

# **Independent Patient Choice and Procurement Panel**

**Review of a proposed contract award**

**Talking Therapies and Psychological Therapies for Severe Mental Health Problems for Mid and South Essex**

**Case Reference: CR0021-25 and CR0022-25**

**24 September 2025**

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# 1 Executive Summary

1. On 24 June 2025, the Panel was asked by Midlands Partnership University NHS Foundation Trust (MPFT) to advise on the selection of a provider by NHS Mid and South Essex Integrated Care Board (MSE ICB) for its Talking Therapies and Psychological Therapies for Severe Mental Health Problems (mental health core services) in Mid and South Essex. On 27 June 2025, the Panel was asked by Essex Partnership University NHS Foundation Trust (EPUT) to advise on the same provider selection process. The Panel, in accordance with its case acceptance criteria, accepted MPFT's request on 27 June and EPUT's request on 1 July 2025.
2. Mental health core services in Mid and South Essex encompass talking therapies and psychological therapies. Talking therapies are for people suffering from anxiety and depression while the psychological therapies in this service are for people with severe mental health problems.
3. There are currently four providers of mental health core services in the MSE ICB area, namely MPFT, EPUT, Hertfordshire Partnership NHS Foundation Trust and Vita Health Solutions Limited (Vita Health). The service specification and financial envelope differs across providers, and each serves a separate geographic area, aligning to the former Clinical Commissioning Group (CCG) areas in the ICB. The average cost per patient in the highest cost service is more than double the average cost per patient in the lowest cost service.
4. MSE ICB, in moving to a single contract for mental health core services, is adopting a single service specification and a revised financial envelope. According to MSE ICB, this will "ensure a consistent and equitable service offer to improve patient experience and address inequalities" and achieve "better value for money and efficiencies from estates, digital infrastructures and workforce".
5. To deliver the new contract successfully, the new provider will need to carry out a major transformation programme. This will include taking on staff from the current providers (via TUPE transfer), implementing the new ICB-wide service specification, integrating clinical records from the four current providers into a single patient records system, and putting in place service locations across the ICB area, which may include taking over premises used by the current providers. The new provider may also need to carry out a redundancy programme given that the financial envelope for the new contract is smaller than that for the four existing contracts.
6. MSE ICB published a PIN on 11 February 2025, inviting "suitably qualified providers to attend a virtual Market Engagement event which will inform the market of the Authority's intention to undertake a competitive procurement process [for mental health core services]". This was followed by a notice inviting proposals on 4 March 2025. The new contract has a three year term with the option of a two year extension, and was due to commence on 1 August 2025. The estimated total contract value, including the extension, is approximately £92.5m (excluding VAT).
7. Bidders were initially given 19 working days to submit proposals (i.e. until 28 March 2025). On 10 March, the deadline was extended by two working days (i.e. until 1 April 2025), and then on 26 March, as a result of the large number of clarification questions

(CQs) asked by bidders, the deadline was extended by another two working days (i.e. until 3 April 2025).

8. The Panel notes that, even with these extensions, the timescale for a provider selection process of this scale and complexity was tight. MSE ICB told the Panel that it believed that the duration of the tender process was reasonable, noting that the accelerated process under the open procedure in the former Public Contracts Regulations (PCR) allowed for a minimum of 15 working days.
9. On 11 March 2025, a week into the tender process, MSE ICB was asked, by way of a bidder CQ, to confirm that the annual cost of staff who could be expected to transfer to the successful bidder under TUPE rules exceeded the contract's annual financial envelope. MSE ICB responded on 17 March, saying that having reviewed the TUPE information, its calculation indicated that this was not the case. Although MSE ICB did not realise this at the time, its response, unfortunately, was not correct.
10. Bidders, having carried out their own analysis of the TUPE data supplied by MSE ICB, did not take MSE ICB's response at face value. With bidders pressing the point that indicative staffing costs exceeded the contract's budget, MSE ICB re-visited its analysis of the TUPE data. On 27 March 2025, the ICB's finance team reported internally that by including pay-related costs (such as pension costs), which had previously been excluded from the ICB's analysis, the total cost of staff identified as eligible for TUPE exceeded the budget envelope for year 1 by approximately £2.2 million.
11. Given the results of this analysis, the matter was escalated to MSE ICB executives for further consideration. These executives decided to continue the procurement with an unchanged financial envelope. The view was taken that "the market would respond via the competitive tender exercise to evidence innovation, investment and if the opportunity was commercially attractive/attainable".
12. MSE ICB also issued a statement on 1 April 2025, two days before the deadline for proposals, responding to bidders' queries that their financial proposals must not exceed the financial envelope. However, it provided bidders with an opportunity to exclude certain costs from their financial proposal, as set out in the Commercial Offer Template, where bidders proposed to finance these costs using their own resources (i.e. external to contractual payments to the provider by the ICB).
13. EPUT and Vita Health both submitted proposals. MPFT engaged in the provider selection process, but did not submit a proposal. MPFT told the Panel that it was unable to submit "a fully costed and considered proposal that had achieved the required organisation sign-off" by the 3 April 2025 deadline.
14. On 7 May 2025, MSE ICB published a contract award notice announcing Vita Health as the successful bidder.
15. On 16 May 2025, prior to the end of the standstill period, MPFT made representations to MSE ICB about the provider selection process. EPUT made representations to MSE ICB on 20 May (also before the end of the standstill period), and requested further information from MSE ICB. On 20 June, MSE ICB communicated to both providers its further decision to proceed with the contract award to Vita Health, and at the same

time shared several documents with MPFT and EPUT in response to their requests for information.

16. The Panel, in reviewing MPFT's and EPUT's representations, has found that MSE ICB's provider selection process for its mental health core services contract breached the PSR regulations in several respects:
  - First, the Panel finds that MSE ICB, in denying itself the opportunity to evaluate key aspects of bidders' proposals on a level playing field, breached the PSR regulations, and in particular, its obligations to act fairly, transparently and proportionately.
  - Second, the Panel finds that MSE ICB, in inviting bidders to make proposals to use resources external to the contract to assist in financing the cost of service provision, while not asking for any information that would allow it to reach an informed view on the potential effects on the sustainability of other services, breached the PSR regulations, and in particular Regulation 11(2) by not sufficiently taking into account the requirement under Regulation 5(c)(iii) to ensure that services are provided in a sustainable way when determining the contract award criteria.
  - Third, the Panel finds that MSE ICB, in changing its approach as to how bidders could present information on costs in their proposals, and not allowing bidders a reasonable period of time to take account of MSE ICB's new approach, breached the PSR regulations, and in particular its obligations to act fairly and proportionately.
  - Fourth, the Panel finds that MSE ICB, in responding to several bidders' CQs in a way that was incomplete, lacked timeliness or was misleading, breached the PSR regulations, and in particular its obligations to act transparently, fairly and proportionately.
  - Fifth, the Panel finds that MSE ICB, in adversely assessing EPUT's response to Question 2.3.1 (Service Model) with respect to the possibility of DWP funding of employment advisers not continuing, when such a possibility was not suggested by MSE ICB in either the tender documentation or in its response to the relevant CQ, breached the PSR regulations and in particular its obligation to act fairly.
  - Finally, the Panel finds that MSE ICB, in failing to provide relevant documents in response to MPFT's request for information, and in responding to MPFT's and EPUT's requests for information at the same time as responding to their representations, breached its obligation to ensure that a provider which makes representations "is afforded such further opportunity to explain or clarify the representations made as the relevant authority considers appropriate" (Regulation 12(4)(a)) and to "provide promptly any information requested by an aggrieved provider where the relevant authority has a duty to record that information under regulation 24" (Regulation 12(4)(b)).
17. Given these conclusions, three options are open to the Panel. The Panel may advise that:

- the breaches had no material effect on MSE ICB's selection of a provider and it should proceed with awarding the contract as originally intended;
  - MSE ICB should return to an earlier step in the provider selection process to rectify the issues identified by the Panel; or
  - MSE ICB should abandon the current provider selection process.
18. The Panel's view is that the breaches identified have had a material effect on MSE ICB's provider selection process for the mental health core services contract.
19. The Panel's advice to MSE ICB is that it returns to an earlier step in the provider selection process, namely the publication of a new contract notice and issuance of tender documentation suitably revised to address the issues identified by the Panel in this review. The Panel notes, however, the provision in the statutory guidance that "Relevant authorities should not use the option to return to an earlier step as an opportunity to modify the selection parameters (that is, to modify the key criteria or change the service specifications)". If MSE ICB is unable to return to an earlier step in the process without modifying its selection parameters, the Panel's advice, in line with the statutory guidance, is that MSE ICB "should abandon the provider selection process (in accordance with the Regulations) and start a new one.

## 2 Introduction

20. On 24 June 2025, the Panel was asked by Midlands Partnership University NHS Foundation Trust (MPFT)<sup>1</sup> to advise on the selection of a provider by NHS Mid and South Essex Integrated Care Board (MSE ICB)<sup>2</sup> for its Talking Therapies and Psychological Therapies for Severe Mental Health Problems (mental health core services) in Mid and South Essex. On 27 June 2025, the Panel was asked by Essex Partnership University NHS Foundation Trust (EPUT)<sup>3</sup> to advise on the same provider selection process.
21. The Panel, in accordance with its case acceptance criteria, accepted MPFT's request on 27 June and EPUT's request on 1 July 2025. The Panel's case acceptance criteria set out both eligibility requirements and the prioritisation criteria the Panel will apply when it is approaching full caseload capacity.<sup>4</sup> Both providers' requests met the eligibility requirements, and as the Panel was not approaching full capacity, there was no need to apply the prioritisation criteria.
22. The Panel's Chair appointed three members to a Case Panel for the review of both cases (in line with the Panel's procedures). The Case Panel consisted of:
- Andrew Taylor, Panel Chair;
  - Albert Sanchez-Graells, Case Panel Member; and

<sup>1</sup> MPFT is a provider of mental health, physical health and social care services for adults, primarily in the Midlands but also in several other regions in England. Further information can be found on its website at <https://www.mpft.nhs.uk/>.

<sup>2</sup> MSE ICB is the statutory body responsible for planning health services to meet the health needs of the Mid and South Essex population and for managing the budget for NHS services for this population. Further information on MSE ICB can be found on its website at <https://www.midandsouthessex.ics.nhs.uk/about/boards/integrated-care-board/>.

<sup>3</sup> EPUT is a provider of community health, mental health and learning disability services in Luton, Bedfordshire, Essex and Suffolk. Further information can be found on its website at <https://www.eput.nhs.uk/>.

<sup>4</sup> The Panel's case acceptance criteria are available at <https://www.england.nhs.uk/commissioning/how-commissioning-is-changing/nhs-provider-selection-regime/independent-patient-choice-and-procurement-panel/>.

- Alison Tonge, Case Panel Member.<sup>5</sup>
23. The Case Panel's review has been carried out in accordance with the Panel's Standard Operating Procedures ("procedures").<sup>6</sup>
  24. This report provides the Panel's assessment of MPFT's and EPUT's representations and its advice to MSE ICB. The report is set out as follows:
    - Section 3 briefly describes the role of the Panel;
    - Section 4 sets out the background to the Panel's review, including the events leading up to, and including, the provider selection process;
    - Section 5 sets out the concerns raised by MPFT and EPUT;
    - Section 6 identifies the PSR regulations relevant to MPFT's and EPUT's representations;
    - Section 7 sets out the Panel's assessment of the issues raised by MPFT and EPUT;
    - Section 8 sets out the Panel's advice to MSE ICB.
  25. The Panel thanks MSE ICB, MPFT and EPUT for their assistance and cooperation during this review.

### 3 Role of the Panel

26. The PSR regulations, issued under the Health and Care Act 2022, put into effect the Provider Selection Regime for NHS and local authority commissioning of health care services. The Provider Selection Regime came into force with the adoption of the PSR regulations on 1 January 2024 and gives relevant authorities (i.e. commissioners) greater flexibility in selecting providers of health care services.<sup>7</sup>
27. The Panel's role is to act as an independent review body where a provider has concerns about a commissioner's provider selection decision. Panel reviews only take place following a commissioner's review of its original decision.
28. For each review, the Panel's assessment and advice is supplied to the commissioner and the potential provider that has requested the Panel's review. It is also published on the Panel's webpages. The commissioner is then responsible for reviewing its decision in light of the Panel's advice.

### 4 Background to this review

29. Mental health core services in Mid and South Essex encompass talking therapies and psychological therapies for severe mental health problems. Talking therapies are for people suffering from anxiety and depression<sup>8</sup> while the psychological therapies in this

<sup>5</sup> Biographies of Panel members are available at <https://www.england.nhs.uk/commissioning/how-commissioning-is-changing/nhs-provider-selection-regime/independent-patient-choice-and-procurement-panel/panel-members/>.

<sup>6</sup> The Panel's Standard Operating Procedures are available at <https://www.england.nhs.uk/commissioning/how-commissioning-is-changing/nhs-provider-selection-regime/independent-patient-choice-and-procurement-panel/>.

<sup>7</sup> The PSR Regulations are available at <https://www.legislation.gov.uk/uksi/2023/1348/contents/made> and the accompanying statutory guidance is available at NHS England, *The Provider Selection Regime: statutory guidance*, <https://www.england.nhs.uk/long-read/the-provider-selection-regime-statutory-guidance/>

<sup>8</sup> Talking therapies were initially introduced into the NHS under the Improving Access to Psychological Therapies (IAPT) programme.

service are for people with severe mental health problems.<sup>9</sup> Across Mid and South Essex, MSE ICB expects around 95% of referrals for mental health core services to be for talking therapies and the remaining 5% for psychological therapies for severe mental health problems.<sup>10</sup>

30. This section sets out the background to the current competitive tender for mental health core services, which is the subject of this review by the Panel. It sets out the planned transition from four geographically separate providers to a single provider (Section 4.1), MSE ICB's attempt, prior to the competitive tender, to enter into a new contract via the Most Suitable Provider Process under the PSR regulations (Section 4.2), and the conduct of the competitive tender (Section 4.3).

#### **4.1 Transitioning existing services to a new contract**

31. There are currently four providers of mental health core services in the MSE ICB area, namely MPFT, EPUT, Hertfordshire Partnership NHS Foundation Trust and Vita Health Solutions Limited (Vita Health).<sup>11</sup> The service specification and financial envelope differs across providers, and each serves a separate geographic area, aligning to the former Clinical Commissioning Group (CCG) areas in the ICB. The average cost per patient in the highest cost service is more than double the average cost per patient in the lowest cost service.<sup>12</sup>
32. MSE ICB, in moving to a single contract for mental health core services is adopting a single service specification and a revised financial envelope. According to MSE ICB, this will “ensure a consistent and equitable service offer to improve patient experience and address inequalities” and achieve “better value for money and efficiencies from estates, digital infrastructures and workforce”.<sup>13</sup>
33. To deliver the new contract successfully, the new provider will need to carry out a major transformation programme. This will include taking on staff from the current providers (via TUPE transfer), implementing the new ICB-wide service specification, integrating clinical records from the four current providers into a single patient records system, and putting in place service locations across the ICB area, which may include taking over premises used by the current providers. The new provider may also need to carry out a redundancy programme given that the financial envelope for the new contract is smaller than that for the four existing contracts.

#### **4.2 Attempt to arrange a new contract via the Most Suitable Provider process**

34. Prior to the competitive tender for the new contract, MSE ICB sought to put in place a single new contract with all four current providers using the Most Suitable Provider (MSP) process under the PSR regulations. MSE ICB and the current providers commenced discussions about awarding a new contract via the MSP process in

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<sup>9</sup> For further information see NHS England, NHS Talking Therapies for anxiety and depression at <https://www.england.nhs.uk/mental-health/adults/nhs-talking-therapies/>, and NHS England, Psychological therapies for severe mental health problems at <https://www.hee.nhs.uk/our-work/mental-health/psychological-therapies-severe-mental-health-problems>.

<sup>10</sup> Panel calculations based on data in MSE ICB, *Market Engagement Event Presentation*, 24 February 2025.

<sup>11</sup> Vita Health Solutions Limited is also known as Vita Health Group and is a provider of mental and physical health services. Further information can be found on its website at <https://www.vitahealthgroup.co.uk/>.

<sup>12</sup> Panel calculations based on data in MSE ICB, *NHS Talking Therapies: A Review of the Health Services provision by 4 Providers within the Mid and South Essex ICS*, undated, p.13.

<sup>13</sup> Mid and South Essex ICB, *MSE ICS Procurement Update March 2025*, 18 March 2025.



January 2024. The four providers agreed that EPUT would be the lead provider for the new contract.

35. On 14 June 2024, MSE ICB published a Prior Information Notice (PIN) on Find a Tender Service (FTS), informing the market of its intention to use the MSP process. Expression of interest documentation was issued to the providers in July 2024, and the providers were invited to submit an outline solution in August 2024.
36. Structured dialogue sessions took place in September 2024. The following month, October 2024, the providers wrote to MSE ICB outlining concerns about the financial envelope for the new contract, the risk of redundancies, and the risk of limited service provision. In response, MSE ICB increased the proposed contract value from £84 million to £86 million. Evaluation and moderation of the providers' proposal commenced on 17 October 2024 and continued until 15 November 2024. Following a satisfactory evaluation of the outline solution, MSE ICB invited the providers to submit a detailed solution.
37. On reviewing the detailed solution, MSE ICB concluded that the serious risks which had previously been identified, including to clinical safety, remained. As a result, MSE ICB commenced internal discussions in December 2024 on alternatives to the MSP process. On 22 January 2025, the four providers withdrew from the MSP process, following which MSE ICB decided to abandon the MSP process and carry out a competitive procurement.<sup>14</sup>

#### **4.3 Conduct of the competitive tender for the new contract**

38. MSE ICB published a new PIN on 11 February 2025, inviting "suitably qualified providers to attend a virtual Market Engagement event which will inform the market of the Authority's intention to undertake a competitive procurement process [for mental health core services]".<sup>15</sup> Twenty four expressions of interest were received from potential providers.<sup>16</sup>
39. A virtual market engagement event was held on 24 February 2025 where MSE ICB shared the "maximum financial envelope, activity data, potential TUPE from four (4) incumbent Providers and the overview of the new service's aims and expectations". Interested providers were invited to submit clarification questions to which it responded after the event.<sup>17</sup> On 4 March 2025, MSE ICB published a notice inviting proposals.
40. The new contract has a three year term with the option of a two year extension, and was due to commence on 1 August 2025. The estimated total contract value, including the extension, is approximately £92.5m (excluding VAT).<sup>18</sup>
41. Bidders were initially given 19 working days to submit proposals (i.e. until 28 March 2025). On 10 March, the deadline was extended by two working days (i.e. until 1 April 2025), and then on 26 March, as a result of the large number of CQs asked by

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<sup>14</sup> On 30 January 2025, MSE ICB published a notice stating that it had abandoned the MSP process as "the parties were unable to identify a suitable collaborative solution to the specification within the proposed financial envelope" (MSE ICB, *Notice for changes or additional information (corrigendum notice) on Find a Tender Service*, 30 January 2025).

<sup>15</sup> MSE ICB, *Prior Information Notice on Find a Tender Service*, 11 February 2025.

<sup>16</sup> MSE ICB later told the Panel that around six of these potential providers were potentially credible bidders (Panel meeting with MSE ICB, 24 July 2025).

<sup>17</sup> MSE ICB, *Mental Health Core Services Review Panel Detailed Overview*, 27 May 2025.

<sup>18</sup> MSE ICB, *Contract Notice on Find a Tender Service*, 4 March 2025.

bidders, the deadline was extended by another two working days (i.e. until 3 April 2025).

42. The Panel notes that, even with these extensions, the timescale for a provider selection process of this scale and complexity was tight. MSE ICB told the Panel that it believed that the duration of the tender process was reasonable, noting that the accelerated process under the open procedure in the former Public Contracts Regulations (PCR) allowed for a minimum of 15 working days.<sup>19</sup>
43. EPUT and Vita Health both submitted proposals. MPFT engaged in the provider selection process, but did not submit a proposal. MPFT told the Panel that it was unable to submit “a fully costed and considered proposal that had achieved the required organisation sign-off” by the 3 April 2025 deadline.<sup>20</sup>
44. On 7 May 2025, MSE ICB published a contract award notice announcing Vita Health as the successful bidder.
45. On 16 May 2025, prior to the end of the standstill period, MPFT made representations to MSE ICB about the provider selection process. EPUT made representations to MSE ICB on 20 May (also before the end of the standstill period), and requested further information from MSE ICB. On 20 June, MSE ICB communicated to both providers its further decision to proceed with the contract award to Vita Health, and at the same time shared several documents with MPFT and EPUT in response to their requests for information.
46. On 24 June 2025, MPFT asked the Panel to advise on MSE ICB’s provider selection decision, and on 27 June, EPUT requested the same. Both requests were received by the Panel prior to the end of the standstill period. The Panel accepted MPFT’s request on 27 June and EPUT’s request on 1 July. On being made aware of this, MSE ICB confirmed that it would hold the standstill period open for the duration of the Panel’s review.
47. MSE ICB has told the Panel (for contextual purposes) that it has subsequently implemented two rounds of urgent contract awards with the incumbent providers, articulated as i) “four (4) separate contracts amongst the four (4) separate Providers from 01st April 2025 - 31st July 2025 to cover the period whilst the Competitive Process for Mental Health Core Services was underway”<sup>21</sup>, and ii) “The ICB has now implemented new Urgent Award contracts, which have been negotiated by each Provider and the ICB, with the single service specification and maximum financial budget (allocation of the total budget based on cost per population), in accordance with MSE ICB’s commissioning and Governance processes, to ensure safe, consistent and equitable service provision to the patient population in MSE whilst the Competitive Process for this Mental Health Core Services is under review.”<sup>22</sup>

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<sup>19</sup> Panel meeting with MSE ICB, 24 July 2025.

<sup>20</sup> MPFT, Representations to the Panel, 24 June 2025.

<sup>21</sup> Mid and South Essex ICB, Response to Panel questions, 4 July 2025

<sup>22</sup> Mid and South Essex ICB, Response to Panel questions, 19 August 2025

## 5 Representations by MPFT and EPUT

48. This section sets out MPFT's and EPUT's concerns about MSE ICB's provider selection process for mental health core services in Mid and South Essex, as summarised in their representations to the Panel.

### 5.1 Representations by MPFT

49. MPFT's concerns about the provider selection process, as summarised in its representations to the Panel, are as follows:

"Representation 1 - The ICB's failure to provide the Equality Impact Assessment ("EQIA"), has undermined our ability (and possibly that of other bidders) to satisfy the needs of local people in the development of the service and for MPFT to submit a fully informed and compliant bid. The ICB has therefore failed to secure the needs of the people who use the services. The ICB has responded to the representations to say that it will not be disclosing the EQIA to the Trust. The ICB considers that all of the information detailed within the EQIA is set out within the Services Specification. The Trust maintains its position that failure to disclose the EQIA prevented the Trust from submitting a fully informed and compliant bid and the ICB therefore failed to secure the needs of the people using the services.

The Panel should note that the ICB previously disclosed the EQIA documents under a previous failed procurement (which was set out in the ICB's independent review report). The Trust therefore considers the resolution of this Representation to be outstanding.

Representation 2 – The change in the ICB's response to a similar Clarification Question received late in the process by providers was a material change that did not provide a reasonable timeframe for MPFT to amend its bid to take into consideration the material changes or achieve organisational sign-off before the submission date/time. The ICB has responded to the representations to say that they do not consider the changes made to have been material and that they feel the receipt of two other bidders' tender submissions indicates that our representations are unfounded. The ICB also stated that they did not amend the methodology in which it would assess and evaluate the bid submissions received. The Trust maintains its position that by the ICB responding differently to two different clarifications asked at different points in the process that this has resulted in a significant change (specifically that a bidder can absorb their transformational costs outside of the funding envelope, where previously stated this wasn't the case and that all costs should be detailed within the Financial Management Template) that could not be reasonably addressed by the Trust in the remaining timescales provided. This prevented the Trust from submitting a fully costed and considered proposal that had achieved the required organisational sign-off. The Trust also maintains that the representation was not that the ICB had changed their assessment and evaluation of submitted bids but that the material detail contained within the submissions has changed based on the newly issued clarification response at the end of the process, which was a change from the previous response provided to all bidders.

Representation 3 – Throughout the process, responses provided by the ICB to Clarification Questions were incomplete or not accurate, resulting in delaying MPFT (and potentially other bidders') ability to prepare an appropriate costed & considered tender submission. The ICB have responded saying their panel found no merit in this representation and rejected the concerns raised. The ICB has also detailed in their response that it would have been helpful for the Trust to have included an example where it believed that the Authority [MSE ICB] did not respond fully to a Clarification

Question. The Trust maintains its position that this has been the case and provided examples within our challenge letter. Additionally it should be noted that the ICBs Panel has detailed that it would have been helpful for the Trust to provide examples, however no clarifications were asked by the panel despite this being an option.

Documents – the ICB has only part disclosed to the Trust some of the documents requested by the Trust in the Representation letter. The Trust considered the document requests to be reasonable and in accordance with Regulation 24. The Trust therefore considers the resolution of this Representation to be outstanding.”

## 5.2 Representations by EPUT

50. EPUT’s concerns about the provider selection process, as summarised in its representations to the Panel, are as follows:

### “Late and incomplete responses to clarification questions

We remain of the view that the ICB has provided late or incomplete responses to clarification questions during the procurement, in breach of its duty to act fairly and transparently under regulation 4 of the PSR.

We have checked the tendering portal which indicates that there are a number of clarifications which were raised and were not responded to.

We do not feel that the relevant authority has engaged with our concerns regarding this point, instead simply setting out an account of the clarification logs issues and, further, dismissed this representation on the basis that it felt it was *“further unsubstantiated as no actual example(s) was provided. A broad, general statement was made as to late responses and incomplete responses.”* If the relevant authority thought examples were required, we believe that it should have afforded us a further opportunity to clarify or explain this representation in accordance with regulation 12(4)(a) of the PSR.

### Evaluation of question 2.3.1 (Service Model)

The relevant authority’s internal panel’s findings on this representation repeatedly refer to the relevant authority making various assertions, and we do not see any evidence that in considering our representation, the relevant authority’s internal panel has properly addressed itself to the question of whether the evaluators have failed to correctly apply the evaluation criteria when evaluating our response to question 2.3.1 and/or evaluated the responses inconsistently.

In light of the moderation minutes provided by the relevant authority after conclusion of its review, we have additional concerns. We note that Evaluator 3 moved from a 4 to a 3 on the basis that our response ‘lacked relevant evidence and detail’. Question 2.3.1 asked bidders to set out their model and provide descriptions of how aspects would be delivered in a limited word count, without any request for ‘evidence’. We consider that the relevant authority has not followed its own process (notwithstanding its assertions regarding the moderation process reported by its internal panel) and we believe that the absence of 1 of the 4 evaluators might have altered the discussion taking place at the moderation meeting.

We believe that the likelihood of the evaluators not applying the evaluation criteria correctly is likely to have been exacerbated by the standard scoring matrix in Table D in Doc 1 – Competitive Process Overview which, in our view, is not sufficiently clear and could lead to evaluators subjectively deciding whether a bid is ‘Good’, ‘Average’ or ‘Poor’.

We also consider that the complicated calculation of 'raw' weightings and 'total' weightings as described in Table C in Doc 1 – Competitive Process Overview (where the individually listed example percentages in the table for 2.3.1, 2.4.1 and 2.5.1 do not add up to the example subtotal 'raw' and total weighting figures stated in that table) could have led to issues in calculating scores.

We remain of the view that the evaluators have not correctly applied the published evaluation criteria when assessing our response and/or have evaluated the responses from EPUT and Vita inconsistently and believe that the relevant authority has breached of regulation 4 and regulation 11(5) of the PSR.

#### Mobilisation period

From the documents provided by the relevant authority, we note that one of three evaluators did not attend the moderation meeting and, for the same reasons as set out above, we consider that this resulted in the moderation carried out not being sufficiently robust and not complying the relevant authority's process as described by its internal review panel. We further note that Evaluator 4 did not attend the moderation meeting but their individual score was moved during this meeting. In our view this indicates that a robust moderation process has not been carried out.

The relevant authority has not responded to our question regarding the mobilisation period.

We note that the relevant authority's internal review panel notes that the relevant authority asserted that all requirements listed in the question were evaluated wholly, not by each bullet point alone. However, the format of the moderation meeting minutes indicates that responses were evaluated by bullet point.

We consider that this is exacerbated by the lack of clarity in the published evaluation methodology. We therefore consider that the evaluators have not correctly applied the published evaluation criteria when assessing our response and believe that the relevant authority has breached of regulation 4 and regulation 11(5) of the PSR.

#### Evaluation of question 2.16.1 ((Commercial) Value for Money and Financial Sustainability)

As with the previous representation, the relevant authority's internal panel's findings on this representation repeatedly refer to the relevant authority making various assertions, and we do not see any evidence that in considering our representation, the relevant authority's internal panel has properly addressed itself to the question of whether the evaluators have failed to correctly apply the evaluation criteria when evaluating our response to question 2.16.1 and/or evaluated the responses from us and Vita inconsistently.

Having considered the moderation meeting minutes for this question disclosed by the relevant authority, we note (from the red text in the moderation meeting minutes) that Evaluator 8 reduced their score on the basis that we had not provided examples or our existing KPIs/productivity/capacity/activity in our response, despite this not being expressly required in the question. Evaluator 8 also criticised our response on the basis that, as an incumbent provider, we should have evidenced some of their existing works/initiatives/performance measures despite, again, this not being expressly required by the question.

We consider that the evaluators have failed to correctly apply the evaluation criteria when evaluating our response to question 2.16.1 and/or that the evaluators have evaluated the responses from us and Vita inconsistently. We consider that the relevant authority has breached regulation 4 and regulation 11(5) of the PSR.

#### Evaluation of question 2.4.1 (Service Delivery)

As with the previous representation, the relevant authority's internal panel's findings on this representation repeatedly refer to the relevant authority making various assertions, and we do not see any evidence that, in considering our representations, the relevant authority's internal panel has properly addressed itself to the question of whether the evaluators have failed to correctly apply the evaluation criteria when evaluating our response to question 2.4.1 and/or evaluated the responses from us and Vita inconsistently.

We consider that the evaluators have failed to correctly apply the evaluation criteria when evaluating EPUT's response to question 2.4.1 and/or evaluated the responses from EPUT and Vita inconsistently. We consider that the relevant authority has breached regulation 4 and regulation 11(5) of the PSR.

We also ask the Panel to consider the following issues relating to the way the relevant authority has dealt with our representations:

- In our representation letter of 20 May 2025, we requested information and documents from the relevant authority. The relevant authority sought clarification from us regarding those requests on 28 May 2025 and we responded on 3 June 2025 to confirm that we were requesting provision of documents. However, we only received the relevant authority's response to our request for provision of information and documents on 20 June 2025 (including a copy of its regulation 24 records), as part of the notice from the relevant authority of its further decision following its review. We consider that this was a breach of the relevant authority's duty, under regulation 12(4)(b) of the PSR to provide promptly information requested by us where the relevant authority had a duty to record the information under regulation 24.
- The tone of the relevant authority's internal review panel's findings leads us to the view that the review has not been conducted as an impartial review of our genuinely held concerns regarding the procurement of a service which, ultimately, is important to service users who cannot raise the concerns themselves. We find the tone of the independent review panel's reported findings to be aggressive and contentious in places."

## **6 PSR regulations relevant to this review**

51. In its representations to the Panel, MPFT suggested that MSE ICB breached the PSR regulations in relation to the general requirements on commissioners (as set out in Regulation 4), the application of basic and key criteria (as set out in Regulation 5), and the recordkeeping obligations set out in Regulation 24.
52. EPUT's representations additionally suggested that MSE ICB breached the PSR regulations in relation to the processes to be followed (as set out in Regulation 6), the steps that commissioners must follow when using the competitive process (as set out in Regulation 11), and the requirements in relation to responding to representations (as set out in Regulation 12).
53. The relevant parts of these PSR regulations are set out below:
  - Regulation 4 sets out the general requirements on relevant authorities (i.e. commissioners) when selecting a provider of health care services. This states that relevant authorities "must act – (a) with a view to (i) securing the needs of the people

who use the services; (ii) improving the quality of the services, and; (iii) improving the efficiency in the provision of the services; and (b) transparently, fairly and proportionately”.

- Regulation 5 sets out the key criteria which a commissioner must consider when procuring relevant health care services. The five key criteria are: (a) quality and innovation; (b) value; (c) integration, collaboration and service sustainability; (d) improving access, reducing health inequalities and facilitating choice; and (e) social value.
- Regulation 6 sets out the appropriate process a relevant authority must follow when procuring a relevant health care service to which the PSR regulations apply. This states that “(7) Where (a) the relevant authority is not required to follow Direct Award Process A or Direct Award Process B, and (b) neither paragraph (5) nor (6) applies,<sup>23</sup> the relevant authority must follow the Competitive Process.”
- Regulation 11 sets out the obligations that apply to commissioners when following the competitive process. It states that “(1) Where the relevant authority follows the Competitive Process, the process is that the relevant authority follows the steps set out in this regulation ... (5) Step 3 is that the relevant authority assesses any offers received in accordance with the contract or framework award criteria ...”
- Regulation 12 sets out the requirements on commissioners in relation to the standstill period after a contract award decision. It states that “(4) Where the relevant authority receives representations [during the standstill period], it must ... (b) provide promptly any information requested by an aggrieved provider where the relevant authority has a duty to record that information under regulation 24 (information requirements) ...”
- Regulation 24 sets out the information that must be recorded by commissioners. This includes “... (d) the decision-making process followed, including the identity of individuals making decisions ... (f) where the competitive process was followed, a description of the way in which the key criteria were taken into account, the basic selection criteria were assessed and contract or framework award criteria were evaluated when making a decision; (g) the reasons for decisions made under these Regulations ...”.

54. The Provider Selection Regime Statutory Guidance “sits along the Regulations to support organisations to understand and interpret the PSR regulations”.<sup>24</sup> Reference is made to relevant provisions of the Statutory Guidance in the Panel’s assessment of the issues in Section 7.<sup>25</sup>

## 7 Panel Assessment

55. This section sets out the Panel’s assessment of MPFT’s and EPUT’s representations on MSE ICB’s compliance with the PSR regulations when:
- first, deciding not to share the Equality Impact Assessment (EQIA) with bidders (Section 7.1);

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<sup>23</sup> Paragraph 6(5) sets out the conditions under which the relevant authority may follow Direct Award Process C, while paragraph 6(6) sets out the conditions under which the relevant authority may follow the Most Suitable Provider Process; such choice being at the discretion of the relevant authority.

<sup>24</sup> NHS England, *The Provider Selection Regime: statutory guidance*, 21 February 2024, p.2.

<sup>25</sup> The PSR Statutory Guidance was updated in April 2025. However, references to the Statutory Guidance in this report are to the February 2024 guidance as this was the version in force during this provider selection process. Where relevant, differences between the two versions of the Statutory Guidance are noted in this report.

- second, specifying the content of, and evaluating, bidders' financial proposals (Section 7.2);
- third, responding to bidders' CQs (Section 7.3);
- fourth, evaluating and scoring of EPUT's proposal (Section 7.4); and
- finally, reviewing unsuccessful bidders' representations (Section 7.5).

## 7.1 Sharing the Equality Impact Assessment with bidders

56. This section sets out the Panel's assessment of MPFT's concerns about MSE ICB's refusal to share with bidders its Equality Impact Assessment (EQIA).

57. MPFT, in its representations to the Panel, said that MSE ICB's refusal to share the EQIA with bidders undermined its ability to submit a fully informed and compliant bid. More specifically, it said:

"MSE ICB's failure to provide the Equality Impact Assessment (EQIA) has undermined our ability (and possibly that of other bidders) to satisfy the needs of local people in the development of the service and for MPFT to submit a fully informed and compliant bid. MSE ICB has therefore failed to secure the needs of the people who use the services. MSE ICB has responded to the representations to say that it will not be disclosing the EQIA to the Trust. MSE ICB considers that all of the information detailed within the EQIA is set out within the Services Specification. MPFT maintains its position that failure to disclose the EQIA prevented the Trust from submitting a fully informed and compliant bid and MSE ICB therefore failed to secure the needs of the people using the services.

"The Panel should note that MSE ICB previously disclosed the EQIA documents under a previous failed procurement (which was set out in the ICB's independent review report). MPFT therefore considers the resolution of this Representation to be outstanding" (see paragraph 49).<sup>26</sup>

58. MSE ICB, in responding to MPFT's representations immediately following the provider selection process, reported the findings of its internal review panel, which (in part) said:

"MSE ICB asserted that the key findings, considerations, and outcomes of the EQIA were fully reflected within the published Service Specification, which was made available to all Bidders as part of the procurement documentation suite from the outset of the publication of this Competitive Tender Process. MSE ICB did not share privileged, internal governance documents with Bidders. MSE ICB notes that this Competitive Process was not conducted in the same way as the previous non-competitive, MSP process, in which MPFT had been a key delivery partner as part of the 'Provider Collaborative' and had previously been given access to the MSE ICB's internal governance documentation.

"The EQIA documents and assessments were primarily for internal decision making within MSE ICB. MSE ICB did not find it necessary to share the EQIA document with Bidders because the Service Specification captured all relevant and pertinent information for the requirements of this service and the Service Specification had been shared alongside all other relevant procurement documentation in the first instance."

<sup>26</sup> To assist with clarity, quotes taken from MPFT, EPUT and MSE ICB documents have been adjusted to make sure that each organisation is clearly identified. For example, references by MPFT to itself as "the Trust" have been amended to MPFT and references to "the Authority" and "Commissioners" have been amended to MSE ICB.



59. The Panel notes that there is no specific requirement in the PSR regulations to share an EQIA with bidders and, having reviewed the EQIA, the Panel does not believe that it contains any information that went beyond the service specification in terms of potentially informing bidders' proposals.
60. As a result, the Panel finds that MSE ICB, in deciding not to share the EQIA with bidders, did not breach the PSR regulations, and in particular its obligations under Regulation 4 to act transparently and fairly.

## **7.2 Indicative staffing costs and requirements for bidders' presentation of cost-related information**

61. This section sets out the Panel's assessment of MPFT's and EPUT's concerns about MSE ICB's provision of information on indicative staffing costs for bidders, and its requirements as to how information on service delivery costs should be presented in bidders' financial proposals:
- Section 7.2.1 sets out MPFT's and EPUT's concerns;
  - Section 7.2.2 describes the background to MPFT's and EPUT's concerns; and
  - Section 7.2.3 sets out the Panel's assessment.

### **7.2.1 MPFT's and EPUT's concerns about MSE ICB's advice to bidders on costs**

62. MPFT and EPUT both made representations to the Panel regarding the guidance given to bidders about how the costs of delivering the mental health core services contract should be presented in their proposals. Their view is that:
- before 1 April, bidders were obliged to include all expected costs in the Commercial Offer Template (or Financial Management Template, FMT); and
  - after 1 April, bidders had the option of excluding costs from the FMT, where these costs were being funded by the bidder,<sup>27</sup> and to describe these excluded costs in their response to Question 2.16.1.
63. MPFT told the Panel that before 1 April 2025 it had decided not to bid. However, MSE ICB's new approach to how bidders could present costs in their proposals, which potentially allowed MPFT to fund some of the costs of delivering the contract, meant that it may have been able to formulate a viable proposal. But, with the 3 April deadline for proposals, it had insufficient time to assess whether it could formulate a viable proposal, put such a proposal together, and obtain internal sign-off.<sup>28</sup> EPUT also told the Panel that it had insufficient time to take into account in its proposal the information given to bidders on 1 April.<sup>29</sup>
64. MPFT's concerns are set out in further detail below:
- "The change in MSE ICB's response to a similar Clarification Question received late in the process by providers was a material change that did not provide a reasonable timeframe for MPFT to amend its bid to take into consideration the material changes or achieve organisational sign-off before the submission date/time. MSE ICB has responded to the representations to say that they do not consider the changes made to

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<sup>27</sup> When referring to "costs funded by the bidder" or "costs absorbed by the bidder" in this report, the Panel is referring to a bidder using resources external to contractual revenues to assist in covering the cost of service delivery. MSE ICB and bidders have also described this as an "investment" by bidders (see footnote 38).

<sup>28</sup> Panel meeting with MPFT, 24 July 2025.

<sup>29</sup> Panel meeting with EPUT, 24 July 2025.

have been material and that they feel the receipt of two other bidders' tender submissions indicates that our representations are unfounded. MSE ICB also stated that they did not amend the methodology in which it would assess and evaluate the bid submissions received.

"MPFT maintains its position that by MSE ICB responding differently to two different clarifications asked at different points in the process that this has resulted in a significant change (specifically that a bidder can absorb their transformational costs outside of the funding envelope, where previously stated this wasn't the case and that all costs should be detailed within the Financial Management Template) that could not be reasonably addressed by MPFT in the remaining timescales provided. This prevented MPFT from submitting a fully costed and considered proposal that had achieved the required organisational sign-off. MPFT also maintains that the representation was not that MSE ICB had changed their assessment and evaluation of submitted bids but that the material detail contained within the submissions has changed based on the newly issued clarification response at the end of the process, which was a change from the previous response provided to all bidders" (see paragraph 49).

65. MSE ICB, in responding to MPFT's representations following the provider selection process, reported the findings of its internal review panel. This noted MSE ICB's position that its response to the CQs on 1 April did not represent a material change to how bidders could present information on costs in their proposals, and therefore there was no question of bidders needing further time to prepare their submissions. More specifically, MSE ICB's response said:

"MSE ICB reaffirms [to the internal review panel] that it did not make a material change to the tender process nor to the evaluation criteria that was published in the first instance when the tender opportunity and procurement documentation was issued via the e-procurement portal to the open market

"MSE ICB did not enact an extension following the Clarification Question response, as a material change had not been made in which Bidders' may have reasonably required further time to consider their bid submissions

"MSE ICB asserts having asked Bidders within Technical Question 2.16 for a detailed financial plan, demonstrating a cost effective and sustainable TT & PT SMHP service, that it was appropriate for MSE ICB to have understood that Bidders would utilise this element of question 2.16 to evidence any investment into the service. This would have included, but not be limited to, the financial considerations made by Bidders of the service, mobilisation, Year 1 of contract, Year 2 of contract, Year 3 of contract, and TUPE costs

"MSE ICB did not amend the methodology in which it would assess and evaluate the bid submissions received

"The [internal review] panel found that the clarification response provided by the MSE ICB to Bidders supported the MSE ICB of acting in accordance with Regulation 4, to treat all Bidders the same in a fair and transparent manner, by explicitly allowing for information to be provided in question 2.16 for information only, that would not prejudice a Bidder's written response to question 2.16 or the evaluation criteria and methodology in which the Bidder's written responses would be assessed and evaluated."<sup>30</sup>

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<sup>30</sup> MSE ICB, *Representations Report to MPFT*, 20 June 2025.

66. EPUT, in its representations to MSE ICB, said: “The delays to responding and late information, particularly relating to transformation cost absorption and investment impacted on the Trust’s ability to prepare and submit its tender.”<sup>31</sup> EPUT reiterated these concerns in its representations to the Panel.<sup>32</sup>

### **7.2.2 Background to MPFT’s and EPUT’s concerns about the presentation of costs in bidders’ proposals**

67. The relevant background to MPFT’s and EPUT’s concerns about the presentation of costs in bidders’ proposals has two parts:
- first, the guidance provided to bidders in the tender documentation on how costs should be presented in their proposals (see paragraphs 68 to 71); and
  - second, developments in bidders’ and MSE ICB’s understanding of service costs during the provider selection process, and how this was reflected in the guidance given to bidders on how costs should be presented in their proposals (see paragraphs 72 to 83).

#### **Guidance for bidders in tender documentation**

68. Bidders were told in the tender documentation that the maximum value (or financial envelope) for the new contract was £55.9 million over the first three years, and that any bids in excess of this figure would be rejected. Bidders were also told that their total price “must cover all costs associated with the provision” of the service, and that they “must ensure that they clearly communicate any anticipated set up and mobilisation costs” in the FMT.
69. More specifically, the tender documentation said:
- “The maximum total contract value over the 5-year period is £92,503,175 pound sterling (inclusive of uplift assumptions) as detailed in Find a Tender Service notice. Bidder’s may vary their commercial offer in line with Doc 6. Commercial Offer Template, so long as they do not breach the maximum financial envelope of £55,879,469 pound sterling for the 3-year contract.
- “All bidders must complete Doc 6. Commercial Offer Template (Doc 6. MHCoreServices - Commercial Offer template v2 100325) in full to ensure a compliant bid. Failure to do so will mean your Tender Response is rejected as non-compliant and you will be excluded from the procurement.
- “Price scoring will be undertaken on Bidder’s Price for the first 3 years of the contract only. Commissioners will accept total bids up to £55,879,469 pound sterling over the three-year contract term. This figure acts as a total affordability envelope for this procurement for the purposes of bidding. Any bids received in excess of such affordability envelope will be rejected as non-compliant. In such instances you will be excluded from the procurement and will not be awarded a contract.”<sup>33</sup>
70. The FMT’s instructions for bidders (in the “Instructions for Use” worksheet) said:
- “The Bidders Total Price shall encompass all elements of service provision outlined in the Service Specification and other ITT documents, including workforce, and must cover

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<sup>31</sup> EPUT, *Representations to MSE ICB*, 20 May 2025.

<sup>32</sup> Panel meeting with EPUT, 24 July 2025.

<sup>33</sup> MSE ICB, *Competitive Process Overview Mental Health Core Services*, 3 March 2025.

all costs associated with the provision of such services in line with the quality requirements and the expectation of achievement of all performance indicators ...

“Bidders must ensure that they clearly communicate any anticipated set up and mobilisation costs in the Financial Summary tab ... [highlighted in red text]

“Overheads and Corporate costs: Organisational set-up/mobilisation costs should be included in the relevant year. These costs would be assumed to be non-recurrent and therefore not present across the life of the contract. Where costs span multiple years, in particular if they are for different items, then a supporting analysis should be provided detailing the different costs and the split of each cost by year. Costs should be split as accurately as possible across the life of the contract ...”<sup>34</sup>

71. To assist bidders in formulating their proposals, MSE ICB provided indicative TUPE data, collected from the four existing providers, which set out the likely annual cost of staff that could be expected to transfer to the successful bidder under TUPE rules.

### **Developments during the provider selection process**

72. On 11 March 2025, a week into the tender process, MSE ICB was asked, by way of a bidder CQ (CQ43), to confirm that the annual cost of staff that could be expected to transfer to the successful bidder under TUPE rules exceeded the contract’s annual financial envelope. On 17 March 2025, MSE ICB responded, saying that having reviewed the TUPE information, its calculation indicated that this was not the case. Although MSE ICB did not realise this at the time, its response to CQ43, unfortunately, was not correct.
73. Bidders, having carried out their own analysis of the TUPE data supplied by MSE ICB, did not take MSE ICB’s response to CQ43 at face value. A bidder set out its analysis of the TUPE data in a CQ on 20 March (CQ64), saying that annual staffing costs, including pension and other pay-related costs, exceeded the contract’s annual financial envelope, and asked MSE ICB to share the calculations underlying its response to CQ43.
74. With indicative staffing costs exceeding the contract’s annual budget, bidders had to formulate a proposal that involved a reduction in staffing costs so that the costs of their proposals would remain within the fixed financial envelope. Bidders unable to redeploy staff to other services would need to carry out a redundancy programme. However, the costs of any redundancy programme also needed to be included in bidders’ proposals given MSE ICB’s instruction that the total price “must cover all costs associated with the provision” of the service, including “any anticipated set up and mobilisation costs” (see paragraph 70).
75. Given the difficulty that at least some bidders were experiencing in budgeting for redundancies while remaining within the financial envelope, one bidder asked MSE ICB (in CQ63 on 20 March 2025) to confirm that all costs, including transformation costs (i.e. including redundancy costs), needed to be shown in the FMT. MSE ICB

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<sup>34</sup> MSE ICB, *Commercial Offer Template v2*, 10 March 2025. The FMT’s “Instructions for Use” worksheet was supplemented with further instructions in the three worksheets bidders had to complete. In the ‘Financial Summary’ worksheet in relation to Set-up/mobilisation costs, bidders were told that they “should enter the total value of all set-up/mobilisation costs (excl. premises & equipment)” (MSE ICB, *Commercial Offer Template v2*, 10 March 2025).

responded to CQ63 on 26 March, repeating the tender documentation's instructions that all costs needed to be included in the FMT.

76. MSE ICB also responded to CQ64 on 26 March, but did not directly respond to the bidder's point about annual staffing costs exceeding the contract's annual budget. (This was similarly the case for CQ65 where a bidder had also asked about staffing costs exceeding the contract's annual budget.)
77. With bidders pressing the point that indicative staffing costs exceeded the contract's budget, MSE ICB decided to re-visit its analysis of the TUPE data. On 27 March 2025, the ICB's finance team reported internally that including various pay-related costs (such as pension costs), which had previously been excluded from the ICB's analysis, the total cost of staff identified as eligible for TUPE exceeded the budget envelope for year 1 by approximately £2.2 million.<sup>3536</sup>
78. Given the results of this analysis, the matter was escalated to MSE ICB executives for further consideration. These executives decided to continue the procurement with an unchanged financial envelope. The view was taken that "the market would respond via the competitive tender exercise to evidence innovation, investment and if the opportunity was commercially attractive/attainable. The decision to proceed was made [on] 27 March 2025. Executive and Board agreement was noted".<sup>37</sup>
79. On 1 April 2025, two days before the deadline for proposals, MSE ICB told bidders, in responding to several other CQs about costs, that their financial proposals must not exceed the financial envelope of £55.9 million for the contract's first three years. However, it further said that any costs that a bidder proposed to absorb (or fund) could be excluded from the FMT and described in the bidder's response to Question 2.16.1 (Value for Money & Financial Sustainability) and that this would be "for information only". (The seven CQs on costs asked during the provider selection process, and MSE ICB's responses, are set out in full at Appendix 1.)
80. MSE ICB also issued a statement saying:

"Bidders have queried where to indicate any investment into the service, noting that the inclusion of investment<sup>38</sup> would breach the financial envelope in the Commercial Offer Template assessment. Please do not include investments that would exceed the financial envelope in the Commercial Offer Template (FMT). If you would like to indicate investment into the service without indicating costs that would breach the financial envelope, please utilise the attachment function within the technical question 2.16 Value for Money & Financial Sustainability – Please make it clear in the quality written response or supporting attachments that the costs will be absorbed by your organisation".<sup>39</sup>
81. Question 2.16.1 asked bidders to:

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<sup>35</sup> MSE ICB, *Mental Health Core Services Review Panel Detailed Overview*, 27 May 2025.

<sup>36</sup> EPUT has separately provided figures to the Panel that estimate the total cost of staff eligible for TUPE to be £3.9 million in excess of the ICB's Year 1 forecasted contract value.

<sup>37</sup> MSE ICB, *Independent Review Panel as required under the Health Care Services (Provider Selection Regime) Regulations 2023 of the Representations received before midnight 20<sup>th</sup> May 2025*, 27 May 2025, p.10.

<sup>38</sup> The Panel notes that the term "investment" is used by both bidders and MSE ICB to describe costs that would be borne (i.e. absorbed) by the provider, rather than being covered by contractual payments. The Panel notes that this can be a somewhat confusing term in that the costs being borne by a provider are not a capital investment.

<sup>39</sup> MSE ICB, *Clarification Questions Log version 5*, 1 April 2025.

“Provide a detailed financial plan, demonstrating how you will deliver cost-effective and sustainable Talking Therapies and PTSMHP services.

- How will you ensure efficient use of resources while maintaining high service quality?
- Describe your approach to managing waiting lists and service demand within the allocated budget.
- How will you optimise productivity and efficiency without compromising patient outcomes?”

82. Bidders were told in the tender documentation that they could submit “additional attachments to support the written response” and that these attachments would not be included in the word limit for the question.<sup>40</sup> The Panel notes, however, that Question 2.16.1 does not ask bidders for estimates of, or information on, costs that bidders proposed to fund through resources external to the contract.
83. On the 3 April 2025 deadline, proposals were submitted by EPUT and Vita Health, but not by MPFT. MPFT told the Panel that it was unable to submit “a fully costed and considered proposal that had achieved the required organisation sign-off” by the deadline (see paragraph 43).

### **7.2.3 Panel’s assessment of concerns about MSE ICB’s advice to bidders on costs**

84. The Panel, in reviewing MPFT’s and EPUT’s concerns about MSE ICB’s requirements as to how information on service delivery costs should be presented in bidders’ financial proposals, has assessed whether MSE ICB breached the PSR regulations in relation to:
- first, the information requested from bidders and its approach to evaluating proposals given the picture that emerged during the tender regarding likely staffing costs relative to the contract’s value; and
  - second, the specific changes to the tender process on 1 April 2025, which allowed bidders to exclude from the FMT those costs that bidders proposed to absorb.

### **Information requested from bidders and MSE ICB’s approach to evaluating proposals**

85. MSE ICB’s understanding of the risks facing bidders in taking on the new contract changed significantly during the course of the provider selection process. At the outset of the process, on 4 March 2025, MSE ICB believed that the contract’s budget was sufficient to cover the cost of staff likely to transfer to bidders under TUPE rules. However, on 27 March, MSE ICB realised that the contract’s budget was not sufficient to cover the cost of staff likely to transfer to bidders under TUPE rules, and providers would need to make up this shortfall by delivering larger efficiencies, redeploying staff to other vacant posts or contributing their own funding to the service.
86. In response to this changed picture, MSE ICB chose to press ahead with the procurement process, deciding that it would see whether “the market would respond via the competitive tender exercise to evidence innovation, investment and if the opportunity was commercially attractive/attainable” (see paragraph 78).

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<sup>40</sup> MSE ICB, *Competitive Process Overview Mental Health Core Services*, 3 March 2025.

87. MSE ICB did not, however, require any additional information from bidders or alter its approach to evaluating proposals in the light of: (i) the changing picture about the risks that bidders were being asked to take on; and (ii) its interest in seeing whether bidders would propose their own investment in the service or evidence innovation (to drive necessary efficiencies).
88. Bidders did not have to, for example, set out plans for delivering any efficiencies necessary for their financial proposal to fall within the financial envelope. Further, although bidders were given the opportunity to supply information about costs they proposed to absorb (in their response to Question 2.16.1), this information was not required and would be included on a “for information only” basis (i.e. it would not be evaluated).
89. This approach allowed bidders to potentially claim that:
- (i) substantial efficiencies would be made in delivering services, so as to remain within the financial envelope, without having these efficiency claims tested and evaluated by MSE ICB; and/or
  - (ii) outside funding would be supplied, so as to allow costs to be excluded from the FMT and to allow the bidder to remain within the financial envelope, without having the availability and certainty of this funding assessed by MSE ICB.
90. This, in turn, meant that MSE ICB denied itself the opportunity to equitably evaluate key aspects of bidders’ proposals that were critical to them being able to deliver the service within the fixed budget set by MSE ICB. This had consequences not only for the integrity of the provider selection process, but also in terms of the risk for MSE ICB and service users of a bidder being selected, whose proposal was aided by claims that were not evaluated, and subsequently not delivering on these promises.
91. Having reviewed bidders’ proposals, the Panel cannot be confident that unevaluated claims about efficiencies, outside funding and related matters were not made by bidders.
92. The Panel has carefully considered whether these circumstances are sufficient to amount to a breach of the PSR regulations (as opposed to being an example of potentially poor practice that may not in itself breach the PSR regulations). In doing so, the Panel has had particular regard to Regulation 4, which requires that a relevant authority must act:
- (a) with a view to (i) securing the needs of the people who use the services, (ii) improving the quality of the services, and (iii) improving efficiency in the provision of the services;
  - (b) transparently, fairly and proportionately.
93. The Panel’s view is that the circumstances of this case resulted in MSE ICB denying itself the opportunity to evaluate key aspects of bidders’ proposals on a level playing field, and in particular the ability of bidders to effect the necessary transition to the new service they would provide, in accordance with the proposed bid price within the maximum financial envelope.

94. As a result, the Panel finds that MSE ICB, in denying itself the opportunity to evaluate key aspects of bidders' proposals on a level playing field, breached the PSR regulations, and in particular, its obligations to act fairly, transparently and proportionately.

### **Changes to the tender process on 1 April 2025 allowing bidders to exclude self-financed costs from the FMT**

95. The Panel has also considered the narrower issue of whether MSE ICB's decision to allow bidders to exclude from the FMT those costs they planned to fund from their own resources outside the contract was in breach of the PSR regulations. Two potential breaches arise:
- first, whether allowing bidders to use external resources to finance the costs of service provision breached the PSR regulations; and
  - second, whether bidders were allowed sufficient time to modify their proposals given the guidance issued by MSE ICB on 1 April.

#### *Bidders' use of external resources to finance the costs of service provision*

96. The Panel's view is that allowing bidders to decide to use external resources, beyond contractual payments, to assist in financing the costs of service provision is not, in principle, a breach of the PSR regulations. However, the Panel is also of the view that where a bidder makes such a proposal, a commissioner should satisfy itself that: (a) the provider will be likely to be able to meet its commitment; and (b) the bidder's proposed use of resources beyond contractual payments to finance the costs of service provision is consistent with the PSR statutory guidance on service sustainability.
97. In relation to point (a), the Panel has found that MSE ICB did not place itself in a position to evaluate any information that was provided in relation to bidders' self-financing of costs (see paragraphs 85 to 94).
98. In relation to point (b), the PSR statutory guidance says that "Relevant authorities must consider whether and how the decisions they make about which providers should provide services might impact on the stability and sustainability of the NHS locally ... Relevant authorities are expected to avoid destabilising providers through their decision-making. If the proposals are likely to have a negative impact on the stability, viability or quality of other good quality services immediately or over time, relevant authorities are advised to consider whether this is justified by the wider benefits of the proposal".<sup>41</sup>
99. Any proposal by a bidder to make significant use of resources external to the contract to assist in financing the costs of service provision has the potential to impact on other healthcare services supplied by that bidder. (Whether this will be the case in practice will depend on various factors, including the source of the relevant resources that the bidder proposes using.) The Panel's view is that, where such proposals are made by a bidder, a commissioner should take sufficient steps to satisfy itself that this is compliant with the PSR statutory guidance, as set out in the previous paragraph. The Panel

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<sup>41</sup> PSR statutory guidance, February 2024, pp.55-56. These provisions have been carried forward into the April 2025 version of the statutory guidance, where they are set out on pages 27-28.



notes that MSE ICB, in requesting information from bidders, did not ask for any information that would allow it to reach an informed view on this issue.

100. As a result, the Panel finds that MSE ICB, in inviting bidders to make proposals to use resources external to the contract to assist in financing the costs of service provision, while not asking for any information that would allow it to reach an informed view on the potential effects on the sustainability of other services, breached the PSR regulations, and in particular Regulation 11(2) by not sufficiently taking into account the requirement under Regulation 5(c)(iii) to ensure that services are provided in a sustainable way when determining the contract award criteria.

*Whether bidders had sufficient time to modify their proposals*

101. MPFT and EPUT both raised concerns with the Panel about the limited amount of time between MSE ICB's response to the CQs, communicating its new approach at 4.34pm on 1 April 2025, and the proposal deadline of 5.30pm on 3 April 2025. MPFT said that there was not enough time for it to work out whether a revised proposal would be viable, and then, if this was the case, put the revised proposal together and have it approved internally.<sup>42</sup> EPUT said that it lacked time to take the new approach into account in its proposal.<sup>43</sup>
102. The Panel notes that neither MPFT nor EPUT requested an extension to the deadline that would have allowed additional time to submit their proposals.
103. The Panel also notes MSE ICB's view that it "did not enact an extension following the Clarification Question response, as a material change had not been made in which Bidders' may have reasonably required further time to consider their bid submissions" (see paragraph 65). The Panel does not agree with MSE ICB that its 1 April 2025 response to CQs did not represent a new approach compared to the instructions set out in the tender documentation. In particular:
- the tender documentation was clear that: (i) the bidder's total price "must cover all costs associated with the provision of such services"; and (ii) "bidders must ensure that they clearly communicate any anticipated set up and mobilisation costs in the Financial Summary tab" of the FMT (see paragraph 70); and
  - MSE ICB's 1 April response to the CQs on transformation costs allowed bidders to exclude transformation costs from their FMT (where these costs would be absorbed by the provider) and to set out these costs, for information only, in their response to Question 2.16.1 (Value for Money & Financial Sustainability).
104. The Panel's view is that these two approaches are not the same. The instructions in the tender documentation mandate the inclusion of all costs in the FMT, the 1 April response to the CQs allows certain transformation costs to be excluded from the FMT (where the bidder planned to absorb these costs).
105. MSE ICB explained to its internal review panel the reasons why it considered that the 1 April response to the CQs did not represent a new approach compared to the

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<sup>42</sup> Panel meeting with MPFT, 24 July 2025.

<sup>43</sup> Panel meeting with EPUT, 24 July 2025.

instructions set out in the tender documentation. The Panel has reviewed each of the points made by MSE ICB, and sets out in the table below the reasons why it considers MSE ICB's explanation to be deficient.

106. In summary, the Panel's view is that two days is not sufficient time for a bidder to be able to make major changes to its proposal and achieve internal organisational approval for these changes, and that it was not fair or proportionate of MSE ICB not to extend the deadline for proposals after setting out its new approach.
107. As a result, the Panel finds that, MSE ICB, in changing its approach as to how bidders could present information on costs in their proposals and not allowing bidders a reasonable period of time to take account of MSE ICB's new approach, breached the PSR regulations, and in particular its obligations to act fairly and proportionately.

MSE ICB's reasons why it had not made a material change to the tender process	Panel's view
(i) The ICB "did not make a material change ... to the evaluation criteria that was published"	The Panel agrees that MSE ICB did not make a material change to the evaluation criteria, but does not consider this to be relevant to MPFT's and EPUT's concern that MSE ICB changed how bidders were able to present costs in their proposals.
(ii) "it was appropriate for the ICB to have understood that bidders would utilise this element of Question 2.16.1 [i.e. 'a detailed financial plan, demonstrating a cost effective and sustainable ... service'] to evidence any investment into the service"	<p>The Panel does not agree that it was appropriate for MSE ICB to have understood that bidders would use Question 2.16.1 to evidence any "investment" into the service. This is because:</p> <ul style="list-style-type: none"> <li>• Question 2.16.1 does not ask bidders to provide details of any such "investment" (see paragraphs 81 and 82);</li> <li>• MSE ICB instructed bidders to show all of their costs in the FMT, and any "investment" is predicated on certain costs not being shown in the FMT (see paragraph 68); and</li> <li>• the FMT instructs bidders to show all of their anticipated set up and mobilisation costs in the FMT (see paragraph 70), which would include any transformation costs.</li> </ul>
(iii) the ICB "addressed and responded to each Clarification Question ... in good faith and with the relevant information"	The Panel's view is that MSE ICB's assertion that it "addressed and responded to each Clarification Question ... in good faith and with the relevant information" is not relevant to MPFT's and EPUT's concern that MSE ICB changed how bidders were able to present costs in their proposals.
(iv) the ICB "did not amend the methodology in which it would assess and evaluate the bid submissions received"	The Panel partly agrees that MSE ICB "did not amend the methodology in which it would assess and evaluate the bid submissions received". The evaluation methodology remained unchanged in the sense that the scoring matrix, the way in which evaluators conducted their review, and the moderation process were not amended. However, MSE ICB's basis for evaluating bidders' costs was amended by virtue of it allowing transformation costs that would be financed by the bidder to be excluded from the FMT.
(v) "the financial envelope ... was not amended nor altered during the procurement process"	The Panel agrees that MSE ICB did not change the financial envelope, but does not consider this to be relevant to MPFT's and EPUT's concern that MSE ICB changed how bidders were able to present costs in their proposals.

<p>(vi) “all bidders had access to the same information as part of the tender exercise and it was clear that all bidders were to invest TUPE costs into the services in Year 1 or their bid submissions would have exceeded the maximum financial envelope and would therefore have been non-compliant”</p>	<p>The Panel agrees that all bidders had access to the same information as part of the tender exercise, but does not consider this to be relevant to MPFT’s and EPUT’s concern that MSE ICB changed how bidders were able to present costs in their proposals.</p> <p>The Panel does not agree that “it was clear that all bidders were to invest TUPE costs into the services in Year 1 or their bid submissions would have exceeded the maximum financial envelope and would therefore have been non-compliant”. On the contrary:</p> <ul style="list-style-type: none"> <li>• there is no mention of any such requirement in the tender documentation;</li> <li>• MSE ICB implied that no such investment was necessary when responding to CQ43 (saying that the financial envelope was sufficient to cover the cost of staff likely to transfer under TUPE rules) and did not correct its response to CQ43 when it released updated TUPE information that contradicted its answer to this CQ (see paragraph 72); and</li> <li>• MSE ICB only explicitly acknowledged that “investment” by bidders might be needed for the first time on 1 April.</li> </ul>
<p>(vii) the ICB “received two compliant bid submissions ... [and] cannot therefore reasonably consider that [these submissions] could reasonably be discredited or dismissed because MPFT believed itself unable to submit a compliant and legally binding tender”</p>	<p>The Panel notes that MSE ICB’s point that it “received two compliant bid submissions ... [and] cannot therefore reasonably consider that [these submissions] could reasonably be discredited or dismissed because MPFT believed itself unable to submit a compliant and legally binding tender” does not address the issue of whether MSE ICB changed its approach to how bidders could present their transformation costs.</p>

Source: MSE ICB, Representations report to MPFT, 20 June 2025.

### 7.3 Responses to bidders’ clarification questions

108. This section sets out the Panel’s assessment of MPFT’s and EPUT’s concerns about the completeness, accuracy and timeliness of responses to CQs during the provider selection process.

#### 7.3.1 Background to MPFT’s and EPUT’s representations on the CQs

109. Instructions for bidders in relation to CQs in the tender documentation were as follows:

“The Bidder may submit questions to MSE ICB where they require clarification on the information contained in the ITT. For avoidance of doubt, this is not an opportunity to seek additional information to that already provided in the ITT and/or on the Portal.

“All clarification requests should be submitted via the Portal by the Clarification Deadline, as set out in the Procurement Overview. MSE ICB is under no obligation to respond to clarification requests received after the Clarification Deadline. The Bidder should submit clarification questions via the Portal messaging facility only. Questions received by any other method will not receive a response.

“Any clarification requests should clearly reference the appropriate paragraph in the ITT documentation and, to the extent possible, should be aggregated rather than sent individually.

“Unless otherwise indicated in the Procurement Overview, MSE ICB will seek to answer questions within 5 working days following the day of receipt. The Bidder is urged to review the ITT immediately upon receipt and identify and submit any questions as soon as possible and in any event no later than the deadline specified within the Procurement Overview. Any questions received after this time, or via any other method than the Portal messaging facility, may not be answered.”<sup>44</sup>

110. MSE ICB responded to 90 CQs during the provider selection process. Answers to CQs were included in a CQ log<sup>45</sup> that was updated as follows:

- CQ log 1: 10 March 2025;
- CQ log 2: 17 March 2025;
- CQ log 3: 26 March 2025;
- CQ log 4: 1 April 2025; and
- CQ log 5: 1 April 2025.<sup>46</sup>

111. MPFT expressed concerns, in its representations to the Panel, about the completeness, accuracy and timeliness of responses to CQs. It said:

“Throughout the process, responses provided by the ICB to Clarification Questions were incomplete or not accurate, resulting in delaying MPFT (and potentially other bidders’) ability to prepare an appropriate costed & considered tender submission. The ICB have responded saying their panel found no merit in this representation and rejected the concerns raised. The ICB has also detailed in their response that it would have been helpful for the Trust to have included an example where it believed that MSE ICB did not respond fully to a Clarification Question. The Trust maintains its position that this has been the case and provided examples within our challenge letter. Additionally it should be noted that the ICB’s panel has detailed that it would have been helpful for the Trust to provide examples, however no clarifications were asked by the panel despite this being an option” (see paragraph 49).

112. EPUT, in its representations to the Panel, also expressed concerns about the completeness and timeliness of responses to the CQs. It said:

“We remain of the view that MSE ICB has provided late or incomplete responses to clarification questions during the procurement, in breach of its duty to act fairly and transparently under regulation 4 of the PSR. We have checked the tendering portal which indicates that there are a number of clarifications which were raised and were not responded to.

“We do not feel that the relevant authority has engaged with our concerns regarding this point, instead simply setting out an account of the clarification logs issues and, further, dismissed this representation on the basis that it felt it was ‘further unsubstantiated as no actual example(s) was provided. A broad, general statement was made as to late responses and incomplete responses.’ If the relevant authority thought examples were required, we believe that it should have afforded us a further opportunity to clarify or explain this representation in accordance with regulation 12(4)(a) of the PSR” (see paragraph 50).

113. MSE ICB responded to MPFT’s and EPUT’s concerns about its responses to CQs in its review of the providers’ representations. In relation to MPFT’s concerns, MSE ICB

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<sup>44</sup> MSE ICB, Tender Conditions and Instructions, 4 March 2025.

<sup>45</sup> Bidders that completed and returned a TUPE Confidentiality Agreement received responses to all submitted CQs, and bidders who had not completed the confidentiality agreement received a redacted version of the log.

<sup>46</sup> CQ log 4 was issued at 4.34pm on 1 April 2025 and CQ log 5 was issued later that day.

said that all CQs were fully addressed in good faith and transparently, and reported back to MPFT the findings of its internal review panel, which said:

“MSE ICB addressed and responded to each Clarification Question received for this Mental Health Core Services Competitive Process in good faith and with the relevant information, to aid Bidders in being able to submit a compliant bid response in the first instance ...

“MSE ICB addressed eighty-nine (89) Clarification Questions and published responses to all, including a query received after the official deadline for Clarification Questions and provided a response on the same day (01/04/25) via Clarification Log 5, totalling ninety (90) Clarification Question responses. MSE ICB received 37 Clarification Questions from MPFT, 41.6% of the total questions received across all Bidders, many of which were multi-part questions, submitted frequently, and submitted close to the bid submission deadlines.

“The assertion that Clarification Questions were not responded to completely is countered by the sheer quantity of questions submitted by MPFT, in which multi-questions were submitted in one Clarification Question that covered a range of themes, which made it very difficult for MSE ICB to review and ensure accurate responses to these questions. Nevertheless, all Clarification Questions received by MSE ICB were fully addressed in good faith and transparently ...”<sup>47</sup>

114. In relation to EPUT’s concerns, MSE ICB responded in similar terms, reporting the findings of its internal review panel, and saying that it answered all questions in good faith and transparently. It also said that all questions were answered within ten working days or within five working days where MSE ICB had the requested information. More specifically, it said:

“MSE ICB found that it would have been useful for EPUT to have included an example where it believed that MSE ICB did not respond to Clarification Questions in a ‘timely manner’ or where MSE ICB did not respond ‘fully’ to a Clarification Question during the Clarification Question period. MSE ICB addressed eighty-nine (89) Clarification Questions and published responses to all, including a query received after the official deadline for Clarification Questions and provided a response on the same day (01/04/25) via Clarification Log 5, totaling ninety (90) Clarification Question responses. MSE ICB received 36 questions from EPUT, 40.4% of the total questions received across all Bidders, many of which were multi-part questions, submitted frequently, and submitted close to the bid submission deadlines.

“The assertion that Clarification Questions were not responded to completely is countered by the sheer quantity of questions submitted by EPUT, in a scatter-gun like approach, which made it very difficult for MSE ICB to review and ensure accurate responses to these questions, frustrating the Clarification Question process. Nevertheless, all Clarification Questions received by MSE ICB were fully addressed in good faith and transparently, and submitted in 2 versions of CQ logs:

- A redacted version that made explicit call to TUPE data.
- One full log that was sent to Bidders that had completed the Doc 8. TUPE Confidentiality agreement document, including TUPE data associated.

“MSE ICB recognised the high volume and close timing of the Clarification Questions received, and extended the procurement deadline by 2 full days, which was a proportionate and reasonable measure to take by MSE ICB given that no material changes to the procurement requirements had been introduced.

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<sup>47</sup> MSE ICB, *Representations Report to MPFT*, 20 June 2025.

“MSE ICB met its published timescales for response to Clarification Questions ‘within 5 working days’ where the information was available to MSE ICB. Where Clarification Questions pertained to TUPE data, MSE ICB was required to engage with the incumbent Providers and await further clarification before it was able to publish accurate responses. The longest period being 10 working days. This was not the fault of MSE ICB as it acted in good faith and required 3<sup>rd</sup> Party intelligence from the incumbent Providers pertaining to their TUPE data.”<sup>48</sup>

115. The Panel asked MPFT and EPUT to identify those CQs where they had concerns about the completeness, accuracy or timeliness of the response. MPFT signposted the panel to five CQs referenced in their representations, and EPUT provided the Panel with a list of fifteen CQs.<sup>49</sup> Several of these CQs have already been discussed in relation to transformation costs, where the Panel has found that MSE ICB’s response to these CQs gave rise to a breach of the PSR regulations (see Section 7.2). Concerns about MSE ICB’s response to other CQs in relation to DWP funded Employment Advisers, which gives rise to a further breach of the PSR regulations, are discussed in Section 7.4.2.
116. The remaining CQs about which concerns were raised fall into five categories, namely:
- activity targets;
  - estates;
  - patient record systems;
  - staffing and TUPE; and
  - systems migration and mobilisation.

### **7.3.2 Panel’s assessment of MPFT’s and EPUT’s representations on the CQs**

117. In assessing the timeliness of CQ responses, the Panel has taken several factors into account, including:
- the amount of time taken to respond to the CQ relative to the duration of the provider selection process (which was, following two extensions, 23 working days);
  - whether the CQ response was substantive or limited (e.g. a response saying that the ICB is unable to provide the requested information), with an expectation that a substantive response should take longer than a limited response; and
  - the proximity of the CQ response to the deadline for proposals.
118. The Panel notes that MSE ICB, in responding to the earlier representations by MPFT and EPUT, said that its ability to respond was constrained by the large number of CQs and the follow-up requirements necessitated by these CQs, highlighting that MPFT and EPUT were responsible for many of the CQs. The Panel does not consider the source of the CQs to be relevant to whether MSE ICB’s response to the CQs was adequate.
119. The following summarises the Panel’s assessment of MSE ICB’s response to the CQs identified by MPFT and EPUT in the five categories identified at paragraph 116. The full assessment is at Appendix 2 to this report.

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<sup>48</sup> MSE ICB, *Representations Report to EPUT*, 20 June 2025.

<sup>49</sup> EPUT, *Response to Panel questions*, 6 August 2025; Panel meeting with MPFT, 24 July 2025.

- In relation to activity targets CQs, MPFT and EPUT identified three CQs of concern (CQs 6, 36 and 86). The Panel's view is that these questions were not fully answered by MSE ICB, with incomplete and/or partial data being provided in response to bidders' questions. The Panel notes that MSE ICB took 12 working days to answer one of these questions, which the Panel does not regard as timely in the context of a 23 working day provider selection process. Moreover, the answer provided after 12 working days largely replicated an earlier answer to the same question, albeit with slightly different figures.
- In relation to estates CQs, EPUT identified three CQs of concern (CQs 2, 45 and 80). These questions asked about the successful bidder's ability to access existing premises used by incumbent providers to deliver core mental health services. MSE ICB in its response to CQs 2 and 45 indicated that it anticipated that some of the incumbent providers' estates may transfer to the new provider and promised further details. In response to CQ80, however, bidders were told that they needed to seek clarification from incumbent providers. The Panel's view is that MSE ICB could and should have advised bidders earlier that it could not answer this question. However, the response was given on 1 April, two days before proposals were due, meaning that there was insufficient time for bidders to make inquiries.
- In relation to patient record systems CQs, EPUT identified two CQs of concern (CQs 41 and 46). These questions asked about costs of electronic patient record (EPR) systems used by incumbent providers and other contractual terms and conditions. MSE ICB did not provide the requested information. The Panel's view is that this was a reasonable response given that the information is likely to have been commercially confidential to the incumbent providers and/or the EPR suppliers. MSE ICB, however, took 10 working days to say that it did not have the requested information and would not be providing it. The Panel's view is that, in the context of a 23 working day provider selection process, this was not a timely response.
- In relation to staffing and TUPE CQs, EPUT identified four CQs of concern (CQs 38, 48, 52 and 71). These questions asked about whether certain staff were included in the TUPE list, their alignment to the talking therapies and psychological therapies services, the number of trainees, and staff on fixed term contracts. The Panel appreciates that TUPE information supplied to bidders in procurement processes will necessarily be indicative and that providers will always need to manage a degree of uncertainty. Notwithstanding this, the Panel's view is that MSE ICB did not directly answer the questions that were asked, and was not sufficiently clear about the information that it was, or was not, in a position to provide. MSE ICB took 9 working days to answer one question. The Panel's view is that, in the context of a 23 working day provider selection process, this was not a timely response. Further, in at least one instance the answer was misleading in that it referred to a commissioner split of the funding envelope as the basis for splitting the staff list into service components.

- In relation to systems migration and mobilisation CQs, EPUT identified two CQs of concern (CQs 73 and 87). These questions asked about scenarios where system migration takes longer than the mobilisation period identified in the tender documentation. This issue is addressed in Section 7.4.4.
120. In summary, the Panel's view is that MSE ICB failed to answer several CQs in a way that was either complete or timely and in at least one case was misleading for bidders. The Panel recognises that the bidders for the contract were experienced providers of the service that was being contracted, and to some extent were able to use that experience to inform their own estimates in the absence of information from MSE ICB. The Panel, however, considers that the answers supplied by MSE ICB were sufficiently incomplete, late and, in some cases, misleading, for the ICB to have breached the PSR regulations.
121. As a result, the Panel finds that MSE ICB, in responding to several bidders' CQs in a way that was incomplete, lacked timeliness or was misleading, breached the PSR regulations, and in particular its obligations to act transparently, fairly and proportionately.

## **7.4 Evaluation and scoring of EPUT's proposal**

122. This section sets out the Panel's assessment of EPUT's concerns about MSE ICB's evaluation and scoring of EPUT's responses to three questions, namely Question 2.3.1 (Service Model), Question 2.4.1 (Service Delivery) and Question 2.8.1 (Mobilisation & Implementation).<sup>50</sup>
123. The Panel, in assessing EPUT's concerns, has taken a two-part approach. First, in Section 7.4.1, the Panel reviews MSE ICB's overall approach to evaluation and scoring, including its approach to evaluator training, the guidance offered to evaluators and the evaluation and scoring process. Second, in Sections 7.4.2 to 7.4.4, the Panel reviews the evaluation and scoring of the three questions where specific concerns were raised by EPUT.

### **7.4.1 MSE ICB's overall approach to evaluation and scoring**

124. MSE ICB, in responding to EPUT's representations to the ICB about the evaluation and moderation process, described the briefing and training sessions for evaluators and the moderation process. It said:

"The evaluation process was conducted in strict accordance with procurement principles and best practice. The bid submissions were scored by experienced, appropriately appointed Subject-Matter Experts (numbering 19 Subject Matter Experts across many disciplines and professional expertise) with multiple evaluators scoring each tender question response. The evaluators were assigned over the seven scored Technical Questions (Key Criteria) that formed 90% weighting of this tender exercise.

"Attain<sup>51</sup> facilitated the five (5) evaluation briefing sessions that were attended by every evaluator on the evaluation panel for this Mental Health Core Services procurement. The briefing sessions outline the roles/responsibilities of an evaluation panel, Procurement Principles including transparency, non-discrimination, equal treatment and

<sup>50</sup> EPUT also raised concerns about the evaluation and scoring of its response to Question 2.16.1 (Value for Money & Financial Sustainability). However, the Panel has not found it necessary to review these concerns given its findings in Section 7.2.

<sup>51</sup> Attain conducted the competitive procurement process as a third-party agent for and on behalf of MSE ICB.



proportionality. The importance of evaluating each bid on its own merit, including the proper application of the scope of the requirement (the technical question, the service specification and the scoring criteria). The evaluators understood and conducted their evaluations of the tender responses in silo, without speaking with or conferring with colleagues or other members of the evaluation panel. The evaluators conducted their independent evaluations in strict accordance of the scoring criteria that was published in the procurement documentation in the first instance for this Mental Health Core Services.

“A moderation process, facilitated by an independent body, was carried out with only the specific evaluators of a specific technical question being invited to discuss the findings of the evaluation of the tender responses, to discuss where the response had met the requirements of the question and where (if any) the response had not met the requirements of the question, in strict accordance with the published scoring criteria. The moderation sessions concluded in the Subject Matter Experts evaluating a specific question response agreeing upon a consensus score for each technical question response submitted by each Bidder.”<sup>52</sup>

125. MSE ICB elaborated on these points during the Panel review, saying that “Evaluators accessed the bid materials via the e-procurement portal, with access being given to evaluators only for the questions that had been assigned for them to evaluate. No one evaluator saw the entire bid submission for quality, technical and commercial envelopes during the evaluation process, in order to prevent any actual or perceived bias towards their evaluations of their assigned questions/responses within the tender submissions”.<sup>53</sup>
126. MSE ICB also told the Panel that once the evaluators had completed their individual evaluation of assigned questions, moderation sessions were scheduled at which the evaluators had a discussion that resulted in an “outline consensus narrative and outline consensus score”.<sup>54</sup>
127. The Panel notes that MSE ICB’s records for each moderation session include: (i) a PowerPoint presentation that covers some elements of the evaluator training (including the scoring matrix and conflict of interest management) and the question being evaluated; (ii) a record of individual evaluators’ feedback and both individual and moderated scores for each bidders; and (iii) moderation meeting notes that include a justification for the movement of individual evaluator scores where these initially differed from the consensus score.
128. MSE ICB also told the Panel that following the moderation sessions “evaluators confirmed the moderated narrative via email that was used verbatim in the outcome letters provided to the Bidders” and that “at no time during evaluation or moderation did a single evaluator have sight of the entire bid submissions, nor did any evaluator have sight of how the entire bid had been assessed or scored until the end of the evaluation and moderation process”.<sup>55</sup>
129. The Panel, having reviewed evaluator training materials and the guidance given to evaluators by MSE ICB, notes that this addressed various areas relevant to ensuring a robust evaluation. This included information on the scoring matrix and methodology,

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<sup>52</sup> MSE ICB, *Representations response to EPUT*, 20 June 2025.

<sup>53</sup> MSE ICB, *Response to Panel questions*, 4 July 2025.

<sup>54</sup> Panel meeting with MSE ICB, 24 July 2025.

<sup>55</sup> MSE ICB, *Response to Panel questions*, 4 July 2025.

clarity on roles and responsibilities in the evaluation and moderation process, and guidance on how to evaluate bidders' responses using the scoring matrix. Examples of best practice in respect of individual evaluator feedback and moderation minutes were also covered in the evaluator training material. The Panel did not identify anything in these materials to suggest systemic flaws in the evaluation and scoring process conducted by MSE ICB.<sup>56</sup>

#### 7.4.2 Evaluation of Question 2.3.1 (Service Model)

130. This section sets out the Panel's assessment of EPUT's concerns about the evaluation of its response to Question 2.3.1 (Service Model).

131. By way of background, Question 2.3.1 (Service Model) was as follows:

"Please set out your model to deliver a NICE-compliant and clinically safe Talking Therapy and PTSMHP [Psychological Therapies for Severe Mental Health Problems] service across MSE, within the maximum financial envelope as outlined in Doc 6. Commercial Offer Template.

"The following must be included in the response:

- How you will approach caseload management to ensure efficiency and effectiveness of the service, including the use of tools and technologies.
- The workforce structure across the ICB Area with specificity noting the alliance subsidiarity (place-based/neighbourhood/are-as) – i.e. Mid Essex, South East Essex, Thurrock, Basildon & Brentwood, PCN and INT footprints evidencing flexibility of the proposed workforce. Please include an organisation chart with adequate detail as an Appendix.
- Your approach to service expansion, i.e. an increase in access targets for those unemployed at the point of referral.
- Please describe how you will deliver equitable, effective Services in line with the service specification for NHS Talking Therapies and Psychological Therapies for SMHP. How does your approach align with NHS England's Talking Therapies for Anxiety and Depression and PTSMHP guidance?
- How will you ensure timely access to Talking Therapies and PTSMHP, including meeting the referral-to-treatment (RTT) targets?"

132. Bidders were asked to respond within a 2,000 word limit, but MSE ICB told bidders that "additional attachments to support the written response are permitted and will not count towards the word count".<sup>57</sup> (The Panel notes that this, in effect, meant that bidders were not subject to any word limit in their response to this question. This also applies to Questions 2.4.1 and 2.8.1, which are discussed later in this report)

133. Scoring of responses was on a 0-5 scale as set out in the table below:

Score	Interpretation
The Bidder has demonstrated within their response to this question that:	
5 Excellent	The response fully addresses and meets all of the Requirement <sup>58</sup> in a clear and detailed way and provides all of the relevant evidence requested (where evidence was requested by the question).

<sup>56</sup> Potential issues with the clarity of the scoring matrix are discussed separately in Section 7.4.2.

<sup>57</sup> MSE ICB, *Competitive Process Overview Mental Health Core Services*, 3 March 2025.

<sup>58</sup> MSE ICB told bidders that "Requirement is defined as the subject matter of each question, and any sub-bullet points or sub questions within each question ('the Award Criteria and Sub-Criteria'), which in all cases are derived from all relevant and specified paragraphs / sentences or sections of the Service Specification(s) and/or Contract and/or other specified document published to the Bidders." MSE ICB, *Competitive Process Overview Mental Health Core Services*, 3 March 2025.

	Therefore, the bidder's response is excellent. There is no ambiguity as to whether the bidder can meet and deliver the Requirement.
4 Good	The response addresses and meets all of the Requirement in a clear and detailed way. The response provides all of the relevant evidence requested (where evidence was requested by the question), but the response and/or evidence provided omits some minor detail required by the question.  Therefore, the bidder's response is good. There is very little ambiguity as to whether the bidder can meet and deliver the Requirement.
3 Adequate	The response addresses and meets all of the Requirement. However, the response lacks detail in how all of the Requirement will be met and does not provide all of the relevant evidence requested (where evidence was requested by the question).  Therefore, the bidder's response is adequate. There is limited ambiguity as to whether the bidder can meet and deliver the Requirement.
2 Poor	The response fails in some areas to address and meet the Requirement. The response and/or relevant evidence (where evidence was requested by the question) provided omits some detail required by the question.  Therefore, the bidder's response is poor. There is ambiguity as to whether the bidder can meet and deliver the Requirement.
1 Unacceptable	The response fails to address and meet the majority of the Requirement. The response and/or relevant evidence provided (where evidence was requested by the question) omits significant detail required by the question.  Therefore, the bidder's response is unacceptable. There is significant ambiguity as to whether the bidder can meet and deliver the Requirement.
0 No response	The bidder has provided no response, or the response that has been provided does not address and meet any aspect of the Requirement.

Source: MSE ICB, *Competitive Process Overview Mental Health Core Services*, 3 March 2025.

134. EPUT was awarded a score of 3 (Adequate) for its response, while Vita Health was awarded a score of 4 (Good).

135. EPUT, in its initial representations to MSE ICB, said that:

"Question 2.3.1 required bidders to outline their 'approach to service expansion i.e. an increase in access for those unemployed at the point of referral'. This aligned to the delivery of DWP funded Employment Advisory services, as identified in the response to question 10 in the Clarification Log.

"Further clarification questions were raised to clarify employment advisor posts which were included in TUPE information and whether they were funded through the MSE NHS TT and PT-SMHP contract or through DWP, IPS or other funding streams. It was repeatedly clarified that Employment Advisors were non-recurrently funded by DWP. In response to Clarification Question 51 commissioners did not provide a written response but did upload revised TUPE data which now excluded employment advisors.

"EPUT achieved a score of 3 (Adequate) for question 2.3.1, with one of the reasons for the score awarded being that 'The evaluation panel noted that this role was described within the response as being within the DWP funding provision and it was unclear to the panel how the Bidder would meet the TT-Manual requirements without the provision of funding from DWP.'

"In EPUT's view, this reason contradicts the commissioner's response to the clarification questions and, further, there was no requirement for bidders to set out how they would meet the TT-Manual requirements without the provision of funding from DWP."<sup>59</sup>

<sup>59</sup> EPUT, *Representations to MSE ICB*, 20 May 2025.

136. MSE ICB, in responding to EPUT's representations, reported the findings of its internal review panel, which included the following:

"MSE ICB asserts that the concerns raised by EPUT (Point 7.1) in this section fail to recognise the entirety of the feedback for both EPUT and the winning tenderers responses to each question, which need to be looked at holistically to understand the overall score awarded ...

"MSE ICB asserts that orphaning one or two elements from the whole evaluation and moderation assessment and final narrative as published transparently in detailed 37 Page Document (Outcome Letter) issued to EPUT by MSE ICB only serves to skew the evaluation methodology ...

"MSE ICB asserts that the bid response for 2.3.1 was evaluated wholly, not by each bullet point alone ...

"MSE ICB's internal review panel found that in broad terms, the assertions made by EPUT were opinions as to the moderation narrative and score that EPUT considers it and/or winning tenderer ought to have been awarded by MSE ICB's evaluation panel of Subject Matter Experts. In the absence of manifest error and/or a breach of one or more of the procurement principles (such as transparency or equal treatment), the [internal review] panel found that it would not intervene with matters of judgment which are the preserve of MSE ICB."<sup>60</sup>

137. EPUT, in its representations to the Panel, said:

"MSE ICB's internal review panel's findings on this representation repeatedly refer to the ICB making various assertions, and we do not see any evidence that in considering our representation the internal review panel has properly addressed itself to the question of whether the evaluators have failed to correctly apply the evaluation criteria when evaluating our response to question 2.3.1 and/or evaluated the responses inconsistently.

"In light of the moderation minutes provided by MSE ICB after conclusion of its review, we have additional concerns. We note that Evaluator 3 moved from a 4 to a 3 on the basis that our response 'lacked relevant evidence and detail'. Question 2.3.1 asked bidders to set out their model and provide descriptions of how aspects would be delivered in a limited word count, without any request for 'evidence'. We consider that MSE ICB has not followed its own process (notwithstanding its assertions regarding the moderation process reported by its internal review panel) and we believe that the absence of 1 of the 4 evaluators might have altered the discussion taking place at the moderation meeting.

"We believe that the likelihood of the evaluators not applying the evaluation criteria correctly is likely to have been exacerbated by the standard scoring matrix in Table D in Doc 1 – Competitive Process Overview which, in our view, is not sufficiently clear and could lead to evaluators subjectively deciding whether a bid is 'Good', 'Average' or 'Poor'.

"We also consider that the complicated calculation of 'raw' weightings and 'total' weightings as described in Table C in Doc 1 – Competitive Process Overview (where the individually listed example percentages in the table for 2.3.1, 2.4.1 and 2.5.1 do not add up to the example subtotal 'raw' and total weighting figures stated in that table) could have led to issues in calculating scores.

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<sup>60</sup> MSE ICB, *Representations Report to EPUT*, 20 June 2025.

“We remain of the view that the evaluators have not correctly applied the published evaluation criteria when assessing our response and/or have evaluated the responses from EPUT and Vita inconsistently and believe that MSE ICB has breached regulation 4 and regulation 11(5) of the PSR” (see paragraph 50).

138. The Panel in assessing EPUT’s concerns about the evaluation and scoring of its response to Question 2.3.1 considered the following issues:
- clarity of the scoring matrix;
  - whether evaluators incorrectly and/or inconsistently applied the scoring criteria given MSE ICB’s responses to CQs;
  - the absence of an evaluator during moderation; and
  - issues in calculating scores.

### **Clarity of the scoring matrix**

139. EPUT told the Panel that the scoring matrix (as set out in the table at paragraph 133) was not sufficiently clear and could lead to evaluators subjectively deciding whether a bid is ‘Good’, ‘Average’ or ‘Poor’ (see paragraph 137). The Panel notes that EPUT did not raise any concerns about the scoring matrix before submitting its proposal.
140. The Panel’s view is that the scoring matrix overall sets out a reasonable scoring methodology but has reservations about the clarity of the boundary between answers that are scored as Adequate (score of 3) and answers that are scored as Good (score of 4). In particular, an answer that is scored as Good “provides all of the relevant evidence ... but the response and/or evidence provided omits some minor detail required by the question”, while an answer that is scored as Adequate “lacks detail in how all of the requirement will be met and does not provide all of the relevant evidence”. These two definitions require evaluators to make finely based judgements on whether the detail omitted from an answer is “minor” or more significant.
141. Where such finely based judgements are required, there is a greater risk of inconsistent scoring of responses to the same question. The Panel notes, however, that even if all of EPUT’s scores of 3 were awarded a 4, EPUT’s total score would have been 81.91, which would still have been lower than Vita Health’s score of 87.94. Given this, the Panel’s view is that the scoring matrix used by MSE ICB, and any potential lack of clarity in the boundary between the scores of 3 and 4 did not give rise to a material disadvantage to EPUT.

### **Scoring rationale and response to related CQs**

142. EPUT, in its representations to MSE ICB, said that MSE ICB’s reason for the score awarded to EPUT’s response to Question 2.3.1 “contradicts the commissioner’s response to the clarification questions” (see paragraph 135). These concerns were carried forward in EPUT’s representations to the Panel (see paragraph 137).
143. The part of Question 2.3.1 relevant to EPUT’s concerns stated: “The following must be included in the response ... Your approach to service expansion, i.e. an increase in access targets for those unemployed at the point of referral” (see question in full at paragraph 131). EPUT told the Panel that this part of the question aligned to DWP-funded employment advisory services, as per MSE ICB’s response to CQ10.

144. CQ10 asked “Will the Employment Adviser initiative, currently funded by the DWP, continue? The specification mentions employment advisers, will their funding remain through the DWP, or will has it been incorporated into the contract value?”. MSE ICB’s response was “Employment Advisors is non-recurrent funding and is a pass through from DWP via an MOU arrangement”. (For completeness, the table below includes all CQs and responses relevant to this issue.)

No.	Submission date	Response date	Question	Response
10	5 Mar	10 Mar	Will the Employment Adviser initiative, currently funded by the DWP, continue? The specification mentions employment advisers, will their funding remain through the DWP, or will has it been incorporated into the contract value?	Employment Advisors is non-recurrent funding and is a pass through from DWP via an MOU arrangement.
18	6 Mar	17 Mar	Theme: TUPE data and employee pay/pension ... We note that several Employment Advisor related posts have been included in the TUPE information. Please can commissioners confirm that these posts are wholly funded through the MSE Talking Therapies / PTS contracts or whether these are funded through DWP/Essex IPS/Other funding streams ...	The ICB has issued new TUPE data for HPFT, MPFT Inclusion and Vita Health Group (please see Doc 9b. TUPE Data HPFT v2, Doc 9c TUPE Data Vita v2, Doc 9d. TUPE Data MPFT Inclusion v2) ... Employment advisor roles – non-recurrent pass-through funding from DWP ...
38	11 Mar	17 Mar	Theme: TUPE Data query Within the TUPE lists various Employment Advisors are included. Our understanding was that Employment Advisors are excluded. Please will you confirm whether a) employment advisors are included b) that those included are from within the core (ICB) funding and that c) no DWP funded posts are included	Please see revised TUPE Data: Doc 9b. TUPE Data HPFT v2 Doc 9c. TUPE Data Vita v2 Doc 9d. TUPE Data MPFT Inclusion v2
51	17 Mar	26 Mar	Clarification Question - Sub-Contracts Regarding existing sub-contracts that providers may hold—such as the Employment Advisor element, which is sub-contracted and therefore not subject to TUPE—can you confirm whether these sub-contracts are expected to transfer alongside the main service, given that they form part of the overall Talking Therapies provision?	Please see Clarification Question 18 [referring to TUPE data]. Employment advisor roles are pass through funding from DWP. TUPE Data in relation to this tender from Providers is presented by the ICB in good faith, however, TUPE data has been identified by Providers in the first instance. The updated TUPE Data now does not include Employment Advisors. The funding for these roles is from DWP and not the ICB.

Source: MSE ICB, Clarification Questions Log version 5, 1 April 2025.

145. EPUT, in its proposal, included the following in its response to Question 2.3.1:

“Assuming investment will continue from the Department of Work & Pensions (DWP) EPUT will provide employment advisory support to all patients that access the service and this will be offered at the point of referral through to treatment, to ensure that this offer is aligned to treatment interventions.”

146. MSE ICB, in its tender outcome letter to EPUT, included the following feedback in relation to the relevant part of Questions 2.3.1:

“The response was found to have outlined a high-level approach to expansion of access for unemployed individuals. This approach was found to have been in alignment with DWP funding assumptions. It was noted that this approach would be integrated within the care pathway from the point of referral. The evaluation panel noted that this role was described within the response as being within the DWP funding provision and it was unclear to the panel how the Bidder would meet the TT-Manual requirements without the provision of funding from DWP. Further detail may have further benefited the response.”<sup>61</sup>

147. EPUT, in its representations to MSE ICB, said that this feedback contradicted MSE ICB’s response to the CQs because “there was no requirement for bidders to set out how they would meet the TT-Manual requirements without the provision of funding from DWP” (see paragraph 135).
148. The Panel notes that the nationally published NHS Talking Therapies Manual (NHSTT Manual) reflects an expectation that employment advice should be delivered as a core part of the service, with employment advisors working alongside NHSTT therapists. For example, the Manual says, “We now expect about 15% of people who complete NHS Talking Therapies treatment to take up combined treatment and employment support ... There is employment advice in the NHS Talking Therapies service model and there is scope to adapt aspects of service delivery at a local level”.<sup>62</sup>
149. However, the Panel also notes that MSE ICB’s service specification says that the “provider should adhere to” the NHSTT Manual, which “describes the NHSTT model in detail” and “provides key operational guidance that all NHSTT services should follow”. It further says, “As part of the model of NHSTT provision, the service will incorporate Employment Advisors and Senior Employment Advisors (as per the NHSTT Manual) and associated funding released to Mid and South Essex ICB for this purpose. The employment advice offer within the service will follow the model and reporting set out in the national specification.”<sup>63</sup>
150. The Panel’s view is that, given the service specification says that “the service will incorporate Employment Advisors and Senior Employment Advisors (as per the NHSTT Manual) and associated funding released to Mid and South Essex ICB for this purpose”, it was unreasonable for MSE ICB to criticise EPUT’s response based on it not taking account of the possibility of this funding not continuing. This is particularly the case when CQ10 specifically asked whether this funding would continue, and MSE ICB in its response did not suggest that there was a risk of it not continuing.
151. The Panel further notes that EPUT’s concerns about the evaluation and scoring of its response to Question 2.3.1 relate to only one out of five parts to this question.

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<sup>61</sup> MSE ICB, *Outcome letter to EPUT*, 7 May 2025.

<sup>62</sup> NHS England, *NHS Talking Therapies for anxiety and depression Manual*, 25 June 2025.

<sup>63</sup> The Panel considers that in this context “national specification” refers to the national NHSTT Manual.

However, the Panel cannot be confident that if MSE ICB had disregarded this point it might not have awarded EPUT a higher score.

### **Absence of an evaluator during moderation**

152. EPUT told the Panel “that the absence of 1 of the 4 evaluators might have altered the discussion taking place at the moderation meeting” (see paragraph 137).
153. MSE ICB, in response, told the Panel that the evaluator’s absence from the moderation meeting was managed through the procurement lead presenting the evaluator’s feedback. The notes for the moderation meeting say that apologies for the meeting were received from Evaluator 4, explaining that the evaluator “met with [Procurement lead] before moderation session to discuss and permission received for [Procurement lead] to present Evaluator 4 feedback to the [evaluation] panel on Evaluator 4 behalf”.<sup>64</sup>
154. MSE ICB further told the Panel that at the meeting a consensus narrative and score were reached at the moderation meeting but this was not finalised until Evaluator 4 confirmed that they were comfortable with these outcomes, and that if Evaluator 4 had not been comfortable with these outcomes then a further moderation meeting would have been scheduled.<sup>65</sup> The Panel notes that, prior to the moderation meeting, Evaluator 4 individually awarded EPUT a score of 3 (Adequate), which was consistent with the moderated score.
155. The Panel notes that an evaluator’s absence from a moderation meeting is occasionally unavoidable, and that MSE ICB mitigated the effects of the evaluator’s absence by: (i) ensuring their individual scoring and rationale was shared with the remaining evaluators; (ii) ensuring the absent evaluator was happy with the evaluation meeting outcome; and (iii) providing for the possibility of a further moderation meeting if the absent evaluator had not been happy with the evaluation meeting outcome. Moreover, the Panel notes that EPUT does not appear to have been disadvantaged by the evaluator’s absence, given their individual score was consistent with the consensus score.
156. The Panel notes that whilst MSE ICB mitigated the effects of the evaluator’s absence, its records could have provided further detail in relation to this point, such as the date and method in which Evaluator 4 confirmed their agreement with the outline consensus score.
157. As a result, the Panel finds that the evaluator’s absence from the moderation meeting for Question 2.3.1 did not give rise to a breach of the PSR regulations, and in particular the obligation on MSE ICB to act fairly. However, the Panel considers that MSE ICB’s recordkeeping could have been more detailed on this matter.

### **Issues in calculating scores**

158. EPUT told the Panel that “the complicated calculation of ‘raw’ weightings and ‘total’ weightings as described in Table C in Doc 1 – Competitive Process Overview (where the individually listed example percentages in the table for 2.3.1, 2.4.1 and 2.5.1 do not

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<sup>64</sup> MSE ICB, *Moderation Meeting Notes Question 2.3.1*, 23 April 2025.

<sup>65</sup> Panel meeting with MSE ICB, 24 July 2025.



add up to the example subtotal 'raw' and total weighting figures stated in that table) could have led to issues in calculating scores" (see paragraph 137).

159. In assessing EPUT's concern about the calculation of scores, the Panel reviewed the table in MSE ICB's tender documentation to which EPUT referred. Within this table, MSE ICB set out the weighted scores for each question (or sub-criteria) and totals per key criteria. By way of example, for key criteria "Quality and Innovation" (which had three sub-criteria taking form of questions 2.3.1, 2.4.1 and 2.5.1) it stated: "Quality and Innovation' questions 2.3.1 - 2.5.1 have a combined 'raw' weighting of 42% out of 100 and a total weighting of 38% out of 90".<sup>66</sup>
160. The Panel notes that while the weighted scores "out of 100%" of the three questions in this example add up to 42%, the weighted scores "out of 90%" add up to 37.8%. Similarly, for two other key criteria there are decimal point variances between the stated "total weighting of ... out of 90" and the actual weighted scores "out of 90%". The Panel does not consider these rounding issues to be significant.
161. The Panel considered whether the errors identified in paragraph 160 had any bearing on how MSE ICB would calculate weighted scores. The Panel notes that MSE ICB's tender documentation said:
- "The score awarded for each question will be multiplied by the weighting to arrive at both a 'raw' score (out of 100) and the equivalent 'weighted' score for that question. The weighted scores will then be added together to give a total weighted technical score. The Technical response that is awarded the highest numbers of marks will achieve the highest percentage Technical score."<sup>67</sup>
162. Notwithstanding the rounding issues with the key criteria total weightings set out in the tender documentation, the Panel did not identify any errors in MSE ICB's final calculations of EPUT's or Vita's weighted scores.
163. As a result, the Panel finds that MSE ICB did not erroneously calculate the final weighted scores for EPUT and Vita Health for Question 2.3.1, and as a result this issue did not give rise to a breach of the PSR regulations, and in particular the obligation on MSE ICB to act fairly.

### **Panel conclusions on evaluation of Question 2.3.1 (Service Model)**

164. In summary, the Panel's view is that MSE ICB's evaluation and scoring of EPUT's response to Question 2.3.1 (Service Model) was flawed as a result of it adversely assessing EPUT's response for not taking account of the possibility of DWP funding for employment advisers not continuing, when such a possibility was not suggested by MSE ICB in either the tender documentation or in its response to CQ10.
165. The Panel does not, however, view MSE ICB's evaluation and scoring of EPUT's response to Question 2.3.1 (Service Model) to be flawed as a result of a lack of clarity in the scoring matrix, the absence of an evaluator during the moderation meeting, or a miscalculation of scores.
166. As a result, the Panel finds that MSE ICB, in adversely assessing EPUT's response to Question 2.3.1 (Service Model) with respect to the possibility of DWP funding of

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<sup>66</sup> MSE ICB, Competitive Process Overview Mental Health Core Services, 3 March 2025.

<sup>67</sup> MSE ICB, Competitive Process Overview Mental Health Core Services, 3 March 2025.

employment advisers not continuing, when such a possibility was not suggested by MSE ICB in either the tender documentation or in its response to the relevant CQ, breached the PSR regulations and in particular its obligation to act fairly.

#### **7.4.3 Evaluation of Question 2.4.1 (Service Delivery)**

167. This section sets out the Panel's assessment of EPUT's concerns about MSE ICB's evaluation of Question 2.4.1 (Service Delivery).

168. By way of background, Question 2.4.1 was as follows:

"Please set out your model to deliver a NICE-compliant and clinically safe Talking Therapy and PTSMHP service across MSE, within the maximum financial envelope as outlined in Doc 6. Commercial Offer Template.

The following must be included in the response:

- How the service will be delivered, including the approach to enable people to access the service in their local communities and how you will promote the service to adults and their support networks and ensure that it is accessible for people with additional needs.
- Describe your approach to digital and face-to-face therapy delivery. How will you ensure digital inclusion for patients with accessibility challenges?
- How will your service integrate with primary care, secondary mental health services, and voluntary/community organisations? Provide examples of collaboration and multi-disciplinary approach.
- What steps will you take to ensure patient-centred care and personalised treatment pathways?
- Please detail how you will continuously review the service to improve outcomes and experiences for service users?"

169. Responses were limited to 1,500 words, but MSE ICB told bidders that "additional attachments to support the written response are permitted and will not count towards the word count".<sup>68</sup>

170. Scoring of responses to Question 2.4.1 was on a 0-5 scale as set out in the table in paragraph 133. EPUT was awarded a score of 3 (Adequate) for its response. Vita Health was awarded a score of 4 (Good) for its response.

171. EPUT, in its initial representations to MSE ICB, said that:

"EPUT was awarded a score of 3 (Adequate) in relation to question 2.4.1. However, EPUT has some concerns regarding the scoring of this question, based on the reasons stated in the outcome letter dated 7 May 2025.

"The reasons for EPUT's score stated that the evaluation panel 'recognised the Bidder's understanding of the stepped care model'. The national stepped care model was included in the service specification. The reasons for Vita's higher score make no reference to the stepped care model, despite Vita achieving a higher score.

"We query, therefore, whether the evaluators have confirmed that the requirement for providers to deliver a stepped care model, as defined in the NHS Talking Therapies manual 2024, will be met by Vita and whether the evaluation has verified that Vita will deliver a compliant NHS TT service in accordance with NHS guidance, including the best practice stepped care model, 65% staff at Step 3 and 35% staff at Step 2.

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<sup>68</sup> MSE ICB, *Competitive Process Overview Mental Health Core Services*, 3 March 2025.

“Feedback for Vita included the following statements:

- “While digital inclusion was robustly addressed, the panel noted that further detail pertaining to the face-to-face offer may have benefitted the response, such as the inclusion of detail pertaining to service provision outside of core working hours.
- “However the [evaluation] panel identified that while face-to-face delivery was referenced throughout the response, detail regarding how, when, and where these face-to-face services would be delivered— including flexibility across the week — was limited. The panel concluded that inclusion of a more detailed and specific plan for face-to-face provision may have strengthened the response.
- “The [evaluation] panel concluded that inclusion of a more detailed and specific plan for face-to-face provision may have strengthened the response.”

“EPUT has seen data for the current service provision by Vita in Basildon and Brentwood which indicates that [redacted].<sup>69</sup> A lack of face to face provision inherently introduces health inequalities, prevents co-location of services and reduces the cost of delivery disproportionately. We know that it is vital that remote delivery runs alongside in person delivery to ensure informed choice for every patient in all areas of the country, to guarantee equitable and high quality clinical provision.

“In these circumstances, EPUT is concerned that the evaluators have failed to correctly apply the evaluation criteria when evaluating EPUT’s response to question 2.4.1 and/or evaluated the responses from EPUT and Vita inconsistently, in breach of the ICB’s duty to act transparently and fairly under regulation 4 of the PSR.”<sup>70</sup>

172. MSE ICB, in responding to EPUT’s representations following the provider selection process, reported the findings of its internal review panel, which said:

“MSE ICB asserts that orphaning one or two elements from the whole evaluation and moderation assessment and final narrative as published transparently in detailed 37 Page Document (Outcome Letter) issued to EPUT by MSE ICB only serves to skew the evaluation methodology.

“MSE ICB asserts that the bid response for 2.4.1 was evaluated wholly, not by each bullet point alone.

“As highlighted in EPUT’s Representation, EPUT was found to have understood the requirements of the question and adequately addressed the requirements, as proven by their score of 3 (Adequate) which in line with the scoring demonstrates: The response addresses and meets all of the Requirement. However, the response lacks detail in how all of the Requirement will be met and does not provide all of the relevant evidence requested (where evidence was requested by the question). Therefore, the bidder’s response is adequate. There is limited ambiguity as to whether the bidder can meet and deliver the Requirement.

“MSE ICB notes that EPUT have omitted the following from the Representation, which were contained on Page 8-9 of the detailed 37-Page Outcome Letter issued by MSE ICB to EPUT on the 07<sup>th</sup> May 2025: ‘The [evaluation] panel concluded that while the response met the minimum requirements, a more detailed and innovative approach would have strengthened it. Further evidence of flexibility in face-to-face provision outside of core working hours, and further detail pertaining to the breadth of access options for digitally excluded individuals may have strengthened the response’.”<sup>71</sup>

<sup>69</sup> These words have been excised from the report on the basis that the Panel has reasonable grounds to consider that they may be commercially confidential.

<sup>70</sup> EPUT, *Representations to MSE ICB*, 20 May 2025.

<sup>71</sup> MSE ICB, *Representations Report to EPUT*, 20 June 2025.

173. EPUT, in its representations to the Panel, said that:

“As with the previous representation, MSE ICB’s internal review panel’s findings on this representation repeatedly refer to MSE ICB making various assertions, and we do not see any evidence that, in considering our representations, the internal review panel has properly addressed itself to the question of whether the evaluators have failed to correctly apply the evaluation criteria when evaluating our response to question 2.4.1 and/or evaluated the responses from us and Vita inconsistently.

“We consider that the evaluators have failed to correctly apply the evaluation criteria when evaluating EPUT’s response to question 2.4.1 and/or evaluated the responses from EPUT and Vita inconsistently. We consider that MSE ICB has breached regulation 4 and regulation 11(5) of the PSR” (see paragraph 50).

174. The Panel, in assessing EPUT’s concern that MSE ICB had incorrectly and inconsistently applied the scoring criteria in evaluating EPUT’s response to Question 2.4.1, reviewed MSE ICB’s evaluation materials for this question, including the moderation notes and the Outcome Letter sent to EPUT by MSE ICB.

175. The Panel notes that Question 2.4.1 allowed bidders relatively broad licence to explain their service delivery models, within the parameters of the question’s subheadings, and that it is open to evaluators to provide feedback on where a bidder might have included further or clearer explanation in order to improve their response. The nature or specificity of this feedback may legitimately vary between bidders, in accordance with the particular proposals from each bidder, so long as the rationale for the scoring decision is consistent with the published evaluation methodology and is consistent between bidders. The Panel’s view is that MSE ICB’s evaluation of Question 2.4.1 was consistent in relation to both elements.

176. As a result, the Panel finds that MSE ICB, in evaluating responses to Question 2.4.1 (Service Delivery), did not breach the PSR regulations, and in particular, the obligation to act transparently, fairly and proportionately.

#### **7.4.4 Evaluation of Question 2.8.1 (Mobilisation & Implementation)**

177. This section sets out the Panel’s assessment of EPUT’s concerns about MSE ICB’s approach to mobilisation of the new service model, including MSE ICB’s evaluation of responses to ITT Question 2.8.1 (Mobilisation & Implementation).

178. By way of background, Question 2.8.1 was as follows:

“Please describe in detail your proposed mobilisation plan to ensure a full service is in place by the service commencement date taking into account the identified mobilisation tasks set out in the Service Specification and any additional tasks you will need to deliver.

The response must include the following:

- a detailed mobilisation plan from point of contract award to 6 months after the service commencement date with a clear timeline to demonstrate that you will be able to achieve full-service availability on the service commencement (1 August 2025) assuming circa 8 weeks mobilisation. The plan must include key actions, milestones, and SMART objectives (including contingency arrangements)
- Provide a detailed mobilisation plan outlining how you will ensure a smooth transition from the current provider.

- How will you manage referrals and ensure continuity of care during the mobilisation period?
  - What risks do you foresee during mobilisation, and how will you mitigate them?
  - How will you engage with key stakeholders (e.g., GPs, commissioners, community organisations) during mobilisation?”
179. Responses were provided via an attachment with a limit of 2,000 words, but MSE ICB told bidders that “additional attachments to support the written response are permitted and will not count towards the word count”.<sup>72</sup>
180. Scoring of responses to Question 2.8.1 was on a 0-5 scale as set out in the table in paragraph 133. EPUT was awarded a score of 3 (Adequate) for its response. Vita Health was awarded a score of 4 (Good) for its response.
181. EPUT, in its initial representations to MSE ICB, said that:
- “Within clarification question 87, MSE ICB was asked to confirm whether bidders would be disadvantaged when including the required timescale for system migration (IAPTUS) which was clarified through due diligence during the process with the system provider, Mayden. The period of migration is outside of bidders’ control but exceeded commissioner’s mobilisation period. The recommended solution within the specification in the CPO Pack is to use IAPTUS. MSE ICB confirmed that bidders would not be disadvantaged by the reasonable impact outside of bidder’s control.
- “However, within the outcome letter dated 7 May 2025, it was noted that EPUT identified that Mayden (IAPTUS) required 16 weeks for data migration, which exceeded the proposed mobilisation window, highlighting this as a key risk. EPUT is concerned that it has been disadvantaged by MSE ICB’s recommended system provider’s migration period, contrary to MSE ICB’s assurances in its response to clarification question 87 and therefore MSE ICB’s duty to act transparently and fairly under regulation 4 of the PSR.
- “Furthermore, in response to clarification question 58, MSE ICB asserted that the 1st August 2025 was an achievable commencement date, as stipulated in the procurement documentation. In clarification question 73, MSE ICB was specifically asked questions relating to the likelihood for a longer lead-in time for system migration than was enabled by the rapid mobilisation period so as to ensure retention of the integrity of clinical data. MSE ICB confirmed that, if necessary, it would seek to extend current contracts and that system migration would be managed as part of the mobilisation period.”<sup>73</sup>
182. MSE ICB, in responding to EPUT’s representations following the provider selection process, reported the findings of its internal review panel, which said:
- “Nowhere in the detail provided above [referring to the feedback provided in MSE ICB’s tender Outcome Letter to EPUT] did MSE ICB assign blame or disadvantage EPUT for the 16-week data mitigation period. The evaluation panel noted the risk identified by EPUT in their submission and outlined that no further mitigations had been identified by EPUT in their submission, such as *a contingency plan for the management of this delay or what these interim solutions may have been (i.e. dual systems, manual data handling protocols)*.
- “In line with EPUT’s assertion ... the technical question required Bidders to “explain the risks that they foresee during mobilisation and how they will mitigate them”, the detail provided in the Outcome Letter dated 07th May 2025 provided to EPUT by MSE ICB

<sup>72</sup> MSE ICB, *Competitive Process Overview Mental Health Core Services*, 3 March 2025.

<sup>73</sup> EPUT, *Representations to MSE ICB*, 20 May 2025.

clearly articulates that EPUT did not provide sufficient detail pertaining to the mitigations/mitigation actions required in response to the risks identified in their own bid submission.

“MSE ICB asserts that the bid response for 2.8.1 was evaluated wholly, not by each bullet point alone.”<sup>74</sup>

183. EPUT, in its representations to the Panel, said that:

“From the documents provided by MSE ICB, we note that one of three evaluators did not attend the moderation meeting and, for the same reasons as set out above, we consider that this resulted in the moderation carried out not being sufficiently robust and not complying MSE ICB’s process as described by its internal review panel. We further note that Evaluator 4 did not attend the moderation meeting but their individual score was moved during this meeting. In our view this indicates that a robust moderation process has not been carried out.

“MSE ICB has not responded to our question regarding the mobilisation period.

“We note that MSE ICB’s internal review panel notes that MSE ICB asserted that all requirements listed in the question were evaluated wholly, not by each bullet point alone. However, the format of the moderation meeting minutes indicates that responses were evaluated by bullet point.

“We consider that this is exacerbated by the lack of clarity in the published evaluation methodology. We therefore consider that the evaluators have not correctly applied the published evaluation criteria when assessing our response and believe that the relevant authority has breached of regulation 4 and regulation 11(5) of the PSR” (see paragraph 50).

184. In relation to EPUT’s assertion that “MSE ICB has not responded to our question regarding the mobilisation period”, the Panel notes that EPUT asked MSE ICB:

“Please confirm whether MSE ICB still considers that the mobilisation period (service commencing 1st August 2025) is reasonable and proportionate for a service of this size and complexity and enables a safe and seamless transition, particularly in light of the ICB’s statement that there would no sudden changes with a carefully managed transition process?”.<sup>75</sup>

185. The Panel notes that EPUT’s concerns about the absence of an evaluator from the moderation meeting raises issues that are discussed in paragraphs 152 to 157. For the same reasons set out in those paragraphs, the Panel does not consider that the PSR regulations have been breached in relation to the evaluation of EPUT’s response to Question 2.8.1. The Panel also notes that EPUT’s concerns about the evaluation methodology and application of the scoring criteria are also addressed in Section 7.4.1 and as a result are not discussed further in this section.

186. The Panel’s assessment of EPUT’s concerns about the evaluation of its response to the Mobilisation question therefore focuses on two points raised by EPUT, namely:  
(i) evaluation of EPUT’s risk mitigation in relation to system migration; and  
(ii) evaluation of responses by bullet points versus holistically.

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<sup>74</sup> MSE ICB, *Representations Report to EPUT*, 20 June 2025.

<sup>75</sup> EPUT, *Representations to MSE ICB*, 20 May 2025.

## **Evaluation of EPUT's risk mitigation in relation to system migration**

187. The moderation notes<sup>76</sup> and Outcome Letter both contain the following statement with respect to EPUT's discussion of "What risks do you foresee during mobilisation, and how will you mitigate them?":

"The response was found to have demonstrated a good level of awareness of the potential risks, particularly pertaining to IT system migration and workforce transition. The response was found to have referenced mitigation strategies; however, it was noted that the response identified that Mayden required 16 weeks for data migration, which exceeded the proposed mobilisation window for these new services. The response was found to have highlighted this as a key risk, however, the panel found that a contingency plan for the management of this delay was not clearly defined within the response. The response would have further benefited from the inclusion of greater clarity/detail pertaining to the Bidder's contingency planning in areas such as data migration timing and system continuity during downtime and what these interim solutions may have been (i.e. dual systems, manual data handling protocols)."

188. The Panel's view is that it is possible for commissioners to hold an expectation that bidders will identify risks and describe proposed mitigating actions, including in relation to a known risk, even where the risk arises due to the commissioner's actions or expectations. The Panel's view is that it was reasonable for MSE ICB to expect EPUT to provide details of its mitigating actions in relation to a key system migration risk, and sees no evidence that EPUT was penalised by MSE ICB for the existence of the risk in the first place.

## **Evaluation of responses by bullet points vs holistically**

189. The moderation notes for each bidder's response to Question 2.8.1 include distinct analysis against each of the bullet points of the question, followed by a summary of the evaluation panel's overall assessment and scoring decision. The Panel is content that the consensus scoring for Question 2.8.1 was undertaken against the requirements of the question as a whole, following detailed review against the requirements of each of the component bullet points.

## **Panel conclusions on evaluation of Question 2.8.1 (Mobilisation & Implementation)**

190. As a result, based on the views set out above, the Panel finds that MSE ICB, in evaluating responses to Question 2.8.1 (Service Delivery), did not breach the PSR regulations, and in particular, the obligation to act transparently, fairly and proportionately.

## **7.5 Representations review process**

191. This section sets out the Panel's assessment of MPFT's and EPUT's concerns about MSE ICB's review of the bidders' representations and its response to their information requests.

### **7.5.1 MPFT's concerns about the representations review process**

192. MPFT made representations to MSE ICB about the provider selection process on 16 May 2025, including the requests for information set out in the table at

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<sup>76</sup> MSE ICB, *Moderation Meeting Notes Question 2.8.1 Mobilisation*, 23 April 2025.

paragraph 200. On 21 May, MSE ICB wrote to MPFT, explaining that it had received two representations, that it was aiming to complete its review of the representations by 26 June, and that it might wish to ask questions of MPFT about its representations during this period.

193. On 27 May 2025, MSE ICB's review panel met to review MPFT's representations, and the following day sent a clarification question to MPFT "pertaining to whether MPFT formally requested disclosure of documents and if so, please could MPFT reaffirm which documents were being sought for disclosure".<sup>77</sup> On 30 May, MPFT wrote to MSE ICB, reiterating its request of 16 May.
194. MSE ICB, in responding to MPFT's representations on 20 June 2025, shared two documents: first, a copy of the report it had drafted to fulfil its recordkeeping obligations under Regulation 24 of the PSR regulations; and second, a redacted copy of its Procurement Recommendation Report. MSE ICB told MPFT it was supplying these documents "to provide MPFT with an insight as to how the overall assessment and evaluation process was conducted and to provide assurance of the due diligence undertaken by MSE ICB".<sup>78</sup>
195. MSE ICB also told MPFT that several of its requests fell outside the recordkeeping requirements of Regulation 24 and signposted MPFT to its Freedom of Information (FOI) process to submit formal requests for this other information and documentation, which would then be "appropriately assessed and processed".
196. MPFT, in its representations to the Panel, said that:

"The ICB has only part disclosed to the MPFT some of the documents requested by the MPFT in the Representation letter. MPFT considered the document requests to be reasonable and in accordance with Regulation 24. MPFT therefore considers the resolution of this Representation to be outstanding" (see paragraph 49).
197. Details of MPFT's information requests, MSE ICB's responses to those requests, and the Panel's assessment of MSE ICB's responses are set out in the table below.
198. The Panel notes that MSE ICB supplied the information requested by MPFT (in part) when communicating the outcome of MPFT's representations and the ICB's further decision on the provider selection process. The PSR regulations require that a commissioner ensures that a provider which makes representations "is afforded such further opportunity to explain or clarify the representations made as the relevant authority considers appropriate" (Regulation 12(4)(a)) and that commissioners "provide promptly any information requested by an aggrieved provider where the relevant authority has a duty to record that information under regulation 24" (Regulation 12(4)(b)).
199. Consistent with previous cases,<sup>79</sup> the Panel's view is that responding to a bidder's information requests at the same time as responding to its representations does not meet the requirement of promptly providing requested information nor the requirement to afford the bidder further opportunity to explain or clarify its representations.

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<sup>77</sup> MSE ICB, *Representations Report to MPFT*, 20 June 2025.

<sup>78</sup> MSE ICB, *Representations Report to MPFT*, 20 June 2025.

<sup>79</sup> For example, see CR0015-25, Targeted lung healthcare checks for Shropshire, Telford and Wrekin, 19 May 2025; CR0018-25, Primary care partner for urgent treatment centre at University Hospital Lewisham, 27 May 2025.



200. In summary, the Panel finds that MSE ICB, by failing to provide relevant documents in response to MPFT's request for information, and in responding to MPFT's requests for information at the same time as providing its response to MPFT's representations, breached its obligation to ensure that a provider which makes representations "is afforded such further opportunity to explain or clarify the representations made as the relevant authority considers appropriate" (Regulation 12(4)(a)) and to "provide promptly any information requested by an aggrieved provider where the relevant authority has a duty to record that information under regulation 24" (Regulation 12(4)(b)).

No.	MPFT's information request	MSE ICB's response	Panel's view
1	"initial assessment of the opportunity and design of the procurement including all internal notes/communications"	The Panel could not identify a direct response to this specific request, but notes that MSE ICB said the following in its overall response: "requests for documentation pertaining to the NHS MSE ICB's Commissioning intentions, including documentation of NHS MSE ICB's internal governance processes, were deemed out of scope of the Regulation 24 disclosure for this procurement process (Competitive Process)." "The Authority is not obliged to share its pre-procurement internal governance documentation (documentation that is not in the public domain) under the PSR 2023."	MPFT's request is not framed in terms of MSE ICB's recordkeeping obligations under Regulation 24. This leaves considerable scope for interpretation about the nature of MPFT's requests. The Panel's view is that a request for information about the decision to use a competitive process falls within the scope of Regulation 24(g) ("the reasons for decisions under these Regulations"). However, it is not entirely clear that this was what was being requested by MPFT. Given this, the Panel's view is that MSE ICB's response to MPFT's request was not unreasonable (although MSE ICB could have made more effort to clarify the nature of MPFT's information request).
2	"pre tender documentation around the service modelling and financial modelling including all internal notes/communications"	"[This element] was conducted, reviewed and signed off by MSE ICB's internal governance processes before the formal launch of the Competitive Process under PSR 2023. All pertinent information was captured in the Service Specification, that was issued in the first instance as part of this Competitive Process on the 03rd March 2025 via the e-procurement portal..."	The Panel's view is that the requested information falls outside the scope of Regulation 24
3	"EQIA(s)"	"MSE ICB's EQIAs were conducted and signed off before the formal launch of the Competitive Process under PSR 2023. All pertinent information was captured in the Service Specification, that was issued in the first instance as part of this Competitive Process on the 03rd March 2025 via the e-procurement portal."	See discussion of this issue at Section 7.1 of this report.
4	"The proposed targets/activity for the service including both ICB and NHSE"	"MSE ICB shared the information that it had available with Bidders during the tendering process in respect to addressing CQ 36 ... Since then, MSE ICB can confirm that the targets are 14418. These	The Panel's view is that MPFT's information request was met by MSE ICB.

		were confirmed on the 27th of the March and were not available to the Commissioners or Bidders during the tendering process as the ICB was still developing its operational plan as submitted to NHS E on the 27th of March 2025."	
5	"internal notes/communications relating to the changes made to the financial approach"	"The pertinent information was provided within the procurement documentation that was issued in the first instance as part of this Competitive Process on the 03rd March 2025 via the e-procurement portal."	This request relates to MSE ICB's adoption of a new approach to bidders' presentation of transformation costs during the procurement process (see Section 7.2). Regulation 24(g) obliges relevant authorities to keep a record of the reasons for decisions made under the PSR regulations. The Panel's view is that adoption of a new approach to bidders' presentation of their transformation costs amounts to a decision under the PSR regulations and as a result MSE ICB was obliged to keep a record of the reasons for this decision and to supply this record to MPFT.
6	"detail around how the tenders were evaluated and how they met the key criteria"	"MSE ICB has provided written detail around how the tenders were evaluated within this Representation Report to MPFT ..."	The Panel notes MSE ICB's concern in its response to MPFT that "documentation pertaining to the procurement process, such as evaluation/moderation minutes, would be highly unusual to provide to an Organisation that did not submit a tender response". However, MPFT as a "provider of the services to which the contract or framework agreement relates" was entitled to make representations under Regulation 12, including requests for information. The only basis for refusing to supply the information requested by MPFT is that it falls outside the scope of Regulation 24's recordkeeping obligations or that it falls within one of the exemptions set out in Regulation 12(5). MSE ICB's reason for refusing MPFT's request does not fall into either of these categories, and as a result MPFT should have been supplied with the requested information.

Source: MSE ICB, *Representations Report to MPFT*, 20 June 2025.

### 7.5.2 EPUT's concerns about the representations review process

201. EPUT, in its representations to the Panel, said that:

"In our representation letter of 20 May 2025, we requested information and documents from the relevant authority. The relevant authority sought clarification from us regarding those requests on 28 May 2025 and we responded on 3 June 2025 to confirm that we were requesting provision of documents. However, we only received the relevant authority's response to our request for provision of information and documents on 20 June 2025 (including a copy of its regulation 24 records), as part of the notice from the relevant authority of its further decision following its review. We consider that this

was a breach of the relevant authority's duty, under regulation 12(4)(b) of the PSR to provide promptly information requested by us where the relevant authority had a duty to record the information under regulation 24.

"The tone of the relevant authority's internal review panel's findings leads us to the view that the review has not been conducted as an impartial review of our genuinely held concerns regarding the procurement of a service which, ultimately, is important to service users who cannot raise the concerns themselves. We find the tone of the independent review panel's reported findings to be aggressive and contentious in places" (see paragraph 50).

202. There are, in summary, two elements to EPUT's concerns about the representations review process: first, that the information that was requested was not supplied promptly, in accordance with MSE ICB's obligations under Regulation 12; and second, the representations review process was not conducted fairly.
203. On the first issue, the Panel notes that MSE ICB supplied the information requested by EPUT when communicating the outcome of EPUT's representations and the ICB's further decision on the provider selection process. The PSR regulations require that a commissioner ensures that a provider which makes representations "is afforded such further opportunity to explain or clarify the representations made as the relevant authority considers appropriate" (Regulation 12(4)(a)) and that commissioners "provide promptly any information requested by an aggrieved provider where the relevant authority has a duty to record that information under regulation 24" (Regulation 12(4)(b)).
204. Consistent with previous cases,<sup>80</sup> the Panel's view is that responding to a bidder's information requests at the same time as responding to its representations does not meet the requirement of promptly providing requested information nor the requirement to afford the bidder further opportunity to explain or clarify its representations.
205. On the second issue, the Panel has not found it necessary to reach a finding on the conduct of the representations review process given that the Panel's review addresses the substantive matters of concern raised by EPUT.
206. As a result, the Panel finds that MSE ICB in responding to EPUT's information request at the same time as responding to its representations breached its obligation to ensure that a provider which makes representations "is afforded such further opportunity to explain or clarify the representations made as the relevant authority considers appropriate" (Regulation 12(4)(a)) and to "provide promptly any information requested by an aggrieved provider where the relevant authority has a duty to record that information under regulation 24" (Regulation 12(4)(b)).

## 8 Panel Advice

207. In summary, the Panel's findings on the provider selection process carried out by MSE ICB for mental health core services are that MSE ICB has breached the PSR regulations in several respects:

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<sup>80</sup> For example, see CR0015-25, Targeted lung healthcare checks for Shropshire, Telford and Wrekin, 19 May 2025; CR0018-25, Primary care partner for urgent treatment centre at University Hospital Lewisham, 27 May 2025.

- First, the Panel finds that MSE ICB, in denying itself the opportunity to evaluate key aspects of bidders' proposals on a level playing field, breached the PSR regulations, and in particular, its obligations to act fairly, transparently and proportionately.
- Second, the Panel finds that MSE ICB, in inviting bidders to make proposals to use resources external to the contract to assist in financing the cost of service provision, while not asking for any information that would allow it to reach an informed view on the potential effects on the sustainability of other services, breached the PSR regulations, and in particular Regulation 11(2) by not sufficiently taking into account the requirement under Regulation 5(c)(iii) to ensure that services are provided in a sustainable way when determining the contract award criteria.
- Third, the Panel finds that MSE ICB, in changing its approach as to how bidders could present information on costs in their proposals and not allowing bidders a reasonable period of time to take account of MSE ICB's new approach, breached the PSR regulations, and in particular its obligations to act fairly and proportionately.
- Fourth, the Panel finds that MSE ICB, in responding to several bidders' CQs in a way that was incomplete, lacked timeliness or was misleading, breached the PSR regulations, and in particular its obligations to act transparently, fairly and proportionately.
- Fifth, the Panel finds that MSE ICB, in adversely assessing EPUT's response to Question 2.3.1 (Service Model) with respect to the possibility of DWP funding of employment advisers not continuing, when such a possibility was not suggested by MSE ICB in either the tender documentation or in its response to the relevant CQ, breached the PSR regulations and in particular its obligation to act fairly.
- Finally, the Panel finds that MSE ICB, in failing to provide relevant documents to in response to MPFT's request for information, and in responding to MPFT's and EPUT's requests for information at the same time as responding to their representations, breached its obligation to ensure that a provider which makes representations "is afforded such further opportunity to explain or clarify the representations made as the relevant authority considers appropriate" (Regulation 12(4)(a)) and to "provide promptly any information requested by an aggrieved provider where the relevant authority has a duty to record that information under regulation 24" (Regulation 12(4)(b)).

208. Given these conclusions, three options are open to the Panel. The Panel may advise that:

- the breaches had no material effect on MSE ICB's selection of a provider and it should proceed with awarding the contract as originally intended;
- MSE ICB should return to an earlier step in the provider selection process to rectify the issues identified by the Panel; or
- MSE ICB should abandon the current provider selection process.

209. The Panel's view is that the breaches identified have had a material effect on MSE ICB's selection of a provider for the mental health core services contract.
210. The Panel's advice to MSE ICB is that it returns to an earlier step in the provider selection process, namely the publication of a new contract notice and issuance of tender documentation suitably revised to address the issues identified by the Panel in this review. The Panel notes, however, the provision in the statutory guidance that "Relevant authorities should not use the option to return to an earlier step as an opportunity to modify the selection parameters (that is, to modify the key criteria or change the service specifications)". If MSE ICB is unable to return to an earlier step in the process without modifying its selection parameters, the Panel's advice, in line with the statutory guidance, is that MSE ICB "should abandon the provider selection process (in accordance with the Regulations) and start a new one.

## Appendix 1: Clarification questions about costs

No.	Submission date	Response date	Bidder's question	MSE ICB response
43	11 Mar	17 Mar	Theme: TUPE Data query Can commissioners confirm that the combined value of the TUPE lists exceeds the financial envelope per annum?	Having reviewed the TUPE information, our calculation indicates that the combined value does not exceed the financial envelope per annum.
63	20 Mar	26 Mar	Please can Commissioners confirm that all submissions must show clearly all costs relating to the mobilisation, delivery and change management of the service within the submitted financial submission, including all transformational costs? If providers are expected to absorb transformational costs and the money available is solely an annual revenue budget, do we need to show the level of this additional money we would be allocating to undertake this work? If so, where does this need to be identified on the financial return and how would this investment from a perspective bidder be scored or assessed?	Please complete the fields indicated in the Doc 6. MHCoreServices-Commercial Offer template v2 100325 - tabs 'Summary and Sign-Off', 'Financial Summary' and 'Workforce Summary'. Please note that any bids received in excess of the outlined affordability envelope will be rejected as non-compliant. Commercial (Price) will be evaluated in accordance with the "Evaluating price" as detailed on page 15 of the process overview document ...
64	20 Mar	1 Apr	In relation to the response to Clarification Question 43 – The newly shared TUPE ELI information from providers indicates that with National Insurance, Pensions and pay related costs that the annual staffing costs are circa £21m in year 1 of the contract. Therefore, the pay costs alone exceed the financial resource available to provide the service. Please can Commissioners share their calculations stated in the clarification response that do not exceed the financial envelope per annum? Please can Commissioners also comment on how the financial envelope has been designed and agreed?	The ICB did not base the financial envelope for this service on staffing models. The total financial envelope has been maximised for equitable provision of the service delivery across Mid and South Essex.
65	20 Mar	1 Apr	If the Commissioner is accepting that the pay costs alone exceed the financial envelope available per annum, what resource or support is being made to the successful bidder to manage this pressure? Or how do Commissioners anticipate the successful provider is to achieve efficiency savings of at least 30% to bring the pay budget into the envelope as well as providing the financial resource for non-pay costs such as premises, equipment, IT, EPR system, travel and training?	Please see CQ64
79	27 Mar	1 Apr	In relation to the response to CQ63 - If any submission involves an approach where the organisation agrees to absorb any transformation costs to reduce staff levels etc does this need	Please do not use the Commercial Offer Template (FMT) to submit a non-compliant bid submission. Bidders may utilise technical question 2.16 Value for Money & Financial Sustainability -

			to be included on the Commercial Offer Template V2 100325 and would this be evaluated as part of the tender as part of the overall financial offer, or an element of added value?	Please make it clear in the quality written response or supporting attachments that the costs will be absorbed by your organisation.
82	28 Mar	1 Apr	<p>With reference to question 63 on the log and the commissioners response please will you provide further clarity. Can you confirm: if a provider is absorbing costs (investing in the service) in addition to costs outlined in the FMT, so as to ensure a compliant tender,</p> <p>1) are you requiring bidders to a) include these costs within the FMT (rendering it non compliant)?</p> <p>b) not disclosing the costs of investing in the service?</p> <p>c) including these costs within the narrative but not the FMT? To clarify this relates to investment by providers not costs within the financial envelope?</p>	<p>Please see CQ 79</p> <p>a. Please <b>do not render your FMT non-compliant</b> - please ensure the FMT submission is within the maximum budget outlined.</p> <p>b. Bidders can disclose the cost of investment in the service - please utilise the attachment function for technical question 2.16 Value for Money &amp; Financial Sustainability</p> <p>c. Please utilise the attachment function in response to question 2.16 Value for Money &amp; Financial Sustainability. Please make it clear in the quality written response that the costs will be absorbed by your organisation. Please do not use the Commercial Offer Template (FMT) to submit a non-compliant bid submission.</p>
89	31 Mar	1 Apr	<p>Redundancy costs will be a one off year one non recurrent cost of change, where redundancy is unaffordable within the financial envelope allocated and requires a provider to pay for the redundancy costs outside of the financial envelope how does the commissioner expect a bidder to include this cost transparently without exceeding the affordability cap?</p>	<p>Please see CQ 79. Please do not breach the FMT, the Commercial Offer Template should be submitted within the maximum budget. Bidders may utilise technical question 2.16 Value for Money &amp; Financial Sustainability - Please make it clear in the quality written response or supporting attachments that the costs will be absorbed by your organisation (for information only).</p>

Source: MSE ICB, *Clarification Questions Log version 5*, 1 April 2025.

## Appendix 2: Other clarification questions and responses

No	Question	Date Sent	Response date	Authority Response	Providers' concerns	Panel view
<b>CQs about activity targets</b>						
6	<p>Upon reviewing the tender documents, we have been unable to identify specific NHS Talking Therapy targets for completed courses of treatment.</p> <p>Can commissioners please promptly confirm what these are for the contract to enable consideration of workforce requirements?</p>	06/03/2025	10/03/2025	NHS Talking Therapy targets for the completed course of treatment are indicative and subject to change, depending on performance and assumptions. The target for FY 2025/26 is 14,476.	<p><b>MPFT's concerns (CR0021-25/P02):</b></p> <p>Responses around the lack of specified NHS Talking Therapy targets within the Specification and Documentation. Bidders requested this information through the clarification process (Clarification Question 6 and 36) in order to consider the appropriate model and cost submissions. Responses provided by the ICB do not provide the appropriate level of detail to allow bidders to fully consider and operationally model the requirements for staffing resource to safely provide the requirement with the ICB responding "NHS Talking Therapy targets for the completed course of treatment are indicative and subject to change, depending on performance and assumptions. The target for FY 2025/26 is 14,476.</p>	<p>Three CQs were asked about activity targets and waiting lists. The Panel's view is that these questions were not fully answered by MSE ICB, with incomplete and/or partial data being provided in response to bidders' questions.</p> <p>The Panel notes that MSE ICB took 12 working days to answer one of the three questions which, in the context of a 23 working day bidding process is neither fair nor proportionate. Moreover, the answer provided after 12 working days largely replicated an earlier answer to the same question, albeit with slightly different figures.</p>
36	<p>Upon reviewing the tender documents, we have been unable to identify specific NHS Talking Therapy targets for completed courses of treatment.</p> <p>Can commissioners please promptly confirm what these are for the contract to enable consideration of workforce requirements?</p>	10/03/2025	26/03/2025	NHS Talking Therapy targets for the completed course of treatment are indicative and subject to change, depending on performance and assumptions. The target for FY 2025/26 is <b>14,933</b>		
86	Could commissioners please confirm the current waiting list position by provider for second appointments, broken down by volume of waits (e.g. number of patients waiting). Under and over 28 days and over 90 days by step 2, step 3 and step 4.	31/03/2025	01/04/2025 16:34	Please see the link below from NHS Futures that outlines the breakdown as requested: NHS Futures	<p><b>EPUT's concerns (CR0022-25/P13):</b></p> <p>Question not answered.</p> <p>The question was for waitlist information by intervention (step2, 3, 4) which was not provided. The purpose of this information would enable modelling and impact of inherited waiting times</p>	



No	Question	Date Sent	Response date	Authority Response	Providers' concerns	Panel view
<b>CQs about estates</b>						
2	Will the existing estate leases transfer to the new provider? If only certain estates will transfer, please specify which ones.	05/03/2025	17/03/2025	We anticipate some of the Estates may transfer to the new provider; we will provide further details in due course.	<b>EPUT's concerns (CR0022-25/P13):</b> The Authority indicated some estate may transfer therefore this information was required to support an accurate and efficient costing and support an assessment of estate requirements across MSE ICB	Three CQs were asked about the successful bidders' ability to access existing premises used by incumbent providers to deliver core mental health services. MSE ICB initially indicated that it anticipated that some of the estates may transfer to the new provider and promised further details. In response to the third question on estates, however, bidders were told to seek clarification from incumbent providers.  The Panel's view is that MSE ICB could and should have advised bidders earlier that it could not answer this question. However, the response was given on 1 April, two days before proposals were due, meaning that there was insufficient time for bidders to make inquiries.
45	Where providers have leases / licenses for the use of premises to deliver the service can the ICB confirm whether any of these will be in force post 1 August 2025. If so what are the relevant notice periods and costs?	11/03/2025	Awaiting response 17/03/25  Responded 26/03/2025	We anticipate some of the Estates may transfer to the new provider; we will provide further details in due course.	<b>EPUT's concerns (CR0022-25/P13):</b> As above in question two this information is required to support accurate costing - risk for all parties should costs be higher than those estimated.	
80	Qu 16- the response states "However, providers may choose to utilize these locations if they align with their service delivery model". Have the incumbent providers confirmed that they are in agreement with the estate identified in the information provided being utilised?	27/03/2025	01/04/2025 16:34	The incumbent providers have only provided Estates data. As stated in the procurement response, 'providers may choose to utilise these locations if they align with their service delivery model' and subject to the incumbent's determination of the availability of these premises.  It is not explicitly confirmed whether the incumbent providers agree to the identified estates being utilised. If further assurance is required, clarification may be sought from the incumbent providers regarding their position on the use of these locations.	<b>EPUT's concerns (CR0022-25/P13):</b> The Authority did not contact Providers to gain further detail. The Trust has a copy of the request from the Authority for Estates information on 12/02/25 and EPUT's response to this on 26/02/2025 (pre-tender).  Several attempts were made to obtain accurate information. There was no certainty any provider would be able to utilise these locations as some are owned premises / leased.  In EPUTs submission to the Authority estates costs were included but redacted when shared with the tender documentation. The Authority did not request further information from incumbent providers.	

No	Question	Date Sent	Response date	Authority Response	Providers' concerns	Panel view
<b>CQs about patient record systems</b>						
41	Clarification Question - Systems  Can commissioners confirm the cost associated with PCMIS and IAPTUS by provider.	11/03/2025	17/03/2025	The ICB does not have that information. The Provider's manage their own commercially sensitive information from procuring a suitable system (such as PCMIS and IAPTUS).	<b>EPUT's concerns (CR0022-25/P13):</b> Not provided.  The information was not sought from incumbent providers	Two CQs were asked on costs associated with incumbents' EPR systems. MSE ICB did not provide the requested information. The Panel's view is that this response was reasonable given that the requested information was most likely commercially confidential to the EPR supplier. However, MSE ICB took 10 working days to say that it did not have the requested information and would not be providing it. The Panel's view is that response was not timely in the context of a 23 working day tender process.
46	Can the ICB confirm what the costs of the EPR systems are by provider, termination /exit arrangements and contract term	12/03/2025	26/03/2025	The ICB does not have this information. All providers are to manage their own EPR systems and contractual arrangements.	<b>EPUT's concerns (CR0022-25/P13):</b> Clarification answered. Was awaiting response 17/03/25 Responded 26/03/25  Bidders were unaware of the terms and any associated costs of legacy systems this information could have been sought from incumbent providers to support costing and risk management	

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<b>CQs about staffing and TUPE</b>						
38	<p>Theme: TUPE Data query</p> <p>Within the TUPE lists various Employment Advisors are included. Our understanding was that Employment Advisors are excluded. Please will you confirm whether</p> <p>a) employment advisors are included</p> <p>b) that those included are from within the core (ICB) funding and that</p> <p>c) no DWP funded posts are included</p>	11/03/2025	17/03/2025	<p>Please see revised TUPE Data:</p> <p>Doc 9b. TUPE Data HPFT v2</p> <p>Doc 9c. TUPE Data Vita v2</p> <p>Doc 9d. TUPE Data MPFT Inclusion v2</p>	<p><b>EPUT's concerns (CR0022-25/P13):</b></p> <p>This question was not answered</p> <p>To note confirmation from DWP was received on 06/06/25 re continuation of funding for Employment Advisors.</p> <p>Uncertainty regarding funding for employment advisors, the lack of clarification led to assumptions having to be made regarding the funding stream</p>	<p>Four questions were asked on staffing and TUPE related matters. The Panel appreciates that TUPE information supplied to bidders in a procurement process is indicative and as a result there will always be a degree of uncertainty that providers need to manage in relation to staffing. Notwithstanding this, the Panel's view is that MSE ICB did not directly answer the questions that were asked, and was not sufficiently clear about the information that it was, or was not, in a position to provide. MSE ICB took 9 working days to answer one question, which was unreasonably long in the context of a 23 working day bidding process. Further, in at least one instance the answer was misleading in that it referred to a commissioner split of the funding envelope as the basis for splitting the staff list into service components.</p>
48	<p>Could commissioners please confirm within each TUPE list which staffing group are aligned to the PTS Service</p>	13/03/2025	26/03/2025	<p>The TUPE Data does not indicate a split between the TT staff and PTSMHP staff. NHS MSE ICB have suggested a minimum financial split of TT 85/ PTS 15 split respectively, which is inclusive of service costs and staffing.</p>	<p><b>EPUT's concerns (CR0022-25/P13):</b></p> <p>To note there was a delay in the question being read and acknowledged.</p> <p>Detail was not requested from the incumbent providers by the Authority and each incumbent would have had the relevant detail.</p> <p>The delay in responding left bidders five working days to re-produce a costed model for the service based on this information, revise technical responses accordingly along with managing internal governance for approval to submit. This was a material issue</p>	

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<b>CQs about staffing and TUPE</b>						
52	Can commissioners confirm the number of trainees who will be offered posts as per NHSE stipulated requirements from all providers.	19/03/2025	26/03/2025	Please see TUPE data as outlined in documents 9a - 9d TUPE Data.	<p><b>EPUT's concerns (CR0022-25/P13):</b> Question not answered.</p> <p>The Trainees are in salary supported posts and upon qualification are a potential cost pressure to the service, should there not be vacant qualified posts for the trainees to move into. The use of trainees are a fundamental part of the national expansion of Talking Therapy services. Understanding the financial impact the trainees could have was an essential part of the financial modelling</p>	
71	Where fixed term contracts have an end date prior to 1 August 2025 can all providers confirm that they will not be extended beyond this date	21/03/2025	26/03/2025	<p>See CQ 39.</p> <p>All incumbent providers have frozen recruitment and/or are not actively recruiting to any roles in the Talking Therapy or Psychological Therapies for Serious Mental Health Problems services.</p>	<p><b>EPUT's concerns (CR0022-25/P13):</b> Question not answered this related to FTCs not the recruitment freeze for new posts.</p> <p>[Needed] To assess potential financial impact</p>	

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<b>CQs about system migration and mobilisation</b>						
73	<p>Given that there is likely to be a longer lead in time for system migration than is enabled by the mobilisation period, to ensure the provider can retain the integrity of the clinical data please will commissioners confirm</p> <p>a) whether they are willing to extend the period between award and go live or b) whether the ICB will mandate the four incumbent providers to work collaboratively during the period between award and system migration to maintain the status quo</p>	21/03/2025	26/03/2025	<p>The ICB expects that Providers will detail the mobilisation of the service, including transfer of clinical records/data that would have already been verified by the incumbent Providers.</p> <p>Should the need for extension be absolutely necessary:</p> <p>a) The ICB is not considering extending contracts and will work with the successful provider to ensure the service is fully mobilised within the expected timeframe. However, if absolutely necessary, the ICB may seek to extend the current contracts with the incumbent Providers, based on the existing service provision and individual contract terms. System Migration will be addressed as part of the mobilisation process</p> <p>b) No, the ICB would not mandate the incumbent providers to work collaboratively.</p>	<p><b>EPUT's concerns (CR0022-25/P13):</b> The response felt contradictory</p>	Panel deals with mobilisation issues, including these CQs, in Section 7.4 of the report.
87	Please will commissioners confirm that a bidder will not be disadvantaged when including the required timescale for system migration (IAPTUS) which is outside of bidders control but exceeds the commissioners mobilisation period, (pre go live).	31/03/2025	01/04/2025 16:34	We can confirm that Bidders would not be disadvantaged by the reasonable impacts outside of Bidders control.	<p><b>EPUT's concerns (CR0022-25/P13):</b> Not Applicable.</p> <p>Despite the clarification question response it would appear from the evaluation that this is not the case</p>	