

Independent Patient Choice and Procurement Panel

Review of a proposed contract award

Community Audiology Services in Barnet

Case Reference: CR0023-25 and CR0024-25

12 November 2025

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1 Executive Summary

1. On 8 July 2025, the Panel received requests from Scrivens Limited (Scrivens) and Specsavers Optical Superstores Limited (Specsavers) to advise on the selection of a provider by NHS North Central London Integrated Care Board (NCL ICB) for a Community Audiology Service in the London Borough of Barnet. The Panel accepted both requests on 11 July 2025.
2. NCL ICB is a statutory body responsible for planning health services to meet the health needs of the North Central London population and managing the budget for the provision of NHS services to this population. The North Central London area includes five London boroughs, namely Barnet, Camden, Enfield, Haringey and Islington. Audiological Science Limited (Audiological Science) has been the provider of community audiology services in Barnet since 2019.
3. In April 2024, NCL ICB carried out a strategic review of community audiology services, responding to the significant variation in service models and contracting approaches across North Central London. In May 2024, NCL ICB decided that it would move to a single point of access model for community audiology services in each borough from 1 April 2026. It told the Panel that having settled on this plan, it decided to renew contracts for existing providers until 31 March 2026 “to allow time for a procurement to be scoped and implemented for commencement on 1 April 2026”.
4. In November 2024, NCL ICB decided to award new one year contracts to five independent sector providers of community audiology services in North Central London, including Audiological Science, using Direct Award Process C under the Provider Selection Regime (PSR). NCL ICB told the Panel that each new contract award was subject to it approving an assessment of the incumbent provider’s performance.
5. In December 2024, NCL ICB completed its assessment of whether Audiological Science should be awarded a new contract using Direct Award Process C. On 13 January 2025, NCL ICB announced, by way of a notice published on the Find a Tender Service (FTS), its intention to award a new contract to Audiological Science for the period 1 April 2025 to 31 March 2026 (the “intention to award notice”).
6. Both Scrivens and Specsavers subsequently made representations to NCL ICB about the contract award decision. Following these representations, NCL ICB identified several errors in the contract award approval process and the FTS notice. As a result, NCL ICB decided to abandon the provider selection process. On 18 March 2025, NCL ICB published a notice to this effect on FTS.
7. In March 2025, NCL ICB started a new assessment (“the current provider selection process”) of Audiological Science’s performance (by way of its “direct award toolkit”). This resulted in a recommendation to award a new contract to Audiological Science, which was approved by NCL ICB’s Chief Executive Officer and Chief Finance Officer on 10 March 2025.
8. On 31 March 2025, NCL ICB published a notice announcing its intention to award a new contract for community audiology services to Audiological Science using Direct Award Process C. The notice stated that the contract, which was intended to

commence on 1 April 2025, would be for one year, with no option to extend, and had an estimated total contract value of approximately £920k (excluding VAT).

9. Prior to the end of the standstill period, Scrivens and Specsavers both made representations to NCL ICB about the current provider selection process, and both requested information from the ICB. On 8 July 2025, NCL ICB communicated its further decision to proceed with the contract award as originally intended. That same day both Scrivens and Specsavers asked the Panel to advise on NCL ICB's provider selection process.
10. The Panel's findings on the provider selection process carried out by NCL ICB for community audiology services in Barnet are as follows:
 - First, the Panel finds that NCL ICB, in concluding that condition (d) of PSR regulation 6(5) was satisfied, and that it was accordingly eligible to award a new contract to Audiological Science using Direct Award Process C, breached the PSR regulations. The Panel also finds that while NCL ICB was able to conclude that conditions (a) to (c) and (e) of PSR regulation 6(5) for the use of Direct Award Process C were satisfied it did not produce any documentation to support this conclusion.
 - Second, the Panel finds that NCL ICB, in documenting its assessment and decision to award a new contract to NCL ICB using Direct Award Process C, breached the PSR regulations, and in particular its recordkeeping obligations under Regulation 24.
 - Third, the Panel finds that NCL ICB, in responding to Scrivens' and Specsavers' information requests during the representations review process, breached the PSR regulations, and in particular Regulation 12(4) which requires commissioners to "provide promptly any information requested by an aggrieved provider" and "ensure each provider who made representations is afforded such further opportunity to explain or clarify the representations".
 - Finally, the Panel finds that NCL ICB, in supplying the Panel with amended decision-making records and only much later explaining the changes it had made, breached its obligation under the PSR regulations to act transparently.
11. Given these conclusions, three options are open to the Panel. The Panel may advise that:
 - the breaches had no material effect on NCL ICB's selection of a provider and it should proceed with awarding the contract as originally intended;
 - NCL ICB should return to an earlier step in the provider selection process to rectify the issues identified by the Panel; or
 - NCL ICB should abandon the current provider selection process.
12. The Panel, on this occasion, does not intend to offer advice on next steps, notwithstanding its findings of multiple breaches of the PSR regulations by NCL ICB. This is because NCL ICB has, in effect, already abandoned the current provider selection process (in that it no longer intends to award a new contract to Audiological Science using Direct Award Process C). Instead, NCL ICB has decided to extend Audiological Science's contract by way of an "urgent modification" with a view to

awarding a new contract for community audiology services in Barnet, Camden and Enfield starting on 1 July 2026.

13. The Panel notes, however, that this review has highlighted several important issues for commissioners when awarding new contracts using Direct Award Process C.
 - First, where contracts are low value and/or short term and commissioners wish to carry out an assessment process that is accordingly proportionate, the resulting process must still be robust, coherent and comprehensible, both to those carrying out the process and to other interested stakeholders.
 - Second, the same standards for recordkeeping apply to the award of contracts under Direct Award Process C as apply to other provider selection processes under the PSR regulations (e.g. the competitive process).
 - Finally, commissioners must keep decision making records intact and separate from other documents supplied to the Panel (or other stakeholders) during any subsequent review process.
14. On this final point, during this review NCL ICB supplied multiple documents in response to requests from the Panel. This included several versions of: (i) the key document in which NCL ICB recorded its assessment of whether to award a new contract to Audiological Science using Direct Award Process C (the “direct award toolkit”); and (ii) NCL ICB’s “scoring methodology” which supported its evaluation of Audiological Science’s performance.
15. The Panel learnt, later in its review, that some of these versions were created after NCL ICB’s contract award decision, either in anticipation of the Panel’s review, or in response to the Panel’s requests for information. This has had the unfortunate effect of extending the time required for the Panel’s review, given the need to understand the process by which these documents were created and when each version was created. The Panel has made its assessment against the versions of NCL ICB’s documentation that it understands were in place at the time of the contract award decision.
16. When any procurement decision is reviewed by the Panel, the Panel will ask the commissioner to explain its decision-making process. It is important that commissioners, in providing documents in response to the Panel’s requests, clearly identify those documents that are the decision-making record for the contract award decision, and supply these documents to the Panel in an unamended form. Where further documentation is supplied to the Panel by way of additional explanation of the decision-making process, this further should be kept separate from the documents that form the decision-making record. If this does not happen there is a significant risk of the Panel being misled and/or there being an extended review period while the Panel ensures it has a clear understanding of events.
17. The Panel also reminds commissioners of the importance of ensuring that their decision-making records are clear and complete, including the reasons for their decisions, so as to ensure compliance with the PSR regulations.

2 Introduction

18. On 8 July 2025, the Panel received requests from Scrivens Limited (Scrivens) and Specsavers Optical Superstores Limited (Specsavers) to advise on the selection of a provider by NHS North Central London Integrated Care Board (NCL ICB) for a Community Audiology Service in the London Borough of Barnet.¹
19. The Panel accepted both requests on 11 July 2025 in accordance with its case acceptance criteria. These criteria set out both eligibility requirements and the prioritisation criteria the Panel will apply when it is approaching full caseload capacity.² Both providers' requests met the Panel's eligibility requirements.
20. The Panel also gave careful consideration as to whether the providers' requests should be refused on prioritisation grounds. The proposed contract for community audiology services in Barnet was to be awarded for a single year, with NCL ICB signalling its intention to undertake a wider re-procurement of community audiology services across the ICB in that year ("the wider procurement"). New contracts under the wider procurement were, at the time, expected to commence in April 2026. This meant that any advice from the Panel about the current procurement could be rendered obsolete given the planned implementation of the wider procurement.
21. The Panel, however, concluded that there was merit in reviewing the issues raised by Scrivens and Specsavers. This was for three reasons:
 - first, NCL ICB's plans for the wider procurement could change, allowing implementation of the Panel's advice in relation to the current procurement;
 - second, the Panel's advice might be relevant to NCL ICB's wider procurement; and
 - finally, the Panel's advice could assist other commissioners in complying with the PSR regulations.
22. As a result, the providers' requests for the Panel's advice were not refused on prioritisation grounds.
23. The Panel's Chair appointed three members to a Case Panel for this review, namely:
 - Andrew Taylor, Panel Chair;
 - Carole Begent, Case Panel Member; and
 - Sally-Ann Collier, Case Panel Member.³
24. The Case Panel's review has been carried out in accordance with the Panel's Standard Operating Procedures ("procedures").⁴
25. This report provides the Panel's assessment and advice to NCL ICB and is set out as follows:
 - Section 3 briefly describes the role of the Panel;

¹ Scrivens and Specsavers are both providers of optical and hearing care. Further information on Scrivens can be found on its website at <https://scrivens.com/> and further information on Specsavers can be found on its website at <https://www.specsavers.co.uk/>.

² 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/>.

³ 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/>.

⁴ 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/>.

- 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 Scrivens and Specsavers;
- Section 6 identifies the provisions of the PSR regulations relevant to Scrivens' and Specsavers' representations;
- Sections 7 sets out the Panel's assessment of the issues raised by Scrivens and Specsavers; and
- Section 8 sets out the Panel's advice to NCL ICB.⁵

26. During this review, NCL ICB supplied multiple documents in response to requests from the Panel. This included several versions of: (i) the key document in which NCL ICB recorded its assessment of whether to award a new contract to Audiological Science using Direct Award Process C (the "direct award toolkit"); and (ii) NCL ICB's "scoring methodology" which supported its evaluation of Audiological Science's performance.

27. The Panel learnt, later in its review, that some of these versions were created after NCL ICB's contract award decision, either in anticipation of the Panel's review, or in response to the Panel's requests for information. This has had the unfortunate effect of extending the time required for the Panel's review, given the need to understand the process by which these documents were created and when each version was created. The Panel has made its assessment against the versions of NCL ICB's documentation that it understands were in place at the time of the contract award decision.

28. When any procurement decision is reviewed by the Panel, the Panel will ask the commissioner to explain its decision-making process. It is important that commissioners, in providing documents in response to the Panel's requests, clearly identify those documents that are the decision-making record for the contract award decision, and supply these documents to the Panel in an unamended form. Where further documentation is supplied to the Panel by way of additional explanation of the decision-making process, this further should be kept separate from the documents that form the decision-making record. If this does not happen there is a significant risk of the Panel being misled and/or there being an extended review period while the Panel ensures it has a clear understanding of events.

29. The Panel also reminds commissioners of the importance of ensuring that their decision-making records are clear and complete, including the reasons for their decisions, so as to ensure compliance with the PSR regulations.

30. The Panel thanks NCL ICB, Scrivens and Specsavers for their assistance and cooperation during this review.

3 Role of the Panel

31. 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

⁵ The Panel's advice is provided under paragraph 23 of the PSR Regulations and takes account of the representations made to the Panel prior to forming its opinion.

regulations on 1 January 2024, and gives relevant authorities (i.e. commissioners) greater flexibility in the selection of providers of health care services.⁶

32. 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.
33. 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

34. NCL ICB is a statutory body responsible for planning health services to meet the health needs of the North Central London population and managing the budget for the provision of NHS services to this population.⁷ The North Central London area includes five London boroughs, namely Barnet, Camden, Enfield, Haringey and Islington.
35. Community audiology services involve assessment, treatment (e.g. hearing aids) and ongoing aftercare for age-related hearing loss. Audiological Science Limited (Audiological Science)⁸ has been the provider of community audiology services in Barnet since 2019. Community audiology services in the other four boroughs in North Central London are supplied by several providers, including Whittington Health, University College London Hospitals NHS Foundation Trust (UCLH), Royal Free London (RFL), Scrivens and Specsavers. In at least some of these areas patients are offered a choice of provider.
36. This section sets out the background to the current provider selection process for community audiology services in Barnet. It sets out the history of contracting and service provision in Barnet since 2013 (Section 4.1), describes the events leading up to the current provider selection process (Section 4.2), and sets out the key steps in the current provider selection process (i.e. the process which is the subject of the Panel's review) (Section 4.3).

4.1 Community audiology services in Barnet since 2013

37. Community audiology services in Barnet were, prior to the establishment of NCL ICB in 2022, commissioned by NHS Barnet Clinical Commissioning Group (Barnet CCG). From 2013 to 2016, patients could choose their provider under an Any Qualified Provider arrangement, and providers included Scrivens and Specsavers.⁹ From 2016 to 2019, Concordia Healthcare was contracted to provide a consultant-led community service for audiology and related services.¹⁰ In 2019, following the unplanned exit of

⁶ 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/>

⁷ Further information on NCL ICB can be found on its website at <https://nclhealthandcare.org.uk/icb/about/>.

⁸ Audiological Science is a provider of hearing aids. Further information can be found on its website at <https://www.audiologicalscience.com/>.

⁹ Panel meeting with Scrivens, 1 September 2025.

¹⁰ Panel meeting with Specsavers, 1 September 2025.

Concordia Healthcare, Audiological Science was awarded an “emergency interim contract” for community audiology services in Barnet.¹¹

38. Audiological Science’s services have been retained by commissioners since the initial contract award in 2019 (i.e. by Barnet CCG until 2022 and by NCL ICB since 2022). This has involved a combination of contract extensions and/or awards of new contracts.¹²
39. The Panel’s understanding of key events in the history of community audiology services contracting in Barnet from 2013 until the 2024/25 contracting year is set out in the table below.

Date	Event
2013-16	Barnet CCG contracts with Scrivens to provide community audiology services.
2016-19	Concordia holds a prime provider contract with Barnet CCG for multiple services. Concordia subcontracts the provision of community audiology services in Barnet.
Apr 2019	Barnet CCG awards an “emergency interim contract” to Audiological Science for community audiology services following Concordia’s unplanned exit. This contract had a one year duration, commencing on 1 April 2019 with the option of a one year extension, leading to a contract end date, including the extension, of 31 March 2021. ¹³
Nov 2019	Barnet CCG holds a market engagement event for community audiology services, but further engagement suspended due to the COVID-19 pandemic. ¹⁴
Apr 2021 – Mar 2022	Barnet CCG contracts with Audiological Science via “an urgent award under the previous legislation and in light of government contract guidance arising from the pandemic in order to provide continuity of service when Concordia withdrew from providing the service.” ¹⁵
Jul 2022	NCL ICB takes over commissioning responsibilities from Barnet CCG. ¹⁶
12 Sep 2022	NCL ICB awards a new community audiology contract to Audiological Science for the period 1 Apr 2022 – 31 Mar 2023, with the option of a one year extension.
11 May 2023	NCL ICB exercises the option to extend its contract with Audiological Science for a further year (with the contract now due to expire on 31 March 2024).
19 May 2023	Following a delay in completing a planned strategic review of community audiology services, NCL ICB’s Finance Committee approves a decision to extend the contract with Audiological Science for a further year (i.e. from 1 Apr 2024 to 31 Mar 2025) via a “Single Tender Waiver”.
1 Jan 2024	The Provider Selection Regime for healthcare services comes into force.
22 Feb 2024	Audiological Science signs a Variation Agreement that puts into effect NCL ICB’s decision of 19 May 2023 to extend the contract with Audiological Science for a further year, to 31 March 2025.

40. The Panel notes that NCL ICB’s contracting with Audiological Science in recent years has taken place in an environment where the ICB’s resources have been stretched by

¹¹ Panel meeting with Specsavers, 1 September 2025.

¹² To note, the Panel has not assessed the validity of NCL ICB’s previous contract award processes.

¹³ NCL ICB, *audiology signed contract 2019*.

¹⁴ Panel meeting with Specsavers, 1 September 2025.

¹⁵ NCL ICB, *Response to Panel questions*, 22 September 2025.

¹⁶ NCL ICB have declined to comment on or provide information about Barnet CCG’s contracting with Audiological Science beyond providing a copy of the 2019-2021 contract. The Panel has no information about the contractual arrangements that were in place with Audiological Science for the period 1 April 2021 to 31 March 2022.

the large number and short duration of the contracts that it inherited from the former CCGs. NCL ICB told the Panel that this included around 1,200 contracts with independent and third sector providers, and resulted in a heavy burden of annual contract reviews and renewals. However, since the ICB's formation it has been able to consolidate many of these contracts and extend durations, reducing the total number of contracts with independent and third sector providers to around 400, with around 250 contracts coming up for renewal every year.¹⁷

4.2 Events leading up to the provider selection process

41. In April 2024, NCL ICB carried out a strategic review of community audiology services, responding to the significant variation in service models and contracting approaches across North Central London.¹⁸ In May 2024, NCL ICB decided that it would move to a single point of access model for community audiology services in each borough from 1 April 2026. It told the Panel that having settled on this plan, it decided to renew contracts for existing providers until 31 March 2026 "to allow time for a procurement to be scoped and implemented for commencement on 1 April 2026".¹⁹
42. In November 2024, NCL ICB decided to award new one year contracts to five independent sector providers of community audiology services in North Central London, including Audiological Science, using Direct Award Process C under the Provider Selection Regime (PSR).²⁰ NCL ICB told the Panel that each new contract award was subject to it approving an assessment of the incumbent provider's performance. Each of these assessments is set out in a "direct award toolkit"²¹ that NCL ICB employs for the purposes of considering contract awards using Direct Award Process C.²²
43. In December 2024, NCL ICB completed its assessment of whether Audiological Science should be awarded a new contract using Direct Award Process C. On 13 January 2025, NCL ICB announced, by way of a notice published on the Find a Tender Service (FTS), its intention to award a new contract to Audiological Science for the period 1 April 2025 to 31 March 2026 (the "intention to award notice").²³
44. Both Scrivens and Specsavers subsequently made representations to NCL ICB about the contract award decision. Following these representations, NCL ICB identified several errors in the contract award approval process and the FTS notice. As a result, NCL ICB decided to abandon the provider selection process. On 18 March 2025, NCL ICB published a notice to this effect on FTS.²⁴

¹⁷ Panel meeting with NCL ICB, 4 September 2025.

¹⁸ NCL ICB told the Panel that "This commissioning landscape is a legacy of historic commissioning arrangements pre-dating the NCL ICB and all were in scope of the Strategic Commissioning Review into Audiology Services" (NCL ICB, *Response to Panel questions*, 13 August 2025).

¹⁹ NCL ICB, *Response to Panel questions*, 13 August 2025.

²⁰ NCL ICB, *Procurement Oversight Group – Procurement & Contracting Update*, 20 November 2024.

²¹ The Panel notes that these toolkits are based on the national Direct Award Process C Guide published by NHSE on <https://www.england.nhs.uk/publication/provider-selection-regime-toolkit-products/>, and have been customised by NCL ICB.

²² NCL ICB, *Response to Panel questions*, 2 September 2025; Panel meeting with NCL ICB, 4 September 2025. The ICB further told the Panel that the decision to award the new one year contracts was informed by its strategic review of audiology services in 2024.

²³ NCL ICB, *Contract Award Notice on Find a Tender Service*, 13 January 2025.

²⁴ NCL ICB, *F14: Notice for changes or additional information on Find a Tender Service*, 18 March 2025.

4.3 The provider selection process

45. In March 2025, NCL ICB started a new assessment (“the current provider selection process”) of Audiological Science’s performance (by way of its “direct award toolkit”). This resulted in a recommendation to award a new contract to Audiological Science, which was approved by NCL ICB’s Chief Executive Officer and Chief Finance Officer on 10 March 2025.²⁵
46. NCL ICB told the Panel that the March 2025 assessment of Audiological Science’s performance used the same process as the December 2024 process (see paragraph 43), but that a “refined and updated” direct award toolkit was used.²⁶ NCL ICB later explained that this involved the use of sub-criteria and associated weightings under each of the five key criteria against which Audiological Science was assessed.²⁷
47. On 31 March 2025, NCL ICB published a notice announcing its intention to award a new contract for community audiology services to Audiological Science using Direct Award Process C. The notice stated that the contract, which was intended to commence on 1 April 2025, would be for one year, with no option to extend, and had an estimated total contract value of approximately £920k (excluding VAT).²⁸
48. Prior to the end of the standstill period, Scrivens and Specsavers both made representations to NCL ICB about the current provider selection process, and both requested information from the ICB. On 8 July 2025, NCL ICB communicated its further decision to proceed with the contract award as originally intended. The table below sets out the chronology of events in relation to these representations.

Date	Event
1 Apr 2025	Standstill period commences
3 Apr 2025	Specsavers makes representations to NCL ICB about the provider selection process, including a request for information from NCL ICB
9 Apr 2025	Scrivens makes representations to NCL ICB about the provider selection process, including a request for information from NCL ICB
22 May 2025	NCL ICB convenes its internal review panel to review the representations and consider the information requests from Specsavers and Scrivens
3 Jul 2025	NCL ICB provides additional information to Scrivens and Specsavers in response to each provider’s request. NCL ICB told the Panel that this information “related to both the first and second Direct Awards”
8 Jul 2025	NCL ICB communicates to both providers its further decision to proceed with the contract award as intended

49. On 8 July 2025, prior to the end of the standstill period, both Scrivens and Specsavers asked the Panel to advise on NCL ICB’s provider selection decision. These requests were accepted by the Panel on 11 July 2025. On being made aware of the Panel’s acceptance decision, NCL ICB confirmed that it would hold the standstill period open for the duration of the Panel’s review.

²⁵ NCL ICB, *Response to Panel questions*, 13 August 2025; 2 September 2025.

²⁶ NCL ICB, *Response to Panel questions*, 13 August 2025.

²⁷ NCL ICB, *Response to Panel questions*, 24 September 2025.

²⁸ NCL ICB, *Contract Award Notice on Find a Tender Service*, 31 March 2025.

50. Since the start of the Panel's review, NCL ICB has: (i) told the Panel that it intended to implement an "urgent modification" of Audiological Science's existing contract to cover the 1 April 2025 to 31 March 2026 period;²⁹ and (ii) published a contract notice on 13 October 2025 advertising a contract opportunity for "Community Audiology Services for the London Boroughs of Barnet, Camden and Enfield", to commence on 1 July 2026.³⁰

5 Representations by Scrivens and Specsavers

51. This section sets out Scrivens' and Specsavers' concerns about NCL ICB's provider selection process for Community Audiology services in Barnet, as summarised in their representations to the Panel.

5.1 Representations by Scrivens

52. Scrivens' concerns about the provider selection process, as summarised in its representations to the Panel, are as follows:

"If the NCL ICB had acted in accordance to PSR rules and statutory guidance it would have recognised that Direct Award C would have been inappropriate and should have acted differently. That in turn could have led to a materially different outcome. The failure to recognise this has led up to this point.

"It is our position that it is essential to clearly document how the ICB has ensured that it understands the "provider landscape" so that it has the necessary level of knowledge to determine if Direct Award C for a lapsed contract is appropriate or not.

"NCL ICB has not supplied evidence to demonstrate it had the necessary knowledge. The absence of demonstrable knowledge means that NCL ICB has failed to comply with its obligation to act with a view to improving (i) the quality of the services, and (ii) the efficiency in the provision of the services, as they are required to do under Regulation 4.

"We have received none of the documentation requested for Community Audiology Contract – Notice reference 2025/s 000=001001 in breach of regulations 12 4b and 24 – The ICB is content with its position that this information is irrelevant. This position is flawed as the first process clearly informed the second. This also denied Scrivens the opportunity to explore any conflicts of interest i.e. Were the same evaluators, knowledge holders and decision makers involved in both Community Audiology Contract – Notice reference 2025/s 000=001001 and Community Audiology Services – Notice reference: 2025/S 000-012100.

"The documentation received for Notice reference: 2025/S 000-012100 falls short of that required by regulations 12 4b and 24 and does not address our concerns as set out in detail in our representations."

53. In summarising its concerns, Scrivens said:

"North Central London ICB has;

1 – Failed to provide us with the documents we requested in our original request to review the decision and has failed to provide the information required by the Regulations. This has inhibited our ability to review whether the ICB completed a fair and complete process which denied us the ability to ask follow-up questions.

²⁹ NCL ICB, *Response to Panel questions*, 2 September 2025.

³⁰ NCL ICB, *Contract Notice on Find a Tender Service*, 13 October 2025.

2 - Undertaken a PSR Direct Award C which is not appropriate for a lapsed contract – in breach of regulation 65b.

3 - Failed to supply the names and qualifications of the evaluators, knowledge holders and decision makers. This inhibits our ability to identify the suitability of the process and whether conflicts of interest have suitably managed.

4 - Failed to demonstrate that it was in command of the knowledge/intelligence it needed to meet Regulation 4.”

5.2 Representations by Specsavers

54. Specsavers' concerns about the provider selection process, as set out in its representations to the Panel, are as follows:

“It was not appropriate to use Process C when multiple other capable providers have made representations and the ICB and its predecessor CCG have acknowledged these representations and engaged directly with potential providers on the basis of an imminent competitive procurement, since 2019. The incumbent's previous contract was awarded in 2019 as a short term emergency arrangement pending competitive re-procurement. The ICB claims to have satisfied itself of the quality and value of money of the incumbents offer despite not having any current comparators, not having solicited offers for this service since 2016. The ICB's response to specific questions on this has not produced any evidence which would support a reasonable comparison of the incumbent's offer with what else is available in the market. The service specification under which the incumbent has operated since 2019, while arguably necessary as a short-term, emergency arrangement is incompatible with NHS guidance on the procurement of community audiology services, <https://www.england.nhs.uk/wp-content/uploads/2016/07/HLCF.pdf> and should not be allowed to continue beyond a reasonable emergency period as, amongst other things, it denies patients choice of provider. The ICB continues to let, manage, renew and reprocure community audiology services in other "places" in its footprint, and is therefore perfectly capable of running a competitive procurement for services according to the Hearing Loss Commissioning Framework (above). Under such an arrangement the incumbent would be free to continue providing services, alongside other providers, but subject to Patient Choice.”

55. Specsavers summarised its concerns as follows:

“Inappropriate selection of Process C in following representations and prior registrations of interest from qualified and capable providers.

“Inappropriate reliance on internal and incumbent representations to assure value of money and quality in the absence of bona fide comparators.

“Time taken to respond to representations.”

6 PSR regulations relevant to this review

56. In its representations to the Panel, Scrivens suggested that NCL ICB breached the PSR regulations in relation to the general requirements on commissioners (as set out in Regulation 4), the general conditions that apply when using Direct Award Process C (as set out in Regulation 6(5)), the steps that commissioners must follow when using Direct Award Process C (as set out in Regulation 9), the requirements in relation to responding to representations (as set out in Regulation 12), and the requirement to keep a record of all decisions made under the Regulations and their rationale (as set out in Regulation 24).

57. Specsavers' representations additionally suggested that NCL ICB breached the PSR regulations in relation to the application of key criteria (as set out in Regulation 5), the application of the basic selection criteria (as set out in Regulation 19), and the conditions to exclude a provider from a procurement process (as set out in Regulation 20).

58. Those parts of the PSR regulations most relevant to this review 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(5) sets out the general conditions that apply to relevant authorities (i.e. commissioners) when using Direct Award Process C. It states that a relevant authority can use Direct Award Process C when "(a) the relevant authority is not required to follow Direct Award Process A or Direct Award Process B, (b) the term of an existing contract is due to expire and the relevant authority proposes a new contact to replace that existing contract the end of its term, (c) the considerable change threshold is not met ..., (d) the relevant authority is of the view that the existing provider is satisfying the existing contract and will likely satisfy the proposed contract to a sufficient standard, and (e) the procurement is not to conclude a framework agreement."
- Regulation 9 sets out the obligations that apply to commissioners when following direct award process C. It states that "where the relevant authority follows Direct Award Process C, the process is that the relevant authority (a) follows the steps set out in this regulation ... (2) Step 1 is that the relevant authority decided, taking into account the key criteria³¹ and applying the basic selection criteria,³² whether it is content that the existing provider is satisfying the original contact and will likely satisfy the proposed contact to a sufficient standard ..."
- 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), and "(6) The further decision in paragraph (4)(d) must be communicated promptly ..."

³¹ The key criteria set out in the PSR regulations are: (i) Quality and innovation; (ii) Value; (iii) Integration, collaboration and service sustainability; (iv) Improving access, reducing health inequalities and facilitating patient choice; and (v) Social value.

³² The basic criteria are set out in Schedule 16 of the Regulations. The basic selection criteria may relate to: (a) suitability to pursue a particular activity; (b) economic and financial standing; (c) technical and professional ability."

- Regulation 19 sets out the obligations on commissioners when applying the basic selection criteria. It states that “(1) ... a relevant authority must not award a contract to, or conclude a framework agreement with, a provider who does not meet the basic selection criteria”, and “(3) The relevant authority must determine the basic selection criteria in accordance with Schedule 16.”
- Regulation 20 sets out the conditions for exclusions of providers from a procurement process. It states that “(1) ... a relevant authority must not award a contract to a provider, and may exclude a provider from a procurement process under these Regulations, where the relevant authority would be obliged to exclude the provider from participation in a procurement procedure under regulation 57 of the Public Contracts Regulations 2015 (exclusion grounds) were the relevant authority the contracting authority and the provider an economic operator under that regulation ...”.
- 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; (e) where Direct Award Process C or the Most Suitable Provider process was followed, a description of the way in which the key criteria were taken into account, the basic selection criteria were assessed when making a decision ... (g) the reasons for decisions made under these Regulations; (h) declared conflicts or potential conflicts of interest; (i) how any conflicts or potential conflicts of interest were managed for each decision ...”.

59. The Provider Selection Regime Statutory Guidance “sits along the Regulations to support organisations to understand and interpret the PSR regulations”.³³ The Panel has taken account of the Statutory Guidance in carrying out its assessment.

7 Panel Assessment

60. This section sets out the Panel’s assessment of whether NCL ICB, when conducting the provider selection process, complied with the PSR regulations in relation to:

- first, the decision to use Direct Award Process C to award a new contract to Audiological Science (Section 7.1);
- second, the keeping of records related to its decision-making process (Section 7.2);
- third, its response to information requests during the representations review process (Section 7.3); and
- finally, the additions that were made to its decision-making records following the contract award decision (Section 7.4).

7.1 NCL ICB’s use of Direct Award Process C to award a new contract

61. This section sets out the Panel’s assessment of NCL ICB’s decision to award a new contract to Audiological Science using Direct Award Process C. Scrivens and Specsavers, in their representations to the Panel, both raised concerns about whether the necessary conditions for using Direct Award Process C were met.

62. Regulation 6(5) of the PSR regulations sets out five conditions that must be satisfied for Direct Award Process C to be used. These are:

³³ NHS England, *The Provider Selection Regime: statutory guidance*, 21 February 2024, p.2.

- (a) the commissioner is not required to follow Direct Award Process A or Direct Award Process B,
- (b) the term of an existing contract is due to expire and the commissioner proposes a new contract to replace the existing contract at the end of its term,
- (c) the considerable change threshold is not met,
- (d) the commissioner is of the view that the existing provider is satisfying the existing contract and will likely satisfy the proposed contract to a sufficient standard, and
- (e) the procurement is not to conclude a framework agreement.

63. The procurement was not to conclude a framework agreement, therefore the Panel's view is that condition (e) was satisfied (although the Panel notes that NCL ICB's decision making record makes no reference to this condition). The extent to which the remaining four conditions were met is discussed in Sections 7.1.1 to 7.1.4.

7.1.1 Commissioner is not required to follow Direct Award Process A or Direct Award Process B

- 64. A commissioner is unable to award a new contract using Direct Award Process C if it is required to use either Direct Award Process A or Direct Award Process B.
- 65. Regulation 6(3) sets out that Direct Award Process A must be followed where prescribed circumstances apply including (a) there is an existing provider of the relevant health care services to which the proposed contracting arrangements relate, (b) the relevant authority is satisfied that the relevant health care services to which the proposed contracting arrangements relate are capable of being provided only by the existing provider due to the nature of the relevant health care services ...".
- 66. Regulation 6(4) sets out that Direct Award Process B must be followed where prescribed circumstances apply including "(a) the proposed contracting arrangements relate to relevant health care services in respect of which a patient is offered a choice of provider, (b) the number of providers is not restricted by the relevant authority, (c) the relevant authority will offer contracts to all providers to whom an award can be made because they meet all requirements in relation to the provision of the relevant health care services to patients ...".
- 67. NCL ICB told the Panel that it considered that it was not required to follow Direct Award Process A or Direct Award Process B.³⁴
- 68. Specsavers, in its representations to the Panel suggested that community audiology services in Barnet should be commissioned so as to enable patient choice, referring the Panel to NHS England's Hearing Loss Commissioning Framework. More specifically, Specsavers said that:

"The service specification under which the incumbent has operated since 2019, while arguably necessary as a short-term, emergency arrangement is incompatible with NHS guidance on the procurement of community audiology services, <https://www.england.nhs.uk/wp-content/uploads/2016/07/HLCF.pdf> and should not be allowed to continue beyond a reasonable emergency period as, amongst other things, it denies patients choice of provider. The ICB continues to let, manage, renew and re-

³⁴ Panel meeting with NCL ICB, 4 September 2025.

procure community audiology services in other ‘places’ in its footprint, and is therefore perfectly capable of running a competitive procurement for services according to the Hearing Loss Commissioning Framework (above). Under such an arrangement the incumbent would be free to continue providing services, alongside other providers, but subject to Patient Choice.”

69. The Panel notes that NHS England’s Hearing Loss Commissioning Framework says that commissioners “should consider offering service users a choice of different providers for their hearing services”.³⁵ The Panel also notes that this does not amount to a requirement that commissioners offer patients a choice of provider for community audiology services.
70. The Panel’s view is that neither Direct Award Process A nor B applied to the procurement of community audiology services in Barnet given that: (i) there is clearly more than one possible provider of community audiology services (thus meaning that Direct Award Process A was not applicable) (see paragraph 35); and (ii) community audiology services do not fall within the scope of elective services where patients have a legal right to choose their provider (thus meaning that Direct Award Process B was not applicable).
71. As a result, the Panel’s view is that NCL ICB was able to conclude that condition (a) for the use of Direct Award Process C (as set out in PSR regulation 6(5), see paragraph 62) was satisfied. The Panel, however, notes that NCL ICB did not produce any contemporaneous document to support this conclusion, a subject that is addressed further in Section 7.2.
72. The Panel notes that Scrivens and Specsavers both raised concerns that NCL ICB did not undertake a competitive procurement process (see paragraphs 52 to 55). Given the Panel’s view that neither Direct Award Process A or B applied to the procurement of community audiology services in Barnet, the Panel notes that in accordance with Regulation 6(5), NCL ICB was required to “follow one of Direct Award Process C, the Most Suitable Provider Process or the Competitive Process, such choice being at the discretion of the relevant authority”. That is, there was no requirement on NCL ICB to carry out a competitive tender.

7.1.2 Term of an existing contract is due to expire and the commissioner proposes a new contract to replace the existing contract

73. A commissioner is unable to award a new contract using Direct Award Process C if there is not a contract currently in place with the supplier. Scrivens, in its representations to the Panel, said that NCL ICB’s contract with Audiological Science had lapsed and it had “undertaken a PSR Direct Award C which is not appropriate for a lapsed contract – in breach of regulation 6 5b”.
74. Scrivens’ view that the existing contract had lapsed is based on, as the Panel understands it, the “intention to award notice” published by NCL ICB on 13 January

³⁵ NHS England, *Commissioning Services for People with Hearing Loss: A framework for clinical commissioning groups*, 18 July 2016.

2025 (see paragraph 43). This notice includes a field entitled “V.2.1) Date of conclusion of the contract”. NCL ICB’s entry into this field was “16 December 2024”.³⁶

75. The guidance for entries into this field when using Direct Award Process C says “Please enter the date when the relevant decision on the provider in question was made (even though the contract has not yet been awarded)”.³⁷ As a result, while NCL ICB’s entry into this field was correct, the field title has the effect of giving the impression that the contract expiry date was 16 December 2024. This, however, was not the case.
76. NCL ICB told the Panel that the expiry date for the existing contract was 31 March 2025 as it had varied the contract with Audiological Science to extend the expiry date from 31 March 2024 to 31 March 2025 (see paragraph 39). NCL ICB said that this extension “was agreed for extension via a Single Tender Waiver (STW) on the 19 May 2023 ... by the ICB Finance Committee”.³⁸
77. Given this, the Panel’s view is that there was a contract in place between NCL ICB and Audiological Science when NCL ICB decided to use Direct Award Process C to award a new contract to Audiological Science.
78. As a result, the Panel’s view is that NCL ICB was able to conclude that condition (b) for the use of Direct Award Process C (as set out in PSR regulation 6(5), see paragraph 62) was satisfied. The Panel, however, notes that NCL ICB did not produce any documentation to support this conclusion, a subject that is addressed further in Section 7.2.

7.1.3 Considerable change threshold is not met

79. A commissioner is unable to award a new contract using Direct Award Process C if the considerable change threshold is met. Regulation 6(10) says, subject to the provisions of Regulation 6(11) and 6(12), that the considerable change threshold is met:
 - (a) where the proposed contracting arrangements are materially different in character to the existing contract when that existing contract was entered into, or
 - (b) where –
 - (i) changes in the relevant health care services to which the proposed contracting arrangements relate (compared with the existing contract) are attributable to a decision of the relevant authority,
 - (ii) the lifetime value of the proposed contracting arrangements is at least £500,000 higher than the lifetime value of the existing contract when that existing contract was entered into, and

³⁶ The Panel notes that NCL ICB’s intention to award notice for the current provider selection process (as published on FTS on 31 March 2025) does not include this field. The comparable information in the 31 March 2025 notice is a field for “Earliest date the contract will be signed”, which NCL ICB completed with “31 March 2025”. The Panel further notes that the 31 March 2025 notice does not use the intention to award notice template stipulated in the FTS Supplementary Guide (March 2024). Instead, it uses a “UK5” notice, which is a transparency notice for the purposes of the Procurement Act 2023, “published to provide transparency before making a direct award”, Find a Tender Service, *Notice types and sequences*.

³⁷ NHS England, *FTS Supplementary Guide*, March 2024. The Panel also notes that field V.2.1 is renamed from “Date of conclusion of the contract” to “Award date” within this guidance.

³⁸ NCL ICB, *Response to Panel questions*, 9 September 2025.

(iii) the lifetime value of the proposed contracting arrangements is at least 25% higher than the lifetime value of the existing contract when that existing contract was entered into.

80. In relation to whether the new contract with Audiological Science was materially different to its existing contract, NCL ICB shared relevant documentation with the Panel and said that “the specification for the existing contract will remain the same for the proposed contracting arrangements with the exception of the delivery dates contained within”.³⁹ It also told the Panel that “key similarities in both patient group, the procedures available under the service and the population coverage are demonstrative of the fact that the proposed contracting arrangements are not materially different in character to the existing contract”.⁴⁰

81. The Panel’s view is that the new contract with Audiological Science was not materially different in character to the existing contract when that contract was entered into.

82. In relation to whether the value of the new contract exceeded the considerable change threshold, the Panel notes that the new contract’s value of £921,345 was less than the lifetime value of the existing contract. As a result, the new contract’s value does not exceed that of the existing contract by the £500,000 and 25% thresholds.

83. In summary, the Panel’s view is that the new contract does not meet the considerable change threshold with respect to either the nature of the services that will be supplied under the new contract or the value of the new contract.

84. As a result, the Panel is also of the view is that NCL ICB was able to conclude that condition (c) for the use of Direct Award Process C (as set out in PSR regulation 6(5), see paragraph 62) was satisfied. The Panel, however, notes that NCL ICB did not produce any documentation to support this conclusion, a subject that is addressed further in Section 7.2.

7.1.4 Whether Audiological Science is satisfying the existing contract, and will likely satisfy the new contract, to a sufficient standard

85. A commissioner may only award a new contract using Direct Award Process C if the commissioner is of the view that the existing provider is satisfying the existing contract and will likely satisfy the proposed contract to a sufficient standard. Scrivens and Specsavers, in their representations to the Panel, both expressed concerns about how NCL ICB assured itself that Audiological Science was likely to satisfy the new contract to a sufficient standard (see paragraphs 52 and 54).

86. This section sets out the Panel’s assessment of NCL ICB’s decision that Audiological Science was satisfying the existing contract, and would likely satisfy the proposed contract, to a sufficient standard.⁴¹

87. The Panel’s assessment is in three parts:

- first, an overview of NCL ICB’s methodology for carrying out its assessment;

³⁹ NCL ICB, *Response to Panel questions*, 21 July 2025.

⁴⁰ NCL ICB, *Response to Panel questions*, 21 July 2025.

⁴¹ The Panel’s view is that a commissioner, when using Direct Award Process C, will only need to carry out any assessment needed to satisfy this test once, and can then rely on this assessment for the purposes of both deciding that it is eligible to use Direct Award Process C, and as Step 1 in carrying out Direct Award Process C.

- second, a discussion of NCL ICB's assessment of Audiological Science's performance under its existing contract and its likely future performance against the basic selection criteria and key criteria; and
- finally, the Panel's conclusions.

Overview of NCL ICB's methodology for assessing Audiological Science's performance

88. NCL ICB's assessment of Audiological Science's performance was carried out by members of its commissioning and contracting teams.⁴² Evaluators were not provided with any training specific to this evaluation. Two key documents used by the evaluators were shared with the Panel. These were:

- first, the completed direct award toolkit, which set out the assessment of Audiological Science's performance in relation to both the basic and key criteria;⁴³ and
- second, a scoring methodology document, which provided guidance to NCL ICB staff on how to carry out the assessment.

89. The completed direct award toolkit, containing the evaluation of Audiological Science's performance, was submitted to NCL ICB's Chief Executive Officer and Chief Finance Officer. This was accompanied by a recommendation to award a new contract to Audiological Science using Direct Award Process C (see paragraph 45).

90. In relation to the basic criteria, Audiological Science was assessed on a pass/fail basis against various grounds for either mandatory or discretionary exclusion. NCL ICB also looked at Audiological Science's: (i) suitability to pursue a particular activity; (ii) economic and financial standing; and (iii) technical and professional ability.⁴⁴

91. In relation to the key criteria, the assessment of Audiological Science's performance was set out in two parts.

- First, a commentary on Audiological Science's performance against each of the key criteria with separate assessments of current and likely future performance. A single score was also awarded against each of the key criteria taking into account both current and likely future performance.
- Second, sub-criteria were set out for each of the key criteria with weightings allocated for each sub-criterion. For each sub-criterion, a brief assessment of Audiological Science's performance was set out (on a combined basis for current and likely future performance). Scores were awarded for each of the sub-criteria which, in total, matched the overall scores for each of the key criteria that were set out in the first part of the assessment.

92. NCL ICB told the Panel that its commissioning and contracting teams are provided with general evaluator training, covering PSR processes, record keeping requirements, and the use of Direct Award Process C.⁴⁵ NCL ICB told the Panel that it also shared with

⁴² The evaluation and scoring was recorded in a direct award toolkit, where it was reviewed and finalised by another member of staff (NCL ICB, Response to Panel questions, 13 August 2025; 9 September 2025; 25 September 2025).

⁴³ The key criteria are (i) Quality and innovation, (ii) Integration, collaboration and service accountability, (iii) Improving access, reducing health inequalities and facilitating choice, (iv) Social value, and (v) Value.

⁴⁴ NCL ICB, *DAPC Toolkit for Audiological Science*, 27 March 2025.

⁴⁵ Panel meeting with NCL ICB, 4 September 2025; NCL ICB, *NHS Procurement Training Programme*, 28 November 2023; NCL ICB, *Direct Award C How to Guide (External)*, September 2024.

evaluators, to inform their assessment, Audiological Science's recent Change of Control Notification, financial accounts and KPI report as well as NCL ICB's comparison of costs and tariffs between Audiological Science and other providers of community audiology services in the ICB.⁴⁶ In addition, evaluators were provided with the scoring methodology document (see paragraph 88), which provided guidance to NCL ICB staff on how to carry out the assessment.⁴⁷

93. The scoring methodology document includes two tables.

- The first table repeats the sub-criteria and weightings set out in the direct award toolkit, and lists "areas to consider" for each of the sub-criteria such as "provider's KPI report", "patient surveys", "compare against National Tariff" and "how is the provider improving access".⁴⁸
- The second table, reproduced below, seeks to provide guidance for evaluators in scoring Audiological Science's performance.⁴⁹

Allocation of Scores	%
Full Marks	81%-100%
Reduced Marks moderators can reduce score on the basis that not all key criteria are fulfilled by provider	51%-80%
Zero or minimal Marks	<51%

Source: NCL ICB, *March 2025 - Scoring Methodology given to Evaluators to inform their scoring for 2nd Toolkit*, March 2025.

Panel assessment of NCL ICB's assessment of Audiological Science's performance

94. The Panel has two concerns about NCL ICB's assessment of Audiological Science's performance:

- first, the two different parts of the assessment of Audiological Science's performance (described in paragraph 91) lacked coherence; and
- second, the adequacy of the guidance for evaluators in the scoring methodology document.

95. Regarding the assessment of Audiological Science's performance in the completed direct award toolkit, as noted in paragraph 91, the first part contained detailed commentary distinguishing between current and likely future performance but was not broken down by sub-criteria, while the second part assessed Audiological Science's performance against individual sub-criteria, but included only a brief commentary that did not distinguish between current and likely future performance. The Panel's view is that it was not clear how these different elements of the assessment came together to support the scores that were awarded.

96. Regarding the adequacy of the guidance for evaluators in the scoring methodology document, NCL ICB told the Panel that this was "the closest we have to a scoring template" and that "one of the learnings from this is that this table needs to be

⁴⁶ NCL ICB, *Response to Panel questions*, 9 September 2025.

⁴⁷ NCL ICB, *Response to Panel questions*, 24 September 2025.

⁴⁸ NCL ICB, *March 2025 - Scoring Methodology given to Evaluators to inform their scoring for 2nd Toolkit*, March 2025.

⁴⁹ Panel meeting with NCL ICB, 4 September 2025.

customised for each of the elements in the scoring methodology, so that for each question [it states that] you can give three points or three percent for this, two percent for this and one percent for that to reduce some of that ambiguity".⁵⁰

97. The Panel's view is that the scoring guidance given to evaluators, reproduced in the table at paragraph 93, was not helpful. It is difficult to make sense of the table, but in general terms it does not describe the characteristics of Audiological Science's performance that might warrant a particular score, and the scoring range set out within each of the three bands is so wide that it is difficult to see how an assessment that falls within any of the bands then translates into a specific score.

Panel conclusions on NCL ICB's assessment of Audiological Science's performance

98. The Panel's view is that NCL ICB's assessment of Audiological Science's performance had significant shortcomings. As set out above, these related to the scoring methodology, the guidance given to evaluators for implementing that methodology, and the lack of coherence between the evaluation against the sub-criteria and the evaluation of current and future performance. These shortcomings do not necessarily mean that NCL ICB reached the wrong conclusion about Audiological Science's performance. However, NCL ICB's conclusion is not sufficiently supported by the evaluation set out in the completed direct award toolkit.
99. As a result, the Panel finds that NCL ICB, in concluding that condition (d) for the use of Direct Award Process C (as set out in PSR regulation 6(5), see paragraph 62) was satisfied, breached the PSR regulations.

7.1.5 Panel conclusions on NCL ICB's use of Direct Award Process C to award a new contract to Audiological Science

100. In summary, the Panel finds that NCL ICB, in concluding that condition (d) of PSR regulation 6(5) was satisfied, and that it was accordingly eligible to award a new contract to Audiological Science using Direct Award Process C, breached the PSR regulations. The Panel also finds that while NCL ICB was able to conclude that conditions (a) to (c) and (e) for the use of Direct Award Process C (as set out in PSR regulation 6(5), see paragraph 62) were satisfied it did not produce any documentation to support this conclusion, a subject that is addressed further in Section 7.2.

7.2 NCL ICB's record keeping

101. NCL ICB's record of its decision-making process for the award of a new contract to Audiological Science is, for the most part, contained within the completed direct award toolkit.
102. NCL ICB's record keeping obligations are set out in Regulation 24 of the PSR regulations. This includes a requirement to keep a record of "(d) the decision making process followed" and "(e) where Direct Award Process C ... was followed, a description of the way in which the key criteria were taken into account and the basic selection criteria were assessed when making a decision" and "(g) the reasons for decisions made under these Regulations".

⁵⁰ Panel meeting with NCL ICB, 4 September 2025.

103. The Panel has concerns that the completed direct award toolkit does not include sufficient information to meet NCL ICB's record keeping obligations, and that NCL ICB has not been able to produce other contemporaneous records sufficient to meet the gaps identified by the Panel.

104. Specifically in relation to the use of Direct Award Process C, the Panel's view is that for NCL ICB to comply with its obligations under Regulation 24, its records need to set out its decisions, and supporting reasons, in relation to each of the conditions set out in Regulation 6(5). Taking conditions (a) to (e) under Regulation 6(5) in turn:

- *Condition (a) (i.e. that the relevant authority is not required to follow Direct Award Process A or Direct Award Process B):* the Panel agrees with NCL ICB that it was not required to follow either of these processes (see paragraph 72). This decision and the supporting reasons are not, however, set out in the completed direct award toolkit. When asked about its documentation of this decision, NCL ICB referred the Panel to its strategic review of ENT, Earwax and Audiology services of May 2024.⁵¹ The Panel, however, notes that this review did not record any assessment of whether Direct Award Processes A or B applied to these services.
- *Condition (b) (i.e. that the term of an existing contract is due to expire and the relevant authority proposes a new contract to replace that existing contract at the end of its term):* the completed direct award toolkit does not include any details about current contracting arrangements (e.g. the existing contract's term and expiry date). NCL ICB was unable to provide the Panel with any other contemporaneous records setting out an assessment of whether this condition was satisfied.⁵²
- *Condition (c) (i.e. that the considerable change threshold is not met):* NCL ICB's completed direct award toolkit states that "the new contract does not significantly alter the existing arrangement's terms, scope or character".⁵³ However, the completed direct award toolkit does not address the monetary component of the considerable change threshold and NCL ICB was unable to provide the Panel with any other record detailing how NCL ICB assured itself that the considerable change threshold was not met.
- *Condition (d) (i.e. whether Audiological Science satisfied the existing contract and would likely satisfy the proposed contract to a sufficient standard):* the lack of coherence in NCL ICB's assessment of Audiological Science's performance

⁵¹ NCL ICB, *ENT, Earwax and Audiology Thematic Reviews*, May 2024.

⁵² The Panel routinely fact-checks excerpts of its reports with parties ahead of publication. In response to this particular point, NCL ICB responded:

"The Panel is confusing the authority to proceed which was granted by the Procurement Oversight Group (POG) held on 8 November 2024 which considered Condition (b) with the fact that this was not recorded within the toolkit. The Panel is reminded that the toolkit document is primarily an internal checklist and does not in itself provide any authority to proceed, this having been granted by POG, something those involved in completing the document would have been well aware at the time of completing it."

The Panel notes that NCL ICB is required to maintain a record of reasons for decisions made under the PSR Regulations. This includes reasons for decisions in relation to condition 6(5)(b) regarding the term of the existing contract. NCL ICB used the direct award toolkit as its decision record but as noted, it contained no details about the current contracting arrangements. In addition, the Panel notes that the minutes from the POG meeting of 8 November 2024 did not address condition (b) either. No other record was made known to the Panel.

⁵³ NCL ICB, *DAPC Toolkit for Audiological Science - Tab 4. Decision Making Record*, 27 March 2025.

(see paragraph 95) means that NCL ICB has not clearly set out “the reasons for its decisions”.

- *Condition (e) (i.e. that the procurement is not to conclude a framework agreement):* the completed direct award toolkit is silent in relation to whether this condition is satisfied.

105. In addition to these specific points about recordkeeping in relation to the conditions that have to be met to use Direct Award Process C, the Panel also notes that other elements of the direct award toolkit template were not completed. In particular, NCL ICB’s toolkit made provision for a “Completed PSR - toolkit route decision log” to be inserted as a separate tab but no such decision log was entered, and the separate “decision-making record” table was not fully completed.

106. As a result, the Panel finds that NCL ICB, in documenting its assessment and decision to award a new contract to NCL ICB using Direct Award Process C, breached the PSR regulations, and in particular its recordkeeping obligations under Regulation 24.

7.3 Responses to information requests during the representations review process

107. This section sets out the Panel’s assessment of whether NCL ICB complied with the PSR regulations when responding to Scrivens’ and Specsavers’ representations and information requests following the ICB’s decision to award a new contract to Audiological Science.

108. PSR regulation 12(4) says that “where the relevant authority receives representations ... it must: (a) ensure each provider who made representations is afforded such further opportunity to explain or clarify the representations made as the relevant authority considers appropriate; and (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)”.

109. PSR regulation 12(5) says that a commissioner is not required to provide requested information where provision: (a) would prejudice the legitimate commercial interests of any person, including those of the relevant authority; (b) might prejudice fair competition between providers; or (c) would otherwise be contrary to the public interest.

110. NCL ICB told the Panel that upon receipt of the representations from Scrivens and Specsavers on 3 and 9 April 2025 it convened its internal review panel. The internal review panel met on 22 May 2025, and at this meeting “considered the requested information from Specsavers and Scrivens in relation to both Direct Awards. The review panel noted that this information for the first Direct Award had not yet been sent and that this would be rectified”.⁵⁴ NCL ICB responded to Scrivens’ and Specsavers’ information requests on 3 July, and on 8 July it told both providers of its further decision to proceed with the contract award as intended (see paragraph 48).

111. In assessing whether NCL ICB complied with the PSR regulations, the Panel has reviewed: (a) the completeness of NCL ICB’s response to Scrivens’ and Specsavers’

⁵⁴ NCL ICB, *Response to Panel questions*, 21 July 2025.

information requests; and (b) the timeliness of NCL ICB's response to Scrivens' and Specsavers' representations and information requests.

7.3.1 Completeness of NCL ICB's response to information requests

112. This section discusses, in turn, NCL ICB's responses to Scrivens' and Specsavers' information requests.

Scrivens' information requests

113. Scrivens told the Panel that:

"[NCL ICB has] Failed to provide us with the documents we requested in our original request to review the decision and has failed to provide the information required by the Regulations. This has inhibited our ability to review whether the ICB completed a fair and complete process which denied us the ability to ask follow up questions."

"[NCL ICB has] Failed to supply the names and qualifications of the evaluators, knowledge holders and decision makers. This inhibits our ability to identify the suitability of the process and whether conflicts of interest have suitably managed."

"We have received none of the documentation requested for Community Audiology Contract – Notice reference 2025/s 000=001001 in breach of regulations 12 4b and 24 – The ICB is content with its position that this information is irrelevant. This position is flawed as the first process clearly informed the second. This also denied Scrivens the opportunity to explore any conflicts of interest i.e. Were the same evaluators, knowledge holders and decision makers involved in both Community Audiology Contract - – Notice reference 2025/s 000=001001 and Community Audiology Services – Notice reference: 2025/S 000-01210"

"The documentation received for Notice reference 2025/S 000-012100 falls short of that required by regulations 12 4b and 24 and does not address our concerns as set out in detail in our representations" (see paragraphs 52 and 53).

114. Regarding the completeness of NCL ICB's response to Scrivens' information request, the Panel's view is that NCL ICB, for the most part, provided the information requested by Scrivens (see paragraph 124 and the following table). There are, however, two areas of concern for the Panel in relation to NCL ICB's response.
115. First, in response to Scrivens' request for information concerning "the decision-making process followed, including the identity of individuals making decisions" and "the reasons for decisions made under these Regulations", NCL ICB provided Scrivens with a copy of the direct award toolkit template and a redacted copy of the completed direct award toolkit. NCL ICB also told Scrivens that the individuals making decisions were the ICB's Chief Executive Officer and the Chief Finance Officer.
116. The Panel's view is that this information did not sufficiently set out a record of "the decision-making process followed" and "the reasons for decisions made under these Regulations" given the lack of coherence in the assessment (see paragraph 95), the absence of its "decision log" and the incomplete "decision-making record" (see paragraph 105), and, to some extent, the redactions made by the ICB (see paragraphs 122 and 123).
117. Regarding the identity of individuals making decisions, the Panel has previously set out its views on this in its review of a proposed contract award for the community aural

microsuction service in Norfolk and Waveney,⁵⁵ where it said that “individuals making decisions”, as per Regulation 24, includes all individuals whose role makes a material contribution to determining the outcome of a provider selection process, and that this covers both individual evaluators and the officials responsible for formally deciding whether to adopt the outcome of a provider selection process.

118. As set out in that decision, the underlying purpose of requiring commissioners to keep a record of decision makers’ identities is to facilitate the transparency necessary to demonstrate that the provider selection process has been free of conflicts of interest and that those involved have sufficient expertise to make fair decisions. Excluding evaluators from the Regulation 24 record keeping requirement would defeat the underlying purpose of recording this information. These issues were further elaborated in the Panel’s review of the contract award for intermediate minor oral surgery services in Yorkshire and the Humber.⁵⁶ Consistent with these two previous reviews, the Panel’s view is that NCL ICB was obliged to provide Scrivens with further information on those involved in the decision-making process.
119. Second, in response to Scrivens’ request for “a description of the way in which the key criteria were taken into account and the basic selection criteria were assessed when making a decision”, NCL ICB said:

“Please see attached scoring methodology [referring to a table setting out the key criteria/sub-criteria and weightings]⁵⁷ and completed scoring matrix [referring to the completed direct award toolkit]”, and went on to say that “Certain information in the completed version of the scoring matrix has been redacted. This is because we consider that to disclose it would prejudice the legitimate commercial interests of the ICB and would prejudice fair competition between providers. We take this view in particular because the ICB intends, subject to approval, to undertake an open, competitive procurement procedure for audiological services within the next 12 months. The release of commercially sensitive information could prejudice that procedure. The ICB notes that it is entitled to withhold this information under PSR regulation 12(5).”⁵⁸
120. NCL ICB told the Panel that it had decided on the information redactions in accordance with its Freedom of Information (FOI) policy which “makes clear when information is deemed commercially sensitive”.⁵⁹ It told the Panel that it did not consult with Audiological Science about what it considered to be commercially sensitive, and it had not recorded its rationale for each of the redactions at the time,⁶⁰ but upon request shared a retrospective perspective on each of the redactions with the Panel “to show how it aligns to the classifications within the Information Commissioner’s Office (ICO) definition as referenced within the NCL ICB FOI Policy”. In summary, NCL ICB’s rationale for its redactions were on the basis of exemptions under Section 43 (commercial interest) and Section 40 (personal information).⁶¹

⁵⁵ See CR0011-25, *Community aural microsuction service in Norfolk and Waveney*, 8 April 2025.

⁵⁶ See CR0013-25, *Intermediate minor oral surgery services for Yorkshire and the Humber*, 27 May 2025.

⁵⁷ The Panel notes that this “scoring methodology” document shared with Scrivens was different from the “scoring methodology” document that NCL ICB shared with the Panel, in that it did not include the column “areas to consider” or the additional table which sought to provide guidance for evaluators in scoring Audiological Science’s performance (see paragraph 93).

⁵⁸ NCL ICB, *Representations response to Scrivens*, 3 July 2025.

⁵⁹ NCL ICB, *Response to Panel questions*, 9 July 2025.

⁶⁰ Panel meeting with NCL ICB, 4 September 2025.

⁶¹ NCL ICB, *Response to Panel questions*, 9 July 2025.

121. The Panel notes that the basis for any redactions to information requested by an aggrieved party is set out in Regulation 12(5) of the PSR regulations. This sets out three grounds for possible redactions, namely, the provision of information:

- (a) would prejudice the legitimate commercial interests of any person, including those of the relevant authority;
- (b) might prejudice fair competition between providers; or
- (c) would otherwise be contrary to the public interest.

122. The Panel reviewed the redactions made by NCL ICB and is of the view that at least some of these redactions went beyond the exemptions set out in Regulation 12(5). For example: NCL ICB redacted all of its assessment of Audiological Science's performance against a set of grounds for mandatory or discretionary exclusion. The Panel's view is that the outcome of this assessment does not fall within any of the exemptions set out in Regulation 12(5).

123. NCL ICB redacted all information related to Audiological Science's KPI performance, including the conclusion that it was achieving or exceeding all KPIs. The Panel is also of the view that the redaction of NCL ICB's overall conclusion about Audiological Science's KPI performance does not fall within any of the exemptions set out in Regulation 12(5).

124. Full details of Scrivens' information requests, NCL ICB's responses to those requests, and the Panel's assessment of NCL ICB's responses are set out in the table below.

Scrivens's information request	NCL ICB's response	Panel's view
(i) "the name of any provider to whom it awards a contract"	"Audiological Science Ltd"	The Panel's view is that NCL ICB's response satisfied Scrivens' information request.
(ii) "the name of any provider who is a party to a framework agreement"	"Not applicable"	The Panel's view is that NCL ICB's response satisfied Scrivens' information request.
(iii) "the address of the registered office or principle place of business of each provider referred to in paragraph (a) or (b)"	"5 Hoop Lane, London, NW11 8JR"	The Panel's view is that NCL ICB's response satisfied Scrivens' information request.
(iv) "the decision-making process followed, including the identity of individuals making decisions"	"Please see attached template scoring matrix [referring to the direct award toolkit template]. The individuals making decisions were the Chief Executive Officer and the Chief Finance Officer of the ICB"	The Panel's view is that NCL ICB's response did not satisfy Scrivens' information request (see paragraph 116).
(v) "where Direct Award Process C or the Most Suitable Provider Process was followed, a description of the way in which the key criteria were taken into account and the basic selection criteria were assessed when making a decision"	"Please see attached scoring methodology [referring to a table setting out the key criteria/sub-criteria and weightings] and completed scoring matrix [referring to the completed direct award toolkit]"	The Panel's view is that NCL ICB's response did not satisfy Scrivens' information request (see paragraph 122).
(vi) "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	"Not applicable"	The Panel's view is that NCL ICB's response satisfied Scrivens' information request.

contract or framework award criteria were evaluated when making a decision”		
(vii) “the reasons for decisions made under these Regulations”	“Please see attached completed scoring matrix [referring to the completed direct award toolkit]”	The Panel’s view is that NCL ICB’s response did not satisfy Scrivens’ information request (see paragraph 116).
(viii) “declared conflicts or potential conflicts of interest”	“No conflicts or potential conflicts of interest were declared”	The Panel’s view is that NCL ICB’s response satisfied Scrivens’ information request.
(ix) “how any conflicts or potential conflicts of interest were managed for each decision”	“Not applicable”	The Panel’s view is that NCL ICB’s response satisfied Scrivens’ information request.
(x) “where a procurement is abandoned, the date on which it is abandoned”	“Not applicable”	The Panel’s view is that NCL ICB’s response satisfied Scrivens’ information request.
(xi) “Details of all Market Engagement processes that it undertook as part of this process to establish an appropriate evidence base for its decisions”	“The ICB has the right to implement the procurement process as long as it complies with its requirements. The ICB followed the correct process with each of the steps required to implement the Direct Award Process C and had demonstrated this in the documentation provided to Scrivens Limited.”	The Panel’s view is that the information requested by Scrivens falls outside the scope of Regulation 24, and as a result, there was no obligation on NCL ICB to provide this information under the provisions of Regulation 12.
(xii) “Copies of all supporting documents and in particular the business cases that were used to support award notice 2025/S/000-001001 and transparency notice 2025/S 000-012100, along with any market engagement outcomes and procurement exemption relied upon. This is not an exhaustive list so we rely on the ICB to further supply any documents that have not been named but have been used in its decision making processes.”		The Panel has not seen any response by NCL ICB to this request. Notwithstanding this, the Panel’s view is that the information requested by Scrivens (business cases and market engagement documentation) falls outside the scope of Regulation 24, and as a result, there was no obligation on NCL ICB to provide this information under the provisions of Regulation 12.
(xiii) “There is a historical request from us for this information with the ICB for award notice 2025/S000-001001 by letter dated 3rd March 2025, and we ask for this again, along with the same request for information on how the ICB carried out their assessment, its weighting and the scoring process”	“Notice 2025/S 000-001001 refers to the Direct Award Process C published on 13 January 2025, which was challenged on 17 January 2025. The ICB set up a panel to review the process and the outcome of such review concluded to abandon the process. On 19 March 2025, the ICB informed the aggrieved party. As such, and since notice 2025/S000012100 is a new procurement process with new evidence, comparisons with previous processes are irrelevant.”	The Panel’s view is that as Scrivens’ information request relates to NCL ICB’s previous, abandoned provider selection process, it falls outside the scope of this review.

Sources: Scrivens, *Representations to NCL ICB*, 9 April 2025; NCL ICB, *Letter to Scrivens*, 3 July 2025; NCL ICB, *Representations response*, 8 July 2025.

125. As a result, the Panel finds that NCL ICB, in failing to provide Scrivens with a sufficient response to its request for information, breached Regulation 12(4), which requires it to promptly provide any information requested by an aggrieved provider where the relevant authority has a duty to record that information under Regulation 24, subject to the exclusions set out in Regulation 12(5).

Specsavers' information requests

126. Specsavers told the Panel that it was not satisfied with NCL ICB's responses to the questions it asked during its representations to NCL ICB (see paragraph 54).

127. Regarding the completeness of NCL ICB's response to Specsavers' information request, the Panel's view is that NCL ICB, for the most part, provided the information requested by Specsavers (see paragraph 131 and the following table). There are, however, two areas of concern for the Panel in relation to NCL ICB's response.

128. First, in responding to Specsavers' question "what evidence did the ICB consider in relation to the specified criteria ...", NCL ICB said "Please see the attached completed version of the scoring matrix [referring to the completed direct award toolkit] used in the procurement process".

129. Second, in response to Specsavers' question "Who evaluated this evidence and what was the process for oversight and moderation of their findings?", NCL ICB initially said "Please see the attached completed version of the scoring matrix [referring to the completed direct award toolkit] used in the procurement process", and later followed up with "The evidence received had been evaluated by The Senior Contracts Manager, Senior Commissioner Manager and Head of Business Processes, the processes complied and met the criteria to award the contract. This was in line with best practice".

130. The Panel's view is that both of these responses are problematic given the lack of coherence in the assessment (see paragraph 95), the inadequacy of the scoring methodology guidance (see paragraph 96), the absence of a "decision log" and incomplete "decision-making record" table (see paragraph 105), and, to some extent, the redactions made by the ICB (see paragraphs 122 and 123). The Panel is also of the view that the completed direct award toolkit insufficiently set out a record of the decision-making process that was followed (see also paragraph 116).

131. Full details of Specsavers' information requests, NCL ICB's responses to those requests on 3 July and on 8 July, and the Panel's assessment of NCL ICB's responses are set out in the table below.

Specsavers's request	NCL ICB's response	Panel's view
(i) Did Audiological Science declare its change of ownership to the ICB? And, if so, did the ICB conduct appropriate due diligence at the time? Or prior to the proposed direct award?	[3 July 2025] "ICB was informed on 4th October 2024 about the change in control in respect of Audiological Science Ltd. The change of control took the form of a sale of all the shares in the company from the two existing shareholders to a third party. There has, accordingly, been no change in the identity of the company itself, but rather to the identity of its shareholders; Audiological Science Ltd, as a legal entity, continues to exist. The ICB undertook appropriate due diligence into the economic and financial	The Panel's view is that NCL ICB's response satisfied Specsavers' information request.

	<p>standing of Audiological Science Ltd as part of its analysis pursuant to Direct Award Process C. Under regulation 9 of the PSR, the ICB had to apply the basic selection criteria when deciding whether it was content that the existing provider was satisfying the original contract and would likely satisfy the proposed contract to a sufficient standard. One element of the basic selection criteria is economic and financial standing. Please see the attached completed version of the scoring matrix used in the procurement process.”</p> <p>[8 July 2025] “It was content the change of control did not have a material impact on the provision of the service, noting that there had been no change to the operational, day to day management by the existing provider”</p>	
(ii) On what basis was the Competitive Process rejected? Who made that decision and when?	<p>[3 July 2025] “The ICB has the right to implement Direct Award Process C provided that it complies with the requirements relating to that process as set out in the PSR. Direct Award Process C was chosen because the relevant contract forms part of a wider strategic commissioning review of audiology services across the five boroughs in North Central London. Due to the complexity of and timeframe for this review, it was considered necessary to renew contracts with existing providers to ensure service continuity and to negate any impact on the population.”</p> <p>[8 July 2025] “It was further noted that the PSR route was approved at the Procurement Oversight Group meeting on 20 November 2024. It was the ICB's prerogative to choose the Direct Award C procurement route under the PSR provided that it complied with the requirements relating to that procurement route as set out in the regulations.”</p>	The Panel's view is that NCL ICB's response satisfied Specsavers' information request.
(iii) What evidence did the ICB consider in relation to the specified criteria (1 quality and innovation, 2 value for money compared to other providers, 3 Integration, collaboration and service sustainability, 4 improving access, reducing health inequalities and facilitating choice, 5 Social Value).	<p>[3 July 2025] “Please see the attached completed version of the scoring matrix [referring to the completed direct award toolkit] used in the procurement process.”</p>	The Panel's view is that NCL ICB's response did not satisfy Specsavers' information request (see paragraph 130).
(iv) Who evaluated this evidence and what was the process for oversight and moderation of their findings?	<p>[3 July 2025] “Please see the attached completed version of the scoring matrix [referring to the completed direct award toolkit] used in the procurement process.”</p> <p>[8 July 2025] “The evidence received had been evaluated by The Senior Contracts Manager, Senior Commissioner Manager and Head of Business Processes, the processes complied and met the criteria to award the contract. This was in line with best practice.”</p>	The Panel's view is that NCL ICB's response did not satisfy Specsavers' information request (see paragraph 130).

Sources: Specsavers, *Representations to NCL ICB*, 3 April 2025; NCL ICB, *Letter to Specsavers*, 3 July 2025; NCL ICB, *Representations response*, 8 July 2025.

132. As a result, the Panel finds that NCL ICB, in failing to provide Specsavers with a sufficient response to its request for information, breached Regulation 12(4), which requires it to promptly provide any information requested by an aggrieved provider where the relevant authority has a duty to record that information under Regulation 24, subject to the exclusions set out in Regulation 12(5).

7.3.2 Timeliness of NCL ICB's response to representations and information requests

133. Specsavers, in its representations to the Panel, raised concerns about the “time taken to respond to representations” (see paragraph 55), telling the Panel that it felt that there were unnecessary delays in the process.⁶² Specsavers also raised concerns about the time taken by NCL ICB to respond to its requests for information.
134. On 8 May 2025, NCL ICB provided Scrivens and Specsavers with an update on the progress of their representations, saying that the internal review was taking longer than initially anticipated,⁶³ and on Thursday 3 July, NCL ICB shared information in response to Specsavers' information request of 3 April 2025 and Scrivens' information request of 9 April 2025 (see paragraph 48). NCL ICB communicated its further decision, to continue with the contract award to Audiological Science as originally intended, three working days later, on Tuesday 8 July 2025.
135. NCL ICB told the Panel that it had not been “immediately obvious” that the representations included “embedded information requests”, and that its internal review panel had identified the information requests on 22 May 2025.⁶⁴ NCL ICB told the Panel that it took three months to respond to the providers' information requests because of the volume and nature of requests and, more broadly, because of organisational changes within the ICB.⁶⁵
136. NCL ICB further told the Panel that “Whilst the ICB would ideally have provided a response to the representations more quickly, we note that neither complainant has raised any additional substantive issues since the response was supplied – evidence that they have not been disadvantaged by any alleged delay”.⁶⁶
137. Regarding Specsavers' concerns about the overall length of NCL ICB's representations review process, the Panel notes that there are no specific requirements set out in the PSR regulations in relation to the duration of this process. The Panel, however, also notes that in reviewing an aggrieved provider's representations a commissioner remains subject to the overall obligation under the PSR regulations to act transparently, fairly and proportionately.
138. In relation to the time taken to respond to Specsavers' and Scrivens' information requests, the Panel has in previous cases set out its view that taking three months to respond to an information request does not meet the requirement on commissioners, as set out in the PSR regulations, to respond “promptly” to information requests during

⁶² Panel meeting with Specsavers, 1 September 2025.

⁶³ NCL ICB, *Email to Scrivens*, 8 May 2025; NCL ICB, *Email to Specsavers*, 8 May 2025.

⁶⁴ Panel meeting with NCL ICB, 4 September 2025.

⁶⁵ NCL ICB, *Opening Statement for Panel meeting*, 4 September 2025.

⁶⁶ NCL ICB, *Opening Statement for Panel meeting*, 4 September 2025.

the representations process.⁶⁷ Moreover, by issuing its further decision on 8 July 2025, only three working days after responding to Specsavers' and Scrivens' information requests, Specsavers and Scrivens were denied the opportunity to make further explanations or clarifications based on the information supplied by NCL ICB.

139. As a result, the Panel finds that NCL ICB, in responding to Scrivens' and Specsavers' information requests during the representations review process, breached the PSR regulations, and in particular Regulation 12(4) which requires commissioners to "provide promptly any information requested by an aggrieved provider" and "ensure each provider who made representations is afforded such further opportunity to explain or clarify the representations".

7.4 NCL ICB's additions to its records following the contract award decision

140. During this review the Panel became aware that NCL ICB had provided the Panel with documents from its decision-making process that included content that had been inserted since its contract award decision (see paragraph 26). NCL ICB did not alert the Panel to the fact that the records it had supplied to the Panel included this additional material. This section sets out the Panel's assessment of whether this has resulted in a breach of the PSR regulations.
141. The PSR regulations place general and specific obligations on commissioners that relate to their record keeping and to their subsequent communication with stakeholders, including aggrieved bidders and the Panel. In particular, commissioners are obliged to act transparently (under Regulation 4), and to share information with aggrieved bidders which the relevant authority has a duty to record (under Regulations 12 and 24).
142. In this case, NCL ICB supplied the Panel with versions of its completed direct award toolkit and its scoring methodology document that had been amended to include substantial additional information that was not present in these documents at the time of the ICB's contract award decision.⁶⁸
143. For example, in June 2025, NCL ICB created a new version of the "scoring methodology" document (see paragraph 92), which added a large amount of detail to the "Rationale" column in the table of awarded scores. Further, in August 2025, NCL ICB created another new version of this document, which included further information to support NCL ICB's scoring decisions. These later changes included: (i) a new column in the table of awarded scores, which sought to provide an explanation of NCL

⁶⁷ For example, see CR0015-25, *Targeted lung healthcare checks for Shropshire, Telford and Wrekin*, 19 May 2025.

⁶⁸ In response to the Panel's pre-publication fact-checking on this issue, NCL ICB said that:

"[this statement] seems to imply that additional information was added retrospectively to the toolkits created for both the first and second procurements. This is categorically denied by the ICB and the Panel has seen the unedited versions. The confusion here is arising because of the following:

- In June 2025, when it became obvious the complainants were intending to make a formal complaint the responsible director requested additional information on the decision making processes to confirm that the decisions had been taken appropriately.
- In August 2025 the Panel requested clarifications on why certain decisions had been taken to which additional information was added for the Panel's benefit.

"The Panel is in receipt of all four versions, the two original versions and the June 2025 (internal) and August 2025 (Panel) amended versions. This has previously been explained in writing and was further discussed at the Review Meeting." (NCL ICB also made similar remarks regarding paragraphs 143, 144 and 146.)

The Panel notes that NCL ICB did not provide the "original versions" until 25 September 2025, by which time it was more than two months since the commencement of the Panel's review. Moreover, these documents were only supplied by NCL ICB after repeated questions by the Panel about the ICB's decision making process and the records arising from this process.

ICB's scoring decisions; and (ii) a new column in the scoring matrix table, which sought to further explain how marks should be allocated.

144. The "scoring methodology" document was also amended to include what appears to be guidance for moderators, such as "Note to Moderators; score will be reduced by 1% for each issue recorded here". However, the Panel understands that this amended version of the "scoring methodology" document was not supplied to evaluators ahead of the actual assessment and contract award decision.
145. The August 2025 version of the scoring methodology document was supplied to the Panel in response to a question about the guidance given to evaluators with no explanation that this version was not the original version given to evaluators. It was not until 25 September 2025 that NCL ICB started to clarify the modifications it had made to its records, providing the previous versions of the scoring methodology document dated "March 2025" and "June 2025".⁶⁹
146. Regarding the completed direct award toolkit, on 13 August 2025, in response to a Panel question, NCL ICB supplied the Panel with a new version of this document, saying that there had been an error in the "initial version", and that the new version had been "subsequently updated with the missing information" and "this was an error on an internal document only and did not feed through to any documents issued in the public domain".⁷⁰ NCL ICB subsequently told the Panel that this new version of the completed direct award toolkit had, in fact, been created following the Panel's question.⁷¹
147. The Panel notes that NCL ICB, before later clarifying the situation, provided the Panel on at least two occasions with documents where significant changes had been made subsequent to the ICB's decision. In both cases, the ICB did not inform the Panel that these documents had been amended until questioned on this by the Panel.
148. The Panel will always seek from commissioners, in its review of a contract award decision, explanation of the commissioners' decision making processes and rationales so as to ensure that it has a fully informed view before reaching any conclusions. Critical to this process is being supplied with a complete and unadulterated version of the relevant decision making records as they were created during the provider selection process.
149. Additional explanation and additional material from commissioners, that provides further explanation and support, is welcomed. However, this additional material should be provided separately, rather than through amending the original decision making record. In practical terms, when the Panel is supplied with amended records which then need to be clarified, this will inevitably result in a much longer review process given the time that is required to clarify the situation.
150. The Panel finds that NCL ICB, in supplying the Panel with amended decision-making records and only much later explaining the changes it had made, breached its obligation under the PSR regulations to act transparently.

⁶⁹ NCL ICB, *Response to Panel questions*, 25 September 2025.

⁷⁰ NCL ICB, *Response to Panel questions*, 13 August 2025.

⁷¹ NCL ICB, *Response to Panel questions*, 25 September 2025.

8 Panel Advice

151. In summary, the Panel's findings on the provider selection process carried out by NCL ICB for community audiology services in Barnet are as follows:

- First, the Panel finds that NCL ICB breached the PSR regulations in concluding that condition (d) of PSR regulation 6(5) was satisfied, and that it was accordingly eligible to award a new contract to Audiological Science using Direct Award Process C. The Panel also finds that while NCL ICB was able to conclude that conditions (a) to (c) and (e) of PSR regulation 6(5) for the use of Direct Award Process C were satisfied it did not produce any documentation to support this conclusion.
- Second, the Panel finds that NCL ICB, in documenting its assessment and decision to award a new contract to NCL ICB using Direct Award Process C, breached the PSR regulations, and in particular its recordkeeping obligations under Regulation 24.
- Third, the Panel finds that NCL ICB, in responding to Scrivens' and Specsavers' information requests during the representations review process, breached the PSR regulations, and in particular Regulation 12(4) which requires commissioners to "provide promptly any information requested by an aggrieved provider" and "ensure each provider who made representations is afforded such further opportunity to explain or clarify the representations".
- Finally, the Panel finds that NCL ICB, in supplying the Panel with amended decision-making records and only much later explaining the changes it had made, breached its obligation under the PSR regulations to act transparently.

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

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

153. The Panel, on this occasion, does not intend to offer advice on next steps, notwithstanding its findings of multiple breaches of the PSR regulations by NCL ICB. This is because NCL ICB has, in effect, already abandoned the current provider selection process (in that it no longer intends to award a new contract to Audiological Science using Direct Award Process C). Instead, NCL ICB has decided to extend Audiological Science's contract by way of an "urgent modification" with a view to awarding a new contract for community audiology services in Barnet, Camden and Enfield starting on 1 July 2026.

154. The Panel notes, however, that this review has highlighted several important issues for commissioners when awarding new contracts using Direct Award Process C.

- First, where contracts are low value and/or short term and commissioners wish to carry out an assessment process that is accordingly proportionate, the

resulting process must still be robust, coherent and comprehensible, both to those carrying out the process and to other interested stakeholders.

- Second, the same standards for recordkeeping apply to the award of contracts under Direct Award Process C as apply to other provider selection processes under the PSR regulations (e.g. the competitive process).
- Finally, commissioners must keep decision making records intact and separate from other documents supplied to the Panel (or other stakeholders) during any subsequent review process.