

# Market Failure & Provider Closure Protocol

## 1. Introduction

The Care Act 2014 places a new temporary duty on local authorities to meet the care and support needs of an adult and the support needs of a carer when a registered care provider becomes unable to carry on a regulated activity because of business failure. This document sets out what will happen when this duty is triggered, which needs will be met and how this will be done.

## 2. Principles

The following principles will be applied in exercising the temporary duty:

- Each situation will be assessed and responded to individually, based on the level of seriousness.
- Disruption to those in receipt of care will be minimised.
- Notwithstanding the urgency of the specific situation, the council will seek to involve the person concerned, any carer that the person has, or anyone the person asks the authority to involve. If the individual lacks mental capacity to do that, the council will involve the adult's next of kin or appropriate nominated individual.
- Where the provider is subject to the Care Quality Commission (CQC) Market Oversight Regime of 'difficult to replace' providers, the council will work with the CQC to prepare to develop a remedial action plan in preparation for exercising this temporary duty.

## 3. The council's responsibilities

Linked to the temporary duty, there are three main areas of responsibility for the council:

- Market oversight – as part of its day-to-day work, the council will have a good understanding of the provider market in its area and how providers are performing. As a result of this knowledge and understanding of the provider market the council will be in a better position to know if a provider might be facing closure and how best to assist in this scenario.
- Response to planned closures of providers – in this scenario the council will be given contractual notice of two to four months (dependant on size capacity) that a provider is going to close or leave the local care market.

- Response to emergency closures of providers – this includes market failure, cancellation of a registration through Care Quality Commission (CQC) enforcement action, management/ staffing changes, fire, flood, infection outbreak.

Not all instances of provider failure will trigger local authority intervention. If service provision remains uninterrupted and the needs of the people using that service are still met (for example when administrators are utilised), there is no need for local authority intervention. The temporary duty to intervene begins once provider failure leads to a temporary or permanent service disruption.

In the event of service disruptions occurring that are not triggered by business failure, the council may still choose to exercise the temporary duties if the disruption is likely to create urgent need amongst the individuals receiving that service.

This temporary duty applies regardless of whether;

- there is a contract in place between the provider and the council
- the people affected pay for their own care
- other local authorities had made the arrangements to provide the service

#### **4. Which needs will the council meet?**

The council will meet those care and support needs of adults and support needs of their unpaid carers, which were being provided immediately before the provider became unable to continue providing the regulated activity. This means the council will provide care and support based on the assessment that informed the care and support package. Adopting this approach will ensure there is no delay in arranging the alternative provision.

In the event that there is no assessment of needs, carer's assessment, or a financial assessment and irrespective of whether those needs would meet the eligibility criteria, The council will act as promptly as possible to meet needs under the temporary duty, pending a full assessment once the situation has stabilised.

#### **5. How will the needs be met?**

The council has discretion as to how it will meet needs when the temporary duty becomes applicable. Although there is no requirement to meet needs through exactly the same combination of services that were previously supplied, the council will aim to minimise disruption to the individual in line with the wellbeing principle enshrined in the Care Act. In doing this the council will seek to provide a service(s) as similar as possible to those previously provided, wherever possible.

## **6. Who will be involved?**

Subject to the urgency of the individual situation, when deciding how to meet an adult's needs for care and support, the council will involve:

- the relevant adult concerned,
- any carer that the adult has,
- anyone whom the relevant adult asks the authority to involve

Where the relevant adult lacks mental capacity to ask the council to involve other persons, the council will involve the adult's next of kin or appropriate nominated individual.

In deciding how to meet a carer's needs for support, the council will involve:

- the carer,
- any nominated person the carer asks the council to involve.

The council will take all reasonable steps to agree how needs should be met with the relevant adult or carer.

## **7. What about adults who are not funded by the council?**

In exercising its temporary duty, the council will ensure that adults placed by a different local authority continue to have their care needs met. The costs of arranging alternative services will be recharged to the placing authority.

The duty does not apply to anyone receiving Continuing Health Care (CHC), and in this situation the Integrated Care Board (ICB) responsible for the CHC will remain responsible for intervening. However, the council will work with the ICB in order to reach agreement about how best to meet the adult's needs and minimise disruption through a coordinated approach.

No action carried out on behalf of a different local authority or in conjunction with an ICB during the exercise of the council's temporary duty will confer a permanent responsibility.

## **8. Charging**

Care and support services are not always provided free of charge and charging for some services is vital to ensure affordability.

The Care Act 2014 states that a local authority may charge a person for the costs of arranging alternative services, where that individual is already funding the costs of their own care. The council will only seek to recover costs incurred in arranging the alternative care in order to ensure this service is cost neutral to the local tax payer.

In the event that the service was arranged by another local authority, the Care Act 2014 allows the cost of arranging alternative services to be recharged to the placing authority.

Additional transport and removal charges may also apply, in addition to the arrangement costs incurred by the council. These will be discussed and agreed on a case by case basis with the person concerned, or their representative.

The council will not charge for the provision of information and advice to the person as a result of provider failure.

This charging mechanism does not apply to people who are receiving care that is paid partially or fully by the council.

## **9. Urgent Needs**

Where the council considers the needs to be urgent, it may exercise its discretionary power to meet needs without first conducting a needs assessment, financial assessment, or eligibility determination and regardless of whether the relevant adult is ordinarily resident in Redcar & Cleveland.

This may be necessary where services are interrupted, there are quality failings with a provider or there is a risk of an emergency closure, but business failure is not the cause.

Where the provider's business has not failed, it remains the provider's primary responsibility to meet the needs of individuals receiving care and support in accordance with their contractual liabilities. Where the continued provision of care and support is in imminent jeopardy and there is no likelihood of returning to business as usual, the council will exercise its discretionary power to meet urgent needs. This power is not limited to regulated providers and may be extended to unregistered providers, i.e. unregulated providers of a social care activity.

Before exercising this discretionary power, a risk assessment will be completed to determine whether the needs are urgent. Every service interruption will be considered on its facts and the specific circumstances.

## **10. Basic checklist**

The council's response to the ending of a provider service whether planned or unplanned will be tailored to the service, the needs of adults who use the service, and the specific circumstances. However, there are certain key requirements which will be common to every situation. The basic checklist includes these key requirements below:

<b>Planned Closure</b>			
	<b>Action</b>	<b>Reason</b>	<b>Responsibility</b>
<b>Communication</b>	<p>As soon as possible following the notification of closure, ensure that the following are made aware:</p> <ul style="list-style-type: none"> <li>• All relevant senior management (EMT Report)</li> <li>• All relevant operational leads</li> <li>• All Commissioning staff</li> <li>• Brokerage Team</li> <li>• Safeguarding Team</li> <li>• Quality Assurance Team</li> <li>• Procurement Team</li> <li>• ICB where relevant</li> <li>• ICLS Team where relevant</li> <li>• CQC</li> <li>• Other Local Authorities that have residents receiving care from the provider.</li> <li>• Financial Services (in relation to financial assessments)</li> <li>• Payments Processing Officer</li> <li>• Workforce Development Team (Training)</li> <li>• Any Commissioned services delivering support to the provider (e.g. MUST Service, IPC, Medicines Optimisation Service)</li> </ul>	<p>To make people aware and start the planning process</p>	<p>Commissioning Team</p>

<b>Planned Closure</b>			
<b>Action</b>		<b>Reason</b>	<b>Responsibility</b>
<b>Actions</b>	<p>Speak to Service to negotiate exit plan and closure date. Request written confirmation of closure (formal notice)</p> <ul style="list-style-type: none"> <li>- <i>Ensure Provider sends notifications of service closure to staff and residents/NOK simultaneously and offers consultation meetings (where appropriate)</i></li> </ul>	<p>Obtain official confirmation of closure and anticipated closure date</p>	<p>Commissioning Team</p>
	<p>Convene a multi-agency planning meeting to discuss the situation and start planning actions for meeting the needs of residents</p> <ul style="list-style-type: none"> <li>- <i>Planning meeting may include details of engagement between council representatives and residents/NOK to explain next steps (where required)</i></li> </ul> <p><i>NB: Where feasible, steps 4a and 4b should be conducted in quick succession to ensure a coordinated response to service closure can be facilitated in a way to minimise distress and uncertainty for adults/NOK and service staff.</i></p>	<p>Ensure that all relevant parties are aware of the situation and start to think about the action plan. Opportunity to identify any concerns and risks</p>	<p>Safeguarding Team/Commissioning/Quality Assurance Team</p>
	<p>Develop a multi-agency action plan for progressing in a controlled environment.</p>	<p>Ensure that all necessary actions are collated in one place and that all partners are</p>	<p>Safeguarding Team/Commissioning/Quality Assurance Team</p>

	<ul style="list-style-type: none"> <li>• Identify risk and plan to minimise</li> <li>• Identify who will do what (Name individual lead)</li> <li>• What they will do</li> <li>• When they will do it (Set dates)</li> <li>• And why they are doing it (desired outcome)</li> </ul>	<p>working to the same aim and timeframe. Actions are focused, time driven and appropriate.</p>	
	<p>Deliver and monitor the action plan</p> <ul style="list-style-type: none"> <li>• Decide how to monitor i.e. series of meetings</li> <li>• Who will take overall responsibility for the action plan</li> </ul>	<p>Ensure that actions are on track and that residents needs are met and the Care Home is supported in the closure.</p>	<p>Safeguarding Team/Commissioning/QA Team</p>
	<p>Closure of Action Plan</p> <ul style="list-style-type: none"> <li>• Upon service closure ensure that all relevant parties are notified of closure date: <ul style="list-style-type: none"> <li>- Payments Processing</li> <li>- CQC</li> <li>- ICB</li> <li>- Capacity Tracker</li> </ul> </li> </ul>	<p>Ensuring final payments to provider are made in line with closure date and all necessary registrations are ceased.</p>	<p>Safeguarding/Commissioning Team</p>
<p>Complete lessons learnt: Safeguarding Team/Commissioning Quality Assurance Team</p>	<p><b>Led by:</b> <b>Service Manager - Adults Commissioning &amp; Support Services</b></p>		