

04 July 2018

Cabinet Member for Adult Services

Name of Cabinet Member:

Cabinet Member for Adult Services – Councillor Abbott

Director Approving Submission of the report:

Deputy Chief Executive (People)

Ward(s) affected:

All

Title: Managing Care Market Failure

Is this a key decision?

No. Although this matter affects all wards in the City, the impact is not expected to be significant

Executive Summary:

The Council is committed to ensuring that it commissions or delivers the best quality services possible within the available resources.

A key requirement of the Care Act (2014) is a duty on local authorities to ensure safe and sustainable care and support provision through effective market shaping. In addition local authorities are required to have plans in place to be used should there be failure of either a single provider organisation or a number of organisations.

The Council's approach addresses market/provider failure in relation to social care provision. This includes services that may also cater for people supported solely through the NHS through, for example, using Continuing Health Care funding.

Services covered include provision regulated by the Care Quality Commission e.g., nursing and residential homes, housing with care and home support agencies and non-regulated services such as day opportunities and community meals suppliers.

The approach is not intended to cover provision which is commissioned by the NHS such as hospitals and community health services.

In order to meet its legal duties in respect of Market Failure the Council developed a process for responding to situations ranging from large scale disruption including failure of a major care provider affecting many service users to smaller scale difficulties such as the temporary unavailability of a particular service, for example, a small care home affected by flood or fire. This

process was endorsed by the Cabinet Member for Health and Adult Services on 14th December 2015.

The Care Quality Commission (CQC) has a parallel responsibility for maintaining a Market Oversight regime designed to respond to significant care market failures likely to affect large numbers of vulnerable people in multiple authorities or smaller numbers supported in services that are very specialist and therefore difficult to replace. The Council works closely with CQC to ensure appropriate sharing of intelligence and alerts around the potential for market failure.

There have been three exits from the local market over the last 3 years (two care homes and 1 home support provider) from a total of around 120 registered services, however, these have all been small scale and well managed in cooperation with the agencies involved along with CQC and Coventry and Rugby Clinical Commissioning Group (CRCCG) colleagues.

However, the Local Government Association (LGA), Association of Directors of Social services (ADASS), CQC, Local Authorities and care market organisations recognise an ongoing risk around the potential for major market failure given well documented concerns about financial sustainability of the market in the context of ongoing austerity.

In September 2017 The Association of Directors of Adult Social Services (ADASS) produced a guide for local authorities in respect of regional responses to provider failure outlining key principles, and a checklist of prompts and questions for Regions to use in the event of market failure.

This was followed in May 2018 by a briefing designed by ADASS in conjunction with the Local Government Association (LGA) and including a series of top tips for responding to market failure in the context of 3 priorities i.e.

- *Ensuring continuity of care and support for people using the services*
- *Supporting the failing provider to retain its workforce*
- *Communicating with service users and their relatives to provide reassurance that continuity of care is the priority*

The Council's proposed contingency planning approach has been updated to reflect this additional guidance and ensure that our approach remains robust in the context of a changing landscape.

Recommendations:

Cabinet Member is recommended to approve the updated contingency plan to be used in cases of market failure.

List of Appendices included:

Appendix One Market and Provider Failure Approach

Background papers:

None

Other useful documents

ADASS/LGA Guidance

[‘Care and Continuity: Contingency planning for provider failure’](#)

ADASS: Provider Failure and Emergency Incidents
[Checklist for regional response](#)

ADASS/LGA Guidance
[‘Contingency planning tips for the business failure of a major social care provider’](#)

Ensuring the Quality of Care and Support in Adult Services.

Report to Cabinet Member for Health and Adult Services –14th December 2015

Has it been or will it be considered by Scrutiny?

No

Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?

No

Will this report go to Council?

No

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Report title: Managing Care Market Failure

1. Context (or background)

- 1.1 The Council is committed to ensuring best value in its commissioning and procurement and requires on-going assurance that the quality standards for care and support outlined in its service specifications and contracts continue to be met. This includes requirements for individual outcomes to be delivered by providers working with service users and their families with dignity and respect being central to the quality of services.
- 1.2 A requirement of the Care Act 2014 is that local authorities must develop their local knowledge in respect of potential provider failure, and focus, where appropriate, on supporting providers at risk of failure. Local authorities are also required to have plans in place to manage exits from the market to ensure continuity of care. The Care Quality Commission (CQC) has parallel duties in relation to larger providers where provision spans several authority areas and there is a requirement for co-operation between CQC and local authorities. The report describes the approach taken to manage this requirement through contingency planning.
- 1.3 The Council's approach addresses market/provider failure in relation to social care provision. This includes services that may also cater for people supported solely through the NHS through, for example, using Continuing Health Care funding. Services covered include provision regulated by the Care Quality Commission e.g. nursing and residential homes, housing with care and home support agencies and non-regulated services such as day opportunities and community meals suppliers. The approach is not intended to cover provision which is commissioned by the NHS such as hospitals and community health services.
- 1.4 The Council developed a market contingency process as a result of changes in responsibilities brought about by the Care Act which was endorsed in December 2015.
- 1.5 There have been three exits from the market (two care homes and one home support provider) from a total of approximately 120 registered services over the last 3 years, however, these have all been small scale and well managed in cooperation with the agencies involved along with CQC and Coventry and Rugby Clinical Commissioning Group (CRCCG) colleagues.
- 1.6 One example of the plan being used relates to the closure of a nursing home due to quality issues and sustainability. On notification of the providers intention to close the home the Council worked with stakeholders to ensure a managed closure and that residents and their families were kept informed as appropriate throughout. Through partnership working with the provider, CRCCG and CQC, the Council was able to arrange suitable alternative provision. Application of the Market and Provider Failure approach enabled the Council to ensure that appropriate steps were taken at each stage in the process to ensure a positive outcome.
- 1.7 However, a range of organisations including LGA/ADASS, CQC, Local Authorities and care market organisations recognise an ongoing risk around the potential for major market failure given well documented concerns about financial sustainability of the market in the context of ongoing austerity. Within the last 12 months one of England's largest care home providers were required to issue assurances to local authorities and the NHS in respect of debt management arrangements and a major home support provider caused concern in respect of entering voluntary administration, although collapse of the provider was fortunately avoided.

- 1.8 In September 2017 The Association of Directors of Adult Social Services (ADASS) produced a guide local authorities to use in respect of regional responses to provider failure outlining key principles, and a checklist of prompts and questions for regions to use in the event of market failure.
- 1.9 This was followed in May 2018 by a briefing designed by ADASS in conjunction with the LGA and included a series of top tips for responding to market failure in the context of 3 priorities:
- Ensuring continuity of care and support for people using the services
 - Supporting the failing provider to retain its workforce
 - Communicating with service users and their relatives to provide reassurance that continuity of care is the priority
- 1.10 In the light of concerns and the additional guidance produced by ADASS and the LGA the Council's guidance has been updated and is presented for endorsement.

2. Options considered and recommended proposal

- 2.1 **Recommended Option:** A legal requirement of the Care Act (2014) is to have plans to address market failure (part of market shaping) which is key to ensuring the Council's response is robust to support people receiving care and support services where a provider exits the market. There are not considered to be any alternative viable options which would to meet the legislative requirements

3. Results of consultation undertaken

- 3.1 No specific consultation was undertaken in respect of the proposals within this report however, the methodology described in well communicated and developed with partner organisations and providers.

4. Timetable for implementing this decision

- 4.1 The market contingency process will be implemented immediately and will be used in the next instance of provider failure.

5. Comments from Director of Finance and Corporate Services

5.1 Financial implications

There are no direct financial implications arising from this report or approach. Whilst action is taken to support providers and minimise the likelihood of failure, by the very nature of such an event, there is a risk of significant cost pressures in the event of a provider failure. This may be through another provider having to be paid to meet the needs of service users affected at short notice, or if the local authority is required to staff or manage provision.

5.2 Legal implications

Section 48 of the Care Act 2014 places a temporary duty on local authorities to, for as long as considered necessary, meet and adult's (and carer's) needs for care and support which were being met by a provider immediately before he provider became unable to carry on the regulated activity. This duty also covers self-funders, who may not be known to the local authority. It is for the local authority to determine when the temporary duty is triggered.

6. Other implications

6.1 How will this contribute to the Council Plan (www.coventry.gov.uk/councilplan/)?

This proposal would contribute to the Council's key objectives through a contribution to protecting our most vulnerable people.

6.2 How is risk being managed?

Market Failure risks and contingencies are documented in the Council's Corporate Risk Register.

There are no identified risks with the approach outlined.

6.3 What is the impact on the organisation?

Appropriate contingency planning and management of market failure helps to meet the Council's responsibilities in relation to service continuity.

6.4 Equalities / EIA

Not applicable

6.5 Implications for (or impact on) the environment

None

6.6 Implications for partner organisations?

Coventry and Rugby Clinical Commissioning Group benefits from the joint approach to market failure activities outlined in this report.

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