



Coventry City Council

Adult Social Care

Market and Provider Failure Approach

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1. Introduction

This document sets out the approach taken by Coventry City Council (the Council) to prevent, mitigate and respond to market and provider failure across the local social care market in Coventry.

The approach aims to ensure compliance with duties under the Care Act 2014 along with setting out definitions of provider and market failure and how the Council will work with all stakeholders, providers and system partners, to manage the risk of failure and impact on adults receiving care and support should service be disrupted.

2. Scope

This document outlines the approach that the Council will take in respect of market/provider failures of 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.

3. Definition of Failure

Provider failure may occur for a number of reasons, including but not limited to:

- Business failure as defined in the Care Act as a financial failure of the care provider's business where regulated activity can no longer continue. Business failure is the type of provider failure that is specifically addressed by the Care Act 2014
- Decisions by the provider (or any Corporate Insolvency Practitioner that has been appointed) to change the registered care status or exit the market and therefore alter or cease trading.
- Decisions taken by the Care Quality Commission (CQC) within scope of their enforcement powers (Health and Social Care Act 2008 and (Regulated Activities) Regulations 2014) to remove a care registration or require immediate closure to protect people who use regulated services from harm and the risk of harm.
- An emergency situation such as serious infection outbreak, flooding, fire or loss of power which may be failure of a temporary nature and such that recovery is possible in order to return to business as usual.

This approach seeks to manage any provider and market failure across all types of regulated social care provision.

4. Legislative Duties

Market Shaping

Section 5 of the Care Act 2014 established a statutory duty for local authorities to facilitate a diverse, sustainable and high-quality market for their whole local population, including

those who pay for their own care, and to promote efficient and effective operation of the adult care market.

Care Act 2014 Statutory Guidance states:

Market shaping means the local authority collaborating closely with other relevant partners, including people with care and support needs, carers and families, to encourage and facilitate the whole market in its area for care, support and related services. This includes services arranged and paid for by the state through the authority itself, those services paid by the state through direct payments, and those services arranged and paid for by individuals from whatever sources (sometimes called 'self-funders'), and services paid for by a combination of these sources. Market shaping activity should stimulate a diverse range of appropriate high quality services (both in terms of the types of services and the types of provider organisation), and ensure the market as a whole remains vibrant and sustainable.

The core activities of market shaping are to engage with stakeholders to develop understanding of supply and demand and articulate likely trends that reflect people's evolving needs and aspirations, and based on evidence, to signal to the market the types of services needed now and in the future to meet them, encourage innovation, investment and continuous improvement. It also includes working to ensure that those who purchase their own services are empowered to be effective consumers, for example by helping people who want to take direct payments make informed decisions about employing personal assistants. A local authority's own commissioning practices are likely to have a significant influence on the market to achieve the desired outcomes, but other interventions may be needed, for example, incentivising innovation by user-led or third sector providers, possibly through grant funding.

Market Oversight

The Care Act 2014 places a general duty on local authorities to oversee the care market; ensuring that services are sustainable and can continue to meet the care and support needs of adults and their carers when a registered care provider becomes unable to carry on a regulated activity, establishment or agency as a result of business failure.

Care Act 2014 Statutory Guidance states:

The Care Act places new duties on local authorities to facilitate and shape their market for adult care and support as a whole, so that it meets the needs of all people in their area who need care and support, whether arranged or funded by the state, by the individual themselves, or in other ways. The ambition is for local authorities to influence and drive the pace of change for their whole market, leading to a sustainable and diverse range of care and support providers, continuously improving quality and choice, and delivering better, innovative and cost effective outcomes that promote the wellbeing of people who need care and support.

Importantly, local authorities need to have a good knowledge of their social care market in order to:

- Shape the quality, diversity and sufficiency of care
- Understand which providers may be experiencing challenges and are at risk of business failure

- Know which providers would be able to take the place of exiting providers in meeting local needs if any care providers fail.
- Be prepared to deal with the consequences of providers failing, exiting the market or being temporarily unable to provide services because of natural disasters or other emergencies.

The Care Act 2014 also introduced a market oversight scheme, started in April 2015, requiring the Care Quality Commission (CQC) to protect people using care services, their families and carers from the anxiety and distress that may be caused by the failure of a major care provider. This is done by monitoring the performance and finances of large-scale social care providers and providing local authorities with an early warning of where a provider is at risk of failure that is likely to result in a registered care service ending.

The scheme is intended to identify potential failure so that timely action can be taken to prevent large-scale failure. The duty on CQC to mitigate the risk of provider failure is present throughout sections 48-55 of the Care Act and is focussed on supporting providers through sustainability plans and business reviews as opposed to stepping in to prevent failure. In addition the Act allows CQC to request financial information from providers whilst ensuring that information sharing across all stakeholders is in place.

Temporary Duty

Section 48 of the Care Act 2014 places a temporary duty on local authorities in the event that a regulated care provider becomes unable to provide a service or regulated activity to an individual due to a financial business failure. This duty applies regardless of whether an individual's care is funded by the local authority or not and whether another local authorities originally made the arrangements to provide care services.

It is important to recognise that there may be instances where the local authority can charge individuals or other local authorities for arranging 'emergency care' under this duty.

This temporary duty is engaged when all of the following criteria are met:

- The provider is a registered care provider
- The provider is unable to carry out the particularly activity
- The activity is a regulated activity.

5. Role and Responsibilities

The Council will have responsibility for managing the instances of provider and market failure along with ensuring continuity of care for all part-funded and fully adult social care funded placements commissioned by the Council.

The responsible agency for fully health funded individuals receiving care from providers at risk of failure is Coventry and Rugby Clinical Commissioning Group (CRCCG). This also includes responsibility for coordinating arrangements on behalf of individuals whose care is fully funded and commissioned by other health bodies, i.e. "Out of Area" CCGs. In any such circumstances the Council will work jointly to find alternative provision, ensure that any move is well managed, and enable risks and costs to be shared accordingly.

It is important to recognise that all individuals receiving a social care service (funded or not, fully or in part, by the Council) will have broader health needs that are supported by GP involvement. Therefore, all health needs should be a consideration regardless of whether health / CHC funding is in place.

In addition, the Council will have responsibility for co-ordinating care continuity and ensuring the immediate welfare of all self-funders and other individuals funded or commissioned by local authorities 'Out of Area'; ensuring that any move to alternative provision is well managed. However, funding responsibility and the detailed longer-term care planning responsibility for affected individuals will remain with the placing authorities.

6. Priorities and Principles

The Department of Health and Social Care, the Association of Directors of Adult Social Services (ADASS) and the Local Government Association (LGA) jointly developed a '[Care and Continuity: Contingency planning for provider failure](#)' guidance to assist local authorities in relation to business failure, particularly on a large scale.

Priorities and principles are the same regardless of the scale of the failure.

Whilst each case of market failure will be different the three key priorities in all cases will be to:

- Ensure continuity of care and support for people using the services delivered in the local authority's area and ensure the safeguarding of individuals
- Support the failing provider to retain its workforce during this time
- Ensure communication with service users and their relatives to provide reassurance that continuity of care is the priority.

Whatever the nature of market failure or emergency incidents a number of key principles apply:

- Person-centred care – individuals' needs are paramount and any process/practice should maintain dignity and respect.
- Safeguard – while providers may fail, service continuity should not. The local authority's duty to safeguard and ensure continuity of care comes first.
- Communicate – service users, carers, their families and care workers themselves must never be left out of the loop.
- Managing information – holding good, accessible data on people receiving care.
- Management of personal data will be crucial in fulfilling the duties defined in the Care Act and ensuring continuity of care for all individuals in a locality, including self-funders.
- Be prepared – preparing, testing and regularly reviewing contingency plans

7. Market management and sustainability

Market analysis

The Council and CRCCG are aware of and have up to date information regarding market capacity across all sectors within Coventry. In addition to this information regarding capacity in Warwickshire is readily available and up to date.

Market engagement to support major events

A focussed engagement exercise has taken place with a selection of key providers in the City from which the Council has developed a framework of providers (across all sectors) who have committed to mobilise support at short notice should the need arise.

The following section details the commissioning and procurement activities being taken to ensure that Coventry has a sustainable market that has the capacity to respond in potential provider and market failure situations.

Area / Issue	Key Project to initiate	Timescale
Care Home contingency	Care Home Re-commissioning	April 2019
Home support contingency	Home support Contract Management	Ongoing – review March 2019
Housing with care contingency	HWC review and re-commissioning	March 2019
Day Centre contingency	Re-commissioning. Internal provision / contracted provision	November 2018, however, Capacity exists within existing provision
Advocacy support (general)	Re-commissioned 2018 (Warwickshire lead)	Part of current contractual arrangements
IMCA / IMHA / Dols support	Re-commissioned 2018 (Warwickshire lead)	Part of current contractual arrangements
Voluntary Sector Preventative Provision	Re-commissioned 2017 – Grant basis	Part of current grant management arrangements
Provision with CQC ratings less than “Good”	Key focus in quality assurance regime	Already commenced

8. Scenarios / scope of market failure

The table below details those stakeholders with a regulatory and/or quality assurance responsibility/interest in each service type, who will need to be involved should market failure materialise and what type of resource is required.

<u>Service / Provider Type</u>	<u>CCC</u>	<u>CRCCG</u>	<u>CQC</u>
Residential (national)	Financial / Operational	Operational	Oversight
Residential (local)	Financial / Operational	Operational	Oversight
Nursing (National)	Financial / Operational	Financial / Operational	Oversight
Nursing (Local)	Financial / Operational	Financial / Operational	Oversight
Extra Care (national)	Financial / Operational	Operational	Oversight
Home Support (National)	Financial / Operational	Operational	Oversight
Home Support (local)	Financial / Operational	Operational	Oversight
Day Service (National)	Financial / Operational	Operational	None
Day Service (Local)	Financial / Operational	Operational	None
Sheltered (non-social care)	Information	None	None
Third Sector (Large)	Information	Information	None
Third Sector (small and local)	Information	Information	None

Scope of risk mitigation by organisation

The following section aims to outline the pro-active process of managing a provider where significant risks are presented which may impact on their ability to continue providing services.

Coventry City Council

Initial scope

- Identify and record provider delivery issues and risk of failure
- Engage with provider through senior level meetings including CQC where applicable
- Identify all people in receipt of services including private clients and Out of Area placements
- Strategy meeting to review information, evaluate risk, co-ordinate urgent action and lead development of an action plan
- Action plan developed, implemented and monitored on a weekly basis
- Instigate enhanced monitoring at Provider Escalation Panel (PEP) if not already in place
- Instigate large scale investigation if required
- Identify social care resource to undertake reviews of all people affected, to ensure up to date understanding of individual needs and requirements and invoke safeguarding processes where appropriate
- Development of a communication plan including letters to people in receipt of services / carers,
- Development of press and media statements/response as appropriate
- Produce and provide Cabinet Member briefings
- Appropriate liaison with OOC placing local authorities
- Market Identification of checks for alternative capacity

Continuous scope should provider continue to be on the verge of failure

- Liaison with CQC at a greater level to jointly work on provider failure
- Communication (face to face meetings) with individuals receiving care and their families and carers where applicable
- Reviews of all individuals receiving care including mobilisation of advocates and IMCA / DOLS assessments (and Best Interest processes where applicable)
- Ensure ICT / Council systems are set up to react to potential changes
- Liaison with providers regarding their own ICT systems and use of E-Systems
- Engagement of wider provider market to ascertain definitive capacity and the ability to : -
 - a) Accept care placements of current individuals receiving care
 - b) Explore the market appetite/options to transition care delivery to an alternative provider
 - c) Assess and gather information in relation to potential TUPE undertakings
- Ensure measures are in place for continuity of care for current clients through staff levels and competencies
- Explore the potential of using the existing building to avoid unnecessary disruption to individuals' care and support

Coventry and Rugby Clinical Commissioning Group (CRCCG)

Initial scope

- Joint meetings with City Council
- Joint communication plan where necessary
- Identification of review resource for health funded clients
- GP engagement
- Identification of nursing team to provide specialist assessment and support with health related needs (e.g. tissue viability concerns / falls / nutrition and hydration / medication needs / health checks etc)
- Identify risk to UHCW re: capacity and discharges for both current and future intended placements
- Ensure continuity of medication supplies as appropriate

Continuous scope should provider continue to be on the verge of failure

- Mobilisation of nursing team to work jointly with CCC social work teams

CQC

Initial scope

- Joint meetings with Council
- Establish and communicate enforcement action including any action to restrict or remove registration
- Ensure compliance notices are in place and implemented

Large Scale Market Failure

For large scale market failure affecting more than one local authority in the West Midlands/nationally action would be as per approach 1 but should be co-ordinated by West Midlands regional ADASS following the [checklist for regional response](#).

This would not replicate detailed local authority plans but would identify steps to be taken regionally. This would include ADASS regional chair or vice chair identifying a DASS lead who would coordinate the response including ensuring identification of key contacts holding initial meeting, deciding governance arrangements, clarifying roles and responsibilities, developing a regional action plan, managing communications and ensuring lessons learned are captured and shared.

9. Responses to managing market failure risk

The following section details the high level actions and decisions that will need to be taken should market failure occur. Example scenarios are detailed below for illustrative purposes although it needs to be recognised that the characteristics of each situation can be unique which results in different options presenting: -

Provider Type	Key Factors	Risk Management Process
Care Homes	e.g. Building(s) closed down	Approach 1
Housing with care	e.g. Building(s) still available	Approach 1
Home Support	e.g. Branch closed immediately	Approach 2
Day Centre	e.g. Building (s) closed down	Approach 1

Under differing scenarios, although a provider may exit the market buildings may or may not remain available for use in the short/long term

Approach 1

Issues	Options	Key Involvement / Factors
Accommodation	Source alternative accommodation	<ul style="list-style-type: none"> • Building availability within CCC and private market • Cost of building (rent / charges etc.) • Suitability of building and adaptations needed • Where no capacity exists an option to use cross border accommodation
	Use existing building (s)	<ul style="list-style-type: none"> • Suitability of building and adaptations needed • Arrangements with current landlord (this may be a creditor) • Risk assessments to be undertaken (CCC Health and Safety to be mobilised)

	Re-provide service in another building (e.g. HWC or another vacant care home)	<ul style="list-style-type: none"> • Building availability within CCC and private market • Source increased staffing levels • Health input mobilised • Suitability of building and adaptations needed • Change of tenure / tenancy arrangements – cost implications and arrangements to be formalised
Staff	CCC / CRCCG TUPE staff	<ul style="list-style-type: none"> • Policies and processes to be implemented swiftly • Council / CRCCG terms and conditions – do they become permanent statutory services employees with same conditions?
	A new provider takes over the staffing	<ul style="list-style-type: none"> • Agreement of which provider takes over and agreed mobilisation period • Which terms and conditions and policies and procedures are used? Existing or new providers? • The need to line up providers within procurement processes for this type of scenario
	Enhanced rates for new provider	<ul style="list-style-type: none"> • Short term enhanced rates for new provider • Agreed cost split between CCC and CRCCG
Clients	Reviews	<ul style="list-style-type: none"> • Social Care reviews on all residents including private clients where needed • Options appraisal / risk assessments • Advocates / IMCA arrangements in place
	Health and well-being checks	<ul style="list-style-type: none"> • CRCCG health reviews on all residents

Approach 2

Issues	Options	Key Involvement / Factors
Staff	CCC / CRCCG TUPE staff	<ul style="list-style-type: none"> • Policies and processes to be implemented swiftly • Council / CRCCG terms and conditions – do they become permanent statutory services employees with same conditions?
	A new provider takes over the staffing	<ul style="list-style-type: none"> • Agreement of which provider takes over and agreed mobilisation period • Which terms and conditions and policies and procedures are used? Existing or new providers? • Integrate calls within new providers existing staff group • The need to line up providers within procurement processes for this type of scenario
	Enhanced rates for new provider	<ul style="list-style-type: none"> • Short term enhanced rates for new provider • Agreed cost split between CCC and CRCCG (where joint packages exist)
Clients	Reviews	<ul style="list-style-type: none"> • Social Care reviews on all residents including private clients where needed • Options appraisal / risk assessments • Advocates / IMCA arrangements in place
	Health and well-being checks	<ul style="list-style-type: none"> • CRCCG health reviews on all residents

Communications

A clear approach to communications is required in every situation. The exact contents of communications and the approach will vary dependant on the situation at hand but would generally include consideration of:

- Letters to clients and families (From provider if possible, content approved by local authority)
- Meetings with clients and families (Led by provider if possible, otherwise local authority and CRCCG)
- A contact point within the City Council to clients and families
- Cabinet Member and ward Councillor briefing
- Local media press release / plan for press release
- Provider engagement
- Shared information across neighbouring authorities

Safeguarding

Safeguarding duties will be applied to individuals affected as required and appropriate. Dependant on the nature of the failure Large Scale Investigation protocols may be instigated. If this is the case this would include:

- Information gathering of customer needs
- Mobilisation of CCC / CRCCG operational teams and / or nursing / therapist staff
- Current provider engagement
- Contract and quality assurance site visits (daily)

Business continuity plans (BCP's)

BCP's are a pre-requisite of every organisation contracted to the City Council. These plans vary in detail but all will have a focus on provider assurances to facilitate a range of actions should an incident (small or large) require.

BCP's are checked as part of the regular quality assurance monitoring. Plans for the Council's internal provision were refreshed early 2018 and signed off by the Head of Commissioning and Provision

In line with provider BCP's, there will be scenarios, as identified within this document, where the Council will need to mobilise actions and support swiftly. The market and provider failure approach will be used, through market engagement and planning, as a mechanism to react to such scenarios.

1. **Appendix: Regionally developed risk tool to identify step by step approach**

<u>PROVIDER FAILURE CHECKLIST</u>						Appendix B
Area	√ or x	-	Date Planned	Progress	Date Completed	
Communications				Establish legal status and full details/intentions of existing provider/Administrator/Receiver.		
				Check that the actions of other local authorities affected by the failure do not affect our plan.		
				Establish urgent dialogue with potential alternative provider(s).		
				Set up a Communications/Project Group with relevant representatives.		
				Secure permission to make urgent payments (if not already covered).		
				Confirm the full contact details for new/alternative provider.		
				Telephone call to our customers using predefined script by appropriately briefed workers.		
				Telephone call to private customers using predefined script by appropriately briefed workers.		
				Letter to our customers to confirm new provider and transfer arrangements.		

					Letter to private customers to confirm new provider and transfer arrangements.
					Telephone call to existing staff.
					Approach In-house services (e.g. Re-ablement) to allocate capacity and other external providers.
					Inform new providers re In-house and external cover providers' contact details.
					Communication to members/unions/Health/CQC.
					Communication to internal teams and other relevant managers.
					Staff consultations/measure letters for new provider.
					Change resource/service directory to show new provider details.
Provider					Administrators to confirm if existing office can continue to be used/rented etc.
					Address use of ICT systems e.g. continued temporary use and access issues.
					Payment of staff through the Administrator or the provider (new or old).
Management					Issue letters of Intent to new provider.

				Sign actions letter from Administrator and return.	
				Issue contract to new provider (and subsequently chase).	
				Issue service Proposals to new provider.	
				Update client record system for all customers.	
				Ensure new provider set up on finance systems.	
				Ensure team administration and finance officers made aware of changes.	
				Inform CQC re registration change and ensure provider complies.	
				Check and implement if required the need to underwrite risk of staff challenge by staff on T&C's.	
				Ensure new provider entered on Contracts Register system.	
Data				Confirm to existing provider that the Council is acting as intermediary for data exchange.	
				Transfer of customer information to new provider.	
				Transfer of staff information to new provider.	
				Check and implement any retention of information needed by the Council.	

Finance					Compile a list of all outstanding invoices.	
					Compile details of any counter charges.	
					Audit Administrator's accounts i.e. what paid against what they require - seek unused amounts.	
Legal					Prepare defence against factoring company as required.	
Market management					Discussion with other providers re building capacity/viability in the affected area.	
Review					Arrange for process from lessons learnt/pre-planning for future.	