



Adult Social Care and Health

Managing Provider Failure and Other Service Interruptions

Version 3

Version: 3 FOI Status: Public	Derbyshire County Council – Adult Social Care & Health Managing Provider Failure and Other Service Interruptions	V1 issued: July 2016 Issued: January 2024 Review due: January 2026 Author: Alice Sanghera
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If you would like to make any comments, amendments, additions etc. please email ASCH.adultcare.policy@derbyshire.gov.uk

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1. Introduction

The [Care Act 2014](#) regulations and guidance places a temporary duty on the council to ensure that care and support needs of adults and the support needs of carers continue to be met if there is a service interruption or a provider fails. the duty applies regardless of whether an individual is self-funded, or the local authority pays for the care and support services.

This policy sets out what the duty means, when it is triggered, what and how people's needs will be met by the council. The policy seeks to ensure that adults and carers are not left without the care or support they need if their registered care provider becomes unable to carry on providing it because of business failure. The policy also covers service interruptions and the discretionary power to meet urgent needs.

This policy aims to set out the responsibilities of the council and the procedure for responding to planned and emergency local care provider failure. It is aimed at all staff and stakeholders who may be required to respond. It should be read in conjunction with:

- Sections 5, 19, 48 and 57 of The Care Act 2014.
- The Care and Support (Business Failure) Regulations 2015
- Chapter 4 (Market Shaping and Commissioning of Care and Support) and Chapter 5 (Managing provider failure and other service interruptions) of the Care and Support Statutory Guidance
- the council's internal procedures and guidance

2. Aims and Objectives

To define the temporary duty of the council to ensure that the needs of adults receiving care and support and/or a carer continue to be met once it becomes aware that a provider is unable to continue to provide services.

To set out how the care and support needs of adults receiving care and support continue to be met where a provider is unable to carry out its business because of business failure.

To seek to minimise the disruption for adults receiving care and support.

To provide a service as similar as possible to the previous one, whilst ensuring that individual's needs are met.

To act promptly to meet an individual's needs irrespective of whether those needs meet eligibility criteria.

The council shall consider each service disruption on its facts and determine the level of

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intervention based on risk assessment.

In the event of business failure, the council has a responsibility to meet individual's needs regardless of the following

- whether the person pays for care
- whether the council pays for the person's care
- whether the person's care is funded in any other way including self-funding
- whether the person is ordinarily resident in Derbyshire
- whether the person's needs would meet the eligibility criteria
- the relevant adult or carer is ordinarily resident in Derbyshire
- the council has carried out a needs assessment, carers assessment or financial assessment
- any of the needs meet the eligibility criteria
- the council has a contract with the failed provider
- another local authority made the arrangements to provide the services, the cost of which was paid for by that authority or that authority was making direct payments in respect of those needs

3. Definitions

“**Business Failure**” is defined in the [Care and Support \(Business Failure\) Regulations 2015](#). Where a provider is not an individual, business failure means that, in respect of that provider:

- an administrator is appointed
- a receiver or an administrative receiver is appointed
- a resolution for a voluntary winding up without a declaration of solvency is passed
- a liquidator is appointed
- a winding up order is made by a court
- a members' voluntary winding up becomes a creditors' voluntary winding up
- an order by virtue of Article 11 of the [Insolvent Partnerships Order 1994](#) (joint bankruptcy petition by individual members of insolvent partnership) (g) is made
- administration moves to winding up pursuant to an order of a court
- the charity trustees of the provider become unable to pay their debts as they fall due

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- where the business failure relates to an individual person, business failure means that the individual has been declared bankrupt
- service interruption because of “business failure” relates to the whole of the regulated activity and not to parts of it

“**Temporary Duty**” or “**Duty**” means the duty on the council to meet needs of people in receipt of a regulated service in the case of business failure or service interruption.

“Temporary” means the duty continues for as long as the council considers it necessary. The temporary duty applies regardless of whether a person is ordinarily resident in the council’s area. The duty applies from the moment the council becomes aware of the business failure. The actions to be taken by authorities will depend on the circumstances and may include the provision of information.

“**Regulated Activity**” means services involving or connected with the provision of health or social care. The services and activities that are regulated are prescribed in Schedule 1 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014. providers of these regulated activities must be registered with the Care Quality Commission (CQC).

“**Registered Care Provider**” means any individuals, partnerships or organisations (companies, charities, NHS trusts and local authorities), that provide care, support or other services to people must be registered with the CQC. The duty applies to these registered providers in respect of carrying out regulated activities.

“**Relevant Adult**” means an adult whose needs for care and support were being met or the carer whose support needs were being met immediately before the provider was unable to carry on providing it because of business failure.

“**Ordinary Residence**” means a person’s abode in a particular place or country adopted voluntarily and for settled purposes, whether for a short or long duration. Ordinary residence can be acquired as soon as a person moves to an area, if their move is voluntary and for settled purpose, irrespective of whether they own, or have an interest in a property in another local authority area.

4. Service interruptions because of business failure

Business failure of a major registered care provider is a rare and extreme event and does not automatically equate to closure of a service. This is because a provider would be considered to have “failed” at the point when an administrator or insolvency specialist becomes involved. It may have no impact on residents or the people who use the services.

However, if a provider is unable to continue because of business failure, the council’s duties are as follows.

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If the provider’s business has failed but the service continues to be provided, then the duty is not triggered. This often may happen in insolvency situations where an administrator is appointed and continues to run the service.

The duty applies where a failed provider was meeting needs in the council’s administrative area. It does not matter whether the council has contracts with that provider; if all the people affected are self-funders or which local authority (if any) made the arrangements to provide services.

The needs that must be met by the council are those that were being met by the registered care provider immediately before the provider became unable to carry on the activity. It is not necessary to meet those needs through the same combination of services that were previously supplied. When deciding how an individual’s needs are met, the council must involve the individuals concerned, any carer that the person has, or any other individual whom the person asks to be involved.

The council has the power, where it considers this necessary to discharge the temporary duty, to request that the provider, or anyone involved in the provider’s business as it thinks appropriate, to supply it with information that it needs. This may involve, for example, up to date records of the people who are receiving services from that provider, to help to identify those who may require care and support and/or to enable Adult Social Care to contact them and arrange for alternative care.

The lack of a needs, carers or financial assessment for an individual must not be a barrier to action. Neither is it necessary to complete those assessments before or whilst acting. The council must meet needs irrespective of whether those needs would meet the eligibility criteria. All people receiving services in Derbyshire are to be treated the same. This includes self-funders and people who receive top ups. The council may charge a self-funded person for the costs of meeting their needs, and it may also charge another local authority which was previously meeting those needs. The charge must cover only the actual cost incurred by the council in meeting the needs.

Where a failed provider is providing an adult with NHS Continuing Healthcare (CHC) which is commissioned by an integrated care board, the relevant integrated care board will be treated as the relevant partner that the council will co-operate with in reaching an agreement about how to meet needs.

The council will not be able to meet NHS Continuing Healthcare needs in provider failure cases. This is because the duty to provide NHS Continuing Healthcare falls on the NHS and the council is not permitted to provide it.

All the above duties apply equally to people funded by local authorities in Wales, Scotland or Northern Ireland, the council may recover costs from those authorities or the person themselves as appropriate.

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Where a dispute occurs, staff must inform the assistant director for commissioning, contracting and market management and contact Legal Services in the resolution of the dispute.

5. Business failure involving a provider in the CQC oversight regime

From April 2015, the financial “health” of certain care and support providers has been subject to monitoring by the CQC. [The Care and Support \(Market Oversight Criteria\) Regulations 2014](#) set out the entry criteria for a provider to fall within the regime. These are intended to be providers which, because of their size, geographic concentration, or other factors, would be difficult for one or more local authorities to replace, and therefore where national oversight is required. CQC will determine which providers satisfy the criteria using data available to it.

Where CQC is satisfied that a provider in the regime is likely to become unable to continue with their activity because of business failure, it is required to tell the council so that we can prepare for the local consequences of the business failure. CQC will inform the council once it is satisfied the provider is unlikely to be able to carry on because of business failure.

CQC’s trigger to contact the council is that it believes the whole of the regulated activity in respect of which the provider is registered is likely to fail, not parts of it. It is not required to make contact with the council if a single home owned by the provider in the regime is likely to fail because it is unprofitable and the CQC is not satisfied that this will lead to the whole of the provider’s relevant regulated activity becoming unable to continue. In these circumstances, it is the provider’s responsibility to wind down and close the service in line with its contractual obligations and it is expected that providers would do so in a planned way that does not interrupt people’s care.

Where CQC considers it necessary, it may request the provider share with it relevant information to support the council in the discharge of their temporary duty. CQC must give the information, and any further relevant information it holds, to the council affected to enable it to fulfil its temporary duties.

If the CQC is of the view that a provider is likely to become unable to continue with its activity because of business failure, the Council will work with the CQC to fulfil their temporary duty.

6. Business failure involving a provider not in the CQC oversight regime

A large proportion of the providers in Derbyshire are likely to fall outside the CQC oversight regime as small and medium size businesses.

Where a provider falls outside the CQC market oversight criteria the temporary duty on the council to meet needs in the case of business failure and to ensure continuity of care in respect of business failure still applies.

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The council will record soft information to identify financial constraints. For example, the recruitment and retention of staff, complaints about food, monitoring checks of supplies, complaints regarding non-payment of staff or suppliers, if urgency is expressed by providers to get purchase orders processed quickly to trigger payments etc.

7. Administration and other insolvency procedures

In the event of business failure, it is often the case that an administrator will be appointed. The role of the administrator is to represent the interests of the creditors of the provider and to seek ways to rescue the company as a 'going concern'. Where this occurs, the council will not be required to exercise its temporary duty.

The council will not be involved in the commercial aspects of the insolvency but will work with administrators to ensure the safety and wellbeing of people receiving care and support.

It is recognised that early removal of people from a service or terminating commissioning arrangements following the appointment of an administrator could impact on the potential to retain the business as a 'going concern'. This will be avoided in so far as it is possible without adversely affecting people's wellbeing.

The council reserves the right to suspend new placements with providers subject to insolvency arrangements until such time that assurances are provided about the future of the service. The relevant adults will also be supported to decide whether they would want to continue to be supported by an organisation where there is a lack of clarity over future service arrangements.

8. Service interruptions other than business failure (service failure)

In situations where services fail or are interrupted but business failure is not the cause powers detailed in Sections 18 and 19 of the Care Act 2014 can be exercised to meet urgent needs without having to first conduct a needs assessment, financial assessment, or eligibility criteria determination.

The council will meet urgent needs regardless of whether the adult is ordinary resident in its area and, therefore, can act quickly if circumstances warrant.

The power to meet urgent needs is not limited by reference to services delivered by providers and is thus available where urgent needs arise as a result of service failure of an unregistered provider (i.e., a provider of an unregulated social care activity). The power may also be used in the context of quality failings of providers if that is causing people to have urgent needs.

The action required in relation to each service interruption should be considered on its facts and via a process of risk assessment. It is for the council to decide if it will act to meet a

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person’s needs for care and support which appear to it to be urgent. In exercising this judgement, the council must act lawfully, including taking decisions that are reasonable.

9. Activation of the Procedure

As soon as a failure notification is received or real risk of potential failure is identified, the assistant director for commissioning, contracting and market management must be notified immediately by telephone with confirmation in writing (email). If they are unavailable, contact should be made to the nominated deputy. It is not acceptable to leave a message with other members of staff.

The assistant director for commissioning, contracting and market management will instruct appropriate officers to verify the failure/potential failure with CQC and/or the provider and any other relevant parties.

Should the business failure be related to the alleged abuse of one or more adults, the safeguarding group manager or their nominated deputy must be notified and should ensure that safeguarding alerts are made in accordance with the safeguarding policy and procedures.

The relevant service manager for contracting and compliance will immediately arrange an incident response group (IRG) meeting to take place at the earliest practicable opportunity, to agree a plan of action, and if appropriate to invoke adult care operational procedures.

In view of the potential implications for the health and well-being of individuals, the relevant officers will be required to treat the situation as demanding their personal involvement and very high priority; to ensure timely involvement of all key parties (including CQC) ‘virtual’ meetings such as through teleconference will be utilised.

10. Incident Response Group

The first meeting of the incident response group (IRG) is to be arranged at the earliest practicable opportunity following the identification of a provider failure (or potential failure). The service manager for contracting and compliance will act as chair.

Members of the IRG may include but not be limited to:

- assistant director commissioning, contracting and market management
- group manager contracting and compliance
- adult safeguarding group/service manager
- group/service manager for prevention & personalisation & principal social worker
- service manager for contracts and compliance
- service manager for brokerage

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- finance representative
- communications representative
- legal representative
- CQC representative (If applicable)
- ICB Commissioning/Contracting representative (If applicable)
- ICB Quality representative (If applicable)
- NHS Continuing Health Care representative (If applicable)
- where appropriate the IRG should also include representatives from other local authorities.

The first meeting will confirm the council’s lead officer for the group. The lead officer will:

- have responsibility for ensuring that all decisions are made and implemented in a timely manner
- ensure minutes are taken of each meeting with agreed actions (timescales noted), and circulated to group members and copied to the relevant leads for adult care services
- organise any subsequent meetings - the IRG will decide on the frequency of its meetings, agreeing a core group of members who will be kept informed and responsible for cascading information to colleagues

Matters relating to publicity and the release of information will be considered at the IRG and a suitable balance struck so that where failure is not yet a certain outcome, the situation is not exacerbated and a provider’s entitlement to commercial confidentiality is not infringed.

The IRG will discuss, if deemed appropriate, potential measures to prevent or delay failure for example short-term additional funding or assistance from the council.

It may be appropriate to invite other “interested parties” to certain meetings, or parts of meetings, where they have a specific contribution to make, but not as “ongoing” participants. These could include, for example:

- relevant provider management
- advocacy representative
- family/carers representatives
- ambulance service representative
- police
- health and safety officers

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11. Disputes between Authorities

There will be open communication and co-operation between the council and the relevant local authority that arranged and or funded care and support with the failed provider. This is to ensure that alternative care and support is secured with minimum delay and disruption. In the event of a dispute the mechanism for resolution will be an application to the relevant secretary of state for a determination (ordinary residence dispute resolution procedure).

12. Contingency planning

As part of contingency planning the council will identify and assess potential risks in Derbyshire with local partners. The council will also work with local providers to determine the services they are willing and able to provide if the need in the case of provider failure. This will enable the council to facilitate a prompt response and secure continuity of care for people affected in the event of a business failure or service interruption.

13. Brokerage Procedure for Managing Large Hand backs

Hand backs are identified either by the contracts manager, or duty broker via emails from an agency. Emails are usually exchanged when an ‘incident’ arises.

Either the contracts manager, or brokerage service manager agree to email all service managers, senior practitioners and allocated workers of client PINS affected by the hand back. All are advised that Brokerage cannot guarantee obtaining a replacement provider in turn, and that alternatives may need to be considered, such as respite, family or other strengths approach. All are requested to create a brokerage episode, and email brokerage@derbyshire.gov.uk when this is complete. If required, the brokerage service manager will organise a team multi-disciplinary team (MDT), inviting Adult Social Care colleagues and brokers for “progress chasing and action planning”.

The duty broker upon receipt of email confirming brokerage workflow completes the following, usually within an hour of receipt. Assigns the workflow as urgent to the next available broker in turn and is advised it is an urgent hand back and change of provider.

Duty will set up a tab in the brokerage’s team spreadsheet for change of provider (CoP) hand backs in the Brokerage team channels.

The assigned broker completes the enquiry and follows up, recording actions in the broker activity form (BAF) and then updating the handbacks spreadsheet (accessible to Adult Social Care colleagues).

Regular email follow up and updates will occur between all parties.

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14. Information for individuals who self-fund their care provision

The Care Act 2014 regulations and guidance places a temporary duty on the Council to ensure that care and support needs of Adults and the support needs of carers continue to be met if there is a service interruption or a local provider failure. The duty applies regardless of whether an individual is self-funded, or the Local Authority pays for the care and support services.

Derbyshire County Council’s adult social care service (ASC) will provide advice and guidance in relation to meeting individual social care needs and will liaise with health professionals in relation to ensuring health needs are met. Social care workers will advise on alternative care provision and will keep the individual, family, and carers fully informed and actively engaged in the process, exercising choice and control to support and maximise wellbeing. ASC will complete an assessment and support plan with anyone who funds their own care where this is requested by the individual or their representative.

ASC will schedule safe and well visits as a priority and make referrals to advocacy services as required. Social care workers will listen to any concerns that the person or family raise and provide support to try to alleviate the situation and will also complete a review within the new care setting.

Derbyshire County Council will not provide financial advice nor fund any financial support for additional costs that may arise for people who fund their own care; however, information on obtaining independent financial advice is available on the council’s website and social care workers will be able to direct individuals to this.

15. Review of policy

This policy will be reviewed as necessary to reflect operational or legislation changes.

16. Contact Information

Further advice and guidance is available from the Contracts and Compliance team via email: asch.adultcare.contracts@derbyshire.gov.uk

17. Appendices

[Appendix 1a](#)

[Appendix 1b](#)

[Appendix 1c](#)

[Appendix 2 – Meeting Agenda](#)

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[Appendix 3 – Feedback Sheet](#)

[Appendix 4 – Care Home Market Failure Procedure](#)

Author History

Approval and Authorisation History

Authored by:	Ann Welburn	Contracts Manager	March 2023
Approved by	Colin Selbie	Assistant Director of Commissioning and Market Management	March 2023

Change History

Version 1	July 2016	Taffline Davies	New procedures
Version 1.	Sept 2018	Lele Bobeszko	Review: Minor changes to terminology and formatting
Version 2	Jan 2023	Ann Welburn	Review: Minor changes to terminology and formatting
Version 3	Jan 2024	Alice Sanghera	Review and update