

Contingency Planning Protocol for Regulated Adult Services in Newcastle

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Principles
Adult
Emergency
Carer
Commissioning
Incident
Council
Care
Needs
Provider
Stakeholders
Communication
Advocate
Market
Sustainability
Support

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1. Introduction

This protocol details the roles and responsibilities of Newcastle City Council in the event of provider failure and the principles that have been put in place with providers to ensure, in the event of provider business failure, services are transitioned as smoothly, and with as little disruption to the adult receiving services, as possible.

This protocol relates to adult services providing regulated care activities for example:

- Regulated residential care homes
- Regulated nursing care homes
- Regulated support in the home

The types of failure covered by the plan include immediate closure or cessation of a service; cancellation of registration through a Care Quality Commission (CQC) enforcement action; immediate closure due to a catastrophic event. This temporary duty **will not** be triggered in the event of a planned provider closure.

This protocol does not replace duties under the safeguarding policy and for situations where there are safeguarding risks a separate process should be followed.

2. Background

The Care Act (2014) introduces a temporary duty on local authorities to ensure that the care and support needs of those receiving **regulated** care activities continue to be met, should a **regulated** service provider experience business failure and be unable to carry out that particular activity. This duty applies regardless of whether the individual's care is funded by the local authority or not.

The Act states that a local authority 'must for so long as it considers necessary' meet the needs for care and support which were being met immediately before the business failure occurred. The local authority is not required to provide identical services to those that were previously provided and has discretion as to how it will meet those needs, though this should be agreed with the individual where possible. The duty applies as soon as a local authority becomes aware of a business failure, and applies to both adults in need and their carers.

'Business Failure' is defined in The Care and Support (Business Failure) Regulations 2015 and any references made to business failure in this document should be read in this context.

3. CQC Market Oversight Scheme

The Care Act (2014) also makes the Care Quality Commission (CQC) responsible for assessing the financial sustainability of those care organisations that local authorities would find difficult to replace should they fail. The Care and Support (Market Oversight Criteria) Regulations 2015 sets out the following criteria for a provider to come under the scheme:

Non-residential / domiciliary care providers who provide:

- 30,000 or more hours of regulated care per week;
- or**
- provide regulated care to 2,000 or more people;
- or**
- provide 30 or more hours of care per week per person to at least 800 people.

Residential and nursing care home providers who operate:

- Between 1,000 and 2,000 beds with at least 1 in 16 or more local authority areas;
- or**
- Between 1,000 and 2,000 beds and the bed capacity of the provider in at least 3 local authority areas exceeds 10% of the total bed capacity for the local authority area;
- or**
- 2,000 or more beds.

Entry to the scheme does not mean that a provider is at risk of failing. It only means that the provider would be difficult to replace if they did fail. Providers will stay on the list for a minimum of 12 months at which point if it is deemed there is no longer a risk they will be removed.

CQC will publish the names of all regulated care providers who meet the above criteria and will share data as required with the relevant local authorities.

4. Roles and Responsibilities

This section describes the responsibilities that Newcastle City Council has when ordinarily working with providers. These tasks allow us to have a good understanding of the market in our area and mean that if a provider starts to face difficulties regarding the sustainability of their business, we would be quickly aware of it and able to respond effectively.

The Commissioning and Procurement team will:

- ensure they have a robust understanding of the market and its potential weaknesses in order to ensure appropriate action is taken should there be an issue;

- support the provider market through developing and publishing Market Position Statements in order to inform the market of future commissioning intentions;
- carry out provider engagement on a regular basis;
- produce reports on a regular basis on the number of service users accessing services (by service type). This information is held internally and supports us to understand the capacity within social care markets;
- gather information on the number of service users in residential and nursing care services irrespective of who they are funded by, and the number of vacancies in those services, on a monthly basis. This information is held internally and supports us to understand the capacity within social care markets;
- work with key stakeholders including CQC, CCG and the NHS to ensure there is a full understanding of the market and establish clear lines of communication with these, and any other relevant, partners;
- ensure that information and concerns are shared with relevant parties to allow a proactive and coordinated approach to any potential emergencies.

5. Overarching Best Practice Principles

This section sets out the overarching best practice principles, in line with requirements within the Care Act 2014, which should be applied in all cases of business failure.

- The needs that **must** be met are those that were being met by the provider immediately before the provider became unable to carry on the activity.
- Newcastle City Council **must** ensure a person's needs are met but it is not necessary to meet those needs through exactly the same combination of services that were previously supplied, however the aim should be to provide a service as similar as possible to the one previously received unless a change to the package is specifically requested.
- When deciding how someone's needs will be met, the Council **must** involve the person concerned, any carer that the person has, or anyone whom the person asks the Council to involve.
- Where the person lacks capacity to ask the Council to do that, the Council **must** involve anyone who appears to be interested in the person's welfare or

appoint an appropriate advocate.

- Where a carer's service is involved, the Council **must** involve the carer and anyone the carer asks to be involved.
- The Council **must** take all reasonable steps to agree how needs should be met with the person concerned.
- Wherever possible the Council will maintain continuity of care and relationships with staff.
- Exiting providers must provide all service user records on termination of the contract to the Council or any successor provider who is to deliver the service.

6. Agreed Contingency Principles

Newcastle City Council held a number of meetings with services providers within the City to agree arrangements that could be put in place should a service provider in the City experience business failure.

All parties agreed that should this situation arise the highest priority was to ensure that the people receiving services saw as little disruption as possible and that their needs continued to be met.

The following principles were agreed as a result of these meetings:

- All providers agreed to work collaboratively, if required, in order to ensure service continuation.
- All providers felt they would be able to offer support of some form should a provider within their submarket fail – information to be gathered by the Social Care Commissioning and Procurement team and reviewed bi-annually. This will be in the form of a questionnaire, an example of which is attached in **Appendix 1**
- When accommodation based services are involved providers highlighted that they would have to be mindful of their current residents when agreeing to offer support in an emergency situation, and current residents' needs would take priority.
- Providers would be advised of how long the service is required for as soon as practicably possible. This would enable them to plan the best use of any resources required.
- All care planning and risk information held by the Council will be shared with any incoming provider as soon as possible.

- All information held by the outgoing provider will be shared with the incoming provider as soon as practicably possible.
- All providers to ensure Newcastle City Council has a copy of their Business Continuity Plan and to append the final version of this document to those plans.

7. Contingency Actions

This protocol will be activated if Newcastle City Council are notified of:

- the immediate business failure of a regulated care provider registered as operating with its area;
- or*
- the immediate suspension, closure and deregistration of a regulated care provider by CQC;
- or*
- any major and immediate unplanned business interruptions e.g. significant incident where the providers own business continuity plan is unable, or has failed, to address the resulting service impact.

In the event of an incident the Social Care Commissioning and Procurement Team should be contacted on the following number **0191 2115394**. If the incident occurs outside of normal office hours, then the Emergency Duty Team should be contacted on **0191 278 78 78**

A Council Officer will be identified as Incident Manager who has the following responsibilities:

- Work with key partners to devise an action plan and set clear timescales for action
- Work with the current provider to obtain a copy of an up to date service user list, this should include **all** individuals receiving support, with details of; care plans; risk assessments; medication; health records; next of kin or representative; details of placement; the name and contact details for funding authority or confirmation if the individual is a self-funder.
- Seek legal advice as required
- Keep Elected Members, Directors, Assistant Directors and Service Managers fully briefed as necessary
- Ensure all meetings and decisions are recorded
- Arrange for creation of incident log for all requests, decisions and actions

The Incident Manager will arrange for all service user records to be removed from the current provider as required and transferred to any new or interim provider or relevant Social Care Team.

For those services where the support is provided within the home, if a service users property has been accessed via a key safe, or a member of staff held a key for a service user's property then any keys must be given to the Incident Manager and any key safe combination must be changed.

The Incident Manager will ensure that all funding authorities are promptly identified and informed of the provider business failure.

In the event of Newcastle City Council being notified by another local authority of a regulated provider business failure in their area (and Newcastle has individuals placed with the provider) then an appropriate Council Officer will be allocated to support the process, and work with the host authority, service provider, service users, family members, carers and any other relevant stakeholders. This type of emergency fall outside of the scope of this protocol.

8. Communication

Good communication will be essential for the smooth transition of services, particularly for service users and their families who will require reassurance and information on any proposed changes to services. Clear communication will also allow service users and their carers to be fully informed when making decisions around alternative arrangements

Equally staff teams must be kept informed throughout the process to ensure all queries are responded to correctly and with a consistent message, giving unclear or mixed messages can raise peoples stress and anxiety levels.

Business failure for a regulated service could result in negative press attention, all staff involved in this protocol should make themselves aware of the media policies of their own organisation.

Providers should not contact the press in terms of any of their services contracted for by the Council without first giving two weeks' notice to the Council of its intention to do so, including the content of the expected press communication. The Council has the right to refuse any such press communication if appropriate.

Any joint press statements must first be discussed between the Council and providers and shall make reference to, and include quotes from, both parties.

Appendix 1 – Emergency Contingency Planning

In an emergency situation would your organisation be able to provide staffing capacity if required?

Yes

No

In an emergency situation would your organisation be able to provide management capacity if required?

Yes

No

Does your organisation have any geographic preferences for where service users live? If Yes please give details:

Yes

No

Does your organisation provide specialist care, if Yes please give details:

Yes

No

Organisation name –

Name of person completing the form –

Position of the person completing the form -