**Provider Failure Procedure**

1. **Introduction**

This procedure sets out the roles and responsibilities of Salford Care Organisation, Salford City Council and Providers of commissioned care services operating in the area of Salford City Council, in the event of any provider failure and aims to:

* Ensure that there is a clear, transparent, fair process that is properly communicated.
* Ensure all parties are aware of their responsibilities.
* Ensure that incidents of Provider Failure are managed and controlled in a proportionate, sensitive and effective manner.
* Acknowledge the need for emergency short term changes to support if necessary – whilst still aiming to promote long term choice and control for people.

1. **Background**

2.1 The Care Act 2014 imposes clear legal responsibilities on local authorities where a care provider fails**.** The duty is to all people living within the local authority area and receiving care from a care provider, whether or not the local authority organises or pays for that care.

2.1 The Care Act 2014 specifically references regulated activity and registered providers, but this procedure is aimed at all services we provide to support people’s assessed needs, so will also include some non-regulated service and not registered providers.

2.3 [Provider/business failure](https://www.legislation.gov.uk/uksi/2015/301/pdfs/uksi_20150301_en.pdf) occurs, for the purposes of local authority responsibility, if care and support (that is meeting assessed need) ceases. If the care and support continues to be provided, such as in the event of the provider going into administration, but the service continues to be provided then the requirement does not apply. Equally if a provider chooses to abruptly leave the market even if the service hasn’t failed this could also result in a sudden cessation in service. (Please see legal definition at Appendix)

2.4 The Care Act 2014 establishes that the Care Quality Commission (CQC) has taken on a new responsibility for assessing the financial sustainability of certain “hard-to-replace” care providers.

2.5 To assess financial sustainability, the Act gives the CQC the power to request information from any provider in the region. The CQC will share this information with relevant local authorities where it believes a provider is about to fail, to help minimise the negative effects of the provider failing, and to ensure a smooth process that provides continuing care to individuals

2.6 The scheme includes only those providers who are large in size, regional presence or specialism. Failure of these providers would present significant challenges for Local Authorities in the affected areas. Legislation sets out criteria to identify providers that fall within this scheme.

1. **Purpose**

3.1 The purpose of the proceedure is to:

* Ensure that service continuity is retained in circumstances where Providers may fail or choose to close / give notice on their contract (or appear likely to) – that being they are unable to continue to provide services and support to meet someone’s assessed needs under the Care Act 2014.
* Give confidence and reassurance to people supported, carers and family members in the event of uncertainty about the continuity of care and support.
* Establish a clear set of responsibilities and accountabilities for mobilising staff and other resources in response to potential Provider closure or failure.

1. **Scope**

4.1 This procedure should be used by Salford Care Organisation, Salford City Council and Providers of commissioned care services (both regulated and non-regulated) in the event of business failure.

4.2 Providers may already be known to be failing as a result of quarterly risk data submission, and/or utilising the Provider Sustainability Policy (Appenidx 6) or this could have occurred unexpectedly.

4.3 This procedure applies to all adult social care providers and nursing home providers located in Salford, regardless of there being a formal contract in place with the provider and regardless of whether local residents are using the service.

4.4 This procedure is applied in cases where the CQC has identified closure through suspension of registration or notification via the national Market Oversight Scheme.

4.5 The Care Act often refers to only regulated services, but this procedure will be applied to the whole of the local market (including non-CQC registered services).

**5.0 Processes in the Event of Provider Failure**

5.1 It is expected that a Provider will have participated in / concluded the Provider Sustainability Process prior to giving notification of Failure, except in circumstances that were unforeseen and happened quickly.

5.2 A Provider may also use this process if they are choosing to exit the market, so that the Salford system can respond appropriately to ensure continuity of care.

5.3 In the event of **potential** provider failure, on receipt of notification from the CQC or a Provider Failure Notification Form (Appendix 1):

1. Ensure both Salford City Council and Salford Care Organisation are notified.
2. Ensure the Director of Adult Social Services (DASS) is informed.
3. Provide briefing for the Lead Member of Adults, Health and Wellbeing
4. Convene a group that is proportionate to the scale of the Provider failure; which will include:  
   Procurement and Market Management Team (PMMT)  
   Director of Adult Commissioning  
   Appropriate Adult Social Care Heads of Service   
   Principal Social Worker  
   And may also include:  
   Legal, Finance, HR, CHC, FNC and others as appropriate.
5. Ensure weekly meetings scheduled with the Provider to maintain updates and consider appropriate interventions.
6. Maintain updates / communication, as appropriate with commissioners, ASC Director and Heads of Service. GM/Information Sharing Protocol.

In the event of **actual** provider failure (in addition to the above):

1. Co-ordinate a strategy meeting with all relevant commissioners (Placing commissioners from outside of Salford) and practitioners to assess scope of work required and assign resource. (Service Continuity Mobilisation Procedures at Appendix 2)
2. Strategy meeting cheklist is at Appendix 3

5.4 Where a failed provider is providing an individual with NHS Continuing

Healthcare, which is commissioned by NHS Integrated Care Salford, the responsibility falls on the NHS. Salford local Authority and Salford Care Organisation. Adult Social CareTeams will work closely with NHS collegues and follow NHS Policies and Procedures surrounding these individuals to ensure all individuals have appropriate care that meet the needs.

1. **Intervention / Exit Plan / Process**

6.1 Options for ensuring continuity of care, may include:

* Providing support to the organisation to continue providing the service (long or short term).
* Another organisation taking direct responsibility for managing the delivery of services on a temporary basis.
* Facilitate another provider to deliver the service and TUPE staff.

6.2 Any decision to intervene must be go through the correct governance process (defined at Appendix 4). Advice should be sought from Legal, Finance and Human Resources to support the decision.

* 1. Any temporary arrangements must also have a clear exit plan and timescales

to securing an alternative, long term care arrangements and must remain in   
 place until this is secured to provide continuity of care.

**7.** **Continuous Improvement & Review**

7.1 Following any Provider business failure, lessons learned should be recorded and reported from each experience and process used. This will help to improve existing processes and procedures to help predict any further potential business failure and to identify any alternative action that could have been taken

7.2 This procedure will be included in emergency/business continuity planning as a possible scenario, which takes place annually and will be reviewed again in 2025.

**Appendix 1**

**Provider Failure Notification Form**

|  |  |
| --- | --- |
| 1. **Provider Details** | ` |
| Name of Provider |  |
| Services operating in Salford |  |
| Type of Care Provision |  |
| CQC Registration Details |  |
| Address of Establishment(s) and/or office(s) |  |
| Name of Key Contact |  |
| Telephone Number |  |
| Email Address |  |
| Date of proposed closure / service end? |  |
| Any considerations for not progressing closure / service end? |  |

|  |  |
| --- | --- |
| **2. Care Provision**  (Domiciliary Care Providers Only) |  |
| 1. How many people do you currently provide care for? |  |
| 1. How many people who use your service currently self-fund? |  |
| 1. What is your ratio of residents between ASC funded, self-funded and other LA and what are their rates? |  |
| 1. How many people receive FNC/CHC? |  |
| 1. How many people are in receipt of FNC/CHC? |  |
| 1. Date you intend to communicate with people and families? |  |
| **2a. Care Provision**  (Care Home Providers Only) |  |
| 1. How many CQC registered beds do you have? |  |
| 1. What is the current occupancy level? |  |
| 1. How many people who use your service currently self-fund? |  |
| 1. What is your ratio of people who are resident between ASC funded, self-funded and other LA and what are their rates? |  |
| 1. How many people are in receipt of FNC/CHC? |  |
| 1. Date you intend to communicate with people and families? |  |

|  |  |
| --- | --- |
| **3. Staffing** |  |
| 1. How many staff are employed in the service? |  |
| 1. What are the implications for staff? |  |
| 1. Date you intend to communicate this with staff? |  |
| 1. Any affiliated unions that you are aware of? |  |

|  |  |
| --- | --- |
| 1. **Building(s)** |  |
| 1. Are there any intentions for the buildngs? |  |
| 1. Is there any alternative? |  |

**Appendix 2**

**Service Continuity Mobilisation Procedures**

These mobilisation procedures set out the roles and responsibilities of SCO & SCC in the event of the imminent closure and/or failure of a contracted social care service, where there is a risk of not delivering a regulated or other non-regulated ASC activity that is meeting needs.

Each provider / service failure is different and it is up to Head Of Service to decide the best approach for the individual situation. This processes is to be used as a framework and should be applied flexibly.

The resources need to be proportionate to the risk and scale of the incident and consideration should be given to who should be appropriately assigned to lead and undertake tasks in accordance of the risk and scale of the incident.

The variability of incidents means that a standard approach is not appropriate, however a checklist at Appendix 3 provides a framework for discussions and planning.

The decision to activate these procedures will be made by Salford’s Drirector of Adult Social Services.

1. Appoint an appropriate person to liaise with CQC.
2. Convene an incident team including Procurement and Market Management Team (PMMT), Director of Adult Commissioning, Appropriate Adult Social Care Heads of Service, Principal Social Worker, Legal, Finance, HR, others as appropriate (Health colleagues if CHC etc) and proportionate to the scale and risk of the incident.
3. Devise an action plan to manage the response to the business failure allocating tasks and duties and giving clear direction and timescales.
4. Seek approval for the resources necessary to achieve the action plan from relevant senior leaders.
5. As a team - liaise with other senior partner stakeholders – escalating issues where necessary.
6. Ensure that meetings are properly recorded; documenting discussions, decisions, actions, timescales and any barriers/issues for the purposes of audit.
7. Meetings should be solution focussed.
8. A single list of affected people supported will need to be developed and maintained.
9. Identification of individual’s care needs (and capacity) and date of last assessment.
10. Identification of any out of area placements and notification of the incident to relevant commissioners
11. Consider potential options for alternative service provision. This may include: - spot purchase from other care providers;   
    - reserving services in other suitable locations;   
    - working with other local authorities to identify alternative provision   
    - temporary staffing;   
    - temporary management, for example via using a consultancy company;   
    - alternative contracted management/nursing team provision ;   
    - short-term additional funding;   
    - fee variation over and above normal ‘expected to pay’ rates to secure suitable service provision;   
    - other actions as deemed necessary based on individual circumstances.
12. The team will all need to input into exploring options and adding to the case for or against each proposal.
13. Consider operational implications as well as impacts on individuals and their families.
14. Wherever possible all transfers of people between care providers should occur within normal working hours and be least disruptive as possible.
15. Consider communication that may be required: to staff, people supported and their families, general public etc.

**Appendix 3**

**Provider Failure/Interruption/Closure: Strategy Meeting Checklist**

|  |  |
| --- | --- |
| Date initiated: |  |
| Name of service(s): |  |
| Chair of Incident Team: |  |
| Accountable officer if different from above: |  |
| Incident Group Members: |  |
| ACTION |  |
| Responsible Officer |  |

|  |  |  |
| --- | --- | --- |
| **ACTION** | **Responsible Officer** | **Action owner** |
| Is provider CQC registered?  (if not, what is the legal scope of duties?) |  |  |
| Identify stakeholders and plan for involvement, consultation and information.  Consider CHC/FNC, MH, Health, CHMP |  |  |
| Establish reporting arrangements to Executive Director, Director(s) and Lead Member |  |  |
| Establish number and needs of people affected. |  |  |
| Devise incident plan and allocate actions to incident team as appropriate. |  |  |
| Notify Comms Teams (SCO and SCC) for handling any briefings to and or responses from media |  |  |
| Establish timescale(s) for closure or failure(s)  Can the provider recover its position?  How much longer, if at all?  What time period would allow for the most effective plan to be implemented?  Can the provider continue to provide service with support? |  |  |
| Liaise with CQC coordinating actions where necessary. |  |  |
| Obtain copy of the contract(s). |  |  |
| Establish the number and names of people affected and who funds them |  |  |
| Develop list of other providers (In Salford, GM or wider) with potential capacity to take on people, liaising with CQC as necessary.  Consider asking appropriate local providers to hold voids / not accept new OOA referrals. |  |  |
| Identify relevant inhouse teams / staff or agency (NHSP?) staff who could support. |  |  |
| Develop list of external staffing agencies it would be acceptable to use. |  |  |
| Think about use of advocates that may be required for people or families. |  |  |
| Is the support linked to accommodation or separate, if separate who is the landlord? |  |  |
| How many staff – TUPE implications |  |  |
| Which staff will be mobilised to do the work and how will they be freed from their current workload |  |  |
| What are the biggest risks and how can we mitigate this?   * Staff / service sustainability * Maintaining confidentiality * Complex people / lack of provision * Resource to carry out reviews in timescale |  |  |
| What are the opportunities?   * Assisting staff into other vacancies in the market * Building use * Better aligned with strategic need and demand |  |  |

**Appendix 4**

Governance Process – subject to change

At the time of writing, the governance would be:

SCC DMG & Lead Member

NCA ASC Assurance Board and then Investment Commitee

**Appendix 5**

[The Care and Support (Business Failure) Regulations 2015 (legislation.gov.uk)](https://www.legislation.gov.uk/uksi/2015/301/pdfs/uksi_20150301_en.pdf)

**Appendix 6**

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