

Staffordshire County Council

Provider Failure

Standard Operating Procedure

March 2017

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1.0 Introduction

The Care Act 2014 places a new temporary duty on local authorities, to meet the care and support needs of an adult and the support needs of a carer, when a care provider becomes unable to carry on because of business failure. This procedure document sets out what this duty means, when it is triggered, what needs will be met and how those needs will be met by Staffordshire County Council. The procedure seeks to ensure that adults and carers are not left without the care or support they need in the event that their care provider becomes unable to carry on providing it because of business failure.

The procedure also covers service interruptions and the discretionary power to meet urgent needs.

2.0 Key Definitions Applicable to this Procedure

2.1 Temporary duty

This means the duty on Staffordshire County Council to meet care and support needs for an adult, or support needs for a carer where registered care providers are unable to carry on because of business failure. The duty is temporary and will continue for so long as the Council considers it is necessary. The temporary duty will be triggered when the Council becomes aware of the business failure and the provider confirms they can no longer carry on its activity.

2.2 Registered care provider

Any individuals, partnerships or organisations (companies, charities, NHS trusts and local authorities), that provide regulated activities to people on a contractual basis must be registered with the Care Quality Commission (CQC)¹. The temporary duty applies to these 'registered care providers' in respect of carrying out 'regulated activities'.

¹ The statutory basis for registered care providers and persons registered (in respect of an establishment or agency) is the Health and Social Care Act 2008, Part 1, Chapter 2 and the Care Standards Act 2000, Part 2

2.3 Regulated activity

These are regulated activities 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 CQC. Examples of regulated activities include the provision of personal care and accommodation for persons who require nursing or personal care.

2.4 Relevant adult

This is the 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.

2.5 Ordinary residence

Ordinary residence is defined in a leading case² and refers to 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.

3.0 Legal Framework

The Care Act 2014 imposes a clear temporary duty on local authorities to meet adults' care and support needs and carers' support needs which were being met immediately before the registered care provider became unable to carry on the regulated activity. This temporary duty applies to all people receiving services in the area of Staffordshire as set out in paragraph 4.1 below. This procedure is written in accordance with the statutory framework and guidance.

4.0 Scope of Temporary Duty

4.1 To whom does this procedure apply?

This temporary duty applies to all people receiving services in Staffordshire regardless of whether:

- the relevant adult or carer is ordinarily resident in Staffordshire;
- Staffordshire County Council has carried out a needs assessment, a carer's assessment or a financial assessment;
- any of the needs meet the eligibility criteria;
- the costs of meeting their needs are made by a self-funder;
- Staffordshire County 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.

4.2 What needs will be met?

Staffordshire County Council will meet those care and support needs of adults and support needs of carers, which were being provided immediately before the provider became unable to carry on that activity in Staffordshire because of business failure.

In the event that there is no assessment of needs, carer's assessment or a financial assessment and irrespective of whether those needs would meet the eligibility criteria, the Council will act as promptly as possible to meet needs under the temporary duty.

Where the Council requires further information to enable it to meet this temporary duty, it will request that the provider or anyone involved in the provider's business, supply it with the information it needs. For example, this may involve up to date records of the people who are receiving services from that provider, to help the Council to identify those who may require its support.

4.3 How will those needs be met?

The Council has discretion as to how it will meet needs when this temporary duty becomes applicable. Examples in the Care Act 2014 include accommodation, care and support at home or in the community, counselling and other types of social work, goods and facilities, information, advice and advocacy. The Council is not required to

meet needs in exactly the same combination of services that were previously supplied; however, it will aim to provide a service as similar as possible and on the basis that the person's needs will continue to be met.

Some people may only require information and advice on alternative services available locally to enable them to make a properly informed choice about a new provider.

Others may require the Council to actively arrange care with a different provider for a period of time, to ensure there is continuity of care.

The steps taken will depend on both the circumstances of the provider failure and the nature of the support the adult or carer requires from the Council.

4.4 Who will be involved in deciding how needs will be met?

In deciding how to meet an adult's needs for care and support, Staffordshire County Council will involve:

- the relevant adult concerned;
- any carer that the adult has; and
- anyone whom the relevant adult asks the authority to involve.
- Where the relevant adult lacks capacity to ask the Council to involve other persons, the Council will involve anyone who appears to it to be interested in the adult's welfare.

In deciding how to meet a carer's needs for support, the Council will involve:

- the carer;
- any person the carer asks Staffordshire County Council to involve.

Where an adult's or carer's needs are case managed by one of the Council's social care partners, such as Staffordshire and Stoke on Trent Partnership NHS Trust, the Council will work jointly with their social work teams to ensure the appropriate actions are coordinated and undertaken.

Staffordshire County Council will take all reasonable steps to agree how needs should be met with the relevant adult or carer. In line with the wellbeing principle, Staffordshire County Council will seek to minimise disruption for people receiving care. Where appropriate the use of IMCA's and advocates will also be accessed to support people through this process.

4.5 When will the temporary duty apply?

The temporary duty will apply as soon as the Council becomes aware of the business failure and the provider confirms they can no longer carry on its activity. It will not apply where a business ceases to operate because of its failure to meet the CQC's standards. If arising from quality failures or the needs become urgent, the local authority has a discretionary power that could be exercised to meet needs. Section 19(3) of the Care Act sets out how the Local Authority can exercise a power to meet urgent needs in the context of quality failings.

If, for example, a business is declared insolvent and an Administrator is appointed, that is, there is a business failure but the service is still continuing to be provided, the Council has no duty to intervene to provide care and support. If, however, the service does not continue to run following business failure, the temporary duty will apply and the Council will ensure an adult's care and support needs and a carer's support needs are met.

The temporary duty will apply for as long as Staffordshire County Council considers it is necessary, i.e. that it is satisfied that the person's needs will be met by the new provider. At that point those people who arrange their own care, will once again become responsible for arranging their own care.

4.6 Will a charge be made when discharging this temporary duty?

The Council may charge the relevant adult for the actual costs incurred of temporarily meeting his or her needs by providing alternative care or support, in line with the Council's Fairer Charging policy. The Council will not charge for the provision of information and advice to a person.

The Council may recover the actual costs of temporarily meeting the needs of a person who is not ordinarily resident in Staffordshire from the relevant local authority which made or funded the arrangements with the failed provider. The costs recovered will be those costs incurred by the Council in meeting the needs under the temporary duty. Costs can also be recovered from the relevant local authority in Wales or Scotland or the relevant Health and Social Care trust in Northern Ireland, which arranged or funded the care and support with the failed provider.

4.7 Cross border placements

There will be close communication and co-operation between the Council and the relevant local authority in Wales or Scotland or the relevant Health and Social Care trust in Northern Ireland that arranged or funded the care and support with the failed provider. Generally, responsibility will continue to remain with the authority that arranged and or funded the care and support.

4.8 NHS Continuing Healthcare

Where a failed provider in England is providing an adult with NHS Continuing Healthcare which is commissioned by a clinical commissioning group, the relevant clinical commissioning group will be treated as a relevant partner that the Council will co-operate with in reaching an agreement about how to meet needs.

Staffordshire County 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. The NHS duties are outside the scope of this procedure. However the Local Authority would act as co-ordinator for the response to the failure and ensure appropriate liaison with the local NHS teams takes place.

5.0. Disputes between authorities

Where required, there will be close communication and co-operation between Staffordshire Council and the relevant local authority that arranged and or funded the 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 determination¹ (ordinary residence dispute resolution procedure).

¹ Section 40 Care Act 2014, Schedule 1; The Care and Support (Cross-border Placements and Business Failure: Temporary Duty) (Dispute Resolution) Regulations 2014

6.0 Discretionary power to meet 'urgent needs'

Where the Council considers the needs to be urgent, it may exercise its discretionary powers to meet needs without first conducting a needs assessment, financial assessment or eligibility determination and regardless of whether the relevant adult is ordinarily resident in Staffordshire.

This may be necessary where services are interrupted, there are quality failings with a provider or there is a risk of an emergency closure but business failure is not the cause.

Where the provider's business has not failed, it remains the provider's primary responsibility to meet the needs of individuals receiving care and support in accordance with their contractual liabilities. Where the continued provision of care and support is in imminent jeopardy and there is no likelihood of returning to business as usual, the Council will exercise its discretionary power to meet urgent needs. This power is not limited to regulated providers and may be extended to unregistered providers, i.e. unregulated providers of a social care activity.

Before exercising this discretionary power a risk assessment will be completed to determine whether the needs are urgent. Every service interruption will be considered on its facts and the circumstances.

7.0 Contingency planning

The Local Authority will undertake on-going contingency planning work within the care market. This will include identifying 'hard to replace' providers. As part of our market contingency planning we will identify and assess potential risks in Staffordshire with our local partners. We will also communicate with local providers which services they would be willing and able to provide if the need arose because of the failure of a provider. 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.

3 Section 19 Care Act 2014

8.0. Review of procedure

This procedure will be reviewed annually or earlier as required by procedure or legislation changes.

Any major amendments to this procedure will be subject to consultation.

9.0 Contact information / further guidance

Further advice and guidance is available from the Adult Care Quality Assurance Team via

email on: QAT@staffordshire.gov.uk

10.0 When to initiate Provider Failure Procedure

There are a number of events that should only be considered as provider failure once they have met a certain threshold. A non-exhaustive list can be seen below to provide guidance on when to escalate a situation into a provider failure response.

Maintaining standard practices will not exclude the preparation of provider failure processes.

10.1 CQC enforcement action

Standard Practice

- Notice of proposal to suspend admissions

Standard Practice

- Notice of decision to suspend admissions

Invoke Provider Failure Procedure

- Notice of proposal to close location (includes multiple variations)

Invoke Provider Failure Procedure

- Notice of decision to close service (includes multiple variations)

10.2 Sale of service

Standard Practice

- Notified of intention to sell service

Standard Practice

- Notified of sale

Invoke Provider Failure Procedure

- Notified of intention to sell the building with an end to care provision

10.3 Return of care packages within single service

Standard Practice

- Notified of a return of 1 to 4 care packages or less than 50 hours

Invoke Provider Failure Procedure

- Notified of a return 5 or more care packages or 50+ hours

10.4 Administration

Standard Practice

- Service has entered administration

Invoke Provider Failure Procedure

- Administrators are no longer willing to fund the service

10.5 Service interruptions

Standard Practice

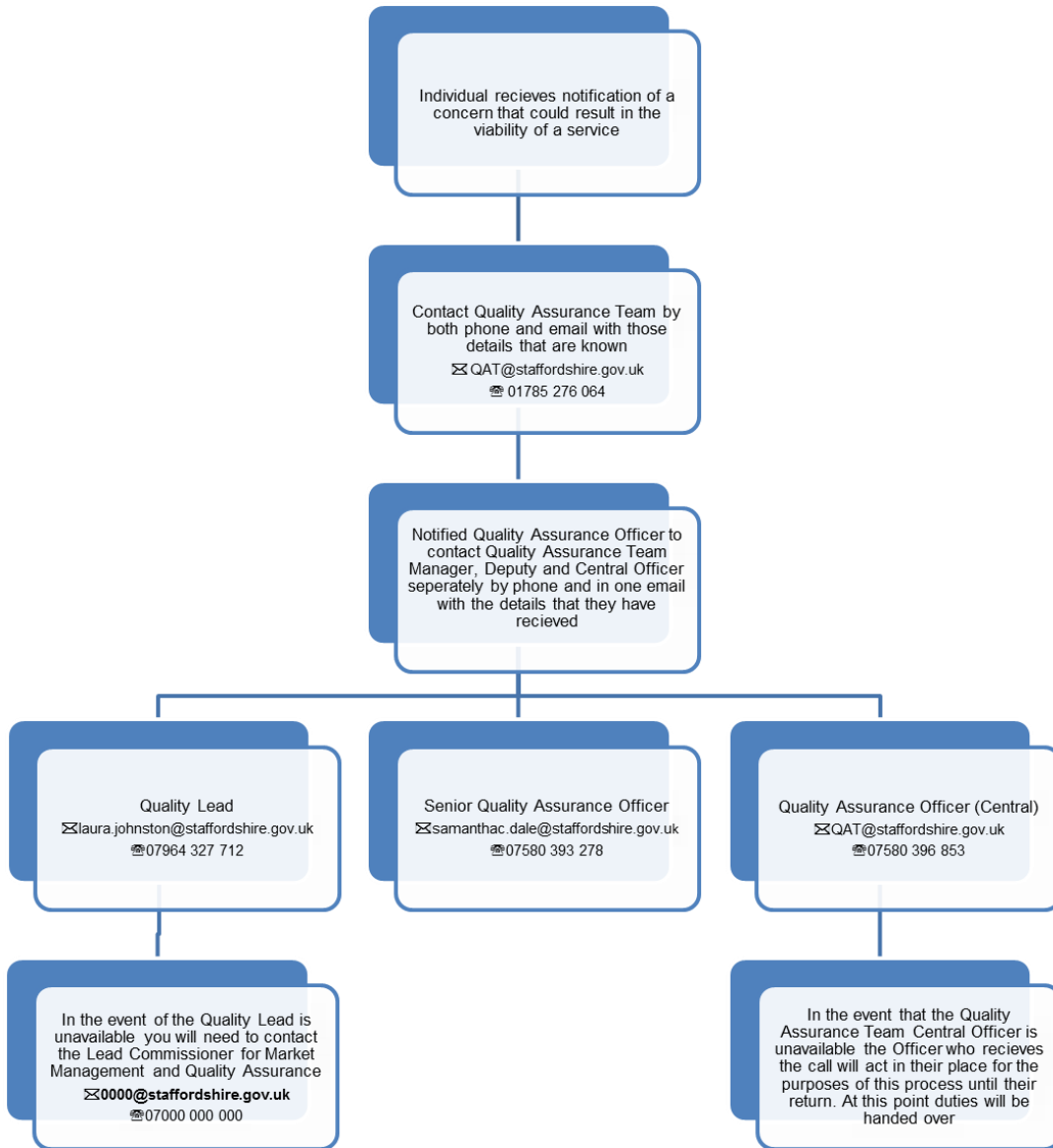
- Service has had to enact their business contingency plan

Invoke Provider Failure Procedure

- Provider's business contingency plan has failed and the service is unable to deliver care

11.0 Route of Escalation

In the event of an individual receiving notification of an event that can be interpreted as a provider failure (see 10.0) the following route of escalation should be followed to ensure the correct individuals are notified and measures put into effect.



11.0 Appendices

11.1 Provider failure overview

Date

Provider

Service

Service Type

Notified By

Nature of

Provider Failure Lead			
Initial information verified with the provider or CQC. Confirmation of verified information to provided through both phone and email.			
Completed by		Date Completed	
Notes			

Provider Failure Lead			
Provisional dates agreed with the provider or confirmed with CQC.			
Completed by		Date Completed	
Notes			

Supporting Officer			
Service User and Next of Kin details to be obtained from the service to identify those service users affected and funding organisations involved. Information compared against centrally held service user records.			
Completed by		Date Completed	
Notes			

11.5 Initial response

Provider Failure Lead			
Initial communication to CQC to outline the situation should they not already be aware.			
Completed by		Date Completed	
Notes			

Provider Failure Lead			
Initial communication to affected organisations to outline initial details and request the details of the correct representatives. <i>Residents and Relatives are not to be notified at this point in time.</i>			
Completed by		Date Completed	
Notes			

Supporting Officer			
Populated service user tracker shared with identified leads from respective organisations. The tracker will include a record of all service users in the service, their Next of Kin and contact details for professional organisation representatives.			
Completed by		Date Completed	
Notes			

Provider Failure Lead supported by Supporting Officer			
Staffordshire County Council to lead communication to the affected service users and relatives through an appropriate communication mechanism. If the situation is urgent the provider of the service may have already arranged this. As best practice affected organisations will input into the communication.			
Completed by		Date Completed	
Notes			

Assessment and Care Management			
Social work contacts to be nominated by Assessment and Care Management Leads to give relatives a confirmed contact point.			
Completed by		Date Completed	
Notes			

Provider Failure Lead supported by Supporting Officer			
Staffordshire County Council to request a Residents and Relatives (or organise if required) meeting be organised to outline the current situation. Best practice is to hold this at the affected service if possible.			
Completed by		Date Completed	
Notes			

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 Should the situation not escalate to closure, at this point the response process can be maintained at this point

11.6 Escalated response

Supporting Officer			
Twice weekly meetings/conference call to be arranged with an appropriate meeting venue for those local to Stafford. The number of meetings/conference calls will be increased or decreased as required.			
Completed by		Date Completed	
Notes			

Provider Failure Lead			
Brief shared with Senior Leaders, Cabinet Member and Comms to detail the situation.			
Completed by		Date Completed	
Notes			

Provider Failure Lead			
Assessment and Care Management to be notified to begin reviews of affected service users.			
Completed by		Date Completed	
Notes			

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Provider Failure Lead			
First meeting/conference call to take place which will confirm the nature of the concern, the affected service and provider, timescales and explain the process. This is followed by a review of each service user on the tracker to confirm their details, funding arrangements and situation in addition to escalating Quality or Safeguarding concerns to be escalated to the Provider Failure Lead. Actions will be agreed with attendees.			
Completed by		Date Completed	
Notes			

Supporting Officer			
Agencies that didn't attend the first meeting/conference call to be chased and initial updates sort.			
Completed by		Date Completed	
Notes			

Supporting Officer			
Service User information and agreed actions updated on the tracker and shared.			
Completed by		Date Completed	
Notes			

11.7 Failure management

Provider Failure Lead
Meeting/conference call to take place to discuss updates for those affected Service Users and confirm action progress. Repeatable

Assessment and Care Management
Service users for which there are Quality or Safeguarding concerns to be escalated to the Provider Failure Lead. Repeatable

Supporting Officer
Agencies that didn't attend the first meeting/conference call to be chased and updates sort. Repeatable

Supporting Officer
Service User information and agreed actions updated on the tracker and shared. Repeatable

Provider Failure Lead
Repeat non attendees to the meeting/conference call to be escalated. Repeatable

Provider Failure Lead
Fortnightly update to provider to confirm progress. Repeatable

Provider Failure Lead

Fortnightly update to Senior Managers to confirm progress.
Repeatable

Assessment and Care Management
 Information systems updated to reflect new Care Package details.
Repeatable

Contracts Team
 Contracts Team to issue the relevant termination documents.
Repeatable

11.8 Failure resolution

Provider Failure Lead			
Confirmation given to the provider that all affected service users have been moved.			
Completed by		Date Completed	
Notes			

Provider Failure Lead			
Confirmation given to CQC, Senior Leaders, Cabinet Member and Comms that all affected service users have been moved.			
Completed by		Date Completed	
Notes			

Supporting Officer			
Service user information and actions finalised.			
Completed by		Date Completed	
Notes			

Assessment and Care Management			
Six weeks post closure follow up reviews to be done to assess those moved service users.			
Completed by		Date Completed	
Notes			

Supporting Officer			
Lessons Learnt meeting to be arranged.			
Completed by		Date Completed	
Notes			

12.0 Supporting Documentation

The Quality Assurance Team will also hold a number of additional supporting documents to assist with a provider failure event. These documents include but are not limited to:

- Service user tracker
- Safe and well checks template
- Relative meeting invite template
- Relative meeting attendance template