

BFC Provider Failure Policy

Appendix 1 - Service continuity mobilisation procedures

1. Introduction

Working with providers, and in particular struggling providers, in terms of helping them in their regulatory and contractual compliance is a regular feature across many Council services and individual officer roles. Where this is in the best interests of service users the Council should act to sustain provision or at least delay the closure of a service wherever possible.

These mobilisation procedures set out the roles and responsibilities of Council staff ONLY in the rare event of the imminent closure and or complete failure of a social care contracted service, resulting in closure of the service.

2. Deciding on Triggering these Service Continuity Procedures

The decision to activate these procedures will largely be predicated on whether there is a likelihood that a provision will, or needs to, imminently cease whether temporarily or permanently. Or, in the event of provider safeguarding concerns the decision will be taken in line with the Berkshire Adult Safeguarding Policy and Procedure.

When these procedures will need to be applied will be decided by the Executive Director – People, in consultation with the Assistant Director – Commissioning, other relevant Assistant Directors, Heads of Service and the Borough Solicitor, but will most likely be as a result of one or more of the following:

- Notification by CQC of the imminent failure of a regulated provider registered as operating in the borough
- Notification from CQC of their suspension, closure and deregistration of a regulated care provider in the borough, e.g. for reasons of health and safety or assessed risk to service users
- Notification by a provider that their business and or provision is at risk of failure
- Notification by a provider that they are choosing to reduce and or close their provision
- The Council is made aware that an Insolvency Practitioner has been appointed to a local provider
- The Council is made aware of a major and unplanned business interruption where a provider's own business continuity arrangements are unable to, or failing to address the service impact, e.g. fire or flood
- Another local authority notifies the Council of a provider failure in their local area where Bracknell Forest Council service users are placed

3. Resources and Flexibility

Every service failure is different, and it is up to the responsible officers to decide the best approach for the situation presenting at the time, interpreting these procedures flexibly to suit each case while still being guided by the policy.

The resources given over to any mobilisation need to be proportionate to the risk and scale of the incident. Consideration will be given to the seniority of the officers assigned to lead and undertake tasks in accordance of the risk and scale of the incident.

The variability of incidents means that a standard management approach is not appropriate.

However, a management checklist at Appendix 2 provides a framework.

4. Roles and Responsibilities

4.1 Plan Activation and Responsible Officers

The Head of Commissioning will have the responsibility for implementing this procedure and the responsibility for managing any one incident.

As responsible officer the Head of Commission may appoint an Incident Manager for the purposes of day-to-day project management.

4.2 Incident Management

The responsible officer has the following duties:

- Convene an Incident Management Team with the best blend of skills and responsibilities to
- manage the incident
- Devise an action plan to manage the Council's response to the business failure allocating the tasks and duties of the action plan to other Incident Team Members
- Give clear direction and timescales for the delivery of the action plan, developing the response as appropriate
- Secure the resources necessary to achieve the action plan
- Liaise with the Executive Director – People, Assistant Director – Commissioning, other relevant Assistant Directors, Heads of Service and the Borough Solicitor and other senior partner stakeholders - escalating issues where necessary
- Put in place arrangements to record meetings, decisions and issues for the purposes of audit
- In the event of transferring service users from one provider to another ensure that a single list of affected service users is developed and maintained for the duration of the incident.

4.3 Incident Team Membership and Roles

The incident team needs to be made up of those staff who can best respond to the incident with a view to sustaining the services and or moving service users to a new provision.

The below table sets out the roles and responsibilities of officers whilst managing an incident of provider Failure

Role	Responsibilities
Incident Manager	Day to day project management of the incident - either the Responsible Officer or their nominee Stakeholder management Ensure that a status log of affected service users is compiled and maintained throughout the incident
Safeguarding Lead	Advising on and managing safeguarding actions
Social Work Team Manager or Head of Service	Care and support mobilisation and decision-making Identification of all care needs Social work with services users Carer and family communications
ICB Rep (where relevant)	Leadership and all actions relating to NHS funded service users Implementation of NHS Serious Incident Procedures
Commissioner Brokerage Manager Contracts Manager ICB Commissioner	Secure placements for the continuity of care Oversight and action over contractual matters Service monitoring arrangements
Administrative lead	Organising incident meetings Making and collating an accurate log of meetings and records Support to the Incident Manager
Finance Partner (where relevant)	Make temporary funding available Track expenditure Make recharge arrangements
HR Business Partner (where relevant)	HR advice and guidance regarding provider staff
ICB Safeguarding Lead (where relevant)	Advising on and managing safeguarding actions and clinical governance Liaising with CCG and NHS agencies
CQC Inspector or other representative (where relevant)	Taking actions within CQC remit Liaising with CQC Regional and National offices
Police (where relevant)	Advising on and managing policing actions Liaison with community safety agencies
Fire Brigade (where relevant)	Advising on and managing fire, rescue and civil defence matters

4.4 Potential Options for Alternative Service Provision

Each occasion of potential provider failure is likely to be unique with its own set of circumstances. There are a range of options to ensure continuity of care and support - which may be applied on their own or in conjunction with other measures to meet the needs of each occasion.

Potential options for alternative service provision 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.

The responsible manager will allocate responsibility for researching and pursuing these options depending upon the specific circumstances of the case.

It should not be assumed, especially in the case of a Provider operating a number of services, and/or where an Insolvency Practitioner is acting, that any payments made that are intended for supporting the continuation of service provision at a specific service will necessarily be applied for that purpose, in that location, by the Provider or Insolvency Practitioner. An explicit written agreement must first be sought and obtained. Payments may need to be withheld by commissioners and only paid when situation is resolved.

Wherever possible all transfers of service users between care providers should occur within normal working hours.

Appendix 2 - Provider Failure/Interruption/Closure Checklist

1. Incident Steering Group

	Action	Responsible officer	Action owner
1.1	Agree that the triggers to mobilise the Incident Team have been met in liaison with relevant stakeholder	Executive Director – People	
1.2	Assemble group and plan the work	Accountable Officer	
1.3	Ascertain whether or not the provider is registered with CQC and where not determine the legal scope of powers and duties	Accountable Officer	
1.4	Prepare stakeholders plan for involvement, consultation and information	Incident Team	
1.5	Establish reporting arrangements to Executive Director, Director(s) and Lead Member	Accountable Officer	
1.6	Devise incident plan	Incident Team	
1.7	Allocate all relevant actions to group members	Accountable Officer	
1.8	Notify Communications Service for handling any briefings to and or responses from media	Accountable Officer	
1.9	Conduct formal closure of incident at appropriate time	Accountable Officer	

2. Clarifying scale and issues

	Action	Responsible officer	Action owner
2.1	Establish timescale(s) for closure or failure(s) Can the provider recover its position? For how much longer, if at all, can the provider continue to provide service? Can things be delayed to better support moving service users?	Accountable Officer	
2.2	Liaise with CQC coordinating actions where necessary. Note: where CQC gives notice of their concerns in advance of an inspection a decision over whether to assess the needs of service users will be made.	Accountable Officer	
2.3	Obtain copy of the contract(s) between the provider and the Council where one exists	Commissioning Manager	
2.4	Establish the number and names of service users affected and who funds them	AtR Manager	
2.5	Develop list of other providers with potential capacity to take on service users liaising with CQC as necessary	Commissioning Manager and AtR Manager	
2.6	Identify relevant Council staff or other agency staff who can support the Incident Team	Accountable Officer	

	Action	Responsible officer	Action owner
2.7	Develop contact list of staffing agencies it would be acceptable to use	Accountable Officer	
2.8	Determine which other agencies need to be involved and in what capacity	Accountable Officer	
2.9	Contact and consult all other Local Authority and NHS stakeholders	Accountable Officer	
2.10	Arrange a meeting with the owners/other relevant provider parties	Accountable Officer	
2.11	Clarify whether the provider has a viable Business Continuity Plan as part of any contractual arrangements	Accountable Officer	
2.12	Determine the chances of the provider being able to deliver services now and or after an interruption	Accountable Officer	
2.13	Check that the owner is allowing free and open access to professionals involved in the provider intervention	Commissioning Manager	
2.14	Determine if, when and how service users and carers will be advised of the possibility/need to change provider	Social Work Manager Commissioning Manager	
2.15	Agree what 'need to know' information can be shared with other parties. Note: the principle of commercial confidentiality will still apply even if the provider is at serious risk of business failure	Accountable Officer	
2.16	Develop communications and press plan with Communications Team	Accountable Officer	
2.17	At time of a potential failure look at arrangements to facilitate carers/service users visits to alternative providers	Social Work Manager	
2.18	Identify meeting site(s) for Incident Team meeting and care staff to conduct business	Accountable Officer	
2.19	NHS to follow Serious Incident Procedures	ICB Lead	
2.20	Consider the impact of any failure of the provision on overall local market supply of this type of service	Accountable Officer	
2.21	Determine project governance and record keeping arrangements for the duration of managing the incident	Accountable Officer	

3. Service users

	Action	Responsible officer	Action owner
3.1	Assemble an accurate list of all service users and their needs - confirming details with the provider	AtR Manager Social Work Manager	
3.2	Confirm where responsibility rests for assessing any Self-Funding or other Local Authority service users	Social Work Manager	
3.3	Check current registration category	Commissioning Manager	
3.4	Determine priority order for assessing service users	Social Work Manager	
3.5	Assess service users to identify any changes in need and or category of care - check if any very frail or those nearing end of life need special arrangements	Social Work Manager	
3.6	Make assessment of service users' capacity to make decisions about move to another provision where mental capacity is identified as an issue. IMCA appointments for those without family/friend support	Social Work Manager	
3.7	Identify any need for advocacy support to support the process and any transfers	Social Work Manager	
3.8	Identify any service users with DOL authorisations and involve DOLS officer accordingly	Social Work Manager	
3.9	Identify service users with Health and Welfare deputies and those with Lasting Powers of Attorney for health and welfare decisions, making contact with relevant parties	Social Work Manager	

4. Financial matters

	Action	Responsible officer	Action owner
4.1	Determine financial resources available for the actions and get financial authorisation	Accountable Officer	
4.2	Contact other authority commissioners to agree their role in relocating service users, e.g. will they want the Council to act on their behalf?	Commissioning Manager	
4.3	Identify Council funded service users and in particular S117 MHA funded service users	Social Work Manager	
4.4	Identify NHS funded service users	ICB Lead	
4.5	Identify self-funded service users and who will take responsibility for their care - check capacity and any representation	Social Work Manager	
4.6	Identify any service users funded by DWP or have Preserved Rights	Social Work Manager	
4.7	Investigate costs of any potential new provision	Commissioning Manager	

	Action	Responsible officer	Action owner
4.8	Take legal view on any contract termination and payment issues	Commissioning Manager	
4.9	Identify service users with Deputyship and other representation arrangements for their financial affairs - powers of attorney, etc	Social Work Manager	
4.10	Keep a running record of allowable costs that may be charged to other commissioning local authorities, NHS and or self-funding service users and invoice accordingly	Finance Officer	
4.11	Stop payments to provider for each service users at the point of moving. Set up payments for new provider.	Finance Officer	

5. Carers, Relatives and Significant Others

	Action	Responsible officer	Action owner
5.1	Collate names, addresses and contact details for carers, identifying any carers with special factors, e.g. poor health, out of borough, etc	Social Work Manager	
5.2	Establish arrangements to involve carers and other significant others in the arrangements	Commissioning Manager Social Work Manager	
5.3	Where necessary undertake carers assessments	Social Work Manager	
5.4	Consider whether it is necessary to arrange advocacy for carers	Accountable Officer	

6. Relocation - where a decision is made to close and or withdraw from the provider's resource(s)

	Action	Responsible officer	Action owner
6.1	Assess the needs of each service user to be relocated	Social Work Manager	
6.2	Maximise service user and or carer and or representative ability to make an informed choice over new service(s)	Social Work Manager	
6.3	Check whether any service user friendships need to be maintained as part of relocation	Social Work Manager	
6.4	Provide opportunity and support for service users and or carers to visit the new provision	Social Work Manager	
6.5	Deploy current care staff in the relocation - passing on information, escorting service users, etc	AtR Manager Social Work Manager	

	Action	Responsible officer	Action owner
6.6	Ensure formal handover of service users, their files and other records takes place including medication and treatment details	Social Work Manager Commissioning Manager	
6.7	Arrange and or re-provide and or install equipment	Social Work Manager Commissioning Manager	
6.8	Arrange transport and carers support for moving service users	Social Work Manager	
6.9	Maintain relocation decisions and movements log	Social Work Manager	
6.10	Arrange for change in GP and record any new arrangements across relevant agencies	Social Work Manager	
6.11	Inform receiving LA/NHS of any out of borough placements	Commissioning Manager	
6.12	Notify DWP of change of home	Social Work Manager	
6.13	Issue contracts to new providers	Commissioning Manager	
6.14	Consider the implications of any arrangements leading to temporary and or second moves	Social Work Manager	

7. Record keeping

	Action	Responsible officer	Action owner
7.1	Maintain a record of meetings and decisions made	Accountable Officer	
7.2	Designate an administrator lead to collate and maintain all records		
7.3	Maintain a risks register that is regularly reviewed throughout the project	Accountable Officer	
7.4	Give oversight to the appropriate sharing of service user, carer and other personal data	Accountable Officer	

8. Quality Assurance and Continuous Improvement

	Action	Responsible officer	Action owner
8.1	Put in place arrangements to record and resolve any complaints and disputes across all stakeholders	Commissioning Manager	
8.2	Collate service user and carer feedback on the process	AtR Manager Social Work Manager	
8.3	At the end of the project convene a meeting of all key agency stakeholders to review the project identifying recommendations for future learning and best practice	Accountable Officer	

	Action	Responsible officer	Action owner
8.4	Produce any recommendations for consideration in future incidents to be reported to the Intelligence Sharing Committee and or Leadership Teams and or Adults Safeguarding Board	Accountable Officer	