

# Provider Failure Policy

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## Document Control

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## Introduction and legal framework

The possibility of interruptions to care and support services can cause uncertainty and anxiety for those in receipt of services. With care and support being provided by numerous external providers there is an increased risk of provider failure. The Care Act 2014 places a temporary duty on local authorities to ensure the needs of the adults who have been affected by provider failure, in their area, continue to be met.

## Principles of policy

The Care Act outlines how Borough of Poole should respond in situations where a Provider fails or where due to service interruption a Provider may not be able to meet their responsibilities to its clients. This policy outlines where Borough of Poole has a duty to meet individual's needs and also where it has powers to meet individual's needs where a duty under Section 18 of the Act does not arise. It is intended that this will go some way to allaying the fears of individuals (clients, carers, and those people who support them) where a service they rely on ceases to operate.

## Scope of policy

The Local Authority has a temporary duty under Section 48 of the Care Act to meet the needs of individuals affected by provider failure regardless of:

- ▶ how they pay for their care and support.
- ▶ whether or not they are ordinarily resident in Borough of Poole.
- ▶ an individual not having a needs' or carers' assessment or a financial assessment. It will also not require these assessments to be carried out in order for the needs of individuals to be met.
- ▶ whether or not the individual would meet the eligibility criteria for care and support.
- ▶ whether or not a Provider is monitored by Care Quality Commission (CQC).

In the situation where a provider within Borough of Poole's area is unable to continue providing services because of business failure Borough of Poole must ensure that individual's needs which were originally met by the provider are met immediately. Borough of Poole does however have discretion over the way in which these needs can be met.

Where an administrator takes over the business and continues to meet the needs of the individual's affected the local authority is not required to act, however should cooperate with the administrator if requested.

When Borough of Poole uses its temporary duty in meeting the needs of the individual, the individual's carer and anyone else the individual would like to be involved must be included. Where an individual lacks capacity, Borough of Poole must include anyone who appears to them to be interested in the individual's welfare.

If the adult has no appropriate individual to support them an advocate must be considered where the adult has substantial difficulty in any of the following areas:

- ▶ understanding relevant information
- ▶ retaining information
- ▶ using or weighing the information as part of engaging
- ▶ communicating wishes and feelings.

In order to identify those in need of support Borough of Poole has the power to request that the provider, or anyone involved in the provider's business as it thinks appropriate, supply it with information that it needs.

Borough of Poole should be mindful of not impacting the market negatively when considering how to meet the needs of individual's affected by Provider failure.

### **Service Interruption due to Business Failure vs Other Circumstances**

The Act distinguishes between the two approaches.

- ▶ Business failure usually involves the appointment of an Administrator, in which case Borough of Poole is required to cooperate, but would not be required to step in if the services to clients continue to be provided.
  
- ▶ Non-business failure Interruption. In the instance of interruption not caused by Provider failure, there may be circumstances that the Borough of Poole has the power to intervene, for example where there is an outbreak of Scabies or Legionnaires Disease. The Local Authority can use its powers as set out in Section 19(3) to meet the needs of clients which appear to be urgent.

### **Contingency planning**

To minimise the impact of failure or interruption, Borough of Poole will aim to work with and to establish / strengthen relationships with providers in their area. This will enable the quick identification of services which present the greatest risk, and develop pre-emptive contingency plans to minimise impact on clients.

Borough of Poole in cooperation with partner organisations and other local authorities plan how they would respond to different service interruptions and ensure effective liaison and information sharing arrangements are set up in advance.

Borough of Poole will work with the smaller providers and through close communications with them will use their local knowledge of the market to respond when smaller providers fail, so ensuring that the needs of clients at risk are responded to.

### **Market shaping**

Borough of Poole aims to promote the efficient and effective operation of the local market in care and support services. In order to do this it may gather market data and use this to determine the current state of the care market in its area, including the associated strengths, risks and potential vulnerabilities. This knowledge will support Borough of Poole in responding effectively to service interruptions.

It will seek to maintain an accurate understanding of the local market by building positive relationships with local Providers in the area.

Where smaller Providers outside of CQC oversight are at risk of failure it will take a proportionate approach in anticipating or getting early warning of business failure.

### **Safeguarding**

Where any failures of a service are resulting in risk of harm and neglect arising for the individual/s, a Safeguarding Concern will, where appropriate, be raised under Section 42 of the Care Act for enquiries to be made. Adult Safeguarding will work with the individual/s affected and or their representatives, the provider, Service Improvement Team, Care Quality Commission and other partner agencies, to ensure steps are taken to reduce and manage the identified risks. Should any criminal offences be suspected as arising, then a referral to Dorset Police will be made to determine who will lead the safeguarding process.

In any situation where there is a Safeguarding risk the 'Bournemouth, Dorset & Poole Safeguarding Adults Board', Safeguarding Adults Policy and Procedures must be followed.

### **Exclusions**

Borough of Poole is not required to meet needs in provider failure cases where the adults are in receipt of NHS Continuing Healthcare (NHS CHC). This is because the duty to provide NHS CHC falls on the NHS and local authorities cannot provide it. However, the Borough of Poole will work in partnership with local health partners to broker care.

### **References and related information**

Department of Health, *(2014) Care Act 2014*

Department of Health, *(2014) Care and Support Statutory Guidance*

Care Quality Commission (CQC), <http://www.cqc.org.uk/>

### **Contact Information**

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