

## Contingency planning tips for the business failure of a major social care provider

May 2018

Most councils will already have detailed local contingency plans in place and are well practised in dealing with individual provider failure. This briefing is designed by the LGA and ADASS to provide top tips for DASSs in anticipation of the rarer event of the failure of a major social care provider. It is intended to supplement other more detailed resources, such as [Care and Continuity: Contingency planning for provider failure](#) and the Association of Directors of Adult Social Services (ADASS) [Checklist for regional response](#).

Social care provider business failure can lead to a range of consequences which could impact on the provision of care for the users, such as the company being restructured around a smaller range of services, being sold, contracts sold on or retendered, or the provider being taken into public ownership of some sort.

The absolute priority when a social care provider fails is to ensure continuity of care and support so that people continue to receive services that keep them safe and well. It is important to quickly reassure service users, their families and carers and staff as a priority, so clear communication will be critical, as well as activation of already tested contingency plans.

Each case will be different, however in all cases the three key priorities are to:

- ensure continuity of care and support for people using the services delivered in your area and ensure the safeguarding of individuals
- support the failing provider to retain its workforce during this time
- communicate with service users and their relatives to provide reassurance that continuity of care is the priority.

### Top tips

1. It will be important to **establish the facts** and level of risk at an early stage, for example check the contract to clarify the hours/beds being delivered by the provider as a percentage of total supply, and what it says about business failure of the provider. Engage with the failing provider identifying key local managers. Assess capacity in the rest of the market. Ensure that those using the provider have up-to-date support plans. Maintain usual commissioning behaviour at this stage.
2. **Review options** for continuity of care. In reality there are usually four options: support the current provider to continue; transfer all care to another single provider; transfer in-house; disperse care to a range of providers. Consider resourcing issues at an early stage (for example staff

# Briefing

needed and the likely additional costs of transferring care). Care should be taken not to overburden other providers so that they also experience risk of failure.

3. **Consider legal issues**, such as how TUPE might apply in this case. Property ownership, leases and/or tenancy issues can be an issue for housing with care services such as care homes or supported living. Agree corporately any re-procurement process that might be needed.
4. **Implement the contingency plan**: identify lead senior officer; implement option chosen to reallocate work if needed; tell people receiving the service and ask them to let the council know if they want to make their own alternative arrangements; prioritise which service users get reviewed; agree advocacy arrangements; consider any mental capacity or safeguarding issues; consider solutions for self-funders.
5. Consider **how to retain the workforce**, ideally retaining people to care for the same service users to provide continuity of care, or at least trying to retain staff in the local social care sector. Address any TUPE issues. Ensure that the current provider is communicating with their staff appropriately.
6. **Communications** will be critical to a wide range of audiences: service users and families; elected members; the council corporate team; the Council workforce; the provider workforce; CQC; MPs; NHS partners; neighbouring Councils and other Councils affected; regional and national bodies including DHSC. A local communication plan and communication lead senior officer will be needed.
7. **Tap into support and intelligence** on offer from regional or national bodies. Tap into the full range of expertise in the Council, for example HR, legal and emergency planning.
8. **Review** whether the plan is working as the situation develops. Consider lessons learned when the incident concludes.

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## Notes

Local authorities (LAs) should be mindful of the following duties and arrangements.

### 1. Local authorities' temporary duty under the Care Act 2014

In cases of business failure [Section 48 of the Care Act 2014](#) places a temporary duty on local authorities to, for so long as it considers necessary, meet an adult's (and carer's) needs for care and support which were being met by a provider immediately before the provider became unable to carry on the regulated activity. This duty also covers self-funders, who may not be known to the authority. It is for the local authority to decide locally when the temporary duty is triggered.

### 2. Care Quality Commission (CQC) Market Oversight Scheme Stage 6 notification

CQC only issue a Stage 6 notification when they are satisfied that a registered provider in the [CQC Market Oversight Scheme](#) is likely to become unable to carry on a registered regulated activity because of business failure. This is the

final stage of the scheme and indicates the highest level of risk where CQC consider that business failure is likely and that the provider is unlikely to be able to continue to provide one or more services. CQC must inform the Local Authorities affected that they think they will be required to carry out the temporary duty to ensure continuity of care. CQC provide a useful explanation of the [Market Oversight Scheme for providers](#), including details of a Stage 6 notification.

### **3. Information about Company Voluntary Arrangements**

See Gov.uk [here](#)

### **4. Other useful resources include**

[Assessing social care market and provider sustainability](#)

This guidance and toolkit suggests a robust but straightforward way that councils can engage in light touch market oversight to help local authorities come to a view about the sustainability of their local care markets and the providers within them.

[Working with providers to understand care costs](#)

This CIPFA guidance aims to assist commissioners on the business knowledge needed to support informed dialogue with providers on understanding their costs when considering fee rates.

[Six top tips for resilience planning in adult social care and health commissioning LGA CHIP 2018](#)