



Adults' Health and Care Department Policy: **02/23 v 1.0**

RESPONDING TO SERVICE INTERRUPTIONS, PROVIDER CLOSURES AND FAILURE

Date: December 2022

Effective Date: 1 February 2023

Summary: This is a combined policy and guidance that details the approach to be taken in Adults' Health and Care (AHC) when a provider is unable to meet care and support needs due to temporary interruption or permanent business failure.

The policy includes the duties under the Care Act 2014 and other applicable legislation.

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Authority to Vary: CGB

Procedures cancelled or amended: Provider failure policy June 2020 This policy also incorporates key elements from the "Covid-19 Provider Contingency Support" guidance approved by Covid19 Bronze Action Group in April 2020

Provider Failure Policy, July 2016" 14/15

Version Control:

Amendment:	Date:

Purpose

The purpose of this guidance is to outline the actions to be taken in the event of a Hampshire social care provider being unable to continue delivering its service either temporarily or permanently.

Scope

This guidance applies to all AHC staff. Any information related to a provider service being interrupted or unable to continue should be responded to and shared in line with this guidance.

Policy Statement

Adults' Health and Care will ensure that the care and support needs of individuals impacted by any business interruption, business closure or failure is minimal and will take all steps to safeguard the people affected by such decisions.

References

Sections 5 19 and 48 to 57 of the Care Act 2014

The Care and Support (Business Failure) Regulations 2015

Hampshire, Southampton, Portsmouth, and Isle of Wight 4LSAB Large Scale Safeguarding Enquiry Protocol

Care Quality Commission Fundamental Standards 2015

Adult Services Large Scale Enquiry Policy 08/16

Adult Services Quality Outcomes Contract Monitoring Policy 04/17

Care and continuity: contingency planning for provider failure, a guide for local authorities, DoH, ADASS, LGA, LGiU 2015

Managing Care Home Closures - A good practice guide for Local Authorities, Clinical Commissioning Groups, NHS England, CQC, Providers and Partners

The Care and Support Statutory Guidance (update 2 November 2022)

Authority to Vary

Any variation to this guidance will be agreed by the Care Governance Board.

Stakeholder Consultation:

This guidance and supporting materials have been produced in collaboration with AHC operational leads and Emergency Planning colleagues.

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Introduction, Background and Exceptions:

This guidance aims to provide AHC staff with the information and tools that they need to respond if a service provider is unable to continue providing a service either temporarily or permanently.

In the last year more services have left the social care market across Hampshire than ever before and for a variety of reasons. The tools provided have been informed by responses to closures and have been tested as part of an AHC emergency exercise.

The tools have been developed to enable a response both in an emergency situation and those where AHC have notice regarding a service interruption or closure. For example:

- Where circumstances mean a care home needs to be evacuated or closed urgently (24-48 hours).
- A domiciliary care agency must cease business as a result of urgent regulatory action and alternative care provision needs to be sought.
- A national care home provider makes a business decision to close one of its homes in the county and provides three months' notice.

The activities that staff need to undertake will be similar in circumstances where the Directorate has a longer lead time and should be adapted to match the incident being responded to.

Principles and Definitions:

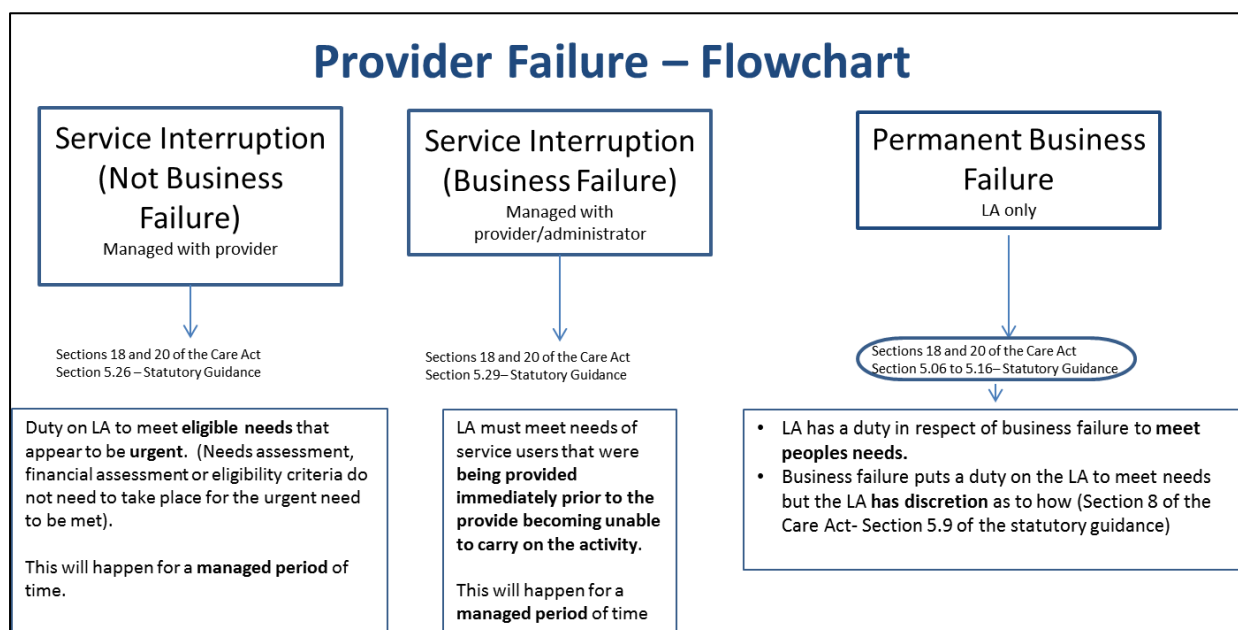
It is important to recognise the difference between a service interruption, business closure and business failure. AHC will need to respond differently to each of these:

- **Service interruption** - This could be as a result of a temporary environmental issue, such as fire, flood, power outage. Similarly, as shown in Flowchart A, urgent needs might need to be met for individuals if a domiciliary care agency was unable to deliver planned care calls. *This will be for a managed period of time and will require AHC to work with the service until normal business is resumed.*
- **Business closure** – This is likely to be as a result of a business decision to exit the social care market. It is important to note that this is not provider failure but instead a decision taken accompanied by a plan. For example, a care home may give notice to close and work with AHC and other parties to ensure the smooth transition of residents to their new home. *This will be for a managed period of time and will require AHC to work with the service until the closure has taken place.*
- **Business failure** - The Care and Support (Business Failure) Regulations 2014 describe business failure as a result of an individual's financial bankruptcy, or administrators being appointed for a business. This places the

responsibility on the local authority to meet the needs of any individuals impacted. *AHC take full responsibility to ensure people's needs are met, this is likely to be in conjunction with administrators for a business. However, it is important to note that the LA hold full responsibility.*

This guidance applies and must be followed for all of the points above; however, it does not relate to circumstances where AHC have taken the decision to terminate a contract with a provider.

Flowchart A:



Roles, Responsibilities, and Expectations:

Under the Care Act 2014, local authorities have a responsibility to support vulnerable people in the event that their normal care arrangements are unable to be delivered.

This guidance 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 – whether that is as a result of a temporary service interruption or permanent business change or failure.

Information regarding a provider’s position can reach AHC via several routes, any staff member in receipt of information regarding a service interruption, closure or failure should inform the Provider Quality team in the first instance. The team can be reached by emailing: ahc.qualityteam@hants.gov.uk

The Provider Quality Team coordinate the directorate response and ensure operational, brokerage, finance and commissioning colleagues are involved and updated as necessary/appropriate.

It is essential that an accurate position is established with the provider, regulatory and/or appointed administrators as soon as possible.

Providers that notify AHC of their intention to exit the market will have contractual responsibilities to fulfil such as notice periods, payment, and or financial alterations etc. This work will be coordinated and communicated by the Provider Quality Team.

Service interruption can arise from different causes and can be permanent or temporary, if in doubt please contact the Provider Quality Team.

Examples include:

- **Business failure** – financial closure or commercial difficulties.
- **Enforcement or compliance action** – for example, action taken by the Care Quality Commission (CQC), Environmental Health, Fire Safety or Health and Safety Executive.
- **Investigation by the Police or Home Office.**
- **Management and staffing changes** – for example action taken by the Borders Agency or Home Office meaning the service has insufficient staff to operate, sudden illness or death of key staff.
- **Impact of a serious outbreak in a setting, such as the Covid-19** – for example, reduced staffing as a result of self-isolation, sickness, or carer responsibility; additional staffing required to meet the increased needs of people supported; and increased expenditure on additional/agency staffing or equipment such as Personal Protective Equipment (PPE).
- **Property damage** such as fire or flood.
- **Emergency in locality of service that requires evacuation.**
- **Safeguarding Large Scale Enquiry** where it impacts on delivery.
- **Termination of contract** leading to closure of a service or the provider exiting the market.
- **Temporary or permanent disruption** due to severe weather conditions or utility failure.

This list is not exhaustive: there may be other situations that can cause disruption to care and support services. Disruption may impact the whole business or be limited to a particular service within that business.

Preventing service interruption – safeguarding and quality

A key objective of the directorates safeguarding, and quality monitoring duties is to recognise indicators that a service is under pressure and struggling to provide a safe and good quality service.

Providers in the Adult Social Care Sector have to deliver high quality services in a sector with long standing challenges, such as financial pressures, high staff turnover and recruitment issues, a lack of community services, and significant dependency on unpaid carers. AHC staff need to recognise and acknowledge the challenges social care providers are dealing with and wherever possible support the service to continue providing a service.

Specific steps are taken as part of the [Quality Outcomes and Contract Monitoring \(QOCM\)](#) framework to monitor indicators, assess the information known and apply a risk score. This process aims to bring together all the information known across the directorate regarding the service.

The QOCM framework is an integral part of all safeguarding and governance activity within AHC. The aim of this framework is to:

- Ensure appropriate systems, processes and procedures are in place to allow teams to record information about the services we commission from.
- Enable all staff to use the guidance and the tools within it to provide a proactive proportionate response to quality concerns.
- Prevent quality issues from escalating to a situation where abuse or harm has taken place.
- Ensure early transparent conversations with providers take place.

This also allows for a fair and consistent approach to contract compliance action and any restrictions to purchasing status for the minimum time necessary with regular reviews.

Where individuals or groups of people have experienced abuse or neglect the management of these concerns should be addressed through the multi-agency [safeguarding policy, guidance and toolkit](#).

AHC staff should ensure that the provider records are updated with any safeguarding, quality, complaint, or compliments information known about the provider, this will inform that quality risk assessment.

Where social care providers have not taken a business decision to exit the market, there is likely to have been an accrual of warning indicators over a period of time that the service is struggling and that an interruption or failure might be the outcome. For example,

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- An increase in the number of incidents where people have been at risk of harm or have been harmed.
- A high turnover of staff or indications that a service is managing with reduced numbers of staff.
- Negative feedback from people in receipt of care, their families or representatives is increasing.
- Contractual issues such as not delivering the service as commissioned, not submitting workbooks or other previously provided information.
- The CQC regulatory rating reduces.
- Providers are unable to provide evidence regarding their infrastructure, staff numbers or mechanisms to ensure safe delivery.

Staff should be alert to the indicators that a service that has performed well in the past is struggling and escalate any concerns to the provider quality team. This will enable the implications to be considered and aligned with other known information and the likelihood of interruption or failure assessed.

It is important that every time a practitioner visits a provider service or meets with an individual in receipt of a commissioned service, they consider the quality of the service the person/s are receiving. [This form](#) should be completed to provide AHC with information regarding the practice observed, to describe the interactions seen and to provide a depiction of the environment. The information will be used to give the Adults' Health and Care Provider Quality Team valuable contemporaneous insights regarding the standard of service being delivered.

Preventing service interruption – commissioning

AHC are committed to fair and consistent commissioning practice, and providing clear contract terms, consistency around compliance, quality standards and monitoring arrangements. Where possible there is a commitment to:

- Avoid spot purchasing that does not support predictability of revenue
- Pay providers within agreed timeframes
- Appropriate lead in and transition provision for high volume contracts
- Appropriate fees which support the provision of high-quality care to ensure hourly rates consistent with minimum and living wage
- Encourage providers to approach operational, contract and commissioning staff at the earliest opportunity if support is needed.

Commissioners undertake the following activities with providers to enable strong relationships and an early indication of a change in service delivery.

- Routinely monitor market demand and capacity within localities, to identify gaps and areas for improvement
- Follow up on hand backs to identify underlying issues which might impact on ability to deliver/quality of care provided

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- Monitor compliance through the care provider portal (submission of payment records, requests for increases, regular reviews undertaken)

Responding to interruption, closure, or failure

Interruption examples

This section relates to circumstances where provider interruption, closure or failure is known to be happening, is planned or becomes inevitable.

It is only applicable where there has either not been the opportunity to manage using existing quality or safeguarding processes or these processes have not been effective.

There are several business-as-usual processes within AHC that deal with routine service interruptions, for example:

Domiciliary Care

- A domiciliary care provider might have cause to hand back a specific care package and brokerage working with operational leads would recommission. These day-to-day individual client examples do not meet the definition of an interruption.
- However, should the same domiciliary care agency hand back several packages, as a result of being unable to meet the requirements due to reasons such as:
 - Inadequate staffing
 - Being unable to provide the agreed contractual notice period
 - Now being unable to deliver care in a particular geographical location
 - Now being unable to deliver care across the duration of a particular time period.

These would be considered service interruptions. They may also be of a failing service and the Provider Quality Team should be alerted. AHC have a duty to initiate steps to ensure continuity of care for the people impacted in the scenarios in line with this guidance.

Care Home

- A care home advises AHC that they have an electrical issue in one floor of the home. They are managing well, and the safety of residents is not impacted, heating, water and food are still being provided and the electrical issue is isolated to a small section of the service. This would not meet the criteria of an interruption.
- However, should the home have a power outage impacting the whole building and care and support cannot be delivered. AHC must work with the care

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home to ensure the safety and continuity of care for the people residing at the service. This would meet the interruption definition.

AHC are required to report to DMT the number, progression and impact of interruptions, closures, and failures. To enable this to happen all incidences must be communicated to the Provider Quality Team at the earliest opportunity. The team can be reached by emailing: ahc.qualityteam@hants.gov.uk

Incidents of interruption, closures, and failures with notice

Where a provider informs AHC that they are unable to continue delivering a service or intend to exit the social care market, the ideal scenario is one where AHC and the provider work together in advance to ensure the ongoing safety and care delivery for the people impacted.

Providers with an AHC contract will have a notice period they need to comply with, and it is therefore important that any staff member in receipt of information directly from a provider, either verbally or in writing, directs the information to the relevant team within AHC.

Contractual information should be sent to AS.contracts@hants.gov.uk and the Provider Quality Team copied in ahc.qualityteam@hants.gov.uk.

In these instances, coordination will be undertaken by the Provider Quality Team in liaison with the appropriate directorate colleagues.

Temporary service interruptions can be variable in impact and duration. But for exceptional circumstances, the provider still has a responsibility to meet the needs of individuals receiving care and support in line with their contractual liabilities.

As part of their business-as-usual processes and contractual requirements providers must have business continuity plans to deal with unexpected events and staffing shortage issues. It is essential that these plans consider short term interruptions and make necessary provision to ensure the maintenance of critical activities.

In the event of service interruption, the circumstances should be considered and assessed by AHC based on risk and urgent need. It is for the directorate to decide if it will act to meet a person's needs for care and support which are urgent.

AHC will intervene where there is immediate risk of harm, and the service is in immediate jeopardy through temporary interruption. This will only apply where there is no likelihood of returning to a 'business as usual' situation in the imminent future. For example, asking to cover staffing for a brief period of time. The local authority duty in these circumstances is to vulnerable people whose needs are urgent.

Where the Council considers the needs to be urgent it may exercise its discretionary power (section 19 Care Act 2014) to meet needs without first conducting a needs

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assessment, financial assessment, or eligibility determination and regardless of whether the relevant adult is ordinarily resident in Hampshire.

This discretionary power is not limited to regulated providers and may be extended to unregistered providers i.e., unregulated providers of a social care activity, such as sitting services.

Where AHC becomes aware of a temporary service interruption it has a responsibility to intervene where:

- the situation is critical
- immediate action or attention is required
- the provider is unable to manage the situation themselves without support

A critical situation is one in which if action were not taken the person(s) in receipt of care and support would be:

- unable to meet their basic needs for hydration, nutrition and warmth or safety
- at risk of deterioration of health leading to serious long-term consequences
- at risk of serious harm, injury, or death without intervention

All attempts should be made to manage temporary service interruptions alongside the provider. AHC will work closely within the wider Hampshire and Isle of Wight system to support providers to wherever possible continue to deliver a service and avoid the service closing.

Only in the most serious of scenarios would AHC take sole responsibility for the management of the situation and assume responsibility through 'a managed period.'

The duty on the local authority is to meet the needs of individuals that were **being provided immediately prior to the provider becoming unable to carry out the activity.**

The duty applies where the provider was meeting needs in the authority's area, regardless of funding arrangements. Local authorities must ensure needs are met but how this is done is for the local authority to decide.

The Provider Interruption, Closure or Failure [action card](#) directs staff regarding the steps that must be followed. It is essential that this guidance is followed, and a new card completed and saved for all incidences to ensure AHC have an audit trail.

The document sets out specific steps for each relevant function of the directorate and includes letter templates and tracking sheets.

All information relevant to the incident can be recorded within the card, and once populated should be saved in SharePoint so that all staff needing to can access it.

When an emergency response is required – Care Home

When a decision has been taken to close a care home urgently, the directorate response will be managed jointly with Emergency Planning colleagues and as part of the Gold, Silver, Bronze (GSB) Command Structure. A Bronze response will be triggered when the closure requires additional resources, or mutual aid to support, or when a directorate wide response is required within 48 hours.

Bronze is the escalation point to assist with bringing resources in to support the response. Bronze membership will include the relevant Heads of Services, subject matter experts and health partners where appropriate. A member of DMT will sit on Bronze to provide the link to DMT and assist with decision making where appropriate.

This approach will ensure there is appropriate membership and decision-making authority to enable the response to happen in the emergency timeframe.

There is a different action card for these emergency scenarios and additional supporting guidance can be [found here](#).

Actions to be taken following the managed period or service interruption

Where individuals have been moved to alternative provision or have their services reinstated it will be necessary to take action to ensure matters are concluded in respect of the property and affairs of individuals and any personal money owed. This may require working with the individuals, their representatives and those with Power of Attorney or a Court appointed deputy.

All individuals directly affected by any moves or change of provision should be reviewed at regular intervals and there should be close communication with their family and/or advocates.

A debrief should be held with staff directly involved to ensure staff have the opportunity to reflect and that any lessons are learned and incorporated into future policy and practice.

All records of actions / decisions taken / costs incurred should be retained and secured safely. Chronologies of involvement should be established and should be added to logs contemporaneously.

Where a provider service's staff are directly affected by any closure, consideration should be given to their welfare and where possible support should be given to enable them to access employment / housing advice. This may include the involvement of the district council.

There should be agreement in respect of the co-ordination of any ongoing investigations and / or enquiries. This may mean ongoing investigations by Police, Home Office Immigration, or the Care Quality Commission.

Additional information

Charging

Adults' Health and Care (AHC) may charge the relevant adult or service provider for the actual costs incurred of temporarily meeting needs by providing alternative care or support.

AHC will not charge for the provision of information and advice.

AHC may recover the actual costs of temporarily meeting the needs of a person who is not ordinarily resident in Hampshire from the relevant authority which made or funded the arrangements with the failed provider. The costs recovered will be those incurred by AHC in respect of meeting the needs under the temporary duty.

Generally, responsibility will continue to remain with the authority that arranged or funded the care and support.

Communication

Consideration should be given at all stages to communicating with all relevant stakeholders including the people impacted, their families and representatives, partner organisations, care teams and commissioners.

All stakeholders should receive frequent updates on any changes to the plans made.

Internal communication should include

- Director of Adults' Health & Care
- Senior managers
- Local councillors
- Communications lead
- Hampshire Safeguarding Adults Board

External communication should include

- The people impacted
- Family and/or advocates, legal representatives including those with power of attorney or court appointed deputy.
- Partner agencies such as Ambulance Service, Police, CQC
- Providers of services

Implementation plan:

The introduction of detailed action cards and specific guidance for AHC staff is a significant and positive change. It will ensure that all staff have the tools they need to be able to respond to a provider interruption, closure, or urgent incident.

The guidance and the accompanying tools will be introduced and implemented by the following steps:

No:	Action	Delivery date	Completed
1.	Agreed and signed off at the Care Governance Board.	1 December 2022	Yes
2.	Work to continue to finalise the supporting action cards and resources for sign off and agreement at Care Governance Board in January 2023.	30 January 2023	Yes
3.	Request for SCPM pages to be updated to show guidance principles and tools.	By end February 2023	
4.	Team Brief Article	By end February 2023	
5.	Operational Managers update	By end March 2023	
6.	New tools to be used with effect from 1 Feb 2023	1 March 2023	

Performance monitoring:

The Provider Quality Team will oversee and coordinate all provider incidents covered in this guidance. Regular reporting will be provided to the following:

- Routine reports as incidents happen and at a minimum on a two-weekly basis to the Head of Care Governance and Quality Assurance.
- Monthly information on the Provider Quality Team scorecard to performance meetings and the Safeguarding and Quality Unit meeting monthly.

Ad-hoc reports and insights to the Departmental Management Team and the Care Governance Board