



**TRAFFORD**  
**COUNCIL**

# Adult Social Care Managing Provider Failure Procedure and Guidance

## Document control

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## Reviewers

This document has been reviewed by the following stakeholders:

Name	Title
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## Approvers

This document requires the following approvals:

Name	Title
DMT/SLT	Signed off as final version at DMT/SLT on 16 June 2025 subject to process map applied and communications plan to be added.

## Review

Reviewer	Date of review
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## 1. Introduction

The [Care Act 2014](#) regulations and guidance places a temporary duty on the council to ensure that care and support needs of adults and the support needs of carers continue to be met if there is a service interruption, or a provider fails. The duty applies regardless of whether an individual is self-funded, or the local authority pays for the care and support services.

This policy sets out what the duty means, when it is triggered, what and how people's needs will be met by the council.

The policy seeks to ensure that adults and carers are not left without the care or support they need if their registered care provider becomes unable to carry on providing it because of business failure. The policy also covers service interruptions and the discretionary power to meet urgent needs.

This policy aims to set out the responsibilities of the council and the procedure for responding to planned and emergency local care provider failure. It is aimed at all officers and stakeholders who may be required to respond. It should be read in conjunction with:

- [Sections 5, 19, 48 and 57 of The Care Act 2014](#)
- [The Care and Support \(Business Failure\) Regulations 2015](#)
- [Chapter 4 \(Market Shaping and Commissioning of Care and Support\)](#) and [Chapter 5 \(Managing provider failure and other service interruptions\) of the Care and Support Statutory Guidance](#)
- [CQC Care Home Closure guidance](#)
- The council's internal procedures and guidance

Any assessment and planning processes involving vulnerable adults affected by a potential failure will also need to be underpinned throughout by the principles of the Care Act 2014 and the Mental Capacity Act 2005.

Any resulting requirement for transfer of residents to alternative care facilities would be dependent on the assessed needs of the person and the availability of sufficient capacity in the local market.

Lead responsibilities for dealing with different categories of residents will fall across the identified agency as the lead contractor, largest proportion of funding or statutory responsibility. This may be superseded in the event of organisational safeguarding procedures. This should be identified through the Joint Incident Steering Group.

- Continuing healthcare funded – ICB Trafford.
- Council-funded, joint and self-funded – Trafford Council.
- 'Out of Borough' – Trafford Council to identify relevant funding authority and agree responsibility for managing transfer.
- s.117 – Trafford Council.

Actual or prospective failure of a single provider imposes stress on a local care market, whereas the failure of a medium or large corporate provider - potentially involving several care services in the same area at the same time - will present enormous challenges. This is likely to require a shared GM approach, with an agreed lead, potentially involving a number of ICB organisations and local authorities to identify alternative capacity and to maintain service provision. In the event of such incidents occurring, the likelihood is that the Care Quality Commission as regulator will already be notified via their Market Oversight team and process.

It is recognised that every situation is different, and it is up to the responsible statutory sector senior managers to decide the best approach for the situation presenting at the time, interpreting this guidance flexibly to suit the specifics of the case while still being guided by its principles. Any case-specific 'contingency' or 'resilience' planning will, to a large extent, be determined by the time available prior to failure, and the lead officer will need to adapt procedures and use available resources to minimise disruption to service users and their families far as possible.

Factors such as the cause of the failure, the timescale, local availability of provision and staffing resources, will all affect the feasibility of using a standard management approach - however, the checklist in **Appendix A** provides a useful framework.

## 2. Aims and Objectives

The main aim of this document is to provide a framework for managing provider failure which has consideration of key principles:

- To define the temporary duty of the council to ensure that the needs of adults receiving care and support and/or a carer continue to be met once it becomes aware that a provider is unable to continue to provide services.
- To set out how the care and support needs of adults receiving care and support continue to be met where a provider is unable to carry out its business because of business failure.
- To seek to minimise the disruption for adults receiving care and support.
- To provide a service as similar as possible to the previous one, whilst ensuring that individual's needs are met.
- To act promptly to meet an individual's needs irrespective of whether those needs meet eligibility criteria.

The council shall consider each service disruption on its facts and determine the level intervention based on risk assessment.

In the event of business failure, the council has a responsibility to meet individual's needs regardless of the following:

- Whether the person pays for care.

- Whether the council pays for the person's care.
- Whether the person's care is funded in any other way including self-funding.
- Whether the person is ordinarily resident in Trafford.
- Whether the person's needs would meet the eligibility criteria.
- The relevant adult or carer is ordinarily resident in Trafford.
- The council has carried out a needs assessment, carers assessment or financial assessment.
- Any of the needs meet the eligibility criteria.
- The 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.

This procedure identifies actions in the event of an unplanned or potential care provider failure, including the officers responsible for these actions.

It is intended as a generic approach to situations of this type and should therefore form part of, and be read in conjunction with, Trafford Council's relevant Business Continuity Plans and those of the provider(s) and other organisation(s) involved.

The options for alternative provision will depend upon individual circumstances and may include:

- a. 'Spot purchase' from other care providers.
- b. Reserving services in other suitable locations.
- c. Temporary staffing.
- d. Temporary management, (e.g. consultancy firm).
- e. Alternative contracted management/nursing team provision.
- f. Short-term additional funding.
- g. Fee variation over and above normal rates to secure suitable service provision.
- h. Other actions as deemed necessary based on individual circumstances.

The Joint Incident Steering Group will allocate responsibility for ensuring that there is an action plan in place and that it delivers short and longer term provision for all people impacted.

In the case of unplanned failures affecting a major service provider that overwhelms the ability of Trafford Council and the relevant integrated care board to relocate service users, emergency planning procedures for the Council and partners would need to be activated.

The procedure for emergency failures resulting from fire, flooding, explosion etc. will be dealt with as part of major emergency planning responses (if required), and the care providers' business continuity plans.

### 3. Definitions of Failure

“Business Failure” is defined in the Care and Support (Business Failure) Regulations 2015. Where a provider is not an individual, business failure means that, in respect of that provider:

- An administrator is appointed.
- A receiver or an administrative receiver is appointed.
- A resolution for a voluntary winding up without a declaration of solvency is passed.
- A liquidator is appointed.
- A winding up order is made by a court.
- A members' voluntary winding up becomes a creditors' voluntary winding up.
- An order by virtue of Article 11 of the Insolvent Partnerships Order 1994 (joint bankruptcy petition by individual members of insolvent partnership) (g) is made.
- Administration moves to winding up pursuant to an order of a court.
- The charity trustees of the provider become unable to pay their debts as they fall due.
- Where the business failure relates to an individual person, business failure means that the individual has been declared bankrupt.
- Service interruption because of “business failure” relates to the whole of the regulated activity and not to parts of it.
- Closure by regulators such as CQC (Care Quality Commission).
- Loss of premises due to damage such as fire or flood.
- Loss of premises or reduced occupancy due to health and safety.
- Closure by owners due to increasing financial pressures; or the outright failure of their business leading to the appointment of a Corporate Insolvency Practitioner (e.g. a Receiver, Administrator etc.).

This policy should also be implemented as appropriate when failure is likely but not yet confirmed. The checklist (**see Appendix A**) should be reviewed and implemented as required by the circumstances.

**“Temporary Duty” or “Duty”** means the duty on the council to meet needs of people in receipt of a regulated service in the case of business failure or service interruption.

**“Temporary”** means the duty continues for as long as the council considers it necessary. The temporary duty applies regardless of whether a person is ordinarily resident in the council's area. The duty applies from the moment the council becomes aware of the business failure. The actions to be taken by authorities will depend on the circumstances and may include the provision of information.

**“Regulated Activity”** means services 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 Care Quality Commission (CQC).

**“Registered Care Provider”** means any individuals, partnerships or organisations (companies, charities, NHS trusts and local authorities), that provide care, support or other services to people must be registered with the CQC. The duty applies to these registered providers in respect of carrying out regulated activities.

**“Relevant Adult”** means an 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.

**“Ordinary Residence”** means 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.

#### **4. Service interruptions because of business failure**

Business failure of a major registered care provider is a rare and extreme event and does not automatically equate to closure of a service. This is because a provider would be considered to have “failed” at the point when an administrator or insolvency specialist becomes involved. It may have no impact on residents or the people who use the services.

However, if a provider is unable to continue because of business failure, the council’s duties are as follows.

- If the provider’s business has failed but the service continues to be provided, then the duty is not triggered. This often may happen in insolvency situations where an administrator is appointed and continues to run the service.
- The duty applies where a failed provider was meeting needs in the council’s administrative area. It does not matter whether the council has contracts with that provider; if all the people affected are self-funders or which local authority (if any) made the arrangements to provide services.

The needs that must be met by the council are those that were being met by the registered care provider immediately before the provider became unable to carry on the activity. It is not necessary to meet those needs through the same combination of services that were previously supplied. When deciding how an individual’s needs are met, the council must involve the individuals concerned, any carer that the person has, or any other individual whom the person asks to be involved.

The council has the power, where it considers this necessary to discharge the temporary duty, to request that the provider, or anyone involved in the provider’s business as it thinks appropriate, to supply it with information that it needs. This may involve, for example, up to date records of the people who are receiving services from that provider, to help to identify those who may require care and support and/or to enable Adult Social Care to contact them and arrange for alternative care.

The lack of a needs, carers or financial assessment for an individual must not be a barrier to action. Neither is it necessary to complete those assessments before or whilst acting. The council must meet needs irrespective of whether those needs would meet the eligibility criteria. All people receiving services in Trafford are to be treated the same. This includes self-funders and people who receive top ups. The council may charge a self-funded person for the costs of meeting their needs, and it may also charge another local authority which was previously meeting those needs. The charge must cover only the actual cost incurred by the council in meeting the needs.

Where a failed provider is providing an adult with NHS Continuing Healthcare (CHC) which is commissioned by an integrated care board, the relevant integrated care board will be treated as the relevant partner that the council will co-operate with in reaching an agreement about how to meet needs.

The 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.

All the above duties apply equally to people funded by local authorities in Wales, Scotland or Northern Ireland, the council may recover costs from those authorities or the person themselves as appropriate.

Where a dispute occurs, officers must inform the Director of Commissioning, the Director of Adult Social Care and where appropriate the Corporate Director for Adult Social Service.

## **5. Business failure involving a provider in the CQC oversight regime**

From April 2015, the financial “health” of certain care and support providers has been subject to monitoring by the CQC. The Care and Support (Market Oversight Criteria) Regulations 2014 set out the entry criteria for a provider to fall within the regime. These are intended to be providers which, because of their size, geographic concentration, or other factors, would be difficult for one or more local authorities to replace, and therefore where national oversight is required. CQC will determine which providers satisfy the criteria by using data available to it.

Where CQC is satisfied that a provider in the region is likely to become unable to continue with their activity because of business failure, it is required to tell the council so that we can prepare for the local consequences of the business failure. CQC will inform the council once it is satisfied the provider is unlikely to be able to carry on because of business failure.

CQC’s trigger to contact the council is that it believes the whole of the regulated activity in respect of which the provider is registered is likely to fail, not parts of it. It is not required to contact the council if a single home owned by the provider in the region is likely to fail because it is unprofitable and CQC is not satisfied that this will lead to the whole of the provider’s relevant regulated activity becoming unable to continue. In these circumstances, it is the provider’s responsibility to wind down and close the

service in line with its contractual obligations and it is expected that providers would do so in a planned way that does not interrupt people's care.

Where CQC considers it necessary, it may request the provider share with it relevant information to support the council in the discharge of their temporary duty. CQC must give the information, and any further relevant information it holds, to the council affected to enable it to fulfil its temporary duties. If the CQC is of the view that a provider is likely to become unable to continue with its activity because of business failure, the Council will work with the CQC to fulfil their temporary duty.

## **6. Business failure involving a provider not in the CQC oversight regime**

A large proportion of the providers in Trafford are likely to fall outside the CQC oversight regime as small and medium size businesses. Where a provider falls outside the CQC market oversight criteria the temporary duty on the council to meet needs in the case of business failure and to ensure continuity of care in respect of business failure still applies.

The council will record soft information to identify financial constraints. For example, the recruitment and retention of staff, complaints about food, monitoring checks of supplies, complaints regarding non-payment of staff or suppliers, if urgency is expressed by providers to get purchase orders processed quickly to trigger payments etc.

## **7. Administration and other insolvency procedures**

In the event of business failure, it is often the case that an administrator will be appointed. The role of the administrator is to represent the interests of the creditors of the provider and to seek ways to rescue the company as a 'going concern'. Where this occurs, the council will not be required to exercise its temporary duty. The council will not be involved in the commercial aspects of the insolvency but will work with administrators to ensure the safety and wellbeing of people receiving care and support. It is recognised that early removal of people from a service or terminating commissioning arrangements following the appointment of an administrator could impact on the potential to retain the business as a 'going concern'. This will be avoided in so far as it is possible without adversely affecting people's wellbeing. The council reserves the right to suspend new placements with providers subject to insolvency arrangements until such time that assurances are provided about the future of the service. The relevant adults will also be supported to decide whether they would want to continue to be supported by an organisation where there is a lack of clarity over future service arrangements.

## **8. Service interruptions other than business failure (service failure)**

In situations where services fail or are interrupted but business failure is not the cause powers detailed in [Sections 18 and 19 of the Care Act 2014](#) can be exercised to meet urgent needs without having to first conduct a needs assessment, financial assessment, or eligibility criteria determination.

The council will meet urgent needs regardless of whether the adult is ordinary resident in its area and, therefore, can act quickly if circumstances warrant. The power to meet urgent needs is not limited by reference to services delivered by providers and is thus available where urgent needs arise because of service failure of an unregistered provider (i.e., a provider of an unregulated social care activity). The power may also be used in the context of quality failings of providers if that is causing people to have urgent needs. The action required in relation to each service interruption should be considered on its facts and via a process of risk assessment. It is for the council to decide if it will act to meet a person's needs for care and support which appear to it to be urgent. In exercising this judgement, the council must act lawfully, including taking decisions that are reasonable.

## **9. Activation of the Procedure**

As soon as a failure notification is received or real risk of potential failure is identified, the Director for Commissioning, Director of Adult Social Care and Corporate Director of Adult Social Services must be notified immediately by telephone with confirmation in writing (email) by the provider or professional. If they are unavailable, contact should be made to the nominated deputy. It is not acceptable to leave a message with other members of staff. GM ICB Trafford, Greater Manchester Mental Health NHS Foundation Trust, other ICB(s) and/or other Council(s) should be consulted with as appropriate. The Corporate Director of Adult Social Care and Executive member should be remained briefed as to any such incidents.

The Director for Commissioning and Director of Adult Social Care will instruct appropriate officers to verify the failure/potential failure with CQC and/or the provider and any other relevant parties. Should the business failure be related to the alleged abuse of one or more adults, the safeguarding manager or their nominated deputy must be notified and should ensure that safeguarding alerts are made in accordance with the safeguarding policy and procedures.

Situations of the above nature do sometimes arise “out of the blue”, but more typically there will have been an accrual of “warning signs” over a period through provider concerns, and proactive quality assurances programmes, and/or the services management and staff may have openly shared word that its future is at real risk, possibly accompanied by media reports. Trafford Council officers should be alert to such signs and should notify their senior leadership team so the implications can be considered, and the likelihood and risk assessed.

Officers passing on information **must** ensure it has been received and acknowledged. If they are unavailable the contact should be made to their nominated deputy. It is 'not acceptable' to leave a message with administrative staff.

The identified Council lead will instruct appropriate officers to verify the failure or potential failure with CQC, and/or the care providers owner, and determine other relevant parties that need to be contacted, by whom, and when.

Should the failure be related to the alleged abuse of one or more vulnerable adults and/or children, the Director of Adult Social Care and Strategic Lead for Safeguarding, must be notified and should ensure that safeguarding alerts are made in accordance with Trafford Council's adult safeguarding policy and procedures.

The Trafford Council lead will immediately call a Joint Incident Steering Group Meeting to take place at the earliest practicable opportunity, to agree a plan of action, and if appropriate to invoke this Operational Procedure – whether wholly or (in the case of potential but unconfirmed failure) in part. In view of the potential implications for the health and wellbeing of individuals placed at such service, the relevant officers will be required to treat the situation as demanding their personal involvement and very high priority; however it is acknowledged that in order to ensure timely involvement of all key parties, including CQC, this may occasionally necessitate 'virtual' meetings such as through Teams Meetings, and/or the nomination of appropriate 'deputies'. See **Section 10** 'Joint Incident Steering Group' for meeting membership.

Dependent upon the urgency of the situation, it may be necessary to convene such a meeting outside of 'normal office hours'. Provider failures that occur outside of normal office hours should be referred to Trafford Council's key contacts or Forward Incident Rota arrangements as outlined in **Appendix B**

## **10. Joint Incident Steering Group**

The first meeting of the Joint Incident Steering Group (JISG) is to be arranged at the earliest practicable opportunity following the identification of a provider failure (or potential failure). The Specialist Commissioner will act as chair.

The first meeting will establish who will be the Council's lead officer for the group. The lead officer will have responsibility for ensuring:

- All decisions are made and implemented in a timely manner.
- Minutes are taken of each meeting with agreed actions. **Appendix C.**
- Each action must have a timescale.
- Minutes must be circulated to group members and copied to the relevant heads of service.
- Briefing notes are adequately prepared through the proceedings to provide a summary to the Corporate Director and/or Executive Member for ASC. See **Appendix D.**

- Agreement is reached as to the frequency of its meetings, agreeing a core group of members who are kept informed and responsible for the proactive cascade of information to colleagues in their own service area (e.g. copy appropriate emails and reports to relevant people who are not necessarily group members but may have a 'need to know').
- A communications plan is agreed, and a suitable balance struck so that where failure is not yet a certain outcome, the situation is not exacerbated and the provider's entitlement to 'commercial confidentiality' is not infringed.
- Consideration is given, if appropriate, to potential measures to prevent or delay failure e.g. short-term additional funding or assistance from Trafford Council and/or GM ICB Trafford.
- Responsibility for researching and pursuing alternative provision, depending upon the specific circumstances of the case, is allocated.
- Any financial decisions, for example if payments for placements should be stopped, should be made.

At the first meeting an operational group will be set up to lead the work on the closure reporting to the JISG. The operational group is responsible for identifying all affected residents, both service users and their carers, and ensuring all residents are supported to move to alternative provision in a timely manner. The chair of the operational group will become a member of the JISG if not already.

Members of the JISG may include but not be limited to:

- Directors of Commissioning and Director of Adult Social Care.
- Relevant Heads of Service/Strategic Leads or equivalent for partner agencies.
- Commissioning Officers across commissioning including brokerage.
- Adult safeguarding group/service manager.
- Group/service manager for prevention and personalisation.
- Principal social worker.
- Finance representative.
- Communications representative.
- Legal representative (if appropriate).
- CQC representative (if appropriate).
- ICB Commissioning/Contracting representative (if appropriate).
- ICB Quality representative (if appropriate).
- NHS Continuing Health Care representative (if appropriate).
- where appropriate the JSIG should also include representatives from other local authorities.
- Greater Manchester Police.
- Relevant provider management (if appropriate).

The Joint Incident Steering Group will allocate responsibility for ensuring that there is an action plan in place and that it delivers short and longer-term provision for all people impacted.

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

which are intended to support 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 between Council and Provider/Agency. Client payments may need to be withheld by commissioners and only paid when the situation is resolved.

Wherever possible all transfer of residents between care providers should occur within normal working hours. Consideration and planning on transfer is necessary, for example specialist transport, ambulance, stretcher etc.

## **11. Disputes between Authorities**

There will be open communication and co-operation between the council and the relevant local authority that arranged and or funded 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 determination (ordinary residence dispute resolution procedure).

## **12. Contingency planning**

As part of contingency planning the council will identify and assess potential risks in Trafford with local partners. The council will also work with local providers to determine the services they are willing and able to provide if the need in the case of provider failure. 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.

## **13. Brokerage Procedure for Managing Large Hand backs**

Home Care hand backs are identified either by the contracts manager, or duty broker via emails from an agency. A large hand back is defined as the supplier of the care are unable to fulfil contractual obligations. This is separate to a supplier providing notice on an individual they are supporting. In the event of a large hand back, emails are usually exchanged when an 'incident' arises. Either the Specialist Commissioner or Commissioning Officer for the brokerage service agree to email all service managers, senior practitioners and allocated workers of clients affected by the hand back.

All are advised that Brokerage cannot guarantee obtaining a replacement provider in turn, and that alternatives may need to be considered, such as respite, family or other strengths approach.

All are requested to create a brokerage episode within LAS Provider Concerns and notify the commissioning duty tray and email [commissioning.referrals@trafford.gov.uk](mailto:commissioning.referrals@trafford.gov.uk) when this is complete. If required, the commissioning manager will organise a team

multi-disciplinary team meeting (MDT), inviting Adult Social Care colleagues and brokers for “progress chasing and action planning”.

The commissioning manager will consider the workflow and market availability within the Framework providers to explore relocation of packages and possible opportunities of workforce TUPE arrangements and coordinate the hand back and change of duty.

The assigned broker will be confirmed and notified through the commissioning brokerage process and individuals’ information will be updated through the Adult Liquid Logic profiles. Regular email follow up and updates will occur between all parties.

#### **14. Information for individuals who self-fund their care provision**

The Care Act 2014 regulations and guidance places a temporary duty on the Council to ensure that care and support needs of adults and the support needs of carers continue to be met if there is a service interruption or a local provider failure. The duty applies regardless of whether an individual is self-funded, or the Local Authority pays for the care and support services.

Trafford’s adult social care service (ASC) will provide advice and guidance in relation to meeting individual social care needs and will liaise with health professionals in relation to ensuring health needs are met. Social care workers will advise on alternative care provision and will keep the individual, family, and carers fully informed and actively engaged in the process, exercising choice and control to support and maximise wellbeing. ASC will complete an assessment and support plan with anyone who funds their own care where this is requested by the individual or their representative. ASC will schedule safe and well visits as a priority and make referrals to advocacy services as required. Social care workers will listen to any concerns that the person or family raise and provide support to try to alleviate the situation and will also complete a review within the new care setting.

Trafford Council will not provide financial advice nor fund any financial support for additional costs that may arise for people who fund their own care; however, information on obtaining independent financial advice is available on the Trafford Council Directory via the website and social care workers will be able to direct individuals to this.

#### **15. Review of policy**

This policy will be reviewed as necessary to reflect operational or legislation changes.

#### **16. Key Contact Information**

Further advice and guidance is available from the key contacts for relevant service in **Appendix C**

**17. Appendices - The following documents are available upon request**

<b>Appendix A - Checklist</b>	
<b>Appendix B – Key Contacts</b>	
<b>Appendix C - JSIG Meeting Note Template</b>	
<b>Appendix D - Briefing Note Template</b>	
<b>Communication Plan Template</b>	

**18. References**

[Care Act 2014](#)

[Mental Capacity Act 2005](#)

[Trafford Strategic Safeguarding Partnership](#)

[Trafford Directory](#)