

Oldham Council

Adult Social Care

Commissioning and Market Management
Provider Failure Policy
(Where the council is lead commissioner)

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healthy, safe and well*

Document Control

Summary

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This document requires the following approvals.

Name	Role	Date approved
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May 2025	V.3	Update to ensure information accurately reflects current procedure and structures.	Alison Berens - Head of Quality and Care Provisioning	Claire Hooley, AD of Commissioning and Market Management

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1. Introduction

- 1.1 The Care Act 2014 places temporary responsibilities on local authorities, to meet the care and support needs of an individual and the support needs of a carer when a registered care provider becomes unable to carry on a regulated activity, establishment or agency as a result of business failure. This policy sets out what this duty means, when it is triggered, what needs will be met and how those needs will be met by Oldham Council. The Care Act also places additional responsibilities on the Care Quality Commission for assessing the financial sustainability of certain hard to replace care providers.
- 1.2 This policy may also be applied in other circumstances where a provider hands back a number of packages for any reason. Throughout this policy, reference to failure is made however, this can be considered to include this wider use.
- 1.3 This policy seeks to ensure that individuals 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 it.
- 1.4 The policy also covers service interruptions and the discretionary power to meet urgent needs.
- 1.5 This policy should be read alongside the Provider Failure Procedure.

2. Scope of temporary duty

2.1 To whom does this policy apply?

This temporary duty applies to all people receiving services in Oldham regardless of whether:

- The relevant individual or carer is ordinarily resident in Oldham
- Oldham Council has carried out a needs assessment, a carer's assessment or a financial assessment
- Any of the needs meet the eligibility criteria
- The costs of meeting their needs are met by a self-funder
- Oldham Council has a contract with the failed provider
- Another local authority made arrangements to provide the services, the cost of which was paid by that authority or that authority was making a direct payment in respect of those needs

2.2 What needs will be met?

Oldham Council will meet those care and support needs of an individual and support needs of carers, which were being provided immediately before the provider became unable to carry on that activity in Oldham because of business failure. This means Oldham Council will provide care and support based on the assessment that informed the care and support package. This will ensure there is no delay in arranging the alternative provision.

In the event that there is no assessment of needs, carer's assessment or a financial assessment and irrespective of whether those needs would meet the eligibility

criteria, Oldham Council will act as promptly as possible to meet needs under the temporary duty.

Where Oldham Council requires further information to enable it to meet this temporary duty, it will request that the provider, or anyone involved in the provider's business as considered appropriate, supplies any necessary information. For example, this may include up to date records of the people who are receiving services from that provider, to help Oldham Council to identify those who may require support.

2.3 How will those needs be met?

Oldham Council has discretion as to how it will meet needs when this temporary duty becomes applicable. Examples in the Care Act 2014 include accommodation, care and support at home or in the community, counselling and other types of social work, goods and facilities, information, advice and advocacy. Oldham Council is not required to meet needs in exactly the same combination of services that were previously provided, however, it will aim to provide a service as similar as possible to the previous one where possible and on the basis that the person's needs will continue to be met.

Some people may only require information and advice on alternative services available locally to enable them to make a properly informed choice about a new provider.

Others may require Oldham Council to actively arrange care with a different provider for a period of time, to ensure there is continuity of care.

The steps taken will depend on both the circumstances of the provider failure and the nature of the support the adult or carer requires from Oldham Council.

2.4 Who will be involved in deciding how needs will be met?

In deciding how to meet an adult's needs for care and support, Oldham Council will involve:

- the relevant adult concerned,
- any carer that the adult has, and
- anyone whom the relevant individual asks the authority to involve
- where the relevant Individual lacks capacity to ask Oldham Council to involve other persons, Oldham Council will involve anyone who appears to it to be relevant or interested in the individual's welfare.

Oldham Council will take all reasonable steps to agree how needs should be met with the relevant individual or carer. In line with the wellbeing principle, Oldham Council will seek to minimise disruption for people receiving care.

2.5 Records Management Responsibilities

2.5.1 Data Controllers

Oldham Council and any care provider are joint data controllers of records of Oldham Council clients. Care providers are joint data controllers of records of other council's clients,

with those councils. Care providers are data controllers for the records of privately placed and funded clients.

2.5.2 Oldham Council Clients

These are clients who have been assessed as needing care services via Oldham Councils social care system.

In the event of a provider failure, the records of current clients must either be:

- Transferred directly to the new provider
- Or
- Must be returned to Oldham Council so they can be passed onto the new provider. (Details are provided in the accompanying Provider Failure Procedures document)

Records of former or deceased clients/individuals who were also assessed and/or funded by Oldham Council must also be returned to the council. (Details are also provided in the accompanying Provider Failure Procedure document).

2.5.3 Other Local Council Clients

These are clients who have been assessed as needing care services via other councils' social care systems. In the event of a provider failure, the records of current out of borough clients must either be:

- Transferred directly to the new provider
- Or
- Must be returned to the appropriate council so they can be passed onto the new provider. (Details are provided in the accompanying Provider Failure Procedure document)

Records of former or deceased clients/individuals who were also assessed and/or funded by out of borough councils must also be returned to the appropriate council. (Details of how this is to be done are also provided in the accompanying Provider Failure Procedure document).

2.5.4 Private Clients

Records of private clients (those who have not been assessed via any councils' social care system), are not the responsibility of any council, and therefore the provider must take full responsibility for the management, transfer, disposal of these records, following the providers records management policies and procedures.

Care providers must comply with Data Protection legislation at all times and in the event of not doing so Oldham Council reserves the right to report the provider to the Information Commissioners Office. (ICO).

2.6 When will the temporary duty apply?

The temporary duty will apply as soon as Oldham Council becomes aware of the business failure and the provider can no longer carry on its activity.

If, for example, a business is declared insolvent and an Administrator is appointed, that is, there is a business failure, but the service is still continuing to be provided,

Oldham Council has no duty to intervene to provide care and support. If, however, the service does not continue to run following business failure, the temporary duty will apply and Oldham Council will step in to ensure an individual's care and support needs and a carer's support needs are met.

The temporary duty will apply for as long as Oldham Council considers it is necessary, i.e. that it is satisfied that the person's needs will be met by the new provider. At that point the person will once again become responsible for arranging their own care.

2.7 Will a charge be made when discharging this temporary duty?

Oldham Council may charge the relevant adult for the actual costs incurred of temporarily meeting his or her needs by providing alternative care or support. Oldham Council will not charge for the provision of information and advice.

Oldham Council may recover the actual costs of temporarily meeting the needs of a person who is not ordinarily resident in Oldham from the relevant local authority which made or funded the arrangements with the failed provider. The costs recovered will be those costs incurred by Oldham Council in meeting the needs under the temporary duty. Costs can also be recovered from the relevant local authority in Wales or Scotland or the relevant Health and Social Care trust in Northern Ireland that arranged or funded the care and support with the failed provider.

2.8 Out of borough placements

There will be close communication and co-operation between Oldham Council and the relevant local authority or the relevant Integrated Care Board (ICB) that arranged or funded the care and support with the failed provider. Generally, responsibility will continue to remain with the authority that arranged and or funded the care and support.

2.9 NHS Continuing Healthcare

Where a failed provider is providing an individual with NHS Continuing Healthcare which is commissioned by an ICB will be treated as a relevant partner that Oldham Council will co-operate with in reaching an agreement about how to meet needs.

Oldham 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 Oldham Council is not permitted to provide it. The NHS duties are outside the scope of this policy. However, Oldham Council will work collaboratively with NHS Oldham ICB and any other relevant ICB to ensure as far as possible, that arrangements are consistent.

3. Discretionary power to meet 'urgent needs'

3.1 Where Oldham Council considers the needs to be urgent, it may exercise its discretionary power to meet needs without first conducting a needs assessment, financial assessment or eligibility determination and regardless of whether the relevant adult is ordinarily resident in Oldham.

3.2 This may be necessary where services are interrupted, there are quality failings with a provider or there is a risk of an emergency closure, but business failure is not the

cause. Where the provider's business has not failed, it remains the provider's primary responsibility to meet the needs of individuals receiving care and support in accordance with their contractual liabilities.

- 3.3 Where the continued provision of care and support is in imminent jeopardy and there is no likelihood of returning to business as usual, Oldham Council will exercise its discretionary power to meet urgent needs. This power is not limited to regulated providers and may be extended to cover unregistered providers, i.e. unregulated providers of a social care activity, such as a day service provision. Before exercising this discretionary power a risk assessment will be completed to determine whether the needs are urgent. Every service interruption will be considered on its facts and the circumstances.

4. Contingency planning

- 4.1 As part of our contingency planning Oldham Council will identify and assess potential risks in Oldham, with our local partners. Oldham Council will engage with local providers to determine which services they would be willing and able to provide if the need arose because of the failure of a provider. This will enable Oldham Council to facilitate a prompt response and secure continuity of care for people affected in the event of a business failure or service interruption.

5. Disputes between authorities

- 5.1 There will be close communication and co-operation between Oldham Council and the relevant local authority that arranged and or funded the 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).

6. Review of policy

- 6.1 This Provider Failure Policy will be reviewed annually or earlier as required by policy or legislative changes. Any major amendments to this policy will be subject to consultation.

Appendices

Appendix 1: Management of Client Records

Please see document attached separately.

Appendix 2: Template Provider Failure Plan

Please see document attached separately.

A1. Definitions

The table below provides an overview and glossary of terms that are either contained or linked to this document.

Business failure	The Care and Support (Business Failure) Regulations 2014 define business failure. The regulations explain the circumstances in which a provider is to be treated as being unable to carry on because of business failure. The full list is in the Regulations.
Care Act 2014	The Care Act is law and set out the legal obligations and duties local authorities must adhere too to promote an individual's 'wellbeing'.
Care Quality Commission (CQC)	The Care Quality Commission is the independent regulator of health and adult social care in England.
Information Commissioners Office (ICO)	The Information Commissioners Office upholds information rights in the public interest, promoting openness by public bodies and data privacy for individuals.
Integrated Care Board (ICB)	Integrated Care Boards (also known as ICBs) are statutory NHS organisations responsible for planning health services to meet the needs of their local population.
NHS Continuing Healthcare	NHS Continuing Healthcare funds those individuals with long-term complex health needs that qualify for their health and social care to be arranged and funded solely by the NHS.
Ordinary residence	Ordinary residence is given its ordinary and natural meaning and refers to a person's abode in a particular place or country adopted voluntarily and for settling purposes, whether for a short or long duration. Ordinary residence can be acquired as soon as a person moves into an area, if their move is voluntary and for settling purposes, irrespective of whether they own, or have interest in a property in another local authority.
Registered care provider	Any individuals, partnerships or organisations (companies, charities, NHS trusts and local authorities) that provide care, support or other services to people on a contractual basis must be registered care providers with the Care Quality Commission. The temporary duty applies to these registered care providers in respect of carrying out regulated activities.
Regulated activity	These are regulated activities involving or connected within 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 within the CQC. Examples of regulated activities include the provision of personal care and accommodation for persons who require nursing or personal care.
Relevant individual	This is the individual 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.
Secretary of State	The Secretary of State is responsible for the work of the Department of Health and Social Care, including overall financial control and oversight of NHS delivery and performance and oversight of social care policy.

Temporary duty	This means the duty on Oldham Council to meet care and support needs for an individual, or support needs for the carer where the providers are unable to carry on because of business failure. The duty is temporary and will continue for as long as Oldham Council considers necessary. The temporary duty will be triggered when Oldham Council becomes aware of the business failure and the provider can no longer carry on its current activity.
Tri-X	This is the main policy and procedure system that Oldham Council, Adult Social Care currently have in place.