

Oldham Council

Adult Social Care

Commissioning and Market Management
Provider Failure Procedure
(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 roles reflect current positions 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 This procedure identifies actions to be taken in the event of actual or prospective failure of one or more providers of care which appears likely to occur in circumstances where the Provider may not be able to plan and implement an orderly and structured run-down of their services.
- 1.2 This document, which should be read alongside the Managing Provider Failure Policy [Adult Social Care Provider Failure Policy | Oldham Council](#), is based on guidance by ADASS (the Association of Directors of Adult Social Services) for dealing with provider failure and supports the requirements of Section 48 of the Care Act (2014).
- 1.2 Failures of care providers are relatively rare events and present particular challenges in that the intervention of commissioners would be required immediately, and the assessment and transfer of residents to alternative care providers may need to take place within a very short time frame.
- 1.3 The impact of the changes to provision upon service users and their relatives and carers should be managed in the best 'person-centred' way possible by working to the framework set out in this document. Every effort should be made to cater for the specific identified needs of each service user, and wherever practicable to keep 'friendship groups' together and take time and great care to minimise disruption and maximise the time available for preparation. Any potential failure will also need to be underpinned throughout by the principles of the Mental Capacity Act 2005.
- 1.4 Failures may be caused by a number of factors - for example:
 - Closure by Regulators
 - Termination of contract by Commissioners
 - Loss of premises due to damage
 - 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.).
- 1.5 In the case of care home failures, any resulting requirement for the transfer of residents to alternative provision would be dependent on the assessed needs of each individual and the availability of spare capacity in the local market.
- 1.6 Lead responsibilities for dealing with different categories of resident will be as follows (see also **Section 5** below):
 - 'Continuing Care' funded – NHS – relevant Integrated Care Board Locality Team
 - Council-funded, joint and self-funded – Oldham Council
 - 'Out of Area' – Oldham Council to identify relevant funding authority and agree responsibility for managing transfer
- 1.7 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 - often involving several Care Services in the same area at the same time - will present enormous challenges that may require the involvement of a number of NHS commissioners and Local Authorities to identify alternative capacity and to maintain service provision.

- 1.8 **It is recognised that every situation is different, and it is up to the responsible statutory sector leads to decide the best approach for the situation presenting at the time, interpreting this Operational Procedure 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 Officers will need to adapt procedures and use available resources to minimise disruption to service users as far as possible.
- 1.9 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 Template Provider Failure Plan included at Appendix 2 of this procedure provides a useful framework.

2. Aim and Purpose of this Procedure

- 2.1 The main aim of this document is to provide a framework for Managers to ensure:
- the health and the emotional wellbeing, safety and welfare of the vulnerable service users that are affected, and of their families and carers.
 - effective coordination and communication between all parties involved in the proposed and/or actual failure arrangements.
- 2.2 This Procedure identifies actions in the event of an unplanned or potential care provider failure, including the officers responsible for these actions.
- 2.3 It is intended as a generic approach to situations of this type and should therefore form part of, and be read in conjunction with, a Resilience or Contingency Plan dealing with the specific circumstances of each case.
- 2.4 In the case of unplanned failures affecting a major service Provider that overwhelms the ability of the local authority and the NHS being able to relocate service users, consideration may need to be given to activating Emergency Planning procedures.
- 2.5 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 care providers business continuity plans.

3. Definition of Failure

- 3.1 This procedure includes all failures and all types of care provision.
- 3.2 The failure may be as a result of a decision by the Care Quality Commission (CQC) under their powers to require an emergency closure; or through a decision by commissioners to decommission care (e.g. as a result of a major event such as serious safeguarding concerns), resulting in the care provision closing. This may also cover other failures, for example due to an emergency e.g. infection control, flooding etc.; or due to a decision by the Provider (or any Corporate Insolvency Practitioner that has been appointed) to cease trading.
- 3.3 However, it is intended that this Procedure is also implemented as part of a Contingency or Resilience Plan in situations where failure is a serious prospect but is not yet confirmed; or where the timescale before prospective or actual failure cannot yet reasonably be

determined. Reference should be made to the Provider Failure Checklist to determine which sections are relevant in the specific circumstances of the current case.

4. Activation Process

- 4.1 The decision that results in a failure of Care Provision may come from a variety of sources; for example:
- It may be invoked by the Care Quality Commission (CQC) under its powers.
 - A decision to decommission care leading to failure may be taken by Commissioners. The formal decision to activate this Procedure will come from the same lead personnel, and the expectation is that the council and the NHS will agree activation and work in partnership, where joint funding is in place.
 - The Provider may give the appropriate 'Contract Termination Notice' period under their Contract.
 - The Provider may themselves decide that the financial position of the individual service, or their overall portfolio of services, is becoming so very acute that it cannot continue to operate for a period sufficient to market the business and attract a new owner, nor to affect a planned 'orderly run-down' of the operation, i.e. one that would probably require a timescale of some months before failure.
 - The Provider's business may have become "insolvent" (i.e. it can no longer meet its bills as and when they routinely fall due for payment, *and/or* its liabilities materially exceed its assets and there is no reasonable prospect of that being reversed in a realistic time-frame). In these circumstances the Directors/Owners have a legal duty not to continue trading while insolvent, so they should follow one of several Corporate Insolvency processes, which are likely to result in the appointment by the Courts of an Administrator or Receiver. That Officer's principal duty is to maximise the return for the Creditors (the people to whom the business owes money). Therefore they will often be willing to continue to operate the services(s) for a short period in hope of finding a buyer of it as a 'going concern' since that will generally achieve more than a dissolved business – but they will not do so indefinitely.
- 4.2 Situations of the above nature do sometimes occur unexpectedly, but more typically there will have been an accrual of "warning signs" over a period of time, and/or the providers management and staff may have openly shared information that its future is at real risk, possibly accompanied by media reports. This would be managed through the Operational and Strategic Provider Risk Groups which are monthly multi-disciplinary teams which come together to share local intelligence on providers in the locality.
- 4.3 As soon as failure notification is received or real risk of potential failure is identified, Oldham Council's Head of Quality and Care Provisioning and for NHS Oldham ICB Associate Director Quality and Safety (Oldham) must be **notified immediately** and any verbal conversation must be followed up in writing by email.
- 4.4 Staff passing information to either of these "Leads" **must** ensure it has been received and acknowledged. If they are unavailable the contact should be made to their nominated deputy.
- 4.5 The Council will instruct appropriate Officers to verify the failure or potential failure with CQC, and/or the Care Providers Owner, and determine what other relevant parties need to be contacted, by whom, and when.

- 4.6 Should the failure be related to the alleged abuse of one or more vulnerable adults, the Council's Principal Social Worker and Safeguarding Adult Board Manager must be notified and safeguarding concerns should be raised in accordance with the Oldham Multi- Agency Safeguarding Adults Policy and Procedure.
- 4.7 The Council will immediately call a Provider Failure 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 well-being of service users, 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 necessitate 'virtual' meetings such as through Microsoft Teams, and/or the nomination of appropriate 'deputies'. See **Section 6** 'Provider Failure Steering Group' for meeting membership.
- 4.8 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 Oldham Council and NHS on call arrangements.

5. Roles and Responsibilities

- 5.1 The responsible agency for fully health funded service users receiving care from providers at risk of failure is NHS ICB Locality Team, or equivalent. This also includes responsibility for coordinating arrangements on behalf of residents whose care is fully funded and commissioned by other health bodies, i.e. "Out of Area" ICBs.
- 5.2 Oldham Council is the responsible agency for part-funded and fully social care funded service users whose places have been commissioned or funded by the council. Oldham Council also has responsibility for supporting all self-funded service users within the borough to find alternative provision and for ensuring that any move is well managed.
- 5.3 Oldham Council will take responsibility for co-ordinating and ensuring the immediate welfare of all service users funded or commissioned by other Local Authorities; however funding responsibility and the detailed longer-term care planning of affected service users will remain with the placing authorities.
- 5.4 All officers will need to commit to the process and identify any impact upon usual work to their line manager. Officers will need to confirm their delegated authority throughout the process to ensure timely decisions can be made.

5.5 Records Management

- 5.5.1 As either joint data controller or data controller, each provider is responsible for the efficient management of all client records and the records pertaining to the running of the service, in line with Data Protection (DP), legislation in particular DP act 2018. Providers can not absolve their legal responsibilities just because of provider failure.
- 5.5.2 Records Management responsibilities when provider failure occurs are listed in Appendix 1.

6. Provider Failure Steering Group

- 6.1 The first meeting of the Provider Failure Steering Group is to be arranged at the earliest practicable opportunity following the identification of a provider failure (or potential failure). The chairing arrangements will be confirmed at the first meeting. Until this is confirmed the Council Lead Officer will act as the chair.
- 6.2 The first meeting will confirm who will be the Council's Lead Officers for the Group. Detailed within the Provider Failure Checklist are the designated Lead Officers. Confirmation of the level of decision making within the remit of the Lead Officers and that which requires higher authorisation is also within this checklist, as is the handover process and escalation route for decision making when covering leave.
- 6.3 The Lead Officers will:
- have responsibility for ensuring that all decisions are made and implemented in a timely manner.
 - ensure minutes are taken of each meeting with agreed actions (timescales noted), and circulated to team members and copied to the relevant Heads of Service.
 - the Group will decide on 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')
 - Issues relating to publicity and the release of information will be considered, 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.
 - the Group will also discuss, if deemed appropriate, potential measures to prevent or delay failure e.g. short-term additional funding or assistance from the Council or the NHS, or the support of the Council's trading company, MioCare.
- 6.4 Those to be invited must include:
- NHS Lead (ICB Locality) (if health commissioning related)
 - Appropriate NHS Continuing Care Lead
 - Council Commissioning / Contract and Quality Lead
 - Council Procurement lead
 - Relevant Head Quality and Care Provision
 - Council Head of Strategic Safeguarding
 - Relevant Operational Heads of Service
 - Council Records Manager
 - Care Quality Commission
 - Communications Lead
 - Finance Lead
 - Council legal representative
 - MioCare representative (as Continuity of Care Provider)

7. Potential Options for Alternative Service Provision

- 7.1 Potential options may include:
- 'spot purchase' from other Care Providers
 - reserving services in other suitable location/s

- temporary staffing, (e.g. via local agencies)
- temporary management and oversight via Miocare as Continuity of Care Provider
- alternative contracted care provision
- short-term additional funding
- fee variation over and above normal rates to secure suitable service provision
- other actions as deemed necessary based on individual circumstances.

- 7.2 The Group will allocate responsibility for researching and pursuing these options depending upon the specific circumstances of the case.
- 7.3 It should not simply 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. Payments may need to be withheld by commissioners and only paid when situation is resolved.
- 7.4 As part of its service level agreement with the council, MioCare Group is commissioned to act as “Continuity of Care Provider” in situations requiring interim arrangements, usually as part of a full or partial failure. It is therefore important that the Steering Group includes Miocare representation, and that its role both as part of the Group, and operationally, is clearly defined. In this role, it is not intended that MioCare takes on employment responsibilities, but instead provides advice, support and management oversight.

8. Provider Failure Plan (Spreadsheet)

- 8.1 The Provider Failure Plan is a checklist which provides a framework for managing care provider failure, it has been developed into a spreadsheet which is attached as Appendix 2. **Please note that this list is not exhaustive.** This checklist has been developed based on guidance from the Association of Directors of Adult Social Care (ADASS) and the Local Government Association, but as lessons are learnt from previous provider failures these can be added to the checklist for future instances. The Provider Failure Steering Group must determine actions as necessary based on the circumstances.
- 8.2 The checklist should also be used in the event of a potential failure where the timescale is unknown. In this case, although all aspects should still be considered, and appropriate preparatory work based on these points should be begun where necessary, not all points will yet be applicable until the position clarifies.

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.

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.
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.
Mental Capacity Act (MCA)	This stands for Mental Capacity Assessment and refers to the legal process under the Mental Capacity Act that is undertaken to assess an individual's Mental State/ Cognition and their ability to make informed decisions independently.
Self-funder or self-funding	Following a financial assessment, an individual maybe classed as a 'Self Funder' or 'Self-funding their own care' – this means the individual has savings/ assets above the current threshold of £23,250 therefore is not eligible for local authority funding towards their care and support.
Social Care Review /Assessment	A social care review or assessment is the term used to describe the process when a social care practitioner e.g., social worker reviews your eligibility and care and support provision to ensure this is still suitable, sufficient, and appropriate to meet an individual's care and support provision.
Spot purchase	A temporary request for a set period of time with a care provider for their services. This would be used as an interim service whilst alternative longer term provision is confirmed.
Tri-X	This is the main policy and procedure system that Oldham Council, Adult Social Care currently have in place.