

# **Managing provider failure, service interruptions and market oversight**

**Essex County Council**

FINAL/ v1.1. 1.4.2015

## Document Control Sheet

<b>Title of Policy:</b>	<b>Managing provider failure, service interruptions and Market Oversight</b>
<b>Purpose of Policy:</b>	<p>a) Lays out Essex County Council's [the Council] position and intent in relation to provider failure, interruption to service and market oversight. There is separate guidance on how these are put into practice which may be subject to change from time to time.</p> <p>b) To give confidence and reassurance to service users, friends and family members in the event of uncertainty about the continuity of care and support.</p> <p>c) To ensure the safety and wellbeing of service users, regardless of funding arrangements, by enabling continuity of care in the event of or the likelihood of provider or business failure or service interruption.</p> <p>d) To outline a proactive approach which, so far as is possible, ensures the county council works with the market (market shaping) to ensure continuity of care and support services.</p> <p>e) To ensure that the use of this duty under is used only in the rarest of circumstances, remains only temporary, and does not become an integral part of service provision in Essex.</p>
<b>Type of Policy:</b>	Supports the implementation of statute.
<b>Target Audience:</b>	<ul style="list-style-type: none"> <li>▪ Internal staff within adult operations, commissioning and commercial.</li> <li>▪ Care providers operating within Essex and beyond.</li> <li>▪ CQC.</li> <li>▪ Essex Cares</li> <li>▪ Essex CCGs</li> <li>▪ NHS Foundation Trusts</li> </ul>
<b>Date policy approved:</b>	24.3.2015. Comes into force 1 <sup>st</sup> April 2015.
<b>Review Date:</b>	This policy takes account of the changes introduced by the Care Act 2014 that will come into force from April 2015. The policy will be updated as necessary once the Act is in force.
<b>This policy replaces:</b>	This is a new policy
<b>This policy should be read alongside:</b>	Policy on Provider Suspension
<b>Lead Director:</b>	Helen Taylor
<b>Policy Lead / Author:</b>	Sue Cooper
<b>Date / Version</b>	1.4.2015. FINAL v1.1

## **1) Purpose of this policy statement**

- a) This policy statement lays out Essex County Council's [the Council] position and intent in relation to provider failure, interruption to service and market oversight. There is separate guidance on how these are put into practice which may be subject to change from time to time.
- b) To give confidence and reassurance to service users, friends and family members in the event of uncertainty about the continuity of care and support.
- c) To ensure the safety and wellbeing of service users, regardless of funding arrangements, by enabling continuity of care in the event of or the likelihood of provider or business failure or service interruption.
- d) To outline a proactive approach which, so far as is possible, ensures the county council works with the market (market shaping) to ensure continuity of care and support services.
- e) To ensure that the use of this duty under is used only in the rarest of circumstances, remains only temporary, and does not become an integral part of service provision in Essex.

## **2) Context of this policy**

- a) The Care Act 2014 places a duty on local authorities to temporarily ensure there is continuity of care in the event of service interruption as a result of business or provider failure, but also service interruptions for other reasons.
- b) It gives power to local authorities to intervene in circumstances where there are service interruptions for any reason creates "urgent needs" in relation to a provider's ability to deliver high quality care.

## **3) Essex County Council's Position**

- a) Essex County Council's position is that this duty and power applies to all CQC registered care and support providers within Essex, regardless of whether they receive Essex County Council funding, whether they are part of the CQC oversight regime, whether the provider is offering services to a service user who has been "placed" in Essex by another authority, or whether the service user themselves meets any current eligibility for needs criteria.

- b) Furthermore, the council can choose to use the power to intervene in any case of urgent need, regardless of registration or regulation regime.

#### **4) Timescales**

- a) The Council sees its duty as a temporary one, albeit that it must be discharged promptly – ie lack of assessment or information should not be barriers to action.
- b) The council will decide on a case by case basis when the intervention should end, and will continue for as long as it considers it necessary.

#### **5) What “needs” will continue to be met?**

- a) In ensuring continuity of care, the council will ensure that support continues for any need identified immediately before the failure or service interruption occurred. It is, however, for the council, in discussion with the service user, and where appropriate, their representative, to decide in what way. It does not have to be on a like for like basis.

#### **6) Possible scenarios**

- a) By way of illustration some possible scenarios where this policy might apply:
  - i) A provider would be considered to have “failed” at the point when an administrator or insolvency specialist becomes involved.
  - ii) A service could be interrupted because of a lack of staff.
  - iii) Urgent need might occur as a result of flooding or other infrastructure failure.
  - iv) Urgent need might occur when people with needs are at risk because of poor quality care and support.
- b) These are for illustrative purposes. The council, under this duty, will decide on a case by case basis, where provider failure, service interruption and urgent need occur.

#### **7) Charging**

- a) Wherever possible, it is the council’s intent to recoup the costs of meeting needs as part of carrying out this duty.

## 8) Market oversight

- a) CQC will subject certain providers to a market oversight regime focusing on financial health. These providers will be those who, because of size, geographic or other considerations mean that individual local authorities would find it difficult to replace, and therefore require national scrutiny.
- b) CQC will only contact Essex County Council when the whole of one of these businesses is at risk or failing, not when just when individual services might be.
- c) Therefore, Essex County Council will operate its own local market oversight approach.

## 9) ECC's Approach to Market Oversight

- a) The council will maintain market intelligence and monitoring functions to ensure a proactive approach to supporting the market and anticipating wherever possible any risks which might lead to service interruption or provider failure.
- b) The activity in 8a) above will be proportionate and have regard to the information CQC may already have requested from providers.
- c) Intelligence will be analysed in terms of risk to service users and to the local authority.
- d) Activity in relation to market oversight will be underpinned by sound business continuity, contingency and emergency planning by providers and Essex County Council.
- e) The council will carry out these activities where appropriate on a regional basis and with neighbouring authorities.

## 10) Market Shaping

- a) Based on market intelligence, the Council will **proactively shape the market**. This is part of our wider responsibilities under the Care Act.

**11) In cases where services are unique or with very few alternatives**

- a) In instances where a service is unique or with very few alternatives, the council will work with the provider to ensure specific contingency plans are in place.

**12) In instances of integrated care or nursing care**

- a) The Council will ensure there are robust arrangements to ensure nursing and other health related supported is in place using the flexibilities afforded within the National Health Service Act 2006, including entering into arrangements under regulations under section 75 of that Act (arrangements with NHS bodies).

**13) In cases involving an Administrator and/or insolvency**

- a) In so far as is possible and without risk to the safety and wellbeing of the affected service users, Essex County Council will cooperate where an Administrator has been appointed to manage insolvency proceeding, including support to maintain the service, for example by not withdrawing clients during this period, or ceasing to commission that service.

**14) In cases where there is urgent need**

- a) There will be some circumstances, even where there has been no assessed need, and where the activity is unregulated, but because of provider failure, a service user is put in “urgent need” of support. In these instances Essex County Council will exercise its power to ensure continuity of care and safeguard service users, and intervene to meet those needs. It does not need to wait for an assessment. In all cases, it will be Essex County Council who will decide whether there is an urgent need.

**15) What will we do in the event of service interruption**

- a) The council has developed detailed guidance to support this policy.

**16) In cases where a person in need is living in Essex but funded by another local authority or where a person is living outside of Essex and funded by the Council. In these instances the council acknowledges its duty in relation to ordinary residence as laid out in the Care Act and associated statutory guidance.**

**17) In cases where some or all of a person's needs are being met through arrangements made by a local authority in Scotland or Wales or a Health and Social Care trust in Northern Ireland, the Council will ensure full cooperation between both bodies in ensuring continuity of care is preserved.**

**18) Relevant legislation and guidance**

- a) This policy refers mainly to sections 48 – 52 and Sections 53 – 57 of the Care Act 2014.
  - b) There is additional detail within The Care and Support (Market Oversight Criteria) Regulations 2014
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- c) The Care and Support (Business Failure) (England and Wales and Northern 5 Ireland) Regulations 2014
  - d) Care and Support Statutory Guidance Issued under the Care Act 2014.  
Department of Health
  - e) ECC Suspension process
  - f) National Health Service Act 2006, including entering into arrangements under regulations under section 75 of that Act (arrangements with NHS bodies).
  - g) Care Act 2014

[END]