



## London Borough of Haringey

# Managing Provider Failure and Other Service Interruptions Procedure

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Sections 19 and 48 to 57 of the Care Act 2014 place a new temporary duty on local authorities to meet an adult’s care and support needs and a carer’s support needs when a registered care provider or agency becomes unable to carry on a regulated activity because of business failure. This procedure document explains what this duty means and Haringey Council’s approach to ensure that adults and carers are not left without the care or support needed if their care provider becomes unable to carry on providing it because of business failure.

### Document Control

Version	Status	Authors
0.1	March 2015	<i>Charlotte Pomery – AD Commissioning Farzad Fazilat - Commissioning Manager, QA and Safeguarding</i>
0.2	July 2015	<i>Charlotte Pomery – AD Commissioning Farzad Fazilat - Commissioning Manager, QA and Safeguarding, Jodie Szwedzinski - Project Officer</i>
0.3	July 2015	<i>Charlotte Pomery – AD Commissioning</i>
0.4	November 2015	<i>Helen Constantine - Strategic Lead - Joint Governance and Business Improvement Service Sujesh Sundarraj - Commissioning and Safeguarding Officer</i>
0.5	January 2019	<i>Farzad Fazilat – Head of Service, Brokerage and Quality Assurance Hazel Ashworth Head of Continuing Health Care Clinical Team and Safeguarding Lead CCG Charlotte Pomery – AD Commissioning</i>
<p><b>Document Objectives:</b> This joint health and social care strategy has been developed as a means for managing large scale investigations of care providers. This document has been revised in light of Brexit impact and recent national provider failures.</p>		
<p><b>Intended Recipients:</b> The procedure applies to all Haringey Adult residents who receive a service from an establishment.</p>		
<b>Scheduled Review Date</b>	<b>January 2022</b>	

# Haringey Managing Provider Failure and Other Service Interruptions Procedure

## 1. Introduction

- 1.1. The Care Act 2014 marks a significant change in social care legislation, policy and practice. The Care Act and its good implementation require the Council and its statutory and non-statutory sector partners to work together to place the *individual wellbeing* of local people at the centre of all we do. The Act is the biggest change to adult social care since the founding of the Welfare State in 1948. The statute imposes a raft of new responsibilities and statutory duties on local authorities while its financial implications must be carefully monitored and controlled. The Act represents an opportunity for the Council to put in place a system of adult social care for the 21<sup>st</sup> century. The Act places an emphasis on personal wellbeing; on person-centred provision; on prevention; on integration of services; on growing communities' solidarity and capacity to support one another; on increased support for carers; on improving the transition from children's to adults' services; and on providing a firm statutory footing for adult safeguarding.
- 1.2. Sections 19 and 48 to 57 of the Care Act 2014 place a new temporary duty on local authorities to meet an adult's care and support needs and a carer's support needs when a registered care provider becomes unable to carry on a regulated activity because of business failure. This procedure explains what this duty means and Haringey Council's approach to ensuring that adults and carers are not left without the care or support they need if their care provider becomes unable to carry on providing it because of business failure
- 1.3. Whilst this procedure largely focuses on the Council's approach when there is business failure, Haringey's priority is to work with all registered care providers in the borough, to avoid the risk of business failure and to minimise the disruption and impact for service users of any such failure. We will proactively support providers and build relationships to ensure that the risk of business failure is identified and well understood and that steps are being taken in a planned way to mitigate this risk.

## 2. Haringey's Preventative Approach to Provider Failure

- 2.1. The Council will continue to maintain a good understanding of all regulated care provision operating in the borough and work with providers and have processes in place to ensure that there are good lines of communication between all providers and the Council. The Council will work with other local authorities to inform its work on

risk assessment, risk management and the offer of support to providers and to build intelligence about the providers operating within the borough. In addition:

- The Council will encourage active identification and early notification of any risks to business continuity by providers in order to carry out its duties under the Act;
- As part of annual Business Continuity Planning, the Council will identify and assess potential risks in Haringey with each of the local regulated care and other providers;
- The Council will keep a risk log of all providers in Haringey and regularly update the log. This would include financial risk management and organisational capacity as well as other service and care related risks;
- The Council will work proactively with providers through the provision of information, advice and support to reduce the risk of business failure; and
- The Council will focus its activity on those providers where there is assessed to be greater risk of business failure to ensure a targeted approach and efficient use of resources.

### **3. Provider Failure and other service interruptions: application of procedure**

3.1. Where there is provider failure and other service interruptions, this procedure and accompanying procedure applies to all people receiving services in the area of Haringey regardless of whether:

- the relevant adult or carer is ordinarily resident in the area of Haringey;
- Haringey 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 made by a self-funder;
- Haringey Council has a contract with the failed provider; and
- 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.

3.2 Haringey Council will meet those care and support needs of adults and support needs of carers, which were being provided immediately before the provider became unable to carry on that activity in Haringey because of business failure.

3.3 This means Haringey 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.

- 3.4 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, Haringey Council will act as promptly as possible to meet needs under the temporary duty.
- 3.5 Where Haringey 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 it thinks appropriate, supply it with the information it needs. For example, this may involve up to date records of the people who are receiving services from that provider, to help Haringey Council to identify those who may require its support.
- 3.6 Haringey Council has discretion as to how it will meet needs when this temporary duty becomes applicable. These include:
- Accommodation;
  - care and support at home or in the community;
  - counselling and other types of social work;
  - goods and facilities; and
  - information, advice and advocacy.
- 3.7 Haringey Council is not required to meet needs in exactly the same combination of services as previously supplied, it will, however, aim to provide a combination of services as similar as possible to the previous one where possible and on the basis that the person's needs will continue to be met.
- 3.8 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 Haringey Council to actively arrange care with a different provider for a period of time, to ensure there is continuity of care.
- 3.9 The steps taken will depend on both the circumstances of the provider failure and the nature of the care and or support the adult or carer require. In deciding how to meet an adult's needs for care and support, Haringey Council will involve:
- the relevant adult concerned;
  - any carer that the adult has; and
  - anyone whom the relevant adult asks the authority to involve. Where the relevant adult lacks capacity to ask Haringey Council to involve other persons, we will involve anyone who appears to it to be interested in the adult's welfare.

3.10 In deciding how to meet a carer's needs for support, Haringey Council will involve:

- the carer, and
- any person the carer asks Haringey Council to involve. Haringey Council will take all reasonable steps to agree how needs should be met with the relevant adult or carer.

3.11 In line with the wellbeing principle, Haringey Council will seek to minimise disruption for people receiving care.

#### **4. Circumstances when the temporary duty applies**

4.1 The temporary duty will apply as soon as Haringey Council becomes aware of the business failure and the provider can no longer carry on its activity. It will not apply:

- where a business ceases to operate because of its failure to meet the CQC's standards;
- If a business ceases to operate because of quality failures and where the needs become urgent the local authority has a discretionary power that could be exercised to meet needs; and
- 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, Haringey Council has no duty to intervene to provide care and support.

4.2 If, however, the service does not continue to run following business failure, the temporary duty will apply, and Haringey Council will step in to ensure an adult's care and support needs and a carer's support needs are met.

4.3 The temporary duty will apply for as long as Haringey Council considers it is necessary, i.e. that it is satisfied that the person's needs will be met by a new provider. At that point, should the person be a self-funder or the responsibility of another local authority, the person will once again become responsible for arranging their own care or the responsibility of the relevant local authority.

#### **5. Charging when discharging this temporary duty**

5.1 Haringey Council may charge the relevant adult for the actual costs incurred of temporarily meeting his or her needs by providing alternative care or support

- i. Haringey Council may recover the actual costs of temporarily meeting the needs of a person who is not ordinarily resident in Haringey from the relevant local authority which made or funded the arrangements with the failed provider.
- ii. The costs recovered will be those costs incurred by Haringey Council in meeting the needs under the temporary duty. Haringey Council will not charge for the provision of information and advice to a person.
- iii. 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.

## **6. Cross border placements**

- 6.1 There will be close communication and co-operation between Haringey Council and 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. Generally, responsibility will continue to remain with the authority that arranged and or funded the care and support. 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).

## **7. NHS Continuing Healthcare**

- 7.1 Where a failed provider in England is providing an adult with NHS Continuing Healthcare which is commissioned by a clinical commissioning group, the relevant clinical commissioning group will be treated as a relevant partner that Haringey Council will co-operate with in reaching an agreement about how to meet needs. Haringey 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 Haringey Council is not permitted to provide it. The NHS duties are outside the scope of this procedure.

## **8. Meeting 'urgent needs'.**

- 8.1 Where Haringey 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 Haringey.

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

## **9. Contingency Planning**

- 9.1 The Council will develop a register of local providers and which services they would be willing and able to provide if the need arose because of the failure of another provider in the borough. This will enable Haringey Council to facilitate a prompt response and secure continuity of care for people affected in the event of a business failure or service interruption.

## Definitions and Legal Framework

**Business failure** is defined in The Care and Support (Business Failure) Regulations 2014. These Regulations define what is meant by “business failure” and explain the circumstances in which a person is to be treated as being unable to do something because of business failure. Business failure is defined by a list of different events such as the appointment of an administrator, the appointment of a receiver or an administrative receiver (the full list appears in the Regulations). Service interruption because of “business failure” relates to the whole of the regulated activity and not to parts of it.

**Temporary duty or duty** means the duty on local authorities to meet needs in the case of business failure. “Temporary” means the duty continues for as long as the local authority considers it necessary. The temporary duty applies regardless of whether a person is ordinarily resident in the authority’s area. The duty applies from the moment the authority 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. The duty is to meet needs but authorities have discretion as to how they meet those needs.

**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 on a contractual basis must be registered with the Care Quality Commission (CQC). The temporary duty applies to these ‘registered care providers’ in respect of carrying out regulated activities’.

**The Duty (Statutory Guidance, paragraph 5.7)** If a Care Home in a local authority’s area fails the local authority is under a duty to meet the needs of residents. The duty *only applies* when a service can no longer be provided and the reason for that is that the provider’s business has failed. If the provider’s business has failed but the service *continues to be provided* then the duty is *not* triggered.

**To Whom the Duty Applies (Statutory Guidance, paragraph 5.7)** The duty applies where a failed provider was meeting needs in the authority’s area. It *does not matter* whether or not the authority has contracts with that provider, *nor does it matter* if all the people affected are self-funders. *The duty is in respect of* people receiving care by that provider in that authority’s area – it *does not matter* which local authority (if any) made the arrangements to provide services. In other words, *the duty covers* people placed by the host local authority, other local authorities and self-funders.

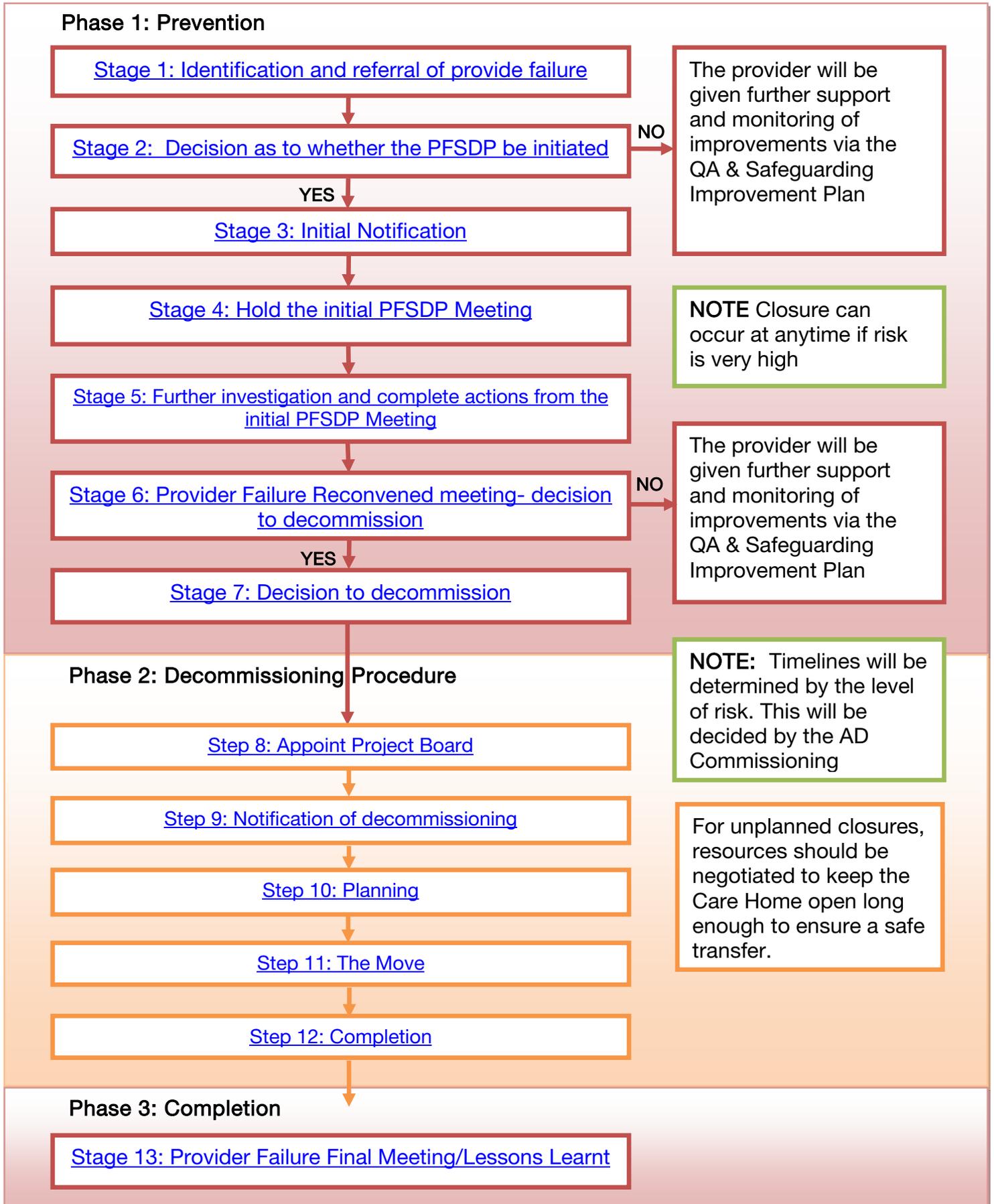
**Speed of Action (Statutory Guidance, paragraph 5.11)** The authority should act promptly to meet people's needs. The lack of a needs or carer's assessment or a financial assessment for a person *must not* be a barrier to action.

Similarly, authorities *must meet needs* irrespective of whether those needs would meet the eligibility criteria. All people receiving services in the local authority's area *are to be* treated the same. In particular, how someone pays for the costs of meeting their needs – for example, in full by the person themselves – must have no influence on whether the authority fulfils the duty.

However, an authority *may charge* the person for the costs of meeting their needs, and it *may also charge another local authority* which was previously meeting those needs, if it temporarily meets the needs of a person who is not ordinarily resident in its area. The charge must cover only the actual cost incurred by the authority in meeting the needs. *No charge must be made* for the provision of information and advice to the person.

**NHS Clients (Statutory Guidance, paragraph 5.12)** The Care Act imposes certain restrictions on the provision of health services by local authorities and these apply to meeting needs in provider failure cases (section 52(7)). A local authority *may not* meet needs in provider failure cases by, for example, providing NHS Continuing Healthcare (NHS CHC). Where the failed provider's clientele consists of persons in receipt of NHS CHC, unless their needs appear to have changed, it would be reasonable for the local authority to conclude that it was not necessary to do anything to meet those needs. This is because *the duty to provide NHS CHC falls on the NHS and local authorities cannot provide it*.

## Haringey Managing Provider Failure and Other Service Interruptions: Procedure



## Phase 1 – Prevention

### 1. Stage 1 – Identification and referral of provider failure

#### 1.1 A concern can be raised:

- by the provider;
- through Court Notification (Administrators);
- through the Establishment Concerns Procedure;
- from Quality Assurance monitoring; and
- by CQC.

1.2 Through risk assessment of the provider. The identification and referral is undertaken by the Commissioning Manager for QA & Safeguarding and referred to the AD for Commissioning. The Commissioning Manager undertakes monthly risk monitoring, completes Organisational Risk Assessment and reports to the Director of Adults Service and AD for Commissioning.

### 2. Stage 2 – Decision as to whether the PFSDP be initiated

2.1 The Assistant Director for Commissioning and the Director of Adult Services will jointly decide.

### 3. Stage 3 – Initial Notification

3.1 Notify the following, where relevant, of the initiation of the PFSDP: the provider (In writing), ADASS, Haringey CCG, CQC, lead member and other relevant bodies.

### 4. Stage 4 – Hold the initial PFSDP Meeting

4.1 A senior manager will be appointed as Chair. The Chair will call a meeting with all the relevant parties supported by the administrative support in the Commissioning Unit.

4.2 The Chair will confirm with the Director of Finance that the PFSDP has been invoked.

4.3 The initial strategy meeting will clarify **roles and responsibilities** particularly:

- The Chair (who will be responsible for coordinating all pieces of work within the process);
- The link worker for user/carer/relatives;
- Finance Manager who will support the process;
- Commissioning Manager who will support the process; and

- The meeting will consider the possibility of stabilising Care provisions or decommissioning of the provider (See Decommissioning Procedure).

4.4 The Organisational Risk Assessment will be updated at this meeting.

4.5 The outline of the communication strategy, both internal and external, will be agreed. The full strategy will be worked up by the Commissioning Team.

4.6 Inform the following, immediately after the first meeting, as outlined in the communication strategy, of the PFSDP and the decisions made in the initial PFSDP meeting: Senior Management; Director of Finance; CQC; other local authorities who have made placements; Health colleagues on any Continuing Care placements; the Provider, Press release (via internal Communications), Chief Executive and or Elected Members, service users and relatives.

4.7 Identify advocate if necessary and use appropriate methods of communication.

4.8 The date of next and any subsequent meetings will be agreed.

## 5. **Stage 5 – Further investigation and complete actions from the initial PFSDP Meeting**

- Follow up on actions from the initial PFSDP meeting; and
- Undertake necessary action to stabilise care provision.

## 6. **Stage 6 – Provider Failure Reconvened meeting- decision to decommission**

6.1 An assessment will be made as to whether the risk of continuing placements or allowing residents to stay in a placement is too high. Consideration should be given to **decommission services** in the following circumstances:

6.2 If at any stage there are strong indicators that there are any other risk of significant harm to other people using services receiving services from the same Provider and that this risk is continuing and it has not been possible to improve standards of care and support to an acceptable level within a reasonable timeframe or the risks to service users are immediate and unacceptable or

6.3 If any other relevant and serious situation warrants such action.

6.4 The meeting will consider the Organisational Risk Assessment and any actions undertaken from the previous meeting.

6.5 In all cases legal advice should be sought and such decisions ratified by the Director of Adult Social Services.

## 7. **Stage 7 – Decision to decommission**

7.1 The decision to decommission is made by AD for Commissioning.

- 7.2 If the decision is made to decommission, residents should be moved to alternative provisions. (See Phase 2: Decommissioning Procedure).
- 7.3 If the Provider operates more than one service consideration should be given to whether any action should apply to those other services also. This will depend on the nature of the risk and the circumstances.

## **Phase 2 – Decommissioning Procedure**

### **8. Stage 8 – Appoint Project Board**

- The Board should include the provider, family representatives, advocates, Commissioning and QA, Care Management reps and other Local Authorities, CCG reps and CQC (if relevant);
- A project plan is developed;
- An Authorised Officer from the Commissioning Team identified who will implement the project plan to coordinate the transfer/move;
- An appropriate alternative provider will be identified that will cause the least disruptions to care provision; and
- Project Board meetings held regularly during the closure process- dependent on the level of risk.

### **9. Stage 9 – Notification of decommissioning**

- 9.1 The Authorised Officer from the Commissioning Team will notify the individual residents, their family and/or representatives (if not notified above) notified of the planned closure and information and advice about the details of the closure will be provided.
- 9.2 If appropriate, identify if an advocate is appropriate and use appropriate method of communication

### **10. Stage 10 – Planning**

- 10.1 The Authorised Officer from the Commissioning Team will undertake planning including:
- Agreeing the options with individual residents;
  - Ensuring a transition plan is in place for each individual;
  - Ensuring practicalities of the move are planned for;
  - Finance;
    - Appoint a finance officer to keep record of all financial impact on the authority, notify relevant authorities in order to invoice according;

- Keeping Financial records of a communications;
- Reviewing Individual residents finance; and
- Full cost and financial records of any placements will be recorded with support from the finance team.

## 11. Stage 11 – The Move

11.1 The Authorised Officer from the Commissioning Team undertakes the move including:

1. Domiciliary Care Move:
  - a. Identify all service users including self-funders;
  - b. Ensure service users care plan is reviewed and current;
  - c. Identify alternative agency/provider to deliver care; and
  - d. Notify service users of date new agency.
  
2. Care Home Move:
  - a. Consultation with all residents and families;
  - b. Identify receiving home;
  - c. Ensure service user if involved in all decisions where possible; and
  - d. Inventory of belongings **Care home Closure Checklist** (See Appendix 1).
  
3. Supported Living:
  - a. Identify all service users including self-funders;
  - b. Clarify tenancy type and link to provider of care;
  - c. Ensure service users care plan is reviewed and current;
  - d. Identify alternative agency/provider to deliver care; and
  - e. Notify service users of date new agency.

## 12. Stage 12 – Decommission completion

- Report back to the PFSDP Meeting on the decommissioning process.

## 13. Stage 13 – Provider Failure Final meeting/Lessons Learnt

13.1 Once support and service has been stabilised for all the residents, the procedure is complete.

13.2 A Lessons Learnt exercise may be considered by the group as a whole and in some instances with Provider participation. Any lessons learnt can be fed into the commissioning cycle, improve the Quality Assurance function and raise awareness with other staff members.

13.3 The final meeting would consider the current level of risk, the sustainability of changes and customer feedback from people who use services and their relatives/friends.

13.4 Invoices will be issued to relevant authorities of individuals.

13.5 A report must be sent to the Director and Lead Member

13.6 The provider and the CQC will be notified formally by the Chair.

Care Home Closure Checklist

No	Task	Comments	By when	Responsibility	Complete	Comments
1	Assess residents	Social Worker to complete for each LBH funded resident and any Self Funders that have given consent.	On-going			
2	Phasing Assessments /Discharges	Ensure phased approach adopted. Based on needs/circumstances.	On-going			
3	Issue Press Notice	Issue joint press notice. This needs to mirror LBH/Abbotsford.				

No	Task	Comments	By when	Responsibility	Complete	Comments
4	Identification of new care home	Ascertain client preferences in terms of choice, including preference to move with friend/s in their current care home.	On-going			
5	Potential placements visited	Assist residents/relatives to view potential care homes placements.	On-going			
6	GP Notified	GP identified and changed.	Prior to resident transfer date			

No	Task	Comments	By when	Responsibility	Complete	Comments
7	Medical Assessment	Medical assessment completed to confirm resident is fit to be transferred or where there is no choice but to transfer, indicating what medical supervision of the transfer may be required. Chris Dempsey to notify GP of home closure.	Prior to resident transfer date			
8	Pharmacy	Chris Dempsey to notify Pharmacy of closure.	Prior to resident transfer date			
9	Medication	Ensure 4 weeks supply of medication ordered.	Prior to resident transfer date			

No	Task	Comments	By when	Responsibility	Complete	Comments
10	Residents belongings & Transfer	Ensure moved in dignified manner i.e. no black bags!	Transfer date			
11	Transport for transfer	Arrange transport to new placement. i.e. special cab, ambulances etc. This is dependent on client need.	Transfer date			
12	Transfer of appointee function	All paperwork and financial assessments completed.	Prior to resident transfer date			

No	Task	Comments	By when	Responsibility	Complete	Comments
14	Initial Review	After 4 week trial period or sooner if required.	4 weeks after transfer			

<b>Haringey Council – Commissioning Unit Care Act Provider Risk Assessment</b>
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<b>Lead Commissioning Manager</b>			
<b>Time and Date</b>			
<b>List professionals involved in the risk assessment and management plan.</b>			
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
<b>Name of the provider:</b>		<b>Lead CQC inspector:</b>	
<b>Provider Address:</b>		<b>Postcode:</b>	
<b>Name of Parent Company and any other relevant business information:</b>			

Risk indicators/factors	Yes	No	N/A	Level of concern Indicated High, medium, low
Is the Provider CQC registered				
Are there any Quality Improvements /enforcements in place that may impact level of risk to business Failure				
Is the responsible person working in partnership with the authority				
Is there a workforce issue related to Brexit				
Is there supply issues related to Brexit?				
Does the Provider have a registered manager in place				
Does the Provider have a stable and experienced staff team? Is there risk of staff flight?				
Has the Provider provided financial information regarding their business?				
Does the Provider have a history of organizational / Financial difficulty? Or poor financial management?				
Does the provider have a stable management structure in place?				
Does the provider have a contingency plan to deal with business failure?				
Is the Provider providing support to Self Funders?				
Does Provider work with people that have serious and complex health problems?				
What is the number of Health Funded placements?				
What is the Number of none- Haringey Commissioned Services with this provider?				
<b>Additional risks not listed in the matrix:</b>				

Are all of the risks addressed if not please list actions to address these risks in the management plan, which can then be incorporated into the provider risk assessment.