

## Appendix 5: Lambeth Provider Failure Policy

The Provider Failure Policy is a policy that seeks to ensure that adults 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 because of business failure. It is a temporary duty imposed on local authorities by Section 38 of The Care Act (2014). The policy and procedures set out how the care and support needs of an individual and the support needs of a carer will be met when a registered care provider becomes unable to carry on a regulated activity, establishment or agency as a result of business failure.

Provider failure occurs when a provider is unable to exercise its normal day-to-day duties, due to a specific set of circumstances, such as:

- the appointment of an administrator
- a receiver is appointed
- a winding up order is made
- an application for bankruptcy is submitted
- the charity trustees of the provider become unable to pay their debts

Not all instances of provider failure will trigger local authority intervention. If service provision remains uninterrupted and the needs of the people using that service are still met, there is no need for local authority intervention. Should provider failure lead to a temporary or permanent service interruption however, the Council has a temporary duty to intervene.

This temporary duty applies regardless of whether:

- there is a contract in place between the provider and the Council
- the people affected pay for their own care
- other local authorities had made the arrangements to provide service

Where a provider in Lambeth is deemed to have failed, they will be treated as a major risk and the provider concerns flow chart followed accordingly (see [Appendix 2: Process Flowchart](#) and [Appendix 3: Lambeth Provider Concerns Threshold Table](#))

The Council will intervene to ensure the needs of the individuals affected continue to be met. This will be through an initial meeting of senior stakeholders responsible to agreeing next steps as set out in the Provider concerns flow chart and associated threshold of risk document.

The Council will seek to minimise the disruption to the people receiving care. The Council will aim to provide as similar a service as is possible, whilst recognising that the Council has discretion about how those needs will be met and it may not be possible or necessary to arrange for the exact same combination of services that were previously supplied. The council will endeavour to provide services that are good quality in every event.

In deciding how an individual's needs will be met, the Council will involve the person concerned and any carer that the person has, or anyone the person asks the authority to involve. If the individual lacks capacity to do that, the Council will involve anyone who appears to have an interest in the person's welfare.

Where the provider is subject to the Care Quality commission (CQC) oversight regime, the Council will work with the CQC to prepare to develop a remedial action plan in preparation for exercising this temporary duty.

The Council will examine the consequences of any actions in planning whether and how to respond. Particular consideration will be given to how any actions will impact on the likelihood of the service continuing, given that some actions may increase the risk of causing business failure. The NHS retains responsibility for anyone receiving Continuing Health Care.