



BEDFORD
BOROUGH COUNCIL

Adult Services Directorate

Adult Social Care

**Care Provider Quality Assurance
Pathway**

May 2022

Lead Director	Kate Walker
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Policy approved by	Senior Leadership Group
Date Policy Approved	2022
Implementation Date:	2022
Review Date:	2024
Status:	Final

Document Control Sheet

Title of Procedure and protocol	Care Provider Quality Assurance Pathway
Purpose of Procedure and Protocol	To inform staff and managers within Adult Social Care and within Strategic Commissioning and Procurement and External Partners of the quality assurance pathway so that they can comply with the pathway and understand their responsibilities in relation to the pathway.
Type of Procedure and Protocol	Operational, specific to Bedford Borough Council
Target Audience	Adult Social Care Practitioners and Managers , and Strategic Commissioning and Procurement and External Partners
Implementation Date	01 June 2022
Action Required	For all staff in Adult social Care to be aware of the serious concerns and provider failure procedure and protocol
This Procedure and Protocol should be read alongside	DoLS Policy and Practice Guidance; Mental Capacity Act Policy and Guidance for Decision Makers, Multi Agency Safeguarding Vulnerable Adults Policy and Practice
Lead Chief Officer	Mark Harris

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EXECUTIVE SUMMARY

Bedford Borough Council has a responsibility to ensure the safety of all people using independent sector providers, including those people who fund their own care, and people who have been placed by another local authority. If a provider should fail, the local authority is responsible for meeting the needs of every adult, including self-funders and those who have been placed by another authority. For this reason, it is important to have a clear process for monitoring the independent sector, which complements the work of the Care Quality Commission (CQC).

The legislative context for managing provider failure is set by The Care Act 2014.

Bedford Borough Council is a member of the multi-agency Safeguarding Adults Board, and abides by the policy agreed by the Board. The Bedford Safeguarding Policy and Procedures includes the Serious Concerns Procedure for both independent sector and in-house providers and is included in this document in its entirety.

Within Adult Social Care, the Care Standards team is responsible for monitoring all independent sector providers of residential and domiciliary care and providers of supported accommodation, and has developed a protocol for providers of concern, and this is included in this document.

1. Introduction

Provider failure is the period from a company's first difficulty to the point of going out of business. There are some common factors leading to provider failure:

- failure to understand the market and customer's needs;
- operating at low profitability;
- inadequate financing (cash flow);
- failure to anticipate or react to competition, technology, or marketplace changes;
- overdependence on a single customer;
- not knowing when to say 'No';

- poor management and planning;
- not meeting regulatory requirements;
- single crisis event or repeated minor failures leading to loss of confidence in the company's ability to deliver.

The fact of a company entering provider failure can be indicated by:

- service users' complaints;
- professionals' comments, from minor dissatisfaction to major concerns;
- non-delivery of services;
- non-compliance with long established standards and procedures;
- notification of likely failure from the [Care Quality Commission's \(CQC\) Market Oversight Scheme](#).

When warning signs like these are observed then the provider concerned will be prioritised for support through the Quality Monitoring Procedure, working within the framework of The Care Act and of The Multi -agency Safeguarding Policy and Procedures.

2.0. LEGISLATIVE CONTEXT

2.1. Section 19 and 48 to 57 of The Care Act and The Care and Support (business failure) regulations 2015 cover the management of provider failure and other service interruptions, and is covered in Section 5 of the Care Act Statutory Guidance.2.1. The [Care Act 2014](#) gives local authorities the power to intervene and minimise the impact of provider failure on individuals, carers, family and friends. If a provider does fail, then the local authority has to manage the effects of the failure in its area and ensure minimal overall impact to the market as a whole.

2.2. Although the local authority has a duty under the Care Act to meet the needs of all people who are using the services of a failed provider, how those needs are met is at the discretion of the local authority. The aim should be to minimise disruption and the replacement service should be as similar as possible to their current service. The person or their representative, if they do not have

capacity, must be involved in planning and agreeing how to meet their needs for the future. The exception is those people who are subject to Continuing Health Care, who remain as the responsibility of the National Health Service.

(Care Act Statutory Guidance Section 5.9 and 5.12)

2.3. If a need is judged as being “urgent” the local authority has the power to meet the person’s needs without first of all determining eligibility, or carrying out an assessment or financial assessment, which may be necessary if there is a severe service interruption. It is at the discretion of the local authority whether and when to exercise this power.

(Care Act Statutory Guidance Section 5.26 – 5.31)

2.3. People who fund their own care can be charged for the service provided by the local authority, and charges can also be made to another local authority including those in Wales, Scotland and Northern Ireland, which has placed a person with the failing provider. The charges can only cover the cost of providing support. However, any discussion about funding should not stop the host authority from making arrangements as laid out in 2.2 above. There cannot be any charge for providing information and advice.

(Care Act Statutory Guidance Section 5.11 and 5.15)

2.4. The CQC operates an oversight regime for providers, which because of their size, geographical location or other factors would be difficult for a single local authority to monitor, and national oversight is required. It is the decision of the CQC as to which providers would be subject to the oversight regime. There are a relatively small number of providers who are subject to this regime. The CQC must work closely with respective local authorities to fulfil their temporary duties if a provider is likely to fail in all aspects of the regulated activity, and not selected parts, and must not put an undue burden upon those authorities in fulfilling its own duties. For all other providers, the local authority will take the lead in monitoring the quality and financial viability of the service

(Care Act Statutory Guidance Section 5.17- 5.22)

2.5. There is a close connection between managing and monitoring the local care market and commissioning the local market, and discussions with local providers should also be in place. The local market and its vulnerabilities and strengths must be understood so that any potential failures or service interruptions can be assessed at an early stage and market disruption can be reduced or avoided.

(Care Act Statutory Guidance Section 5.34 and 5.35)

2.6. The local authority will already have plans in place for emergencies or unforeseen events. A service interruption such as the sudden closure of a home should use these plans as far as possible so that Adult Social Care can concentrate on the welfare of the individuals affected and alleviating the anxiety of the families of people who are using the services of a provider.

(Care Act Statutory Guidance Section 5.36 – 5.40)

3.0 BEDFORD BOROUGH COUNCIL ARRANGEMENTS FOR PREVENTING PROVIDER FAILURE. (SEE ALSO APPENDIX 1: FLOWCHART FOR MANAGING PROVIDER QUALITY PATHWAYS)

3.1. High impact providers are described in the Care Act as providers that are particularly important to a local market because of the amount or type of care they deliver. They may be especially difficult to replace if they fail. 'High impact' is a description brought in by the Care Act and used in a market management context.

For Bedford Borough, providers meeting at least one of the following criteria are deemed high impact providers:

- providing 10% or more of beds;
- providing 10% or more of the home care hours;
- providing services to 10% or more of service users;
- providing services amounting to 10% or more of service spend;
- providing 10% or more of a specialist service.

These providers will be prioritised for ADASS PAMMS monitoring assessment carried out by Care Standards Monitoring service and offered support if required through action plans.

The Council is clear that if a provider is not deemed 'high impact' for Care Act purposes this does not mean it is 'low impact' or that difficulties experienced by it are low priority or that service users of it are low priority.

3.2. The Bedford Borough Quality Monitoring [Pathway](#) confirms the Council's preventative approach to provider failure by acting quickly on concerns about quality standards through QA process, PAMMS monitoring assessments and sharing of information from Care Quality Commission, health partners and other local authorities.

Information is shared with the Council's Strategic Commissioning and Procurement Team Commissioners and may trigger contractual action to run alongside the Quality Monitoring Pathway Similarly sharing with the [Care Quality Commission](#) may lead to regulatory action being taken.

3.3 Care Standards maintain the QA database, undertake quality visits and support the delivery by care organisations of their improvement plans. RAG rated work schedule will be completed prior to the Introduction of PAMMS with higher impact organisations taking priority for Care Standards.

3.3.1 Standard impact providers will be monitored under a principle of proportionality taking into account factors like QA reports, safeguarding concerns, CQC rating, number of packages, and the degree to which specialist services are provided.

3.3.2. Care Standards, SC & P all report to each other if certain providers are causing undue concern. Each team should adjust its activities when justified by such reports.

3.3.3 Providers can enter and leave the 'high impact' category for a number of reasons so the category will be reviewed continuously.

3.4. Each year, once the schedule is set for the high impact providers then a separate schedule will be set for the standard impact providers. The frequency of monitoring will be at the discretion of each team in the light of available resources, known concerns and/or length of time since last reviewed.

4.0. RELEVANT LEGISLATION AND GUIDANCE. :

Relevant Chapter in Care Act Statutory Support and Guidance

[Market Shaping and Commissioning of Adult Care and Support , Care and Support Statutory Guidance \(Department of Health and Social Care\)](#)

[Managing Provider Failure and Other Service Interruptions, Care and Support Statutory Guidance \(Department of Health and Social Care\)](#)

[Managing Care Home Closures: A Good Practice Guide for Local Authorities, Clinical Commissioning Groups, NHS England, CQC, providers and Partners Department of Health et al, 2015\)](#)

June 2017: This chapter was revised in June 2017 to add a link to Managing Care Home Closure guidance, as above.

[Care Act legislation – clauses 48-57](#)

[Care Act Guidance – sections 4-5](#)

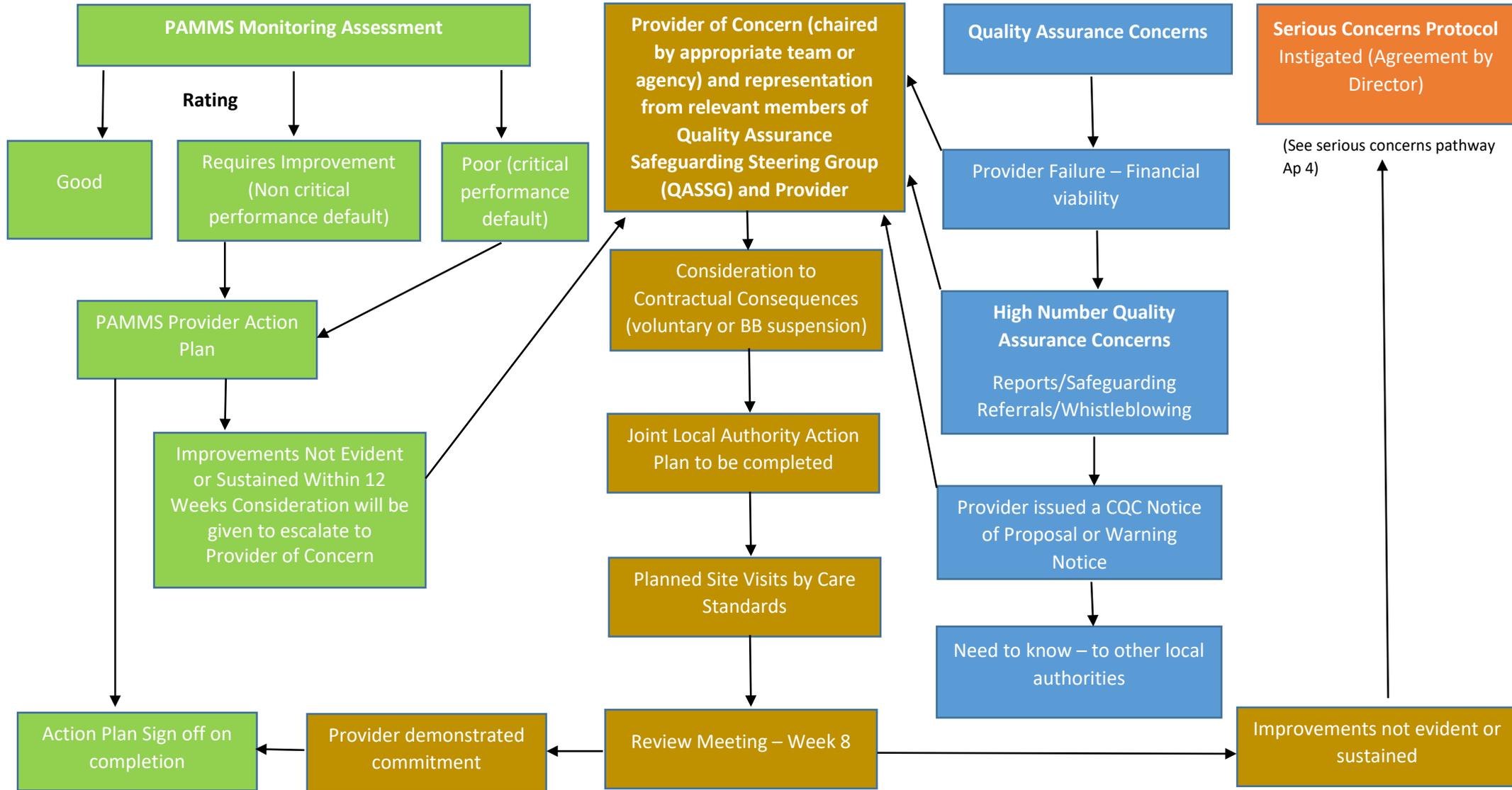
Care Act Regulations:

- [Final Affirmative Regulations Under Part 1 of the Care Act](#)
- [Final Negative Regulations Under Part 1 of the Care Act](#)

CQC – Our new role in the market oversight of adult social care

Appendix 1:

Care Standards Team Provider Quality Monitoring Pathways



Appendix 2

Bedford Borough Provider of Concern Protocol

The Care Act 2014 places duties on local authorities to facilitate and shape their market for adult care and support as a whole, so that it meets the needs of all people in their area who need care and support, regardless of who funds the care. Local authorities are further expected to influence and drive the pace of change for their whole market, leading to a sustainable and diverse range of care and support care providers, continuously improving quality and choice and delivering better, innovative and cost effective outcomes that promote the wellbeing of people who need care and support.

Partners will work alongside the care providers and regulators to monitor and review individual and overarching care delivered that is compliant with contractual, safeguarding, quality and clinical practice. Care providers enter into contracts with Partners undertaking delegated responsibilities for the care and welfare of people and this, therefore, has to be of the highest standard. In undertaking these responsibilities, care providers will notify Partners at the earliest opportunity of any actual or potential failures to deliver safe, effective care and support. Where the care provider fails to meet expected standards of quality care, Partners will enact informal and formal processes to ensure rapid and sustainable improvements.

The Care Act 2014 sets out the requirements that statutory bodies such as local authorities and clinical commissioning groups (CCGs) should have in place to safeguard adults at risk ensuring that safeguarding adults is at the centre of every part of the commissioning cycle. Our responsibility is to safeguard and protect vulnerable people from risk or harm regardless of how and who commissioned the care provider services.

This protocol does not replace individual safeguarding investigations. The oversight for this protocol sits with Bedford Borough Quality Assurance Safeguarding Steering Group (QASSG). This group has multi agency covering all elements of health and social care and meets bi-monthly.

An integral part of this protocol is the need for all partners to work in a transparent and open way with care providers through supporting and providing guidance when concerns arise to assist the provider in improving and sustaining quality care.

The provider of concern protocol could be triggered following a

- **When Provider Assessment Market Monitoring System (PAMMS) has an outcome rating of Require Improvements where improvements are not evident or sustained within 12 weeks.**

- **There has been an increase in activity or intelligence of Quality Assurance or Safeguarding nature. (See appendix 1 Bedford Borough Quality Monitoring Pathway).**
- **Provider failure as a result of financial viability or service interruption.**

A provider will be informed formally that Provider of Concern has been triggered by Bedford Borough Care Standards team; the registered manager and nominated individual will be invited to attend a Provider of Concern meeting with Care Standards along with appropriate representation from the QASSG where the areas of concerns will have discussed.

The outcome of the meeting will be to assess the risk determine, if further multi agency engagement is required and the frequency with provider. A care standards monitoring officer will be allocated to oversee and maintain regular contact.

A provider will remain under the Provider of Concern protocol until the risks have decreased, or the provider demonstrates commitment that the actions have been embedded and evidence has been seen by Care Standards team. A review meeting will be co-ordinated to ensure multi agency agreement to conclude the Provider of Concern protocol.

If at any time during this process further concerns, risks are reported or the provider is not engaging or demonstrating improvements consideration will be given to instigating the Serious Concerns Protocol which forms part of The Multi Agency Adult Safeguarding Policy, Practice and Procedures 2017 sec 8.

Appendix 3

Serious Concerns / Risk of Systemic Failures

(Excerpt from Multi Agency Safeguarding Policy and Practice procedure 2017)

Purpose

The Serious Concerns Procedure outlines the arrangements for enquiry and management of multiple safeguarding concerns in a location or organisation. The purpose of the Serious Concerns procedure is to adopt a consistent and proportionate response when serious, non-compliance of minimum care standards are raised about a provider that has or is likely to result in:-

- a potentially life-threatening injury through abuse
- Maltreatment or Neglect
- Or
- an Act of omission serious and permanent impairment of health o
- Or
- development through abuse, maltreatment or neglect loss of choice independence and well being
- Single of multiple unexplained deaths
- Or
- an enquiry into specific concerns reveals wider issues about a provider
- and
- these cannot be resolved by local negotiation with the registered manager'

Criteria for instigation of the Serious Concerns Procedure

- Reports of Serious Concerns from the Care Quality Commission arising from a regulatory inspection or other concerns.
- Accumulated complaints about the same service by people accessing the service their families or members of the public which amounts to serious safeguarding concerns
- Serious Concerns of a safeguarding nature following several visits or individual reviews in the service
- Serious Concerns of a safeguarding nature following contract compliance reviews of the service

- Reports of serious safeguarding concerns from other professional services / organisations involved in the service
- Serious Concerns as a result of whistle blowing
- Serious Concerns following a Safeguarding Adults planning meeting or enquiry
- This includes concerns relating to NHS and privately funded establishments as well as those contracted by the Local Authority.

Instigating Serious Concerns Meeting

The decision to hold a Serious Concerns Meeting is made by the Chair of the Safeguarding Adults Board, Director of Adult Social Services, or a delegated manager of the authority in whose area the service is based. Serious Concerns affecting both Bedford Borough and Central Bedfordshire Council's will be conducted jointly. Where the Serious Concerns involve other local authorities, the arrangements for joint management of the concerns will be agreed prior to the Serious Concerns meeting either by the Safeguarding Managers or Directors of Adult Social Services.

The ordinary Adult Safeguarding processes will carry on in parallel to ensure specifically identified individuals are safeguarded. Chairs of individual cases will always be invited to Serious Concerns meetings and will be the essential communication link between the two processes.

Special consideration will need to be made if it is anticipated there will be any pre-emptive action e.g. police arrests / interviews; Care Quality Commission unannounced inspection visit or seizing of documents, suspension of new placements or urgent review of existing placements etc.

Chairing of a formal Serious Concerns Meeting

The Serious Concerns meeting will be chaired by the Assistant Director of Adult Social Care (Chief Officer in Bedford Borough Council), or Commissioning or a delegated manager.

Who attends a Serious Concerns Meeting?

There should be a core group of staff representing:

- The Local Authority
- Bedfordshire Clinical Commissioning Group (commissioner)
- Bedfordshire Police
- CQC
- The Safeguarding Adults Manager for the Local Authority

Other staff will be invited as appropriate and may include:

- Representatives of other commissioners of the service
- Legal representative from the Local Authority
- Manager from the care management team
- The professional raising the concerns
- Contract Manager from the Local Authority
- Complaints Manager
- Primary Care Team
- Community Health representative
- Probation
- Advocacy services / IMCA service
- Other investigating teams /authorities

When to involve the Service Provider

The chair of the meeting will decide whether and when the service provider should be invited to attend the meeting or how concerns will be shared with them.

Provider service managers / owners will need to be informed as soon as possible of the concerns leading to the entry into the 'Serious Concerns' process.

For a large service provider, the Area / Regional Manager or most senior manager will be contacted.

For smaller providers, contact will be with the Registered Manager and the registered responsible owner.

For voluntary or community organisations, contact will be with the Chairperson of the Trustee Board or Management Committee.

The Serious Concerns Meeting

Professionals should provide a brief written report to the meeting summarising the information they can contribute to the enquiry.

The meeting will consider the concerns, any action required to address immediate risk, and identify a plan to investigate and address the concerns. An aide memoire is included at the end of this section.

The Serious Concerns meeting will make a further date to meet, to review progress.

An appropriate delegated manager will lead in coordinating the planning and implementation of the Serious Concerns enquiry with operational staff from all involved agencies. Actions might include:

- Reviewing individual cases
- Interviewing people accessing services and / or family / carers
- Health examinations and / or reports
- Liaising with other professionals who access the service
- Liaising with other sponsoring authorities

A record of the Serious Concerns enquiry will be made on the case file of all people accessing the service who were involved and the appropriate delegated manager will collate a summary.

The host Local Authority is responsible for ensuring the immediate safety and welfare of all people accessing the service in their area, regardless of who has commissioned the service provider. As the enquiry progresses the host Authority will remain responsible for the individuals for whom it has commissioned the service and all those who are self-funding. Other funding / placing Authorities will be asked to ensure the ongoing welfare of those individuals they have responsibility for.

The Director of Adult Social Services or nominated representative will consider the recommendations of the Serious Concerns meeting and decide whether sanctions to restrict new placements or end existing placements should be implemented. If this is necessary, Contracts Compliance staff will arrange relevant written notification to the Service Provider, other placing Authorities and CQC.

Suspension of Services due to Safeguarding Concerns

Concerns about the quality of service provided by a provider service may be closely linked to the Safeguarding of people with care and support needs receiving that service. Consideration will need to be made with regards to the safety of all users of the service concerned and those who may become potential users of the service who are at risk of being harmed, mistreated or neglected by that service.

Serious Concerns meetings involve close working between the Purchasers, Contract and Commissioning Teams and the NHS Continuing Care Funding Team. Each of these sections have responsibilities in respect of suspending services in terms of temporarily ceasing to commission new business when the service is causing concern in respect of the safety of the people receiving that service. Existing placements or care packages will normally remain with the provider. More serious concerns may lead to consideration of transferring some or all existing services to other providers or ending the contractual relationship.

Serious Concerns Action Plan

Chairs of Serious Concerns meetings must ensure that there is a Serious Concerns action plan in place at the earliest point which is designed to rectify the concerns.

The details of Serious Concerns action plans will vary in content but should identify;

- What is to be improved
- Who will be responsible for making which improvements
- Who in the Council will be responsible for monitoring the improvements
- Timescales and dates for completion of the improvements

Review dates should be set for further Serious Concerns meetings to monitor and progress forward the action plan until the Local Authority is satisfied that the service no longer presents concerns and they are able to meet and sustain their regulatory and contractual standard requirements.

Monitoring of Serious Concerns

The Safeguarding Adults Board will be informed each time the Serious Concerns procedure is implemented and they will be updated on the progress of the enquiry and action plan.

The Operational Group of the Safeguarding Adults Board will consider lessons learnt and ensure these are incorporated into training and practice.

When a Serious Concern enquiry is completed, the Safeguarding Adults Board will consider whether a Serious Case Review is required.

Serious Concerns meetings should consider:

- Introductions, reminders of need to know confidentiality issues
- Brief synopsis of concerns raised, and who is involved / implicated
- Mental capacity of people accessing the service, in terms of decisions regarding their care
- What are the risks, who do they impact upon, likely outcome without intervention?
- What, if any, action has been taken to minimise risks?
- Are there any criminal proceedings to be considered?
- Are there any regulatory requirements / enforcements?
- Regulation and contractual history of service
- Contractual / legal implications
- Abilities and co-operation of the service provider to highlight concerns and take effective remedial action
- Details of funding arrangements / responsibilities
- Immediate known health and social care needs of people accessing the service
- Previous independent support offered by advocacy / IMCA
- Family or relevant other supports
- Are there appropriate risk, health and care management plans in place to safeguard people with care and support needs?
- Need for further enquiry
- Need for remedial contractual actions, e.g. suspension of new placements
- Immediate actions required with timescales

- Agree roles and responsibilities for completing and monitoring agreed actions
- Agree communications strategy
- Agree date of follow up case conference

Appendix 4: Bedford Borough Provider Serious Concerns Protocol Pathway

