



FACTSHEET 10

The Care Act – market oversight and provider failure

"Everyone who receives care and support wants to know they will be protected if the company in charge of their care goes bust"

Norman Lamb, Minister of State for Care and Support

This factsheet describes how the Act introduces a regime to oversee the financial stability of the most hard-to-replace care providers, and to ensure people's care is not interrupted if any of these providers fail. It also describes the responsibilities of a local authority if a local care provider fails.

What happens when a care provider fails?

There is a diverse market for care services in England. Public, private and voluntary sector organisations can all provide these services.

As in any market, from time to time some providers leave the market, sometimes because they have failed financially. Their care services may be sold or taken over by another care provider. This process is usually managed in an orderly way that does not cause disruptions for the people receiving care. But sometimes, there can be disorderly failures, which happen quickly or with little warning, that can threaten the continuity of services for the people who need it and cause great anxiety.

What is the problem with the current system?

The current law dates back to 1948, when care was provided and managed very differently. There are now many large care providers that span much of England. A diverse number of public, private and voluntary sector organisations have grown to provide good quality care to the population.

When a large, national or specialist care provider fails, it may have an impact on numerous different local authorities. This might create problems for people receiving care and support from that provider if the situation is not well-managed.

When a provider that provides care to many people fails, a local authority might find it difficult to provide any necessary, alternative care arrangements.

There is currently not a formal system in place for checking how well a care provider is managing its own finances. This means there is no 'early warning' that a problem might be coming, nor anything in place to help resolve the problems it may cause people.

The failure of a large care provider, Southern Cross, in 2011 highlighted these issues. It is unacceptable for care users to be left without the services they need. The interruption of care services, or the worry that this might happen, can affect the wellbeing of care users. It can place stress on them, their families, friends and carers.

What does the Act do?

Managing provider failure locally

The Act imposes clear legal responsibilities on local authorities where a care provider fails.

The Act makes it clear that local authorities have a temporary duty to ensure that the needs of people

continue to be met if their care provider becomes unable to carry on providing care because of business failure, no matter what type of care they are receiving. Local authorities will have a responsibility towards all people receiving care. This is regardless of whether they pay for their care themselves, the local authority pays for it, or whether it is funded in any other way.

In these circumstances, the local authority must take steps to ensure that the person does not experience a gap in the care they need as a result of the provider failing. For some people, that may only require providing information and advice on the alternative services available locally, to help them make a choice about a new provider. For others, it may require actively arranging the care with a different provider for a period of time, to ensure that there is continuity. The steps will depend both on the circumstances of the provider failure, and what nature of support the person wants from the authority.

This duty applies temporarily, until the local authority is satisfied that the person's needs will be met by the new provider. At that point, the person may again become responsible for arranging their own care. The local authority may make a charge for arranging care and support in these situations, in the same way as it would for ongoing services.

Market oversight

The Act establishes that the Care Quality Commission (CQC) – the independent regulator for health and care services in England – will take on a new responsibility for assessing the financial sustainability of certain “hard-to-replace” care providers from April 2015. These are care providers who, because of their size, concentration or specialism, would be difficult to replace if they were to fail, and so where the risks posed by failure would be highest for individual local authorities.

To decide which providers it will oversee, regulations include criteria which set out which providers should be captured in the regime. These criteria determine whether a provider would be “hard to replace” – they do not reflect

whether or not a provider is likely to fail. There are different criteria for care home providers and for other providers of care and support. Should it be needed, regulations can also specify particular providers to be included in the regime, irrespective of whether they would meet the entry criteria.

To assess financial sustainability, the Act gives the CQC the power to request information from any provider in the regime. Regulations also allow CQC to request information from other companies in the same group, where this is relevant to assessing the finances of the provider itself.

The Act allows CQC to request that a provider who they judge to be in financial difficulty develops a sustainability plan and, where needed, arranges an independent business review. This is intended to help the care provider to remain financially sustainable, so that the care it provides to people is not disrupted. CQC's role is to oversee the provider's plans to remedy the situation and, if failure cannot be avoided, inform the local authorities affected where it believes a provider is likely to fail, to ensure a smooth, well managed process that provides continuing care to individuals. The CQC's aim is not to stop providers failing at all costs or to bail out providers in difficulty or to interfere with any commercial discussions surrounding the likely failure.