Buckinghamshire County Council

Select Committee

Health and Social Care Select Committee

Report to the Health and Social Care Select Committee

Title:	Care Market Assurance
Committee date:	20th October 2015
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Purpose of Agenda Item

The purpose of this paper is to provide an overview of the action the Council takes in relation to overseeing market stability of the care and support services.

What happens when a care provider fails?

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

Some of these services are regulated through the Care Quality Commission, others are more informal. These services are providing care and support to some of the most vulnerable people in Buckinghamshire. To give you a scale of the size of the regulated market on the Care Quality Commission website, Buckinghamshire currently has approximately

- 250 care homes (0P, LD, Nursing, both registered nursing and residential)
- 251 services in own home (supported living, extra care and domiciliary)

There are clearly a large number of unregulated services which are supporting vulnerable people.

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 disruption 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 and put people at risk. Like all Councils we experience both of these so it is important that we have systems in place to respond.

Who is responsible for what?

Since the 1990s onwards a quasi care market has developed to the point where now about 90% of the Adult Social Care budget is spent on providers outside of the Council. In addition to this, significant amounts of money are spent by self- funders. Prior to this time the Council had a much bigger role in the direct delivery of care.

The failure of a large care provider, Southern Cross, in 2011 highlighted issues around the vulnerability of the market place nationally and has led to changes in responsibilities for both the Council and Care Quality Commission (regulator).

The section below sets out the responsibilities and steps the Council and the Care Quality Commission take to have oversight of the Care Market Place.

The Council's Responsibilities

Tier 1. Day to Day the County Council has responsibility for the following:-

- Prior to purchasing from a provider there is an approval process that is undertaken to ensure that certain thresholds are met. This includes quality, financial and insurance checks.

- Managing contracts in line with the Council's Contract Framework. The scale of contract oversight is based on the size of the contract and the level of risk in terms of service failure. This framework only applies to services the Council purchases.

- All providers are required to have Business Continuity Plans in place under the Civil Contingencies Act 2004, and for the Platinum providers which are larger in value (exceed £1m) or where the impact of market failure is significant these form part of the contract management process.

- As well as the whole service being subject to the Council's Contract Framework, individual service users are subject to an annual review.

- Enter and View Programme - Healthwatch have a statutory power to independently monitor the quality and effectiveness of the care being provided. During 2014/2015 Healthwatch Bucks working in partnership with nursing professional and volunteer post graduates have undertaken visits to 14 care homes. For non-regulated services there is also a 'Support with Confidence Scheme'. This is a voluntary scheme run by the Local Authority Trading Standards department. It provides a list of approved care and /or support services that have been vetted on the grounds of quality, safety and training.

Tier 2. When things may be starting to go wrong or there are emerging concerns

- The Safeguarding Vulnerable Adults Team receives referrals from a range of places 24/7. Sometimes these are about the treatment of individual service users in their own homes or communities, but they can also be an important indicator of a wider systemic problem within a service. Therefore, shared intelligence becomes very important and looking at trend information.

- There is a 'Suspension Policy' where the Council is able to, under the contract, suspend making new placements if there are concerns about a service that have met a certain threshold. This only applies to Council funded placements. It is much harder for us to suspend placements to self- funders.

- The ability to escalate enforcement action within the contract. Again this only applies to areas of the market that we purchase from.

- The Quality in Care Team is a multidisciplinary team which works alongside providers (both contracted and non-contracted) to support them with specific interventions to drive up the quality of their service. This team has been vital to supportively working alongside providers to help them address issues. Providers are able to refer directly to this service and ask for help. This importantly applies to all areas of the Care and Support market irrespective of whether it is Council funded or not.

- Bucks Emergency Assistance and Response Service (BEARs) is a service that has been set up to provide mutual support across the Domiciliary Care Market Place and our Meals Service if they have business continuity issues.

- Market Surveillance Meetings. Every two months a formal meeting takes place between CQC, contracts, safeguarding, operations. This is an important forum for us to share our collective intelligence across the whole of the care and support and health market place locally and sometimes regionally and nationally. There are discussions at this meeting about specific hot spots where we review the management action taken around specific providers.

Tier 3. When things have gone wrong and we have reached a point of serious provider failure

There has been a significant change recently with the Care Act that the Council has a clear legal duty when there is a provider failure.

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.

In Buckinghamshire there is an agreed policy in place. There are a range of options that we could invoke , depending on the scenario.

- Invoke 'Provider of Last Resort'. Commissioned a provider to undertake responsibilities on behalf of the Council to maintain the operational management of a service. This could be taking the management of service and stepping in or it could, for example, be transferring 100 service users into the organisation. The scenario will dictate the approach.

- Alternatives to provider of last resort. Approaches could include finding alternative safe provision or the Council or NHS taking on the management; mutual aid between LAs.

Care Quality Commission Responsibilities

Inspection and regulation

The inspection and regulation of adult social care services has undergone significant changes. The CQC's original four-tier rating system, which saw services rated from zero (poor) to three stars (excellent), was scrapped by the regulator in 2010. However the rating system has been established again with the introduction of a similar system, under which services will be rated as inadequate, requires improvement, good or outstanding. This will be based on how providers perform against five key questions: is their service safe, caring, responsive, effective and well-led. The aim is to inspect all 25,000 adult care services in England by March 2016. CQC are responsible and have a new enforcement policy that explains the approach to be taken where they are identifying poor care, or where registered providers and managers do not meet the standards required in the regulations. Enforcement policy is used to:

- Protect people who use regulated services from harm and the risk of harm, and to ensure they receive health and social care services to an appropriate standard.
- Hold registered providers and managers to account for failures in how the service is provided.

The enforcement policy sets out the full approach to be taken to address breaches of regulations. It also reflects how we may work with other organisations to make sure that people are protected from harm; for example, through special measures regimes.

Market oversight

In addition to this, the Care Act establishes that the Care Quality Commission (CQC) 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 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.

Factors that impact on market stability.

In only exceptional cases do providers set out to provide poor care and support. There are lots of factors which shape the stability of the market place and threaten organisation stability. The section below attempts to isolate the factors

- Organisational structures and whether these create greater financial instability
- Ownership – regular turnover of ownership which increases volume and type of change may increase market instability.
- Distribution – how services are distributed affects how easy and cost effective they are to manage.
- Legislation and regulation – increases in regulatory regime potentially imposes increased costs
- Employment factors – this is seen as one of the biggest threats to market stability. There are a number of risks in this area:-
    - The rises in national minimum wage could be highly problematic if not reflected in the payments.
    - Potentially exacerbated by pay constraint in the public sector at a time where the private sector potentially 'lifts off'.
    - Difficulties recruiting to essential posts. This is especially a problem in Buckinghamshire with challenges around nursing capacity in nursing homes, registered manager, care worker roles. This factor has been one of the key causes of service failure locally.
    - Agency staff are more expensive than permanent staff in addressing staff shortages.
    - Higher than average staff turnover can be an indicator that a provider is not managed well. Industry averages are around 25% per annum.
- Occupancy levels and take up – Average occupancy rates have fallen slightly in residential care homes. Older people are being admitted to residential care homes at a later stage with higher levels of acuity than in the past. The shorter average length of stay increases costs for the providers.
- Fees, pricing and profitability – profit levels of care providers vary widely, depending upon whether or not they have large debts, whether or not they own properties, the proportion of LA funded verses self -funder clients, size of the home.

Real Anonymised Scenarios in Buckinghamshire

At any point in time we have a number of providers/services on our list who are raising significant concerns that have tipped them into tier 2 or 3 activity. Sometimes services move through the tier and sometime a service suddenly tips into tier 3 provider failure. All of these scenarios involve very vulnerable people and our role as a Council is to ensure that vulnerable people continue to receive essential care and support. This also requires us to balance difficult decisions around risk of moving people verses not.

The list below is not current and dates back a number of years by way of an illustration.

1. ASC started to see an increasing number of completed and safeguarding alerts in relation to people being supported by a domiciliary care provider. The nature of the complaints and safeguarding issues were around missed visits and people not receiving essential care and support. Whistle Blow and media attention following this resulted in a loss of confidence of staff in the services leaving the organisation. This included front line carers and officer staff responsible for co-ordinating the logistical care delivery. This exacerbated the failure of the service even more. This happened over a number of months affecting many service users.

2. Provider sold the care home property for development and the Council were told with less than 8 weeks' notice to re-provide over 30 council and self-funder users. The Council was told after the property was sold.

3. Out of County very specialist MH provider had received planning designation at the time the building was developed which put in age restrictions. The care provider supported people outside of the designation in line with its CQC status. The local community challenged the provider for supporting people outside of the planning designation and the provider lost in the High Court. The Council had to move its service users and find very specialist alternative placements.

4. The Fire Authority has inspected a Care Home following concerns raised in a whistle blow. The Fire Authority was so concerned with the access arrangements that it required the provider to make changes. The changes to the building were financially prohibitive and the care home closed with very short notice.

5. A large nursing home has been unable to recruit a registered manager and sufficient nursing staff to cover all of the shifts. It was relying increasingly on agency, but this was unreliable. The Council started to get an increase in safeguarding alerts with people getting pressures sores.

Appendix 1.

Set out below is the outcome of the current status of inspections provided by CQC as of the 8th October. Please note than many providers have not yet had a new inspection under the new inspection regime.

Table 1. Care Home providers (including residential and nursing)

Outturn for Care Home Providers	
Overall Summary	
Inadequate	4
Requires Improvement	14
Good	27
Outstanding	0

Table 2. Non Care Home (including, community, GP and specialist health)

Overall Summary	
Inadequate	0
Requires Improvement	11
Good	19
Outstanding	1