

Somerset County Council
Audit Committee 22 November 2018

Risk of Care Provider Failure

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Cabinet Member: Cllr David Huxtable
Division and Local Member: All

1	Summary / link to the County Plan
1.1	<p>The County Council's vision is all about improving lives, by creating:</p> <ul style="list-style-type: none">• A thriving and productive County that is ambitious, confident and focused on improving people's lives;• A county of resilient, well-connected and compassionate communities working to reduce inequalities;• A county where all partners actively work together for the benefit of our residents, communities and businesses, and the environment in which we all live;• A county that provides people with the right information, advice and guidance to help them help themselves and targets support to those who need it most. <p>The service works to ensure the care and support needs of all service users can continue to be met in the event of a business failure by a regulated care provider in Somerset and has close alignments with the overall vision of the Council.</p>
2	Issues for consideration
2.1	<p>Members are asked to note and consider the updates, recent home closure case studies, and progress made in response to the SWAP Audit recommendations related to the risk of care provider failure published in March 2018.</p>
2.2	<p>This report and updates are also due to be scrutinised internally within an Adult Services SWAP Review meeting tomorrow, 23 November, to ensure sufficient, robust responses are being taken to actions identified by the Audit Partnership.</p>
3	Background information
3.1	<p>Somerset is fortunate to have a high-quality care provider market, and many well-established mechanisms in place to both monitor and support local homes. Based on Care Quality Commission (CQC) published inspection outcomes as of 1st October 2018, 90.3% of the 288 regulated settings in the county inspected under the new, tougher regime were rated 'Good' or 'Outstanding'. This compares positively with the 82.7% of settings judged 'Good' or better nationally and also exceeds the regional average.</p>
3.2	<p>Section 38 of The Care Act (2014) imposes a temporary duty on local authorities to support the needs of vulnerable adults in the event that a regulated provider becomes unable to provide a regulated activity to an individual due to a business failure. The duty applies regardless of whether the individuals' care is funded by the local authority or not. This temporary duty is invoked where the following criteria is met:</p> <ul style="list-style-type: none">• The provider must be a registered care provider;• The provider must be unable to carry out the particular activity; where the provider is able to continue the activity despite business failure the duty will not be triggered;

	<ul style="list-style-type: none"> • The activity that the provider is unable to carry out must be a regulated activity; • The inability to carry out the activity must be due to the provider's business failure.
3.3	As part of the 2017/18 audit plan, a review was undertaken to assess the adequacy of the controls and procedures in place to mitigate the risk of care provider failure across Somerset County Council (SCC) (<i>Appendix B</i>)
3.4	<p>The audit identified a number of well-controlled areas, particularly in relation to the strong partnership working approach with primary stakeholders to closely monitor and support the care provider market, and in responding to home closures:</p> <ul style="list-style-type: none"> • SCC actively engages with other key partners such as the CQC and CCG; regular meetings are held where concerns re: providers can be discussed and action plans developed; • When a provider enters a state of failure, the team act quickly to ensure that service users are assessed and found suitable alternative care; • SCC are proactively engaging with care providers to increase their resilience in the market by identifying areas of weakness and providing info and training where necessary.
3.5	<p>It also identified several aspects requiring further attention, particularly in relation to the financial assessment of local providers:</p> <ul style="list-style-type: none"> • Some key risks are not well-managed and systems require the introduction or improvement of internal controls to ensure the achievement of objectives. • Although procedures have been agreed to assess providers through financial assessments, SAF reviews and contract reviews, this process has not yet been fully implemented. • Financial assessments of market risk providers are yet to start and unforeseen problems with registering providers on the Proactis system has led to delays in the implementation of the electronic SAF return process. Furthermore, new providers joining the framework are not being financially assessed prior to clients being placed with their service. This increases the risk that service users may be placed with providers who are not financially stable.
4	Update following Audit Opinion
4.1	<p>Appendix A attached with this cover report details the progress made against SWAP recommendations since the report was published. The majority of actions have been progressed and completed, with the exceptions being:</p> <ul style="list-style-type: none"> • 1.4a) The Service Manager – Quality Assurance should liaise with the Finance Team to develop a target date for commencing the financial assessments of market risk care providers. <i>Capacity challenges within Finance Teams has meant this has not been progressed, despite a process being established.</i> • 1.8a) The Strategic Manager - Commissioning should ensure that Somerset County Council obtains a written agreement with appropriate providers who can provide personnel to support failing providers in the event of a closure, to ensure that all expectations and boundaries are outlined for this arrangement <i>Provider of last resort arrangements have not been formalised through a written agreement.</i>
5	Recent Home Closure Case Studies
5.1	Acacia Nursing Home, Yeovil:

	<p>Somerset County Council has been working with and actively supporting the owners of Acacia Nursing Home, Camelot Care Ltd, following an Inadequate CQC inspection in February this year. New placements were suspended, and the Home was issued with a Rectification Notice at the start of the year. Due to continued concerns about Acacia's ability to both make and crucially sustain the improvements expected and required, the joint SCC and Somerset Clinical Commissioning Group (CCG)'s Commissioning and Quality Board issued a subsequent Final Warning Notice in May. This is in line with our shared Contract, Quality and Risk Management Policy.</p>
5.2	<p>Significant input was provided to Acacia from the Council's Quality Assurance, commissioning, safeguarding and operational functions, in addition to intensive clinical contributions from the CCG, with staff routinely visiting the Home, reviewing residents and offering support and advice to Acacia's own staff group. However, in August 2018, in direct response to concerns flagged by professionals visiting the service and reports received from relatives, the CQC inspected for a further time and found Acacia to again be 'Inadequate' overall. At this point, the Commissioning and Quality Board reviewed the situation and took the decision to commence a de-commissioning process and offer residents alternative placements. The directors of Camelot Care subsequently took the decision to close the home.</p>
5.3	<p>On 26 October the CQC threatened immediate closure unless reassurances could be given on nursing care and oversight within Acacia; the immediate closure risk was, however, mitigated as they were satisfied by the level of support being provided by the Local Authority and CCG. They aimed to continue with the closure process with a target date set for Friday 2nd November 2018.</p>
5.4	<p>The total number of residents within Acacia at the start of the closure process was 26, both private and social care funded. By 15:00hrs on Wednesday 31st October 2018, all residents were safely transferred from Acacia. This was a very intensive piece of work, which was overseen by the Quality Assurance service with support from the South Somerset Locality team and Safeguarding personnel, who have worked closely with residents and relatives, as well as the owners of Camelot Care Limited throughout, and monitored for safe staffing levels.</p>
5.5	<p>We were also grateful for the help afforded by the Clinical Commissioning Group, Yeovil District Hospital and Somerset Partnership in ensuring additional nursing cover within the Home to help keep all residents safe and well cared for during the transition and in supporting with the necessary assessments and onward planning. A number of other local Homes were instrumental in stepping forward to assist in this process and provide new, suitable placements.</p>
5.6	<p>Popham Court Care Home, Wellington:</p> <p>On 12 September 2018, Somerset Care announced the closure of Popham Court in Wellington, which provided care for 55 residents. Its CEO outlined that a number of factors had led to the decision, including the fact that Popham needed substantial investment in order to meet the needs of our older population in future. After seeking expert advice and looking carefully at the market and costs of development, Somerset Care were unable to make a viable business case to rebuild Popham Court. Despite strong occupancy levels, Popham had also been recording financial losses for a number of years due to rising costs. A closure date was set for 30th November 2018, and Somerset County Council commenced activity to support the home through its closure process and in the review and safe</p>

	<p>transfer of all residents. The home closure concluded on Friday 2nd November, ahead of schedule.</p> <p>Somerset Care staff used the feedback form we now issue as standard to advise the following: <i>“We would like to thank you for your support which contributed to the smooth process of transferring our residents and ensuring that they were all settled in their new homes. We feel that our partnership with the closure of Popham Court has been excellent”.</i></p>
6	Background papers
6.1	Appendix A - Risk of Care Provider Failure – Progress Update (Nov 2018)
6.2	Appendix B - Risk of Care Provider Failure - Final Report (published March 2018)

Note For sight of individual background papers please contact the report author

APPENDIX A**SWAP Care Provider Failure Progress Update (November 2018)**

1.	The business failure of a care provider results in vulnerable adults being left without a means of having their care and support needs met.		Medium
1.1a	Proposed outcome		Priority 3
The Strategic Manager - Commissioning should establish what current measures for response would be and to consider whether there is a need to co-ordinate activity to ensure that Councils assess how the South West as a region would respond to a significant care provider failure.			
Person responsible:	Tim Baverstock	Target date:	April 2018
Progress Update (November 2018): This work has been completed Any issues are discussed at regular commissioning meetings (quality and concerns) and via the regional Quality Surveillance Group meetings convened across local authority boundaries. Nationally we are also kept informed. There was not felt to be a need for a regional plan, and recent events have shown that there is a mechanism for quickly gathering exposure to a particular provider and providing a joined-up response, coordinated by ADASS (Association of Directors of Adult Social Services) and the LGA (Local Government Association) – a good example of this is the recent warning issued by the CQC in relation to one of the country's largest home care providers, private equity-owned Allied Healthcare.			
1.2a	Proposed outcome		Priority 3
The Service Manager – Quality Assurance should review the criteria for key market risk providers and an assessment should be made of the minimum number of placements to identify an accurate threshold for any providers who would be hard to replace.			
Person responsible:	Paul Coles	Target date:	End of May 2018
Progress Update (November 2018): This work has been completed. The criteria for key market risk providers was reviewed and adjusted from 70 beds/70 people to 50 beds/50 people to enlarge the cohort. This decision was made to be more inclusive as part of the annual review process. This equates to 45 providers annually.			
1.3a	Proposed outcome		Priority 4
The Service Manager – Quality Assurance should ensure that a process is set in place for completing financial risk assessments of all care providers joining the Framework.			
Person responsible:	Paul Coles	Target date:	End of May 2018
Progress Update (November 2018): Incomplete The Quality Assurance Team identified 50-60 providers be randomly 'spot' checked per year and have obtained financial accounts for these via Companies House for the selected 2018/19 providers. However, we have been advised there is currently no financial team support available to assess figures. It should be noted that financial accounts are always a year out of date. Furthermore, in discussion with other Local Authority Quality teams in the region, it is clear that financial assessments are not undertaken bar through the initial tender process because they are unsure of the added value this activity brings given the changeable market forces.			
1.4a	Proposed outcome		Priority 4
The Service Manager – Quality Assurance should liaise with the Finance Team to develop a target date for commencing the financial assessments of market risk care providers.			
Person responsible:	Paul Coles	Target date:	End of May 2018
Progress Update (November 2018): Incomplete The Quality Assurance Team developed a process to progress this activity following the SWAP Audit and held a number of meetings with both procurement and finance colleagues to establish and progress this expectation. However, the Finance Team have advised they have no capacity to assist due to the wider financial imperative activity underway and consequent to the reduced resources within their service. This matter has been flagged to the Director of Adult Social Services and also reported on JCAD. The proposed process is therefore on hold pending review.			
1.4b	Proposed outcome		Priority 3

The Service Manager – Quality Assurance should ensure that all contract reviews are recorded and retained on file. Furthermore, the Contract Review Schedule Spreadsheet should include the date that the contract review was last completed and the date that it will next be due.			
Person responsible:	Paul Coles	Target date:	End of May 2018
Progress Update (November 2018): This work has been completed. All Quality and Contract officers notify the team's business support when reviews are completed, along with date of next review, so these can be clearly monitored. The database is up to date and routinely monitored. Business support also audits electronic Sharepoint records to further evidence activity underway. It is up to our contract and quality officers to determine when a contract review is next due (discretionary dependent level of concern). Each team member has a total of 50 contract reviews tasked to them during the year.			

1.5a	Proposed outcome	Priority 4	
The Service Manager – Quality Assurance should agree a plan to achieve full compliance with the agreed process for Care Provider Self Assessments. A decision should be reached as soon as possible as to whether the service will pursue registering all care providers on the Proactis system in light of available resource, to generate the intended benefits.			
Person responsible:	Paul Coles	Target date:	End of October 2018
Progress Update (November 2018): This work has been completed. The Proactis system approach has been abandoned as a process. Instead, the care provider self-assessment process has been agreed: a month prior to the contract review, the SAF (self assessment) is issued to the home manager for completion. This response then informs and sets the agenda for the review. The Quality Assurance process dovetails with the CQC process by being undertaken alternate years to ensure a robust annual review takes place by an independent agency each year.			

1.6a	Proposed outcome	Priority 3	
The Strategic Manager – Quality Assurance should request access to the outcome of the CQC Care Provider Finance Assessments and use this information when assessing which care providers may require further support or may be at risk of failure.			
Person responsible:	Niki Shaw	Target date:	End of April 2018
Progress Update (November 2018): This work has been completed A formal request was made by the Strategic Manager on 15 March 2018 at the regional Quality Surveillance Group meeting where health/care provider concerns are shared and discussed alongside CQC, CCG and LA colleagues. The CQC clarified that this request is not possible for reasons of business confidentiality but that they would encourage LAs to always discuss with providers. This discussion was minuted and can be made available as evidence of the action having been taken.			

1.7a	Proposed outcome	Priority 3	
The Service Manager – Quality Assurance should ensure that Care Provider Failure documentation is updated to ensure that			
<ul style="list-style-type: none"> • all actions raised in closure meetings are recorded with a clear target date and an update is recorded for each action in subsequent meetings; • there is a timeline of all key decisions made outside of formal meetings, including telephone meetings; • there is a prompt to consider lessons learnt provided from a formal feedback request (see 1.7b). 			
All the above should be recorded and retained on file for each closure			
Person responsible:	Paul Coles	Target date:	End of April 2018
Progress Update (November 2018): This work has been completed The Business Failure Policy and Urgent Business Closure Failure Checklist has been updated. Plans are in place to formally re-issue the procedures across the Adults Service, and to present on expectations and process at a Locality meeting with operational staff on the back of learning from recent high-profile home closures. Running records are kept to record any			

decisions taken / made.			
1.7b	Proposed outcome		Priority 3
The Service Manager – Quality Assurance should develop a formal feedback request template to issue to providers for return, following completion of the closure procedures.			
Person responsible:	Paul Coles	Target date:	End of April 2018
Progress Update (November 2018):			
This work has been completed A QIM Closure feedback request template was created in the spring, and is now routinely issued following the closure of any quality improvement process or business failure. The feedback forms seeks satisfaction rates in relation to the way the Quality Assurance team dealt with the concerns/closure process, the extent to which the provider felt supported, and the extent to which the care provider felt listened to and respected by the Quality Assurance team during the process. It also seeks feedback in terms of ideas for improvement that we could learn from. To date, 2 feedback forms have been returned by providers and both have been overwhelmingly positive about the approach and levels of support provided. These can be made available upon request.			

1.8a	Proposed outcome		Priority 3
The Strategic Manager - Commissioning should ensure that Somerset County Council obtains a written agreement with appropriate providers who can provide personnel to support failing providers in the event of a closure, to ensure that all expectations and boundaries are outlined for this arrangement			
Person responsible:	Tim Baverstock	Target date:	End of August 2018
Progress Update (November 2018):			
Incomplete Somerset has always had excellent support from its whole market and has very robust partnership arrangements in place with NHS colleagues as well as a tried and tested quality assurance intervention plan. Working with other local authorities we are aware that they follow the same path as Somerset – that is working closely with providers all year round which enables them to mobilise support quickly when required. Whilst not reliant on one provider, we do have an understanding with our largest provider, Somerset Care, that they will offer their support from their extensive resource if required and when available. There is no formal agreement in place for this as situations are fluid and changing. In the recent episode outlined by the Acacia case study in this document, we were able to utilise CCG, Somerset Partnership and Yeovil Hospital resource, coordinated by ourselves and CCG colleagues. Regular meetings with the provider sector and their trade body, the RCPA, are now in place and we are using these to develop plans further.			