

	<h2>Adults and Safeguarding Committee Meeting</h2> <h3>12th November 2015</h3>
Title	London Borough of Barnet’s approach to concerns with providers in the regulated care market - update
Report of	James Mass – Assistant Director
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Summary

This report provides an update to the Council’s approach to responding to concerns with providers in the regulated care market, as requested by the Committee on the 8th June. There are 180 providers of regulated adult social care registered with the Care Quality Commission (CQC) in Barnet and since 2014 these have been inspected under a new regime.

When providers are found to be ‘inadequate’ or ‘requires improvement’ the Council responds with a partnership approach alongside the CQC and the Barnet Clinical Commissioning Group (BCCG) to ensure the safety of vulnerable residents.

The Council’s Care Quality service is also pro-actively working with all providers to help lift standards of care across Barnet and minimise the number of providers locally that cause concern.

Decisions

That the Adults and Safeguarding Committee note the on-going work to develop and improve the approach to responding to concerns with providers in the regulated care market.

1. WHY THIS REPORT IS NEEDED

The Care Quality Commission

1.1 The Care Quality Commission (CQC) is the national body responsible for the regulation of hospitals, care homes, home care, dental and GP surgeries, clinics, community services and mental health services in England. This report focusses solely on care homes and providers of domiciliary homecare as providers of Adult Social Care.

The Old CQC Regime

1.2 The previous registration requirements were brought into force in 2010 and set out 16 essential standards of quality and safety that all providers had to meet when they registered with CQC, and on an on-going basis thereafter. Following inspection, providers could either be assessed as 'Met all standards' or 'Not met all standards'.

1.3 This system was increasingly criticised following a number of reviews, inquiries, consultations and policy initiatives including:

- The Mid Staffordshire NHS Foundation Trust Public Inquiry (the Francis Inquiry);
- The Winterbourne View Review;
- The Berwick Review in to Patient Safety;
- The government's Red Tape Challenge.

The Francis Inquiry report noted that:

“The current outcomes are over-bureaucratic and fail to separate clearly what is absolutely essential from that which is merely desirable.”

1.4 They were also widely criticised for a lack of clarity and being difficult to enforce. The new regime aims to remedy this by identifying 'Fundamental Standards' which are intended to be common-sense statements that describe the basic requirements that providers should always meet, and set out the outcomes that patients or care-service users should always expect. All care

providers registered with CQC now have to meet them.

The new CQC regime

- 1.5 Inspections are now unannounced and delivered by teams tailored to the service they are inspecting – this includes an inspector, an expert by experience, and may also include a specialist adviser.
- 1.6 The size of the team depends on the size and complexity of the service being inspected. Inspectors use professional judgement, supported by objective measures and evidence, to assess services against five key questions:
 - Are they safe?
 - Are they effective?
 - Are they caring?
 - Are they responsive to people's needs?
 - Are they well-led?
- 1.7 Each service is then given a rating to help people to compare services and to highlight where care is outstanding, good, requires improvement or inadequate.
- 1.8 The inspectors use a standard set of key lines of enquiry (KLOEs) that directly relate to the five key questions to ensure consistency and focus on those areas that matter most.
- 1.9 The CQC has recently published its State of Care report (available at <http://www.cqc.org.uk/content/state-care-201415>). This sets out that 60% of services were judged good or outstanding and highlights the significant variation in the market. The analysis shows that 50% of services re-inspected demonstrated improvement. Locally, the Council has seen something similar with some services continuing to struggle or close whilst a significant proportion are able to demonstrate significant improvement – often with considerable input from Adults & Communities Delivery Unit.
- 1.10 This report sets out the Council's approach to responding to concerns with providers in the regulated care market in light of the new inspection regime in

relation to Home Care and Care Home providers.

1.11 There are 73 home care providers registered in Barnet and 101 care homes.

1.12 Table 1 shows the number of providers in Barnet compared to a number of other comparator boroughs for Adults and Older People as identified by the National Adult Social Care Intelligence Service (NASIS).

Table 1

Borough	Home Care	Care Homes
Redbridge	60	71
Harrow	62	84
Ealing	55	63
Haringey	34	59
Brent	49	85
Enfield	62	94
Barnet	73	101

Table 2 shows the ratings for Barnet providers who have been rated to date under the new inspection regime.

Table 2

	Home Care	Care Homes
New Regime		
Outstanding	0	0
Good	8	15
Requires improvement	3	10
Inadequate	1	4
Not rated	0	1
Old Regime		
Met all standards	35	75
Not met all standards	4	8

'Not rated' indicates that an inspection has been undertaken but the report has not yet been published.

In a number of instances where a provider has closed, moved premises or been acquired, inspection reports have now been archived and therefore the figures in table 2 do not reflect the totality of registered providers within the borough (table 1). All registered providers will now be inspected under the new regime.

Provider Concerns Process

1.13 The aims of the provider concerns process are to:

- Ensure the safety, dignity and care to those who use the service of the provider;
- Ensure that the customer is at the heart of the process;
- Share information appropriately in order to enable effective partnership working;
- Work together with providers to improve the quality of care;
- Take robust action in instances where a crime has been committed or to protect the wellbeing of those who use services.

1.14 Working together means recognising that no single agency can alone respond or improve the quality of care within providers. Each organisation has its own remit, focus and skills, which together, has the potential to contribute to creating the best possible outcomes within a care provision.

1.15 Concerns in relation to providers can be raised through a number way e.g. safeguarding alerts, contract monitoring meetings, service user reviews, family or friends, CQC inspection process, health.

1.16 Where concerns are raised in relation to a provider then the following process is followed:

1. Initial provider concerns meeting
2. Fact finding and investigation
3. Reviewing recent social care reviews for any individuals placed by the local authority

4. Reviewing any recent safeguarding alerts
5. Reviewing recent contract monitoring information
6. Reviewing service users if appropriate and needed
7. Risk analysis and action planning
8. Work with providers on implementation of action plan

Risk Assessment and Review of individuals

- 1.17 Following the raising of a provider concern, the Council will undertake a risk assessment of the provider. This will involve an audit of recent Council contact with the provider including monitoring visits, contract management and reviews of individuals.
- 1.18 Where it is deemed necessary, a review of those receiving service will be undertaken to ensure an acceptable level of care is being received.

Joint working with health

- 1.19 The Council works closely with Barnet Clinical Commissioning Group to ensure a multi-agency approach to dealing with provider concerns. Health commissioner and practitioner involvement will often be critical to working with providers regarding services commissioned by BCCG or in relation to nursing or clinical care in order to assess risk and improve practice.

Suspensions

- 1.20 A possible action that is likely where there is a concern is to put in place a provider suspension. Potential triggers include:
- Action required under the Multi Agency Procedures for Safeguarding Adults
 - Following a CQC inspection, the provider has received a rating of 'Inadequate'.
 - Following an inspection CQC decide to take action against a provider, such as issuing a warning.

- The provider needs to embed significant improvements, and it is determined that a respite from referrals is necessary while the improvement work is on-going.
- Evidence that the health and safety of a service user(s) is at risk.
- Due to a provider's failure to adhere to the contractual requirements between the provider and the Council.

1.21 The decision to suspend will be based on the evaluation of available evidence as to whether or not the provider is in a position to effectively and safely accept new referrals.

1.22 In most circumstances it will be necessary to convene a Provider Concerns meeting to decide whether there are sufficient grounds to suspend referrals and assess the risk to individuals currently placed with the provider. All available evidence will need to be reviewed, including the outcome of any Adult Safeguarding Strategy meeting that has been held.

1.23 The decision to suspend should be based on whether suspension is warranted based on the circumstances and available evidence and must be for an agreed period. In determining the duration of the suspension, due consideration should be given to the action required to improve and the timescales for the improvement to take place.

1.24 In some cases, a provider will indicate they are willing to undertake a voluntary suspension which may seemingly negate the need to impose a formal suspension. This will not be accepted. If it is considered necessary to suspend a provider this must always be a formal suspension and the appropriate procedures must then be followed.

1.25 Under the Provider Concerns Policy, it may sometimes be necessary for the Head of Care Quality to suspend a provider with immediate effect, while the service is completing a risk assessment. The conditions under which this may occur are:

- Following a CQC inspection, the provider has received a rating of 'Inadequate'.

- Following an inspection CQC decide to take action against a provider, such as issuing a warning.
- 1.26 The Council may also use its discretion to suspend a provider prior to the Provider Concerns meeting where it believes this is necessary to safeguard individuals.
- 1.27 In those instances where an immediate suspension is placed upon a provider, the Council will then undertake a risk assessment to identify the level of risk posed by the concerns raised by the CQC enabling it to determine if the suspension is warranted.

Communication

- 1.28 Following the decision to suspend a provider, they will be notified in writing within five working days. The decision will be shared with senior managers and officers that arrange placements across the authority. Regular updates are provided to senior management.
- 1.29 Other funding authorities are then identified and notified in writing with a recommendation for them to carry out client reviews where appropriate and offering the opportunity for engagement in the LBB provider concerns process.
- 1.30 A notification is also sent out via London Councils to all Directors of Adult Social Care.

Shared approach across London

- 1.31 London Directors of Adult Social Services have commissioned a review of the London Multi-Agency Policy and Procedures to Safeguard Adults from Abuse. An independent contractor has been commissioned to do this work, and is engaging a range of stakeholders including the Assistant Directors Group, and LASN (London Safeguarding Adults Network), Police and Health.
- 1.32 Part of the project brief is to include a section on Policy and Procedures for a Provider Concern. This work is in progress and Sue Smith, Head of Safeguarding Adults within the Adults and Communities Delivery Unit has been involved in the reference group. This will have the benefit of a co-

ordinated approach across London, will clarify the roles and responsibilities of local authorities whether they are host or placing authorities (funding authorities), and aims to provide a shared threshold for the procedure to be invoked, and a shared risk matrix.

- 1.33 The procedures will also include guidance on communication with residents and relatives and other local authorities, when a suspension of placements is agreed in one Borough. This will address current inconsistencies across London.
- 1.34 The Council will review and adopt this when complete and ensure the local policy builds on the shared approach while reflecting the detail of the local arrangements with partners.

Preventative work to improve quality in the market

- 1.35 Alongside responding to concern the Care Quality Service within Adults and Communities carries out proactive work to support providers across Barnet to improve their services and also co-ordinate partners in supporting this approach. In addition to a contract management and monitoring function, the service works with the wider market to improve poor practice and promote instances of high quality care.
- 1.36 This includes arranging Quality and Practice Forums, and developing support networks. The teams also look at how health and social care support for people can be more joined up, and prevention initiatives which can be undertaken by providers.

Development work

- 1.37 In July 2015, Barnet experienced the closure of a care home with nursing accommodating 7 highly vulnerable residents following CQC and Council intervention. Following action taken by the regulator to deregister the home, the Delivery Unit worked closely with BCCG and the community services provider to manage the safe transfer of all residents to new accommodation. This was undertaken through a co-ordinated approach, led by the Care Quality Service and ensured that each individual was safeguarded and mitigate the risks associated with moving vulnerable people.

1.38 Following this provider failure, the Care Quality Service convened a Lessons Learned workshop, drawing together the appropriate professionals to review the precipitous events, actions and consequences of the failure and agree how to best incorporate the learning to strengthen the future approach.

1.39 A key action from the workshop has been to agree that the Council and BCCG will now work jointly to produce a shared provider concerns policy and develop a full suite of procedures and documentation to support the process.

1.40 Key actions for the group are to produce the following documents by December 2015:

- *Development of a trigger & escalation policy*

This will identify changes, developments or themes which may suggest services starting to fail. The early identification of failings within services and more open communication across partnerships had the potential to prevent harm and abuse from occurring.

- *Refinement of a comprehensive risk assessment tool*

This tool will enable those involved in the process to systematically identify and assess risk and then plan and implement a response to the risk. The purpose of the risk assessment is to agree the level of acceptable risk. In this instance, the major decision is to determine if it is safe for people to remain with a provider.

- *Information sharing protocol*

This will set out principles as to who information should be shared with and the information governance surrounding information sharing.

- *Exit strategy and guidance on contingency planning*

This will outline the strategy and factors for consideration if it becomes necessary to move individuals. The document will be heavily informed by the home closure in July.

2. REASONS FOR RECOMMENDATIONS

2.1 That the Adults and Safeguarding Committee consider the current approach to responding to concerns with providers in the regulated care market and

note the on-going work to develop and improve the approach. This will ensure that Adults and Communities can continue to effectively respond to any concerns with providers within the regulated care market in Barnet.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

3.1 None

4. POST DECISION IMPLEMENTATION

4.1 The approach will continue to be used by the Adults and Communities Delivery Unit.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

5.2 This approach supports the Council's Corporate performance targets to deliver effective services to residents and supports the key priority identified by the Adults and Safeguarding Committee 'that all adults are given the opportunity to live well, age well and stay well, with people feeling safe;'

5.3 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

5.3.1 The paper formally confirms current working practices and further development work is being undertaken within existing resources and as part of business as usual. There are therefore no additional resource implications, over and above the current budget, to note.

5.4 Legal and Constitutional References

5.4.1 The Council's Constitution (Responsibility for Functions) sets out the Adults and Safeguarding Committee's Terms of Reference, which include: 'Promoting the best possible Adult Social Care services'.

5.4.2 Under The Care Act 2014, local authorities are required to help develop a market that delivers a wide range of sustainable high-quality care and support services that will be available to residents.

5.4.3 The Act also imposes legal responsibilities on local authorities where a care

provider fails for a business reason, involving the financial failure of the organisation.

5.4.4 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.

5.4.5 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.

5.4.6 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.

5.4.7 This duty applies temporarily, until the local authority is satisfied that the person's needs will be met by the new provider.

5.4.8 Although this duty does not apply where a business ceases to operate because of its failure to meet the CQC's standards, The Act does confer a discretionary power upon the local authority in the case of a failure due to quality.

5.4.9 The local authority has duties to safeguard adults if it has reasonable cause to suspect that an adult in its area (whether or not ordinarily resident there) -

- a. has needs for care and support (whether or not the authority is meeting any of those needs),
- b. is experiencing, or is at risk of, abuse or neglect, and
- c. as a result of those needs is unable to protect himself or herself against the abuse or neglect or the risk of it. (section 42 of the Care Act 2014)

5.4.10 The local authority also has a duty to ensure that the eligible needs of adults who are ordinarily resident in its area are met (section 18 of the Care Act 2014).

5.5 Risk Management

5.5.1 Provider concerns will continue to be dealt with using a robust assessment of risk using the provider concerns risk tool. This will enable the Council to rate the different elements of risk and assess the action required. These will continue to be escalated to Senior Management to ensure the appropriate level of scrutiny and assurance that action is both timely and proportionate.

5.6 Equalities and Diversity

5.6.1 Under Section 149 of the Equality Act 2010 the Council must, in the exercise of its functions, have due regard to the need to do the following:

- a) Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act.
- b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
- c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

5.6.2 Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to

- a. Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- b. Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
- c. Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

5.6.3 The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

5.6.4 Having due regard to the need to foster good relations between persons who

share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to tackle prejudice, and promote understanding.

5.6.5 Compliance with the duties may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under the Act.

5.6.6 The relevant protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

5.6.7 People in Care and Nursing Homes and those receiving care at home are some of the most vulnerable people in the community by reason of age and/or disability and therefore require the Council to ensure that, as well as being safeguarded, the measures taken by the Council under this policy meet the equality duty particularly in ensuring that any action takes into account a person's disabilities.

5.7 **Consultation and Engagement**

5.7.1 N/A

6. **BACKGROUND PAPERS**

6.1 London Borough of Barnet's Approach to Concerns with Providers in the Regulated Care Market.

<https://barnet.moderngov.co.uk/documents/s23583/Provider%20Concerns%20-%20AC%20June%202015%20FINAL.pdf>