
City of Bradford Metropolitan District Council

Bradford and District Residential and Nursing Care Homes Provider List

Reference: BMDC/DN420609

5.3 POLICY & PROCEDURE

5.3.1 SERIOUS CONCERNS PROCEDURE

Adults Integrated Health and Social Care

Serious Concerns Procedure

<u>Contents</u>	<u>Page</u>
Serious Concerns Procedure Overview	2
Objective of the Procedure	2
What Triggers the Serious Concerns Procedure	3
Criteria for Embargo	4
Who should take part in a Serious Concerns Procedure	5
Timescale for the Serious Concerns Procedure	6
Serious Concerns Procedure (Stages)	6
Record Keeping, Information Sharing and Data Protection	11
Requesting an Exemption to an Embargo	12

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1. Serious Concerns Procedure Overview

This document sets out the procedure to be followed in the event that serious concerns arise in respect of a provider's performance. It also covers the procedure to follow if they are subsequently considered to be unable or unwilling to make the required improvements.

In drawing up this agreement, the City of Bradford Metropolitan District Council and the Airedale, Wharfedale and Craven, Bradford District and Bradford City Clinical Commissioning Groups are committed to working in partnership with statutory partners, in particular the Regulator (CQC) who retain the overall responsibility for the registration and monitoring of care providers' compliance with the fundamental standards below which care must never fall. Other key partners and stakeholders are police colleagues, voluntary organisations and people who use services and those who support people who use services as family, friends and local residents.

This policy should be read in conjunction with the Safeguarding Adults West and North Yorkshire and York Multi-Agency Policy and Procedures. Where concern relates to an issue of abuse or neglect (including self-neglect), then this will be referred to the Safeguarding Adults Policy and Procedures to take the lead on the enquiry.

2. Objective of the Procedure

This guidance is necessary to ensure that a standardised response to all serious concerns regarding providers, including reporting and evidence gathering, is achieved and effectively managed.

In particular to:

- Ensure a standardised response to all circumstances, including reporting and evidence gathering.
- Establish clear decision making.
- Identify responsibilities.
- Agree a practical process which all officers are aware of and can follow.
- The imposition of an embargo, in this context meaning the undertaking of suspension and/or termination measures.
- Ensure the safety and welfare of the resident's remains the priority, including supporting the Safeguarding Adults West and North Yorkshire and York Multi-Agency Policy and Procedures.
- Involve stakeholders appropriately.
- Investigate concerns within the statutory framework.
- Manage and mitigate risks.
- Establish clear communication channels for service users, relatives, key internal and external stakeholders and providers.
- Conform to legal requirements.
- Form a component of the Service Provider terms and conditions of contract.

This policy is intended to reflect the Safeguarding Principles and contract management, including the management of risk.

Definition of Provider

A Service Provider for the purposes of this agreement is any care provider who delivers support and care to a group of individuals. This would include but is not exclusive to the following:

- Domiciliary Care Providers
- Residential Care Homes
- Nursing Homes
- Voluntary Sector Organisations
- Supported Living
- Day Care and day opportunities providers
- Respite and short break providers
- Rehabilitation services for people who misuse drugs or alcohol

Who does this protocol apply to?

This protocol applies to health and social care providers working with vulnerable people in the Bradford District.

3. What Triggers the Serious Concerns Protocol?

- A concerning CQC inspection outcome of a provider where key standards are not met. The Serious Concerns Protocol will be initiated in all cases where a provider is rated inadequate overall or inadequate for Safe.
- Concerns raised by CQC relating to a provider outside of their inspection programme.
- Notifications from other authorities of an embargo of a provider.
- Safeguarding Adults investigation relating to a service provider, particularly where concerns are about institutional abuse or trends in safeguarding alerts within a service or a number of alerts where the alleged perpetrator is the same member of staff.
- Issues identified through contract management or risk based validation procedures including:
 - Poor, or lack of, recording of serious incidents and concerns
 - Sustained evidence of poor management or leadership within the provider organisation
 - Sustained, unresolved poor relationships with partner organisations and commissioners
 - Evidence of inability to learn from previous safeguarding adults investigations or concerns processes
 - On-going concerns of poor quality of care provision within the provider organisation
 - Report of a serious crime within the provider resource or involving their staff, which requires Police involvement
 - Admission of service users whose needs cannot be met by the provider organisation.
 - Failure to implement service improvements as identified by provider regulatory bodies and commissioners.

Please note that this list is not exhaustive, but is intended to provide an indication of the kind of concerns that would give rise to the initiation of the serious concerns protocol.

NB: If the serious concerns relate to safeguarding issues then this will be referred to the Safeguarding Adults West and North Yorkshire and York Policy and Procedures to be managed through the formal enquiry route. The Commissioning Team will assist the Safeguarding Procedures as required.

4. Criteria for Embargo

An embargo or serious concerns process can only be invoked with the approval of the Assistant Director of Integration and Transitions or the Assistant Director of Operations.

- Where a provider has been rated as overall inadequate by CQC an immediate embargo will be placed
- Where a provider has been rated as inadequate against the fundamental standard 'Safe' by CQC, the Serious Concerns Process will be initiated, the Serious Concerns Meeting will recommend whether this will proceed to embargo, in line with the stages of the serious concerns procedure
- If the Bradford Safeguarding Strategy Liaison Meeting determines that a safeguarding concern(s) is of a serious nature and/ or that there is an unacceptable level of risk while more information is gathered, they will consider whether an embargo should be placed.
- Where the Serious Concerns Process has been triggered outside of these circumstances, the Serious Concerns Meeting will progress through the stages of the serious concerns procedure and consider initiating an embargo at Stage 4 where the concern is of a serious nature and/ or there is an unacceptable level of risk

The risk should be considered from the perspective of i) new commissions ii) existing commissions iii) existing self-funder commissions, as an embargo may be appropriate in some or all circumstances depending upon the risk

In considering the risk, in the following circumstances an embargo would be deemed appropriate:

- a) If at any stage there are strong indicators that there is a risk of significant and continuing harm.
- b) If a criminal investigation is underway.
- c) There is a recommendation from Bradford Safeguarding Strategy Liaison Group, where any other relevant and serious situation warrants such action such as failure to deliver a safe service leading to a death, major/serious injury as a result of negligence, and failure to consistently adhere to the Medication Administration Policy.

- d) If there is a poor CQC inspection e.g. receiving overall inadequate rating, loss of registration, or serving of an enforcement notice. Where a provider has been rated as inadequate against the fundamental standard 'Safe' by CQC, the Serious Concerns Process will be initiated.
- e) If there is notification from other authorities of an embargo.
- f) If contracted performance falls below acceptable levels e.g. missed visits, late calls, overlapping of calls, or submission of fraudulent documentation.
- g) Concerns regarding the financial stability of an organisation.

This list is not exhaustive and each concern will be considered on its own merits.

When it is considered necessary to implement an embargo Bradford Metropolitan District Council (BMDC) and its Commissioning Partners will expect the Provider to recognise the importance of the embargo and that it is being used to protect the Provider and all existing service users. During the embargo period the Provider will be expected to refuse all new referrals from any source e.g. Local Authorities, CCG's and self-funding service users

If the Supplier operates more than one service, consideration will be given to whether the suspension or termination should apply to those other services also. This will be dependent upon the assessment of the risk.

5. Who should take part in a Serious Concerns Procedure?

Governance

Overall authorisation for this procedure will be undertaken by the Assistant Director of Integration and Transitions or the Assistant Director of Operations. The Serious Concerns Meeting will be chaired by the Service Manager Commissioning (Adults and Housing Related Support) or a delegate; however this must not be delegated below Service Manager level.

Other representation within the serious concerns process should include:

- Relevant members of the BMDC Authority Commissioning Team
- CCG representation where nursing or Continuing Health Care funding is in place
- Safeguarding Adults Lead (Adult Protection Unit)
- Service Manager from Operations
- BMDC, CCG and Health Managers responsible for areas of the service relevant to the enquiry
- A senior representative of the Provider's organisation attendance required from Stage 3 of the process
- Minute taker

In some cases it may be appropriate for other professionals to attend, such as representatives from other Local Authorities with placements in the service.

The quorum for Serious Concerns Meetings is agreed when any of the 3 following parties are present for decision making: Adult Protection Unit, Operations, Commissioning, CQC or CCG.

Service Providers

In all cases where an immediate embargo is placed upon providers following an overall Inadequate CQC rating, then providers will be required to meet with the Assistant Director(s) and the Commissioning Team to discuss this.

Where the Serious Concerns Process is initiated and a decision to place an embargo is made within Stage 4 of the process, the provider will be required to meet with the Assistant Director(s) following the notification of an embargo.

Providers will be invited to join the Serious Concerns Meeting at Stage 3, Action Planning stage and on-going provider engagement will then be agreed.

Service Users, Carers and Advocates

Service users, carers or advocates would not be invited to the serious concerns meetings, but would be involved in their own individual safeguarding adults process if there is one. However, consideration should be made during the serious concerns process to sharing information with service users, carers or advocates if appropriate about the process, this should be detailed within the Communications Strategy.

6. Timescales for the Serious Concerns Process

Timescales for the process are detailed where required within the relevant stages of the process. However timescales for the completion of the serious concerns process will be agreed within the Serious Concerns Meeting, guided by recommendations from Assistant Director(s) and in agreement with the provider. Sustained improvement of no less than 3 months is required in order to request to lift an embargo.

7. Serious Concern Procedure

The stages are outlined below:

Stage 1: Decision to Invoke the Serious Concerns Procedure

A proposal to invoke the Serious Concerns Procedure will be made by Service Manager of Safeguarding or Service Manager of Commissioning, in consultation with Service Manager

Operations, CCGs and / or Health giving reasons to invoke to the Assistant Director of Operations and the Assistant Director, Integration and Transition. Approval by the Assistant Director of Operations or the Assistant Director is required prior to commencing the Serious Concerns Procedure.

In instances where the concern is in a health setting the Assistant Director(s) will consult with the senior manager of the Clinical Commissioning Group.

The safeguarding process may run concurrent with the Serious Concerns Procedure but the safeguarding adults' process will take precedence.

Where the provider has been rated overall inadequate by CQC or where there is deemed to be a significant risk to individuals then proceed to Stage 4 'Embargo Procedure Initiation'.

Where the process is not invoked as a result of an inadequate rating or significant risk to the existing residents, then the provider will be notified in writing see appendix 1 - Provider letter to notify Serious Concerns process invoked.

CQC will be notified in writing that the serious concerns process is being invoked.

A Chairperson will be appointed and initial Serious Concerns Meeting convened. All communication with individuals outside of the Council network to be sent via secure email, minutes of meeting to be circulated to all attendees with seven working days.

Stage 2: Fact Finding

If the serious concerns relate to safeguarding issues then these will be referred to the Safeguarding Adults West and North Yorkshire and York Multi Agency Policy and Procedures to be managed through the formal enquiry route where appropriate.

A multi-agency professional Serious Concerns Meeting will be convened with the Service Manager Commissioning (Adults and Housing Related Support) or a delegated Service Manager appointed as Chairperson. This meeting will clarify roles and responsibilities, including leads for actions and a link worker for service users, carers or relatives where required.

In addition a fact finding plan will be developed with named leads and timescales for completing each action to be brought back to a reconvened serious concerns meeting. Information will include as a minimum:

- Service user data from CommCare / ContrOcc
- Information on self-funders and users from other Local Authorities/CCG's
- Date of last reviews for existing service users and outcomes of recent reviews

- Health assessments
- CQC report and provider Service Improvement Plan (including submissions to CQC)
- Reports of contract management visits
- Themes from Customer Complaints Log, previous Safeguarding alerts
- Financial evaluation, particularly where sustainability concern
- Providers health and safety reports and fire reports, where linked to concerns raised.

Stage 3: Action Planning

The Chairperson will reconvene the Serious Concerns Meeting to review all Stage 2 data where the required service improvements will be identified and agreed. The Provider may be invited to attend. At this meeting a decision will be made regarding the nature of the concern and risk levels.

A communications plan will be agreed with the provider and key stakeholders.

If the concern does not warrant the instigation of an embargo, a Service Improvement Plan must be developed and implemented by the Provider. A date will be agreed for the Serious Concerns Meeting to be reconvened to review the Service Improvement Plan. Written notification is issued to the Provider (Appendix 2 - Provider letter to notify Service Improvement Plan requirement)

If the Serious Concerns Meeting recommends an embargo, proceed to Stage 4.

Stage 4: Embargo Procedure Initiation

If the concern is of a serious nature and/or there is an unacceptable level of risk then an embargo should be initiated.

The Serious Concerns Meeting will make a decision on the scope of the embargo, whether this relates to new commissions, existing commissions, and/or existing and new self-funders. When it is considered necessary to implement an embargo Bradford Metropolitan District Council and its Commissioning Partners will expect the Provider to recognise the importance of the embargo and that it is being used to protect the Provider and all existing service users. During the embargo period the Provider will be expected to comply within the scope agreed.

If the Supplier operates more than one service, consideration will be given to whether the suspension or termination should apply to those other services also. This will be dependent upon the assessment of the risk.

Where the Provider has been rated overall inadequate by CQC, or where a safeguarding strategy meeting makes a recommendation for embargo as a result of a significant risk to individuals Appendix 3 - Serious Concerns Group request to place immediate embargo template will be completed for the Assistant Director for Operations and / or the Assistant Director Integration and Transitions. Appendix 4 Provider letter to notify embargo is sent to the Provider within two working days of

Assistant Director approval and the Provider is required to meet with the Assistant Director and members of the Commissioning Team.

CQC, CCG's, relevant teams and other local authorities where appropriate are notified in writing of the placing of an embargo.

The meeting with the Assistant Director(s) will outline the required improvements following the immediate placing of an embargo.

Where the embargo process is not invoked as a result of an inadequate rating or significant risk to the existing residents and has followed Stage 1, 2 & 3 of the procedure, Appendix 5 Serious Concerns Group request to place embargo will be completed and supporting evidence collated. Members of the Serious Concerns Meeting are to approve documentation, prior to referring to Assistant Directors for consideration.

Briefing forwarded to CCG and or Health where applicable.

The embargo request will either be supported or declined. If declined, the response form is to be shared with the Serious Concerns Meeting. If supported, the Assistant Director(s) will make a decision to suspend or terminate placements made. Where concerns are significant enough to consider decommissioning the service, refer to Stage 9.

The Assistant Director notifies the Leader of the Council and Portfolio Holder of the decision to embargo.

Signed copy of embargo form is held by the Commissioning Team and embargo logged on central tracking sheet.

A Serious Concerns meeting will be reconvened to review embargo as per signed copy of embargo form and review date.

Stage 5: Communication of Decision

Written confirmation will be sent to the provider within two working days of approval by the Assistant Director (Appendix 4 Provider letter to notify embargo is sent to the Provider). A meeting will be convened with the Provider, chaired by the Assistant Director and involve members of the Commissioning Team.

The decision to place an embargo will be communicated to CQC, CCG's, Local Authority Officers and Care Management Teams and other Local Authorities that have placements within the same provider services. Care Management will support the Provider with communication of the decision to service users, relatives and / or advocates where appropriate. This will be in line with the Communications Plan agreed in Stage 2.

Stage 6: Quality Assurance, Monitoring and Support to Service Providers

If directed by the Serious Concerns Group, the Provider will be supported to develop a Service Improvement Plan. Overall accountability for monitoring provider progress towards achieving the Service Improvement Plan will be retained by the Commissioning Team.

A Provider meeting will be convened to discuss the Service Improvement Plan and/or any required improvements as identified by the Serious Concerns Group. Support to the provider from relevant stakeholders will be made available and review timescales will be agreed.

Consideration will be given to consultation requirements with people who use the service and whether service user reviews are required.

A service visit may be scheduled to evidence the Service Improvement and / or Action Plan implementation; this will be arranged jointly with CCG Quality Assurance where appropriate. Following this the Serious Concerns Group will be reconvened to consider feedback from service improvement process, current level of risk, sustainability of changes and feedback from service users, relatives and / or advocates.

The embargo review process must allow a minimum of three months from development of the Service Improvement Plan to demonstrate sustained improvements.

If the Serious Concerns Group is satisfied that the provider has made the necessary changes and implemented the Service Improvement Plan, they will make a recommendation to propose to lift the embargo in (Stage 7). Where the provider has made progress with the Service Improvement Plan, but not implemented all improvements required, the service improvement process will continue for an agreed time limited period.

Where an embargo is in place and a Provider accepts new placements against the terms of the embargo and without prior agreement then the Serious Concerns Meeting will consider applying the Terms and Conditions of Contract default position.

If the Serious Concerns Group consider the level of risk continues and this cannot be mitigated by offering further support, or where the provider has made insufficient progress with the Service Improvement Plan, then the Serious Concerns Group will consider recommending the decommissioning of the service (Stage 9).

Stage 7: Review Embargo Decision

All relevant information and a copy of the Service Improvement Plan will be sent to the Assistant Director to consider whether the recommendation to lift the embargo using appendix 6 - Serious Concerns Group request an embargo review

If the recommendation is not to lift the embargo, the Assistant Directors will decline it with actions required, this will then refer back to Stage 6 of the process.

Where the recommendation from the Assistant Director is to lift the embargo, the Provider is notified of the decision in writing (Appendix 7 - Provider letter notifying lifting of embargo). The Provider is made aware that they may be subject to enhanced monitoring for a specified period. A meeting with the Provider may be convened where necessary.

The lifting of the embargo is communicated to CQC, CCG's, Local Authority officers, Care Management Teams and other Local Authorities and other parties where applicable, as per the Communications Strategy.

All documentation and evidence relating to the embargo to be filed and held by the Commissioning Team in line with the Council's retention policies.

Stage 8: Closure of the Serious Concerns Process

A final meeting of Serious Concerns group will consider the current level of risk, sustainability of changes and service user feedback in order to agree if a period of enhanced monitoring is required. The meeting will also consider any lessons learned and the outcome of lessons learned will be used to inform Commissioning and service delivery.

If sustainable improvements to service have been made the process will formally end.

All relevant parties will be informed as per the Communications Strategy.

Stage 9: Decommissioning the Service

The fact finding plan (stage 2) will be updated and extended to include details of any additional contributions being made by individuals that will need consideration when considering alternate placements.

The Provider will be required to supply staffing data and an update on the financial stability of the organisation.

The rationale proposing to decommission the service will be considered by Legal Services where required.

A copy of the Service Improvement Plan and other information will be sent to the Assistant Director to approve or decline the request to decommission.

If the recommendation is not to decommission, actions identified by the Assistant Director to be considered and the process will be referred back to Stage 6.

If the recommendation is to decommission, the Provider is notified in writing quoting the relevant terms and conditions clauses that supports the decision to decommission.

A further Serious Concerns meeting will be convened to agree the decommissioning process and a review meeting held weekly.

The decision is communicated as per the Communication Strategy, including a letter to service users, carers / next of kin and / or advocates sent by first class post.

Service users, including self-funders will be supported with the decision to find alternative provision by Social Workers, Operational teams and the Provider.

The Provider will ensure that current service user records are up to date and available to transfer to the new provider. Historic records will be returned to BMDC Commissioning Team.

Following a move to new provision a six week review will be carried out to service users to ensure that new provider is meeting the service user needs and that wellbeing is maintained.

A final Serious Concerns meeting will consider any lessons learned and the outcome of lessons learned will be used to inform Commissioning and service delivery.

8. Record Keeping, Information Sharing and Data Protection

The Local Authority Commissioning & Contracting Team will maintain a central list of Service Providers subject to a commissioning suspension or termination.

Written evidence which has informed the decision-making and relevant correspondence will also be filed and held by the Commissioning Team, or Safeguarding Team where related to a safeguarding concerns.

The Support Options Team and Social Workers will be able to consult this list when considering placement or other service options for residents.

Suppliers will be able to request access to this information in accordance with their rights under the Data Protection Act 1998 and the Freedom of Information Act 2000. However, best practice will require Service Providers to be given full details of the concerns held in order that these may be addressed appropriately. Certain information may be withheld where it is lawful and necessary to do so, but should only be withheld in accordance with any exemptions to disclosure that may apply.

Members of the public who have an interest, for instance someone requesting information on available placements for self-funding residents, should be advised that:

“The City of Bradford Metropolitan District Council has decided to cease using the Service Provider at this time as a result of outstanding Safeguarding Adults and/or contractual concerns, which the Council is seeking, along with the Service Provider, to address and resolve”.

Legal advice on information sharing will be sought as required.

9. Requesting an Exception to an Embargo for an individual placement

It is recognised that circumstances may arise in which this is a necessary course of action. In these circumstances Appendix 9 Individual Placement request for an exception must be completed by the service area (e.g. Care Management) requiring the placement stating the reasons to support the exception.

The Assistant Director will make the final decision and communicate the outcome to all relevant parties.

SUBJECT TO REVIEW