



MARKET OVERSIGHT IN ADULT SOCIAL CARE

JOINT SUBMISSION: SOLACE, LGA, ADASS

1 MARCH 2013

1. STRENGTHENING AND CLARIFYING THE ROLE OF LOCAL AUTHORITIES

- 1.1. Local authorities already recognise their duty to step-in in the event of a provider failure leading to change of ownership or closure of a service. Up and down the country, councils deal with provider failure on a regular basis and in the vast majority of cases people's care is transferred smoothly to alternative providers. A key means of enabling continuity comes from 'in house' direct provision; however, continuity also relies on good information from providers on, for example, users' care plans, who needs care and where they are (in the case of domiciliary care). Such information is not always readily available.
- 1.2. If this duty is to be enshrined in statute, it needs to be set out in a wide and permissive way that allows local authorities to ensure the right, or optimal, arrangements are made for care and support (and not a duty which assumes that the local authority will directly provide the care or assumes like-for-like care; for example, that residential care is the best option).
- 1.3. Further detail is needed on how the Government proposes to clarify and strengthen the duties of local authorities in relation to provider failure. In particular, information is needed on the scope of the proposed duty and of the term 'social care market'. In the context of wider reform, does this extend to health and / or housing? If it does, this may raise questions around who should lead the regulatory function.
- 1.4. The relationship with health is particularly important to detail; in particular, information is needed on the proposed duty in relation to service users who are NHS or self-funded. With regard to the former, clarity is needed on the interface with the NHS given the range of things that local authorities cannot do (such as fund or provide nursing care).
- 1.5. Additionally, local authorities should not be required to reassess all service users or to pick up the longer term costs of self-funders or individuals placed in a local service by a neighbouring council. Local authorities should also be able to recharge NHS and self-funded service users for any temporary care that they provide. Any new arrangements must set out the respective responsibilities of these other agencies clearly, taking into consideration ADASS Safeguarding Network Out of Area Guidance (December 2012)¹.
- 1.6. The Southern Cross crisis needs to be put in context; it was a direct result of the company's high risk investment model, primarily driven by a desire to maximise returns for investors; it

¹http://www.adass.org.uk/images/stories/Policy%20Networks/Safeguarding_Adults/Key_Documents/ADASS_GuidanceInterAuthoritySafeguardingArrangementsDec12.pdf

was not linked to issues regarding the quality of services received by Southern Cross residents or any failures on the part of local authorities. Imposing a duty on local authorities will not address the problems that caused the Southern Cross situation and which could lead to other large-scale provider failures. What is needed is a clearly focused regulatory regime to safeguard against large scale provider financial failure.

2. SETTING THE THRESHOLD

- 2.1. The consultation paper does not include a risk analysis of the current market. This information is needed to inform a view on the threshold and reporting requirements for those that fall above the line. Linked to this point, clarity is needed both on who triggers action when the threshold has been reached and who is then responsible for activity to address the situation. In short, this issue is twofold: how to foresee provider failure, and then how that failure is dealt with.
- 2.2. A key principle that should underpin the setting of the threshold is that any decision must take into consideration local as well as national impacts and seek to be as flexible to local circumstances as possible. Consideration should be given to the factors that are most important in terms of continuity for service users. The impact of a provider failing which has several homes in a large local authority area is not going to be as great as for a small council that has a high geographical concentration of services run by that provider. What is manageable in one area may be more difficult to manage in another. A single threshold that does not take into account local variance risks introducing a disproportionate regulatory regime that will increase burdens on the sector.
- 2.3. A number of criteria should be considered for inclusion including: numbers of people supported by the provider, the provider's market share (both nationally and locally), cross-authority profiles and scope – i.e. range of services provided and turnover. Within this there are likely to be concerns from providers around handing over commercially sensitive information if potential problems are identified.
- 2.4. Additionally, if a key test is about financial security there must be recognition that this may mean different things to different organisations if they are public quoted companies, companies not quoted, or charitable organisations.

3. ANALYSING RISK OF FAILURE AND INFORMATION SHARING

- 3.1. We welcome the intention to ensure that regulation is light touch and proportionate to the risk of failure, which local authorities have and continue to manage effectively at local level. In the current financial context, it is right that every effort is made to reduce reporting requirements and associated costs on local authorities.
- 3.2. A flexible approach should be taken to determining which key metrics are gathered for which providers that takes account of levels of risk at local level. The focus should be on risk management and prevention of failure.
- 3.3. Additional costs borne by local authorities as a result of the new regime should be fully funded under the Government's new burdens doctrine. As well as local authorities being able to recover costs of health funded placements, as mentioned above, legislation should address the responsibilities of the provider; for example, local authorities' costs should have priority in settling the company's debts. It would seem reasonable and proportionate that the

provider's assets are used to defray the cost to the public purse of temporary placements caused by closure.

- 3.4. Greater clarity is needed on who will have access to what information, particularly that which is commercially sensitive, and when. Local authorities would benefit from receiving information early in order to plan effectively for a specific failure.
- 3.5. With regard to proposed powers of registration and de-registration, we suggest that there should be provision (underpinned by formal support and advice) to require a registered owner to report to the national regulator and relevant local authorities where there is potential risk of closure, as well as where there is a decision to close. Early dialogue with the local authority could avoid outright closure and lead to the transfer of a business of growing concern to another provider. Both the regulator and the local authority need to know as there are both regulatory issues and care needs / operational issues to consider. The responsibility should rest with the registered owner to report.
- 3.6. In terms of proposals regarding what providers would do and plan to do in the event of potential closure, we suggest that the proposals should require the provider to a commitment of early and full communication with service users and families following notification of closure, alongside similar early and full consultation with the local authority. These requirements should commit the providers to full cooperation with the local authority and all acting, first and foremost, in the interest of residents and their families and carers

4. THE REGULATOR

- 4.1. More information is needed on how Monitor would develop its relationship with local authorities in order to form a view on whether it should or should not perform the role of regulator. In the absence of this knowledge, we are cautious about introducing yet another regulator into the social care space, which could have a fragmentary effect. Presumably if CQC were to fulfil this role, it would need to develop its capacity for financial regulation as opposed to the regulation of service quality.

5. CONCLUDING REMARKS

- 5.1. This is an important consultation given the centrality of a strong market to the operation of an effective care and support system. Whilst the focus of this consultation is on financial regulation, not quality, this issue must not be seen in isolation from other developments and agendas and should consider, for example, the appropriate links with local Safeguarding Adults Boards. This brings in the political dimension given the role of Lead Members in the safeguarding process.
- 5.2. SOLACE, the LGA and ADASS are very keen to stay closely involved in this work as it develops further.

NOTES:

SOLACE

The Society of Local Authority Chief Executives and Senior Managers (SOLACE) is the representative body for senior strategic managers working in the public sector in the UK. We are committed to promoting public sector excellence. We provide our members with opportunities for personal and professional development, and seek to influence debate around the future of public services to ensure that policy and legislation are informed by the experience and expertise of our members. Whilst the vast majority of SOLACE members work in local government we also have members in senior positions in health authorities, police and fire authorities and central government.

SOLACE's Health and Social Care Network is co-chaired by Tony Hunter, Chief Executive at North East Lincolnshire Council, and David White, Chief Executive at Norfolk County Council.

For further information please contact:

Philippa Mellish
Policy Manager
t: 0207 233 0081
e: Philippa.Mellish@solace.org.uk

The Local Government Association

1. The Local Government Association (LGA) is here to support, promote and improve local government. We will fight local government's corner and support councils through challenging times by focusing on our top two priorities:
 - a. Representing and advocating for local government and making the case for greater devolution
 - b. Helping councils tackle their challenges and take advantage of new opportunities to deliver better value for money services
2. The LGA is an organisation that is run by its members. We are a political organisation because it is our elected representatives from all different political parties that direct the organisation through our boards and panels. However, we always strive to agree a common cross-party position on issues and to speak with one voice on behalf of local government. We aim to set the political agenda and speak in the national media on the issues that matter to council members.
3. The LGA covers every part of England and Wales and includes county and district councils, metropolitan and unitary councils, London boroughs, Welsh unitary councils, fire, police, national park and passenger transport authorities.
4. We work with the individual political parties through the Political Group Offices.
5. Visit www.local.gov.uk

The Association of Directors of Adult Social Services

The Association of Directors of Adult Social Services (ADASS) represents directors and senior managers of adult social services departments in English local authorities. Directors (DASSs) have statutory responsibilities for the social care of older people, adults with disabilities and adults with mental health needs. In many authorities ADASS members will also share a number of responsibilities for the provision and/or commissioning of housing, leisure, libraries, culture, and community safety on behalf of their councils. Nearly a third of DASSs are also the statutory director of children's services for their authority.