

**DRAFT Provider Business Failure Procedure  
Suffolk County Council  
Adult and Community Services**

**December 2015**

## **DRAFT SCC Adult Services Provider Business Failure Procedure**

### **1. Introduction and the ACS Policy Framework**

- 1.1. Suffolk County Council Adult and Community Services has developed an Adult Social Care Policy Framework, to support the delivery of the requirements of the Care Act 2014, and to provide transparency for staff, service users, carers, the general public and partner organisations.
- 1.2. The policy framework covers the statutory duties of Suffolk County Council as set out in the Care Act 2014: some of a general nature and that apply to the population as a whole; others are specific and relate to people with care and support needs and / or their carers. The policy framework also indicates where the Council has legal powers under the Act, how it intends to exercise those powers, either for the benefit of the population of Suffolk generally, or in relation to people with care and support needs.
- 1.3. The Policy Framework can be found on the Council website: [Here](#)
- 1.4. The Policy Framework contains a section on market shaping and provider failure.
- 1.5. This document should be read in conjunction with the Policy Framework and provides details about the procedure which should be followed by ACS practitioners, working with providers, customers and family carers, and other key stakeholders, in the event of provider failure.

### **2. Business failure and service interruptions**

- 2.1. There are numerous situations that can give rise to business failure and 'disruption to care and support services' that action by ACS. Not all of these are classed as to 'business failure'.
- 2.2. Examples include;
  - 1.2.1 Financial – insolvency, going in to administration, going into the CQC financial oversight regime owing to
    - I. the appointment of an administrator
    - II. a receiver is appointed
    - III. a winding up order is made
    - IV. an application for bankruptcy is submitted
    - V. the charity trustees of the provider become unable to pay their debts.
  - 1.2.2. Quality – safeguarding or quality of service concerns, up to and including, CQC special measures and or de-registration.
  - 1.2.3 Force majeure – environmental disaster e.g. fire, flood, immigration

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enforcement on whole workforces, outbreak of illness such as norovirus or meningitis at a care home or other emergency situation.

1.2.4 Strategic Exit – provider leaving the market due to retirement, disinvestment or change of registration of service type.

### **3. Definitions: Types of Service interruptions**

- 3.1. **Financial “Business failure”** is defined in The Care and Support (Business Failure) Regulations 2014. These Regulations define what is meant by “business failure” and explain the circumstances in which a person is to be treated as being unable to do something because of business failure. Business failure is defined by a list of different events such as the appointment of an administrator, the appointment of a receiver or an administrative receiver (the full list appears in the Regulations). ‘Service interruption’ because of “business failure” relates to the whole of the businesses regulated activity and not to parts of it.
- 3.2. **Business failure involving a provider in the ‘CQC oversight regime’ April 2015.** The financial “health” of certain care and support providers will become subject to monitoring by the Care Quality Commission (CQC). This applies to providers which, because of their size, geographic concentration or other factors, it would be difficult for one or more local authorities to replace, and therefore where national oversight is required.
- 3.3. CQC are in regular contact with ACS and they are required to notify ACS if this type of business failure was expected in a Suffolk provider. ACS would be alerted to the fact that it may be required to carry out the ‘temporary duty’, so that ACS can prepare for the local consequences of the business failure.
- 3.4. Where CQC considers it necessary, it may request the provider to share with it relevant information to support ACS in the discharge of the temporary duty. CQC must give the information, and any further relevant information it holds, to the any and all local authorities affected.
- 3.5. **Financial Business failure involving providers not in the CQC market oversight regime**
- 3.6. Where concerns are raised in relation to the financial viability of a provider that falls outside the CQC Market Oversight Criteria ACS will request CQC run a credit check on the company. The action required in relation to each service interruption should be considered on its facts and via a process of risk assessment. It is the ACS to decide if it will act to meet a person’s needs for care and support which appear to it to be urgent.

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- 3.7. In exercising this judgement the local authority will act lawfully, including taking decisions that are reasonable.
- 3.8. **Business Failure in relation to Quality.** ACS work closely with CQC as the regulator when there are quality issues. ACS have different routes to address quality failure, including:
- I. The Quality and Dignity Team working intensively with the provider to support them to identify the root causes of the quality failure and developing an overarching improvement plan. Delivering workshops for the provider and identifying sources of support
  - II. Suspending the contract with the provider
  - III. Issuing a Notice to Remedy specific breaches in the contract
- 3.9. CQC have different routes to address quality failure, including:
- I. Placing providers in Special Measures (See appendix b)
  - II. Issuing a Notice of Proposal or an Urgent Notice of Decision – These can be in relation to restricting admissions, requiring the provider to submit quality audits to CQC, through to terminating a providers registration or an individual location.
- 3.10. **Business Failure in relation to Force Majeure.** Providers are required to have Business Continuity Plans in place to ensure service continuity, which must be available to the Council for review. Providers should:
- Sign up to EA flood warnings if necessary.
  - Have arrangements for responding to forecasts of winter weather.
- 3.11. **Business Failure in relation to a Strategic Exit.** Where the exit from the market is planned ACS requires providers to give the maximum possible notification to ACS, in line with contractual requirements.

### 4. Assessing the risk of provider business failure

- 4.1. Information will be held by the ACS Contracts Team and will be assessed by the 'Provider Performance Panel (information sharing and planning)' which will meet fortnightly, focusing on each of the four localities in turn, meaning the panel will meet in each locality bi-monthly.
- 4.2. The panel will include representatives from ACS Contracts, ACS Quality and Dignity Team, ACS Adult Protection Team, ACS Cluster Teams, ACS Customer Rights, CCG and CQC.

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- 4.3. The panel will review key information about services which will include information about complaints and compliments, safeguarding referrals, information from customer reviews, CQC assessments and inspections, information from other key stakeholders, information from CQC including financial information.
- 4.4. The panel will risk-assess provided services and identify where a plan of support and intervention is required, where there are identified risks to the service which are likely to impact on the safety and wellbeing of people using the service.
- 4.5. The following principles will apply:
- I. Action is rooted in an assessment and judgement about the risks to customers in terms of their safe care and wellbeing;
  - II. Decision making will be transparent so that providers know the reasons for concern, escalation and consequent action;
  - III. Providers are treated equally and fairly;
  - IV. Decisions are communicated in writing and that the process is set out clearly;
  - V. Decisions are made on the assessable facts and a judgement on the risks to customers;
  - VI. Decisions are reviewed regularly and providers afforded a reasonable opportunity to demonstrate service improvement, consistent with the need of ACS to be satisfied that the risk to customers is mitigated and service improvements are embedded and sustained.
  - VII. Where necessary, the panel will request a dedicated strategy meeting is convened to focus on a particular service. This meeting will be arranged and chaired by the Contracts Manager unless otherwise agreed.
- 4.6. The panel will escalate concerns about providers to the Provider Performance Board, which is a multi-agency forum for sharing information. The Board will include representatives from ACS Contracts, ACS Quality and Dignity Team, ACS Adult Safeguarding Team, ACS Cluster Teams, ACS Customer Rights, CCG, CQC, Environmental Health, Fire and Rescue Service, Public Health England and HealthWatch.
- 4.7. The Board will meet bi-monthly to exchange information about provider performance that is giving or is likely to give imminent rise for concern. This board will escalate concerns about providers to the Regional Quality Surveillance Group

### **5. Procedure for responding to planned and emergency provider failure – information for all staff and other stakeholders who may be involved in the response process.**

- 5.1. Where there are concerns that a provider or service is at risk of failure or has failed, the following roles and responsibilities will apply:
- I. Contract Manager: responsible for arranging and chairing planning and

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- monitoring meetings (Provider Failure Response Meetings) through the process. This may be with the support of an ACS senior manager. Co-ordination; primary contact with the provider/provider organisation; seeking legal advice; communicating with the provider through letter/e-mail; notifying key stakeholders internal and external as appropriate (including Finance, social work services, placements team); liaison with CQC, managing accreditation issues; co-ordinating 'lessons learned'.
- II. Area Manager (social work services): responsible for co-ordinating social work response; communications with customers and families; assessments and reviews - understanding needs and preferences of people using the service; co-ordinating transfer arrangements where appropriate and direct liaison with new providers offering alternative services; informing out of hours service; contributing to 'lessons learned'.
  - III. Social workers – work to direction of the Area Manager (social work services); undertake reviews; liaise with family carers; arrange visits to alternative providers where necessary; manager transfer arrangements; mental capacity assessments/reviews; review following transfers; contribute to 'lessons learned'.
  - IV. Quality and Dignity Improvement Team: provide supportive intervention to providers and services through the process.
  - V. Placement Team: contact alternative providers to make enquiries about alternative places where required; maintain records of local and other vacancies; liaise with social workers over specific placements.
  - VI. Safeguarding managers/officers: may have a direct role in the above.
- 5.2. The following actions will typically apply. The response and sequence of actions will be governed by the specific incidence of provider or business failure.
- I. A team will be established and lead by the Contracts Manager. The team will include at least: Assistant Director or Head of Service; Area Manager of representative (social work services); Quality and Dignity Improvement Manager; Placement Team manager; Business Support; other relevant membership from Customer Rights, Adult Protection Team, Communications Team, Legal Team, External Colleagues, e.g. CCG. See **Appendix A** for agenda for the initial meeting, subsequent meetings will be reviewing and updating the action plan based on information shared during the meeting.
  - II. An Action Plan for the team (i.e. not a provider service improvement plan) will be agreed to be shared with the provider. Consideration given to referrals for new customers to the service.
  - III. Contract Manager establishes regular contact meetings/conference call arrangements, so that everyone is informed. Seeks legal support.
  - IV. Contract manager establishes clear communication with provider (written plus verbal/meeting), explaining the Council's position.
  - V. Social work services to establish a core group of social work practitioners and a leader to keep involved at the point at which concerns lead to the

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- need to review individuals' care being delivered by the care provider through moves to alternative providers and reviews, to maintain continuity. Leader will have the authority to make appropriate key decisions to ensure that the process is followed without undue delays.
- VI. Contract manager and social work services agree communications with provider so that residents and service users, families, staff and other key stakeholders are fully aware of the situation.
  - VII. Contract manager maintains close communication with CQC as appropriate.
  - VIII. Social work services undertake reviews to establish the needs and requirements of people using the service and their families. Undertake mental capacity assessments/reviews.
  - IX. Contract manager ensures that there is consistent and clear communication with the provider throughout.
  - X. 'Step-in' arrangements to be considered which could include the following:
    - Additional support from care services (e.g. where the service is experiencing difficulties regarding staffing) – this on a temporary basis. The provider may themselves bring in additional support;
    - Additional management support – from other providers or arranged through providers' representative organisation. (The provider may themselves undertake to bring in additional management capacity or support).
  - XI. Where intervention and work by the provider does not result in service continuation and there is a need for alternative arrangements to be made, social work services will ensure the provider offering the alternative service has all the necessary information about individuals' needs and requirements. In the case of residential or nursing care, social work services will agree and arrange transfers to alternative placements where appropriate, ensuring that there are transport arrangements. Checks that outgoing provider has recorded personal possessions and that these are safely transferred. Ensures that arrangements to receive new residents are in place which are welcoming and supportive, given the concerns that residents and families will have about moves.
  - XII. In the case of failure of domiciliary care services or non-building based services, procurement advice will be sought at the earliest opportunity regarding alternative arrangements.
- 5.3. Supporting information includes the points below:
- 5.4. The Care Act Policy Guidance is clear that ACS has powers and duties when services are at risk of interruption in general and, in particular, when the interruption is because a provider's business has failed. ACS has responsibility to make sure that care and support needs of people affected by such business failure, service disruptions, however caused, continue to be met. This is referred to as the "Temporary duty" or "duty".

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- 5.5. “Temporary” means the duty continues for as long as the local authority considers it necessary. The temporary duty applies: regardless of whether a person is ordinarily resident in the authority’s area; and from the moment the authority becomes aware of the business failure. The actions to be taken will depend on the circumstances, and may include the provision of information. The duty is to meet needs, but ACS has discretion as to how they meet those needs.
- 5.6. Business failure of a major provider is a rare and extreme event and does not automatically equate to closure of a service. It may have no impact on residents or the people who use the services. If the provider’s business has failed but the service continues to be provided then the duty is not triggered, for example. The duty applies where a failed provider was meeting needs in the Council’s area. It does not matter whether or not the authority has contracts with that provider, nor does it matter if all the people affected are self-funders or arrange their own care and support. The needs that must be met are those that were being met by the provider immediately before the provider became unable to carry on the activity.
- 5.7. It is not necessary to meet those needs through exactly the same combination of services that were previously supplied. However, when deciding how needs will be met, ACS will take all reasonable steps to agree how needs should be met with the person concerned involving as appropriate:
- I. the person concerned,
  - II. any carer that the person has,
  - III. or anyone whom the person asks the authority to involve;
  - IV. anyone who appears to the authority to be interested in the person’s welfare in cases where the person concerned lacks capacity, if required an Independent Mental Capacity Advocate will support the person;
  - V. the carer and anyone the carer asks the authority to involve where a carer’s service is involved.
- 5.8. Where business failure is the reason for disruption of service or support needs must be met regardless of whether the needs would meet eligibility criteria, how people are paying for the cost of meeting those needs, for example where the person arranges their own care via a direct payment or in the case of self-funders, ordinary residence (in cases of out of county or cross-border placements where a person or persons are placed within Suffolk from another authority area).
- 5.9. It is permissible for ACS to charge the person for the costs of meeting their needs where they would ordinarily have paid these themselves, and ACS may also charge the local authority which was previously meeting those needs in the case of out of county or cross border placements. The charge must cover only the actual cost incurred by us in meeting the needs. No charge must be made for the provision of information and advice to the person.
- 5.10. In cases of provider failure where, for example, persons are in receipt of NHS

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Continuing Healthcare (NHS CHC) the duty to meet the needs and provide NHS CHC falls on the NHS and the authority may **not** meet these needs. In such cases reference should be made to the relevant NHS regulations.\*:

- 5.11. ACS may meet urgent needs regardless of whether the adult is ordinary resident in its area and, therefore, can act quickly if circumstances warrant. In this context, “urgent” takes its everyday meaning, subject to interpretation by the courts, and may be related to, for example, time, severity etc. The power to meet urgent needs is not limited by reference to services delivered by particular providers and is thus available where urgent needs arise as a result of service failure of an unregistered provider (i.e. a provider of an unregulated social care activity). The power may also be used in the context of quality failings of providers if that is causing people to have urgent needs.

### 6. Contingency planning

6.1 ACS will:

- I. Require that providers maintain a Business Continuity Plan. There should be:
  - An annual review of the Business Continuity Plan
  - An identified officer responsible for maintaining the provider’s business continuity arrangements.
  - Training and awareness in business continuity for managers and staff who have a key role in business continuity arrangements.
- II. Maintain contact with providers and expect that provider will notify ACS of problems and concerns that might impact on business continuity. On an individual provider basis, or through provider/provider representative forum arrangements;
- III. Maintain up to date information about alternative places in localities;
- IV. Undertake regular customer reviews.

### Data protection

All parties must ensure that information is managed and protected throughout the process. For help and advice, ACS Data Protection Officers should be contacted.

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### APPENDIX A

Agenda for initial Provider Failure Response Meeting meeting



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### APPENDIX B

ACS Response to providers placed in Special Measures:



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## Appendix A

### Provider Failure Response Meeting Agenda

Item	Concern	Action
1	<p>What is the current situation</p> <ul style="list-style-type: none"> <li>• What are the key areas of concern?</li> <li>• Who is concerned?</li> <li>• What has ACS / CCG / CQC already done?</li> <li>• How many customers does ACS have with this service?</li> <li>• Do we know how many customers the provider has in total (including self-funders, direct payments, placement by other L.As and CCGs)? If we do not know, who will find out?</li> <li>• Does the situation just affect one location or a whole provider?</li> <li>• If the failure is of a provider, is it the parent company or specific subsidiaries of a company?</li> <li>• If the failure is of a provider, does the company solely operate within Suffolk, or have other Local Authorities been affected? Is there a need for a regional response?</li> </ul>	
2	<p>Provider</p> <ul style="list-style-type: none"> <li>• Has contract been suspended, if not, does it need to be?</li> <li>• Support from QIT (If Band 2 offer has not already been used / could be tried again)?</li> <li>• Contract meeting with provider, has this happened, does it need to be arranged now?</li> <li>• Is a joint visit with QIT or Contracts and CCG?</li> <li>• Communication with provider – who will lead? Does this need to be with owner / manager / wider staff team?</li> <li>• Frequency of contact with provider, by whom.</li> </ul>	
3	<p>Customers</p> <ul style="list-style-type: none"> <li>• Have any customers recently been reviewed? If so, what feedback is there from the review(s)?</li> <li>• Are any customers due for a review?</li> <li>• Is there any need to review all ACS funded customers?</li> <li>• Is there any need to offer reviews to all customers?</li> <li>• Can the service still meet the customers assessed needs?</li> <li>• Briefing note for practitioners carrying out reviews, so they have a clear understanding of the issues and recent history of the service, who will compile this?</li> <li>• Agree how practitioners will feed information into the Tactical Management Team</li> <li>• Impact on cluster team, do they require support from other teams?</li> </ul>	

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	<ul style="list-style-type: none"> <li>• Other communication with customers and their families – residents and relatives meetings / letters? If so, who?</li> <li>• Advocacy – do any customers require independent advocacy support?</li> <li>• Consider the role of HealthWatch Suffolk</li> </ul>	
4	<p>Other</p> <ul style="list-style-type: none"> <li>• Need to notify other funding L.As? If so, who?</li> <li>• Briefing note for senior managers and Councillors, who will complete this?</li> <li>• Is a chronology log needed? If so, who will compile and update this?</li> <li>• CQC – who will take the lead role in communicating with CQC?</li> <li>• How frequently should these meetings take place?</li> </ul>	
5	<p>Agree Immediate Actions</p> <ul style="list-style-type: none"> <li>• Team Action Plan</li> <li>• Communication Plan</li> </ul>	
6	<p>Medium to long term planning.</p> <ul style="list-style-type: none"> <li>• Is there sufficient market oversight information?</li> <li>• Are there adequate alternative services if this service closes? If this information is not available, who will gather it?</li> <li>• Contingency plans.</li> </ul>	

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## APPENDIX B

### ACS response to Providers placed in Special Measures V5 (03/12/2015)

This document should be read in conjunction with the ACS Provider Business Failure Policy

#### Context

In April 2015 the CQC special measures framework came into force.

[CQC Guide to special measures: Adult Social Care](#)

There are two routes into special measures:

*If a service is rated inadequate overall it will be placed straight in special measures.*

*If a service is rated inadequate for one of the five key questions it will usually have six months to improve. We [CQC] will inspect it again within six months of the report being published. If the quality of care is inadequate in any key question at the second inspection special measures will be imposed.*

CQC Guide to special measures: Adult Social Care

#### Scope

This procedure covers all providers in Suffolk registered with CQC regardless of whether SCC uses the service or not.

This procedure does not include out of county providers. Where SCC are using out of county providers who are placed in special measures, the contracts team will liaise with the host authority and follow the procedure of the host authority.

#### Preventing Providers being placed into Special Measures

ACS will monitor services to identify providers at risk of being placed into special measures, through the use of:

- The Providers database
- Environmental Health warning notices
- CCG concerns
- Practitioner concerns raised through PERs.
- Fire Officer Inspections.

This and other information will be shared within ACS and with external partners through the Information Sharing arrangements as set out in the Provider Business Failure Policy.

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When a provider is identified as being at risk of going into special measures the QIT will contact the service and discuss their improvement plan, making recommendations and offering appropriate support; which could include advice and support around:

- Care planning
- Moving and handling
- Health and safety
- Personalisation
- Training – Suffolk Brokerage Red to Green Scheme
- Coaching for service managers provided by the Suffolk Coaching and Mentoring Partnership
- Support from the Dignity Ambassadors
- Clinical support from the CCG

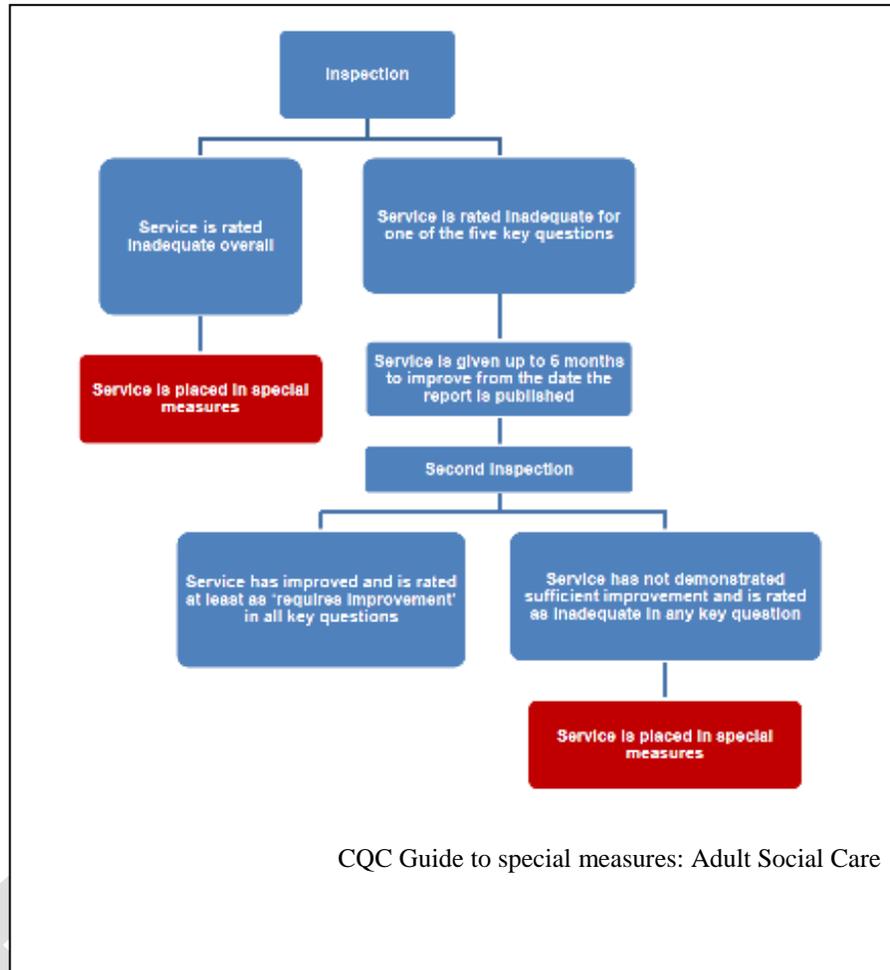
The ACS Contracts team will consider the information and other intelligence about the service and will risk assess the accreditation status of the service.

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## Placement in special Measures

There are 2 routes in which services may be placed in special measures:



### How ACS will respond to providers being placed in Special Measures

As outlined above it is expected that ACS will have prior knowledge that a service may be placed in special measures and have already commenced work with the service. If this intervention is not successful and the service is placed in special measures ACS will respond by following the ACS Provider Failure Procedure.

ACS Contracts team will take the lead in arranging and chairing these meetings. The Tactical Management Team will agree an action plan. Please see appendix A for the agenda for the initial meeting, subsequent meetings will be reviewing and updating the action plan based on information shared during the meeting.

### Routes out of Special Measures

The flow chart below shows the CQC process for providers coming out of special measures.

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If the service remains inadequate in one or more of the five areas, the Tactical Management Team meetings will continue and contingency plans for the service closing will to be reviewed to ensure they are up to date. ACS contracts team will seek legal advice and consider the options in relation to the ACS contract with the provider. These options include but are not limited to, issuing a notice of contract breach letter, issuing a notice of to remedy – requiring the provider to comply with the breaches by a set date, serving notice on the contract, immediately terminating the contract.

If the service is taken out of special measures the Tactical Management Team will meet to consider if it is appropriate to end the role of the Tactical Management Team, if there are any final actions for the Tactical Management Team and to agree to on-going monitoring of the service. The team will also reflect on the process, identify any lessons learnt and make changes to this procedure if required.

