



**Policy**

**THE CARE ACT 2014:  
MARKET SHAPING AND MARKET FAILURE**

Statutory Basis for Policy  
The Care Act 2014

<u>Version History</u>				
Version Number	Summary Of Change	Approved By	Author	Date
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## **CARE ACT 2014: MARKET SHAPING AND MARKET FAILURE POLICY**

### **1. INTRODUCTION & BACKGROUND**

The Care Act 2014 replaces numerous previous laws and builds on recent reviews and reforms to provide a single, coherent approach to adult social care in England. The aims of the Act include:

- a clearer and fairer approach to care and support;
- an approach that focuses on the physical, mental and emotional wellbeing of both the person needing care and their carer;
- the prevention and delay of the need for care and support;
- giving people control over their care; and
- collaboration and integration between local authorities and other public authorities, including health and housing to work seamlessly to meet care and support needs.

To achieve these aims, the Care Act outlines a number of changes in law and/or in practice that will affect all local authorities. The Act is divided into three main parts. Part One of the Act details the reform of adult social care legislation, and describes the journey through the reformed system for both the person receiving care and support and their carer. Part Two of the Act seeks to enhance the quality of care, by increasing transparency and putting people and their carers in control of their care and support. Part Three establishes Health Education England and the Health Research Authority.

This policy statement refers to Stockport Metropolitan Borough Council's statutory obligations regarding the sections of the Care Act that refer to the new requirement for; Market shaping and commissioning of adult care and support; Managing provider failure and other service interruptions.

### **2. STATUTORY BASIS FOR THE POLICY**

#### **MARKET SHAPING AND COMMISSION OF ADULT CARE AND SUPPORT**

The Care Act was published as a Bill in the House of Lords in May 2013, and received Royal Assent on the 14th May 2014.

The Care Act consolidates existing social care legislation into a single statute.

The Act places a number of new legal requirements on all local authorities in relation to market shaping and the commissioning of adult care and support.

**Section 5** of the Care Act places a duty on local authorities to promote diversity and quality in the market of care and support providers for people in their local area. In particular, local authorities must act to ensure there are a range of different providers of services available, offering a range of services shaped by the demand of individuals, families and carers and that those services are of a high quality.

**Section 5** is a new duty that reflects existing responsibilities of local authorities and policy with regard to the promotion of the market of local services. The Act places new duties on local authorities to facilitate and shape their market for adult care and support as a whole, so that it meets the needs of all people in their area who need care and support, whether arranged or funded by the state, by the individual themselves, or in other ways.

The Care Act states that local authorities should encourage choice between providers; facilitating an effective open market, driving quality and cost-effectiveness.

The principles underpinning **Section 5** focus on outcomes and wellbeing; promoting quality services, including through workforce development and remuneration and ensuring appropriately resourced care and support. Market shaping and commission activity should support sustainability, ensuring choice and co-production with partners.

### **MANAGING PROVIDER FAILURE AND OTHER SERVICE INTERRUPTIONS**

**Section 19** of the Care Act (Power to meet needs), provides a broad power for the local authority to meet care and support needs in circumstances where **Section 18**, 'Duty to meet needs' does not arise. The Care Act allows for local authorities to temporarily bypass carrying out an assessment of needs, where care and support is needed urgently.

**Sections 48-52** set out legal responsibilities on local authorities where a care provider fails; replacing and updating existing requirements. The Care Act makes it clear that local authorities have a temporary duty to ensure 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 receive. The local authority will have a duty towards all people receiving care; regardless of how they pay for that care.

The Care Act ensures that the local authority must take steps to ensure that a person does not experience a gap in the care they need as a result of provider failing. This can range from providing information and advice to actively arranging care with a different provider.

**Sections 53-57**, Market Oversight, establishes that the Care Quality Commission (CQC) will take on a new responsibility for assessing the financial sustainability of certain 'hard-to-replace- care providers from April 2015. **Sections 53-57** are new in law and practice. The Care Act introduces an oversight regime for the CQC to;

- Assess the financial sustainability of the most difficult to replace providers
- Support local authorities to ensure continuity of care when providers fail

The Act allows the CQC to request that, a provider who they judge to be in financial difficulty develops a sustainability plan and, where needed, arranges an independent business review. The CQC's role is to oversee the provider plans to remedy the situation or to inform the local authority affected where it believes a provider is likely to fail; to ensure a smooth, well managed process that provides continuity of care. The CQC's role is not to stop providers failing or to bail out providers.

### **3. POLICY STATEMENT**

#### **MARKET SHAPING AND COMMISSION OF ADULT CARE AND SUPPORT**

Stockport Metropolitan Borough Council will take steps to design strategies that meet local needs and engage with providers and communities to implement local approaches to market-shaping and commissioning.

Stockport Metropolitan Borough Council will facilitate the development of the market; to ensure the delivery of better, innovative and cost effective outcomes that promote the wellbeing of people who need care and support.

Stockport Metropolitan Borough Council will encourage a variety of different providers and different types of services, and will make available information about the providers of care and support services in the borough and the services provided.

Stockport Metropolitan Borough Council will collaborate with stakeholders and the community, and integrate their approach with local partners and providers.

#### **MANAGING PROVIDER FAILURE AND OTHER SERVICE INTERRUPTIONS**

Stockport Metropolitan Borough Council will provide temporary support and ensure continuity of care to any person whose care provider becomes unable to, due to business failure. Stockport Metropolitan Borough Council may however charge for arranging care and support in these situations, in line with the same procedure for ongoing services.

Stockport Metropolitan Borough Council will work with the CQC as part of the new provider failure oversight regime and will develop contingency plans in advance to address service interruptions that pose the greatest risk locally.

Stockport Metropolitan Borough Council will gather market intelligence data, using the information of providers of care and support (Section5), to anticipate and if necessary, respond to business failures and other services interruptions.