

Contract Guidance Note

Author:

John Wilkin/Angela O'Reilly

Date:

July 2008

Note:

08-003

Subject:

**Concerns About Care and Support Providers
(To be read in conjunction with Safeguarding Adults Policy and Guidance)**

This CGN replaces Contract Guidance Note 08-001 dated January 2008

1. Introduction and Glossary

1.1 The purpose of this Contract Guidance Note is to set out the procedure to be followed in the event of concerns being raised about a care or support provider, either where an alert has been made through the Devon Safeguarding Adults Multi Agency Alerts Pathway or where the Care Quality Commission (CQC) has informed Devon County Council's Adult & Community Services Directorate (ACS) or Devon (DPCT) that a service provider has been rated as "poor".

2. The Multi Agency Strategy Meeting

2.1 When such concerns are raised a Multi Agency Safeguarding Adults Strategy Meeting will be convened, which will be chaired either by the lead agency (ACS, DPCT) or by the Safeguarding Adults team. Each agency will be represented by a manager (the Responsible Manager) who is authorised to make decisions on behalf of their organisation and to instigate any necessary actions arising from the meeting.

2.2 Any response made by the lead agency has to be proportionate to the concerns that are being raised and therefore one of the functions of the Strategy Meeting will be to ensure good liaison and communication between ACS, DPCT, CQC and any other agencies to ensure that all relevant information is efficiently gathered and presented and that any actions agreed are properly understood and co-ordinated.

2.3 In any situation where there are concerns as to the well-being or safety of vulnerable people the primary consideration must always be for the welfare of those people. However, it is also important to ensure that the action taken does not have the effect of financially damaging a provider in circumstances where further investigation reveals the concerns to have been unwarranted.

2.4 Before the Strategy Meeting the ACS Responsible Manager will:

- Obtain a list of ACS-funded service users placed with the service provider from the CareFirst system;
- Inform the Adult & Community Services Procurement and Contracts (P&C) Team that issues of concern have been raised about the service provider. (However, P&C Officers will not routinely attend Strategy Meetings.)

Contract Guidance Note Continued

- 2.5 On receipt of the notification from the Responsible Manager, the P&C Team will inform the Responsible Manager of any relevant hard or soft information that the P&C Team holds regarding the service provider.
- 2.6 From the evidence presented at the Strategy Meeting it should become apparent whether the issue of concern relates to one incident which has been properly responded to by the service provider (in which case it is unlikely that any further action will need to be taken) or whether there is evidence of more widespread failings in leadership, service delivery or quality within the service (in which case the actions set out in section 3 below should be undertaken).
- 2.7 An electronic copy of the Minutes will be sent to the P&C Team for filing against the provider concerned.

3. “Whole Provider” Concerns

- 3.1 Where it is apparent from the Strategy Meeting that there is evidence of failings in leadership, service delivery or quality within the service the following actions may be undertaken:
- 3.2 The ACS Responsible Manager will provide to the P&C Team a summary of the evidence that supports the concern about the provider. This must be factually accurate and include details of the service users affected, any service provider staff involved, dates, times, and the details and statements of any witnesses. Based on this summary, the P&C Team will determine whether contractual action is warranted (see section 4 below), or will inform the Responsible Manager and the Chair of the Strategy Meeting if it is considered that the evidence is insufficient. The summary of evidence will also be provided to the Chair of the Strategy Meeting, who will inform the service provider that an ongoing Safeguarding Adults investigation is being undertaken and that the P&C Team and CQC have been made aware.
- 3.3. Based on the summary of evidence, the ACS Responsible Manager and P&C Officer may agree that the P&C Team will circulate by email an instruction, either:
 - That any member of ACS staff considering making a placement with the service provider must contact the Responsible Manager before doing so, in order to ascertain whether the service provider is able to meet the assessed needs of the service user, or
 - That no placements should be made with the service provider.

This email will be sent to ACS Cluster Managers, Practice Managers and the Emergency Duty Team. It may be copied to relevant PCT Managers for information, if appropriate.

Because of the sensitive nature of this issue details of concerns about providers must **not** be routinely broadcast to all ACS staff.

Contract Guidance Note Continued

- 3.4 Where the nature of the concerns merits it the ACS Responsible Manager will arrange for reviews to be undertaken on any ACS-funded service users already receiving the service from the service provider, including a risk assessment to establish whether the service is able to safely meet their needs. ACS-funded service users and their relatives (or other representatives) should be informed that an investigation is in progress. Legal advice is that they are entitled to know what we know, in general terms, although this should be balanced against the nature of the allegation, the impact releasing any information may have on any CQC or police activity and the response of the service provider – for example, if the service provider has promptly suspended a care worker against whom an allegation has been made it would be disproportionate to inform all service users receiving a service from that service provider, particularly in a domiciliary care service. Where the concern has arisen through the CQC inspection process service users seeking more detailed information about the concerns should be directed to CQC. It is not the role of ACS to inform privately funded service users that an investigation of this nature is taking place – this responsibility rests with CQC.
- 3.5 As well as determining whether ACS should place new service users with the service provider, the review will determine whether existing service users should continue to receive a service from the service provider concerned (see section 5 below).

4. Breach of Contract

- 4.1 From the evidence provided following the Strategy Meeting, the relevant P&C Officer will determine whether action is warranted under the Agreement for Provision of the Service (the overarching set of terms and conditions which underpins the placement of service users through Individual Contracts).
- 4.2 Such action may take the following forms:

Issuing a **Default Notice**. This is a notice which sets out the nature of the default. It might tell the service provider what they must do to put matters right, and set a timescale for this; or it might require the service provider to provide a written response (usually within 14 days) as to how they are going to put matters right.

Issuing a **Persistent Default Notice**. This is a notice which is issued when the service provider has failed to put matters right following the issuing of a Default Notice, or if the service provider has committed another default within six months of the first default. The issuing of a Persistent Default Notice gives Devon County Council the right to immediately terminate the Agreement for Provision of the Service. However, the matter might be such that it is considered more appropriate to require the service provider to provide a written response (usually within 14 days) as to how they are going to put matters right.

Issuing a **Serious Default Notice**. This is a notice which is issued when it is considered that the default materially prejudices the health safety or welfare of a service user(s). The issuing of a Serious Default Notice gives Devon County Council the right to immediately terminate the Agreement for Provision of the Service. However, the matter might be such that it is considered more appropriate to require the service provider to provide a written response (usually within 14 days) as to how they are going to put matters right.

4.3 A copy of the Notice will also be sent to the Responsible Manager and to the Chair of the Strategy Meeting, and they will be informed of the written response of the service provider (where this has been required). Following receipt of the written response from the service provider the Responsible Manager and the P&C Officer may meet with the provider to discuss their response and ensure that it is appropriate and realistic. The outcome of such a meeting will be fed back to the Chair of the Strategy Meeting.

4.4 Responsibility for ensuring that the service provider has put matters right, either as required in the Default Notice or as set out in the service provider's response, rests with the Responsible Manager.

5. Removing Service Users from the Service

5.1 Decisions about whether service users should remain in a care home where there are serious concerns and/or a Serious Default Notice has been issued or the Agreement terminated will need to be taken between the relevant Cluster Manager (as a minimum), the P&C Team and the service users, bearing in mind the severity of the risks identified.

5.2 Where it is considered that it is not safe for DCC-funded service users to remain in the service, alternative placements will need to be found which meet each service user's assessed needs as closely as possible.

5.3 In these circumstances the relevant Assistant Director should be informed, and the Press Office should be briefed.

5.4 Whilst there may be financial considerations in the case of block-contracted services the welfare of service users will always take precedence.

6. Concerns re DCC-Placed Service Users in Care Homes Outside Devon

6.1 If information is received from another local authority that a Safeguarding Adults Strategy Meeting is being convened regarding a care home where Devon County Council has placed a service user, the Cluster Manager for the cluster area from which the service user originated should be notified. It is the Cluster Manager's responsibility to ensure that contact is made with relevant staff in the other local authority and that appropriate actions are undertaken, such as attendance at the Strategy Meeting.