Bank loans for your care homes

Specialist legal advice for a quick and smooth financing

Great service... Great people...

clarkewillmott.com

Prepare for a
quick process

Banks require a lot of information before they lend. You can help speed up the process by assembling information and checking public registers are up to date.

Points to consider include:

- Are the details of your registration displayed on the CQC's website up to date such as the service provider, registered manager, nominated individual and maximum number of beds?
- Does an explanation need to be prepared for any aspect of an inspection report?
- Have all necessary notifications to the CQC been made?
- Is there a chart showing the ownership of key assets and legal entities?
- Have management financial statements been prepared for periods after the most recent audited accounts?
- Have financial projections been prepared? Do they show your ability to pay interest and to make capital repayments?
- Are there any ongoing or potential disputes? Banks may take a pessimistic view of the possible outcomes. Can any disputes be resolved or the possible impact mitigated?

Speak to

an expert

Working with healthcare solicitors who specialise in finance makes a difference to how quickly money can be borrowed.

Clarke Willmott is a national law firm with seven offices across England and Wales. We have a focus on the healthcare sector, including care homes. Our solicitors can work with large care home groups and owners of single homes.

Rich Eldridge, Partner
t: 0345 209 1143
e: rich.eldridge@clarkewillmott.com

Kirill Bingham, Partner
t: 0345 209 1239
e: kirill.bingham@clarkewillmott.com

"They're very good at **protecting our interests."**
Client

clarkewillmott.com

Key
commercial considerations

You may want to borrow to buy an operating home, buy a site to develop a new home or release equity. There are key aspects to consider.

How much and **on what terms?**

Initial considerations

The key questions to ask yourself are:

- How much do you want to borrow?
- Can conditions of your home's registration be varied to achieve a higher valuation, such as increasing the maximum number of beds? A higher value will enable you to borrow more.
- Do you want to repay the loan by instalments or by one payment at the end of the term?
- How much interest can be paid without creating pressure on cash flow?
- Do you need a period during which capital and interest payments will not be made, for example until a home is developed and occupancy has reached a certain level?
- What assets are you willing to offer as security? All of your homes or some of them?
- Are you willing to provide personal guarantees?

Structure to **raise more finance**

To raise the most finance a group may need to include more than one bank. Involving more than one bank can be particularly beneficial for groups with a variety of homes.

A group may have a combination of privately funded homes and homes funded by local authorities, as well as a mix of purpose built and converted properties. The bank willing to lend the most to one type of home may be different to the bank willing to lend the most to other types of home.

Having relationships with several banks also provides a platform to replace a lender if its appetite for the sector changes. A bank may be unwilling to extend its loan at maturity. It may be unwilling to provide further finance, for example to fund an extension. Banks already lending to the group will be well positioned to quickly refinance other lenders.

You could hold properties in a company that leases them to operating companies running care homes.

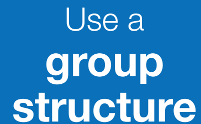
The property owning company may borrow from banks that specialise in financing investment properties let to tenants, known as real estate lenders. The operating companies may borrow from banks that specialise in financing trading businesses, known as cash flow lenders.

The total amount raised may be greater than one loan by a single bank to a company owning and operating care homes.

More banks **more cash**

Structure to

minimise risk



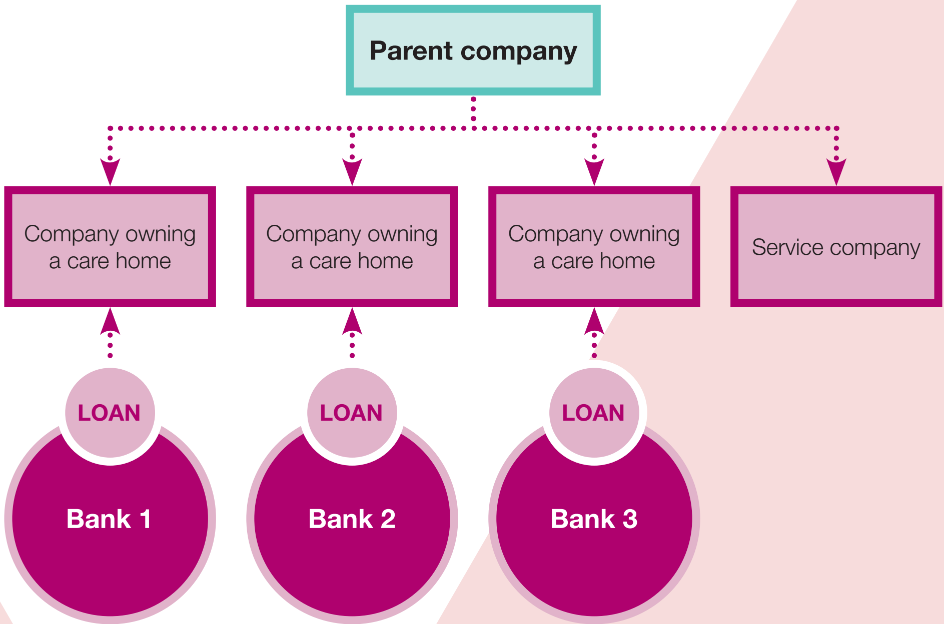
A business with a number of homes runs the risk of losses at some homes resulting in the whole business becoming insolvent.

The risk of a whole business becoming insolvent can be reduced. A business can be structured so each home is owned by a separate operating company. The aim is to ensure that, if one company is loss making, it does not lead to the insolvency of other companies in the group. This is achieved by:

- creating a parent company to own the operating companies
- transferring each home to a separate operating company
- ensuring no liabilities are incurred by the parent company
- each operating company borrowing a separate loan
- ensuring no company provides a guarantee or security for another company's liabilities
- negotiating each company's contracts so they will not be breached by events or circumstances relating to another company

A business can be structured so suppliers do not have recourse to operating companies. A subsidiary of the parent can be created which is a service company. The service company, rather than operating companies, can enter into contracts with suppliers.

Example of a
structured group



Considerations
before restructuring

Restructuring a business provides an opportunity to consider whether many aspects best meet your needs and your long term objectives. It can be good to consider planning for family succession or a sale.

There are various topics to consider ahead of a restructuring including:

- share ownership
- who will control the group following the death of shareholders
- board composition
- tax planning
- whether consents are required
- whether to rename homes so the staff working in them clearly operate on behalf of the relevant operating company
- whether to rename homes so they benefit from a group identity

Negotiating
terms and conditions

If a bank wishes to lend it will provide a term sheet indicating the key terms of the loan.

Although it may be uncomfortable, it can be beneficial to foresee the unexpected. We can help you negotiate changes to the term sheet.

Where banks are competing to lend to a high performing home you will have the commercial leverage to achieve many changes.

After the key terms are agreed the bank or its solicitors will produce a full loan agreement and security documents.

Although we can negotiate changes after full documents have been produced, changes at the term sheet stage can be more cost effective.

It takes less time to change a term sheet than it does to revise a loan agreement.

Changes can be **achieved**

Negotiate a

good deal

There are two key topics to consider: saving money and the circumstances in which a bank can require early repayment.

You may wish to refinance early if another bank can lend more and/or for less interest. The amount of an early repayment fee and the period in which it will be charged can be negotiated.

A loan agreement may say you must pay for valuations at any time. This could be changed to say you will pay for valuations every three years, with the bank also being able to require valuations at your expense if you are in default.

Terms can be negotiated to allow you more flexibility. If you are a large group you may like to be able to dispose of some homes without the bank's consent. You may like to change terms that restrict loans with other group companies.

You can negotiate an opportunity to remedy breaches of financial covenants, before they cause a default. For example, by depositing cash into an account of the borrower and the covenant being retested as if the cash had reduced the loan. The loan agreement can provide that, after a period of compliance without the deemed repayment, the deposit can be released.

Loan agreements and **the CQC**

We understand action the CQC can take, how this can result in breaches of loan agreements and how this can lead to a bank requiring early repayment.

If a bank requires early repayment and a borrower cannot repay the borrower will be insolvent. Loan agreements can be negotiated to narrow the circumstances in which actions by the CQC will cause a default.

The effect of the terms of the loan agreement may include a bad rating in a draft inspection report being a default. The default could instead apply to final inspection reports. This would enable you to challenge the rating in a draft report before a default occurs. You can challenge the accuracy of the facts and the completeness of the information used by the CQC before a final report is published. This must be done within 10 working days.

The effect of the terms of the loan agreement may include receipt of a warning notice being a default. This could instead apply to publication of a warning notice by the CQC. This would enable you to use the representations procedure before a default occurs. If your representations persuade the CQC to withdraw the notice or not to publish it, then receipt of the warning notice would not be a default.

Similar changes could be negotiated in relation to requirement notices, notices of proposal, notices of decision and applications to magistrates for closure orders.

Action by the CQC can cause **default**

*clarke willmott

Get in touch:

t: 0345 209 1143

e: rich.eldridge@clarkewillmott.com

Offices

Birmingham Bristol Cardiff London Manchester Southampton Taunton

clarkewillmott.com

Great service... Great people...

Clarke Willmott LLP is a limited liability partnership registered in England and Wales with registration number OC344818. It is authorised and regulated by the Solicitors Regulation Authority (SRA number 510689), whose rules can be found at https://www.sra.org.uk/solicitors/standards-regulations/. Its registered office is 138 Edmund Street, Birmingham, West Midlands, B3 2ES. Any reference to a 'partner' is to a member of Clarke Willmott LLP or an employee or consultant who is a lawyer with equivalent standing and qualifications and is not a reference to a partner in a partnership.