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Buying a trading care home

Specialist legal advice for a
quick and smooth purchase

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Preparing to buy a trading care home

The decision to buy a care home is significant and there are many aspects to consider. There are key regulatory aspects to bear in mind.

Initial considerations

Preparing a route map and having a clear understanding of the options, process and steps you can take will put you in a better position.

Our healthcare solicitors can help you determine your best case scenario and provide guidance on current market conditions. The first questions to ask yourself are:

- What is the most you are willing to pay?
- What do you want to buy? Shares or assets? A whole care group or some of its homes?
- Would you like any selling shareholders to have a role after the purchase?
- What types of payment would you be willing to offer? All of the price paid in cash on completion or an element paid at a later date, perhaps subject to the future performance of the home?

We can
help you
determine your
**best case
scenario**

Speak to an expert

Working with expert healthcare solicitors makes a difference to the speed and cost of the process.

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 care providers buying their first home.

We invest time in developing relationships with our clients and are known for our high level of service, straightforward manner and transparent fee solutions. We advise on almost every aspect of the law.

Your key contacts



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“They’re very good
at **protecting
our interests.**”

Client

Purchase of **assets or shares?**

If you buy the shares in a company you buy the company with all of its liabilities. This includes unknown liabilities, for example relating to former properties and tax. HMRC has power to reopen matters that occurred years ago.

If you wish to only acquire certain assets, leaving other assets and liabilities with the seller, an asset purchase will be appropriate. An asset purchase will be appropriate if, for example, a seller has several homes and wishes to sell some of them.

The seller may prefer to sell shares as it is usually the most tax efficient option for the seller.

There may be other factors that point towards a purchase of certain assets in preference to a purchase of shares (or vice versa). This should be considered at the start of the process.

If the seller is a sole trader or an unlimited partnership an asset purchase will be the only option, unless the business is incorporated before the purchase.



A purchase of
assets can
**avoid some
liabilities**

Information to **consider**

It will be important to obtain and check information relating to the home before you purchase it. This includes:

- Details of the registration with the Care Quality Commission, such as the service provider, registered manager, nominated individual and maximum number of service users.
- Who owns the home.
- The statutory books, including the registers of shareholders and directors.
- Find out whether there are any unexercised options over the shares in any company to be purchased that need to be dealt with.
- Find out whether any key assets are owned by the seller personally or by third parties/other group companies.
- Find out whether any key assets are to be retained by the seller (e.g. properties) that will be extracted prior to the purchase.
- Checking whether the seller's standard trading terms comply with consumer law.
- Determine whether any key contracts need to be renegotiated, for example where a third party is entitled to terminate upon a change of control.
- Determine whether tax records are up to date and whether tax has been properly accounted for? Find out whether any investigations or audits are ongoing or expected.

Will supply
contracts
need to be
renegotiated?

Protecting your interests

Purchasing a home can be an exciting opportunity. It is important to think about what could go wrong and provide you with a means of redress if the home is not what you expect.

Points to consider include:

- What assurances do you require from the seller about the home and its liabilities? It is usual to require warranties and indemnities from the seller.
- Should part of the purchase price be retained for a certain period of time to satisfy any claims against the seller?
- If there are a number of sellers is their liability to be joint and several, so each is liable for the full amount of any claim?
- Will you require a guarantee of the seller's obligations? For example, this could be important if the seller is a company which will be dissolved after the purchase.
- Will you require the seller and directors (if the seller is a company) to agree not to compete with the homes purchased?



Think about
**what could
go wrong**

The Care Quality Commission

The healthcare sector is highly regulated. Actions by the Care Quality Commission (CQC) and conditions of registration affect the purchase price.

Points to consider include:

- Do aspects of an inspection report affect the value of the business?
- Have any requirement notices, warning notices, notices of proposal or notices of decision been issued?
- Are any investigations by the CQC ongoing or expected?
- Have all necessary notifications to the CQC been made?
- Does the purchase price need to be adjusted?
- Is it possible to vary conditions of registration after purchase to increase the value of the home, such as raising the maximum number of beds?

If there are
problems
**lower the
price**

The employees

A purchase can be unsettling and disruptive for employees. The uncertainty can have a negative effect on the business.

You will need access to key employees before purchasing, such as the registered manager.

A decision needs to be made as to when to tell staff. If the purchase is to be carried out by way of a business and assets purchase, the Transfer of Undertakings (Protection of Employment) Regulations 2006 will apply.

Points to consider include:

- Has evidence of the qualifications of key employees been obtained?
- Have contracts of employment and other documents relating to employees been obtained?
- Has pensions auto enrolment been complied with?
- Are there any material disciplinary or grievance matters that are unresolved?
- Are policies up to date?
- Is there a plan to inform employees about the purchase and to explain how they will benefit?

Employees
may need to be
**talked through
the benefits**

The properties

Care home properties are key to the value of the deal. They have significant value and can be important to the value of goodwill.

Points to consider include:

- If the properties are owned by the business, are they to be purchased or extracted and let to you after the purchase?
- If the properties are leasehold, are there any rent deposits or guarantees that need to be dealt with?
- Are there dilapidations issues?
- Are there any break clauses held by third parties? If there are, will the third party agree not to exercise the break?
- Are there land contamination issues that can be addressed in advance of the purchase or can insurance be put in place?

Properties
are key to
value

What about intellectual property?

Intellectual property (IP) or information technology (IT) may be of significant value. For instance, the business may have a valuable brand.

Before the purchase you should be clear about the extent to which IP and IT are owned or used by the business. Ownership and the extent to which it is protected may be a key focus for you.

Points to consider include:

- Who owns the IP? Does it belong to the business? Is it owned by the seller personally or by third parties?
- Who owns the domain name used by the business? Who created the website?
- Does the seller have valid licences for any IP used by the business?
- Is the seller's IP capable of being registered and if so are the registrations up to date?
- Are the seller's IT systems working effectively? Are support and maintenance contracts in place? Does the seller have a recovery plan?

Is the
**IP capable
of being
registered?**

Ongoing and potential disputes

It is important to consider ongoing and potential disputes. The possible outcomes and the potential liabilities need to be thought through. If the dispute is with an important trading partner, such as a local authority, it may affect the value of the business.

Points to consider include:

- Are there any ongoing or potential disputes? Can they be resolved or the possible impact mitigated in advance of the purchase?
- If there are claims against the business, are they covered by valid insurance policies?
- Generally on insurance matters, does the seller have records showing the claims history of the business? Can the seller show continuity of cover for matters such as occupier's and employer's liability?

Consider
potential
outcomes and
**mitigate
risk**

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Great service... Great people...

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