

# Exiting the care sector: how to prepare for sale

The care sector is facing significant challenges that are forcing some providers to exit the market. The combination of challenging funding environment, rise in energy costs, recruitment issues, increasing regulation and market saturation is making it difficult for small and medium sized operators to remain in business.

We are seeing that buyers have a keen interest in the care sector and the market is still relatively buoyant. Appetite remains strong from independent operators wanting to expand their groups and investment from private equity and REITs.

Sellers wishing to exit should start having conversations with professionals at an early stage. Having a specialist team on board from the outset will ensure sellers put themselves in the best position to navigate the sale process and achieve their offer price by preparing thoroughly.

There are a number of potential issues that a well-advised seller can plan and prepare for ahead of time to mitigate the risk of delays and complications during the exiting process.

## Structure

Tax and legal advice should be taken at an early stage. Sellers should take advice from their tax advisors to ensure the business goes to market with the most favourable tax structure.

A share sale usually negates the need for a split exchange and completion. Where an asset sale is agreed and there is a gap between exchange and completion, careful thought will need to be given to how risk is allocated between the parties during that period.

## Heads of terms

Once you have accepted an offer, it is sensible to agree a short “heads of terms” document with the buyer. They will help set expectations for the timescale and can be useful to clarify key points such as exclusivity, purchase price mechanism (including working capital), apportionment of the price and any conditions.

For a share purchase they can be particularly useful in ensuring each party’s accountants and tax advisors are on board with how the purchase price is calculated and adjusted.

## Timing

It is important to think through the route to completion in terms of timing and how the various pieces of the puzzle fit together. It can be helpful to kick off with an all-parties or professionals call to set out a timeline. If you start the legal due diligence process too far in advance of the buyer’s finance being approved, then work may have to be duplicated as information becomes outdated.

In an asset sale, the registration of the manager will need to be “fast-tracked” to the incoming buyer. CQC applications should be submitted at the appropriate time, the timing of the application is key. CQC no longer allow applications to hang around indefinitely and will require re-submission if a completion date is pushed out for several months.

The CQC application will inevitably involve informing the manager of the sale and brings with it concerns about confidentiality and stability. Sellers can mitigate this by putting in place a bonus agreement in return for loyalty and confidentiality to the point of completion.

## **Pre-sale checklist**

Legal and financial due diligence carried out by the buyer can be lengthy and can take up significant time for the seller. It is therefore crucial that sellers have their 'house in order' in readiness for the sale.

Our experience has shown that accurate and quality information provided at the due diligence stage installs confidence in buyers, investors and lenders, minimises the chances of an avalanche of additional enquiries and reduces the opportunity for re-negotiation on price.

We can provide a pre-sale checklist to assist sellers to prepare for this stage. We can also review any key documents and the property title documents to highlight any key issues. Anticipating the issues and addressing them ahead of time can mitigate the risk of delays and further complications during the sales process.

## **What's hot in due diligence?**

On the employment side, the increasing use of overseas staff in the sector has resulted in a focus on immigration compliance. Failure to pay holiday pay correctly for overtime continues to be a problem and buyers are focusing on whether furlough rules were complied with as HMRC continue to investigate error and fraud from the pandemic.

Fire remains a "hot topic". It is often the case that only an internal fire risk assessment has been undertaken.

Environmental issues are of particular importance specially for lenders therefore ensuring the Energy Performance Certificate is up to date is vital as that can cause delay.

Any historic works at the property will need to be disclosed so making sure planning documents, building regulations and any construction contracts and warranties are in order is another important requirement.

Sellers need to think carefully about how to manage requests for site visits from buyers. Whilst it is reasonable for a seller to limit access due to concerns about confidentiality or public health, red flags will arise if access is refused outright as this may indicate that the seller has something to hide. We can help sellers navigate this process.

Our specialist Health & Social Care team regularly advises providers of all categories on acquisitions and sales in the care sector.