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Four Seasons Health Care Group – financial difficulties and safeguards for clients

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Summary

This House of Commons Library briefing paper explores the latest developments concerning the financial state of the Four Seasons Health Care Group – the UK's second largest care home provider – and (for England) the regulatory oversight of strategically important social care providers and the temporary duty of local authorities to meet people's needs when such a provider suffers business failure.

On 30 April 2019, Four Seasons Health Care Group ("the Group") announced that the holding companies that carry its debt had entered administration. The Financial Times (FT) described the step as allowing its principal creditor, H/2 Capital Partners, "to sell the business without any ongoing obligations".

The Group emphasised that "the operating companies under which the care home and hospital operations sit are not in administration and continue to be run as normal". The Government said on 1 May 2019 that the regulator for social care in England, the Care Quality Commission (CQC), was "clear that there is no current risk of service disruption".

Four Seasons Health Care Group has some 340 care homes in the UK, and accounts for 4% of all beds, totalling 17,504 beds across its brands. It provides care home places in both residential and nursing settings for clients who are self-funded or publicly funded (those eligible for either local authority funding support towards the cost of their place, or NHS fully funded care). Care market analysts LaingBuisson noted in July 2018 that the Group had a "high exposure to public pay", which had negatively impacted its profitability as a result of "government austerity and downward pressure on council paid fee rates".

The Group was bought in 2012 by Terra Firma, a private equity company, a move which involved the Group accumulating a significant amount of debt. However, the current position is that Terra Firma is now only the nominal owner of the Group: the Group's creditors, in particular H/2 Capital Partners, took effective control of the Group in December 2017 after a deal was made for a "standstill agreement" concerning a £26 million interest payment that was due.

The Group joins the other three members of the "Big Four" largest care home providers in being offered for sale at present. It was reported in September 2019 that H/2 Capital Partners was "in advanced talks" to buy 185 of the Group's freehold sites, but in October 2019 the Joint Administrators terminated the conditional sale process although "constructive discussions" were ongoing. In October 2019, the FT reported that Four Seasons had withheld rental payments without warning on its 135 leasehold care homes.

This note provides a brief overview of the Group's business and an overview of developments since Terra Firma acquired it. For England, it also provides information on the role of the regulator, the Care Quality Commission, in monitoring certain social care providers and about the temporary duty of local authorities to meet people's needs when a social care provider suffers business failure.

More information on the wider care home market can be found in the Library briefing paper, Social care: care home market – structure, issues, and cross-subsidisation (England).

1. The administration announcement of 30 April 2019

1.1 Announcement by the Four Seasons Health Care Group and what it meant

On 30 April 2019 – seven years to the day that its current owners (now nominal owners), the private equity firm Terra Firma, announced they it had agreed to acquire it[1] – Four Seasons Health Care Group ("the Group") issued a press release:

> Further to the announcement on 10th December 2018, Four Seasons Health Care Group (the "Group") is launching on 3 May 2019 an independent sales process, as the next stage of its restructuring, which it expects to complete by year end.
>
> Richard Fleming, Mark Firmin and Richard Beard of Alvarez & Marsal Europe LLP, have been appointed as Joint Administrators to the holding companies that carry debt, Elli Investments Limited and Elli Finance (UK) Plc (together "the Companies"). The Companies do not own or operate any care homes or hospitals directly.
>
> The operating companies under which the care home and hospital operations sit are not in administration and continue to be run as normal by the existing leadership teams. The Group has entered into a funding agreement which provides sufficient operational funding to ensure continuity of care for all of the Group's residents and patients during the independent sales process period.

In terms of the immediate impact for residents of the group's care homes, Dr Claire Royston, Group Medical Director of Four Seasons Health Care, commented:

> Today's news does not change the way we operate or how our homes are run or prompt any change for residents, families, employees and indeed suppliers. Our priority remains to deliver consistently good care. It marks the latest stage in the Group's restructuring process and allows us to move ahead with an orderly, independent sales process.[2]

The Financial Times (FT) observed that by placing Elli Investments Limited and Elli Finance (UK) Plc into administration, this would enable H/2 Capital Partners – a US hedge fund that, along with other creditors, were in effective control of the Group – "to sell the business without any ongoing obligations".[3]

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1 Four Seasons Health Care Group, Terra Firma acquires Four Seasons Health Care, 30 April 2012

2 Four Seasons Health Care Group, Announces 3 May 2019 Independent Sales Process Launch and Administration of certain Holding Companies, press release, 30 April 2019

3 "Care home operator Four Seasons appoints administrators", Financial Times, 30 April 2019

1.2 Comments by the regulator for England

The reaction of the regulator of social care in England, the Care Quality Commission (CQC), to these developments were reported by the consultancy LaingBuisson on 30 April 2019:

> Debbie Westhead, interim chief inspector of adult social care at the Care Quality Commission, said its market oversight function was fully aware of developments and was closely monitoring the position.
>
> She said: 'Our market oversight regulatory responsibility is to advise local authorities if we believe that there will be likely service cessation as a result of likely business failure. We do not believe this to be the case at this time.
>
> 'We will continue to keep this under review and remain in regular contact with Four Seasons Health Care throughout this process'.[4]

1.3 Statement by the Minister for Care (for England)

In a written parliamentary statement published on 1 May 2019, the Minister of State for Care, Caroline Dinenage, told the House that the Group's two companies that had been placed into administration "between them hold £625m of the company's debt".

Noting the Group had launched "an independent sales process of the operational parts of the Group (Four Seasons Healthcare, Brighterkind and the Huntercombe Group)", Ms Dinenage offered assurance that "the planned sale of the operating businesses, through an independent, court appointed administrator will now bring greater certainty to those in care, their families and the 22,000 people employed by the company".

The Minister said she had "met with the company and the administrator to seek assurance that they are putting the continuity of care at the forefront of this process and that there will be no sudden care home closures. I'm pleased to confirm that they have provided both me and the CQC with this reassurance".

The CQC had, she noted, "a legal duty to notify local authorities if they consider there to be a credible risk of service disruption (Stage 6 notification) as a result of business failure so that they have more time to prepare their plans to protect individuals", but the Minister said that the CQC was "clear that there is no current risk of service disruption and is not issuing a Stage 6 notification to local authorities at this time".

Ms Dinenage added that:

> In the event that a buyer isn't found for any of the care homes, the company has undertaken to manage any future plans around the transition of care with great sensitivity, taking time to ensure that residents are supported to find a new home.

The Minister concluded her statement by saying: "the Care Quality Commission and my Department are closely monitoring the situation.

4 "Four Seasons appoints administrators", LaingBuisson: Care Markets, 30 April 2019

They are also working closely with the Local Government Association, the Association of Directors of Adult Social Services, NHS England and Four Seasons Healthcare Group to ensure that individuals' care and support needs continue to be met".[5]

A number of written parliamentary questions were asked about the Group, to which responses were given by Ms Dinenage on 8 May and that largely repeated the information provided to the House on 1 May.[6]

1.4 Media reports

The media provided the following reports on the announcement:

- the Daily Telegraph said that Four Seasons Health Care had "called in administrators at Alvarez & Marsal to help find a buyer", adding that it had said "its homes would continue to operate as normal for the time being as the insolvency only affects its holding companies Elli Investments Limited and Elli Finance (UK), which are responsible for its debts";[7]
- the BBC reported that "Four Seasons Health Care has gone into administration. Two of the holding companies behind the firm appointed administrators on Tuesday after struggling to repay their debts";[8]
- the FT noted that the Group had "appointed administrators to push through a sale in a last-ditch attempt to save the business that houses 17,000 residents. The administration of two holding companies — which were set up by the care home chain's former private equity owner, Terra Firma — will enable the US hedge fund that seized control to sell the business without any ongoing obligations";[9]
- LaingBuisson reported in its Care Markets (CM) publication that "Four Seasons told CM that the group's operations were not in administration nor impacted and would 'run as normal'. 'There will be no change in the way homes are run and no change for residents, families, employees or suppliers,' a source said. 'People running homes at regional and group level will continue to run the business'".[10]

5 HCWS1532 1 May 2019
6 PQ 249859 8 May 2019; PQ 249858 8 May 2019; PQ 249829 8 May 2019
7 "Debt-laden care home giant Four Seasons falls into administration", Daily Telegraph, 30 April 2019
8 "Four Seasons Health Care goes into administration", BBC News, 30 April 2019
9 "Care home operator Four Seasons appoints administrators", Financial Times, 30 April 2019
10 "Four Seasons appoints administrators", LaingBuisson: Care Markets, 30 April 2019

2. Four Seasons Health Care Group – a brief overview of its business and significance

2.1 Market share and number of beds

Four Seasons Health Care Group is one of the "Big Four" care home providers (by number of beds) in the UK in what is a relatively disperse market.[11]

The "Big Four" providers (HC-One, Four Seasons Health Care Group, Barchester and Care UK, by order of size) accounted for only 14% of all beds, while the top 25 provide 30% of all beds, according to care market analysts LaingBuisson (as of May 2018). LaingBuisson have contended that "at a national level (and a local level as well) care home services for older people and dementia (65+ [years of age]) have a relatively low market concentration".

Indeed, HC-One, the largest provider, only accounts for just over 5% of all beds. Four Seasons Health Care Group is the second largest provider and accounts for 4% of all beds, totalling 17,504 beds across its brands (as of May 2018).[12] The Group has some 340 care homes.[13]

The map overleaf shows the location of the Group's care homes in England and highlights those local authorities where over 5% of care home beds were provided by the Group.

2.2 The business model

The Group operates under three brands:

- Four Seasons Health Care – "provides care services with a particular focus on dementia";
- brighterkind – "focuses on private [i.e. self-funding] residential and nursing care"
- The Huntercombe Group – "provides specialised services in mental health, brain injury and neurodisability".[14]

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11 For more information, see the Library briefing paper, Social care: care home market – structure, issues, and cross-subsidisation (England).

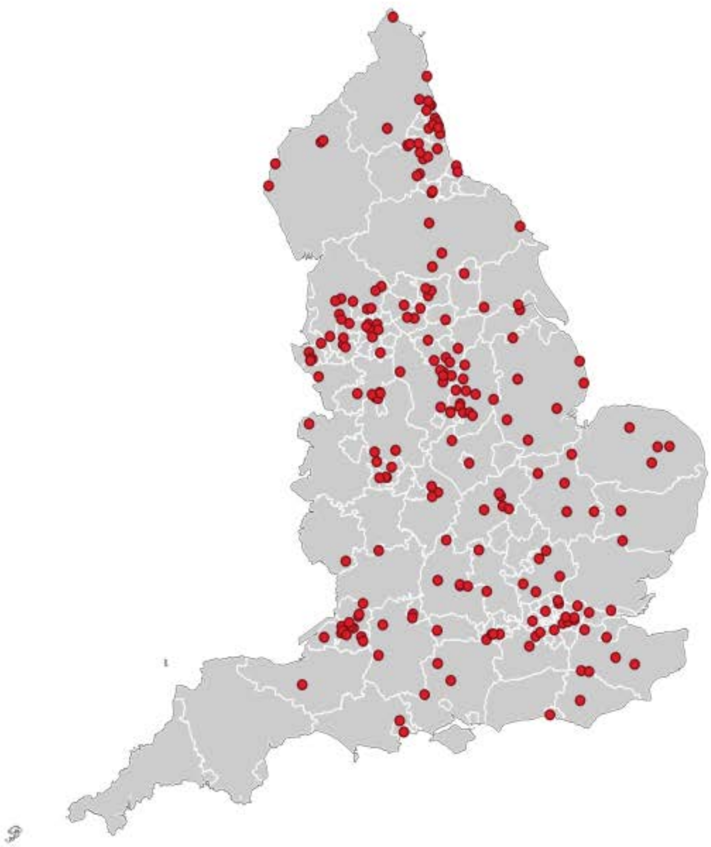
12 LaingBuisson, Care Homes for Older People – UK Market Report, 29th edition, July 2018, p203 and p204, Table 4.2

13 "H/2 close to rescue deal for bulk of Four Seasons care homes", Sky News, 11 September 2019

14 Terra Firma, Investments: Four Seasons Health Care Is The Uk's Largest Independent Elderly And Specialist Care Provider, webpage accessed on 17 September 2019

LOCATION OF FOUR SEASONS CARE HOMES

1 May 2019: CQC Care Directory



LOCAL AUTHORITIES WHERE OVER 5% OF CARE HOME BEDS PROVIDED BY FOUR SEASONS					
Newham	17.7%	Bracknell Forest	7.8%	Salford	6.3%
Northumberland	14.3%	Bristol, City of	7.7%	West Berkshire	6.2%
Hartlepool	14.1%	Sunderland	7.5%	Greenwich	6.2%
North Tyneside	14.1%	York	7.3%	Swindon	6.2%
South Gloucestershire	12.7%	St. Helens	7.3%	Nottinghamshire	5.9%
Wirral	11.0%	Bury	7.2%	Stoke-on-Trent	5.8%
County Durham	9.7%	Bath and NE Somerset	7.0%	Northamptonshire	5.8%
Darlington	9.7%	Calderdale	6.8%	Derbyshire	5.7%
Wokingham	9.5%	Coventry	6.7%	Lambeth	5.6%
Dudley	8.1%	Peterborough	6.5%	Kingston upon Thames	5.6%
South Tyneside	8.0%	Blackburn with Darwen	6.4%	Ealing	5.5%
Bexley	7.9%	Enfield	6.3%	Cumbria	5.3%

As such, the Group provides residential care home places for both self-funding clients and those eligible for local authority funding support, as well as nursing care home places which can attract partial or full NHS funding.

LaingBuisson noted, however, that in terms of its self-funded/local authority funding support (i.e. private/public) mix of clients, the Group had a "high exposure to public pay", which had negatively impacted its profitability as a result of "government austerity and downward pressure on council paid fee rates".[15]

Box 1: Eligibility for local authority funding support, and the negotiating power of local authorities over care home providers

People needing a care home place can be eligible for local authority funding support towards the cost: in England, this is the case if someone has assets of less than £23,250 (which may include the value of their home in some circumstances) and their income is less than the amount a local authority would *usually* pay for a care home place (although this latter point is not a hard and fast rule).[16]

Where someone is eligible, the person is still expected to contribute almost all of their income (which can include their pension, welfare benefits etc.) towards the cost.

LaingBuisson note that the care home market is dominated by for-profit private providers, who account for 76% of bed capacity. Some 14% is provided by non-profit providers, and the other 10% by statutory providers (local authorities and the NHS).[17] As such, local authorities usually turn to private or voluntary sector providers to acquire care home places for those eligible for local authority funding support.

Because of the dispersed state of the care home market, local authorities typically have "monopsony" purchasing power: one buyer, many sellers. This gives local authorities significant leverage to negotiate a lower cost for a care home bed, and they often pay less than an individual "self-funder" (someone not eligible for local authority funding support): a November 2017 report by the Competition and Markets Authority (CMA) found this difference to be "on average 41%" for larger providers.[18]

The CMA found that "many" care homes with a mix of self-funded and local authority-funded clients "charge much higher fees for self-funded than for LA [local authority] funded places" – known as cross-subsidisation – without which, the CMA said, "the public funding shortfall would have a substantially larger impact than it currently has". [19]

The CMA estimated that for those care homes with more than 75% of their residents eligible for local authority funding support (about a quarter of all care homes), "LA-fees are currently (as of November 2017), on average, as much as 10% below total cost for these homes".[20] For more information on local authority fees, see section 4.2 of this note (in particular, the sub-section entitled "Financial pressures facing the sector").

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15 LaingBuisson, Care Homes for Older People – UK Market Report, 29th edition, July 2018, p225
16 For more information on the means-test in England, see the Library briefing paper [Social care: paying for care home places and domiciliary care (England)](#).
17 LaingBuisson, Care Homes for Older People – UK Market Report, July 2018, p2
18 Competition and Markets Authority, [Care homes market study – Final report](#), 30 November 2017, p40, para 2.40
19 As above, p39, para 2.37 and p14, para 39
20 As above, p13, para 38

2.3 The Group's complex ownership structure including its offshore registration

Four Seasons Health Care Group is the trading name of Elli Investments Ltd, a Guernsey-registered company owned by Terra Firma, which is run by financier Guy Hands.[21]

In relation to the financial reporting arrangements of the Balliwick of Guernsey, the organisation Tax Justice Network says that while there are now registers of beneficial ownership "these are closed registers not available to the public, and company accounts are not available to the public".[22]

In addition, the Group appears to have a complex financial and ownership structure. According to the financial analysis organisation Company Watch, "Four Seasons had 187 companies in nine tiers, including 14 offshore, spread across at least six jurisdictions, including the UK".[23]

This structure makes it difficult for external company analysts to study the financial performance of the Group.

Box 2: Case study: financial dividends and other payments paid by another Big Four care home provider which also has a complex structure including offshore companies

Another of the Big Four care home companies (indeed the largest), HC-One, also has a complex corporate structure, "with 50 companies, six of which are registered offshore either in the Cayman Islands or Jersey and a further five in the UK as foreign entities", according to the FT. This, the FT said, means "tracing the flow of money is difficult".

The FT reported that although HC-One "appears" to have declared a loss in every year except one since its creation in 2011:

> HC-One paid its investors two cash dividends of £42.3m in 2017 and £6.2m in 2018.
>
> […]
>
> Court Cavendish, which is 90 per cent owned by Dr [Chai] Patel [founder of HC-One], with the remaining 10 per cent owned by his family trust, has also received £25m of management fees.

The FT added that HC-One's structure "means investors and executives are likely to have received much greater sums as only one of its subsidiaries files consolidated accounts — the "top UK company", FC Skyfall Upper Midco Limited".[24]

There is no suggestion that the financial steps reportedly taken at HC-One have also occurred at Four Seasons Health Care Group, or that the steps taken at HC-One are a breach of any regulatory or other rules.

21 LaingBuisson, Care Homes for Older People – UK Market Report, 29th edition, July 2018, p224; Bloomberg, Company Overview of Elli Investments Limited, webpage accessed on 17 September 2019

22 Tax Justice Network, Financial Secrecy Index 2018 – Narrative Report on Guernsey, 2018, p3

23 "Care home operator Four Seasons appoints administrators", Financial Times, 30 April 2019

24 "Care home group paid £48.5m in dividends while warning of cuts", Financial Times, 10 May 2019

3. A brief history of the Group and Terra Firma's ownership

3.1 Ownership prior to Terra Firma

Some of the key dates in the Group's history are as follows:

- Four Seasons established in the early 1980s;
- the then chief executive led a management buyout in 1999, with backing from Alchemy Partners, a private equity firm. It acquired Cresta Care for £150m later that year, and in September 2002 bought Omega Worldwide and Principal Heathcare Finance for a combined £330m, so doubling in size;[25]
- acquired by Allianz Capital Partners, part of the Allianz financial services company, for "a reported £775 million" in 2004;[26]
- sold to an investment fund (Delta Commercial Property LP) of the Qatar Investment Authority, a sovereign wealth fund, in 2006 for £1.4 (billion including assumed debt).

During Delta's ownership, LaingBuisson noted that in September 2009 "the group's financial creditors including RBS agreed a consensus capital restructuring", the effect of which was reduce the group's debt "by 50% to £780m".

LaingBuisson added that a "further crisis" was averted in September 2010 when the maturity of a £600 loan was extended by two years to September 2012.[27]

Notwithstanding its own financial difficulties, in 2011 the group acquired the bulk of the care home portfolio of its failed competitor, Southern Cross Healthcare. As the April 2014 edition of LaingBuisson's UK care home market report noted:

> The Four Seasons Health Care group of companies became the UK's largest operator of care homes for older and physically disabled people in terms of bed capacity when in late 2011 it took over from Southern Cross Healthcare the operation of care homes whose freeholds were owned by Four Season Health Care's sister company Principal Healthcare Finance, as well as those homes owned by Loyd.[28]

Prior to its failure, Southern Cross had been the country's largest care home group. In its July 2018 market report, LaingBuisson reflected that its collapse was "by far the most important failure in the short life of the independent care home sector" and noted that "the reverberations have not yet ceased". LaingBuisson ascribed the main reason for its failure as "excessive debt (or over-renting), exacerbated by downward

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25 FastTrack, Four Seasons Health Care, webpage accessed on 17 September 2019
26 "Care home group sold to Allianz for £775m", Daily Telegraph, 6 July 2004
27 "Loses increase at Four Seasons Health Care Group", Laing Buisson Care Markets, July 2019, p39 and LaingBuisson, Care Homes for Older People – UK Market Report, 29th edition, July 2018, p225
28 LaingBuisson, Care of Older People – UK Market Report, 26th edition, April 2014, p120

pressure on public paid fees", adding that "this is the most common feature of nearly all of the other major financial failures in the sector".[29]

3.2 Acquisition by Terra Firma

In April 2012 it was announced that Terra Firma was acquiring the Group (through Elli Investments Ltd). The deal was completed in July 2012, the cost of which was £825m. It was financed "to a large extent by the issue of two tranches of high yield bonds, £350m senior secured bonds at 8.75% and £175m senior bonds at 12.25%".[30]

As such, following its acquisition by Terra Firma, the Group was operating under a considerable debt burden for which it was paying relatively high interest charges.

The FT reported when the proposed acquisition was announced on 30 April 2012 that "Four Seasons is the largest independent provider in a £15bn market in the UK. It operates 445 care homes, with 22,364 beds, and 61 specialist care centres, with 1,601 beds".

Reflecting on the deal, the Chairman and Chief Investment Officer of Terra Firma, Guy Hands, was quoted as saying:

> By investing new equity, Four Seasons' debt has been very substantially reduced and Terra Firma has brought stability to the company. Terra Firma is committed to further investment in the business in order to achieve long-term sustainable growth.[31]

3.3 Developing financial difficulties under Terra Firma's ownership

A brief timeline of key financial developments during Terra Firma's ownership of the Group includes:

- November 2014 – the FT reported that Terra Firma had "appointed Blackstone [an investment firm] to advise on options for Four Seasons Health Care following a deterioration of the UK care homes operator's financial health … Terra Firma declined to comment";[32]
- September 2015 – Moody's, a debt rating agency, downgraded the Group's debt, so pushing its bonds to "junk" status;[33]
- October 2015 – describing the financial situation at the Group as in "crisis", the FT said that the Group had "appointed advisers to carry out an emergency review of its finances. The private-equity owned company appointed independent adviser PJT Partners and Allen & Overy, the law firm, to review its financial structure. The company said 'all options' were being considered";[34]

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[29] LaingBuisson, Care of Older People – UK Market Report, 26th edition, April 2014, p221
[30] As above, p120
[31] "Terra Firma to buy Four Seasons for £825m", Financial Times, 30 April 2012
[32] "Terra Firma appoints adviser to consider Four Seasons' future", Financial Times, 23 November 2014
[33] "Four Seasons launches emergency review of finances", Financial Times, 22 October 2015
[34] As above

- April 2016 – the Group "reported a 39 per cent slump in earnings and admitted it is in crisis talks to secure the long-term future of the group" as it faced £50 million in interest payments, according to the FT;[35]
- October 2017 – the Group announced "its intention to launch financial creditor and leasehold estate restructuring".[36] In response, the social care regulator for England, the Care Quality Commission (CQC), said it was "monitoring the situation closely and currently there is no reason to believe that the day to day provision of care within Four Seasons Health Care Group will adversely change as a result of today's announcement";[37]
- November 2017 – the Group "proposed relinquishing control of the debt-laden company to its creditors for a 'nominal sum', having incurred £450m in losses", reported the FT. One of its principal creditors was H/2 Capital Partners;[38]

Box 3: H/2 Capital Partners

H/2 Capital Partners has been described as "a mystery firm that few know anything about".[39] Bloomberg, the financial information provider, has noted that "H/2 Capital Partners is a privately owned hedge fund sponsor. It also makes real estate investments. The firm invests in the public equity and hedging markets of the United States. H/2 Capital is based in Stamford, Connecticut".[40] The Financial Times described it as a "distressed debt fund".[41]

Its Chief Executive Officer is Spencer B. Haber, whose career has included roles with major Wall Street banks including Lehman Brothers and Solomon Brothers.[42]

- December 2017 – the Group and H/2 Capital Partners "announced that they have reached a standstill agreement in relation to Four Seasons' December interest payments". The amount due was an interest payment of £26 million. The deal was described as giving H/2 Capital Partners "effective control over the company".[43] The CQC said that it was "encouraged to see that a standstill agreement has now been agreed";[44]
- February 2018 – the loan size provided to the Group by H/2 Capital Partners increased from £40 million to £70 million. The move was described by The Guardian as giving H/2 Capital

35 "Four Seasons in crisis talks as earnings slide 39%", Financial Times, 27 April 2016
36 Four Seasons Health Care Group, Four Seasons Health Care High Yield Bond Group (FSHC) announces its intention to launch financial creditor and leasehold estate restructuring, 17 October 2017
37 Care Quality Commission, CQC response to Four Seasons Health Care announcement, news story, 17 October 2017
38 "Terra Firma offers to hand creditors control of Four Seasons", Financial Times, 8 November 2017
39 "More than 360 struggling British care homes to fall into hands of secretive US tycoon", This is Money, 11 December 2017
40 Bloomberg, Capital Markets – Company Overview of H/2 Capital Partners, webpage accessed on 1 May 2019
41 "Opinion: Lombard – Hands' private-equity approach is not helping the aged", Financial Times, 11 December 2017
42 Bloomberg, Capital Markets – Company Overview of H/2 Capital Partners: Executive Profile – Spencer B. Haber, webpage accessed on 1 May 2019
43 "Care provider Four Seasons temporarily bailed out", LocalGov, 9 February 2018
44 Care Quality Commission, Update on CQC's financial monitoring of Four Seasons, 14 December 2017

Partners "even more control" over the Group, further to the December 2017 standstill agreement;[45]

- October 2018 – Care Home Professional reported that the Group "is being prepared for possible sale as part of rescue talks with its leading creditor H/2 Capital".[46] The Guardian reported that "H/2 Capital Partners [had] … swept aside the company's senior management, installing Margaret Ford and Mark Ordan to the board of directors";[47]
- March 2019 – the Group secured £40 million of additional funding from H/2 Capital Partners "to ensure that the Group has sufficient liquidity to maintain continuity of a high standard of care for our residents and patients and time to complete an orderly sale process and transition to new ownership";[48]
- April 2019 – the Group announced that administrators – who were individual partners of Alvarez and Marsal Europe LLP – had been appointed to the holding companies that carried the Group's debt, Elli Investments Limited and Elli Finance (UK) Plc.[49] It added that the administrators, would, among other things, immediately commence the independent sales process;[50]
- July 2019 – unaudited draft accounts for the Group show a pre-tax loss of £229.3 million in 2018 (compared to a loss of £146.1 million in 2017).[51]

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45 "Care provider Four Seasons temporarily bailed out", LocalGov, 9 February 2018
46 "BREAKING NEWS: Four Seasons being prepared for possible sale", Care Home Professional, 30 October 2018
47 "US hedge fund puts Britain's biggest care home operator up for sale", The Guardian, 29 October 2018; see also Irish Stock Exchange, Elli Finance (UK) plc and Elli Investments Limited – Announcement £350,000,000 of 8.750% Senior Secured Notes due 2019 (the Senior Secured Notes) £175,000,000 of 12.250% Senior Notes due 2020 (the Senior Notes) (Collectively referred to as the Notes), 26 October 2018
48 "BREAKING NEWS: Four Seasons secures additional funding as it prepares for sale", Care Home Professional, 13 March 2019
49 Four Seasons Health Care Group, Announces 3 May 2019 Independent Sales Process Launch and Administration of certain Holding Companies, press release, 30 April 2019
50 Irish Stock Exchange, Elli Finance (UK) plc and Elli Investments Limited – Announcement: £350,000,000 of 8.750% Senior Secured Notes due 2019 (the Senior Secured Notes) £175,000,000 of 12.250% Senior Notes due 2020 (the Senior Notes), 30 April 2019
51 "Loses increase at Four Seasons Health Care Group", Laing Buisson Care Markets, July 2019, p38

4. The proposed sale of the Group

4.1 Previous attempts and the current proposal to sell the Group

The Financial Times (FT) first reported that Terra Firma was considering selling the Four Seasons Health Care Group in October 2015, just over three years after it completed its acquisition of the Group.[52]

H/2 Capital Partners and the Group's other creditors effectively acquired control of it in December 2017. The Group announced its intention to launch a sales process on 26 October 2018.

The sale process began following the appointment of administrators to the Group's holding companies and prior to this a sales process had not been launched. On 30 April 2019 the two holding companies that carried the Group's debt, Elli Investments Limited and Elli Finance (UK) Plc, entered administration. As noted above, the FT contended that this move was intended to enable H/2 Capital Partners "to sell the business without any ongoing obligations".[53]

The issue now arises as to whether a buyer can be found, and what happens if one cannot. As the Minister for Care told the House on 1 May 2019: "In the event that a buyer isn't found for any of the care homes, the company has undertaken to manage any future plans around the transition of care with great sensitivity, taking time to ensure that residents are supported to find a new home".[54] Ms Dinenage's answer appeared to consider a scenario where some or all of the Group's care homes were closed.

4.2 Possible factors that could affect the likelihood of a successful sale

There are a number of factors that could affect the likelihood of a successful sale of the Group.

The seller

Individual partners of Alvarez and Marsal Europe LLP are acting as the Administrators of the two holding companies that carried the Group's debt (Elli Investments Limited and Elli Finance (UK) Plc). A member of their team said:

> This will be an independent, open sale process for the business, with the aim of achieving a whole Group sale. The Administrators, independent officers of the High Court in England and the Royal Court of the island of Guernsey, are in control of the sales process and alongside a specialist team of M&A advisers from BDO, will consider all credible offers from appropriate interested parties.

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52 "Four Seasons launches emergency review of finances", Financial Times, 22 October 2015

53 "Care home operator Four Seasons appoints administrators", Financial Times, 30 April 2019

54 HCWS1532 1 May 2019

The state of the market for care home businesses

The Group is entering an already crowded market place for the sale of big care home business. Indeed, the other three members of the "Big Four" (HC-One, Barchester, Care UK) are already up for sale, which, together with Four Seasons Health Care Group, account for some 14% of care home beds.

The dates that the other "Big Four" businesses were put up for sale were:

- Care UK – April 2018;[55]
- HC-One – May 2018;[56]
- Barchester – July 2018.[57]

In a July 2019 article, the FT reported that Nick Hood of Opus Restructuring had said: "with all the major care home operator groups currently up for sale, interested parties are spoiled for choice about premium opportunities, but deals are still not happening. It speaks volumes about the severe problems facing the sector". On the other hand, the article noted that "experts said investor appetite for UK care homes remained strong, with private equity, sovereign wealth and infrastructure funds, particularly from Asia, seeking to capitalise on demand for housing from the ageing population".

Box 4: The reported abandoned purchase of Barchester in July 2019

It was reported by the FT in July 2019 that the Australian "infrastructure bank", Macquarie Group had "pulled out of a £2.5bn deal" to buy Barchester Healthcare, despite having "all but signed off on an agreement" to buy the company.

The article added that "one person close to the bank said that 'given the exchange rate is all over the place, it is not the right time. It's not just Brexit itself but that no one knows which direction the UK is going in or who the leader will be if there is an election".

The FT added that both Macquarie and Barchester had declined to comment.[58]

Financial pressures facing the sector

The consultants LaingBuisson noted that there was a "golden period" in the mid-2000s of funding of care home places by local authorities for those clients eligible for funding support.[59] However, following the "credit crunch" of the late 2000s, LaingBuisson contended that "councils monopsony purchasing power[60] … [became] a major threat to providers after austerity policies were introduced in 2011/12".

55 "Bridgepoint explores sale of UK's biggest NHS outsourcer", Financial Times, 27 April 2018. Care UK is part of the private equity firm Bridgepoint's portfolio of health and social care assets. At the time of article's publication, it was reported that "the sale of the care home business is already under way".

56 "Britain's biggest care home business for sale", Financial Times, 21 May 2018

57 "Care home group Barchester put up for sale", Financial Times, 16 July 2018

58 "Macquarie drops £2.5bn care home deal over Brexit concerns", Financial Times, 10 July 2019

59 Information on the social care means-test which determines if someone is eligible for local authority funding support towards the cost of their care home place, see the Library briefing paper Social care: paying for care home places and domiciliary care (England).

60 A monopsony is a market where there is a single buyer, but many sellers. Typically, due to the fragmented nature of the care home market, in each local authority area

Local authorities used their purchasing power to negotiate lower fees for care home places, and as a result, LaingBuisson added, "council paid fee uplifts fell a long way behind care home cost increases in the period after 2011/12".

LaingBuisson calculated that "fee rates paid by councils across England for residential and nursing care of older people … have fallen by a national average of 6% in real terms over the period 2010/11 to 2016/17".[61] This decrease in funding is particularly relevant for those care home companies whose business model has a greater reliance on clients in receipt of local authority funding support.

There have been a number of recent announcements of additional funding to support the delivery of local authorities' adult social care[62] (as well as significant increases to the rate of NHS Funded Nursing Care (FNC) paid to nursing homes).

However, LaingBuisson said that it is not clear at this stage if there has been an increase in local authority funding for care home providers in 2017/18 and 2018/19, contending that "more recent council paid fee inflation … is hard to pin down".[63]

At the same time, there have been a number of upward cost pressures for care home providers such as increases to the rate of the National Living Wage (NLW) and the National Minimum Wage (NMW). LaingBuisson noted that "the care home sector depends heavily on low paid staff" and some roles are "typically paid close to [the] NLW". As a result, an increase in the NLW (or NMW for younger employees) may lead to an increase in a care home's payroll bill.[64]

Uncertainty over Government policy

In March 2017, the then Chancellor of the Exchequer, Philip Hammond, announced that the Conservative Government would publish a Green Paper on how people pay for social care,[65] notwithstanding two major Government-commissioned independent reports on the topic in the past two decades (neither of which had been fully implemented).[66]

However, at the time of writing the Green Paper has yet to be published – far exceeding the time it took the other two reports to be completed – and a number of stated publication dates have been and gone. There is

there are many care home providers competing for business from one large buyer (the local authority). There are also self-funders but these are individuals – their lack of purchasing power means they are commonly charged more for the same service than a local authority would be. For more information, see the Library briefing paper Social care: care home market – structure, issues, and cross-subsidisation (England).

61 LaingBuisson, Care Homes for Older People – UK Market Report, 29th edition, July 2018, p185

62 For more information, see the Library briefing paper Adult Social Care Funding (England).

63 LaingBuisson, Care Homes for Older People – UK Market Report, 29th edition, July 2018, p187

64 As above, p92

65 HC Deb 8 March 2017 c818 and HM Treasury, Spring Budget 2017, HC1025 2016-17, 8 March 2017, p47, para 5.6

66 See the Library briefing paper, Social care: Government reviews and policy proposals for paying for care since 1997 (England).

no firm date set for its publication beyond a vague commitment first made in December 2018 to do so "at the earliest opportunity".[67]

It was reported in late-July 2019 by the FT that the much-delayed Green Paper will be scrapped by the new Prime Minister, Boris Johnson, and instead a White Paper will be published in the autumn "proposing a clear course of action to address the crisis".[68]

But even if this happens, it is unclear at this stage when those proposals will be implemented, and other factors such as whether any new rules on how people pay for their social care will apply to existing care home residents, or those already beyond retirement age. The FT reported that the reforms "are not expected to be delivered this side of a general election", and quoted a "Government insider" as saying "it will be a manifesto thing".[69]

As such, the future funding of social care is unclear at present, both in terms of possible changes as to when individuals are eligible for local authority funding support, and the amount of funding provided by local authorities to care home providers for individuals who are eligible.

Given the importance of local authority-funded clients to most care home providers, it is possible that some potential buyers of care home businesses are waiting for clarity on this issue.

In particular, should Government proposals – such as a more generous means-test – mean that more people become eligible for local authority funding support, then without other changes this could have a significant impact on the future profitability of many care home businesses. More generous eligibility criteria for local authority funding support could see the client mix of many care homes tilt more towards local authority funded clients and away from self-funders, who typically pay much more for the same service (on average, 41% more in respect of larger care home providers according to a recent Government report, see Box 1 above).[70]

However, the impact could be mitigated if additional funding for local authorities is provided, so allowing them to pay care homes a higher fee for places.[71]

But with no firm publication date set for the Green Paper (or the reported White Paper), it appears that the uncertainty about Government policy in this area, which has persisted since the Royal

67 The change to publishing the Green Paper "at the earliest opportunity" was first announced by the Government in December 2018 (PQ 199475 13 December 2018) and most recently repeated on 23 July 2019 (HC Deb 23 July 2019 c1199).

68 "Boris Johnson set to pledge billions for new hospitals and social care", Financial Times, 30 July 2019

69 As above

70 Competition and Markets Authority, Care homes market study – Final report, 30 November 2017, p40, para 2.40

71 See also p208, para 14.26 of the Competition and Markets Authority, Care homes market study – Final report, 30 November 2017.

Commission published its report in 1999 (or arguably before that even) is set to continue.[72]

For more information, see the Library briefing papers Adult social care: the Government's ongoing policy review and anticipated Green Paper (England) and Adult Social Care Funding (England).

[72] For more information on this point, see section 6 of the Library briefing paper, Adult social care: the Government's ongoing policy review and anticipated Green Paper (England).

5. Developments in regard to the sales process

5.1 Freehold care homes

Initial interest in the sale

The Financial Times (FT) reported in mid-July 2019 that the Group was "encouraged by the 'levels of interest and active engagement from bidders'", and added that the Group "hopes a deal will be sealed by the end of this year".[73]

In a report later in July, the FT reported that there had been "offers worth £400m to £600m for the business, according to two people briefed on the sale process". Those offers, the FT noted, compared to the £825 million Terra Firma had paid to acquire the Group in 2012, leading the FT to describe the Group as being offered at a "knockdown price". The FT said that:

> The sharp drop in Four Season's value underlines how the care home sector has come under intense pressure since local authorities cut the fees they pay for the elderly, as well as being hit by a shortage of nurses, high debt levels and rising costs.

The FT said that the bidders included "H/2 Capital Partners … Cheyne Capital, the second biggest bondholder, and Davidson Kempner Capital Management, a US-based fund that is one of the company's landlords [for its leasehold care homes, see section 5.2]". It added that "Round Hill Capital, a property investor that provides senior [old age] accommodation, is also a contender".[74]

H/2 Capital Partners emerges as the frontrunner (September 2019)

In September 2019, Sky News reported that H/2 Capital Partners was "in advanced talks to buy the bulk of Britain's second-largest care home operator, paving the way for a two-stage rescue deal the Group".

Of the Group's 340 homes, H/2 would acquire the freeholds of 185 care homes – although it was "unclear … how much H/2 was preparing to pay for the freehold estate" – and was "offering a financial guarantee to secure the running of the remaining 135 [leasehold] care homes until a sale process for those sites has concluded".

Terra Firma also has a portfolio of 24 "brighterkind" homes which Sky News reported are "not part of the insolvency process" and are being sold separately.[75] The value of these homes is about £200 million according to the FT.[76]

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73 "Macquarie drops £2.5bn care home deal over Brexit concerns", Financial Times, 10 July 2019
74 "Bidders circle Four Seasons care homes at knockdown price", Financial Times, 17 July 2019
75 "H/2 close to rescue deal for bulk of Four Seasons care homes", Sky News, 11 September 2019
76 "Four Seasons to be taken over by H/2 Capital Partners", Financial Times, 11 September 2019

Conditional sale to H/2 terminated by the Joint Administrators (October 2019)

Care Markets reported on 24 October 2019 that "the conditional sale of Four Seasons Health Care to H/2 Capital Partners has been 'terminated due to certain conditions' not being met".

However, the report noted that the Joint Administrators from Alvarez and Marsal Europe LLP, along with Four Seasons and the majority creditor H/2 "'remain in constructive discussions' with a view to implementing a restructuring of Four Seasons, including the ongoing leasehold estate".[77]

5.2 Leasehold care homes

Four Seasons withholds rent payment to landlords (October 2019)

As noted above, the sale process is seeking to include a resolution for the Group's 135 leasehold care homes.

However, as Care Markets noted, the future of the leasehold estate "remains unclear", not least because in October 2019 the Group withheld rent payments to landlords.[78]

In a report published on 2 October 2019, the FT noted that the Group had "failed to pay millions of pounds of rent this month with no warning to landlords, raising concerns over the care of thousands of elderly residents". It added:

> Four Seasons said in a stock market announcement on Monday that it was seeking to renegotiate rents on the remaining 135 leasehold homes. It then failed to pay rent owed to landlords the same day, according to three sources who say they received no advance warning.
>
> […]
>
> The landlords are believed to be discussing whether other operators would be interested in taking over the homes. But they will also have the option of giving notice to the tenants, potentially leaving local authorities to find alternative accommodation.
>
> […]
>
> Nick Hood, social care analyst at Opus Restructuring, accused Four Seasons of "playing a high-stakes game with the most vulnerable people in society".
>
> "They are assuming that the landlords won't have the courage to force closures and end up as the fall guys and are using that to try to extract last-minute rent cuts."[79]

The situation appeared to worsen as the month went on. In a further report on 13 October, the FT noted that "landlords say they have been

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77 "Talks ongoing after Four Seasons sale 'terminated'", Care Markets, 25 October 2019

78 "Future of Four Seasons leasehold care homes remains unclear", Care Markets, 14 October 2019

79 "Troubled care home operator fails to pay landlords", Financial Times, 3 October 2019

asked to agree steep rent cuts and in some cases have been told they may not receive rent on some properties again".

The FT added that in regard to the 135 leasehold care homes, "many of which are in poor condition, require significant capital investment and house mainly local authority residents".

In terms of possible closures, the FT said that while "landlords are assessing their options — including agreeing a deal with Four Seasons, finding fresh management or running the homes themselves … Around one quarter of the leased homes [some 34 care homes or thereabouts], involving around 2,000 staff, are most immediately at risk of closure under this process, according to two sources close to the process".[80]

Care Markets reported that "landlords have been trying to 'engage' with Four Seasons and H/2 Capital without any 'meaningful discussions'. The person said: 'Most landlords want to take control of the situation, but they have lost all confidence'".[81]

80 "More Four Seasons care homes at risk of closure", Financial Times, 13 October 2019
81 "Future of Four Seasons leasehold care homes remains unclear", Care Markets, 14 October 2019

6. Regulatory oversight and local authorities' duty to temporarily meet needs (England only)

Prompted by the collapse in 2011 of what was then the largest care home bed provider, Southern Cross Healthcare,[82] the then Coalition Government introduced changes through what became the Care Act 2014 to provide enhanced oversight of strategically important social care providers, and to set out the duties of local authorities to temporarily meet people's needs should a provider fail in England.[83]

The Care and Support Statutory Guidance issued by the Department of Health and Social Care which supports the Care Act 2014 states:

> Business failure (as defined) will usually involve an official being appointed for example, an Administrator to oversee the insolvency proceedings. An Administrator represents the interests of the creditors of the provider that has failed and will typically try to rescue the company as a going concern. In these circumstances, the service will usually continue to be provided, and the exercise of local authorities' temporary duties may not be called for. It is not for local authorities to become involved in the commercial aspects of the insolvency, but they should cooperate with the Administrator if requested. Local authorities should, insofar as it does not adversely affect people's safety and wellbeing, support efforts to maintain service provision by, for example, not prematurely withdrawing people from the service that is affected, or ceasing to commission that service.[84]

Regulation 2 of the Care and Support (Business Failure) Regulations 2015,[85] which defines "business failure" for these purposes, can be found in the Annex to this note.

In terms of the role of the Care Quality Commission (CQC) for certain social care providers and "business failure":

> In April 2015, the financial 'health' of certain care and support providers became subject to monitoring by the Care Quality Commission (CQC). The Care and Support (Market Oversight Criteria) Regulations 2015 set out the entry criteria for a provider to fall within the regime. These are intended to be providers which, because of their size, geographic concentration or other factors, would be difficult for one or more local authorities to replace, and therefore where national oversight is required. CQC will determine which providers satisfy the criteria using data available to it. It will notify the providers which meet the entry criteria.
>
> […]
>
> Where CQC is satisfied that a provider in the regime is likely to become unable to continue with their activity because of business

82 HL Deb 22 July 2013 cc1141–1142
83 Specifically, sections 19 and 48 to 57 of the Care Act 2014 and the associated Care and Support (Business Failure) Regulations 2015 (SI 2015/301)
84 Department of Health and Social Care, Care and Support Statutory Guidance, October 2018, para 5.23
85 SI 2015/301

> failure, it is required to tell the local authorities which it thinks will be required to carry out the temporary duty [see below], so that they can prepare for the local consequences of the business failure. CQC will inform local authorities once it is satisfied the provider is unlikely to be able to carry on because of business failure. CQC's trigger to contact authorities is that it believes the whole of the regulated activity in respect of which the provider is registered is likely to fail, not parts of it. It is not required to make contact with authorities if, say, a single home owned by the provider in the regime is likely to fail because it is unprofitable and the CQC is not satisfied that this will lead to the whole of the provider's relevant regulated activity becoming unable to continue. In these circumstances, it is the provider's responsibility to wind down and close the service in line with its contractual obligations and it is expected that providers would do so in a planned way that does not interrupt people's care.
>
> Where CQC considers it necessary to do so to help a local authority to carry out the temporary duty, it may request the provider to provide it with information and CQC must then give the information, and any further relevant information it holds, to the local authorities affected. If the CQC is of the view that a provider is likely to become unable to continue with its activity because of business failure, the CQC should work closely together with the affected local authorities to help them fulfil their temporary duty. In exercising its market oversight functions, CQC must have regard to the need to minimise the burdens it imposes on others.[86]

When a provider does experience business failure:

> Local authorities are under a temporary duty to meet people's needs when a provider is unable to continue to carry on the relevant activity in question because of business failure. The duty applies when a service can no longer be provided and the reason for that is that the provider's business has failed. If the provider's business has failed but the service continues to be provided then the duty is not triggered. This often may happen in insolvency situations where an administrator is appointed and continues to run the service.
>
> The duty applies where a failed provider was meeting needs in the authority's area. It does not matter whether or not the authority has contracts with that provider, nor does it matter if all the people affected are self-funders (for example, arranging and paying for their own care). The duty is in respect of people receiving care by that provider in that authority's area – it does not matter which local authority (if any) made the arrangements to provide services.
>
> The needs that must be met are those that were being met by the provider immediately before the provider became unable to carry on the activity. Local authorities must ensure the needs are met but how that is done is for the local authority to decide, and there is significant flexibility in determining how to do so, as set out in section 8 of the Care Act.[87]

86 Department of Health and Social Care, Care and Support Statutory Guidance, October 2018, paras 5.17 and 5.19–5.20

87 As above, paras 5.7–5.9

Annex – the definition of "business failure" for the Care Act 2014

Regulation 2 of the Care and Support (Business Failure) Regulations 2015 (SI 2015/301)

(1) For the purposes of sections 48 and 50 to 52 of the Act—

(a) business failure has the meaning given in paragraphs (2) to (5); and

(b) a provider is to be treated as unable to carry on a regulated activity or to carry on or manage an establishment or agency because of business failure if the provider's inability to do so follows business failure.

(2) Where a provider is not an individual, business failure means that, in respect of that provider—

(a) the appointment of an administrator (within the meaning given by paragraph 1(1) of Schedule B1 to the 1986 Act or paragraph 2(1) of Schedule B1 to the 1989 Order) takes effect;

(b) a receiver is appointed;

(c) an administrative receiver as defined in section 251 of the 1986 Act or article 5 of the 1989 Order is appointed;

(d) a resolution for a voluntary winding up is passed other than in a members' voluntary winding up;

(e) a winding up order is made;

(f) an order by virtue of article 11 of the Insolvent Partnerships Order 1994 (joint bankruptcy petition by individual members of insolvent partnership) is made;

(g) an order by virtue of article 11 of the Insolvent Partnerships Order (Northern Ireland) 1995 (joint bankruptcy petition by individual members of insolvent partnership) is made;

(h) the charity trustees of the provider become unable to pay their debts as they fall due;

(i) every member of the partnership (in a case where the provider is a partnership) is adjudged bankrupt; or

(j) a voluntary arrangement proposed for the purposes of Part 1 of the 1986 Act(7) or Part 2 of the 1989 Order has been approved under that Part of that Act or Order.

(3) In relation to a provider who is an individual, business failure means that—

(a) the individual is adjudged bankrupt; or

(b) a voluntary arrangement pursuant to Part 8 of the 1986 Act or Part 8 of the 1989 Order is proposed by or entered into by the individual.

(4) For the purposes of paragraph (2)(h), a person is a charity trustee of a provider if—

(a) the provider is a charity that is unincorporated; and

(b) the person is a trustee of that charity.

(5) For the purposes of paragraph (2)(h), the charity trustees of a provider are to be treated as becoming unable to pay their debts as they fall due if—

(a) a creditor to whom the trustees are indebted in a sum exceeding the relevant amount then due has served on the trustees a written demand requiring the trustees to pay the sum so due and the trustees have for 3 weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor;

(b) in England and Wales, execution or other process issued on a judgment, decree or order of a court in favour of a creditor of the trustees is returned unsatisfied in whole or in part;

(c) in Scotland, the inducíae of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest, have expired without payment being made; or

(d) in Northern Ireland, a certificate of unenforceability has been granted in respect of a judgment against the trustees.

Other Library briefing papers on adult social care

- Social care: paying for care home places and domiciliary care (England)
- Adult Social Care Funding (England)
- Health and Social Care Integration
- Social care: Government reviews and policy proposals for paying for care since 1997 (England)
- Social care: the Conservative Party's 2017 General Election pledges on how individuals pay for care (England)
- Adult social care: the Government's ongoing policy review and anticipated Green Paper (England)
- Social care: care home market – structure, issues, and cross-subsidisation (England)
- Social care: Announcements delaying the introduction of funding reforms (including the cap) (England)
- Social care: how the postponed changes to paying for care, including the cap, would have worked (England)
- Social care: Recent changes to the CQC's regulation of adult residential care (care homes)

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