HOUSE OF COMMONS LIBRARY

BRIEFING PAPER

Number 8004, 21 May 2019

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 a provider suffers business failure.

On 30 April 2019, Four Seasons Health Care 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 joins the other members of the "Big Four" largest care home providers that are also currently being offered for sale; the FT reported the other members of the "Big Four" – which were put up for sale during the period April to July 2018 – were "struggling to find buyers as a result of a Brexit-related downturn in commercial property sales and a long-term decline in fees paid by local authorities for elderly care".

Four Seasons Health Care 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 over 250 care homes in the UK, and accounts for 4% of all beds, totalling 17,504 beds across its brands (figures as of May 2018). 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). 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 run by Guy Hands, a move which involved 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.

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 because of their size, geographic concentration or other factors which would be difficult for one or more local authorities to replace, and therefore where national oversight is required. In addition, the temporary duty of local authorities to meet people's needs when a provider suffers business failure is highlighted.

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 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]

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, 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.

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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 Financial Times 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 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 over 250 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 associated with the Four Seasons 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]

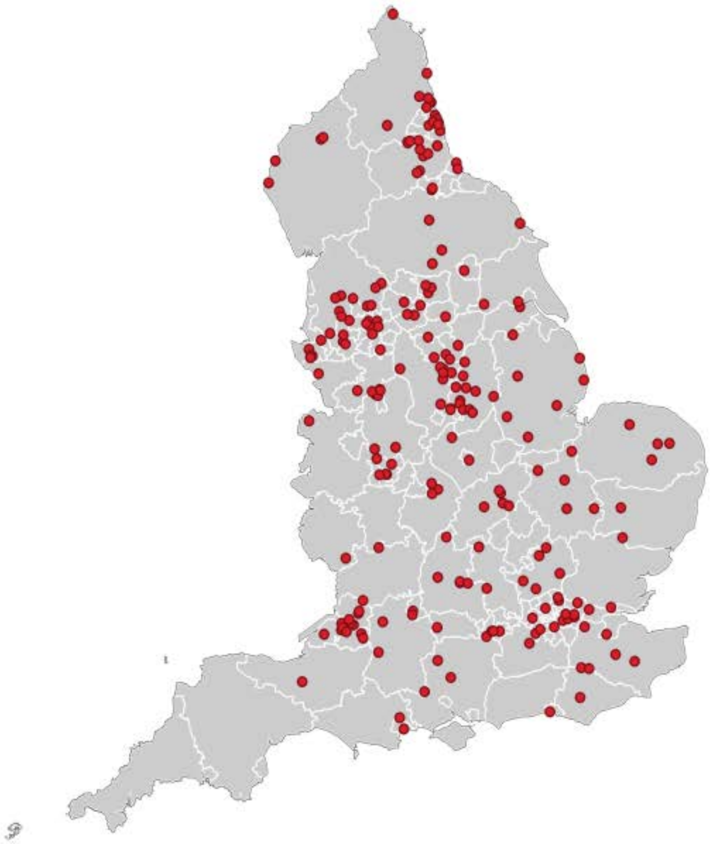
[11] For more information, see the Library briefing paper, Social care: care home market – structure, issues, and cross-subsidisation (England).

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

[13] Four Seasons Health Care, About Four Seasons Health Care, webpage accessed on 30 April 2019

[14] Terra Firma, Investments: Four Seasons Health Care Is The Uk's Largest Independent Elderly And Specialist Care Provider, webpage accessed on 30 April 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).[16]

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

LaingBuisson note that the care home market is dominated by for-profit private providers, who account for 76% of 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 the difference to be "on average 41%".[18]

As such, those care homes whose business model relies to a significant extent on clients in receipt of local authority funding support may be more vulnerable to financial pressures due to the lower fees paid. 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[local authority]-fees are currently, on average, as much as 10% below total cost for these homes".[19]

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 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". [20]

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

[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, p13, para 38

[20] As above, p39, para 2.37 and p14, para 39

[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 30 April 2019

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 car 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 Financial Times (FT). This, the newspaper 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.

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

Terra Firma acquired the Four Seasons Health Care Group in 2012, only a few months after the Group had itself bought many of the care home assets from the collapsed Southern Cross Healthcare Group which, prior to its failure, had been the country's largest care home group.

LaingBuisson noted that Four Seasons was established in the early 1980s, and grew "organically and by merger and acquisition" before being acquired by the financial services company Allianz (for a reported £775 million). It was sold in August 2006 to the sovereign wealth-fund, the Qatar Investment Authority (for the price of £1.4 billion including assumed debt).[25]

In 2011, as noted above, the then largest care home provider, Southern Cross Healthcare Group, fell into administration; in its July 2018 market report, LaingBuisson reflected that this was "by far the most important failure in the short life of the independent care home sector" but 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 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".[26]

Southern Cross's failure was, it appears, seen as an opportunity by Four Seasons: it acquired the bulk of Southern Cross's portfolio. 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.[27]

Following this development, 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%".[28]

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.

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25 LaingBuisson, Care Homes for Older People – UK Market Report, 29th edition, July 2018, p225
26 As above, p221
27 LaingBuisson, Care of Older People – UK Market Report, 26th edition, April 2014, p120
28 As above, p120

The Financial Times (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 new owner, 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.[29]

A brief timeline of key 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";[30]
- September 2015 – Moody's, a debt rating agency, downgraded the Group's debt, so pushing its bonds to "junk" status;[31]
- 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";[32]
- 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;[33]
- October 2017 – the Group announced "its intention to launch financial creditor and leasehold estate restructuring".[34] 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";[35]
- November 2017 – the Group "proposed relinquishing control of the debt-laden company to its creditors for a 'nominal sum',

29 "Terra Firma to buy Four Seasons for £825m", Financial Times, 30 April 2012
30 "Terra Firma appoints adviser to consider Four Seasons' future", Financial Times, 23 November 2014
31 "Four Seasons launches emergency review of finances", Financial Times, 22 October 2015
32 As above
33 "Four Seasons in crisis talks as earnings slide 39%", Financial Times, 27 April 2016
34 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
35 Care Quality Commission, CQC response to Four Seasons Health Care announcement, news story, 17 October 2017

having incurred £450m in losses", reported the FT. One of its principal creditors was H/2 Capital Partners;[36]

Box 3: H/2 Capital Partners

H/2 Capital Partners has been described as "a mystery firm that few know anything about".[37]

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".[38] The Financial Times described it as a "distressed debt fund".[39]

Its Chief Executive Officer is Spencer B. Haber, whose career has included roles with major Wall Street banks including Lehman Brothers and Solomon Brothers.[40]

- 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".[41] The CQC said that it was "encouraged to see that a standstill agreement has now been agreed";[42]
- 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 Partners "even more control" over the Group, further to the December 2017 standstill agreement;[43]
- 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".[44] 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";[45]
- 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

36 "Terra Firma offers to hand creditors control of Four Seasons", Financial Times, 8 November 2017

37 "More than 360 struggling British care homes to fall into hands of secretive US tycoon", This is Money, 11 December 2017

38 Bloomberg, Capital Markets – Company Overview of H/2 Capital Partners, webpage accessed on 1 May 2019

39 "Opinion: Lombard – Hands' private-equity approach is not helping the aged", Financial Times, 11 December 2017

40 Bloomberg, Capital Markets – Company Overview of H/2 Capital Partners: Executive Profile – Spencer B. Haber, webpage accessed on 1 May 2019

41 "Care provider Four Seasons temporarily bailed out", LocalGov, 9 February 2018

42 Care Quality Commission, Update on CQC's financial monitoring of Four Seasons, 14 December 2017

43 "Care provider Four Seasons temporarily bailed out", LocalGov, 9 February 2018

44 "BREAKING NEWS: Four Seasons being prepared for possible sale", Care Home Professional, 30 October 2018

45 "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

care for our residents and patients and time to complete an orderly sale process and transition to new ownership";[46]

- 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.[47] It added that the administrators, would, among other things, immediately commence the independent sales process.[48]

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46 "BREAKING NEWS: Four Seasons secures additional funding as it prepares for sale", Care Home Professional, 13 March 2019

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

48 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

4. The proposed sale of the Group

4.1 Previous attempts and the current proposal to sell the Group

The Financial Times 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.[49]

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 Financial Times contended that this move was intended to enable H/2 Capital Partners "to sell the business without any ongoing obligations".[50]

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".[51] 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 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";
- the state of the market for care home businesses – the Group is entering an already crowded market place for the sale of big care

[49] "Four Seasons launches emergency review of finances", Financial Times, 22 October 2015
[50] "Care home operator Four Seasons appoints administrators", Financial Times, 30 April 2019
[51] HCWS1532 1 May 2019

home business. Indeed, the other members of the "Big Four" (HC-One, Barchester, Care UK) are already up for sale, together accounting for some 14% of care home beds. The dates the sales were announced were:

- Care UK – April 2018;[52]
- HC-One – May 2018;[53]
- Barchester – July 2018;[54]

- uncertainty over Government policy – 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. However, with no firm publication date set for the Green Paper (which will put forward proposals for reforms for when individuals have to pay for social care) – which itself will only be a consultation – or the Spending Review to determine local authority funding in this area, it appears that the uncertainty is set to continue.[55]

Box 4: Uncertainty over social care policy

In March 2017, the Government announced that it would publish a Green Paper on social care. It is expected to focus on proposals for when individuals should become eligible for local authority funding support for social care, after previous reforms were delayed and then indefinitely postponed.

The publication of the Green Paper has already been delayed a number of times, and the current position is that it will be published "at the earliest opportunity" although media reports in April 2019 indicated that publication would not happen until the UK's exit from the European Union was "resolved".[56]

Even when it is published, the Green Paper will only be a consultation paper to which responses will be invited. The Government would be expected to then consider those responses and publish its own response (e.g. a White Paper), and legislation may be required to implement the proposals. As such, and especially given the history of past delays in this area, it may be some considerable time before clarity is achieved.

In particular, should the Government propose that more people could be eligible for local authority funding support this could have a significant impact on the future profitability of care home businesses. More generous eligibility criteria could see the client mix of many care homes tilt towards local authority funded clients and away from self-funders, who typically pay 41% more for the same service according to the CMA (see Box 1 above).[57] 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[58] – clarity on this point might be provided when the forthcoming Spending Review is published (for which a date has also yet to be set).

For more information, see the Library briefing papers Social care: forthcoming Green Paper (England) and Adult Social Care Funding (England).

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52 "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".
53 "Britain's biggest care home business for sale", Financial Times, 21 May 2018
54 "Care home group Barchester put up for sale", Financial Times, 16 July 2018
55 For more information on this point, see section 6 of the Library briefing paper, Social care: forthcoming Green Paper (England).
56 "New social care betrayal: Plans to fix our system's crisis are delayed AGAIN as experts warned that 60,000 elderly people died while waiting for help", Mail Online, 29 April 2019
57 Competition and Markets Authority, Care homes market study – Final report, 30 November 2017, p40, para 2.40
58 See also p208, para 14.26 of the Competition and Markets Authority, Care homes market study – Final report, 30 November 2017.

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

Prompted by the collapse of Southern Cross Healthcare in 2011,[59] 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.[60]

The Care and Support Statutory Guidance issued by the Department of Health and Social Care 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.[61]

Regulation 2 of the Care and Support (Business Failure) Regulations 2015, 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 failure, it is required to tell the local authorities which it thinks will

59 HL Deb 22 July 2013 cc1141–1142

60 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)

61 Department of Health and Social Care, Care and Support Statutory Guidance, October 2018, para 5.23

> 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.[62]

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.[63]

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

63 As above, paras 5.7–5.9

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

(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 inducia e 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.

Version control

1.0	30/4/19	Published
2.0	1/5/19	Section 4 ("The proposed sale of the Group") added together with the CQC and Government's response to developments, updates to other sections, and explanatory text boxes added
3.0	20/5/19	Statistics added, updates provided and more information relating to offshore ownership (including Box 2) added
4.0	21/5/19	Changes made regarding launch of sales process in October 2018, and the role of the administrators in selling the Group

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BRIEFING PAPER
Number 8004
21 May 2019