CARE HOMES IN WALES: PROMOTING SOCIAL ENTERPRISE

Guide 1: An introduction to social enterprise and co-operatives for the care home sector

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cwmpas

Llywodraeth Cymru
Welsh Government

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INTRODUCTION

This guide provides an overview of social enterprise and co-operative models for the care and support sector and outlines how these models could be used to rebalance care home provision in Wales with a social impact focus.

Welsh Government describe rebalancing as a set of system changes:

Rebalancing means....

...Away from complexity. Towards simplification.

Away from price. Towards quality and social value.

Away from reactive commissioning. Towards managing the market.

Away from task-based practice. Towards an outcome-based practice.

Away from an organisational focus. Towards more effective partnership...

... to co-produce better outcomes with people.

Who is the guide for?

The purpose of this guide is to raise awareness of potential social enterprise and co-operative models in the care home sector. The guide is particularly aimed at staff, communities and charities that may wish to consider operating a care home in their local area. Current care home owners will also find this guide useful in considering a social enterprise or co-operative model to ensure a sustainable future for their homes. Local Authority and Local Health Board commissioning teams, working in social care, will also find this document of interest as they consider how best to fulfil their duty to promote social enterprise in social care under the Social Services and Well-being (Wales) Act 2014.

This guidance applies to all care home settings for adults and children.

BACKGROUND

The social care market is diverse, reflecting the wide range of care and support needs and the many ways in which they may be met. With such diversity, it might be more accurate to talk of social care 'markets' than of a single market. Some of these markets operate through competition whereas others are more co-operatively managed.

The residential care market for older people in Wales is fragile and has been for a number of years; even before the impact of the Covid-19 pandemic. The reasons for this fragility have been discussed at length in numerous reports.

Residential care markets for adults, children and young people are considered to be less fragile due to the very different procurement and funding arrangements in place.

It is acknowledged that the supply and demand issues are different across the different markets. However, it is clear that Wales needs a robust care home sector, which is sustainable for the long term and responsive to the needs of the most vulnerable members of society and our local communities. No single approach will achieve uniform sustainability so there will need to be a variety of strong private, public and social enterprise/co-operative sector businesses.

WHAT IS A SOCIAL ENTERPRISE?

There is sometimes confusion about what a social enterprise is. 'Social enterprise' can be considered as an umbrella term, that encompasses a variety of different social business models, such as Community Interest Companies, co-operatives and mutuals.

The Vision and Action Plan for social enterprise in Wales 'Transforming Wales through Social Enterprise', defines a social enterprise as:

"A business with primarily social objectives whose surpluses are principally reinvested in the business or in the community, rather than being driven by the need to maximise profit for shareholders and owners.

Their social, environmental, economic or cultural purpose is at the heart of what they do. This includes reducing social problems, tackling the climate emergency, improving the environment, building stronger communities and providing training and employment for those furthest from the labour market. They help build local economies, ensuring that wealth and resources are created and re-invested in local communities.

They aim to make a profit but unlike mainstream businesses the profit is reinvested towards business growth, and furthering their social, environmental, economic or cultural purpose. This purpose is set out in their governing documents."

Social enterprises are values-led organisations. These values mean they are uniquely placed to tackle the challenges facing Wales, in ways which benefit everyone. These values include:

- being transformative and creative – social enterprises take action to solve problems and bring people together to make changes that affect them positively.
- being collaborative – social enterprises help and support one another, share information and solve problems together.
- being accountable – they are democratic, involving customers and staff in open and fair decision-making. By giving staff and residents a voice, social enterprises embody the principles of Section 16 of the Social Services and Well-being (Wales) Act 2014
- being good employers – they usually pay at least a National Living Wage and treat people fairly, deliver equality of opportunity and have a more diverse workforce than businesses in the private sector.
- being responsible – they value the environment and use natural resources efficiently and carefully to minimise their impact.
- being inclusive – they work for and serve all sections of society regardless of gender, disability, age, sexual orientation, race, religion or belief.

CO-OPERATIVES

Co-operatives are a form of social enterprise which may be particularly suitable in a care home setting. Therefore, this guide will examine their potential separately from that of social enterprise, when discussing how this legal form could be used. Co-operatives are businesses which are jointly owned and democratically controlled by their workers, service users or members. Co-operative businesses operate within seven internationally-recognised co-operative principles:

1. Voluntary and open membership

Co-operatives are open-membership non-discriminatory organisations.

2. Democratic control

Co-operatives are democratic organisations controlled by their members, who actively participate in their decision-making processes. Representatives are elected and accountable to the membership.

3. Member economic participation

Members contribute equitably to, and democratically control, the capital of their co-operative.

4. Autonomy and independence

Co-operatives are autonomous, self-help organisations controlled by their members. If they enter into agreements with other organisations, or raise capital from external sources, they do so on terms that ensure democratic control by their members and maintain their co-operative autonomy.

5. Education, training and information

Co-operatives provide education and training for their members, their elected representatives, managers and employees so that they can contribute effectively to the development of their co-operatives. They inform the general public – particularly young people and opinion leaders – about the nature and benefits of co-operation.

6. Co-operating with other co-operatives

Co-operatives serve their members most effectively and strengthen the co-operative movement by working together through local, national, regional and international structures. Learning together is one way of making positive links between organisations, which can be built upon.

7. Concern for the community

Co-operatives work for the sustainable development of their communities through policies approved by their members.
(Social Business Wales)

SCALE OF SOCIAL ENTERPRISE AND CO-OPERATIVE SECTOR IN WALES

Within Wales there is a vibrant and diverse social enterprise sector. Research undertaken by Wales Co-operative Centre in 2019 showed that there were 2,022 social enterprises in Wales, employing an estimated 55,000 people. The total value of the sector to the Welsh economy is £3.18 billion (Wales Co-operative Centre, 2019). Approximately 19% (324) of social enterprises in Wales operate in the field of health and social care (Wales Co-operative Centre, 2019).

2022

SOCIAL ENTERPRISES

55,000

EMPLOYEES IN WALES

WORTH

3BN

TO THE WELSH ECONOMY

19%

OF SOCIAL ENTERPRISES OPERATE IN THE FIELD OF HEALTH AND SOCIAL CARE

STRUCTURE OF THE CARE HOME SECTOR IN WALES

204
CHILDREN'S HOMES

263
NURSING HOMES

790
HOMES FOR ADULTS AND OLDER PEOPLE

1257
CARE HOMES REGISTERED IN WALES

Care Inspectorate Wales interactive data tool details 1,257 care homes registered in Wales with placements for a total of 26,681 people of all ages:

- 204 children's homes (with capacity for 878 children) - increased from 160 in 2018;
- 790 homes for adults and older people (13,102 people) - reduced from 814 in 2015 ; and
- 263 Nursing homes (12,391 people) – this has remained the same since 2015.
  (CIW March 2020)

The majority of places for older people in care homes in Wales are funded by local government or the NHS. However, this varies by local authority area. In Monmouthshire, Denbighshire and Wrexham for example the majority of beds are occupied by self-funders, whereas in Neath Port Talbot, Gwynedd, Rhondda Cynon Taf and Ceredigion, the vast majority are funded by the local authority or NHS.

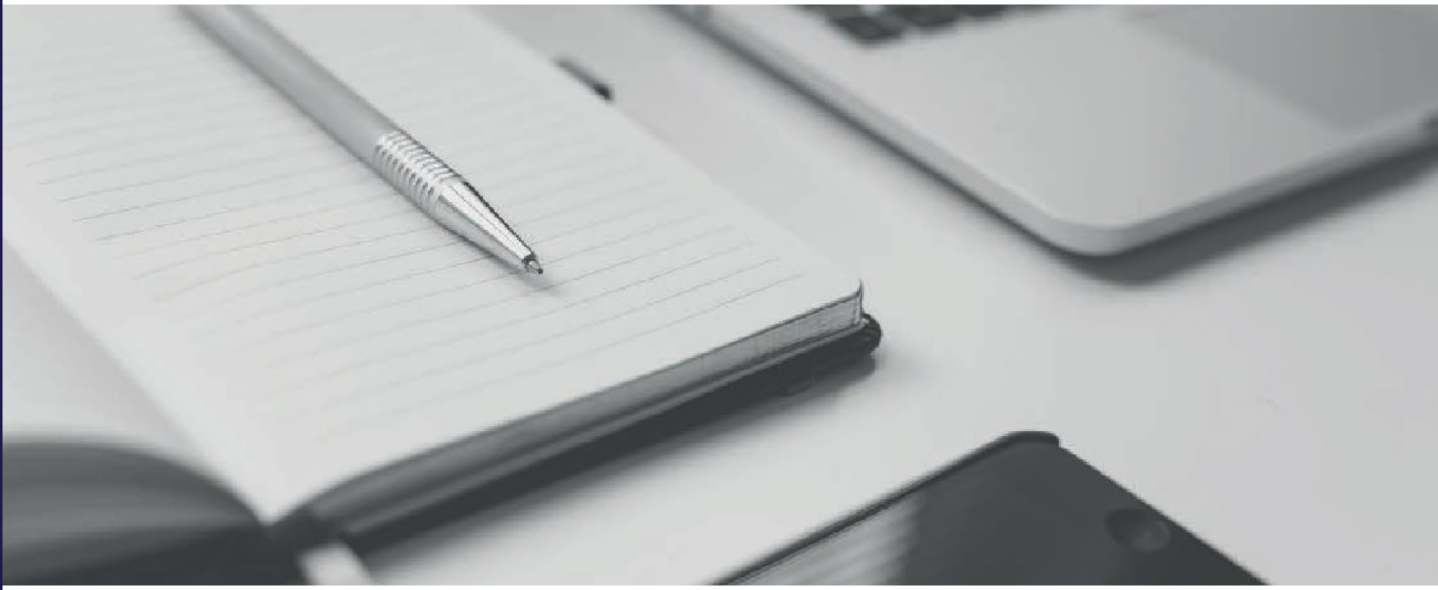
Care homes are either owned by local authorities, the private sector or third sector organisations. The third sector organisations currently operating in the sector are either charities or housing associations. At present there are no examples of social enterprise or co-operative care home models in Wales.

The majority (75%) of care homes for older people in Wales are owned by a single owner and/or an owner who has less than five homes. A much smaller percentage of homes are owned by larger group providers (8%) and 29% of care homes in Wales for older people are run by organisations based in England.*

Care homes, for older people can expect to function with occupancy of between 85%-90%. There are parts of Wales where care homes did not reach these levels before the pandemic. This was already presenting a problem for the sustainability of the sector which of course is further challenged by the lower occupancies now evident as a result of Covid-19. It is worth noting that occupancy rates for residential care homes for younger adults, children and young people can be lower, due to matching issues.

*2015 data, taken from Rapid Review for Care Homes in Relation to Covid-19 in Wales July - September 2020 By Professor John Bolton

A SUPPORTIVE POLICY AND LEGISLATIVE LANDSCAPE IN WALES



Wales has a unique policy and legislative landscape that supports the development of social enterprise and co-operative models throughout the social care sector.

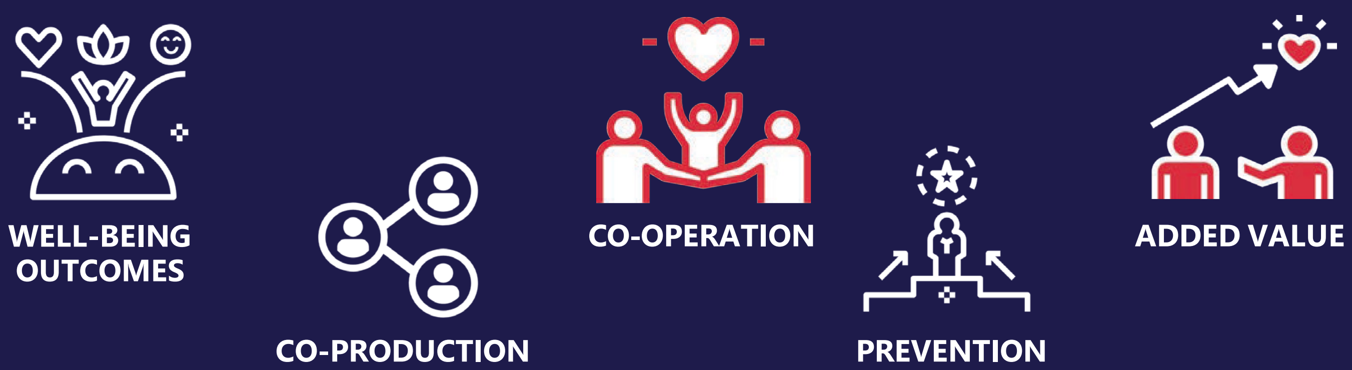
The key pieces of policy and legislation are outlined below:

The Social Services and Well-being Act (Wales) 2014

The overarching intention of the Social Services and Well-being (Wales) Act 2014 ('the 2014 Act') is to achieve sustainable social services. Section 16 puts a duty on local authorities to promote the development of not-for-private-profit organisations to provide care and support for carers, including social enterprises as well as the development of co-operative organisations or arrangements to provide care, support and preventative services.

The 2014 Act expects local authorities to involve the people for whom care and support or preventative services are to be provided in the design and operation of that provision. It is based on key principles, including:

- well-being outcomes
- voice and control
- co-production
- co-operation and partnership
- prevention and early intervention.



REGULATION AND INSPECTION OF SOCIAL CARE (WALES) ACT 2016

The Regulation and Inspection of Social Care (Wales) Act 2016 (RISCA) builds on the success of the regulatory regime in Wales and places the quality of services and improvement at the heart of regulation. It strengthens protection for those who need it, establishes a regulatory system that is in-line with the 2014 Act and creates a regulatory system that is centred around people who need care and support, and the social care workforce.

RISCA provides the statutory framework for the regulation and inspection of social care in Wales. It:

- reforms the regulation of social care in Wales by placing people who receive care and support at its centre
- reforms the regulation of the social care workforce
- renames the Care Council for Wales and the Social Services Improvement Agency as Social Care Wales, giving them new powers from April 2017
- reforms the inspection of local authority social service functions
- provides a robust response to the lessons learned from previous failures in the system.

Five principles underpin the new system of regulation and inspection:

- reflecting the changes brought about by the 2014 Act
- putting people at the centre of their care and support
- developing a coherent and consistent Welsh approach
- tackling provider failure
- responding quickly and effectively to new models of service and any concerns over the quality of care and support.

SUPPORTING CARE COMMISSIONERS AND PROCURERS TO PROMOTE "SOCIAL VALUE" MODELS OF DELIVERY

his report explores the meaning of social value and draws on the wording contained in Section 16 of the 2014 Act:-

"Promoting social enterprises, co-operatives, user-led services and the third sector

(1) A local authority must promote –
a) the development in its area of social enterprises to provide care and support and preventative services;

b) the development in its area of co-operative organisations or arrangements to provide care and support and preventative services;

c) the involvement of persons for whom care and support or preventative services are to be provided in the design and operation of that provision;

d) the availability in its area of care and support and preventative services from third sector organisations (whether or not the organisations are social enterprises or co-operative organisations)."

The models outlined in this guide may further assist commissioners and procurers as they explore social enterprise and co-operative solutions in the social care market.

Prosperity for All

Prosperity for All is a key strategic document launched by Welsh Government in 2017. It sets out the Welsh Government's commitment to "health in all policies", to make a difference to wider social and economic influences such as housing, parenting, education and employability. One of the aims of this document is to build resilient communities, culture and language. It aims to work with communities to help maintain local facilities that bring people together, helping communities take ownership of assets in their local area. Core to these aims is supporting a strong foundational economy.

The foundational economy provides the basic goods and services on which every citizen relies and which keep communities safe, sound and civilized. Care and health services, food, housing, energy, construction, tourism and high street retail are all examples of the foundational economy. These industries and firms are there because people are there. Social businesses are at the heart of the foundational economy. Where mainstream businesses have withdrawn from the market, social businesses provide much-needed local services and in doing so create local employment opportunities. Welsh Government has supported a number of innovative social care projects through the Foundational Economy Challenge Fund, such as Community Care Collaborative.

"The foundational economy provides the basic goods and services on which every citizen relies and which keep communities safe, sound and civilized."

A Healthier Wales 2018

A Healthier Wales is the Welsh Government's long-term plan for health and social care. It sets out a broad framework of commitments and actions to ensure everyone in Wales has longer, healthier and happier lives, and remain active and independent in their own homes for as long as possible. It also sets out an ambition for a whole system approach to health and social care, with the third sector and social businesses being referenced as key delivery partners to support the transformation of services.

Third sector organisations including social businesses are well placed to support the desired shift of services from hospitals to communities, and from communities to care homes. The third sector is referenced as a key partner in delivering innovation in health and social care delivery mechanisms with good outcomes and demonstrable value for money. Over 10% of third sector organisations in Wales are active in the field of health and social care, accounting for the highest rates of employment in the sector (WCVA, 2019).

> **Third sector organisations including social businesses are well placed to support the desired shift of services from hospitals to communities, and from communities to care homes.**

The Parliamentary Review into Health and Social Care

The Parliamentary Review into Health and Social Care was established on a cross-party basis, to advise on how the future challenges of health and social care could be met. Their report was published in January 2018 and contains a number of recommendations, for example; Recommendation 3:

> **Bold new models of seamless care – national principles, local delivery.**
>
> **"Move to a seamless new way of working in localities.......... There should now be rapid acceleration of action to develop, implement, and evaluate: seamless care close to home in localities; proactive improvement of population health and wellbeing; and reoriented specialised care."**

Market stability reports and re-shaping social care

The 2014 Act establishes a framework for regional partnership working to strengthen strategic commissioning of care and support across Wales. The seven Regional Partnership Boards (RPBs) are required to prepare and publish market stability reports every five years, linking into the five-year cycle for producing population assessments and area plans. In doing so, RPBs must assess the sufficiency of care and support, and the state of local and regional markets for regulated services (including care homes for adults and children). The first reports are due by 1 June 2022.

The production of these reports will be an opportunity to engage social care and health commissioners, citizens, including; people who need care and support, carers, and providers from across all sectors, in helping to shape a diverse and stable market for the future. There will be a clear correlation to the duty under section 16 of the 2014 Act to promote third sector, social enterprise and co-operative models of delivery.

Well-being of Future Generations (Wales) Act 2015

Co-operatives and social enterprises can make a significant contribution to meeting the well-being goals set out in the Well-being of Future Generations (Wales) Act 2015. They can help deliver the goals of building a prosperous and resilient Wales by developing an economy and communities that are strong, resilient and sustainable. Co-operatives and social enterprises deliver sustainable economic growth while fostering positive social change and innovation. They are anchored in their communities with investment staying in the community and recycled for wider economic and social benefit. While they often operate in hard-to-reach, economically challenged communities they tend to employ more people relative to turnover than other businesses.

Better Jobs Closer to Home

This was originally a campaign developed by the TUC in Wales in 2015 to promote the development of better-paid employment opportunities closer to where people live. The campaign called for Welsh Government to use public procurement policies to create jobs in places like the South Wales Valleys. Setting up locally-owned care and support co-operatives will respond directly to this agenda.

SOCIAL ENTERPRISE AND CO-OPERATIVE MODELS FOR THE CARE HOME SECTOR

There are a variety of legal structures that social enterprises and co-operatives businesses can adopt. However, the most commonly used and relevant legal forms for the care home sector are considered to be the following:

- **Social enterprise structures**
  - A Community Interest Company (CIC)
  - A Company Limited by Guarantee
  - A Charity and a Trading Arm.
- **Co-operative structures**
  - Community Benefit Society (CBS)
  - Employee-ownership model
  - Multi-stakeholder co-operative

Each of these legal forms, when they could be implemented in the sector and how this can be done is considered below.

SOCIAL ENTERPRISE STRUCTURES

1. A Community Interest Company (CIC)

Is a company designed specifically for businesses who want to use their profits and assets for the public good. CICs are easy to set up, with all the flexibility and certainty of a standard business, but with some special features to ensure they are working for the benefit of the community. CICs have a statutory asset lock, which means all assets owned by the CIC can only be applied to its social purpose. This would be particularly important for the care home sector where the service is dependent on the use of a building. CICs report to an independent regulator on how they are delivering for the community and involving stakeholders in their activities.

A new CIC will need to convince the regulator that it has been set up to benefit a community and must pass a community interest test. CICs also have to produce annual community interest reports. A CIC can be limited by either guarantee or by shares. CICs that are limited by shares usually have the provision to pay a dividend to shareholders subject to conditions imposed by the regulator. Because of this, some public funding bodies may not fund a CIC limited by shares. Therefore, it is considered that the most suitable approach would be to adopt a model limited by guarantee.

The CIC model has been used extensively in the health mutualisation agenda in England, such as Thurrock Lifestyle Solutions CIC, because of its multi-stakeholder governance model. Service users and staff can become members of the CIC, as well as other community stakeholders.

2. Company Limited by Guarantee

This legal form of social enterprise will normally provide a service for the benefit of a defined community (geographic or community of interest) and aim to make a profit to invest surpluses back into the business or make social/charitable donations. They cannot pay dividends to directors, employees or members and company assets are usually held 'in common', which means they must be transferred to similar organisations if the company is wound up. There are no shares and therefore no shareholders. As there is no means of attracting working capital from shares, guarantee companies often seek funding from grants or access to loan finance to pay for capital and revenue costs. Companies limited by guarantee will stipulate these characteristics in their articles of association.

3. Charity Trading Arm

A charity working in the care home sector may also develop a social enterprise trading arm. Charities who want the freedom to trade as a separate company and reduce the risk to the parent charity will often consider setting up a trading arm/trading subsidiary, such as the Care and Repair movement within Wales and Platfform.

The company could be owned and controlled by one or more charities and is usually set up to take on risks on behalf of and generate income for the parent charity/charities. Trading subsidiaries must be used for a non-primary purpose. Non-primary purpose trading is trading intended to raise funds for the charity, as distinct from trading, which in itself furthers the charity's objects. Charities may engage in such trading only where no significant risk is involved.

A trading subsidiary can be set up using a company limited by shares where the parent charity or charities are the shareholders, or a company limited by guarantee where the parent charity or charities are the members. It is also possible for a charity to be the sole shareholder or member within a trading subsidiary.

Trading subsidiaries are usually funded by share capital or loans from the parent organisation. However, for charitable subsidiaries, the parent charity's trustees must be able to justify financial support for a trading subsidiary as an appropriate investment of the charity's resources. The Charity Commission suggests that it is good practice to also seek investment funding from other sources. A parent charity must not make donations to the trading subsidiary, in cash or in kind (whether by purchasing stock for the subsidiary and donating that stock to the trading subsidiary, or otherwise); it must not settle the debts of a trading subsidiary; and it must, if allowing the use of its staff, buildings or equipment by a trading subsidiary, make fair charges for those uses.

There is nothing stopping several charities coming together on a collaborative basis and establishing a jointly owned trading arm to deliver care home provision. This may be beneficial for drawing on the skills and expertise of several bodies rather than just one.

Within Wales, there are a number of local and national charities operating care homes, such as Leonard Cheshire, Carningli Trust and Elidyr Communities Trust. Developing a social enterprise trading arm could be suitable for charities that have strong ties to their local communities and see opportunities to diversify their existing skills and knowledge into other care settings, such as residential care.

CO-OPERATIVE STRUCTURES

1. Community Benefit Society (CBS)

Community Benefit Societies (CBS) are a type of community-owned co-operative, run primarily for the benefit of the community at large, rather than just for the CBS members. This means they must have an overarching community purpose reaching beyond their membership.

Although not a company under the Companies Act 2006, a society is still a legally recognised form under the Co-operative and Community Benefit Societies Act 2014 and affords its members with limited liability. Enterprises using this structure must have a special reason for being a CBS rather than a company, such as wanting to have democratic decision-making built into their structure. Although CBSs have the power to pay interest on members' share capital, they cannot distribute surpluses to members in the form of a dividend. CBSs can opt to have a 'statutory asset lock' which has the same strength as the asset lock for charities and community interest companies. This type of asset lock is not currently available for co-operatives.

When could this model be used?

This model may be suitable as a long-term care home transition option. This could be appropriate for a private care home business that is anchored into its community. If there was a risk that the facility could be lost to the community because there was nobody prepared to buy the business, then the owner could look at the potential of selling the business to the community.

How does this model work?

A CBS could be established that included members drawn from the local community, care home residents, as well as workers within the business. All members would have one vote at the AGM and elect some of their peers to sit on the board of directors to run the co-operative. The society could be registered to allow development of a community share issue to raise finance from its members or the wider community to purchase the business. Members would receive interest on their share capital to maintain the investment in the society but profits would be reinvested in the co-operative to continue improving the service.

AN EXAMPLE OF THIS MODEL

CARE PLUS

Care Plus in Lincolnshire is a CBS, owned by its employees, and with profits re-invested for the good of the community. It has 800 staff and a strong network of volunteers. It offers community healthcare, including; palliative and specialist nursing, two GP practices and a community cardiology service and intermediate care at home, as well as a wide range of social care and wellbeing services. These range from domiciliary care to autism support and an older people's residential care home in which they have invested, and to which they supply staff.

Care Plus has a Council of Governors which are elected representative staff members of whom four are in non-managerial roles and volunteers - including two North East Lincolnshire councillors. The Council of Governors meets bi-monthly and acts as a link between staff, the community and the multi-disciplinary Board of Directors. Nine out of ten Care Plus employees live in North East Lincolnshire and 44% of supply chain spend remains there. Its headquarters is also a community resource centre, with rooms available for community hire and co-location with employability services, which provide a range of volunteering, internship, apprenticeship and Intermediate Labour Market opportunities within health and social care.**

> **Nine out of ten Care Plus employees live in North East Lincolnshire and 44% of supply chain spend remains there. Its headquarters is also a community resource centre, with rooms available for community hire and co-location with employability services.**

**Data extracted from www.careplusgroup.org

2. EMPLOYEE-OWNERSHIP MODEL

What is an employee-ownership model?

Employee ownership is where employees have a 'significant and meaningful' stake in a business. There are several ways an employee ownership model could be used in a residential care setting:

1. A longer term transitional sale/handing over of a business to employees from the owner.
2. Short term sale/handing over of a business to employees from the owner.
3. A mutualisation process for care homes currently in local authority ownership that could be spun out into employee ownership, under Regulation 77 of the Public Contracts Regulations 2015.
4. The establishment of a new worker-owned co-operative.

When could these models be used?

There is significant research which shows that businesses owned by the employees thrive during periods of economic hardship, but also remain grounded in the local community and have a higher regard for broader community benefit (Employee Ownership Association).

How do these models work?

In the four approaches outlined above, employee ownership would adopt a variety of forms, either:

- direct (individual share or membership) ownership
- indirect ownership (via a trust)
- hybrid ownership (this combines ownership of a strategic block of shares in a trust with individual share ownership).

Considerations

A direct employee-owned model could be suitable for the long-term transfer of a private care home to its employees. This model is suitable where the exiting owner has an emotional connection to their workforce and wants to protect their jobs, as well as look after the long-term interests of residents. This process requires time and planning and this approach is only successful if the exiting owner is prepared to wait for their capital return from the business, and take it gradually over the sale period. This can help support the longer-term financial viability of the business as it does not rely in having to raise large amounts of capital to pay an exiting owner in a short term period.

Generally, indirect ownership, via a trust makes the employee ownership model easier to set up and run. However, this does not make it an automatic best choice for all companies, some of which may feel that individual ownership is better suited to their circumstances. Using an employee-ownership trust, the existing care home business would be sold for an agreed price to the trust. The trust would be comprised of independent trustees as well as representatives from the workforce. The trust would operate the business, with all profits going back to the exiting owner until they have received the full purchase price for the business. During this time, the owner can slowly withdraw from the business, whilst developing the management capacity within the staff team, so when the owner finally retires or leaves the business, the new ownership team are ready to take over. When the exiting owner has been fully paid then the trust will decide what to do with its profits. They could be re-invested into the business to sustain or expand it, or they could decide to reward the staff team for their commitment similar to how the John Lewis Partnership operates.

A worker-owned co-operative model could potentially be used where the owner wants the sell the business in the short term and where the staff are interested in buying the business. The business must be profitable or at least the workers must feel confident that they can make it profitable with some changes to the business model. The workers would need support to review existing and additional skills required within the co-operative, to replace those of the exiting owner. However, this would depend how 'hands on' the owner had been within the business. Highland Home Carers is an example of an employee-owned business working in the social care sector in Scotland.

The workers are involved in decision-making and how any surplus is shared out or reinvested in the business. How this works in practice depends on what the co-operative has written in their constitutional rules.

Financing the purchase of a care home could be challenging. It is highly unlikely that workers will be in a position to purchase equity shares within the co-operative. Even if this was possible, it would mean that any profits from the co-operative would need to be distributed to the worker members who had invested their own money to set up the co-operative. This is a perfectly legitimate co-operative model but would not necessarily mean profits are kept within the co-operative and focused on improving care and upgrading facilities. To maintain this focus, the workers would need to buy the business using affordable debt. It is important to remember that one issue with financing co-operatives that are not distributing profit to members, is the request from banks for personal guarantees. If the workers in a co-operative do not get a financial reward from profits, they should not be asked to sign personal guarantees.

Additional advice and guidance from the Employee Ownership Association can be found here.

3. Multi-stakeholder co-operative

What is a multi-stakeholder co-op?

Membership of a multi-stakeholder co-operative is organised by two or more stakeholder groups which might include consumers, workers, volunteers or general community supporters. So rather than being organised around a single class of members, multi-stakeholder co-operatives have a more diverse membership base. This means that the co-operative's mission – their reason for existing – can be broader than that of a co-operative with just one class of stakeholder, and will recognise the interdependence of interests of stakeholders.

When could it be used?

This multi-stakeholder co-operative approach can help align the interests of otherwise competing stakeholders, and the structure is appropriate when there is a necessity to plan long-term for the needs of various stakeholders and the normal market relationship is leading to inefficient short-term planning.

How does the model work?

In the case of a care home, the multi-stakeholders could consist of a variety of groups such as workers and community members. There is also the potential to use the experience of registered social landlords, such as housing associations and private sector care providers or private investors, as part of the multi-stakeholder group. Local authorities and health boards could become members of the co-operative and this would be encouraged, although to date, getting this level of membership approved has been challenging due to liability considerations.

Equal Care Co-op is a collaborative platform co-operative that puts the relationship between the care receiver and the care giver at the heart of the service. Each person is able to choose the other and select when, where and how the support takes place. The organisation is based in the Calder Valley and is one of the first multi-stakeholder platform care co-operatives in the UK.

"This means that the co-operative's mission – their reason for existing – can be broader than that of a co-operative with just one class of stakeholder, and will recognise the interdependence of interests of stakeholders."

ALTERNATIVE APPROACHES FOR LOCAL AUTHORITIES TO CONSIDER

As well as the above, there are alternative approaches that could be used, by a local authority, to develop social business models within the care home sector. However, to date, these approaches have not been explored in Wales.

Approximately 17% of care homes, for older people in Wales are owned by local authorities (Bolton, 2020). Some local authorities, such as Wrexham County Borough Council and Powys County Council no longer own any care homes, where as Rhondda Cynnon Taf County Borough Council and Gwynedd County Council still own a substantial number of care home places within their local market. Local authorities recognise that owning care homes has significant resource implications, however, owning their own care facilities allows local authorities to maintain a level of control and influence within the care home sector. It is also worth noting that many recognise their care home portfolio requires or will require significant investment to meet the required standards in future. These are likely to be issues considered during market shaping.

An option for local authorities would be to consider the idea of 'spinning out' their care homes, using a not-for-profit business model, however costs such as TUPE and pension liabilities would need to be carefully evaluated. Some local authorities have used this approach already for their leisure and libraries services, such as Aura Leisure, which is a Community Benefit Society and was previously part of Flintshire County Council.

The 'spin out' approach could mean the provision of flexible services, with the local authority maintaining some level of control over the service. This could be structured as a Local Authority Trading Company (LATCs) or in a similar fashion to allow employees and stakeholders to become part of the ownership structure, using a Community Interest Company for example. The CIC model has been used extensively in healthcare spin outs in England and examples of LATCs in England include Essex Cares, Chelsea Care, Optails and Tricuro. In the case of a CIC, local authorities could use Regulation 77 of the Public Contracts Regulations 2015 to support the spin out process and shield it from standard procurement processes as a mutual.

Another option is for a care home to be owned by a third party with a social enterprise, co-operative or employee-owned business registered as the service provider, through a contractual arrangement. The third party could be a local authority or private company. For example, it is feasible for a care home to be owned by a local authority and operated by a housing association. This arrangement could potentially take the form of a partnership or lease. The procurement process for issuing the contract to run the service would need to be considered as well as any maintenance liabilities for facilities.

Alternatively, they could consider the idea of co-operative arrangements. If a care home becomes unviable there may be the opportunity for smaller care homes, particularly those in key geographic locations, to work together or even merge using a co-operative consortia arrangement to protect and maintain the care home facilities in those locations. This consortia approach could result in overall cost reductions, thus maintaining viability.

OVERVIEW OF THE LEGAL AND GOVERNANCE STRUCTURE OF EACH MODEL

The sections above provide a general overview of the potential structures that a social enterprise or co-operatives could adopt. However, before deciding which is the most suitable legal structure for the enterprise, namely; a social enterprise, a community benefits society, an employee-ownership model or a multi-stakeholder co-operative, thought should be given to the following issues:

- full remit of the business
- governance structure
- finances and how to will raise the finance required
- application of surplus – what will happen to any surplus or profit?
- dissolution and ownership - what will the organisation do with assets if the company is dissolved?

Most of the above should be evaluated during the business planning phase. The organisation should then be in a position to determine the most appropriate legal structure to suit the business. Do not choose a structure and then design the enterprise to fit – this is a common error at start-up. Be wary of guidance that advises a legal structure without a thorough look at exactly what sort of business is to be created.

Governance is the system and process framework to ensure the overall direction, effectiveness and accountability of a social or commercial organisation.

A board is a legal body with responsibility for overseeing the governance of a commercial or social venture. Individuals on the elected to the board can be called 'board members', or trustees, directors,, governors or committee members This is usually dependent on the legal structure chosen by the business.

It is important to distinguish between the governance of an organisation and the day-to-day running of it. For example, governance is not about paying wages or bills, but rather ensuring there are effective systems in place to make sure wages and bills are paid in a timely manner.

The role of the board includes overseeing compliance with policies and regulations whilst also safeguarding the organisational mission and meeting the demands of various stakeholders. Social businesses can limit their potential and undermine their mission when they do not invest appropriate effort and thought into creating a well-functioning governing board. If applied correctly, a board strengthens rather than weakens the leadership and helps to ensure the success of the business.
Boards can help management teams reach their business goals and mission in several ways:

- providing strategic support and expertise
- access to external networks
- ensuring the vision and legacy of the organisation
- signal credibility to external stakeholders, such as investors, contractors and customers.

Board members work with the chief executive to provide strategic direction, set organisational aims and ensure that the organisation remains true to its purpose.

Each of the legal structures outlined in this guide has a number of governance issues that should again be evaluated before deciding on the most appropriate business model. The following points should be considered:

1. When a charity develops a social enterprise trading arm, comprehensive administrative arrangements must be made between the trading subsidiary and the charity, ensuring they are entirely separate. Good governance suggests that the majority of directors of the trading subsidiary should not also be trustees of the charity.

2. In a worker-owned co-operative or CBS, the governing board is typically elected from the membership. The members of the governing board, by virtue of the fact they act for the members, have additional duties in law over and above those of a member.

3. On governing boards of small co-operatives comprised of all its existing members, , the strategic decision-making is typically undertaken by meetings of the entire membership. This style of collective management becomes more difficult as the size of the membership increases. Organisations with more than 15 members often move towards committee management, where the members elect a smaller governing board and delegate some of their powers to it.

4. Community enterprises, whilst more sustainable due to their community ownership, are prone to governance problems relating to the breakdown of the relationship between the members and the governing board. There can also be issues relating to a lack of clarity around roles and responsibilities. This is not a reason to be less co-operative or democratic, but rather a challenge to be a more co-operative, accountable and effective organisation.

5. With an employee-ownership model that uses a trust run by a board of trustees, whose role is not to manage the company, responsibility for day-to-day operations will remain within the remit of the company's existing management to ensure that the company is being led competently and in a way which ensures employee commitment and support.

6. In a trust-owned business, as outlined above, trustees need to manage the affairs of the trust. Employees elect a fellow (often non-management) employee to become a trustee. The role of the trustees is to manage the affairs of the employee benefit trust, they hold shares in the business and act in the best interest of beneficiaries. The employee-elected trustee works with other trustees (for example an appointed and an independent trustee) to hold the board of the trading business to account and ensure that the business is being run as a successful employee-owned business.

7. An employee ownership trust holds the shares for the benefit of employees. The trust will have discretions and powers granted to it under a document known as a "trust deed". The trustee will be required to act in accordance with the terms of the trust deed and this may contain some guidance on how trustees are expected to act in the interests of beneficiaries. The trustees hold the board of the principal company to account, ensuring they treat employees as owners and run the company in their interests.

   One key point to remember is that an employee ownership trust is a discretionary trust. Essentially, so long as the trustees believe they are acting in the best interests of beneficiaries, they can exercise their discretion rather than be instructed by beneficiaries to perform certain acts, such as selling the principal company and splitting the proceeds amongst the employees.

8. In a multi-stakeholder co-operative, the issue of governance needs to be carefully considered when the co-operative is established. Within the multi-stakeholder model, the size of each member organisation may vary significantly. The governance structure will need to ensure that each voice is heard and represented in a democratic manner. Within a multi-stakeholder model, there may be competing organisational interests and again this needs to be considered when the governance structure is designed.

GOVERNANCE WITHIN A RESIDENTIAL CARE SETTING

There is no "one size fits all" for governing boards. Specific organisational factors such as size, complexity or maturity influence the optimal governance structure. This is particularly relevant in a residential care setting.

When establishing a governance structure, the new owners will also have to be aware of legal requirements of the 'responsible individual' (RI) role, as set out in Regulation and Inspection of Social Care (Wales) Act 2016, further explained in the associated Statutory Guidance.

Within a social enterprise or co-operative structure, the RI will need to be a member of the governing board. It is likely that the most appropriate person for the RI role will be the CEO of the organisation. This means that any governance structure, which is usually made up of voluntary members, will have to be constituted to allow a paid employee to be a member of the board. It is also prudent to consider electing portfolio leads onto the board to ensure key areas of the business have appropriate scrutiny and focus (i.e. safeguarding, contract management, risk audit and governance).

There is no "one size fits all" for governing boards. Specific organisational factors such as size, complexity or maturity influence the optimal governance structure. This is particularly relevant in a residential care setting.

RISK ANALYSIS OF SOCIAL ENTERPRISE AND CO-OPERATIVES FOR THE CARE HOME SECTOR

There are a variety of risks associated with adopting a social enterprise or co-operative model within the care home sector and these are outlined below:

- the liabilities associated with operating a care home; in particular the legal duties and responsibilities associated with the role of the RI. The members of the new enterprise need to be fully aware of the burden of responsibility that they are taking on and seek appropriate support and training on an on-going basis to ensure they meet requirements.
- realistic financial (capital and revenue) costing and planning needs to have taken place, prior to takeover, to ensure the proposal is viable. The plans need to consider that many more people are being cared for at home rather than in residential care settings and that this may affect future income. This level of financial forecasting will be required if any form of capital investment is required.
- the new strategic leadership team need to ensure that they have the right skills, qualifications and experience for running the business to make it a viable operation. A full skills audit must be undertaken on an annual basis to ensure the appropriate skills and experience are in place.
- awareness and understanding of the legal responsibilities associated with running a care home, such as the Care Inspectorate Wales inspection regime and standards, local health board requirements (where nursing care is provided) and the role of local authorities and commissioning teams, particularly in terms of procurement processes and contract management.
- the proposed operators may find it difficult to access the funding required to buy the business and maintain the building to required standards (see section below).

- the enterprise will need to have expertise in financial planning necessary at the purchase stage, for the day-to-day operation and longer-term financial planning, particularly in relation to reinvestment in the business to meet the standards set out in the Regulation and Inspection of Social Care (Wales) Act 2016. New owners need to be aware of the income opportunities and limitations from:-

    (i) Self-funders and

    (ii) statutory commissioners.

- if the care home has ceased trading, the new enterprise will need to ensure immediate adherence to the standards, as set out in the Regulation and Inspection of Social Care (Wales) Act 2016. This may require leveraging significant capital to adjust buildings to meet requirements. A business that has closed may also need to be extended to maintain viability and meet the required physical and environmental standard (e.g. issues of shared rooms and en suite WC and shower facilities).
- the new owners will need to balance the requirements of delivering cost-effective, high quality care to ensure the viability of the care home, as well as ensuring they fulfil their social objectives as a social enterprise.
- strong governance mechanisms need to be in place and recruiting a board with the right skillset may be difficult, particularly as board members give their time on a voluntary basis. The enterprise may want to consider paying directors to attract a particular skill level which will need to be factored into the financial planning process, with affordability considered.
- decision-making in social enterprises and co-operatives can take time. There needs to be a balance between delegated autonomy for senior staff, to allow quick decisions to be made and a clear understanding of the decisions to be made at board level. Putting in place a clear 'schedule of delegation' will be essential to ensure clarity for all parties.
- mechanisms also need to be in place to allow the board to convene quickly.

FINANCING FOR SOCIAL ENTERPRISES AND CO-OPERATIVES

The funding required to purchase, operate and, where necessary, upgrade a care home may be significant. It is unlikely that a high street lender will provide the necessary capital and revenue funding for the purchase of a care home by a newly- formed social enterprise or co-operative.

There are a variety of sources of finance available to social businesses. As with private businesses, the types of finance fall into the categories of equity, grants and debt.

Traditionally, equity is a way of raising finance from external investors in return for selling a share of your business. However, access to equity finance may be limited for social businesses as the majority do not have share-based structures. This type of investment may however be suitable for a share-based Community Interest Company.

Many social enterprises and co-operative models rely of a matrix of funding options which often includes grant funding. However, grant funding generally comes with a variety of conditions, such as the recipients making a proportional financial contribution, known as match funding. Often, grant funding also has to be used for very specific purposes and may not be suitable for the purchase of a property.

A suitable option for a social enterprise, co-operative or employee-owned model could be long-term finance often referred to as 'patient capital', where an investor is willing to wait for a longer period of time before receiving a return on investment. Although high street lenders may not generally be willing to support this type of enterprise, their decision will vary depending on circumstances. Consideration should also be given to approaching the Development Bank of Wales, which was set up by Welsh Government to support businesses within the Welsh economy.

Social investment options should also be considered. Social investment is a type of equity, quasi-equity, or debt investment in a social business where both social and financial return are expected by the investors. There are a number of banks, such as Triodos Bank and Unity Bank, that are social lenders. It is also worth noting that some private investors will also consider longer-term social investment opportunities.

There are elements that banks and/or investors look for in order to support this type of venture and these would include:

i) management team –
a bank or investor would need to understand who the key individuals forming the new management team are and be assured that they have the skills to continue running the business successfully. In the context of the social care sector specifically, this would include understanding who is the primary Responsible Individual.

ii) ability to service debt / repay funding over time –
banks and/or investors would need to be satisfied that the historic business and new entity moving forward has sufficient levels of cash generation / profitable potential to repay any funding received. In relation to some recent funds, the Development Bank of Wales outline that they are now able to provide longer-term lending of up to 15 years to businesses. This could be helpful in opening up more opportunities for businesses in the social sector as repayment costs can be spread over a longer time period.

Other considerations

Involvement of key stakeholders

The process of establishing a social enterprise or a co-operative care home will take time, and it is advisable to discuss plans with the relevant local authority, local health board and Care Inspectorate Wales as soon as practicable. Their input will ensure that you have considered the full picture related to legal requirements, the registration process, and financial obligations in both the short and long term.

Business support

Within Wales, there are a number of organisations that specialise in support to establish these types of businesses, such as Social Business Wales. The majority of this support is fully-subsidised with advice and guidance tailored to your particular needs and circumstances. Obtaining basic legal advice should also be part of this business support process.

LINKS TO EXISTING SOURCES OF INFORMATION AND RESOURCES

A Guide to Legal Structures, Social Business Wales

Mapping the Social Business Sector in Wales, 2019, Wales Co-operative Centre;

Business support

Social Business Wales

Wales Co-operative Centre

Social Business Wales New Start

Employee Ownership Wales

Employee Ownership Association

Co-operatives UK

The Hive

Social Enterprise UK

Care sector

Care Inspectorate Wales

Care Inspectorate Wales – Registration guidance

Care Forum Wales

Relevant legislation and guidance

Regulation and Inspection of Social Care (Wales) Act 2016

The Regulated Services (Registration) (Wales) Regulations 2017

The Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017

The Regulated Services (Annual Returns and Registration) (Wales) (Amendment) Regulations 2019

The Regulated Services (Penalty Notices) (Wales) Regulations 2019

Useful reports

https://socialcare.wales/cms_assets/file-uploads/The-Economic-Value-of-the-Adult-Social-Care-Sector_Wales.pdf

https://careinspectorate.wales/sites/default/files/2018-06/180627-statistical-release-services-places-en_0.pdf

http://ppiw.org.uk/files/2015/11/The-Care-Home-Market-in-Wales-mapping-the-sector._pdf

https://gov.wales/sites/default/files/publications/2019-03/measuring-the-mountain-final-report.pdf

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