CARE HOMES IN WALES: PROMOTING SOCIAL ENTERPRISE

Guide 3: Social enterprise, co-operative and employee-ownership opportunities when purchasing a care home

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INTRODUCTION

This guide explores the social enterprise, co-operative and employee-ownership options and opportunities that are available when purchasing a care home. It sets out the key issues that social enterprises, staff or communities need to consider before they decide to purchase a care home. This guide also explores opportunities and challenges for purchasing an unviable care home or a care home which appears to be moving towards unviability.

Who is the guide for?

This guide is primarily aimed at staff, communities and charities that may wish to consider operating a care home in their local area, particularly one that is considered unviable by the current owner(s). Local authority (LA) officers and local health board (LHB) commissioning teams working in social care may also find this document of value when they are dealing with an unviable care home in their area/region. This guide will also provide a useful overview for care home owners faced with the prospect of owning an unviable business or are concerned about the future viability of their operation and are considering the potential of social business solutions.

THE CARE HOME SECTOR IN WALES

The environment within which care homes operate is extremely challenging and there are many factors that may affect the viability of a care home business. These range from the way the market operates, to day-to-day operational difficulties such as complex and extensive care needs, coupled with reducing lengths of stay, consequent occupancy pressures and high levels of staff turnover. This environment some care homes, regardless of operator status, may become unviable. This presents a challenge for commissioners and local authorities where that provision is still valued by communities. One option, encouraged by the Social Services and Well-being (Wales) Act 2014, is to consider operating those care homes as social enterprises, co-operatives or employee-owned businesses.

The care home sector is also changing, particularly in terms of older people's residential care provision, where people are living at home or in supported living environments for longer. The sector has also been severely affected by the Covid-19 pandemic and although the medium to long-term effects are not yet fully known, a forecast by Laing Buissons, published in February 2021, suggests that it will take two years for the care home sector to recover.

Comissioners and local authorities recognise there may be justification, based on market demand, to accept the loss of some of the current care home provision in certain areas of Wales. However, many care homes are strategically important to the flow across the health care system. All actions and decisions on the part of local authorities, as a result of a care home becoming unviable, are taken on an individual case-by-case basis.

> **The environment within which care homes operate is extremely challenging and there are many factors that may affect the viability of a care home business.**

OPTIONS AVAILABLE IN THE FACE OF AN UNVIABLE BUSINESS OR A BUSINESS MOVING TOWARDS UNVIABILITY

If a care home becomes unviable or appears to be moving towards unviablity, the care home owner has a number of options to consider.

There are a variety of scenarios that would result in a care home becoming unviable, including:

- imbalance of debt / income – this could include situations where owners have paid over the odds to acquire a new home or build/upgrade a property to a very high specification and then propose to charge fees considerably above statutory commissioning rates.
- Insufficient demand – not sufficient need, or property / operations not attractive to customers etc.
- insufficient income – fees paid by statutory commissioners too low poor operator capability.

The first option would be obtain business advice, such as contacting Business Wales. Business advisory organisations should be able to provide guidance on issues such as debt restructuring and the availability of any grant or loan finance.

Consideration should also be given to contacting other care providers and/or care association(s) to obtain advice about ways of potentially working together to make cost-efficiencies for example access to procurement frameworks for energy/supplies or other operating support. The adoption of an integrated approach between providers may help to address specific challenges of provision costs, such as night-time cover; out-of-hours management support and coverage of sparsely populated areas .

Depending on the financial structure of the business, owners should also contact their existing bank/lender to review the possibilities of varying their current loan or repayment structure. If a current bank or lender is unable to extend or vary your current financial arrangements, you could contact other providers such as Development Bank of Wales.

As soon as an existing owner becomes concerned about the viability of the business, it is advisable to contact the relevant local authority, Care Inspectorate Wales (CIW) and the local commissioning team. Working with the local authority should allow an owner to further investigate if they are eligible for any short-term further funding or any sector-specific hardship funds.

Also, by providing commissioners with open book accounts of the costs of care, it is possible to request a review of the current fees paid and/or advice on scope for cost efficiencies/savings.

Consideration must also be given to the business options to support the long-term financial sustainability of the business such as:

- management restructure
- collaboration or merger with another business
- pivoting the business to focus on dementia care and/or complex care
- staff buy-out
- market sale.

The above options all have the potential to result in additional risks to the business. Before borrowing any additional funding, the care home owner must be sure of the long-term viability of the facility. In today's economic climate, a bank or lender is unlikely to support the application unless thorough and realistic business and financial plans have been prepared and appraised.

However, if a care home owner has no choice but to close, they should issue notification that the business is in financial difficulty to Care Inspectorate Wales as the regulator. Care Inspectorate Wales will notify the local authority as soon as it is aware of any planned closure. Commissioners also have contracts with care homes and these stipulate notice periods for all parties. The notice periods vary by local authority, but they are usually between 28 days and three months. Details of the Statutory Guidance on escalating concerns with, and closures of, care homes providing services to adults can be found here.

Before borrowing any additional funding, the care home owner must be sure of the long-term viability of the facility.

A SOCIAL ENTERPRISE, CO-OPERATIVE OR EMPLOYEE OWNED MODEL PURCHASING A CARE HOME

As with any new business, there are a number of factors that need to be considered before a social enterprise, a group of employees or the wider community decides to buy a care home business. The following sections provide an overview of the business models that could be used, an outline of the sales process and the key considerations for social businesses thinking of buying a care home.

There are of course a number of benefits associated with operating a social business model. Such benefits include maintaining a key community resource, employing local people and using local supply chains with a focus on increasing social value.

It is also worth noting that within Wales there are a number of organisations specialising in business support, if an owner is thinking of selling to a social enterprise, a co-operative or to their employees. These include Social Business Wales and Employee Ownership Wales. The business support services will be able to provide advice and guidance to both the owner and the potential purchasing organisation. The majority of this support is available fully subsidised, and the advice and guidance given will be tailored to particular needs and circumstances.

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

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

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

Each of these models is considered in detail in Guide 1 of this series titled 'Introduction to social enterprise and co-operatives for the care home sector'

It is also worth noting that there may be occasions where a local authority considers taking over a care home which might otherwise become unviable. However, this approach would have to be supported by the existing range and level of care home provision identified in their population needs assessment or to ensure a sufficient and stable market for care home provision, in line with their market stability report. These local authority care homes could be managed using a traditional approach or the local authority could consider one of the alternative models suggested in Guide 1, for example, a spin out approach or a third party model.

THE PURCHASE PROCESS FOR A SOCIAL ENTERPRISE, CO-OPERATIVE OR EMPLOYEE-OWNED MODEL

Buying a business is always a challenge but buying a care home comes with some additional challenges. It is considered prudent on the part of the vendor and the purchaser to seek expert advice from both solicitors and accountants at the beginning of the sale/purchase process. Although this expert advice can be costly, it is likely to save both time and money as the process evolves. It is also advisable for a prospective social enterprise, co-operative or employee-owned model to speak to CIW at an early stage of the process, so that they are fully aware of the registration requirements and the time that the registration process is likely to take. On average, the registration process with CIW takes approximately 14 weeks, however, this will of course vary depending on individual circumstances.

Purchasers must also ensure that they are aware of the legal responsibilities and accountabilities associated with owning a care home.

Selling to a social enterprise, co-operative or employee-owned business is also likely to take longer than if a care home owner was selling the business to a private company. The steps in the sale process will vary according to specific circumstances and can vary depending on the type of model selected. A basic overview of the various sale process stages is outlined below.

STAGE 1: PRINCIPLES OF THE SALE

Establish that a buyout is in principle possible	For a sale to a social enterprise, a co-operative or a move to employee-ownership to succeed, it is essential for the incumbent business owner to have an active desire in in selling the the business to this type of model. At this early stage, it is important to establish some key facts to help determine whether this type of buyout is feasible.
Who actually owns the business?	The business might have a single owner, but there are many instances where ownership is spread across different parties. It is imperative to identify all owners of the business to ensure there is general agreement to the concept of selling to employees, a social enterprise or a co-operative.
What is being sold?	Typically, a sale will involve either the purchase of the owner's shares or the purchase the business's assets. It is important to clarify exactly what is expected to be included as part of the deal. The structure of the transaction is of fundamental importance. Both parties will need to consider whether the transaction relates to transfer of property and business assets as a going concern (an Asset Purchase), or a purchase of the share capital of the trading company which owns and operates the care business (a Share Purchase).

	The chosen structure is commonly influenced by tax considerations for both buyer and vendor, so tax advice should be sought at an early stage. Owner-managed businesses would typically prefer a sale of the shares in their company which can mean a more favourable tax treatment for the individual owners by way of a capital disposal.
Why does the owner want to sell?	In most cases the exit from the sector will be due to retirement, realising investment value, a desire to do different things etc. However, it is important to clarify the reasons behind the exit and ensure that the care home is commercially viable and has a future. The owner may be keen to support the business under new ownership by taking a role on the board which might be advantageous to the business post sale.
What is the attitude of management and staff to employee or co-operative ownership?	While the business owner might be a 'willing seller', it is important that the management and employees of the business are open to the prospect of an employee buyout, worker-owned or community co-operative and are therefore considered to be a 'willing buyer'. Work may need to be done to raise their understanding of the model before they start to realise the potential for such a sale.
Knowing the business	Clearly, it's important to understand the full remit of the care home business, the associated legal regime, profitability and its future viability. In the case of care home, the potential purchasers need to think about how they will cope with a volatility in revenue, the ongoing investment levels that the business will require, how the business might develop and where the business sits within local care provision.

It is important to clarify the reasons behind the exit and ensure that the care home is commercially viable and has a future

What are the valuation assumptions?	An independent valuation may have been undertaken or the owner may have a value assumption based on other factors. Most valuations will be based on either earnings multiples, net asset value or a mixture. Any valuation must be affordable to the business both at the time of the sale and going forward. This is discussed in more detail under 'Stage 2: Value'.
Choosing the method of exit	Realistically, in the current economic climate, it is probably going to be difficult for a social enterprise, a co-operative or employees, as part of an employee buyout, to raise sufficient finance to allow the owner to receive the full consideration for the business on completion. Therefore, is there the option of a phased exit over time?
Is external finance required to complete the sale?	The cost of purchasing a care home is significant and regardless of the business model chosen, the buyers will most likely need to source external finance (see section below). The ability to raise finance will be reliant on a number of factors such as any security in the business, levels of profit and where appropriate the possibility of any co-investment by employees.
Is there preferred 'social' ownership structure?	Most owners will have a view of the future ownership structure of the business. With a worker-owned or a community-owned co-operative and employee buyouts, it is important that, before any firm decisions are made, thorough consideration has been given to ensure the ownership model provides the benefits the employees/ community might want as the new owners.
What are the timescales?	Ideally, when would the owner like to complete the employee buyout process? Typically, a buyout process to a social business model can take anything between three and nine months to complete. However, if a phased transfer of ownership is being considered, this transfer might take place over a number of years.

STAGE 2: VALUE

The valuation, financial analysis and projections	Once it has been established that a sale is possible and it is agreed in principle, it is necessary to analyse the history of the business, its finances and the ability to fund the purchase.
Methods of valuation	It is sensible to deal with the valuation of the business at a very early stage. If the buyers cannot secure the finances required to purchase the property, at a given valuation and there is no room for negotiation, then quite simply, a sale will not be possible. As outlined above, the value of a care home is dependent on a number of factors and the formula usually used to value a care home business is a multiple of the weighted average of the business's earnings before interest, tax, depreciation, amortisation, rent and management (EBITDARM). The multiplier used will depend on market forces at the time of sale. Depending on the type of care home, the Covid-19 pandemic may also have impacted on the value.
Financial analysis and projections	Ultimately any valuation has to be fundable. In order to determine what the new business can fund, it is necessary to prepare cashflow forecasts to identify what level of borrowing the business can afford. These cashflow forecasts will also show the impact of costs that may no longer be incurred, such as directors' remuneration. In addition to looking at future prospects, it is also important to look at historic financial trends such as levels of turnover and profitability. Experts working in the care home sector consider that this realistic financial planning is key for the success of a social enterprise, co-operative or employee-owned model.
Start preparing for the due diligence process	Starting to think of the due diligence process at this stage and pre-empting questions may save time at a later stage of the negotiation.

3: FINANCE CONSIDERATIONS AND DUE DILIGENCE

Considering financing options and making initial contacts

As previously stated, the purchase price of a care home is likely to be significant. Realistically, high street lenders are unlikely to fund the purchase, however, social lenders and organisations such as the Development Bank of Wales could provide the funds necessary.

Loans will attract a commercial rate of interest and will commonly require repayment for the period of the loan on a monthly or quarterly basis. Typically, debt will be secured against the assets that the business owns such as the care home, any surrounding land and fixtures/fittings. Should the business default on its repayments, the lender will be able to take ownership of assets in lieu of the debt.

Once the loan has been repaid in full, the lender will cease to have any charge over the assets and the loan repayments will of course cease. The benefit to a social enterprise, co-operative or employee-owned business is that this form of finance has a definite end date. As such, after loan repayments have ceased, money previously ringfenced for repayments could be used to expand the business or improve terms and conditions for example.

It must be noted that there are likely to be an ongoing financial investment commitments attached to a care home. The purchasers will need to consider how this can be funded. Is any additional loan capital needed on top of the purchase price, to undertake improvements/upgrading work in line with RISCA standards or for general working capital requirements?

It is important to note that any debt obligations of the business will always have to be repaid before any profit can be reinvested or shared, where appropriate.

It is worth noting that one of the strengths of an employee buyout is the opportunity to raise equity from a larger number of people than from a management buyout, as well as generating a greater commitment to the future success of the business because employees now have a vested interest in the outcome.

In the case of an employee buyout, there are also alternative funding mechanisms that can be considered:

Business's own resources – some businesses build up cash reserves over a number of years. This money could be contributed to an employee trust to be used to fund the purchase of shares from the outgoing owner. However, very few businesses build up sufficient levels of cash to fund the entirety of an employee buyout.

Vendor-deferred consideration – in the current economic climate, it is difficult for businesses to raise debt finance unless they can provide asset security. As a result, vendor-deferred consideration is regularly part of the funding mix. Essentially the outgoing owner (vendor) receives a proportion of the total deal value on completion with the remainder deferred and paid to them over a period of time. typically three to seven years, depending on the size of the deal.

The vendor will of course have to be convinced that the business will be capable of making the deferred payments and this can be decided by all parties only after future cash-flows for the business are prepared that clearly demonstrate the ability to service these payments as well as any other debt. Once the various forms of finance have been considered, it should be possible to agree on the preferred mixture of funding, make contact with lenders and approach employees – assuming they will be asked to invest.

Due diligence

The due diligence process can often be lengthy due to the number of care contracts which may be in place, whether with the local authority and/or private funders. On an asset purchase, each contract will also need to be individually assigned or novated to the buyer as part of the transaction, whereas on a share purchase, a key part of the due diligence process is to check for any change of control provisions which may affect the contract.

Where the care home has contracts in place with local authorities, these are typically for a fixed initial term, but contracts commonly then continue beyond their initial term without always being extended or varied in writing. A buyer needs to ensure that appropriate documentation is in place confirming the current contract term and any variations to the original contract.

The care home is also likely to have numerous contracts in place with various suppliers, including; utilities providers, clinical waste disposal and maintenance providers. The business will also need to collate records of fire and resident risk assessments, data protection policies and food hygiene reports requiring review by the buyer from a compliance perspective to ensure they are adequate and up-to-date.

Apart from the legal issues, it is also crucial that financial accounts and records are correct, up-to-date and supported by well-substantiated business plans and financial projections.

Due diligence	The due diligence process should not be underestimated. In reality, it can mean answering several hundred questions and responding to these will require resource from the vendor to answer the questions and provide supporting documentation. Additionally, confidentiality and data protection requirements should be considered. The vendor will typically require the purchaser to enter into a confidentiality agreement and/or non-disclosure agreement at the outset of the transaction, prior to releasing information.
Producing information to support the sale and awareness of the registration requirements	As part of the care home registration process, a new provider in the care home sector will need to produce a detailed business plan, financial forecasts, proposed staffing structures among other things to satisfy the legal requirements of Care Inspectorate Wales. These documents can also be used to support the sale. It is worth noting that sometimes a vendor will agree to continue as the registered provider until the buyer is registered with the Care Inspectorate Wales, subject to being indemnified by the buyer.

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STAGE 4: INVESTMENT

Detailed presentation of investigation findings to investors and bankers and agreement of finance in principle

This is a critical point in the sale as it requires external finance providers to confirm their intention to make funds available.

Presentations to finance providers – finance providers will use this opportunity to gain a greater insight into the business and its future management.

In the case of an employee ownership model:

Presentation to employees – if employees are being asked to invest alongside external finance, they will need to understand what it means to become a shareholder, understand the potential benefits, identify potential pitfalls and ask questions about the future ownership structure.

STAGE 5: LEGAL REQUIREMENTS

Preparation of legal structure and legal documents

In consultation with a solicitor, the legal structure and the associated legal documents need to be drawn up and agreed. The legal documents will also enshrine the specific governance structures that will operate after the purchase. It should be noted that the agreed governance structure must allow for the Responsible Individual (RI) role to be part of the governing board and/or trust.

In the case of employee ownership:

Creation of an employee trust – an employee trust will be required if there is to be any form of indirect employee ownership. The employee trust will be established with the purpose of holding shares that are acquired from the outgoing owner.

Articles of Association for the trading company – whilst these might not need to be completely replaced, it is important that sufficient changes are made to enshrine aspects such as governance, profit distribution, eligibility of members, decision-making processes, asset locks and dissolution.

Loan agreements and other associated documents – assuming there is a requirement for external finance, the conditions attached to any debt finance and the ranking of creditors will be negotiated.

STAGE 6: PROGRESSING THE SALE

Written offer, subject to contract, made to the current owner(s)	By this point, the hard work should be out of the way. The finance package will have been finalised, the ownership model will have been largely agreed and unless there are any last-minute issues, the sale should complete without any major difficulties, assuming the details previously agreed still stand.
Information awareness	As part of a sale to a social enterprise, a co-operative or an employee buyout, the stakeholders in these new organisations need to be kept informed of progress with the sale.
Appointing Governors and Trustees	Depending on the legal structure chosen, the social enterprise, co-operative or employee-ownership trust will now need to appoint or elect directors and/or trustees. There will be a need to explain the purpose of these roles fully and manage an appointment/ election process.
Keeping management and staff informed	As with any new business takeover, managers and staff need to understand the impact that the 'social business' structure will have on their roles.

STAGE 7: CONCLUSION

Conclusion of negotiations on terms of sale

At this point, the transfer of ownership will be completed and the social enterprise, co-operative or employee-owned business will own their business. While this stage is the end of the employee buyout, it should signal the start of building a successful co-operative culture.

(Adapted for Simply Buyout, 2013)

COMPLETING THE REGISTRATION PROCESS

The process of registering with Care Inspectorate Wales takes time and will require detailed plans and forecasts to be prepared. By this stage, the majority of the work should be completed. Appropriately qualified individuals will need to be appointed to the Responsible Individual and Responsible Manager roles.

Tax considerations

A care home represents a significant financial asset and as owner(s) begin to think about selling the premises, it is advisable to seek advice from accountants on tax planning. It is recommended that this advice is sought as early as practicable, as an accountant may recommend some form of business re-structure to maximise the value of the business.

The purpose of the information below is to act as a guide and is not a substitute for expert tax advice. The details relating to thresholds and allowances was up-to-date at the time of publication.

The primary tax liability associated with the sale of a business or assets is Capital Gains Tax (CGT) and this is calculated on chargeable gains that arise on the disposal of capital assets that occur in any fiscal year (ending on April 5th). At the time of writing, UK Government, through its Office of Tax Simplification, is conducting a review of CGT and its first report was published in November 2020. In the November 2020 budget, changes were made to the lifetime allowance for Entrepreneurs Relief (see below) reducing this from £10,000,000 to £1,000,000. The name of the relief was changed to Business Assets Disposal Relief and is discussed in more detail below. It is quite possible that further changes will be made to CGT in an attempt to achieve greater consistency with the provisions for income tax. Advice should be sought from a tax advisor as part of tax planning.

Each individual has annual CGT allowance of £12,300 (2020/21 allowance) meaning that any gains below this allowance will not be subject to CGT and any gains above this allowance will be taxed.

Where a business owner sells, or gifts, shares/assets, the rate of CGT payable allowing for their CGT allowance, but ignoring entrepreneur's relief, will be as follows:

a. If the individual pays higher rate income tax (£37,500 + 2020/21) in the relevant tax year, the individual will pay CGT at the rate of 20% on chargeable gains for that fiscal year.

b. If the individual pays basic rate income tax, but the aggregate of the individual's income and chargeable gains exceed the basic income tax threshold (£37,500 for 2020/21), then the amount of the chargeable gains in that fiscal year above the income tax threshold are charged at 20% and the gains below the threshold are charged at 10%.

c. If the individuals aggregate of income and chargeable gains in a fiscal year do not exceed the basic rate tax threshold (£37,500 2020/21) the chargeable gains are taxed at 10%.

Business owners may be able to reduce the amount of their CGT bill if they are eligible to claim Business Asset Disposal Relief, formerly known as Entrepreneurs Relief.

Each individual has annual CGT allowance of £12,300 (2020/21 allowance) meaning that any gains below this allowance will not be subject to CGT and any gains above this allowance will be taxed.

Business Asset Disposal Relief (BADR)

BADR can reduce the tax rate to 10% on qualifying gains up to a lifetime limit of £1 million. However, there are certain conditions that must be met (see below). Individuals and trustees qualify for BADR, but companies which are selling shares for example, in the sale of a subsidiary by a holding company, do not qualify for BADR. Any company with significant (generally at least 20%) non-trading activities, during the 12 months leading up to a disposal, will not qualify as a trading company.

To qualify for BADR, a business owner needs to have satisfied all of the criteria below throughout the 12-month period immediately prior to the disposal, and:

a. The seller must have held at least 5% of the ordinary share capital of the company, carrying at least 5% of the voting rights in the company;

b. The company must be a stand-alone trading company, or the holding company of a trading group;

c. The seller must be an officer or employee of the company being sold or, in the case of a sale of a group, one of the companies in the group;

d. The seller must have owned the shares at least two years before the disposal.

Key considerations for a social enterprise, co-operative and employees purchasing a care home

Although some of these issues are broadly discussed in the purchase section above, a number of key considerations that a social enterprise, staff, or communities need to consider before they decide to purchase a care home are highlighted below:

Is the business unviable?

Converting a care home to a social enterprise, a co-operative or an employee-owned business does not suddenly make it viable. The potential purchasers need to understand why the current business is unviable and how their approach can make a difference. Purchasers need to make informed business decision rather than be led by an attachment to the existing business and its role in the community.

Change in market demand

With a growing elderly population, demand for nursing care and dementia care often outstrips supply. However, this demand may not be the same for a residential care home, where older people are living at home or in supported living environments for longer.

Economies of scale also need to be assessed. Many argue that small, often converted, care homes with less than 30 beds may not be viable as they cannot compete in delivering cost-effective care with large, purpose-built facilities.

Time

Selling a care home to a social enterprise, co-operative or to an employee-owned business takes time. For the sale to be successful, there has to be buy-in from both parties, but the vendor(s) need to be fully aware that they may not receive the full sale price of the business for some time if deferred consideration is part of the finance package. The vendor(s) also need to be realistic about the price of the business, particularly if the business is in financial difficulty. This will not suit every care home owner, but, for others it will fit with their plans and support their longer-term vision for the future of the care home.

As well as the timing of the sale, Care Inspectorate Wales registration with the new owners needs to be considered to make sure all of the requirements are complied with and to allow a smooth transition. On average, the registration process with Care Inspectorate Wales takes approximately 14 weeks, however, this will of course vary depending on individual circumstances.

Capital cost

The purchase price of a care home is likely to be significant. Most high street banks will not lend to a newly-formed social or co-operative business, in these circumstances. Detailed, realistic business and financial planning needs to have been conducted before any social lenders or potential investors are approached.

Taking on a high level of debt as a social or co-operative business should be carefully considered.

As well as the capital cost of purchase, thought should also be given to funding of any future upgrading works to the existing facilities. Will/can these future upgrading costs be funded by re-investment of annual revenue or will additional capital funding need to be sourced? Future refurbishment of the premises is likely to be needed to comply with the Regulation and Inspection of Social Care (Wales) Act 2016 (RISCA) and also to keep up with an evolving market standard. It is worth noting that when a new business takes over an existing, operational care home, it will not have to upgrade to the current RISCA standards immediately. However, if the care home business has ceased trading, any new owners will need to upgrade the facilities to the RISCA standards prior to trading.

Revenue

Revenue can be volatile in a care home and it may be difficult to plan for new market entrants. The majority of revenue funding is likely to come from fees paid by local authorities. Potential purchasers need to be sure if these fees will cover the costs of providing high-quality care, if not, careful consideration must be given to how revenue streams could be diversified.

Regulation

Taking on a care home means that the new owners will need to comply with a variety of regulations and be inspected regularly to ensure that standards are being maintained and, where appropriate, improved/upgraded. The regulatory regime in Wales means that any social enterprise, co-operative or employee-owned business operating a care home will need to employ staff that are qualified for the various roles within the business.

Leadership

Leadership within the organisation is going to be key, not only to ensure viability and sustainability, but also to ensure that the care home is complaint with the legal requirements. Taking on these leadership roles is not easy and staff may be reluctant to do so. This may cause difficulty in a co-operative and employee-owned setting.

A social enterprise, co-operative or employee-owned model needs to be sure that they are fully aware of the Statutory Guidance for Service Providers and Responsible Individuals on Meeting Service Standard Regulations, and Practice Guidance for Social Care Managers Registered with Social Care Wales (2017). The guidance details three key roles within the care home setting:

- the service provider (SP) – this role includes setting clear organisational intent and direction by outlining services provided and actions the provider will take to achieve this in the statement of purpose. Also, putting in place underpinning policies and procedures to support managers and staff to achieve the service aims and the achievement of individuals' personal outcomes.
- the responsible individual (RI) – this significant role includes overseeing management of the service and ensuring the service is safe, well run and complies with regulations. Ensuring clear lines of accountability, delegation and responsibility between the RI and the manager. Ensuring the SP is informed about service quality, safety and effectiveness.
- the registered manager (RM) – this role includes leading and managing a service which meets the needs of individuals. They will ensure safeguards are in place, promote well-being and prioritise the development of people. contributing to the development of policies and procedures is also within their remit. Ensuring practices are citizen-centred, individuals have a strong voice, are respected treated with dignity and that their rights are promoted.

Governance and legal structure

A new social businesses needs to carefully consider its governance and legal structure. Within a social enterprise or co-operative structure, the RI will need to be a member of the governing board. 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 will also be prudent to consider electing portfolio leads onto the board to ensure key areas of the business have appropriate scrutiny and focus on, for example, safeguarding, contract management, risk assessment, auditing and governance.

Strong governance mechanisms need to be in place and recruiting a board with the right skills 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 but this will need to be factored into the financial planning process, with affordability considered.

Staffing and TUPE regulations

TUPE are the Transfer of Undertakings (Protection of Employment) Regulations. The purpose of this legislation is to protect employees, if the business in which they are employed changes hands and associated liabilities are transferred from the old employer to the new employer.

Employees can refuse to transfer (or "object"), but, depending on the circumstances of the case, they can lose valuable legal rights if they do. TUPE states that "all the transferor's rights, powers, duties and liabilities under or in connection with the transferring employees' contracts of employment are transferred to the transferee". This all-embracing concept encompasses rights under the contract of employment, statutory rights and continuity of employment. It includes employees' rights to bring a claim against their employer for unfair dismissal, redundancy or discrimination, unpaid wages, bonuses, holidays and personal injury claims.

Employees therefore have the legal right to transfer to the new employer on their existing terms and conditions of employment and with all their existing employment rights and liabilities intact. However, there are special provisions dealing with pensions under occupational pension schemes.

Effectively, the new employer steps into the shoes of the old employer and it is as though the employee's contract of employment was originally made with the new employer. For this reason, it is essential that employers know all about the employees they might inherit if they are planning to take over a contract or buy a business. They must make sure the contract provides protection from any employment liabilities which arose before they became the employer. This is helped by the fact that the old employer is required to provide written details of all employee rights and liabilities that will transfer to the new employer.

TUPE is a significant consideration for care homes currently being run by a local authority, who may be considering spinning out into a social enterprise or co-operative model. For example, access to local government pension arrangements can sometimes be challenge.

(Source: Pinset Mason)

Decision-making processes

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 that need to be made at board level. Putting in place a clear 'schedule of delegation' will be essential to ensure clarity for all parties.

Benefits of social enterprise, co-operative and employee-owned models

Although the process of purchasing a care home may be complicated, there are a number of advantages for a social enterprise, co-operative or employee-owned business in buying and running a care home. These include:

- maintaining jobs in the local community
- harnessing local knowledge, including language and culture
- the potential for innovative approaches
- embedding the principle of social value
- using local supply chains.

The most important benefit though is maintaining and sustaining a key facility for the local community.

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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