



SMITH PARTNERSHIP®

Solicitors

The Care Team



Case Study

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Smith Partnership were instructed on the sale of a limited company carrying on the business of a residential care home following providing a summary of our services and an estimate to the client/home owner.

The deal terms had been pre agreed for a sale of the shares of the limited company carrying on the care home business for a sum of £1.5m. As a share sale the purchaser's solicitors would submit the first draft share purchase agreement and preliminary enquiries. This took several weeks of Smith Partnership chasing the purchaser's solicitors as it became clear that they had little experience of share sale corporate transactions. In the intervening period in order to move matters forward (to enable our client to meet their desired retirement deadline) we issued our standard care home basic request for information to our client and had submitted the bulk of documentation relevant for a purchaser to carry out legal due diligence in connection with the purchase of a care home business before we had received a similar request from the purchaser's solicitors.

Very little by way of further enquiries were requested by the purchaser's solicitors and after much delay a share sale agreement was finally received which took the form of a precedent share agreement downloaded from a subscription precedent bank and whilst it included numerous warranties it was not specifically geared to a nursing home transaction. The Purchaser subsequently expressed the view that despite agreeing terms for a share transaction that he did not want to proceed except by way of a business and asset purchase. This coincided with our property enquiries on behalf of the Seller revealing that the main asset, the care home property itself, was not in the ownership of the company carrying on the care home business.

In order to progress matters for all parties we requested our client's accountants to review the tax and accounting issues involved for our client in the 2 scenarios of a share sale and an asset sale. The conclusion was that there was no overriding tax benefit/detriment in either transaction and therefore in order to move matters more speedily to completion we agreed with our client that the deal revert to an asset transaction and we were able to issue a specifically designed agreement to reflect a sale of the care home property by the property owner and the rest of the assets and the business/goodwill by the limited company.

Due to the lack of knowledge of care home transactions on the part of the other lawyers Smith Partnership had to take the lead in ensuring all CSCI requirements were met and that the transaction proceeded to completion.

This matter illustrated how our expertise in the care sector enabled the matter to proceed in the most appropriate way and how our corporate transaction specialism also enabled the issues that could otherwise have defeated the sale to be overcome so that an appropriate structure was put in place and effected by documentation specifically designed for a care home transaction.

In this case the tax issues involved in switching from a share sale to an asset sale were negligible however it could have been very serious. It illustrates that if it is desired to take advantage of the reliefs available on share sales to mitigate capital gains tax then the advisers dealing need to know exactly what to do – clearly the business had been incorporated without the major asset of value, the care home property itself, being transferred into the new company. This could have resulted in a much larger tax bill to the seller if the property had been in her ownership for a longer number of years than was the actual case.

Smith Partnership not only specialise in care home transactions but also in advising on and effecting the desired corporate/business structure for our clients.

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