

Summary of undertaking

Part 8 of the Enterprise Act 2002 (EA02)

Summary of the undertaking provided to the Competition and Markets Authority (CMA) Under Section 219 of the EA02 relating to: The unfair terms in consumer contracts regulations 1999 (UTCCRs) Part 2 of the Consumer Rights Act 2015 (CRA) Consumer protection from unfair trading regulations 2008 (CPRs)

Welltower Inc (“**Welltower**”), Corporate Headquarters, 4500 Dorr Street, Toledo, OH 43615 USA has fully co-operated and constructively engaged with the Competition and Markets Authority (the “**CMA**”). On the basis that it makes no admissions, express or implied, to any breaches of the law, Welltower has voluntarily provided the following undertaking to the CMA: pursuant to section 219 of the EA02, in response to the CMA’s consumer law investigation into the residential care homes (for the elderly) sector (the “**Undertaking**”).

Undertaking

Definitions

1. For the purpose of the Undertaking:
 - (a) **Community Fee** refers to a one-off charge or fee, which is charged to a consumer (and/or those acting on their behalf), at any time prior to or after moving into a Sunrise Community and which is described as one that *“covers the cost of maintaining the extensive communal areas in the community, which include the lounges, dining rooms and bistro, activity rooms, sunrooms, garden and other outdoor areas such as porches etc.”*
 - (b) **Relevant Terms or Relevant Consumer Notices** refer to the following:
 - (i) The term or notice in the Sunrise Resident Agreements, which provides that:

1. *“6.4.1 On or before the date of this Agreement the Resident shall pay to Sunrise the Community Fee.*
2. 6.4.2 In so far as the Resident has previously paid a Community Fee in respect of his/her occupation of an alternative suite the Resident shall only be obliged to pay the difference between the Community Fee for the Suite and the fee previously paid.
3. 6.4.3 In the event the Resident gives notice to terminate this Agreement within 30 days of the Date of Occupation, a proportionate amount of the Community Fee will be refunded to the Resident based on the number of days remaining in the 30 day period beginning on the Date of Occupation.
4. 6.4.4 In the event of the Resident’s death within 30 days of the Date of Occupation, the entire Community Fee will be refunded to the Resident”.

- (ii) The term or notice in the Sunrise Senior Living Assisted Living Cost Overview document, and any other such documents, which provide that:

“The Community Fee (One Time Charge) covers the cost of maintaining the extensive communal areas in the community, which include the lounges, dining rooms and bistro, activity rooms, sunrooms, garden and other outdoor areas such as porches etc.”

- (iii) The term or notice in the Sunrise Community Fee Receipt, which provides:

“Thank you for your payment of the Community Fee in the amount £
Refunds are subject to the following terms and conditions:

1. The undersigned will receive a full refund of the Community Fee if the resident is prevented from moving

into Sunrise. Final acceptance of the resident is dependent upon Sunrise's review of the Doctor's Report and an assessment by the Wellness Services Manager.

2. In the event the resident gives notice and leaves Sunrise within 30 days of move-in, a partial refund will be given on a pro-rata basis determined by, on the date move out occurs, the number of days remaining of that 30 day period.
3. If for any reason, the resident gives notice to leave Sunrise more than 30 days following move-in, no Community fee refund will be given.
4. Residents are required to move into Sunrise within 30 days following the payment of the Community Fee. Payment of the daily suite rate will commence on 31st day or on the date of occupancy whichever comes first.
5. If the Sunrise community is not officially open (for example, under construction) at the time the Community Fee payment is made, residents are required to move into Sunrise within 30 days of the official opening date. This date will be confirmed to the resident and/or responsible party as soon as it is known by Sunrise. Any alternative schedule for move-in must be agreed upon by both Sunrise and the resident and/or responsible party."

Such terms or notices are contained in the documents at Schedule 1 of the Undertaking.

- (c) **Care Home/Community or Care Homes/Communities** refers to a business which provides residential accommodation together with nursing or personal care to the elderly within the United Kingdom.
- (d) **Sunrise Community or Sunrise Communities** refers to a Care Home or Care Homes operating within the UK under the Sunrise Senior Living and/or Sunrise brand¹.
- (e) **Sunrise Resident Agreement or Sunrise Resident Agreements** refers to the standard-form resident agreements used by Sunrise Communities.

¹ A list of the legal entities currently operating such care homes at the date of the Undertaking is set out at Schedule 2 to the Undertaking.

A copy of all such agreements is included in Schedule 1 of the Undertaking.

- (f) **Permanent resident** refers to a resident who resides in a Care Home/Community on a long-term basis and/or, as appropriate, any individual acting on their behalf and Permanent Residency is to be interpreted consistently with this.

The Undertaking

Community Fee and any Similar Fee

2. In accordance with section 219(4) of the EA02, Welltower undertakes to the CMA not to continue or repeat the conduct which is set out at paragraphs 2 (a) to (f) and 3 below, not to engage in such conduct in the course of any business carried on by it and not to consent to or connive in the carrying out of such conduct by a body corporate with which it has a special relationship (within the meaning of section 222(3) of the EA02):
 - (a) seeking from consumers (and/or those acting on their behalf), at any time prior to or after moving into a Care Home/Community, the payment of a one off Community Fee or any Similar Fee, howsoever named, which is a fee or charge (explicitly or implicitly) described or represented to consumers (and/or those acting on their behalf) as:
 - (i) covering any costs, expenditure and/or disbursements arising from, incurred by or related to, the maintenance, capital expenditure and/or use of communal areas of one or more Care Homes/Communities;
 - (ii) consideration for any pre-contract work or activity connected with the admission of one or more residents; and/or
 - (iii) a condition of a Care Home/Community allowing a consumer to proceed with the admission process for a place at a Care Home/Community, to take up their place of residency in a Care Home/Community or move into a Care Home/Community (as the case may be);
 - (b) receiving from consumers (and/or those acting on their behalf), at any time prior to or after moving into a Care Home/Community, the payment of a Community Fee or any Similar Fee (as defined in paragraph 2 (a) of the Undertaking);
 - (c) using or recommending for use on or after the date of the Undertaking any of the Relevant Consumer Notices and/or Relevant Terms in agreements concluded with consumers on or after the date of the Undertaking;
 - (d) using or recommending for use on or after the date of the Undertaking any other consumer notice and/or any other term in agreements, concluded with consumers on or after the date of the Undertaking, that

are of a similar kind or with a similar effect to any of the Relevant Consumer Notices or Relevant Terms namely which have the object or effect of requiring a consumer (and/or those acting on their behalf) to pay a Community Fee or any Similar Fee (as defined in paragraph 2(a) of the Undertaking);

- (e) enforcing, attempting to enforce or otherwise relying on any Relevant Consumer Notices provided or communicated before the date of the Undertaking and/or any Relevant Terms in agreements concluded with consumers before the date of the Undertaking;
- (f) enforcing, attempting to enforce or otherwise relying upon any other consumer notice provided or communicated before the date of the Undertaking and/or any other term in agreements concluded with consumers before the date of the Undertaking that are of a similar kind or with a similar effect to any of the Relevant Consumer Notices or Relevant Terms namely which have the object or effect of requiring a consumer (and/or those acting on their behalf) to pay a Community Fee or a Similar Fee (as defined in paragraph 2 (a) of the Undertaking).

Upfront Fees generally

- 3. In accordance with section 219(4) of the EA02 (as set out at paragraph 2 above) and subject to paragraphs 2 (a) to (f) above which prohibit the use of a Community Fee and/or Similar Fee, Welltower undertakes to the CMA not to seek from or charge a prospective Permanent Resident (and/or those acting on their behalf) any other charge or fee before the pre-contract care assessment is completed and a clear offer of a place at a Care Home/Community is made for Permanent Residency and accepted by them.

Scope of paragraphs 2 and 3 of the Undertaking

- 4. In line with the scope of the CMA's current investigation, nothing in paragraphs 2 and 3 of the Undertaking is intended to apply to a Care Home (or Care Homes) which is in operation at the date of the Undertaking and does not fall into the definition of a Sunrise Community at the date of the Undertaking, save that paragraphs 2 and 3 of the Undertaking will apply to such a Care Home inter alia if at any time after the date of the Undertaking it operates as a Sunrise Community [see Schedule 3]. For the avoidance of doubt, nothing in this paragraph prevents the CMA or any other enforcer from investigating, at a future date of the Undertaking, any terms, consumer

notices or practices used by one or a number of such Care Homes (which includes any entity operating or managing such a Care Home).

5. Nothing in the Undertaking prohibits the charging of the following fees or charges per se:
 - (a) The accommodation services fee, the care services fee and/or the care and accommodation services fee, as defined in the Sunrise Resident Agreements, subject only to paragraph 3 of the Undertaking, which covers the timing of seeking or charging the payment of such fees.
 - (b) Fees or charges made in relation to Respite Residents including but not limited to the Respite Deposit charged, as defined in the Respite Deposit receipt (a copy of which is included at Schedule 1) and the Respite Fee defined in the Sunrise Resident Agreements.
 - (c) Additional Services Fees as defined in the Sunrise Resident Agreements, subject to such fees being charged only as specified in the said Agreements, which includes payment of such fees being required during the performance of the said Agreements.
 - (d) Redecoration costs as referred to in the Sunrise Resident Agreements, subject to such costs being charged only as specified in the said Agreements, which includes payment of such costs being required at the termination of the said Agreements.

Nothing in the Undertaking is intended to prevent a Sunrise Community from amending the definition of such services or costs in its Resident Agreements from time to time, or otherwise amending its Resident Agreements from time to time, provided such amendment does not contravene the Undertaking.

Publication of CMA Consumer Law Compliance Advice

6. After the publication of the CMA's final consumer law compliance advice of 2018 for UK care home providers for the elderly, which will cover the charging of upfront payments and other charging and pricing practices in care homes, in whatever form, (the "Compliance Advice"), paragraphs 2 and 3 of the Undertaking will not be breached to the extent that Welltower engages in practices and/or uses, recommends for use, enforces or otherwise relies on terms and/or consumer notices which are consistent with the Compliance Advice and not in any way contrary to the Compliance Advice. If guidance is not issued in 2018, Welltower will be at liberty to negotiate, in good faith, with the CMA a variation to the Undertaking.

Fees after death

7. Further, in accordance with section 219(4) of the EA02 (as set out in paragraph 2 of the Undertaking) Welltower undertakes to the CMA, within 6 weeks after the date of the publication of the CMA's final consumer law compliance advice of 2018 for UK care home providers on the charging of fees after a resident's death ("the Fees After Death Compliance Advice"), not to use, recommend for use, attempt to enforce or enforce any terms in agreements with UK consumers which are inconsistent with the Fees After Death Compliance Advice, and not to engage in practices with UK consumers which are inconsistent with it.

Schedule 1

The Sunrise Resident Agreements and other documents referred to in the Undertaking.

Schedule 2

List of corporate entities providing residential accommodation together with nursing or personal care for the elderly under the 'Sunrise Senior Living' and/or 'Sunrise' brand in the UK at the date of the Undertaking.

Schedule 3

Explanation of Paragraph 4 of the Undertaking