HC-One Response to CICTAR Letter Dated 17th November 2021

Response Issued 26th November 2021

HC-One is committed to delivering high-quality, kind care for our Residents and the communities we serve. Our owners share this commitment, and their financial support enables us to invest at scale into our Residents, Colleagues, and homes across the UK. Our owners have invested far more into the delivery of kind care than they have taken out of the organisation.

Below we have responded in full to each allegation sent to us:

1. **Prior to the pandemic and during, HC-One has sent millions from heavily subsidised UK care homes to offshore investors via the Cayman Islands. This demonstrates that extracting profits has been, and continues to be, prioritised over providing the best possible care. In some cases, there have been tragic consequences which may have been avoided with higher staffing levels that could have been afforded if funds had not been shifted offshore.**

This is factually incorrect and not supported by the objective evidence of how we have managed our organisation.

Above all, our priority is, and always has been, the safety and wellbeing of our Residents, and we are committed to continually improving our services so that Residents can lead their best lives.

In the last five years (October 2016 – October 2021) our owners have enabled us to invest £145m in Capital Expenditure, with a further £115m committed by 2022/23. This far exceeds the cumulative dividends and Asset Management Fees they have received over the same period – a total of £32m – demonstrating their financial support to HC-One, and the people living and working in our homes.

No shareholder dividend payments have been made since 2017, and the Asset Management Fee was voluntarily suspended during the pandemic period.

Taken together, our owners have provided a net positive contribution of £113m to HC-One, which we have used to invest in improving our homes, our Colleague pay and reward offer, and the training and development programme we have created in-house.

We are investing more than ever into our Colleagues so that we can attract and retain dedicated, talented carers who see care as a career. In April, we increased pay for all Colleagues by at least 3%, and for Colleagues previously at minimum wage levels raised pay to a minimum of £9/hour for all ages. Later this year, we will be making a further major announcement on how we will pay above and ahead of the new national living wage levels, and further reward carers with the most experience.

We have also started a £54.5m refurbishment programme covering more than 200 care homes which predominately serve local authority and NHS funded Residents, so that we can meet the increasingly complex care needs of older people.

We are the only care provider investing in local authority facing care services at scale, underlining both our commitment to serving the needs of the most vulnerable in our society, and the ethos of delivering an essential public good on behalf of our public sector partners.

We strongly reject the suggestion that for-profit ownership and high-quality care do not align. We have never looked to cut costs at our homes, as suggested. Only by providing the very best care can we ensure that people will choose our homes, as we depend on a strong reputation in the communities we serve, and a positive relationship with Commissioners.

A proof point of a home delivering on the needs of our families, and those in our care, is that home being full, and in high demand. High occupancy is also the most important driver of sustainable returns. The interests of our owners therefore align with those of our Residents and their families: everybody expects, deserves, and benefits when our homes provide great care, and this is what our investments help us to work towards every day.

Given that our owners are transnational our TopCo is registered outside the UK, however all our companies are UK tax resident, pay tax in the UK, and file accounts at Companies House under UK GAAP.

2. **HC-One, like other large UK care home operators, through complex related party transactions appears to have created a pattern of artificial losses. These losses have reduced or eliminated UK tax payments, facilitated demands for more public funding and justified low wages and staffing levels.**

HC-One has never created a pattern of artificial losses that have reduced or eliminated UK tax payments. As stated above all our companies are UK tax resident, pay tax in the UK, and file accounts at Companies House under UK GAAP.

Our debts are held with independent third-party organisations, and the rates we pay are set by the best deals available on the open market at the time when we agree a loan.

Any beneficiary of interest payments is unconnected to our owners.

Critically our debt allows us to own most of our care homes, which we believe is the most financially responsible, sustainable, and stable operating model. Holding debt as we do is akin to having a mortgage. That mortgage is a very reasonable one at a

58% loan to asset value (i.e. debt as a ratio to the value of the property we own). The property value is independently determined.

Without our mortgage we would not own our property, and would be paying rent instead, which would accrue significantly greater costs and give us limited control over rents charged, annual increases, or the timing of payments.

We do not accept allegations relating to low wages and staffing levels, and are investing more than ever into the careers of our Colleagues, to ensure that Residents can receive good, kind care from highly trained carers. As highlighted, in April we increased Colleagues previously at minimum wage levels to a minimum of £9 per hour and will shortly be announcing further considerable enhancements to Colleague pay.

Funding shortfalls affect the entire sector, and all providers of care (see the Health Select Committee report (October 2020) and CQC State of Care report (October 2021). Any requests for funding by HC-One reflect this. We need to make sure that we have enough financial support to be able to maintain high-quality care for our Residents, the vast majority of whom are local authority funded placements and so do not pay for their care themselves.

In such a financially vulnerable sector, HC-One is immensely proud of the level of investment we have been able to make in our people and homes so that high-quality care is maintained for an ageing population with increasingly complex needs. This investment is made possible thanks to our owners – who have made a net-positive contribution of £113m over the past five years, with a further £115m committed for the coming years.

3. In 2019, the Financial Times reported a pattern of reducing taxable profits in the UK through presumably legal but artificial financial structures and this pattern appears to have continued to the present.

As you have not provided details on the date/title of a specific *Financial Times* piece, we are unsure which article is being referenced. However, we are aware that the Financial Times published an article in 2019 that was based on research we challenge and presented the financial information of the largest five care providers as an average.

We strongly believe that the data and research reported by the *Financial Times* at that time should not in in its own right be considered to be points of factual accuracy.

On the substantive point, as noted above we categorically refute the claim being made.

Our Group structure is first and foremost a legacy of the various businesses we have acquired and integrated going back to our formation.

We recognise that as a private provider of a public service we need to be transparent and accountable, and we have always done this by responding fulsomely to questions we've received about our structure from partners, families, or the press.

HC-One's consolidated Group accounts are regularly reported on by multiple UK national newspapers. We always engage fulsomely with these media enquiries and our key financial information is routinely published in the national media.

This year, we have refinanced to consolidate our loans with Welltower (an independent healthcare investor listed on the New York Stock Exchange) and we have also started to simplify our Group structure in three ways: we are reducing the total number of companies that make up the Group; we are reducing the number of overseas companies; and we are renaming every company to HC-One so that it is easier for everyone to understand our structure.

4. **The 2019 financial statements of FC Skyfall Upper Midco Ltd report that despite the beginning of the pandemic occupancy rates had remained stable. Only 26 days later, HC-One sent a letter to every local council asking for guarantees of additional support due to decreased occupancy. The 2020 financial statements indicate relatively minor decreases in occupancy for the year. This could suggest that a potential reduction in occupancy rates was used to extract additional financial support from local councils.**

The 2019 financial statements cover the period from 1st October 2018 to 30th September 2019: well before the impact of the pandemic.

At the time of the letter sent to our local authority partners (which was published in full on our website in line with our commitment to transparency) there were no centrally organised Covid-19 financial relief schemes designed to support the social care sector. All care operators faced significantly increased financial costs in acquiring PPE on the open market (facing global demand, supply shortages, and skyrocketing prices) and increased staffing costs in homes when many Colleagues were either ill or self-isolating.

The letter was drafted based on the predicted financial impact of the pandemic on our organisation, which is the UK's largest care provider and largest care employer. It would have been irresponsible of us not to highlight to local and central government the financial challenges facing an organisation that was responsible for the care and wellbeing of more than 16,000 Residents at the time.

To underline the challenges we faced, our letter was sent based on our predictions of declining occupancy and therefore declining fee levels – at a time when the costs associated with running our homes were significantly increasing.

During the pandemic, our occupancy rates fell to a low of 72.5% from pre-pandemic level of 92%. We are pleased that our occupancy rates have since begun to recover.

The financial costs of the pandemic – including increased PPE procurement costs, increased staffing costs, and declining occupancy – are well documented and have been routinely reported on by national media outlets (examples here, here, and here).

All reputable health and social care commentators recognise the vital role the elderly care sector plays in caring for vulnerable older people in the UK, and the importance of maintaining these services to protect the NHS. This is why some local authorities committed to providing specific Covid-19 pandemic relief.

5. **HC-One's announcement in April 2021 of increased investment by Safanad and refinancing of debt by Welltower, makes no mention of Formation Capital, but Formation continues to be a significant investor in HC-One and continues to benefit financially from dividends and other related party payments from HC-One entities in the UK to entities in the Cayman Islands, alongside Safanad and other investors.**

With 7% ownership in HC-One, Formation Capital is a minority shareholder. Following the refinancing agreement in April 2021, Safanad became our majority shareholder.

As stated above, no shareholder dividend payment has been made since 2017, and Asset Management Fees have also been frozen during the pandemic.

We are committed to long-term, sustainable provision of high-quality care, which is possible due to the level of capital investment our shareholders have made and continue to make. Having long-term committed owners who are aligned with our vision enables us to continue supporting the communities we serve and to make progress towards our mission of being the first-choice care provider.

6. **Formation Capital's co-founder, Steven Fishman, was issued a cease-and-desist order by the US Securities and Exchange Commission (SEC) in February 2020 which forbid him to be associated with any SEC registered investment advisor. Mr Fishman appears to have continued to play a role in HC-One and is currently listed as a director of Skyfall Topco 2021 Limited in the Cayman Islands, which has HC-One Topco Limited as a UK establishment. This would appear to be a violation of the SEC Order by Mr Fishman, Formation Capital and Safanad.**
7. **Continued reporting of Fishman's role at Formation in various UK filings of companies in the HC-One corporate structure, after the date of the SEC Order, appear to be a violation of the UK Companies Act 2006 by all directors who are responsible for internal controls to avoid material misstatement. '**

Mr Fishman is no longer a Director on the ownership Board of HC-One and is no longer associated with Formation Capital.

Suggestion of any material misstatement on the part of HC-One Directors in relation to the above is not only very serious but is also baseless, both in relation to the circumstances alleged and the incorrect interpretation of the UK Companies Act.

8. The entity previously named FC Skyfall Topco Limited reports on "interest payable and similar expenses" on "9% Cumulative preference share dividends" paid to FC Skyfall SPV Limited, which was the immediate parent undertaking and also incorporated in the Cayman Islands. It appears that, by design, the purpose and nature of these financial transactions are virtually impossible to for anyone outside of the company to understand. There appears to be a deliberate attempt to obscure financial transactions and siphon off tax-free proceeds to the Cayman Islands.

In the last five years (October 2016 – October 2021) our owners have enabled us to invest £145m in Capital Expenditure, with a further £115m committed by 2022/23. This far exceeds the cumulative dividends and asset management fees they have received over the same period – a total of £32m – demonstrating their financial support to HC-One, and the people living and working in our homes.

No shareholder dividend payments have been made since 2017, and the Asset Management Fee was voluntarily suspended during the pandemic period.

We refute the accusations made. Our owners are transnational and so our TopCo is registered outside the UK, however we have always been UK tax resident, pay full tax in the UK, and file our accounts at Companies House under UK GAAP.

Like many corporate structures, we offer preference shares to our investors which bring in new equity to the business. Our preference shares attract a coupon of 9% but we have never made any payments on these - as stated above, no dividends have been paid since 2017.

Private equity is one of the only major sources of capital available to the social care sector. Bringing in new equity to the business, including from preference shares, allows HC-One to continue to invest to meet the needs of our Residents and our local authority partners.

9. The funding from the Scottish Government for the purchase of HC-One's Home Farm on Skye – which along with 22 other HC-One Scottish care homes was owned by FC Skyfall IOM Properties Limited registered in the Isle of Man – may have been in violation of a Scottish law banning Covid-19 support to firms based in tax havens.

None of the funds granted to HC-One for Covid-19 support were paid to the company registered in the Isle of Man.

It is not for HC-One to comment on how NHS Highland funded the purchase of Home Farm. However, we can confirm that this was the sale and transfer of the care home (a commercial property) to NHS Highland – this was not a Covid-19 related transaction, nor did it form part of NHS Highland's Covid-19 financial support to HC-One.

Any Covid-19 funding we received from the Scottish or UK Government, or any of the Scottish or UK NHS bodies, was used in line with the terms of the funding to support our homes and our Colleagues to respond to the significant challenges presented by the pandemic, and, above all, to maintain the safety and wellbeing of our Residents.

It should also be noted that companies in the Isle of Man are subject to UK Corporation Tax.

As this claim has no legal basis, it should not be included in the final CICTAR report.

10. Interest payments at very high interest rates on notes or loans listed on the Cayman Island Stock Exchange appear to be another way in which taxable profits are reduced from HC-One care homes in the UK and converted to tax free income in the Cayman Islands. It appears that the entities issuing these notes are either in the ownership structure of HC-One or owned separately by those with a controlling interest in HC-One. This is a relatively common practice used in private equity ownership structures.

HC-One dissolved all loans as part of the refinancing deal secured in April 2021. No new loan notes have been issued since. Our entire debt is now consolidated with Welltower, an independent and publicly listed healthcare and property investor traded on the New York Stock Exchange.

This is a 58% mortgage on the value of the care homes that we own, which we believe is the best and most sustainable model as it gives us financial stability.

Any beneficiary of interest payments is, crucially, not connected to our owners.

Our loans have always carried market competitive interest rates for our business and the terms placed on these loans.

As previously stated, all our income is subject to UK tax, we operate under UK law, and file accounts under UK GAAP.

11. Safanad's investment in HC-One has helped further enrich members of some of Saudi Arabia's wealthiest families and biggest bankers at the expense of some of the UK's most vulnerable people.

We do not accept the concept that for-profit ownership does not align with high-quality care. Our investors continue to invest far more into the organisation than they ever receive in profit, providing us with the long-term finance we need to invest in our people and homes.

With the support of our investors, we are proud to be the only care provider investing at scale in local authority-focused care services so that those living and working in our homes have access to the very best facilities, pay, and career opportunities.

12. Various reports on US nursing homes have documented the role of Formation Capital and other investors who over decades have extracted significant profits but are rarely held accountable when problems occur as a result of underspending and under staffing for front-line care. A specific example of this is the 2020 US$256 million civil fraud judgement against Consulate Health Care, controlled by Formation Capital, which was settled for US4.5 million after entities in the corporate structure filed for bankruptcy in 2021.

As stated above, Formation Capital is a minority shareholder of HC-One, with 7% ownership in the organisation.

The events which formed the basis of the civil case against Consulate Health Care, referenced above, pre-dates Formation Capital's involvement with the organisation, and therefore Formation Capital played no role in the behaviour that led to the judgment.

Formation Capital formally ended their involvement with Consulate Health Care in 2020, and informally well before then. As such, Formation Capital had no control over the Consulate at the time that it filed for bankruptcy in 2021.

13. A recent study of private equity ownership of US nursing homes, which highlighted the role of Formation and Safanad, concluded that in "an industry that provides care to some of the most vulnerable communities and receives hundreds of billions of dollars of government money each year, it is critical that private equity cannot be allowed to continue to siphon money out of nursing homes at the expense of patients and health care workers." We conclude that the same is true in the UK and that the Covid-19 pandemic exposed underlying structural issues in UK care homes.

We categorically reject the premise of the question and believe that the claim simply does not apply to HC-One.

The Covid-19 pandemic underlined the chronic underfunding of the UK social care sector and the failure of successive government to adequately reform the funding of old age care, to integrate the health and care systems, and to fully consider the impact of Covid-19 on the social care sector and the needs of care homes until several weeks into the pandemic.

14. Public records indicate that there were at least 2,141 Covid-19 deaths at HC-One facilities in England and Scotland combined. We conclude that the rate of Covid-19 deaths at HC-One facilities, and those of other large care home operators in both jurisdictions, are higher than might have been the case if there were a

greater focus on high quality care rather than continuing to siphon profits offshore.

Every death in a care home is a tragedy for families and Colleagues in our homes. Covid-19 has had a heavy emotional toll on people's lives across the country, and we are immensely grateful to our care Colleagues who have worked tirelessly to keep Residents safe and well. We know that this has been a uniquely difficult time for many Residents, families, and Colleagues.

Since the start of the pandemic in March, HC-One has had a comprehensive coronavirus contingency plan in place for our homes, which was created by our Clinical Director and repeatedly updated to reflect the latest government guidance.

We began to limit staff movement between homes as much as possible from very early on, in advance of the first guidance on this matter being issued by central government on 13th May. We restricted all non-essential visitors from our homes from 12th March. This decision was not taken lightly, but we felt it was in the best interests of keeping our Residents and Colleagues safe.

We secured the medical equipment, PPE, and supplies needed to protect Residents and Colleagues alike for our homes throughout the pandemic. Colleagues had access to a range of specific coronavirus training modules, including on coronavirus, enhanced infection control, and the correct use of PPE. These training modules were regularly updated to reflect all changes in the guidance.

There is no evidence of any connection between ownership model and death rate in care homes, based on a Care Quality Commission report. It is well established that the biggest factor in death rates in care homes is the number of cases in the local community in which the home is situated.

We categorically reject the assertion that money has been siphoned offshore at the expense of the people living and working in our homes.

No shareholder dividend payments were made during the pandemic, and Asset Management Fees were frozen during the pandemic period.

15. The UK's current system of care homes unnecessarily diverts resources away from the welfare of both residents and workers, in a potential violation of human rights, and cannot be allowed to continue in its current form. HC-One provides a clear example of the problems in the UK's care sector and why there is an urgent need for transparency and accountability.

As a private company that delivers an essential public good, the most important thing for us is to meet the needs of our Residents and our local authority partners, and to do this we need access to long-term finance so we can invest in our people and homes.

HC-One is proud to have the support of committed owners who have been with us for six years, and who re-committed their long-term support earlier this year. They are fully aligned with our goals, and they have consistently provided the financial resources we need to deliver high-quality, kind care to Residents, and invest in the careers of our Colleagues.

HC-One does not unnecessarily divert resources away from the welfare of residents and Colleagues. Our priority is, and always has been, continually improving our services so that our Residents can lead their best lives. Our investment programmes – combined with the new, more comprehensive quality assurance system we also launched this year – will help us continue our journey to be The Kind Care Company.

The level of capital we are able to access thanks to our owners is simply not found elsewhere in the social care sector: last year the Health and Social Care Select Committee report stated that the funding gap in the sector was at least £7 billion a year, recognising the systemic and chronic underfunding of the sector for more than two decades.

Ultimately, the interests of our owners are aligned with those of our Residents and their families: everybody expects, deserves, and benefits when our homes provide great care, and this is what our investments help us to work towards every day.

Our owners have always invested far more into the delivery of high-quality, kind care, than they have taken out.

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