

**DISPUTE RESOLUTION SERVICE****D00016975****Decision of Independent Expert**

Croll Group

and

Web4orce Limited

**1. The Parties**

Lead Complainant:

Croll Group  
1 Orsett Business Centre  
Stanford Road  
Orsett  
Grays  
Essex  
RM16 3BX  
United Kingdom

Additional Complainants:

Eastwood Hall Ltd  
Hill House (Lexden) Ltd  
Carlisle Lodge Ltd  
Ayletts House Ltd

The Additional Complainants all have same address as the Lead Complainant. The Lead Complainant and the Additional Complainants are collectively referred to below as "the Complainant".

Respondent:

Web4orce Limited  
Enterprise House  
56-58 Main Street  
High Bentham  
Lancashire  
LA2 7HY  
United Kingdom

## 2. The Domain Names

abusetheelderly.co.uk  
aylettsresidentialhome.co.uk  
broadoaksresidentialhome.co.uk  
carlislelodge.co.uk  
chelmsfordcarehome.co.uk  
colchestercarehome.co.uk  
hillhousecarehome.co.uk  
mocktheelderly.co.uk  
nursing-care-homes.co.uk  
rochfordcarehome.co.uk

("the Disputed Domain Names")

## 3. Procedural History

The Complaint was filed with Nominet on 22 January 2016. Nominet validated the Complaint on 25 January 2016 and notified the Respondent by post and by email, stating that the Response had to be received on or before 16 February 2016. The Response was filed on 16 February 2016. On the same day Nominet notified the Complainant that a Reply had to be received on or before 24 February 2016. The Reply was filed on 24 February 2016. Nominet appointed the mediator on 25 February 2016.

The Informal Mediation procedure failed to produce an acceptable solution for the parties and so on 4 April 2016 Nominet informed the Complainant that it had until 18 April 2016 to pay the fee for the decision of an Expert pursuant to paragraph 7 of the Nominet Dispute Resolution Service Policy ("the Policy"). A reminder was sent on 14 April, and the Complainant requested a two week extension for payment, which Nominet duly granted. On 19 April 2016 the Complainant paid Nominet the required fee.

On 10 May 2016 the undersigned, Jane Seager ("the Expert"), confirmed to Nominet that she was independent of each of the parties and that, to the best of her knowledge and belief, there were no facts or circumstances, past or present (or that could arise in the foreseeable future) that needed to be disclosed as they might be of such a nature as to call in to question her independence in the eyes of one or both of the parties.

## 4. Factual Background

The Complainant runs four nursing and residential care homes in the south of England.

The Respondent is a company specialising in Search Engine Optimization (SEO) services, run by a sole employee. It seems to have developed a particular focus on advising care homes.

The Disputed Domain Names were registered on the following dates:

abusetheelderly.co.uk	27 October 2015
aylettsresidentialhome.co.uk	10 January 2001
broadoaksresidentialhome.co.uk	10 January 2001
carlislelodge.co.uk	14 October 2005
chelmsfordcarehome.co.uk	26 May 2010

colchestercarehome.co.uk	26 May 2010
hillhousecarehome.co.uk	17 September 2012
mocktheelderly.co.uk	21 October 2015
nursing-care-homes.co.uk	8 October 2004
rochfordcarehome.co.uk	26 May 2010

The Respondent began to work for the Complainant in 2001, and registered certain of the Disputed Domain Names as part of its SEO services. In 2012 it seems there was a dispute concerning an unpaid invoice for £300, and as a result the Respondent proceeded to post content that was critical of the Complainant on various websites to which certain of the Disputed Domain Names were pointing. The Respondent's terms and conditions contain a provision allowing the Respondent to upload a "default notice" to the internet in the event of very late payment, stating that payment is overdue.

The dispute appears to have resulted in a great deal of correspondence between the parties, not all of which the Expert has seen. The Complainant has instructed two firms of solicitors to act for it in the dispute, but the Respondent is represented by its sole employee. It appears that the Complainant has also posted content online criticising the Respondent's business practices and the Respondent has set up a website about the dispute. As far as the Expert is aware, the Respondent's last offer to settle the dispute was apparently in the region of £50,000. However, this was rejected by the Complainant, who then proceeded to file this Complaint with Nominet.

## **5. Parties' Contentions**

### **Complaint**

#### **Complainant's Rights**

The Complainant states that the websites to which certain of the Disputed Domain Names are pointing all contain information about the Complainant and its group which is false and very damaging.

The Complainant encloses copies of correspondence between the Complainant's lawyers and the Respondent from 14 December 2015 to 18 January 2016 (a letter before action from the Complainant's lawyers and six subsequent emails between the parties). The Complainant also encloses a list of the websites to which the Disputed Domain Names are pointing, plus printouts of certain of these websites.

The Complainant asserts that such printouts show that the Respondent has posted material which suggests that the Complainant and its group abuse elderly people in their care and are bad debtors.

In the Complainant's opinion, in view of the Complainant's substantial goodwill and reputation, the registration and maintenance of the Disputed Domain Names amounts to a false representation that the Respondent is associated or connected with the Complainant, passing off and malicious falsehoods.

Furthermore, the Complainant argues that the Disputed Domain Names also constitute an instrument of fraud in the hands of the Respondent as they are so distinctive that they could only denote one trader in each case.

Finally, the Complainant asserts that the Disputed Domain Names also amount to breach of contract by the Respondent, who was contracted to supply SEO services to the Complainant until June 2012. According to the Complainant, the Respondent registered some of the Disputed Domain Names in connection with such services, but solely for SEO purposes and not to cause harm to the business of the Complainant.

### **Abusive Registration**

The Complainant argues that the Disputed Domain Names amount to a representation to those who consult the register and who access the websites that the Respondent is connected to or associated with the Disputed Domain Names and the owner of the corresponding goodwill.

The Complainant asserts that the sole purpose of the Respondent's registration and maintenance of the Disputed Domain Names is to cause damage to the Complainant and to address a dispute about an unpaid invoice for £300.

In the Complainant's opinion, the registration and continued possession of the Disputed Domain Names and websites is resulting in and will continue to result in the erosion of the exclusive goodwill owned by the Complainant in connection with the trade names detailed in the letter from the Complainant's lawyers to the Respondent dated 14 December 2015, which is likely to cause substantial damage to the goodwill in each case.

The Complainant states that it has received communications which demonstrate that its customers are aware of the offending material on the websites and the fact that the financial integrity and standing of the Complainant is being affected (no evidence of this is provided, although the Complainant states that copies are enclosed).

The Complainant concludes by stating that the Disputed Domain Names have been registered and continue to be maintained by the Respondent with the primary purpose of disrupting the business of the Complainant and forcing a large payment for unproven damages to the Respondent.

### **Response**

The Respondent first deals with the following six Disputed Domain Names:

abusetheelderly.co.uk  
rochfordcarehome.co.uk  
colchestercarehome.co.uk  
chelmsfordcarehome.co.uk  
mocktheelderly.co.uk  
nursing-care-homes.co.uk

The Respondent points out that for the Complainant's application to succeed it is first necessary to establish rights and then to demonstrate abuse. The Respondent asserts that the Complaint must fail regarding the six Disputed Domain Names listed above as they are generic and thus the Complainant has failed to establish rights.

The Respondent then deals with the remaining four Disputed Domain names, namely:

aylettsresidentialhome.co.uk  
broadoaksresidentialhome.co.uk

carlislelodge.co.uk  
hillhousecarehome.co.uk

The Respondent asserts that, whilst the Complainant can establish rights in this instance, these Disputed Domain Names are not abusive. The Respondent contends that in 2001 the Respondent purchased the four Disputed Domain Names for four websites that were leased to the Complainant on an annual basis. For the following 11 years the Respondent states that the parties enjoyed a good working relationship. However, the Respondent asserts that in July 2012 the Complainant failed to pay the Respondent's annual invoice amounting to £300, despite being emailed reminders on four separate occasions. Consequently in September 2012, in accordance with the Respondent's terms and conditions, the content of each of the websites was altered to display a default notice. The Respondent provides an example of a website now showing such a notice as a result of similar non-payment by another of the Respondent's clients, also a care home.

The Respondent then goes on to explain that for the next three years many emails were exchanged between the Complainant and the Respondent in an attempt to settle the dispute, but without success. In May/June 2014, the Respondent became aware of a website criticising the Respondent and its use of default notices, but was unable to ascertain who was responsible because the registrant of the corresponding domain name was listed in the Nominet Whois as Johnny BGood. However, the Complainant referred to this website in an email to the Respondent dated 20 June 2014, although it did not indicate that it was responsible. The Respondent asserts that any reasonable person would acknowledge that the content of this website damages the reputation of the Respondent and its owner and points out that, at the time of filing of the Response, the results of a Google search on "web4orce" place the website in first and second place.

The Respondent states that its default notices remained online, virtually unchanged, for the next three years until the beginning of September 2015 when the Complainant's lawyers entered into correspondence with the Respondent.

The Respondent concludes by stating that its defence is as follows: the content of each of the four websites in question is completely true and is therefore by definition "fair comment". The Respondent also directs the Expert to a website set up by the Respondent which contains further detail about the dispute between the parties. According to the Respondent, this was published in part to counteract the damage caused and to help its clients keep up to date regarding the dispute with the Complainant.

### **Reply**

The Complainant states that, contrary to the Respondent's assertions, it does have rights in the following six Disputed Domain Names:

abusetheelderly.co.uk  
rochfordcarehome.co.uk  
colchestercarehome.co.uk  
chelmsfordcarehome.co.uk  
mocktheelderly.co.uk  
nursing-care-homes.co.uk

According to the Complainant, such rights arise as a result of a contractual obligation (as set out below and also in the letter before action from the Complainant's lawyers dated 14

December 2015), or in the alternative indirectly by virtue of the content of the corresponding websites which contain information solely about the Complainant's businesses.

The Complainant asserts that it has already made submissions about the rights and goodwill that it has in the care homes in the letter dated 14 December 2015 (submitted as evidence with the Complaint) and it is admitted by the Respondent that the Complainant has rights in the following domain names for this reason:

aylettsresidentialhome.co.uk  
broadoaksresidentialhome.co.uk  
carlislelodge.co.uk  
hillhousecarehome.co.uk

With regard to the other six Disputed Domain Names, the Complainant states that, as per the contract between the Complainant and the Respondent, it was understood and agreed that the Respondent would register certain domain names to direct internet browsing traffic to the Complainant's websites for the overall purpose of increasing the Complainant's business (as detailed on pages 1 and 2 of the letter from the Complainant's lawyers dated 14 December 2015).

In the Complainant's opinion, the continued maintenance and use of the websites to which these Disputed Domain Names are pointing is in breach of the contractual obligations between the Complainant and the Respondent, as the websites were created solely for the purpose of fulfilling the contractual arrangements with the Complainant and no other purpose.

The Complainant states that the overall objective of the contract between the parties was to promote the Complainant's business. However, the Respondent's subsequent actions in maintaining the Disputed Domain Names have been for the purposes of damaging the Complainant's business, in direct breach of the Respondent's contractual obligations.

In addition, the Complainant argues that, in respect of <rochfordcarehome.co.uk>, <colchestercarehome.co.uk> and <chelmsfordcarehome.co.uk>, there is a geographic connection between the Disputed Domain Names and the business of the Complainant, as certain of the Complainant's care homes are located in Rochford, Colchester and Chelmsford. These Disputed Domain Names are pointing to information about each of the care homes owned by the Complainant in that area.

The Complainant asserts that the Complainant's care homes within these areas are recognised by the public as services provided by the Complainant in these areas and therefore the Complainant does have rights in these Disputed Domain Names. The Complainant argues that the use of the Disputed Domain Names by the Respondent is misleading and causes confusion for internet users.

Further, in respect of <nursing-care-homes.co.uk>, the Complainant points out that when the following suffixes are added:

"/rochord-home-5780.php"  
"/colchester-home-5892.php"  
"/chelmsford-home-5741.php"  
"/eastbourne-home-4962.php"

information about the Complainant's care homes within these areas is displayed and the websites purport to be owned by the Complainant. The Respondent has inserted a scrolling banner along the top of these sites which incorrectly states:

*"Unfortunately court proceedings are pending against our home so we have no good news for the time being. Watch this space."*

For the reasons set out above in respect of the Respondent's contractual obligations as well as the fact that the websites purport to be owned by the Complainant, the Complainant would argue that the Complainant does have rights in this particular Disputed Domain Name.

The Respondent admits that the Complainant has rights in the following four Disputed Domain Names, but denies that their use has been abusive:

aylettsresidentialhome.co.uk  
broadoaksresidentialhome.co.uk  
carlislelodge.co.uk  
hillhousecarehome.co.uk

The Complainant states that the Respondent has however failed to provide any detailed explanation as to why such use has not been abusive other than to state that the content on the websites is true.

In the Complainant's opinion, the Respondent's use of all of the Disputed Domain Names has been abusive. The Complainant states that in some instances the corresponding websites are being used to confuse internet users that they are owned by the Complainant and are then used to post untrue and unfair comments about the Complainant's business. The Complainant argues that the websites are not being used fairly or for the purposes of purely commenting on the Complainant's business. In the Complainant's view they are instead being used solely as an instrument to damage and attack the Complainant's business as a result of a separate and distinct dispute between the parties since 2012.

## **6. Discussion and Findings**

### **General**

Under paragraph 2(a) of the Policy, for the Expert to order a transfer of a disputed domain name, a complainant is required to demonstrate, on the balance of probabilities, both of the following elements:

- "(i) The Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name; and*
- (ii) The Domain Name, in the hands of the Respondent, is an Abusive Registration."*

"Rights" is defined under the Policy as *"rights enforceable by the Complainant, whether under English law or otherwise, and may include rights in descriptive terms which have acquired a secondary meaning"*.

First, given the content of the parties' submissions, the Expert feels bound to underline that Nominet UK's Dispute Resolution Service (DRS) is essentially a fast, simple procedure

designed predominantly for clear cut cases of Abusive Registration under the Policy (often referred to as “cybersquatting”). It is not intended to and cannot deal with other matters such as defamation, passing off, contract disputes and damages, which may only be decided by a court of competent jurisdiction. Thus the Expert must simply consider whether the Complainant has succeeded in making out its case under the terms of the Policy.

### **Complainant's Rights**

Considering that it was filed by a law firm, the Complaint itself is not particularly helpful. It would have been advisable to have first read the Policy and Procedure, and also perhaps the [Experts' Overview](#) provided on Nominet's website before proceeding. Simply attaching various correspondence between the parties pertaining to the overall dispute and expecting the Expert to wade through it and pick out the elements relevant to the Complainant's case under the Policy is not to be recommended.

As far as establishing Rights is concerned, the Experts' Overview reads as follows:

*"As indicated above, the relevant right has to be an enforceable right (i.e. a legally enforceable right). Bare assertions will rarely suffice. The Expert needs to be persuaded on the balance of probabilities that relevant rights exist. The Expert will not expect the same volume of evidence as might be required by a court to establish goodwill or reputation, but the less straightforward the claim, the more evidence the better (within reason – this is not an invitation to throw in the 'kitchen sink'). [.....]*

*If the right is an unregistered trade mark right, evidence needs to be put before the Expert to demonstrate the existence of the right. This will ordinarily include evidence to show that (a) the Complainant has used the name or mark in question for a not insignificant period and to a not insignificant degree (e.g. by way of sales figures, company accounts etc) and (b) the name or mark in question is recognised by the purchasing trade/public as indicating the goods or services of the Complainant (e.g. by way of advertisements and advertising and promotional expenditure, correspondence/orders/invoices from third parties and third party editorial matter such as press cuttings and search engine results).*

*If the right is a contractual right, the Expert will need to see evidence of the contract."*

Aside from a vague reference to the Complainant's "goodwill and reputation" and a reference to the Disputed Domain Names being "distinctive", the Complaint itself does not do this. The correspondence attached in annex is just that. It is not addressed specifically to the Expert, but rather to the Respondent, and does not address the question of the Complainant's Rights under the Policy with any clarity.

Fortunately for the Complainant, the Respondent (unrepresented by a law firm), immediately draws a distinction between those Disputed Domain Names that appear to be descriptive, and those that do not. The Respondent goes on to admit that the Complainant has Rights in the following Disputed Domain Names:

aylettsresidentialhome.co.uk  
broadoaksresidentialhome.co.uk  
carlislelodge.co.uk  
hillhousecarehome.co.uk



Prompted by the Response, the Complainant does address the issue of Rights in its Reply, and states that it has "*already submitted the rights and goodwill the Complainant has in the care homes in the letter dated 14 December 2015*". The Expert has considered this letter in detail and in fact it contains little evidence to demonstrate that the Complainant has Rights in accordance with the Policy.

It appears from the letter that the Complainant's group consists of the following companies:

Ayletts House Ltd  
Eastwood Hall Ltd  
Hill House (Lexden) Ltd  
Carlisle Lodge Ltd

A table in the letter sets out the turnover and advertising spend for each company, plus the number of years that the corresponding trading name has been used. This is probably just enough, on a generous interpretation, to convince the Expert that the Complainant has Rights for the purposes of the Policy in the following terms:

AYLETTS HOUSE  
EASTWOOD HALL  
HILL HOUSE  
CARLISLE LODGE

However, it may be seen that only CARLISLE LODGE is identical to the relevant Disputed Domain Name (it is accepted practice under the Policy to discount the .CO.UK suffix), and the Complainant has made no attempt to demonstrate that the additional terms are similar to the relevant Disputed Domain Names. Furthermore, no evidence at all has been submitted regarding whether or not the Complainant has Rights in the term BROADOAKS RESIDENTIAL HOME. In this regard, the Expert would draw the Complainant's attention to the following wording in the Experts' Overview:

*"The basic rule is that Experts should not make any investigations of their own. They should make their decisions "on the basis of the parties' submissions, the Policy and the Procedure". The second sentence of paragraph 16(a) enables Experts to view web sites mentioned in the parties' submissions, but no party should assume that the Expert will necessarily do so.....No party should assume that the Expert will make any investigations to support a bare assertion made in a party's submission."*

Nevertheless the Expert has consulted the website at [www.crollgroup.co.uk](http://www.crollgroup.co.uk) and is satisfied that the Complainant owns and operates a care home called Broadoaks and that, on the balance of probabilities, it has Rights in respect of a name or mark which is identical or similar to the following Disputed Domain Names:

aylettsresidentialhome.co.uk  
broadoaksresidentialhome.co.uk  
carlislelodge.co.uk  
hillhousecarehome.co.uk

The remaining Disputed Domain Names are as follows:

abusetheelderly.co.uk  
rochfordcarehome.co.uk

colchestercarehome.co.uk  
chelmsfordcarehome.co.uk  
mocktheelderly.co.uk  
nursing-care-homes.co.uk

The Respondent argues that the Complainant has not proved that it has Rights in these terms because they are generic, and the Expert would agree. In its Reply, the Complainant attempts various arguments as to why it has Rights in the remaining Disputed Domain Names, but none of them are sufficient to demonstrate this. Indeed, the Expert finds it surprising that these Disputed Domain Names were included in the Complaint in the first place. For example, the Disputed Domain Name <nursing-care-homes.co.uk> is clearly being used to link to various websites providing information about a large number of care homes, and ordering its transfer to the Complainant would be very disruptive indeed to such businesses.

In conclusion the Expert finds that paragraph 2(a)(i) of the Policy is satisfied with regard to the following Disputed Domain Names only:

aylettsresidentialhome.co.uk  
broadoaksresidentialhome.co.uk  
carlislelodge.co.uk  
hillhousecarehome.co.uk

The Expert finds that paragraph 2(a)(i) of the Policy is not satisfied with regard to the remaining Disputed Domain Names:

abusetheelderly.co.uk  
rochfordcarehome.co.uk  
colchestercarehome.co.uk  
chelmsfordcarehome.co.uk  
mocktheelderly.co.uk  
nursing-care-homes.co.uk

### **Abusive Registration**

Moving on to paragraph 2(a)(ii) of the Policy, "Abusive Registration" is defined in paragraph 1 of the Policy to mean a domain name which:

- "(i) *was registered or otherwise acquired in a manner which, at the time when the registration or acquisition took place, took unfair advantage of or was unfairly detrimental to the Complainant's Rights; or*
- (ii) *has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights."*

It should be noted that it is only necessary for the Expert to consider the question of abuse in relation to the Disputed Domain Names in which the Complainant has proved Rights, as paragraph 2(a) of the Policy is cumulative. These were registered on the following dates:

aylettsresidentialhome.co.uk	10 January 2001
broadoaksresidentialhome.co.uk	10 January 2001
carlislelodge.co.uk	14 October 2005

As far as abusive registration under sub-paragraph 1(i) is concerned, it seems likely from the parties submissions that all except <hillhousecarehome.co.uk> were registered as part of the Respondent's work for the Complainant, and thus were not registered abusively.

Paragraph 3(a) of the Policy sets out a non-exhaustive list of factors that may be evidence of abuse. However, as the Complainant has not cited any of them, the Expert has considered such factors in detail, and finds that under the circumstances, paragraph 3(a)(i) relating to abusive registration is potentially relevant in relation to <hillhousecarehome.co.uk>, as follows:

*"Circumstances indicating that the Respondent has registered or otherwise acquired the Domain Name primarily:*

*[.....]*

*C. for the purpose of unfairly disrupting the business of the Complainant"*

If, as the Respondent asserts, the Complainant did not pay the invoice in question in July 2012, it is likely that this subsequent registration by the Respondent in September 2012 was aimed at unfairly disrupting the Complainant's business. However, in view of the Expert's findings on abusive use below, it is not necessary for the Expert to come to a definite conclusion regarding the abusive registration of this particular Disputed Domain Name (it is sufficient to prove abusive use OR registration, both are not required by the Policy).

Turning to the question of abusive use under sub-paragraph 1(ii), paragraph 4(a) of the Policy sets out a non-exhaustive list of factors which may be evidence that there has been no abuse. In arguing that the content of the websites to which the relevant Disputed Domain Names are pointing is completely true and thus fair comment, the Respondent appears to be relying on the following:

*"(i) Before being aware of the Complainant's cause for complaint (not necessarily the 'complaint' under the DRS), the Respondent has:*

*[ ]*

*C. made legitimate non-commercial or fair use of the Domain Name"*

Paragraph 4(b) of the Policy also provides that *"Fair use may include sites operated solely in tribute to or in criticism of a person or business."*

The Nominet Experts' Overview provides helpful guidance on whether or not using a domain name to point to a criticism website may be seen as fair use, as follows:

*"The appeal decision in DRS 06284 (rayden-engineering.co.uk) confirmed the consensus view among experts today that the nature of the domain name is crucial to the exercise. A criticism site linked to a domain name such as <IhateComplainant.co.uk> has a much better chance of being regarded as fair use of the domain name than one connected to <Complainant.co.uk>. The former flags up clearly what the visitor is likely to find at the site, whereas the latter is likely to be believed to be a domain name of or authorised by the Complainant.*

*[ ]*

*In DRS 06284 the domain name was identical to the name in which the Complainant had rights. A modified name that made it clear that this was a protest site would presumably*

*have been less successful in drawing the protest to the attention of customers of the Complainant. The Panel concluded there was a balance to be drawn between the right to protest (which could be effected via a modified name) and the Complainant's rights in its own name, and that in this case at least the latter outweighed the former. Note that the Panel did not rule that use of an identical name would always and automatically be unfair, but did conclude that it was only in exceptional circumstances that such use could be fair. The Panel declined to find that such exceptional circumstances existed in the case in question."*

The Experts' Overview also provides the following:

*"While there is no system of precedent under the DRS Policy, for the DRS Policy to be effective there has to be a measure of consistency in the decisions and the panel of Experts does its best in that regard, although, as will be seen below, there are a few areas where differing views prevail. If anyone involved in a dispute under the DRS Policy proposes to rely upon the rationale of any previous DRS decision, the more recent decisions (whether at first instance or appeal level) are more likely to represent current thinking."*

Taking this information into account, the Expert notes that the Disputed Domain Names at issue simply consist of the names by which the Complainant's care homes are known and do not contain any indication that the websites to which they point are not owned or operated by the Complainant. As may be seen by previous decisions under the Policy, and particularly the appeal decision in DRS 06284 (<rayden-engineering.co.uk>), in these circumstances most (if not all) Experts would order a transfer under the Policy of the domain name at issue, and the Expert in this case sees no exceptional reason to diverge from this course of action.

In the Expert's opinion, internet users will likely be confused by the Disputed Domain Names and may logically assume that they belong to the Complainant and thus point to websites run by the Complainant. Even if it is abundantly clear upon arrival at the corresponding websites that there is no link between the operator of the websites and the Complainant, users will still have been directed there as a result of the confusing nature of the Disputed Domain Names, and this may be unfairly detrimental to the Complainant's business.

In this regard, the actual content of the websites in question is irrelevant, and the Expert has not taken such content into consideration in making this decision. Whether or not such content is true or untrue, fair or unfair, is not the issue. What is unfair is the use of the Disputed Domain Names, which are identical to the names of the Complainant's care homes, with no adornment, to attract visitors to websites criticising the Complainant (see also paragraph 3(a)(ii) of the Policy).

For the sake of completeness, the Respondent is of course clearly free to criticise the Complainant, provided such criticism stays within the law (for example with regard to defamation) and vice versa, and the Expert makes no comment on any aspects of the current dispute between the Complainant and the Respondent. This decision merely deals with the Disputed Domain Names in accordance with the Policy, and no inferences should be taken from it in the event of any subsequent court proceedings.

In summary, the Expert has considered the admissibility, relevance, materiality and weight of the evidence as a whole and is satisfied that the Complainant has succeeded in proving,

on the balance of probabilities, that the following Disputed Domain Names are Abusive Registrations in accordance with paragraph 2(a)(ii) of the Policy:

aylettsresidentialhome.co.uk  
broadoaksresidentialhome.co.uk  
carlislelodge.co.uk  
hillhousecarehome.co.uk

## **7. Decision**

With regard to the following Disputed Domain Names:

aylettsresidentialhome.co.uk  
broadoaksresidentialhome.co.uk  
carlislelodge.co.uk  
hillhousecarehome.co.uk

The Expert finds that the Complainant has Rights in names which are identical or similar to them, and that the Disputed Domain Names, in the hands of the Respondent, are Abusive Registrations. They should therefore be transferred to the Complainant.

With regard to the following Disputed Domain Names:

abusetheelderly.co.uk  
rochfordcarehome.co.uk  
colchestercarehome.co.uk  
chelmsfordcarehome.co.uk  
mocktheelderly.co.uk  
nursing-care-homes.co.uk

The Expert finds that the Complainant does not have Rights in names which are identical or similar to them, and so they should remain with the Respondent.

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Jane Seager  
2 June 2016