

Case Name: Petition by Redcroft Care Homes Ltd

Case Ref No: P625/22

Date, Time and Duration of Hearing: Thursday 19 September at 10.30am (1 day)

Division and Senators: First Division (Lord President, Lady Wise and Lord Beckett)

Livestreamed Hearing?: Yes No

Agents and Counsel:

Agents / Counsel for the Petitioners and Reclaimers (*Redcroft Care Homes Ltd*):

BTO Solicitors LLP

Dennis Edwards

Agents / Counsel for the Respondents (*Edinburgh Health and Social Care*

Partnership):

The City of Edinburgh Council Legal Department

Callum MacNeill KC and David Anderson

Link to Judgment Appealed:

[court-of-session-redcroft-care-homes-limited-for-judicial-review-21-december-2023.pdf \(scotcourts.gov.uk\)](#)

Case Description:

This is a reclaiming motion (appeal) from a decision of the Lord Ordinary to dismiss the petition on the basis that it was incompetent.

The petitioners are Redcroft Care Homes Limited. They run Redcroft House, a residential care facility for adults with learning difficulties and complex needs.

They are contracted by City of Edinburgh Council to provide these services. The

Council has a statutory obligation under the Social Work (Scotland) Act 1968 to promote social welfare in their area, including by providing financial assistance to persons in need as a result of disability. The Council delegates the planning, resourcing and operational oversight of a range of health and social care services to the respondents, the Edinburgh Health and Social Care Partnership.

In 2014, Redcroft and the Council entered into a Framework Agreement, in terms of which Redcroft agreed to provide residential care services at Redcroft House.

The petitioners are paid a set amount by the Council per resident per week.

In 2018, Redcroft had funding for nine residents. In February 2019, the Council began an investigation into various aspects of the care being provided at Redcroft.

During the investigation, a moratorium was put in place on any new placements at the facility. No new residents would be placed at the facility until the investigation concluded. The investigation was carried out between February 2019 and October 2020. During that period, two residents left the facility and a third died, reducing the number of residents from nine to six.

Operating Redcroft with funding for only six users left the business in financial difficulties. The petitioners requested payment of £284,100.78 from the Council to cover the funding deficit caused by the reduction in the number of residents after the moratorium commenced. By letter of 6 May 2022, the EHSCP refused the claim. The letter said this was because the claim related to the period during which Redcroft House was under investigation and a moratorium was in place.

Redcroft ask the court to quash the decision of 6 May 2022, on grounds that it was unreasonable, irrational, in breach of the petitioners' legitimate expectations, and procedurally unfair. They contend that they did not know that the fact the investigation had been initiated into Redcroft would be taken into account in the decision as to whether to make the backdated funding payments. They say that they had been led to believe it would be based on financial information requested from them, which they had duly provided, and that the investigation was irrelevant. They argue that another claim for payment they had made, which related to the provision of a waking night carer for one resident in the home, was approved, and that the Council acted irrationally in approving one claim, but not the other.

EHSCP contend that the petition is incompetent. They say that the decision was a commercial one, resulting from contractual negotiations, and therefore is not subject to the court's supervisory jurisdiction, and so not amenable to judicial review.

The Lord Ordinary agreed with the respondents. He dismissed the petition as incompetent. He determined that, in any event, had the petition been competent, he would have refused it on its merits.

Redcroft appeal this decision. The First Division will hear the appeal on Thursday 19 September 2024.

