

Subject:	Ombudsman's decision in case 16 019 229. The case of Ms C
Reason for briefing note:	Adult Services and Health Overview and Scrutiny
Responsible officer(s):	Angela Morris, Director of Operations - Optalis
Senior leader sponsor:	Chair of Adult Services and Health Overview and Scrutiny
Date:	20 June 2018

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SUMMARY

- (1) On 27 November 2017, the Local Government & Social Care Ombudsman (LGO) issued a final report to the council, following an investigation into a complaint originating in March 2017, against the Royal Borough of Windsor & Maidenhead, reference 16 019 229.
- (2) Officers responded to the final decision and paid the sum of £500 to Ms C in January 2018. They issued a formal apology to Ms C in April 2018.

1 BACKGROUND

- 1.1 On 27 November 2017, the Local Government & Social Care Ombudsman (LGO) issued a final report to the council, following an investigation into a complaint originating in March 2017, against the Royal Borough of Windsor & Maidenhead, reference 16 019 229. It found that the council failed to properly assess what duties it had to Ms C and as a result the Council was required to make formal apology to Ms C and to pay her the sum of £500.
- 1.2 Officers responded to the final decision and paid the sum of £500 to Ms C in January 2018. They issued a formal apology to Ms C in April 2018.
- 1.3 Ms C was trafficked into the United Kingdom in 2010 as a sex worker and had become dependent on illicit drugs. She was later in a relationship, but suffered domestic abuse. She had a child in October 2015 which was taken into local authority care in Birmingham. In July 2016 she became homeless.
By this time Ms C was a regular user and was dependent on illicit drugs. To fund her drug habit she was known to engage in risky behaviours.
- 1.4 A safeguarding referral to the Borough was made by Ms C's advocate on the 5 August 2016 as they considered Ms C was at risk of sexual exploitation. As a result a supported assessment was undertaken by a worker in CMHT. The outcome of the assessment undertaken on 26 August 2016 determined Ms C did not meet two or more outcomes outlined in the Care Act. However, it was unclear whether this was due to physical/mental impairment or illness due to her circumstances. Due to concerns raised about Ms C's cognitive abilities a referral was made to Community Team for People with a Learning Disability (CTPLD) to have an assessment.

- 1.5 CTPLD were asked to assess if Ms C had a learning disability. However, an assessment could not be undertaken due to Ms C's continued drug and alcohol use. At the time Ms C was engaging with SMART (drug and alcohol services) two to five times a week and a worker from there supported Ms C during the assessment. At the time, the SMART team were supporting her to maintain her personal hygiene and to launder her clothes. Ms C was also supplied with snacks and meals during her visits to the offices. Ms C was also receiving emotional support and periods of housing support from the DASH charity.
- 1.6 The advice given at the time was that Under Section 115 of the Immigration and Asylum Act 1999 the law states that a person has 'no recourse to public funds' if they are subject to immigration control; public funds include welfare benefits and public housing. If someone from a country in the European Economic Area comes to the UK and wishes to claim benefits, they must satisfy certain conditions called the habitual residence test (HRT). To satisfy these conditions they must demonstrate they have a legal right to live in the UK (the right to reside) and intend to settle in the UK, Isle of Man, Channel Islands or Ireland and make it their home(habitual residence).
- 1.7 It was determined Ms C had no recourse to public funds and did not satisfy the habitual residence test.
- 1.8 People with no recourse to public funds are able to receive help from social services, but can only receive support if this is necessary to prevent a breach of their human rights. This is due to an exclusion that applies to some people depending on their nationality and immigration status. Ms C fell into this category. This meant that social services only had to provide housing and social support if there was a breach in Ms C's human rights. A human rights assessment was needed to establish whether help could be provided.
- 1.9 The Council decided in December 2016 they had no duty to house Ms C. At the time Ms C had the right to challenge the decision of the Council, but did not do so. Government guidance states that a council should determine homelessness applications in 33 working days however, because of the complexity of Ms C's case the application took longer.
- 1.10 The Council did however, house Ms C under its severe weather emergency protocols (SWEP) at the end of November 2016. She remained housed under the SWEP until she returned to her country of birth in May 2017.

2 KEY IMPLICATIONS

- 2.1 Ms C was supported by multiple agencies for a considerable period of time prior to her repatriation to the Czech Republic. The Salvation Army had housed her for a period of time, however, Ms C repeatedly breached the conditions of her residency and she was eventually asked to leave.
- 2.2 Adult Social Care carried out extensive searches to try to find supportive and therapeutic placements for Ms C. She was allocated a place at the Sisters of Southall, but failed to attend the appointment for assessment. Rahab was also contacted however, Ms C was reluctant to engage at the time.
- 2.3 A senior social worker from the Physical Disability and Older Persons Team tried repeatedly to contact Ms C in order to carry out a human rights assessment however, they were unable to make contact until January 2017. The arrangements for the meeting were achieved by the social worker arranging to be present at the chemist where Ms C picked up her prescription.

2.4 A Human Rights assessment was undertaken in January 2017. Ms C was supported by a worker from the DASH charity at the meeting. The outcome of the Human Rights assessments indicated there had been no infringements of Ms C's Human Rights under Article 3 or Article 8 of the Human Rights Act 1998. Throughout the meeting, Ms C expressed her desire to return home to the Czech Republic and this was considered the most suitable course of action.

3 RISKS

3.1 There is a reputational risk to the Royal Borough of Windsor & Maidenhead

4 NEXT STEPS

4.1 Lessons Learned

This was an unusual case. Few practitioners have experience in dealing with cases such as this. The law is not clear and practitioners needed to gain legal advice to support their decision making. On hindsight the case could have been treated as a safeguarding concern/enquiry from the outset which would have activated a controlled multi-agency response, instead of the numerous points that Mrs C presented extended the overall response. A multi-agency strategy meeting under Section 42 would have helped to put a safeguarding protection plan in place and a Human Rights Assessment would have been triggered earlier in the process.