

Birmingham

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tel: 0121 2276540

Macshire County Council
Legal Department

By email only:

09 March 2022

Ref:

Dear Sir or Madam

Re: Freja Adamson – 11/03/1990
Oskar Adamson – 11/05/2013
Magnus Adamson – 09/09/2015
Anja Adamson – 01/04/2019

Ms Adamson has instructed us in her section 17 matters. Please find attached signed authority.

This letter has been sent in accordance with the pre-action protocol for judicial review. We require your response by **12pm on Friday 11 March 2022**. We seek an abridgement to the protocol on the basis of urgency. Our client is destitute and is unable to meet the essential needs of herself and her three young children. She faces an eviction on 13 March 2022 and will be homeless on this day. She has £60 and estimates that she will have enough food up until and including Monday 14 March 2022. She has enough electricity to for another 7 days only. We have sent previous correspondence in relation to this matter and Macshire County Council is familiar with the facts and circumstances of this case having engaged in correspondence with the organisation Migrant Help during January and February 2022.

1. The proposed defendant

The proposed defendant is the Macshire County Council ('MCC') whose acts and omissions are challenged in this matter.

2. The proposed claimant

Lexcel



www.centralenglandlc.org.uk

fax: 024 7622 8551

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The Claimant is Ms Freja Adamson whose details appear above.

3. Details of the matter being challenged

This is a challenge to the Defendant's section 17 assessment of 14 February 2022 which concludes that the Claimant is not entitled to support on the basis that she is not destitute and has adequate financial means to meet her and her three young children's essential needs, and ongoing refusal to provide support.

4. The issue: the facts

The s17 assessment questions various factual aspects of the Claimant's circumstances, for example whether the Claimant has an undisclosed bank account with additional funds and whether her ex-partner is living at the property and supporting the family. We refer to our letter of 23 February 2022 and the supporting documents provided. On the basis of our letter and supporting documents we consider these uncertainties now to be settled and will only briefly summarise our client's factual circumstances in this letter. We attach the letter of 23 February for ease of reference.

The Claimant is a Norwegian national who arrived in the UK in September 2020. She left Norway after being subjected to domestic violence at the hands of her ex-partner. The Claimant and her ex-partner lived together in Norway as a family unit with their three young children. The children initially remained in Norway with their father. In June 2021 the children joined their mother in the UK. The Claimant's ex-partner is now in the UK but is living with friends, which he confirmed to the social worker carrying out the s17 assessment.

The Claimant worked from September 2020 until April 2021 and then from July until December 2021. She lost her job in December 2021 due to childcare responsibilities. The Claimant intended to get her children into school and nursery and then continue working full-time. She did not apply for benefits after losing her job in April 2021 and December 2021 because she didn't want to feel like a burden on the local authority or Government by claiming welfare benefits. She wanted to work and contribute to society. Unexpectedly she has not been able to find a school place for Magnus and has been unable to continue with her employment because of childcare commitments. She cannot afford childcare and must therefore stay at home. She has been told by the relevant school, attended by Oskar, that Magnus is first in the queue. This has been the case for 4 months.

Upon losing her only source of income, the Claimant was then referred to Macshire County Council for a section 17 assessment and provided interim payments pending the outcome of the assessment. It is this assessment which is the subject of this challenge. The assessment (i) states that due to her status as an EEA national, her case does not pass the threshold for an assessment by the 'No Recourse to Public Funds' team and (ii) concludes that the Claimant is not destitute and therefore that no support will be provided.

The Claimant has no income and is destitute. She has insufficient means to meet the essential needs of her children and herself. Since December 2021 she has relied on interim payments from Macshire County Council, a one-off emergency payment from her school, a small grant from the charity Migrant Help, a loan from her friends and a one-off payment from her ex-husband. The Claimant is in 5 months' rent arrears and has been served a section 21 notice requiring her to leave the property on 13 March 2022 at which point she and her children will be homeless.

There is a significant risk to the welfare of the Claimant and her three young children. There is currently just one bed at the property, which is broken. Two of the children are sleeping on the floor. The

Claimant cannot afford to buy additional beds or repair the one they have. She cannot afford to top up the electricity or to buy sufficient food. This has been particularly challenging during the recent half-term break as the oldest child relies on free school meals. The Claimant has had to borrow £200 from friends to meet urgent needs and been referred to a food bank by Central England Law Centre since the outcome of the assessment.

Currently, the Claimant only has £60. With the food already in the property, she estimates that she will be able to afford enough food last until and including 14 March 2022. The food is limited to primarily bread and some fruit and vegetables. She estimates that her top-up electricity will last for another 7 days. At this point the Claimant will have no remaining money and will not be able to meet urgent needs. The only reason she has £60 is because she sold some of her daughter's jewellery on 01 March. This was a last resort option in order to meet the needs of herself and the children. It was a difficult decision to sell the jewellery because it was given to her daughter on her 1-year birthday.

As set out in our letter of 23 February, we are aware of the Claimant's potential eligibility for Universal Credit on the basis of her employment history. The Claimant is in the process of exploring this possibility but the area is complex and she will need to gather evidence and receive specialist advice. Even if the application is successful she will not receive her first payment for several weeks and the local authority must prevent destitution in the interim.

We sent a letter on 23 February providing further documents and addressing the Defendant's concerns around the client's financial circumstances highlighted in the section 17 assessment. We sent this letter in the hope of avoiding what we consider to be unnecessary litigation. We asked for a response by 28 February due to the urgency of the matter. In an email of 28 February, you said that you would provide a response on 01 March. This response remains outstanding. We are disappointed that we have not received your response and this means we have no choice but to proceed with this letter and claim.

5. The law

Section 17(1) of the Children Act 1989 confirms that it is the duty of the local authority to safeguard and promote the welfare of children in their area who have been assessed as in need and to provide them and their families with a range and level of services appropriate to those needs. Services may include accommodation, assistance in kind and cash.

Section 11 of the Children Act 2004 places an obligation on local authorities and other public bodies in England and their partner agencies to safeguard and promote the welfare of children.

(2) Each person and body to whom this section applies must make arrangements for ensuring that—

(a) their functions are discharged having regard to the need to safeguard and promote the welfare of children; and

(b) any services provided by another person pursuant to arrangements made by the person or body in the discharge of their functions are provided having regard to that need.

...

(4) Each person and body to whom this section applies must in discharging their duty under this section have regard to any guidance given to them for the purpose by the Secretary of State.

Detailed statutory guidance as to how local authorities, agencies and individual social workers should work together to safeguard and promote the welfare of children is provided in the Working Together to Safeguard Children guidance document published by the government (current version July 2018). The guidance outlines how local authorities should meet their legal obligations, requires local authorities to make arrangements to promote cooperation between itself and organisations and agencies to improve the wellbeing of local children and expects this to be achieved through a child-centred approach.

MCC recently introduced its new Families with No Recourse to Public Funds: Financial Support Policy on 1 November 2021, introducing higher weekly support rates (£43 per person) and including support for gas, electricity (£21.88) and water expenses (£7.63).

6. The challenges

The Claimant contends that the Defendant's failure to provide support under section 17 is unlawful. She relies on the following grounds:

- 1) Illegality
- 2) Discrimination contrary to Article 14 read with article 1 protocol 1
- 3) Failure to take into account relevant considerations
- 4) Unreasonableness/irrationality

Firstly, the Claimant contends that the Defendant has acted illegally by refusing to refer her to the Defendant's No Recourse to Public Funds team for assessment on the basis of her nationality. On page 4 the assessment states the following (emphasis added):

"Referral received 3/11/2021 from The Active Wellbeing Society raising concerns around the families EU status within the UK and mother's No Recourse to Public Funds status. **Threshold not met for the MCC No Recourse to Public Funds team due to mother being an EU national**, therefore case referred to Fox Hollies children's centre family support service."

It is not clear what is meant by "threshold not met for the MCC No Recourse to Public Funds team due to mother being an EU national". It appears that the Defendant decided not to refer the Claimant to the No Recourse to Public Funds team for an assessment on the basis that the Claimant was an EU national and that this somehow affects her eligibility for services. If so, the Defendant has acted unlawfully. The Claimant being an EU (actually EEA) national does not mean that she is excluded from assessment and support from the Defendant's No Recourse to Public Funds team. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020 (S.I. 2020/1309) amended Schedule 3 paragraph 5 to the Nationality, Immigration and Asylum Act 2002 and removed EEA nationals from the list of those ineligible to receive services listed under Schedule 3. This means that EEA nationals are not excluded from community care services unless they are unlawfully present here in the UK.

The Claimant has made an application for pre-settled status under the EU Settlement Scheme and is awaiting a decision. As we set out in our letter of 23 February, she initially applied before the deadline of 30 June 2021 but this application was refused. She submitted a subsequent application within 30 days of the refusal and this application is considered an in-time re-application, which means that she retains her rights. Further she is not unlawfully present in the UK as the government on 6 August 2021 granted temporary protection to late applicants by confirming that EEA and Swiss citizens and their family members who apply late to the EU Settlement Scheme (EUSS) will have their rights protected as

the Home Office continues to support those wanting to stay in the UK. While she is awaiting a decision, she cannot reasonably be expected to leave the UK. As the Claimant was present in the UK before the end of 2020 (the transition period) it is also likely that her application will be successful. She is entitled to remain in the UK and is therefore not unlawfully present. Schedule 3 does not apply and so she is not excluded from community care services. It appears that the assessment has been carried out by the family support team as opposed to the No Recourse to Public Funds team. This means the Claimant has not been assessed by the team that has the most relevant expertise to assess the Claimant's circumstances. This is unfortunate and worrying. At best, there has been a delay on behalf of the Defendant to refer the Claimant to the No Recourse to Public Funds team on the basis of completely irrelevant considerations. As a result, the Claimant has been pushed further into destitution.

In relation to the above, the Claimant contends that the Defendant subjected her to discriminatory treatment by refusing to refer her for an assess to the No Recourse to Public Funds team on the basis of her nationality and that this discriminatory treatment cannot be justified. The claim falls within the ambit of A1P1 and/or Article 8 and individuals and families from EEA countries with pending applications under the EU Settlement Scheme are in the same position as other individuals and families with No Recourse to Public Funds. The difference in treatment is on the ground of nationality which is a relevant status. It is up to the Defendant to justify this difference in treatment but it appears to us to be no objective and reasonable justification.

Secondly, the Claimant contends that the Defendant in continuing to refuse to provide support has failed to take into account relevant considerations and therefore incorrectly maintained that the Claimant is not destitute. The Claimant has provided extensive information and evidence of her financial circumstances, including up to date bank statements and a letter from her employer confirming end of employment in December 2021. She has also provided evidence that her wages were paid in cash and that she paid her rent in cash, addressing assumptions made by the Defendant that she has an undisclosed bank account with funds. Again, we refer to our letter of 23 February. The evidence provided clearly illustrate that the Claimant is destitute. The Defendant has failed to take into account these relevant considerations and failed to reach the conclusion that the Claimant and her children are destitute and in need. The Claimant is struggling significantly financially and feels unable to meet the needs of her children. She is worried they are not getting enough and sufficiently varied food. She is unable to afford electricity for the property, which is around £20 every 10 days. Since the outcome of the assessment the Claimant has seen it necessary to borrow £200 from friends to meet urgent needs. In addition, Central England Law Centre has made a referral for a food parcel and the Household Support Fund. This position is unacceptable and unsustainable. Perhaps even more pressing, the Claimant is facing an eviction on 13 March because she is unable to pay the rent at the property and has been unable to do so for the last 5 months. She and her three young children will become homeless on this day.

Thirdly, the Claimant contends that the Defendant has acted unreasonably and irrationally by claiming that the Claimant is not destitute because she receives sufficient support from her ex-partner. More specifically, the section 17 assessment relies on the fact that the Claimant's ex-partner has agreed to provide the Claimant with £300 per month. As mentioned in our letter of 23 February, the Defendant's s17 policy sets support rates at around £200 **per week** for someone in the Claimant's circumstances. It is therefore irrational for the Defendant to claim that £300 from the ex-partner **per month** is sufficient for the Claimant.

7. Details of the action the defendant is expected to take.

The Defendant is expected to, urgently:

- Refer the Claimant and her children for a new assessment by the No Recourse to Public Funds team.
- Provide interim financial support in accordance with the Defendant's section 17 and its No Recourse to Public Funds policy.
- Prevent the Claimant's homelessness on the 13 March 2022.

8. Legal advisors.

We act as the Claimants' legal advisors on this matter.

9. Interested parties.

We are not aware of any other interested parties.

10. Information sought.

We request that you disclose information relating to the decision that the Claimant did not meet the threshold for the MCC No Recourse to Public Funds team due to her being an EU/EEA national, in particular the reasoning behind this decision.

11. Address for reply and service.

We will accept service of documentation on behalf of the Claimant.

12. Proposed reply date.

We seek your response by **12pm on Friday 11 March 2022**

Yours faithfully

Central England Law Centre

Email correspondence between the law centre and the Defendant local authority

From: Defendant Solicitor <defendant.solicitor@birminghamchildrenstrust.co.uk>
Sent: 15 March 2022 10:14
To: Fee Earner (CELC) <Fee.earner@centralenglandlc.org.uk>; <>
Subject: RE: Referral Outcome : A02301-0002

Dear Fee Earner,

I am instructed that your client agreed that the outstanding £40 from last week could be paid with this week's money. I am also instructed that the social worker has already agreed with your client that her taxi costs would be reimbursed. We are unable to pay S17 money directly into your client's bank account and so a worker has to take it and due to staff shortages, we did not have someone who could go out until Thursday however, I am instructed this morning we have been able to identify another worker who can visit mother tomorrow and that we will endeavour to make payments regularly on a Wednesday until the assessment is completed, after which time we will confirm any ongoing support arrangements.

Kind regards,

Defendant Solicitor | Principal Solicitor

BCT Legal Team

P.O. Box 17484, B2 2JW | **Mobile: 07864 933131**

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**BIRMINGHAM
CHILDREN'S TRUST**

202313/10271864

From: Fee Earner (CELC) <Fee.earner@centralenglandlc.org.uk>
Sent: 14 March 2022 14:53
To: Defendant Solicitor <defendant.solicitor@birminghamchildrenstrust.co.uk>; <>
Subject: RE: Referral Outcome : A02301-0002
Importance: High

Dear Defendant Solicitor

I am writing to provide an update and request further clarifications. Our client has instructed us that she moved into new accommodation on 11/3. She was also informed by her social worker last week that she would receive an additional £60 taking the total weekly amount to £200. She is yet to receive these £60 after being paid £140 last Wednesday. Our client had to cover taxi expenses on Friday in relation to the move totaling £40. She was informed this would be reimbursed. She was finally told that her next interim payment will be this coming Thursday.

Our client is worried she will not have sufficient funds to last until Thursday. Our client is only today getting access to a microwave and so has had to eat out over the weekend. Can we please request that she receives the additional £60 and is reimbursed for the taxi expenses as soon as possible? Can we please also request that her next interim payment is brought forward to Wednesday considering she was first paid on Wednesday last week. The social worker has requested and received our client's bank details and so it should be possible to transfer the money quickly.

Thank you in advance.

Kind regards

Fee Earner

Paralegal (Immigration and Public Law/Community Care)

0121 227 6549 / 07949454377 fee.earner@centralenglandlc.org.uk

Website: www.centralenglandlc.org.uk



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From: Defendant Solicitor <defendant.solicitor@birminghamchildrenstrust.co.uk>
Sent: 09 March 2022 14:33
To: Fee Earner (CELC) <Fee.earner@centralenglandlc.org.uk>; <>
Subject: RE: Referral Outcome : A02301-0002

Dear Fee Earner,

I will take instructions and revert.

Kind regards,

Defendant Solicitor | Principal Solicitor

BCT Legal Team

P.O. Box 17484, B2 2JW | **Mobile: 07864 933131**

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CHILDREN'S TRUST**

From: Fee Earner (CELC) <Fee.earner@centralenglandlc.org.uk>
Sent: 09 March 2022 14:22
To: Defendant Solicitor <defendant.solicitor@birminghamchildrenstrust.co.uk>; <>
Subject: RE: Referral Outcome

Dear Defendant Solicitor

Our client has instructed us that a home visit took place yesterday and that she received £140 in cash today. The social worker has also told our client that they will speak with the landlord of the property and with the school to reinstate free school meals and attempt to secure a place for our client's second child.

I would be grateful if you can please confirm the above and particularly what the Trust's intention is with regards to accommodation going forward.

Can you please also clarify whether £140 is the weekly amount our client will receive in interim support pending the outcome of the reassessment? We note that this is less than the rates set out in the NRPF s17 policy.

I also wanted to inform you that our client has received the attached notice requiring our

client to appear before the court for council tax arrears.

Kind regards

Fee Earner

Paralegal (Immigration and Public Law/Community Care)

0121 227 6549 / 07949454377 fee.earner@centralenglandlc.org.uk

Website: www.centralenglandlc.org.uk



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From: Defendant Solicitor <defendant.solicitor@birminghamchildrenstrust.co.uk>

Sent: 07 March 2022 14:45

To: Fee Earner (CELC) <Fee.earner@centralenglandlc.org.uk>; <>

Cc: Team Head (CELC) <Team.head@centralenglandlc.org.uk>

Subject: RE: Referral Outcome

Dear Fee Earner,

I am seeking instructions and will revert as soon as I can.

Kind regards,

Defendant Solicitor

Defendant Solicitor | Principal Solicitor

BCT Legal Team

P.O. Box 17484, B2 2JW | Mobile: 07864 933131

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202313/10231609

From: Fee Earner (CELC) <Fee.earner@centralenglandlc.org.uk>

Sent: 07 March 2022 14:10

To: Defendant Solicitor <defendant.solicitor@birminghamchildrenstrust.co.uk>; <>

Cc: Team Head (CELC) <Team.head@centralenglandlc.org.uk>

Subject: RE: Referral Outcome

Dear Defendant Solicitor

I would be very grateful if you can please clarify the points below.

Thanks.

Kind regards

Fee Earner

Paralegal (Immigration and Public Law/Community Care)

0121 227 6549 / 07949454377 fee.earner@centralenglandlc.org.uk

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From: Fee Earner (CELC)

Sent: 04 March 2022 15:34

To: 'Defendant Solicitor' <defendant.solicitor@birminghamchildrenstrust.co.uk>; <>

Cc: Team Head (CELC) <Team.head@centralenglandlc.org.uk>

Subject: RE: Referral Outcome

Dear Defendant Solicitor

Thank you for your response. We are pleased that you will undertake a reassessment and provide support in the interim, however we need some further details.

Can you please confirm the following:

- When will the interim support be put into payment? As you are aware our client only has food and money to last a few more days.
- How much will our client receive per week? Will she be supported in line with the support rates set out in the Trust's s17 NRPf policy?
- What will be done with regards to accommodation and when? Our client is naturally very worried about potentially having to leave her accommodation on 13 March.

Many thanks in advance.

Kind regards

Fee Earner

Paralegal (Immigration and Public Law/Community Care)

0121 227 6549 / 07949454377 fee.earner@centralenglandlc.org.uk

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From: Defendant Solicitor <defendant.solicitor@birminghamchildrenstrust.co.uk>

Sent: 04 March 2022 14:21

To: <>; Fee Earner (CELC) <Fee.earner@centralenglandlc.org.uk>

Cc: Team Head (CELC) <Team.head@centralenglandlc.org.uk>

Subject: RE: Referral Outcome

Dear all,

My apologies for the delayed response, I was unexpectedly called to deal with a hearing this morning.

I am instructed that we undertaken an updated assessment in light of the information provided. We will provide interim support on a without prejudice basis as we did previously. The timescale for the assessment to be completed is 45 days.

This assessment is being dealt with by the East Assessment and Short Term intervention Team. Currently, cases with EEA/EU settlement cases fall outside our internal criteria for our NRPf team, and these cases are dealt with by area teams, this how we have internally divided work between resources.

Please confirm you will not be issuing an application in the circumstances.

Kind regards,

Defendant Solicitor

Defendant Solicitor | Principal Solicitor

BCT Legal Team

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**BIRMINGHAM
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From: <>

Sent: 04 March 2022 13:07

To: Fee Earner (CELC) <Fee.earner@centralenglandlc.org.uk>; Defendant Solicitor <defendant.solicitor@birminghamchildrenstrust.co.uk>

Cc: Team Head (CELC) <Team.head@centralenglandlc.org.uk>

Subject: RE: Referral Outcome

Good afternoon Fee Earner,

Apologies for the delay, Defendant Solicitor is currently involved in an urgent hearing and will respond once it has concluded.

Kind regards

Legal Assistant

BCT Legal Team

P.O. Box 17484, B2 2JW

MDX 326401 Birm. 87

Building address: 1 Lancaster Circus

Queensway

Birmingham B4 7DJ

Switchboard: 0121 464 3096

Direct line: 0121 303 1904

Fax: 0121 303 2293

External inbox for new matters and general enquiries:

BCT.Legal@birminghamchildrenstrust.co.uk

Invoices for payment: BCTLegalBusinessSupport@birminghamchildrenstrust.co.uk



BIRMINGHAM CHILDREN'S TRUST

From: Fee Earner (CELC) <Fee.earner@centralenglandlc.org.uk>
Sent: 04 March 2022 12:37
To: Defendant Solicitor <defendant.solicitor@birminghamchildrenstrust.co.uk>
Cc: <>; Team Head (CELC) <Team.head@centralenglandlc.org.uk>
Subject: RE: Referral Outcome

Dear Defendant Solicitor

As we have not received a response to our pre-action letter we have no choice but to start preparing an application to the court.

Kind regards

Fee Earner

Paralegal (Immigration and Public Law/Community Care)

0121 227 6549 / 07949454377 fee.earner@centralenglandlc.org.uk

Website: www.centralenglandlc.org.uk



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From: Fee Earner (CELC)
Sent: 04 March 2022 09:12
To: 'Defendant Solicitor ' <defendant.solicitor@birminghamchildrenstrust.co.uk>
Cc: <>
Subject: FW: Referral Outcome
Importance: High

Dear Defendant Solicitor

Re Client

I wanted to inform you that we have received the below correspondence in relation to the above-named. Can you please confirm whether this means that the family will be provided with services in accordance with the Trust's NRPF policy?

Can you please also indicate whether you are in a position to be able to respond to our pre-action letter by 12pm today?

Thank you.

Kind regards

Fee Earner

Paralegal (Immigration and Public Law/Community Care)
0121 227 6549 / 07949454377 fee.earner@centralenglandlc.org.uk
Website: www.centralenglandlc.org.uk



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From: [REDACTED] > **On Behalf Of** MASHPSS
Sent: 03 March 2022 15:59
To: Fee Earner (CELC) <Fee.earner@centralenglandlc.org.uk>
Subject: Referral Outcome

Name: [REDACTED]
Address: [REDACTED]
D.O.B: [REDACTED]

Name: [REDACTED]
Address: [REDACTED]
D.O.B: [REDACTED]

Name: [REDACTED]
Address: [REDACTED]
D.O.B: [REDACTED]

Dear Sir/Madam,

Thank you for contacting the Children's Advice and Support Service.

Your information has been documented and assessed by CASS with an outcome that the level of need presented for this child and family as defined by Right Help Right Time (RHRT), Complex/Significant Needs, requires a statutory response from Children's Social Care.

The information has been sent to East Assessment and Short Term Intervention (ASTI) Team with the above recommendation. They will decide the local response within their service.

For any further enquiries regarding the progress of the case, please contact the East ASTI duty team on 0121 303 1419.

Birmingham CASS will be unable to answer queries regarding the progression of cases once sent to the ASTI team.

Regards,

Children's Advice and Support Service
Birmingham Children's Trust

Give us your feedback

Children's Advice and Support Service (CASS) provides a single point of contact for professionals and members of the public who want to seek support or raise concerns about a child. CASS receives approximately 250 calls and 250 emails daily. All concerns and requests for support are assessed by a CASS Social Worker using the Right Help Right Time guidance.

Your feedback is valuable to us so we would be most grateful if you could click on the link below and complete our CASS survey. It will take 5-10 minutes to complete.

[Complete Survey Now](#)



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CHILDREN'S TRUST**