

# Report

on an investigation into  
complaint no 08 003 864 against  
the former Cheshire County Council

23 June 2009

# **Investigation into complaint no 08 003 864 against the former Cheshire County Council**

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Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

This report has been produced following the examination of relevant files and documents and interviews with the complainant.

The complainant and the Council were given a confidential draft of this report and invited to comment. The comments received were taken into account before the report was finalised.

## Report summary

### Children and Family Services

L is now a young woman of twenty. When she was a small child she was on the child protection register and then, from the age of 12½, in the care of Cheshire County Council but placed to live with her mother. L's mother suffered from mental illness and was prone to volatile, violent and sometimes bizarre behaviour. L was a bright child but from Easter 2000 her mother stopped her from attending her last year at primary school and, despite being in the Council's care from February 2002, L reached school leaving age in 2005 without ever attending secondary school. The only education that L received from the age of 10 was a maximum of 10 hours a week with a tutor at the local library but there were significant periods without any education.

With the help of the National Youth Advocacy Service, L complained to the County Council about two issues. In her own words:

*Why did Children's Services place me with my mother when they knew that she was so violent? They always used to come with two people to see us as they were scared but yet they left little kids with her.*

*Why was nothing done about my education? I did not go to school after Primary School. I wanted to go, I did. When I was at school I was in the top for Maths and English. I think Children's Services will say lack of communication but they should have tried harder.*

Although the Council accepted some fault, L was dissatisfied and complained to the Ombudsman, saying:

*"How can they say they know what I wanted when I was only seeing someone every year or so and they were always changing...I could not say get me out of Mum's house because of what she would do to me. And she would not let me go back to school. They normally only spoke to me in front of my Mum anyway. What was I supposed to say in front of her? It took me two or three months to speak properly with [Leaving Care Worker].*

*They are making it seem like they were being good to me, listening to me and allowing me not to go to school. I wanted to go to school. How was I going to be a lawyer or a police officer if I did not go to school?"*

L was the subject of care proceedings that are usually private and confidential. The Ombudsman gratefully acknowledges the kind permission of the Court to use information from those proceedings in this report and the help of the Council's Senior Childcare Solicitor in obtaining the Court's permission.

From February 2002 the Council had parental responsibility for L, with a specific duty to promote her welfare and the power to determine the extent to which her mother could meet her parental responsibilities. The Council also had a general duty to comply with the law, regulations, statutory and other guidance.

While recognising that L's age and declared desire to stay with her mother posed considerable challenges for the Council, the Ombudsman found that it failed, comprehensively and spectacularly, to fulfil its responsibilities for L or to promote her welfare. The Ombudsman refers to this as the over-arching maladministration in L's case.

The Ombudsman also found numerous, serious, specific instances of maladministration, including that the County Council failed to:

- assess L's needs in accordance with the 2000 statutory guidance 'Framework for the Assessment of Children in Need';
- meet L alone and be satisfied that her welfare was appropriately provided for by the placement with her mother;
- realise that her placement was in breach of the law;
- demonstrate any awareness that, as a child in the Council's care, L should have had a full-time place at a local mainstream school;
- use its powers as Local Education Authority to either secure L's attendance at school or ensure that she was receiving a suitable education by other means; and
- make any effective use of information collected on monitoring forms.

L was and is capable of achieving a level of education and qualifications that could make a very significant difference to her earning potential. Although she is succeeding in her current chosen career it is not secure and her lack of education and qualifications may become a major disadvantage for her. The injustice caused to L by the County Council's maladministration is long-term and enduring.

Before L complained to the Ombudsman, the County Council had recognised the consequences of its failures and agreed that L should: have access to leaving care services until she is 25; receive financial support to undertake remedial education; receive 'creative' help with appropriate accommodation.

## **Finding**

Maladministration causing injustice

## **Recommended remedy**

The Ombudsman recommends that Cheshire East Council, as successor to Cheshire County Council, should:

- apologise to L;
- agree with her a detailed plan for delivering the commitments made by the County Council; and
- make £45,000 available either for immediate investment in purchasing a home (by a shared ownership scheme if necessary) or to be held in an interest-bearing account and released to her when she is 30 years of age or in equal annual thirds when she embarks on and maintains a programme of education leading to qualifications – whichever is the sooner.

The Ombudsman also recommends that both successor Councils should consider her report and review their newly established services to children to ensure that they are adequately resourced, staff are properly trained and supervised, and monitoring information is regularly reviewed so that issues of concern are identified and reported to senior managers and an appropriate body of elected Councillors.



## Introduction

1. L is the youngest of three children and is now a young woman of twenty. Throughout most of L's childhood her mother was diagnosed as mentally ill and was prone to be volatile, to harm herself, and to very violent and sometimes bizarre behaviour. From being 12½ years old L was subject to Care Orders that gave Cheshire County Council parental responsibility for her and placed it under a duty to safeguard and promote her welfare. L did not attend school at all from the spring term of Year 6, when she was 11, and has had no experience of Secondary School. In her own words she complains:
  - i. *Why did Children's Services place me with my mother when they knew that she was so violent? They always used to come with two people to see us as they were scared but yet they left little kids with her.*
  - ii. *Why was nothing done about my education? I did not go to school after Primary School. I wanted to go, I did. When I was at school I was in the top for Maths and English. I think Children's Services will say lack of communication but they should have tried harder.*
2. The Council dealt with these complaints through the statutory complaints process with a manager from its Children's Safeguarding Unit acting as the Independent Investigating Officer (IIO) assisted by an external Independent Person. L was not satisfied with the outcome and complained to me. She was assisted by the National Youth Advocacy Service<sup>1</sup> and I want to take this opportunity to record my appreciation of the highly professional and helpful way that L's advocate has communicated with my office.
3. L feels that the IIO's report on her complaints was wrong to suggest that her wishes and feelings were taken into account whilst she was in the Council's care:

*"How can they say they know what I wanted when I was only seeing someone every year or so and they were always changing...I could not say get me out of Mum's house because of what she would do to me. And she would not let me go back to school. They normally only spoke to me in front of my Mum anyway. What was I supposed to say in front of her? It took me two or three months to speak properly with [Leaving Care Worker].*

*They are making it seem like they were being good to me, listening to me and allowing me not to go to school. I wanted to go to school. How was I going to be a lawyer or a police officer if I did not go to school?"*

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<sup>1</sup> The National Youth Advocacy Service (NYAS) is a UK charity providing information, advice, advocacy and legal representation to children and young people up to the age of 25, through a network of advocates throughout England and Wales

## **The law and the Local Government Ombudsman**

4. At the time that L complained to me Section 26(4) of the Local Government Act said I should not investigate a matter if the person affected has not complained within 12 months of knowing of it - unless I considered it reasonable to investigate. I decided that it was reasonable to investigate L's complaints because she was a child throughout the events concerned and would not have been able to make judgements about what was happening to her or know how to complain.
5. Section 26(8) and paragraph 1 of Schedule 5 of the Act says that the Local Government Ombudsman shall not investigate "*The commencement or conduct of civil or criminal proceedings before any court of law*". L was subject to Care Proceedings in the County Court. Those proceedings and the judgements made by the Court are outside my jurisdiction and I have not investigated them nor do I make any comment about them. The proceedings of the Court are confidential and I am grateful to the Court for allowing me to include some material in order to give a complete summary of the background and issues in this complaint.

## **Reorganisation of local government in Cheshire**

6. The Cheshire County Council ceased to exist on 31 March 2009. Of the two successor Councils, it falls to Cheshire East as the Council for the area where L lived at the time to deal with and respond to this report. I am grateful to the officers of Cheshire County Council for their co-operation in the investigation and particularly to the Solicitor who dealt with us in the latter stages. As my investigation found serious maladministration causing injustice to L, I am asking both successor Councils to consider my findings and recommendations relating to child protection services.

## **Background**

7. When L was aged 2 – 8 years old her father had a residence order for the children who were looked after by various friends and members of the family. They then went to live with their mother who, soon after, rejected the eldest child who became subject to a Care Order and never went back to live with his mother and sisters.
8. Between January 1998 and January 2002 when she was aged 9½ to 12½, L was:
  - taken into voluntary care and placed with foster parents on five occasions – twice when her mother was compulsorily detained in hospital under the Mental Health Act and once when her mother was arrested for criminal damage;



- arrested twice – once after she and her sister were caught stealing and once when they were reported for causing criminal damage. Apparently both these incidents were at their mother's instigation;
  - subject of neighbour and anonymous calls to Children's Services saying that the sisters were being abused and assaulted by their mother;
  - absent from school from Easter 2000 (when she was 10<sup>3</sup>/<sub>4</sub>);
  - unable to live in the family home for three, separate periods – after her mother had wrecked it when suffering severe delusions about dead bodies being hidden; after it was badly damaged by fire; and after her mother painted the entire outside pink, smashed the kitchen and pulled plaster off the walls during a dispute over re-housing.
9. The Council's records show that when L and her sister were first in voluntary care they spoke of: not being allowed out of the house, being threatened with violence by their mother, seeing her self-harm, and being aware of drug paraphernalia in the house. They had bald patches on their heads and said their mother had pulled their hair out.
10. During these two years (January 1998 – 2000) it appears that L and her sister were on the Child Protection Register for some seven months between May 1998 and November 1998. When they were taken off the child protection register it was noted that L was attending and doing well at school - in one of the top groups for literacy and the middle group for maths. Two months later her elder sister was not attending school, their mother was refusing to let Council staff into the home and had attacked a social worker.
11. From January 1998 L's mother began to keep her away from school. In June 2000, when L was almost 11, her primary school reported to the Education Welfare Service that she had not attended since the Easter. L's mother did not register her at a secondary school for the following term. Education Welfare involved Children's Services and the case was allocated to a Social Worker. The records show that both L and her sister wanted to go to school but were prevented by their mother who said she wanted them to attend a different school that was full.
12. In the autumn of 2001 when L and her sister were living at a variety of addresses following the house fire, the Council decided to apply to the Court for an Assessment Order to enable it to gain access to the children, assess their circumstances, and get them back into the education system. The children's father had not had contact with the sisters and had been in prison since sometime in 2000.

13. The Guardian appointed for the children by the Court considered that an Assessment Order was inadequate in the circumstances and recommended an Interim Supervision Order that the Court granted in January 2002. This gave the Council the duty to: *'advise, assist and befriend'* L; take any steps needed to give effect to the Order; and go back to the Court if the Order was not complied with or was no longer necessary.
14. L and her sister did not attend the medical appointments arranged for them after the Court awarded the Interim Supervision Order. On the Guardian's recommendation, this was changed to an Interim Care Order in March 2002 and the case transferred from the Magistrates' to the County Court. The Court directed the Council to provide details of its plans for the sisters and to identify possible suitable placements for them in residential education. The report produced in response stated that:
- the Education Welfare Service had not fulfilled its promise to provide a list of residential education establishments;
  - it was likely that the girls would need Statements of Special Educational Needs to access such provision;
  - two possible placements had been identified for L but cautioned that other pupils may have serious behavioural problems, be extremely disturbed, have criminal offending histories or have substance dependencies;
  - the view of Council senior officers was that it would not be appropriate to forcibly remove the sisters because of concerns about *'the physical and emotional impact'* on them, the risk of them absconding, and *'...concern about the detrimental effect such action may have on [their mother's] mental health.'*
15. The Guardian considered that an Interim Care Order was required because L's mother had not co-operated with the Supervision Order. Up to February 2003 the Court made monthly Interim Care Orders that were not contested by L's mother. It also made various directions about reports and information that it wanted to see and excused the parties from attending Court from September 2002 to January 2003.
16. A Care Plan for L was produced in April 2002. Its aim was to *'...support L to remain at home with her mother and sister through the provision of support services'*. It said:
- 'A further period of assessment is required in order to determine whether [L's mother] is willing to cooperate with social services and education staff so that [L's] needs are met and she receives an appropriate education'*

and

*'...it is important that significant progress is achieved in relation to [L's] educational needs being appropriately met if placement with the mother is to remain a viable option'.*

17. L and her sister started tuition at the local library for five hours a week from April 2002 and a community support team worker began to support them. The community support worker recorded that L had asked for home-work and, later, *'It is becoming clear that L could rejoin school she is bright and eager to learn'*. L's Care Plan records that all professional workers should monitor her well-being and report any concerns, and that a Personal Education Plan should be produced as soon as possible.
18. In May, L's sister asked to be taken into voluntary care because of her mother's violence and her very difficult home situation. She told the Social Worker that she believed L was her mother's favourite and would be safe at home. L's father was consulted and supported this view. L then lived alone with her mother.
19. L's Care Plan was revised in June 2002 for one of the Court hearings. It recorded *'...discussions in relation to [L's] reintegration into school are only in the preliminary stage, however, [L's] mother has so far expressed an unwillingness to consider this possibility...'* and *'...individual tuition is considered appropriate only in the short term and the aim remains for [L] to be reintegrated into school.'* The case was allocated to Social Worker 2 because of illness.
20. A Looked After Child (LAC) review meeting was held in August 2002 (when L was 13) and noted that the review was overdue because of *'...the difficulties in allocating a Social Worker...in view of the number of vacancies within the locality.'*
21. From September 2002 the Council increased L's tuition at the local library to ten hours a week.
22. A further revised Care Plan was produced in December 2002 for the Court. This stated that L's mother *"....has cooperated with education in ensuring that [L] attends for her 10 hours weekly. She is not willing to cooperate with any plans for [L] to return to school. [L] is not willing to consider returning to school. Education's view is that at the present the issue of [L's] return to school should not be forced. Social Services are in agreement with this and plan to continue pursuing school attendance..."*. It recorded that:
  - L continued to live with her mother who had co-operated in ensuring that L attended for ten hours tuition a week but both she and L were not willing for L to return to school;
  - the Education Service did not want *'at present'* to force the issue of L returning to school;

- L appeared to be physically well cared for and the condition of the house was much improved;
  - L wanted to remain at home and '*...to resume her education, expressing an ambition to pursue a career in the police force or as a lawyer and does not want to return to school. At this point Education and Social Services are receptive to [ L's] wishes and are not pursuing a return to school...It is proposed that [L's] education will continue to take the form of individual tuition. Reintegration into school will continue to be pursued...*';
  - L was 'Gillick competent' (i.e. had sufficient understanding and intelligence to understand and accept or reject medical care or treatment) and had refused to be medically examined;
  - the Council would monitor L's home situation and consider removing her if:
    - her mother did not co-operate with L's education plan or with any issues relating to L's health and essential medical appointments;
    - there was evidence that her mother's mental health was deteriorating to the point that L was '*at risk*';
    - there was evidence of '*significant*' domestic violence or emotional abuse of L;
    - L wanted to leave.
23. L's community support worker recorded in January 2003 "*I attended a professionals meeting...and had a good amount of input to my views around L and her wants, needs, behaviours and understanding of the situation. I was not welcomed at the meeting and initially told I should not be there. However, the Guardian welcomed my input...*"
24. The Court made a full Care Order for L in February 2003 (when L was a little over 13<sup>1/2</sup>). L and her mother were represented by different solicitors.
25. The proceedings of the Court are confidential and I am grateful that the Court has allowed me to have access to the Guardian's report and to refer to some of the content.
26. The Guardian's report to the Court records that from February 2002, L's mother had refused to co-operate with him, L had refused meet him and would only communicate through her solicitor. He comments that:
- the girls '*...have experienced a lengthy history of psychologically unstable parenting and emotional neglect...*';

- *'chronic non school attendance' is primary evidence of significant harm;*
  - *their mother's actions '...appear to have no appreciation of the social and intellectual impairment and the psychological harm the children have suffered as a result of not being allowed to attend full time education...';*
  - *her mother's continuing refusal to allow L to go to school '...and her inability to appreciate the harm this is causing, further emphasises the current high level of significant harm and the high risk of future significant harm resulting from [the mother's] neglectful and inappropriate parenting...'*
  - *based on the '...case history of inconsistent and unstable care..' the reported attachment between L and her mother '...is likely to be a psychologically insecure attachment that is unlikely to afford sufficient security to support [L's] transition into adulthood...'*
  - the degree of risk posed by the mother's non-co-operation meant that it should be made clear that any failure to co-operate and to fully promote plans for L's education would lead to L being removed from her mother;
  - observations indicated that L currently had adequate standards of physical care and nutrition; home conditions were safe and appropriate to her needs; and her mother's mental health had been relatively stable.
27. In giving his assessment of the Council's involvement with L and of her Care Plan, the Guardian records:
- concerns about why it had taken so long for the Council to seek to protect the sisters given *'...the lengthy history of evidence of domestic violence, mental instability and emotional neglect...';*
  - his opinion that the Council's failure to seek Care Orders for the girls in 1999 (when it did so for their brother) had contributed to the significant harm that they had suffered;
  - in the early stages of the proceedings he was concerned that the Council was avoiding seeking parental responsibility and had failed to take appropriate account of the harm associated with the sisters' prolonged non-school attendance and emotional harm associated with the instability of their mother's mental health and disturbed personality;
  - that it was appropriate for L's Care Plan to record the circumstances under which she would be removed from her mother;

- his concerns that the Council might be deterred from acting on this for fear that L's mother would harm herself and that this would cause further harm to L *'This risk is present whatever action the Authority takes and failure to progress [L's] education needs has equal consequences in terms of long-term significant harm.*
28. The Guardian concluded that a full Care Order would be the only order *'...capable of providing appropriate statutory protection...'* for L.
29. At about the time the Care Order was made the community support worker who had worked with L for almost a year withdrew because she did not feel safe after being threatened by L's sister. She was not replaced.
30. A report to a Looked After Child (LAC) review meeting<sup>2</sup> held in March 2003 says that L's tuition was going well and she should be able to take some GCSEs. The notes of the meeting include that:
- *'The purpose of the Care Order...is to provide additional parental responsibility support to [L] at times when her Mum...is not able to do so as a consequence of her own difficulties...';*
  - there was no Personal Education Plan<sup>3</sup> and the Social Worker should liaise with the tutor to complete one;
  - L had refused to have a medical examination and this was her Social Worker's *'...main area of concern...currently...particularly as [the community outreach worker] has informed him that she has observed [L] with a limp on occasions'.*
31. The Chair also commented that she had not met L or seen any independent review of her views and would try to meet her before the next LAC review.
32. In June L's mother made a formal (and totally unfounded) complaint about Social Worker 2.
33. The next LAC Review was in September 2003 (when L was 14<sup>1/4</sup>), it is not clear who attended this meeting, and the only signed record is that of L's Social Worker 2. He reported that L was attending ten hours of tuition but would not meet him. The notes record that L had a Personal Education Plan dated June 2003 and that Social Worker 2 was to liaise with colleague to ensure that L received Connexions<sup>4</sup> advice.

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2 See Appendix 1 paras 99-100 for explanation

3 See Appendix 1 paras 104-105 for explanation

4 At the time Connexions was a statutory organisation providing information, advice and support to young

34. A 'Legal Gate-keeping Meeting' was held in October 2003. Social Worker 2 reported that L had stopped co-operating with tuition and, although she still attended daily, was awkward, hostile and doing as little work as possible. The tutor was not willing to continue. The Independent Investigating Officer's report on L's complaints states that this meeting felt that police assistance would be needed to remove L from her mother's care, there was no guarantee that L would stay in any other placement and the meeting decided not to remove L from her mother's care. The notes that I have seen do not record these points but it is clear that the meeting assumed that L should remain with her mother. It was agreed that Connexions should be asked to provide a Personal Advisor for L, enquiries should be made to find out if L had been involved in a robbery, and a letter should be sent to her mother reminding her that she needed to co-operate or the Care Order might be revoked.
35. In view of the complaint that L's mother had made about Social Worker 2 he was told in October 2003 that he should no longer work with the sisters. L was not allocated a new social worker until May 2004.
36. At the LAC review in January 2004 (when L was a little over 14<sup>1/2</sup>), it was noted that there was still no cooperation with L's Social Worker who was confident that L would say if she did not want to live at home. It appears that this was Social Worker 2 but this is not entirely clear. The basis for such confidence is not recorded. It was agreed to allocate a new social worker. The tutor had changed as L was now refusing to work with the previous one. There is no mention of a Personal Education Plan.
37. In March 2004 the second tutor withdrew following threats from L's mother. A LAC review in May 2004 found that L had not yet been allocated to a Social Worker and no action had been taken since November 2003.
38. A 'Professionals Meeting' was held on 1 July 2004 involving Social Worker 3, her temporary team manager, a Connexions Worker, a Senior Education Welfare Officer, and a Teacher from the Children In Care Support & Development Team. The notes record the Teacher as highlighting that L *'...has not been seen, she is on a Care Order and she needs an education. He has offered to visit [L] at home, but this was declined by the Education Department...'* It was agreed that L's interest in work experience should be supported by Connexions.
39. A LAC review later that month (when L was 15) noted that there had been no tuition since March 2004. Social Worker 3 and a Connexions Worker had visited L who had asked for more tuition and this would start in September 2004. There is no mention of a Personal Education Plan.

40. The Council's files contain e-mails dated November 2004 from the Teacher to colleagues noting that L's mother was refusing to allow her to participate in the alternative tuition/Connexions package and asking for a meeting as a matter of urgency '*... we should not allow this to drift on any longer...*' He was supported by the Senior Education Welfare Officer who expressed concern that an agreed plan of action '*...has been totally scuppered because of [ L's mother's] lack of co-operation. Once again...preventing [L] receiving any education or support...*'

41. One of the Teacher's e-mails says:

*'[L] being a LAC, year 11, who has never had a place or attended secondary school is in a unique situation.*

*I have never met birth mother or [L] because social services colleagues judgement has been that their relationship with mother is so fragile that any other professional worker having direct contact ...could further jeopardise the service relationship...*

*As it is so many months since any professional worker has been able to ...check [L's] wishes and feelings we don't really understand what meaning she gives to her very abnormal life.*

*It feels uncomfortable that she is held hostage by her mother's personality disorder.*

*Also that social services colleagues have very little influence re her daily care and thus the only speculation can be that [L's] needs nearly always come second to her mother's...*

*Sometimes we have to provoke change even though we are uncertain of the outcome especially if the evidence re her present care is damning in some respects and unknown in others.*

*I worry, even though I never met her, of the impact on [L's] emotional and social well being and future life chances of her caring for her mother and having no access to any educational service or activity.*

*I would just like to meet her to reassure myself that though the situation for her is very tough, she is making an informed consent that the life she is leading is one she prefers...'*

42. A LAC review in January 2005 noted that L was not attending tuition and had not been seen by a Social Worker since the last review six months before but had been seen by a Connexions worker. There is no evidence of any action being taken in response to the concerns of the Teacher and Senior Education Worker. The meeting noted that L's 2003 Care Plan needed to be updated and agreed that L's Social Worker 3 and Team Manager should return to 'Legal Gatekeeping'



with updated information since 2004, and that the Social Worker should refer L to the 'pathway planning process' and outline all the attempts that were being made to communicate with L and promote her health and training needs. A Connexions worker was recorded as having a positive relationship with L and her mother, seeing L regularly, and reporting no concerns about L who was always clean and appropriately dressed.

43. By June 2005, L had reached school leaving age and a LAC review meeting once again stated she had not been seen by Children's Services staff although Connexions were involved.
44. A pathway planning meeting was held in October 2005 (when L was 16<sup>1</sup>/<sub>4</sub> and beyond the age of compulsory education). It records that:
  - L's home was not in a habitable state and that she and her mother were in fear of violence from L's brother who was due to be released from prison;
  - L worried about where she would go if her mother were admitted to hospital;
  - the state of the house meant L could not practice her independence skills and needed to develop skills and knowledge of domestic chores, shopping, managing a budget etc;
  - L was eligible for support from the Leaving Care Service until she was 21 and this would be lost if the Council successfully applied to discharge the Care Order;
  - L would need separate legal advice if the Council decided to apply to discharge the Care Order.
45. A report dated December 2005 to a 'Legal Gatekeeping Meeting' held in January 2006 recorded that the Council '*... has been unable to discharge its statutory responsibilities to any useful degree in terms of the Care Order...*' and that L's mother was not in favour of it being revoked '*...because of the apparent duty to provide financial assistance.* It noted that:
  - L and her mother wanted to move because the area they lived in was run-down and they feared violence from L's brother when he was released from prison;
  - L and her mother had attended a Pathway Planning Meeting in October 2005 but would not co-operate with the Leaving Care Team;
  - L could be assessed as a Young Carer but would not co-operate;
  - '*...there are concerns about [L's] emotional health and the impact that her mother's mental ill health is having on her opportunities to do things and*