

Governance Committee

Tuesday, 14th May, 2019
at 5.00 pm

PLEASE NOTE TIME OF MEETING

Council Chamber - Civic Centre

This meeting is open to the public

Members of the Committee

Councillor Keogh (Chair)
Councillor Kataria (Vice-Chair)
Councillor Harwood
Councillor Noon
Councillor White
Councillor Whitbread
Conservative Vacancy

Contacts

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PUBLIC INFORMATION

Role of the Governance Committee

Information regarding the role of the Committee's is contained in Part 2 (Articles) of the Council's Constitution.

[02 Part 2 - Articles](#)

It includes at least one Councillor from each of the political groups represented on the Council, and at least one independent person, without voting rights, who is not a Councillor or an Officer of the Council.

Access – Access is available for disabled people. Please contact the Democratic Support Officer who will help to make any necessary arrangements.

Public Representations At the discretion of the Chair, members of the public may address the meeting on any report included on the agenda in which they have a relevant interest. Any member of the public wishing to address the meeting should advise the Democratic Support Officer (DSO) whose contact details are on the front sheet of the agenda

The Southampton City Council Strategy (2016-2020) is a key document and sets out the four key outcomes that make up our vision.

- Southampton has strong and sustainable economic growth
- Children and young people get a good start in life
- People in Southampton live safe, healthy, independent lives
- Southampton is an attractive modern City, where people are proud to live and work

Smoking policy – The Council operates a no-smoking policy in all civic buildings.

Mobile Telephones:- Please switch your mobile telephones to silent whilst in the meeting

Use of Social Media:- The Council supports the video or audio recording of meetings open to the public, for either live or subsequent broadcast. However, if, in the Chair's opinion, a person filming or recording a meeting or taking photographs is interrupting proceedings or causing a disturbance, under the Council's Standing Orders the person can be ordered to stop their activity, or to leave the meeting. By entering the meeting room you are consenting to being recorded and to the use of those images and recordings for broadcasting and or/training purposes. The meeting may be recorded by the press or members of the public.

Any person or organisation filming, recording or broadcasting any meeting of the Council is responsible for any claims or other liability resulting from them doing so.

Details of the Council's Guidance on the recording of meetings is available on the Council's website.

Fire Procedure – in the event of a fire or other emergency a continuous alarm will sound and you will be advised by Council officers what action to take.

Dates of Meetings: Municipal Year 2018/19

2018	2019
11th June	11th February
30th July	15 th April
10 th September	
12th November	
10th December	

CONDUCT OF MEETING

Terms of Reference

The terms of reference of the Governance Committee are contained in Part 3 of the Council's Constitution.

[03 - Part 3 - Responsibility for Functions](#)

Rules of Procedure

The meeting is governed by the Council Procedure Rules as set out in Part 4 of the Constitution.

Business to be discussed

Only those items listed on the attached agenda may be considered at this meeting.

Quorum

The minimum number of appointed Members required to be in attendance to hold the meeting is 3.

DISCLOSURE OF INTERESTS

Members are required to disclose, in accordance with the Members' Code of Conduct, **both** the existence **and** nature of any "Disclosable Pecuniary Interest" or "Other Interest" they may have in relation to matters for consideration on this Agenda.

DISCLOSABLE PECUNIARY INTERESTS

A Member must regard himself or herself as having a Disclosable Pecuniary Interest in any matter that they or their spouse, partner, a person they are living with as husband or wife, or a person with whom they are living as if they were a civil partner in relation to:

- (i) Any employment, office, trade, profession or vocation carried on for profit or gain.
- (ii) Sponsorship:

Any payment or provision of any other financial benefit (other than from Southampton City Council) made or provided within the relevant period in respect of any expense incurred by you in carrying out duties as a member, or towards your election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.

(iii) Any contract which is made between you / your spouse etc (or a body in which the you / your spouse etc has a beneficial interest) and Southampton City Council under which goods or services are to be provided or works are to be executed, and which has not been fully discharged.

(iv) Any beneficial interest in land which is within the area of Southampton.

(v) Any license (held alone or jointly with others) to occupy land in the area of Southampton for a month or longer.

(vi) Any tenancy where (to your knowledge) the landlord is Southampton City Council and the tenant is a body in which you / your spouse etc has a beneficial interests.

(vii) Any beneficial interest in securities of a body where that body (to your knowledge) has a place of business or land in the area of Southampton, and either:

- a) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body, or
- b) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which you / your spouse etc has a beneficial interest that exceeds one hundredth of the total issued share capital of that class.

Other Interests

A Member must regard himself or herself as having an, 'Other Interest' in any membership of, or occupation of a position of general control or management in:

Any body to which they have been appointed or nominated by Southampton City Council

Any public authority or body exercising functions of a public nature

Any body directed to charitable purposes

Any body whose principal purpose includes the influence of public opinion or policy

Principles of Decision Making

All decisions of the Council will be made in accordance with the following principles:-

- proportionality (i.e. the action must be proportionate to the desired outcome);
- due consultation and the taking of professional advice from officers;
- respect for human rights;
- a presumption in favour of openness, accountability and transparency;
- setting out what options have been considered;
- setting out reasons for the decision; and
- clarity of aims and desired outcomes.

In exercising discretion, the decision maker must:

- understand the law that regulates the decision making power and gives effect to it. The decision-maker must direct itself properly in law;
- take into account all relevant matters (those matters which the law requires the authority as a matter of legal obligation to take into account);
- leave out of account irrelevant considerations;
- act for a proper purpose, exercising its powers for the public good;
- not reach a decision which no authority acting reasonably could reach, (also known as the "rationality" or "taking leave of your senses" principle);
- comply with the rule that local government finance is to be conducted on an annual basis. Save to the extent authorised by Parliament, 'live now, pay later' and forward funding are unlawful; and
- act with procedural propriety in accordance with the rules of fairness.

AGENDA

1 APOLOGIES

To receive any apologies.

2 DISCLOSURE OF PERSONAL AND PECUNIARY INTERESTS

In accordance with the Localism Act 2011, and the Council's Code of Conduct, Members to disclose any personal or pecuniary interests in any matter included on the agenda for this meeting.

NOTE: Members are reminded that, where applicable, they must complete the appropriate form recording details of any such interests and hand it to the Democratic Support Officer.

3 STATEMENT FROM THE CHAIR

4 LGSCO COMPLAINT OUTCOME - KENTISH ROAD (Pages 1 - 208)

Report of Service Lead: Legal Partnership (LGSCO Link Officer) and Service Director: Adults, Housing and Communities providing Governance Committee with an update on the outcome of 8 grouped complaints to the LGSCO relating to respite arrangements following the closure of Kentish Road, attached.

Friday, 3 May 2019

Director of Legal and Governance

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Agenda Item 4

DECISION-MAKER:	Governance Committee		
SUBJECT:	LGSCO (Ombudsman) Complaint Outcome: Kentish Road		
DATE OF DECISION:	14 th May 2019		
REPORT OF:	Service Lead: Legal Partnership (LGSCO Link Officer) / Service Director: Adults, Housing & Communities		
<u>CONTACT DETAILS</u>			
AUTHOR:	Name:	Sarita Riley	Tel: 023 8083 3218
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STATEMENT OF CONFIDENTIALITY			
N/A			
BRIEF SUMMARY			
<p>This report updates Members on the outcome of 8 grouped complaints relating to 9 individuals affected by the transfer of service users from the full time respite provision offered at Kentish Road to revised respite services at other locations and / or the reduced hours of service provided at Kentish Road following a review of the closure decision taken by the Council.</p>			
<p>All complaints were upheld as maladministration (fault) resulting in injustice to the complainants. Although the fault in each case differs slightly, the nature and thematic approach taken by the Local Government and Social care Ombudsman (LGSCO) and the outcomes found merit reporting to Governance Committee as a stand-alone item rather than waiting for the annual complaints report later this year.</p>			
<p>The LGSCO has three options available to them in reaching a finding on a formal investigation:</p> <ul style="list-style-type: none"> • Not uphold the complaint (no fault) • Uphold the complaint (fault and injustice) but not proceed to statutory report • Uphold the complaint (fault and injustice) and proceed to full statutory report requiring a statutory publication process in the press and consideration at the highest levels of the Council. 			
<p>The LGSCO has opted not to exercise their power to proceed to statutory report on any of the complaints on this occasion.</p>			
<p>This report also updates Governance Committee on the internal review undertaken by the Council, the 'Lessons Learned' Report, commissioned from an external independent third party on the overall governance of the project from inception to decision making and outcomes which was received by the Council in May 2018 together with progress on the delivery of the resultant action plan and the changes that have been introduced as a result of learning from this report. The report is presented to Governance Committee as part of the overall learning from the complaints investigated by the LGSCO as the report was heavily relied upon by both</p>			

the Council, in setting its service recovery plans for the last year, and by the LGSCO in reaching their decision not to investigate the wider governance arrangements in place within the Council already addressed by the report and action plan but focus instead on the impact on individual complaints. The Lessons Learned Report sets the complaint outcomes in context in terms of the substantial improvements made to the Council's service delivery in project management and adult social care following the events in 2014-17 and from which the individual complaints arise.

RECOMMENDATIONS:

	(i)	To note the subject matter of the investigations, the faults identified by the LGSCO and the settlements offered by the Council and accepted by the LGSCO to remedy these complaints.
	(ii)	To offer advice, guidance and assistance to the wider Council and Adult Social Care Services in particular on any learning from the complaints that can be further considered in terms of the overall governance of the Council.

REASONS FOR REPORT RECOMMENDATIONS

1.	To ensure that Members are engaged with the outcome of these complaints given the serious nature of the investigation and the outcomes.
2.	To assist the Council in any further learning from these complaints that may assist in improving the Council's governance arrangements and service improvements within Adult Social Care in particular.
3.	To set the complaints in context against the Lesson learned Report and Action Plan and the development and improvement of the Adult care services and project management functions within the Council since the events that gave rise to the complaints.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

4.	N/A
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DETAIL (Including consultation carried out)

5.	<p>The LGSCO has been investigating 8 complaints from individual carers (and their 9 dependants) since May 2018. The original complaints related both to the closure process pursued in relation to Kentish Road and how that was subsequently implemented in relation to each of these cases.</p> <p>The complaints were originally received while the Council was still conducting its own independent review of the service provision in May 2018 as 'premature enquiries'. Considerable work was undertaken with the LGSCO triage team to identify the group of complaints and ensure that, at the instigation of a formal investigation, these could be taken forward together in a single timeline and by a single investigator. The formal investigation process was started between 21st and 26th June 2018 over which period the 8 complaints were individually sent to the Council for a co-ordinated response.</p> <p>The LGSCO recognised the significant amount of work required in order to respond and amended their normal timescale for response to allow the Council time to pull together full bundles of supporting information for each</p>
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	complainant, together with a detailed submission on the events complained of. The Council's response was submitted to the LGSCO on 26 th July 2018.
6.	Further, detailed enquiries were received over the course of August 2018, which the Council formally responded to on 21 st August 2018. The matter has been with the LGSCO for consideration since that date. The LGSCO has periodically updated the Council on the progress of their enquiries, which has included substantial discussion and correspondence with the complainants in each case.
7.	The LGSCO has since indicated it will not pursue its investigation into the original closure decision as it feels that is adequately addressed by the independent review undertaken by the Council and the 'Lessons Learned Report' and Action Plan , which was supplied to the LGSCO in confidence to assist them with their consideration.
8.	<p>The LGSCO process is broadly as follows:</p> <ul style="list-style-type: none"> • Complainant completes Council's complaints process and refers matter to the LGSCO • LGSCO makes some initial inquiries for information that the LGSCO Link Officer (Service Lead: Legal Partnership) responds to with information provided by the service area and complaints team. • Formal Investigation letter for each complaint received from LGSCO. • LGSCO Link Officer considers / makes an initial assessment of fault and outcomes, undertakes and evidence gap analysis and requests further information and evidence pack from service areas / meets with service areas as needed to clarify requests and evidence gaps in Council's position. At this stage if the Link Officer considers there is a fault in the way the Council acts we also discuss potential remedy offers with the service area based on the LGSCO guidance on remedies. • LGSCO link officer drafts and prepares a formal response on behalf of the Council including any remedy offer where appropriate (within the delegated powers of that officer). • LGSCO may submit a request for further inquiries which are responded to by Link Officer • LGSCO considers evidence and response. Usually takes around a month – in this case the outcome was under consideration for six and a half months. • LGSCO issues draft decision to Council and complainants and invite comments (only factual corrections can generally be made at this stage). Link Officer consults service area and responds. • LGSCO issues final decision. <p>The decision by the LGSCO can be:</p> <ul style="list-style-type: none"> • Not upheld (with or without comments and guidance) • Upheld – fault but no injustice (no statutory report) • Upheld –fault and injustice (remedies required- no statutory report) • Upheld – fault and injustice (remedies required AND statutory report) (this requires report to full Council, newspaper adverts etc.)

	<p>All LGSCO decisions, regardless of outcome, are now public and published on the LGSCO website once finalised. All Complainants names are legally required to be replaced and anonymised. Complainants cannot be named on reports (or in Council reports) and the complaint between the complainant and the Council, including the full details of the complaint, are private and confidential outside of the details otherwise published by the LGSCO.</p>
9.	<p>The seriousness of the findings arising from these 8 complaints should not be understated. This is the most significant multi party LGSCO complaint, resource intensive and expensive (in terms of remedies agreed) outcome the council has had for over 20 years and the closest the Council has come to finding with a statutory report since 1998.</p> <p>The total cost in compensation payments for the proposed financial remedies will be £40,375.</p>
10.	<p>The remedies agreed with the LGSCO as part of the settlement package the Council offered to resolve this matter are set out below. The LGSCO has indicated the remedies offered by the Council are satisfactory to resolve the fault they have found in each case and are wholly in line with what they would have recommended in this case / the best they could hope to achieve for the complainants short of going to statutory report. The LGSCO is clear that had the Council not undertaken the independent review and agreed to action its findings and offer the remedies set out below, it WOULD have issued a statutory report.</p>
11.	<p>The Council has agreed with the LGSCO that all of the recommended remedies will be completed within two months of the final decisions.</p>
12.	<p>REMEDIES AGREED:</p> <p><u>(Complainant 1)</u></p> <ul style="list-style-type: none"> • Carry out a review of Ms E's needs as a carer, agree a carer's support plan and personal budget. This will include a review of the number of nights of respite care needed to maintain her wellbeing and continue in her caring role; • To carry out an assessment of Mr F's mental capacity to decide on respite care options; • To appoint an independent advocate for Mr F if he wants one; • To carry out a review of Mr F's care and support plan; • To pay Ms E £500 for her avoidable time and trouble in complaining and £8250 to recognise the Council's failures. This is the cost of the respite care she was entitled to and did not receive (33 nights at £250 a night) when Kentish Road was closed; and • To apologise. <p><u>(Complainant 2)</u></p> <ul style="list-style-type: none"> • Carry out a fresh assessment of Ms A's needs as a carer and agree a carer's support plan and personal budget to meet identified needs, including a review of the number of nights of respite care required; • Review Mr B's care and support plan;

- Appoint an independent advocate for Mr B;
- Carry out an assessment of Mr B's mental capacity to choose between respite options'
- To make a payment of £4000 to Ms A to reflect the 16 nights respite Mr B did not receive (at £250 a night) plus £500 to reflect her avoidable time and trouble
- To apologise.

(Complainant 3)

- Carry out a review of Ms K's needs as a carer, agree a carer's support plan and personal budget. This will include a review of the number of nights of respite care needed to maintain her wellbeing and continue in her caring role
- To carry out an assessment of Ms L's mental capacity to decide on respite care options;
- To appoint an independent advocate for Ms L;
- To carry out a review of Ms L's care and support plan
- To pay Ms K £500 for her avoidable time and trouble in complaining and £6250 to recognise the Council's failures. This is the cost of the respite care she was entitled to and did not receive (23 nights at £250 a night) when Kentish Road was closed;
- To apologise.

(Complainant 4)

- Carry out a fresh assessment of Ms M's needs as a carer and agree a carer's support plan and personal budget to meet identified needs, including a review of the number of nights of respite care required;
- Review Mr N and Mr O's care and support plans;
- Appoint an independent advocate for Mr N and Mr O;
- Carry out an assessment of their mental capacity to choose between respite options;
- To make a payment of £8,000 to Ms A to reflect the 16 nights respite Mr N and Mr O did not receive (at £250 a night) plus £500 to reflect her avoidable time and trouble;
- To apologise.

(Complainant 5)

- Appoint an advocate for Ms D;
- Carry out a full review of Ms C and Ms D's needs, including a review of the number of respite nights needed;
- Carry out a mental capacity assessment for Ms D on her capacity to choose respite care;
- To carry on paying the current carers payment of £34 a month;
- To pay Ms C £5000 based on the cost of 20 nights of respite care she missed out on and £500 for her avoidable time and trouble.
- To apologise.

(Complainant 6)

- Carry out a fresh assessment of Mrs P's needs as a carer and agree a carer's support plan and personal budget to meet identified needs, including a review of the number of nights of respite care required;
- Review Ms Q's care and support plan
- Appoint an independent advocate for Ms Q

	<ul style="list-style-type: none"> • Carry out an assessment of Ms Q’s mental capacity to choose between respite options • To make a payment of £4,000 to Mrs P to reflect the 16 nights respite Ms Q did not receive (at £250 a night) plus £500 to reflect her avoidable time and trouble • To apologise
	<p><u>(Complainant 7)</u></p> <ul style="list-style-type: none"> • Carry out a review of Ms G’s needs as a carer and agree a carer’s support plan and personal budget to meet identified needs, including a review of the number of nights of respite care required; • Review Mr H’s care and support plan, ensuring it seeks an advice from an occupational therapist and other health professionals taking into account Mr H’s mobility needs; • Appoint an independent advocate for Mr H; • Carry out an assessment of Mr H’s mental capacity to choose between respite options’ • To make a payment of £250 to Ms G to reflect her avoidable distress due to the fault identified; • To apologise. <p><u>(Complainant 8)</u></p> <ul style="list-style-type: none"> • Carry out a full review of Ms I’s needs as a carer, review the number of nights of respite needed to enable her to maintain her wellbeing and support her other child and confirm the outcome promptly; • Review Mr J’s care and support plan and confirm the outcome promptly; • Carry out a mental capacity assessment for Mr I regarding respite care and appoint an advocate to help him take part in assessments and decisions about his care and support; • Pay Ms I £1125 representing the 6 nights of respite care she should have had and did not take as outreach support, plus £500 for her avoidable time and trouble in complaining. • Apologise
13.	NO FAULT FINDING COMMON TO ALL:
	<p>The decision to close Kentish Road meant the Council was required, under the Care Act, Mental Capacity Act and Care and Support Statutory Guidance to:</p> <ul style="list-style-type: none"> • Review individual care and support plan as there was a change in circumstances; • Take reasonable steps to agree any proposals to change services to meet eligible needs, having due regard to individuals and their carer’s wishes as a starting point; • Revise the care and support plans because of a change affecting the plan; • Carry out an assessment of individual’s mental capacity where appropriate to decide about proposed respite care arrangements. If the outcome was a

	<p>complainant lacked mental capacity, make decisions about respite care in their best interests;</p> <ul style="list-style-type: none"> • Arrange an advocate if the Council considered a complainant / service user had significant difficulties taking part in the review, but only if there was no suitable person to assist them. <p>The Council carried out reviews of individuals' care and support needs in September 2017; this was undertaken three months before Kentish Road closed and the LGSCO consider this was in good time. These reviews recorded carers concerns about changes to respite, in particular about individuals navigating a new environment and the impact of change on them.</p> <p>The LGSCO was satisfied the reviews noted individual and carer views and was in line with paragraph 13.32 of Care and Support Statutory Guidance and there is no fault in this regard. The LGSCO found the Council had due regard to the carer's views in line with the Davey case [R on the application of Luke Davey v Oxfordshire County Council and the Equality & Human Rights Commission and Inclusion London 2016 – in which significant cuts to service packages were ruled lawful provided proper process, including consulting affected users, had been followed], and had no grounds to criticise officers' view that with some additional support, Weston Court could have met the client's needs.</p> <p>The Council was required to appoint an advocate for the clients who had significant communication difficulties, if it did not consider there was an appropriate person to represent their views. In all cases their carer was an appropriate person to represent the client and so the LGSCO did not regard the failure to involve an advocate to be fault. They recognise the Council has offered an advocate in all cases in any event and as part of the agreed remedies, the council will arrange for independent advocates to be appointed for eight of the nine individuals. The purpose of the advocate in these cases will be to ensure that the individual is involved as fully as possible in their assessments and to establish what is important to them while they are receiving replacement care (to give respite to their carers).</p>
14.	<p>FAULT FINDINGS COMMON TO THE MAJORITY OF CASES:</p>
	<p>A delay of a month in opening Weston Court meant there was no opportunity for an overnight visit to transition to the new service before Kentish Road closed, which the Council has already recognised as a fault.</p> <p>The Council has recognised it should have carried out a formal assessment of the clients' mental capacity to make decisions about respite care. The failure to do so is not in line with the Mental Capacity Act 2005 and is fault. It is not possible to say whether the outcome would have been any different had a capacity assessment taken place in each case.</p> <p>There should also have been a carers assessment review in each case as there was a change in circumstances and the carer should have had a carer's</p>

	<p>support plan that set out their respite care needs. The lack of a carer's support plan was fault and not in line with Care and Support Statutory Guidance. However, the LGSCO did not conclude that any injustice arose because the clients' care and support plans contained their respite entitlement and the approach of providing a service of benefit to the carer, directly to the adult is permitted, although the law required the Council to provide a carer's support plan as well.</p>
15.	<p>INDIVIDUAL FINDINGS ADDITIONAL TO THE ABOVE:</p>
	<p>(Complainant 1)</p> <p>The review carried out by the Council recorded Ms E's concerns about changes to respite, in particular about Mr F navigating a new environment. The LGSCO was satisfied the review noted Ms E's views and was in line with paragraph 13.32 of Care and Support Statutory Guidance and there was no fault.</p> <p>The draft care and support plan, which Ms E received in September, explained any future respite provision would need to be organised so Mr F had support to familiarise himself with a new environment. This addressed Ms E's concerns about the specific impact of Mr F's disability on any change to his care arrangements. While the Council had due regard to Ms E's views the draft care and support plan was faulty because it did not set out revisions needed to Mr F's care arrangements: there was no alternative named respite provision for Mr F set out on the plan although Kentish Road was not going to be available from December. The plan should have set out Mr F's future respite provision and the failure to do so meant the plan was not in line with section 27 of the Care Act 2014. Recognising this, the Council prepared a final care and support plan in November, naming Weston Court. The Council accepts it never sent Ms E a copy of the final plan. While it was appropriate for officers to respect Mr F and Ms E's wish not to be intruded upon when they were dealing with the aftermath of his serious injury, the Council should still have sent them the final care and support plan by post before Kentish Road closed and the failure to do so was fault.</p> <p>The chief executive advised Ms E in an email that officers considered Weston Court was a suitable respite placement. This did not absolve the Council of its responsibility to ensure Ms E had a copy of the final care and support plan which set out the future respite arrangements. The Council has recognised that its communication about future respite arrangements for Mr F was not timely and this was fault which caused Ms E and Mr F avoidable uncertainty and confusion.</p> <p>The records of the placement team's attempts to find an appropriate residential care home willing to take Mr F as a respite client are numerous. However, there is no evidence that the placement team identified a home with a vacancy that was willing to take Mr F. The records indicate that any potential placements fell through or were not pursued for various reasons. But there is no evidence that this was due to Ms E unreasonably declining suitable placements that were willing to take Mr F.</p> <p>Delays in opening Weston Court meant there was no opportunity for any visits to transition to the new service before Kentish Road closed, which the Council has already recognised as a fault.</p>

The Council was required to appoint an advocate for Mr F, who has some communication difficulties, if it did not consider there was an appropriate person to represent his views. Ms E was an appropriate person to represent Mr F and so the LGSCO do not regard the failure to involve an advocate to be fault. They recognise the Council has offered an advocate in any event. It is up to Mr F to decide whether he wants an advocate and he cannot be forced to have one if he does not so wish.

The Council should also have carried out a further formal review of the care and support plan in November 2017 when Mr F's injury became known as this was a significant change in his condition. The review would have determined whether Mr F's eligible needs had changed such that a revision to the care and support plan was needed, including revisions to respite arrangements. The failure to carry out a prompt review was fault. The LGSCO notes the social worker tried to make urgent alternative care arrangements and liaised with NHS staff to provide additional support and advice, but there should still have been a formal care and support plan review in November. The LGSCO recognise the Council did carry out a fresh assessment of need in April 2018, but this was not timely as it was five months after Mr F's injury. The delay was fault. The LGSCO further notes the family said in November 2017 they wanted the search for respite care to cease. But the evidence indicates that they meant 'for the time being' because they were in shock. Later emails from Ms E are clear that she wanted the Council to resume sourcing respite care. The Council also cancelled the Kentish Road booking for September at late notice due to staffing problems. The LGSCO did not conclude this was fault though as there is not enough evidence to suggest the staffing problems were foreseeable or within the Council's control. They took into account that the social worker offered to arrange live-in carers as an alternative and accept the family did not like this idea, but it would have provided an urgent solution and enabled Ms E to go on her trip.

Ms E also had to cancel a work trip in November because of the lack of respite care. The LGSCO found this caused her avoidable inconvenience because she was not at the time aware that the Council's formal offer of respite care was Weston Court because she had not received a copy of the final care and support plan.

The LGSCO report also notes Ms E arranged informal care to cover a second work trip in April 2018. The social worker offered Ms E a direct payment to pay the informal carers. She declined. The LGSCO commented that they understand her reasons, but had no grounds to criticise the Council as the payment would have been a means of meeting Mr F's respite needs, albeit not the family's preferred way.

There should also have been a review of Ms E's carer's assessment as there was a change in circumstances and she should have had a carer's support plan that set out her respite care needs. The Council's records suggest Ms E did not pursue this issue in 2015, but given her caring and work commitments, the LGSCO consider it unreasonable of the Council not to have checked with her about what she wanted to do. And the lack of a carer's support plan was fault and not in line with Care and Support Statutory Guidance. However, the LGSCO report notes they cannot conclude that any injustice arose because Mr F's care and support plan contained his respite entitlement and the approach of providing a service of benefit to the carer, directly to the adult is

	<p>permitted, although the law required the Council to provide a carer's support plan as well.</p>
	<p>(Complainant 2)</p> <p>As with complainant 1 above, the Council issued a revised draft care and support plan in September 2017 setting out the agreed respite offer of an identified care home for some of the client's respite entitlement. It sent a further care and support plan in November naming Weston Court as a second option because that care home could not provide all of the client's agreed respite nights. The LGSCO recognised the carer did not share the Council's view that Weston Court was suitable, but considered the records evidenced the Council considered her concerns and addressed those concerns in respect of size and social isolation. Furthermore, officers met with her to discuss the concerns and offered a further option of converting some of the respite nights into home care support. The LGSCO noted agreement could not be reached about the suitability of Weston Court but considered the Council had due regard to the carer's wishes in line with the Davey case and there are no grounds for the LGSCO to criticise the view that Weston Court could have met the client's needs.</p> <p>The LGSCO consider the Council acted in line with the Care Act and Care and Support Statutory Guidance through a carer's assessment and carer's support plan in January 2018 setting out respite entitlement. Although this should have taken place at the same time as the client's care and support plan review (so in anticipation of the closure of Kentish Road and not after the event), the LGSCO do not consider this caused any injustice as the respite entitlement was set out in the client's care and support plan.</p> <p>The LGSCO found no fault in the way the Council dealt with the review of the client's care and support plan. There was delay in completing a carer's assessment and carer's support plan but there is no injustice to her as the client's respite entitlement was set out on his plan. There was some fault in the failure to have in place arrangements for the client to transition to Weston Court. The Council accepted this and the LGSCO considered this caused avoidable uncertainty and distress. The Council has proposed actions and payments which the LGSCO consider remedy the injustice.</p>
	<p>(Complainant 3)</p> <p>The LGSCO noted the complainant's view was Weston Court was unsuitable, but the notes suggest neither she nor the client visited the scheme before it opened and so it would not seem this view was based on experience, more a concern about change. The LGSCO considered the Council took reasonable steps to reach agreement on the proposed changes by offering visits and also offering other alternatives like additional outreach support, instead of overnight respite. Accordingly the LGSCO found the Council had due regard to the carer's views in line with the Davey case, and had no grounds to criticise officers' view that, Weston Court could have met the client's needs.</p>

	<p>The Council issued a revised care and support plan in November 2017. This was in line with section 27 of the Care Act. However, it was very close to the date when Kentish Road was due to close and should have been issued at the same time as the review so that the carer and client were informed in good time about the proposed changes to care. The delay created avoidable uncertainty for both about future respite.</p> <p>The Council should have reviewed the complainant's carer's assessment. The LGSCO noted this appears to have been offered and refused because the clients care and support plan said she did not want another carer's assessment. There should have also been a carer's support plan on file for the carer.</p> <p>The lack of a carer's support plan was fault and not in line with Care and Support Statutory Guidance. However, the LGSCO cannot conclude that any injustice arose because the client's care and support plan contained her respite entitlement and the approach of providing a service of benefit to the carer, directly to the adult is permitted, although the law required the Council to provide a carer's support plan as well.</p> <p>The Council's failure to send a copy of the client's revised care and support plan in good time and the failure to have in place timely transition arrangements to the new service caused the complainant avoidable distress and uncertainty about future respite care.</p>
	<p>(Complainant 4)</p> <p>The review noted the complainant's concerns about changes to respite care and sought an opinion from a specialist physiotherapist who confirmed Weston Court was suitable. The LGSCO was satisfied the review was in line with paragraph 13.32 of the Care and Support Statutory Guidance and there is no fault.</p> <p>Again, the LGSCO recognised the complainant's view was Weston Court was unsuitable, but considered the Council took reasonable steps to reach agreement on the proposed changes by discussing her concerns and involving a physiotherapist who confirmed the layout of Weston Court could be made suitable for the client. Accordingly they found the Council had due regard to the complainant's views in line with the Davey case, and saw no grounds to criticise officers' view that, Weston Court could have met the client's needs.</p> <p>The Council issued a revised care and support plan in November 2017 in line with section 27 of the Care Act. However, it was very close to the date when Kentish Road was due to close and should have been issued at the same time as the review so the parties were informed in good time about the proposed changes to respite care. The delay created avoidable uncertainty for the clients about future respite.</p>

	<p>The Council should have offered the complainant an updated carer's assessment when it was reviewing the clients care and support plans. It has now offered a carer's assessment and the records evidence the complainant declined this.</p> <p>There should also have been a carer's support plan for the complainant. The lack of a carer's support plan was not in line with statutory guidance and so is fault. However, the LGSCO could not conclude that any injustice arose because the clients care and support plan contained her respite entitlement and the approach of providing a service of benefit to the carer, directly to the adult is permitted, although the law required the Council to provide a carer's support plan as well.</p>
	<p>(Complainant 5)</p> <p>Again, the LGSCO commented that the complainant's view was Weston Court was unsuitable, but the notes suggest this was a concern about any change in the social arrangements at respite care for her daughter. There is no requirement on a council to preserve respite arrangements permanently. They consider the Council took reasonable steps to reach agreement on the proposed changes by offering visits and also exploring other alternatives like additional outreach support, instead of overnight respite and accordingly found the Council had due regard to the complainant's views in line with the Davey case, and had no grounds to criticise officers' view that, Weston Court could have met the client's needs.</p> <p>The Council issued a revised care and support plan in November 2017. This was in line with section 27 of the Care Act. However, it was very close to the date when Kentish Road was due to close and should have been issued at the same time as the review so that the complainants were informed in good time about the proposed changes to care. The delay created avoidable uncertainty for them about future respite.</p> <p>The Council carried out a carer's assessment for the complainant and a carer's support plan in September 2017 set out her personal budget. This is in line with section 10 of the Care Act 2014 and statutory guidance and there is no fault.</p> <p>The Council has acknowledged it should have reviewed the number of nights of respite the carer was entitled to when she asked for more nights. Also, it should have set out her respite entitlement in the carer's support plan and the failure to do this was not in line with statutory guidance and is a further fault.</p>
	<p>(Complainant 6)</p> <p>As with all of the cases, the LGSCO recognised the complainant's view was Weston Court was unsuitable, but considered the Council took reasonable steps to reach agreement on the proposed changes by discussing her concerns and offering her a visit, which she did not take up. The LGSCO found the Council had due regard to the complainant's views in line with the</p>

	<p>Davey case, and I had no grounds to criticise officers' view that Weston Court could have met the client's needs.</p> <p>As with several of the other cases, the Council issued a revised care and support plan in November 2017 in line with section 27 of the Care Act. However, it was very close to the date when Kentish Road was due to close and should have been issued at the same time as the review so the parties were informed in good time about the proposed changes to care. The delay created avoidable uncertainty for the complaints about the new respite arrangements. This was fault.</p> <p>The Council reviewed the complainant's carer's support plan at the same time as the review of the client's assessment. This is good practice and there is no fault.</p> <p>The Council has accepted there was no review of the number of nights of respite required and during this investigation, agreed to carry out a review. Any agreed changes to the number of nights should be set out in both the carer's support plan and in the individual's care and support plan.</p>
	<p>(Complainant 7)</p> <p>The revised care and support plan, which was discussed with the complainant's advocate shortly before Kentish Road closed, set out Weston Court as the named respite provision. The LGSCO consider the Council acted in line with Care and Support Statutory Guidance and with the Care Act 2014 and the Davey case so there is no fault.</p> <p>The Council accepts it should have reviewed the complainant's carer's assessment. The LGSCO noted the clients respite entitlement was in his care and support plan, but the Council should have also completed a carer's support plan for the carer. The failure to do so is fault.</p> <p>The LGSCO found no fault in the way the Council dealt with the review of the client's care and support plan. Although there was no carer's support plan for the complainant, the LGSCO did not consider this caused her injustice as the respite entitlement was set out on the client's care and support plan. There was some fault in the failure to have in place arrangements for the client to transition to Weston Court which caused avoidable uncertainty and distress. The LGSCO concluded the Council proposed actions and a payment which they consider remedy the injustice.</p>
	<p>(Complainant 8)</p> <p>The revised care and support plan, which was discussed with the complainants shortly before Kentish Road closed, set out Weston Court as the named respite provision. The LGSCO therefore considers the Council</p>

	<p>acted in line with Care and Support Statutory Guidance and with the Care Act 2014 and the Davey case so there is no fault.</p> <p>The Council attempted to address concerns about socialising at Weston Court by suggesting the clients friends could attend at the same time. The LGSCO considered the Council had due regard to the complainant's wishes, although agreement could not be reached on Weston Court. In addition, the Council acted flexibly and without fault by agreeing the overnight respite entitlement could be converted into outreach hours instead. This meant that the complainant benefitted from most of the client's respite entitlement pro-rata, during the period Kentish Road was closed.</p> <p>The Council has carried out an assessment of the client's capacity to make decisions about respite care. This is in line with the Mental Capacity Act, but the Council should have completed it before the changes to his care plan were agreed. So it was too late and this is fault.</p> <p>The Council accepts it should have reviewed the number of respite nights the complainant could have, in particular because she asked for more. The Council accepts there should have been a review of the carer's assessment, although the LGSCO noted she has recently declined a further assessment. They also noted the clients respite entitlement was in his care and support plan, but the Council should also have completed a carer's support plan for the complainant and the failure to do so is fault.</p>
16.	<p><u>BACKGROUND TO THE COMPLAINTS / INDEPENDENT REVIEW OF KENTISH ROAD CLOSURE AND ACTION PLAN:</u></p>
17.	<p>At the time of its closure in November 2017, Kentish Road was an eight bed respite service, supporting people living with a learning disability and their carers. At the time of the closure, the service was rated as 'requires improvement' by the Care Quality Commission (CQC). The scheme re-opened in July 2018 following refurbishment and re-registration with the CQC having been assessed as meeting current CQC standards. It now operates as a four bed respite service operating from lunchtime on Fridays to lunchtime on Mondays. The current service was recently inspected by the CQC. Feedback on the day of the inspection was positive but a formal response from the CQC has not yet been received.</p>
18.	<p>The purpose of respite care, defined in the Care Act 2014 as replacement care, is to give informal carers (typically family members) a break from their caring responsibilities, in order to help meet their own needs and to sustain the caring arrangements for the person being cared for. From Friday to Monday, Kentish Road provides respite care during the day and overnight, and complements day services provided or commissioned by the Council, which provide respite during the day. Although the primary purpose of respite care is to provide a break for carers, the respite provider has a duty to ensure that the care and support needs of the person staying at the service are met and, wherever possible and appropriate, their preferences are taken into account in terms of location and activities</p>

19.	The vision for the long term future use of the Kentish Road site is being co-designed with carers and their representatives. This work started in September 2018 and a number of options and proposals are being considered by a task and finish group made up of the Cabinet Member for Adult Care, Council officers, carers, representatives such as Southampton Mencap and other providers of respite care in Southampton. The Council has given a commitment to continue to provide overnight respite care from that location in the future.
20.	On 30 November 2017, Cabinet reconsidered its decision made on 14 November 2017 to close the respite service at Kentish Road, taking into consideration the recommendations made by the Overview and Scrutiny Management Committee on 29 November 2017. Cabinet accepted the recommendation to review the processes that had been followed relating to the Kentish Road respite service decision and to identify any lessons that needed to be learnt for any future decisions of this nature.
21.	The Director of Adult Social Services (DASS) subsequently commissioned an independent review covering the period from the Cabinet's decision to consult on the future of Kentish Road in July 2014 to the closure of the service in November 2017. The final report was received by the Council on 4 June 2018 and is attached at Appendix 10.
22.	<p>The purpose of the review was to determine the factual events leading to the closure of Kentish Road including a chronology of decisions and actions for the period in question and specifically to identify whether:</p> <ul style="list-style-type: none"> • Decision-making and governance routes were followed appropriately and in line with Cabinet resolutions, the scheme of delegation, standing orders and line management accountability • Appropriate and adequate information was provided, updated and given to Cabinet Members, Council meetings and committees in a timely fashion and whether sufficient information was available at all times in order for the relevant decisions to be made • There was a direct link to the strategic objectives which supported this decision and how well this was adequately communicated to relevant stakeholders • All relevant legislation, statutory guidance and governance was followed in relation to the decision and in relation to individuals affected by the decision • Best practice was demonstrated in relation to engagement and consultation with stakeholders including individuals and their carers, the involvement of independent advocates and transition arrangements • Appropriate and proportionate Care Act assessments and plans were produced at appropriate times and whether correct engagement with individuals and their carers was undertaken • Any other actions would have been beneficial, such as transition plans • The structure and organisation of the implementation project was adequate – including how implementation was resourced, project managed, responsibility assigned, progress monitored and reviewed, risks assessed and mitigated and reporting arrangements

	<p>The aim of review was to identify any lessons for future change projects, especially where the decision is likely to be unpopular and lead to challenges, both legal and otherwise.</p>
23.	<p>An Oversight Board was established and chaired by the DASS to consider the findings of the report and to agree and oversee delivery of an action plan to ensure the accepted recommendations were implemented within an agreed timescale (Terms of Reference at Appendix 9). The resultant action plan is attached at Appendix 11. The Oversight Board first met in September 2018 and has met regularly since. The chair of the board changed in November 2018 on the appointment of a new interim DASS.</p>
24.	<p>The report made 15 recommendations. Four of these were not accepted. As at April 2018, eight of the recommendations have been completed and two remain in progress.</p> <p>Implementation of a council wide Project Management Process with governance by the Council Management Team has achieved Recommendation 1, to ensure that for all major changes to service provision, particularly those concerning vulnerable people, that industry recognised project management principles are implemented. The Project plan developed within this process ensures that there is delegation of responsibility for ensuring that internal and external communications are robust and support legal compliance, which is Recommendation 2 and ensures adherence to the Public Service Equality Duty (PSED) under the Equality Act 2010, including through the development of Equality and Safety Impact Assessments (ESIA) at every stage of the decision making process, Recommendation 3.</p> <p>Democratic Services have established a system for tracking the implementation of Cabinet decisions, similar to the OSMC tracker, so that decisions requiring action within timescales are brought forward to Cabinet as required, Recommendation 6. The Council to commissioned independent audits of care and support assessments and plans within learning disability services to assess quality and legal compliance which was recommendation 7.</p> <p>The Project Management Process also includes elements to ensure that public consultation, engagement and co-production approaches are included in project plans and undertaken, where required, in line with legislation and that these continuously inform the service design and decision making process throughout the life of the project, as per Recommendation 11. Also for Recommendation 12 to ensure compliance with the Council's HR policies in relation to managing change and major incidents, so that the staffing implications and capacity and cover issues are planned rather than reactive.</p> <p>All health and care services are only procured when a rigorous assessment of need has been undertaken, including the use of collated information arising from individual assessments of need and this is verified via identified governance routes, as outlined in Recommendation 12. Recommendation 14, to ensure that the re-provision of 32B Kentish Road utilises full engagement and a co-production with service users has been completed.</p>

	<p>Four recommendations were not accepted as it was identified that these requirements were already being achieved. These were Recommendation 4 to amend the finance section of the Cabinet report template and Recommendation 5 to provide an external consultancy role to the Overview and Scrutiny Management Committee (OSMC), to provide expert advice and guidance on appropriate challenge in the area of health and adult social care for a period of one year. Recommendation 9 to ensure that accountability for decision-making and management oversight is provided by a senior manager who has a professional social work qualification, expertise and experience was not accepted nor Recommendation 10 to ensure that all changes relating to service redesign are commissioned by the Integrated Commissioning Unit (ICU) .</p> <p>Two recommendation are still being progressed. Recommendation 8 , using the findings from the independent audit, to provide training and making other required changes and re-audits to track improvement have been scheduled. Recommendation 15 continues to implement actions following a review of respite services across adult services.</p> <p>Further detail on each are set out below.</p>
25.	<p>As a result of lessons learned from this proposal, the Council has now established a Projects and Change Team (formerly known as the Project Management Office) with a robust project management methodology that is now being applied to all in scope projects and programmes. The approach includes four key stages in the lifecycle of a project and sets out in detail the governance arrangements, approval routes and project documentation required for each stage, dependent on financial and other risks. The approach includes clear accountability for internal and external communications, which addresses the failure to communicate clearly and in a planned way with carers and other stakeholders during the period covered by the review. It also provides assurance that equality, safety and other impacts are assessed at every stage of the decision making process. This new process is now being used, for example, in the work being done on the future options for Kentish Road.</p>
26.	<p>A supplementary review of the financial modelling carried out in 2014 and updated in 2017 was carried out by the Council's Internal Audit Service. The report of this review is attached at Appendix 12. It states that the original decision taken in 2014 was based on flawed financial modelling and the decision taken in November 2017 was based on better financial modelling but the auditors were only provided with limited evidence and so the accuracy of the figures has not been proven. Arrangements are now in place in Finance to check the robustness of future financial modelling and to clearly state any assumptions etc. The guidance to authors of Cabinet reports clearly states that all relevant financial information should be added to the report in order that Members have all salient information and this is checked at corporate clearance stage. Recommendation 4 in the main review report to incorporate a tick box in the finance section of Cabinet</p>

	reports was therefore not accepted, as robust enforcement of these arrangements is considered to be sufficient.
27.	As it is considered that the Council discharges its scrutiny function well, with a dedicated Scrutiny Manager, which has previously been held up as an example of best practice nationally, Recommendation 5 to provide additional expert advice to the Overview and Scrutiny Management Committee via an external consultant was not accepted by the Council.
28.	Recommendation 6 was for Democratic Services to establish a system for tracking the implementation of Cabinet decisions, similar to the tracker in use by the Overview and Scrutiny Management Committee, so that decisions requiring action within timescales are brought forward to Cabinet as required. This was implemented in October 2018.
29.	<p>Recommendation 7 was for the Council to commission independent audits of:</p> <ul style="list-style-type: none"> • Care and support assessments and plans within learning disability services to assess quality and compliance with the Care Act 2014 and the Mental Capacity Act 2005. This to include the assessments and care and support plans of carers, which are outsourced on behalf of the Council. • The decision making at the funding panel to ensure decisions follow from care and support plans and not from assessments, in compliance with the Care Act 2014. • The extent of non-compliance with the Mental Capacity Act in the Deprivation of Liberty Safeguards (DoLS) team in relation to applications for deprivation of liberty safeguards that are not taken forward. <p>On 31 October 2018, a contract was awarded to the National Development Team for Inclusion (NDTI) to complete case audits in learning disability and other social care teams, following a tender exercise, to comply with this recommendation.</p>
30.	<p>The NDTI completed desk top audits of 80 electronic case files in January and February 2019. The audit was of a sample of cases completed over the last three years. Their report following these audits, was received by the Council on 13 February 2019, and is attached at Appendix 13.</p> <p>The Oversight Board had decided to expand this exercise to audit practice across all of adult social care (rather than limiting it to learning disability). These findings are critical of social work practice, as the auditors were not able to find evidence of person-centred, strengths-based approaches to assessments and care and support planning in the majority of cases reviewed. Their report was considered at meetings of the Adult Social Care Improvement Board and the Kentish Road Oversight Board on 12 March 2019.</p> <p>The five recommendations contained in the NDTI report are accepted in full. These recommendations can be summarised as follows:</p> <ol style="list-style-type: none"> 1. That the council should use the report to brief relevant stakeholders in order to support co-production of a “different culture of practice” moving forward.

2. Undertake a review of internal learning and development needs and use this to inform a targeted plan for practitioners and first line managers.
3. Improve practice supervision and set aside development time for practitioners and managers to support strengths-based working, backed up by quality and performance management.
4. Work with commissioners to build a more thorough knowledge of resources available to people in their communities and to understand how these can be used to supplement and augment informal and paid support.
5. Benchmark with other authorities; clearly define outcomes for improvement with agreed milestones; measure and review progress.

The Boards will consider if current plans are sufficient to meet all of these recommendations or consider if further actions are required.

In terms of the case audits, the auditors were hampered by the current IT system, Paris, which does not have a clear care pathway or workflow. Due to deficiencies with Paris, referrals are used to manage workflow (which is confusing and makes reporting difficult) and because not all parts of the system are Care Act compliant, some documents have to be uploaded separately, which does not always happen and means they can be difficult to find on the system. This will all be addressed by the new IT system, CareDirector. The Council made a decision to procure a new, compliant system to support best social work practice and this will be in place by March 2020.

Despite the IT system challenges it was highlighted that Social work practice in many cases also fell a long way short of expectations and protocols for case recording were not in evidence. Improvement in practice was being addressed, in advance of the case audits being completed, through a Service Development Programme led by the Principal Social Worker and overseen by the Adult Social Care Improvement Board, with progress against the plan also being reported to the Oversight Board.

The Service Development Programme is structured around four themes:

- Workforce Development
- Strengths-based social work practice
- Safeguarding Adults and
- Quality Assurance

Two additional posts were created as part of a comprehensive restructure of the Adult Social Care Service in April 2018, which have supported delivery of the actions in the Service Development Plan. These are a Principal Social Worker for Adults and an Integrated Service Manager for the Learning Disability Team. A Safeguarding and Service Quality Hub was also created as part of the restructure.

The Integrated Service Manager is a joint appointment with NHS Southampton City Clinical Commissioning Group (CCG) and the post-holder

	<p>took up their post on a full time basis in November 2018. The Learning Disability team is now largely made up of new staff, has joined up with the NHS community health team (including nurses, physiotherapists and other therapists) and the CCG's Learning Disability Continuing Healthcare Team and, since January 2019, has been working in a new location in Redbridge to support integrated working.</p> <p>Completed actions in the Service Development Plan include the introduction of a new supervision policy, to ensure regular and consistent oversight of practice and recording quality; the introduction of a quality assurance framework, with monthly audits and reporting processes now in place; the introduction of an Adult Social Care Development Forum for team managers and senior social workers to reflect on and improve practice; the completion of a training needs analysis and delivery of additional workshops on strengths-based practice, mandatory training on safeguarding adults and the Mental Capacity Act, and a full day of legal training for all social work practitioners. A full day staff conference took place in November 2018, which was supported by Lyn Romeo, the Chief Social Worker for Adults at the Department of Health and Social Care and other experts in the sector.</p> <p>In the Learning Disability Team specifically, plans are in train to reduce workload, to develop senior social work practitioners, and to appoint champions for key areas such as safeguarding and mental capacity. A Business Change Manager is supporting culture change in the team and weekly practice quality team training sessions are taking place.</p> <p>Although work continues across adult social care to train people to consistently provide a strengths-based, person centred approach, these audits show that significant work remains to embed this. For these changes to become embedded, social work practitioners must work with people to find person-centred alternatives instead of (as described by NDTI) a “service based solution to the presenting issues in the person’s life”. Work is also underway through the Integrated Commissioning Unit to develop a range of community solutions, which will help practitioners to link people to community based support and activities. The Council is also reviewing the way that it provides information on care and support options through the online Southampton Information Directory.</p>
31.	<p>The lessons learnt report also highlighted the fact that Deprivation of Liberty Safeguards (DOLS) authorisations may be required for some individuals using the Kentish Road respite service. Since it has re-opened, the Council's DOLS service has received applications for four people who access respite services at Kentish Road. Two of those people also access respite services at another residential respite centre and the Council has received applications for that location as well. Legal advice has been sought on how best to determine these applications in a sensitive and pragmatic manner to avoid any further inconvenience or distress to individuals and family members, and this approach is being followed.</p> <p>The Council has also received four applications for people receiving care at Weston Court and a further 15 for people accessing alternative residential</p>

	<p>respite provision. The Council is using the Association of Directors of Adult Social Services (ADASS) risk matrix to screen all applications, which takes account of matters such as unresolved challenge, exit seeking behaviours and any cases where either physical or chemical restraint is required. The outcomes from the risk matrix are being used to prioritise cases accordingly.</p>
32.	<p>Recommendation 9 in the lessons learnt report was not accepted by the Council, as the current operating model permits accountability from a statutory perspective to be undertaken by a suitable officer, as required, with a direct line of sight to both the Chief Executive in terms of the statutory duties and the Chief Operations Officer and Service Director for both the statutory duties and strategic/commissioning leadership.</p>
33.	<p>Recommendation 10 was also not accepted by the Council, as the current operating model permits the operational re-design of adult social care to be undertaken by the operational service led by the Service Director, whilst commissioning activities are undertaken by the Integrated Commissioning Unit (ICU). There is close working between the ICU and the operational service.</p>
34.	<p>Recommendation 12, to procure services as part of the final stage of the commissioning cycle only when a rigorous assessment of need has been undertaken, including the use of collated information arising from individual assessments of need, when concerning the provision of specialist services, has been implemented. Commissioning processes for health and care services mean that any commissioning decision is based on needs assessment and this is verified through use of the Contract Lifecycle Management Committee (CLCMC) and Joint Commissioning Board.</p>
35.	<p>Recommendation 14 suggested that that the re-provision of 32B Kentish Road should utilise full engagement and a co-production approach with carers. Full co-production was not achieved on the re-provision of 32B but carers did visit the site and gave their opinions as to requirements and suitability. Their feedback significantly changed the plan and that is why part of the main building at Kentish Road (32) was re-opened in July 2018, instead of the annexe (32B). The Council has made a commitment to continue to involve and engage with people who use the service, their families and other partners throughout the process of developing a plan for the future of the Kentish Road site that maximises its potential value. A survey seeking views regarding the service in its current form and options for the future of the site was undertaken from November 2018 to February 2019 and the results of this survey are currently being analysed. The task and finish group including carers and their representatives was also established and has met four times since September 2018. The group is keen to explore ways of complementing the respite service with other services for people with learning disabilities on site, including supported living, training flats, and life skills service provision.</p>
36.	<p>Recommendation 15, the final one in the lessons learnt report, was to undertake a review of respite services, which was completed in November 2018. The review took into account consistency, equity and fairness in respite provision across all groups of service users. This highlighted the need to improve joint working practices and information sharing between Adult Social care and Carers in Southampton, to join up carers assessments with the support provided to the cared for person. Currently this is not achieved as one</p>

	<p>joined up process. Assessment for replacement care remains with Adult Social care and therefore remains detached from the assessment of carers needs so this is not providing carers with a holistic approach. A new social care post was appointed in January 2019 to review the pathway and ensure the achievement of one aligned process.</p> <p>The review also highlighted variable access to respite so work, in partnership with Carers in Southampton, is underway with the aim of considering a replacement care specific resource allocation system. This is a tool for calculating the provisional amount of funding available to the client/carer to meet respite/replacement care social care needs. This would take into account the care and support provided to the cared for person, the support provided to the carer and address any additional replacement care/respite needs, where relevant. The new approach would help ensure a consistent and equitable access to respite/replacement care. Work is being undertaken to widen choice and accessibility to replacement care options and to inform future planning. In addition analysis is being completed to determine future respite needs.</p>
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RESOURCE IMPLICATIONS

Capital/Revenue

37.	The remedies offered in this case comprise a number of services (set out in detail above) to be offered to the complainants that will be delivered within existing resources.
38.	In addition to the above, a total of £40,375 in compensatory payments has been agreed in order to remedy the injustice suffered by the complainants arising from the faults identified by the LGSCO. These payments comprise an allocation of £250 per night per person for lost respite care to which individual complainants would be entitled together with further sums (ranging from £250 to £500) in respect of avoidable uncertainty and distress caused by the faults identified and the pursuance of their complaints to the LGSCO.
39.	During 2017/18, Kentish Road did not record a saving, and instead reflected an overspend of £196,000 against controllable budgets. For 2018/19 there is a forecast overspend of £37,000, against a reduced budget of £314,000 (to reflect the reduction in opening hours). Following the February 2019 budget setting process, a budget provision of £600,000 has been set aside for the centre in 2019/20.

Property/Other

40.	N/A
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LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

41.	<p>The Local Government Act 1974 established the then Local Government Ombudsman for England and for Wales. Wales is now covered by the Public Services Ombudsman for Wales.</p> <p>The Act defines the LGSCO's main statutory functions:</p> <ul style="list-style-type: none"> • to investigate complaints against councils and some other authorities • to investigate complaints about adult social care providers from people who arrange or fund their own adult social care
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	<ul style="list-style-type: none"> • to provide advice and guidance on good administrative practice <p>The main activity under Part III of the 1974 Act is the investigation of complaints, which it states is limited to complaints from members of the public alleging they have suffered injustice as a result of maladministration and/or service failure.</p> <p>The LGSCO's jurisdiction under Part III covers all local authorities (excluding town and parish councils); police and crime bodies; school admission appeal panels and a range of other bodies providing local services.</p> <p>Under Part IIIA the LGSCO investigates complaints from people who allege they have suffered injustice as a result of action by adult social care providers. The Ombudsman changed its name from the Local Government Ombudsman to the Local Government and Social Care Ombudsman in 2017 to reflect the full scope of its jurisdiction.</p> <p>The Regulatory Reform (Collaboration etc between Ombudsmen) Order 2007 amended the 1974 Act and clarified the powers of the Local Government and Social Care Ombudsman, and the Parliamentary and Health Service Ombudsman, to work together. If a complaint covers both jurisdictions - typically social care and health issues - they can carry out joint investigations with a single point of contact.</p>
42.	<p>Where the Ombudsman upholds a complaint, the report will contain recommendations that the local authority or adult social care provider should follow. These could include:</p> <ul style="list-style-type: none"> • paying compensation • providing a service that should have been provided • making a commitment to improve procedures in the future. <p>The Ombudsman does not have the legal power to make a council or care provider carry out its recommendations, but it is rare for them not to do so.</p> <p>If a council does not agree to a settlement proposed by the Ombudsman, the Ombudsman will issue a public interest report, naming the council. It must be made available to the public, and advertised in the local press covering the council's area.</p> <p>Where a council does not agree to carry out recommendations in the Ombudsman's report, a further report will be issued. If, after this, the council still does not act on the recommendations, the council must publish a statement in a local newspaper explaining why.</p> <p>Where a care provider does not agree to carry out the recommendations in the Ombudsman's report, the Ombudsman will issue an adverse findings notice. The notice will be shared with the Care Quality Commission (which regulates health and social care in England) and the care provider will be required to publish it appropriately. Where this is not done, the Ombudsman will publish the notice.</p>
Other Legal Implications:	
43.	N/A
RISK MANAGEMENT IMPLICATIONS	
44.	The Local Government and Social Care Ombudsman's findings of maladministration with injustice, and the recommendations made following the

	<p>independent review and case audits detailed in this report, have highlighted where further assurance is needed regarding:</p> <ul style="list-style-type: none"> • The Council’s approach to assessing the care and support needs of individuals and their carers • The provision of respite care and • Governance arrangements for projects <p>This report sets out for the Governance Committee’s consideration the steps that are being taken to address these findings and recommendations.</p> <p>Implementation of the Action Plan arising from the independent review is being overseen by the Independent Review Oversight Board, chaired by the Interim Director of Adult Social Services, and delivery of the Service Development Plan is being overseen by the Adult Social Care Improvement Board, chaired by the Chief Operating Officer.</p> <p>Progress against these plans will be added as a standing item to the Cabinet Member for Adult Care’s monthly Cabinet Member Briefings.</p> <p>The Chief Executive, Deputy Chief Executive and Service Directors are being updated on progress at meetings of the Council’s Management Team.</p> <p>The Council’s strategic risk register will be updated to reflect how the risks raised in this report are being mitigated and this will be reflected in the next quarterly update of the risk register.</p> <p>The arrangements for mitigating risks associated with Adult Social Care are also overseen by the Local Safeguarding Adults Board, which has an independent Chair.</p> <p>The quality of the current provision of respite care at Kentish Road has recently been inspected by the regulator, the Care Quality Commission, and the quality and provision of respite care at Kentish Road has been rated ‘Good’ by the CQC.</p> <p>A further independent audit of adult social care cases will be commissioned to determine progress against the Service Development Plan.</p>
POLICY FRAMEWORK IMPLICATIONS	
45.	The proposals set out in this report are consistent with the Council’s approved Policy Framework.
KEY DECISION?	N/A
WARDS/COMMUNITIES AFFECTED:	All
<u>SUPPORTING DOCUMENTATION</u>	
Appendices	
1-8.	Copies of the LGSCO complaint decisions (x 8)
9.	Terms of Reference of the Oversight Board established to manage Review actions.
10.	Independent Review Report (‘Lessons Learned’ Report)
11.	Action plan arising from the Independent Review Report
12.	Report of supplementary review into financial modelling carried out by Internal Audit

13.	Independent Adult Social Care Audits – Final Report (carried out by the National Development Team for Inclusion [NDTI])
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Documents In Members' Rooms

1.	None	
Equality Impact Assessment		
Do the implications/subject of the report require an Equality and Safety Impact Assessment (ESIA) to be carried out.		No
Data Protection Impact Assessment		
Do the implications/subject of the report require a Data Protection Impact Assessment (DPIA) to be carried out.		No
Other Background Documents		
Other Background documents available for inspection at:		
Title of Background Paper(s)		Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)
1.	None	

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2 April 2019

Complaint reference:
18 001 460

Complaint against:
Southampton City Council

The Ombudsman's final decision

Summary: There was fault in the way the Council made decisions about Mr F's future respite care. This caused Mr F and his sister Ms E avoidable uncertainty and distress. To remedy the injustice the Council has agreed to apologise, carry out further reviews and a mental capacity assessment and make a payment to reflect the loss of respite care. This action is an appropriate remedy for the injustice caused.

The complaint

1. Ms E and other carers complain about Southampton City Council's (the Council's) offer of respite care following the closure of Kentish Road, a care home providing respite care for adults with learning disabilities. They say the proposed alternatives were unsuitable.
2. They also complain about the decision-making which led to Kentish Road's closure.
3. Ms E wants the same type of service as Kentish Road to be available full-time and a payment to reflect her losses.

What I have investigated

4. I have investigated the first complaint. My reasons for stopping investigating the second complaint are at the end of this statement.

The Ombudsman's role and powers

5. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
6. We have the power to start or discontinue an investigation into a complaint within our jurisdiction. (*Local Government Act 1974, sections 24A(6), as amended*)
7. The Court of Appeal said our powers to decline to investigate a complaint (or to discontinue an investigation) are wide and that it will be '*clearly right that the Ombudsman must prioritise complaints which appear to him to involve significant injustice as opposed to those which do not*' (*R(Abernathy) v LGO [2002] EWCA Civ 552*)

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8. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

How I considered this complaint

9. I considered the complaint, the Council's response to my enquiries and documents described later in this statement. I discussed the complaint with Ms E. Both parties had an opportunity to comment on a first draft of this statement and I took comments into account.

What I found

Relevant law and guidance

10. Respite care is a service to give a carer time away from caring for an adult with care and support needs. Councils provide respite care for adults with disabilities under the legal framework described in the following paragraphs.
11. A council must carry out an assessment for any adult with an appearance of need for care and support. The assessment must be of the adult's needs and how they impact on their wellbeing and the outcomes they want to achieve. It must also involve the individual and where appropriate their carer or any other person they might want involved. (*Care Act 2014, section 9*)
12. Statutory guidance requires a council to carry out an assessment over a suitable and reasonable timescale considering the urgency of needs and any variation in those needs. Local authorities should tell the individual when their assessment will take place and keep the person informed throughout the assessment. (*Care and Support Statutory Guidance, paragraph 6.29*)
13. The Care Act spells out the duty to meet eligible needs (needs which meet the eligibility criteria). (*Care Act 2014, section 18*)
14. An adult's needs meet the eligibility criteria if they arise from or are related to a physical or mental impairment or illness and as a result the adult cannot achieve two or more of the following outcomes and as a result there is or is likely to be a significant impact on well-being:
- Managing and maintaining nutrition
 - Maintaining personal hygiene
 - Managing toilet needs
 - Being appropriately clothed
 - Making use of the home safely
 - Maintaining a habitable home environment
 - Accessing work, training, education
 - Making use of facilities or services in the community
 - Carrying out caring responsibilities.
- (Care and Support (Eligibility Criteria) Regulations 2014, Regulation 2)*
15. The Care Act explains the different ways a council can meet eligible needs by giving examples of services it may provide including: accommodation in a care

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- home, care and support at home (such as outreach support), counselling and social work and information advice and advocacy. (*Care Act 2014, section 8*)
16. If a council decides a person is eligible for care, it should prepare a care and support plan which specifies the needs identified in the assessment, says whether and to what extent the needs meet the eligibility criteria and specifies the needs the council is going to meet and how this will be done. The care plan should set out a personal budget (the cost of care.) The council should give a copy of the care and support plan to the person. (*Care Act 2014, sections 24 and 25*)
 17. Statutory Guidance explains a council should review a care and support plan at least every year, upon request or in response to a change in circumstances. (*Care and Support Statutory Guidance, Paragraph 13.32*)
 18. A council should revise a care and support plan where circumstances have changed in a way that affects the care and support plan. Where there is a proposal to change how to meet eligible needs, a council should take all reasonable steps to reach agreement with the adult concerned about how to meet those needs. (*Care Act 2014, sections 27(4) and (5)*)
 19. Statutory guidance is silent about timescales for the completion of care and support plans and/or reviews of the same. In the absence of a legal timescale, we expect a council to act in a timely manner and to provide a copy of a care plan or review within a reasonable timescale after completing it.
 20. The High Court said an individual's wishes are not the same as their needs and wishes are not the paramount consideration. A council has to have 'due regard' to an adult's wishes as a starting point, but social workers are entitled to exercise their professional skills and judgement in deciding how to meet eligible needs. (*R (Davey) v Oxfordshire County Council [2017] EWHC 354 (Admin)*)
 21. A council must carry out a carer's assessment where it appears a carer may have needs for support. The assessment must include an assessment of the carer's ability and willingness to continue in the caring role, the outcomes the carer wishes to achieve in daily life and whether support could contribute to achieving those outcomes (*Care Act 2014, section 10*)
 22. The Act makes clear that the local authority is able to meet the carer's needs by providing a service directly to the adult needing care. The carer must still receive a support plan which covers their needs, and how they will be met. (*Care and Support Statutory Guidance 2014*)
 23. When carrying out needs assessments and preparing and revising care and support plans, councils should arrange an independent advocate for a person who has substantial difficulty in understanding, retaining, weighing up information and communicating their wishes and feelings. There is no need for an advocate if the council is satisfied there is an appropriate person (who must not be a paid carer) who could support the person's involvement. (*Care Act 2014, section 67*)
 24. The legal framework for adults who lack mental capacity to make decisions is in the Mental Capacity Act 2005. If a professional considers a person lacks mental capacity to decide on their care arrangements, then the professional should carry out or arrange for an assessment of the person's capacity. If that assessment concludes the person lacks mental capacity to decide on their care or living arrangements, then the decision-maker should involve relatives and other professionals before making a decision in the person's best interests. If agreement cannot be reached about a person's best interests, then the Court of Protection can make welfare orders.

What happened

Background

25. Kentish Road is a council-run residential care home providing respite care for up to eight adults with learning disabilities. Consultation about a proposal to close it started in 2014, with a decision to close taken in 2015. The decision was unpopular with carers and the subject of local media interest and a campaign.
26. Papers for a meeting of the Council's overview and scrutiny committee in September 2017 indicate the Council expected to save £300,000 a year from the closure and provision of alternative respite care.
27. In October 2017, the Council wrote to all carers explaining Kentish Road was staying open until the end of November, pending further consideration by members. Members elected to close the unit and this happened at the beginning of December.
28. Weston Court is a three-bed respite service for adults with learning disabilities. The Council commissioned it for respite care when Kentish Road closed. Weston Court is managed by an independent care provider. It has one member of staff during the day and a sleep-in support worker at night. Waking night support and one to one support are available when required. The respite service is part of a larger care home with shared facilities including a laundry, garden and lounges. The Council offered Weston Court as one of several options for respite to those who have complained to us. Other possibilities for respite care included:
 - Shared Lives which is housing and support provided in the family homes of trained and experienced carers;
 - U care home which is an established respite unit. Unfortunately, U care home did not have enough places to accept all of the people who had been using Kentish Road for respite and it was not suitable for many of the Kentish Road clients;
 - Outreach support using a direct payment.
29. The Council declined to investigate any complaints about the closure of Kentish Road and so eight carers complained to us. Soon after we received the complaint, the Council decided to re-open Kentish Road. The Council had also commissioned an independent review of the closure by the time the complainants came to us. The report of that review came out shortly after the complaint to us. The complainants asked us to continue with our investigation.
30. The independent review was an internal report for senior officers and members to learn lessons and improve practice for future service change and was not for sharing with members of the public. It concluded:
 - At the time of the original decision in 2015, people did not have up to date care and support plans and annual reviews had not taken place. And, there were no assessments of the mental capacity of clients to make decisions around their care and support. Transition planning was delayed or limited because carers rejected alternative provision;
 - Delays in completing needs assessments meant there was no information available to commissioners to identify and procure suitable alternative provision and this prevented a strategic approach to commissioning;

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- Consultation on the original decision was not specific enough, did not identify a range of alternatives and there may have been an element of predetermination;
 - Communication with disabled people and their carers was poor. The lack of engagement caused distress. There was real concern from carers about there being no (or at least not enough) alternative provision in Southampton, other than one unit.
31. The Council's position is:
- While the subsequent decision in 2017 remedied many of the process flaws identified in the earlier decision, the report recommended changes to similar projects in future, to avoid the risk of recurrence. It accepts the report's findings and has outlined a skeleton action plan. Some changes have already been implemented;
 - It decided to reopen Kentish Road due to feedback from carers about its value and to offer additional choice. It considered there was more than enough respite care for those who needed it (in fact, there would be an oversupply) The Council intended to run Kentish Road at weekends and it reopened at the beginning of July 2018;
 - It accepted the decision to close Kentish Road created uncertainty for carers and adults.
32. I asked the Council how it intended to allocate respite at Kentish Road as there would likely be a high demand for the service at first. The Council said it would prioritise carers who had not received any respite since the closure. For those who had received respite care at other centres, it was considering individually whether it was in their best interests to move back to Kentish Road.

Ms E and Mr F

33. Mr F has learning and sensory disabilities (visual and hearing). He lives with his sister Ms E who cares for him, works full-time and also has a severe visual disability. The Council's records say Mr F has autistic traits but no formal diagnosis of autism. Ms E told me he has autism. Mr F has a package of council-funded care including day services and respite care, which was at Kentish Road.
34. There was a carer's assessment for Ms E in 2015. It noted respite care would improve her wellbeing because she felt tied to her caring role. There was no carer's support plan. Ms E said she completed the carer's form, submitted it and then heard nothing further. The Council's records suggest Ms E had an assessment in 2015 but did not follow it up.
35. Ms E visited Weston Court when it was first raised as a possibility for respite care. She emailed her concerns to the social worker:
- It was small, claustrophobic and clinical;
 - There was no lounge and only a small kitchen with a sofa;
 - The corridor was narrow and the bedrooms were also small;
 - There was no outside space;
 - It would not foster the friendship and community networks created at Kentish Road; and

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- She had been told there would be agency workers and not permanent staff. Agency workers would not be acceptable.

August 2017: care review

36. A social worker carried out a review of Mr F's care in August 2017 which concluded he remained eligible for social care services. The review form noted Mr F made his feelings and wishes known and also noted Ms E was a positive advocate for Mr F. He liked routine and stability and disliked change because he had to re-learn where things were kept and the layout of buildings. The Council funded day care at a specialist day centre and 56 nights a year of respite care at Kentish Road. Ms E was said to be happy with this. Ms E suggested T care home as a respite placement when Kentish Road closed. Ms E said she was concerned that changes to respite would be traumatic for Mr F with his visual impairment and autism as he would have to learn how to get around in an unknown and smaller environment. Mr F said he would not consider Shared Lives as a respite option and had tried something similar and did not like it. He enjoyed going to Kentish Road and wanted to continue going there. The review noted Mr F would need more support to familiarise himself with a new environment until he was comfortable with his surroundings.
37. A senior social worker emailed Ms E in August to say that the Council was commissioning an independent provider to provide the care and support at Weston Court and this service was going to be available for people who did not have an alternative to Kentish Road, including Mr F.
38. Ms E emailed the social worker towards the end of August to say she was concerned about future respite for Mr F. She said she had visited Z care home but had some concerns about the position of the stairs and some concerns about one of the other permanent residents who was very noisy and this would be confusing and upsetting for Mr F because of his visual impairment. She did not feel there were enough staff at Z care home. Ms E pointed out that none of the respite options she had been offered were confirmed.
39. The records indicate that the Council's placement service tried on several occasions between August and November 2017 to identify a suitable residential care home for Mr F's respite, from a long list of care homes. Staff from the placements service spoke to Ms E on several occasions as well. The searches by the placement service were unsuccessful. Officers attempted to refer Mr F to T care home and it took some time for it to be confirmed that T care home could not take Mr F.
40. A care and support plan in September 2017 set out F's personal budget. It included funding for 56 nights of respite care a year. The plan noted '*any future respite needed to be set up so Mr F could tend to his personal care independently*'. The plan said Ms E and Mr F did not want a live-in carer to provide respite care. There was no named respite provision and the intention was '*for social services to continue to support Ms E and Mr F to find an appropriate respite provision*'. The social worker noted she had posted a copy of the review and care and support plan to Ms E. The covering letter described the plan as a draft.
41. Ms E emailed the social worker to say there were no options offered or agreed for Mr F's future respite care after Kentish Road closed.

September 2017: Kentish Road booking cancelled

42. Mr F was booked to receive respite care at Kentish Road for 10 days in September 2017 while Ms E was out of the country. The Council cancelled part of the booking at short notice because there were only enough senior staff to run Kentish Road at weekends. The social worker offered Ms E a live-in carer as an alternative to cover the week days when she was out of the country. And the placement team identified an agency which could supply a live-in carer. But the family decided they did not want a live-in carer.
43. Ms E complained about the late cancellation of the September respite booking. The Council's response to her complaint said the service director decided to close Kentish Road on weekdays as there was no shift leader available due to sickness and this post could not be covered by agency staff. The Council apologised for the late notice and acknowledged this caused inconvenience and distress because Ms E had to cancel her travel plans. The Council also said Mr F's social worker and the placement service were going to identify alternative respite for the future.
44. In October 2017 officers were considering V care home for respite, but Ms E was unhappy with this and felt the environment was not suitable. Ms E denies ever knowing about V care home and told me she did not know where it was or anything about it. Yet the social worker noted in the electronic case record that she had discussed V care home with Ms E during a visit at the beginning of October. Ms E agreed the Council could explore the possibility of funding respite care at W care home or Y care home. The placements team made contact with these care homes.
45. Ms F sent an email to council officers at the beginning of October to say she had received the draft care and support plan (see paragraph 40), but it did not contain any options for respite care.
46. Ms E asked Kentish Road to take Mr F for two weeks' respite in November as she was going on a work trip. Ms E felt there was not enough time for Mr F to transition to a new respite service. The social worker rang Ms E to say Kentish Road was only open at weekends and the service director wrote to all families using Kentish Road to confirm this. Mr F was booked to go to Kentish Road for a weekend in November.
47. In October 2017, Mr F suffered a head and neck injury following a seizure. This was undiagnosed for several weeks. He then needed (and continues to need) assistance with personal care and additional support not previously required. Ms E told the social worker she would not be able to trust a care provider who did not know Mr F well and she would ask a family member to look after Mr F if she went away in November.
48. The placements service contacted W and X care homes regarding availability for respite in November. X care home said it would contact Ms E directly to arrange an assessment.

November 2017: Final care and support plan; Mr F sustains a neck injury

49. An updated care and support plan dated November 2017 said Weston Court was suitable for Mr F for respite care. The plan also said there were two other possibilities for residential respite care depending on visits and assessments by providers. Ms E never received a copy of the updated care and support plan. Internal emails and case notes indicate the social worker intended to visit Ms E to give her a copy, but the family said not to visit at that point because they had only

just found out about Mr F's serious neck injury and were in shock. There is no record the Council ever sent the family a copy of the November 2017 care and support plan naming Weston Court as the suitable respite service.

50. Ms E emailed the social worker to say she had cancelled her planned work trip in November because of the uncertainty of respite cover. (It appears Kentish Road was not open because of staff sickness). Ms E said she had been in touch with the manager of W care home and was hoping to visit once Mr E was better. She said that X care home had not contacted her but she was still interested.
51. Also in November, the social worker referred Mr F for specialist support from the NHS learning disability service. This was for advice and support to Mr F following his seizure and neck injury. The social worker visited Mr F and Ms E in November and Ms E said they would not be pursuing respite at this time as Mr F's support needs had increased. The social worker said she would start a new assessment of need. The social worker also arranged funding to cover the cost of home care that Mr F now needed (for support with personal care). The placement service tried to source an agency care provider for home care. The search for an agency was not successful although there is evidence the placements team contacted many agencies to see if any were willing to take on Mr F's care package.
52. Ms E emailed the Council's chief executive in mid-November to say she had not formally been offered a suitable alternative respite placement for Mr F. She said she had to cancel a work trip because there was no alternative available and she had no final care and support plan. The chief executive replied saying senior officers' view was that Weston Court was suitable and appropriate for Mr F. The chief executive also said officers acknowledged Ms E disagreed with their view and so another placement was being sought. Ms E replied back saying Weston Court had never actually been discussed as an option with her. She said she had never heard of V care home, she had pursued X care home and she was concerned about W care home being too far for Mr F to travel to his day services, but she intended to visit it. She said live in care was not suitable because Mr E would not have a holiday away from home.
53. An internal email by the social worker says senior officers had been discussing Weston Court for Mr F. The social worker asked her managers to advise her if she should discuss Weston Court with Ms E. There is no evidence to suggest the social worker discussed Weston Court with Ms E.
54. Ms E asked the social worker to complete a new assessment of need. She said there had been a dramatic change in the support Mr F needed with personal care and the support she needed.
55. In January 2018, the social worker asked the placement team again to find a home care agency would could support Mr F with personal care in the evenings. Ms E emailed the social worker to say she felt unsupported, the family were managing Mr F's personal care and she really needed some respite care.

February 2018: planning meeting

56. In February 2018, there was a planning meeting for Mr F. In attendance were NHS staff from the learning disability team, Mr F's social worker and Ms E. The minutes say Ms E had been supporting Mr F with personal care but there had been no paid care because of a lack of clarity about whether paid care staff would need special training to change Mr F's neck brace. The plan at the end of the

meeting was to arrange for trained carers to complete the neck brace change to support Ms E.

57. An NHS learning disability nurse who had provided support to Mr F wrote a letter in March 2018 to say the family's main concerns were (1) for Mr F to access respite care and (2) to obtain an agency to provide him with personal care. The social worker also noted in an email that long-term respite care continued to be required. Ms E said in an email that she needed respite care for April as she wanted to arrange a work trip. She said she would sort out family and friends to look after Mr F if this could not be arranged. The social worker said she could arrange direct payments to fund this family/friends 'respite' support at home while Ms E was away. A direct payments officer emailed Ms E to ask her to make contact to set up direct payments. In the end, Ms E declined direct payments as she did not have the time, energy or stamina to do the paperwork.
58. Ms E sent an email again reminding the social worker that respite was still needed. Ms E said arranging family and friends to cover the two weeks when she was away had been stressful and she could not go on like that.

May 2018: Assessment of need

59. An assessment of Mr F's needs took place in May 2018. This noted Mr F's seizure and neck injury and that he had not had any respite since Kentish Road closed. Although funding had been agreed for a care package for personal care and changing the neck brace, the placement service could not source a provider. An agency had just been identified at the time of the assessment, but the agency later decided it could not meet Mr F's needs and so Ms E and another relative continued to do Mr F's personal care and change his neck brace. The assessment noted Ms E was desperate for respite to relieve her from her caring role and a suitable venue needed to be found that could manage Mr F's physical health needs, visual impairment, learning disability and autistic traits. Ms E reported she had been forced to cancel work trips because of the lack of respite. She was also frustrated with the lack of agency care to support Mr F with personal care.
60. A social worker visited the family at the beginning of May to discuss the assessment. Ms E considered Weston Court was too small and would not meet Mr F's needs. She had arranged for family and friends to look after Mr F when she went away for work in April. Ms E did not want a direct payment to arrange respite care herself because her work and other commitments meant she did not have time to deal with the administration of the payments. The last respite stay for Mr F was in September 2017.
61. The records say Mr F only took 23 of the 56 respite nights he was entitled to in the financial year 2017- 2018.
62. The Council's position is:
- There was no up to date carer's assessment and there had not been a review of the amount of respite care needed for Ms E to sustain the caring role;
 - There was a delay in sending the final care and support plan to Ms E and this meant she could not consider the proposed alternative respite care in advance of Kentish Road closing;
 - Transition arrangements were not adequate because of a delay in registering Weston Court with the Care Quality Commission. So clients could not have an overnight 'taster' stay before Weston Court opened;

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- Officers considered Weston Court was suitable, but Ms E did not agree. The disagreement was not explored further because of Mr F's injury;
 - There was no assessment of Mr F's mental capacity to decide on respite care options;
 - Ms E was an appropriate person to facilitate Mr F's involvement in the review. But the Council should have also involved an independent advocate to ensure his views were heard as far as possible;
 - The transition arrangements were inadequate because there was a delay in registering Weston Court with the Care Quality Commission;
 - He should have had 33 nights during the period of closure, he did not have any respite care at all because officers and Ms E could not agree; and
 - He has been booked in at Kentish Road for respite.
63. The Council accepts it never gave the family a copy of the final care and support plan. It says the reason was to respect the family's wishes. The Council says Ms E asked it to stop searching for respite due to Mr F's injury.
64. The Council offered to:
- Carry out a review of Ms E's needs as a carer, agree a carer's support plan and personal budget. This will include a review of the number of nights of respite care needed to maintain her wellbeing and continue in her caring role;
 - To carry out an assessment of Mr F's mental capacity to decide on respite care options;
 - To appoint an independent advocate for Mr F if he wants one;
 - To carry out a review of Mr F's care and support plan;
 - To pay Ms E £500 for her avoidable time and trouble in complaining and £8250 to recognise the Council's failures. This is the cost of the respite care she was entitled to and did not receive (33 nights at £250 a night) when Kentish Road was closed; and
 - To apologise.
65. Ms E told me:
- She never received the final care and support plan which named Weston Court and so any assertion that there was a delay in sending the final plan is wrong – she never received it;
 - The social worker or other officers never discussed Weston Court with her and she had not been given the opportunity to say why she considered it unsuitable;
 - She did not consider the chief executive's email (see paragraph 52) to be a formal offer of respite care;
 - There was no discussion of any respite possibilities after Mr F's accident and no formal or informal offers of respite care. Respite should have continued to be explored after the accident;
 - Mr F gave his views about Kentish Road and any changes to respite very clearly and she objects to any suggestion by the Council that he could not make his wishes and feeling known;
 - She resents the implication that she is not a suitable advocate;

- Mr F does not want or need an independent advocate; and
- She did not want a direct payment to arrange respite care herself because her work and other commitments meant she did not have time to deal with the administration of the payments.

Was there fault?

66. The decision to close Kentish Road meant the Council was required, under the Care Act, Mental Capacity Act and Care and Support Statutory Guidance to:
- Review Mr F's care and support plan as there was a change in circumstances;
 - Take reasonable steps to agree any proposals to change services to meet eligible needs, having due regard to Mr F's (and Ms E's) wishes as a starting point;
 - Revise the care and support plan because of a change affecting the plan;
 - Carry out an assessment of Mr F's mental capacity to decide about proposed respite care arrangements. If the outcome was he lacked mental capacity, make decisions about respite care in his best interests; and
 - Arrange an advocate if the Council considered Mr F had significant difficulties taking part in the review, but only if there was no suitable person to assist him.
67. The Council carried out a review in September 2017; this was three months before Kentish Road closed and I consider this was in good time. The review recorded Ms E's concerns about changes to respite, in particular about Mr F navigating a new environment. I am satisfied the review noted Ms E's views and was in line with paragraph 13.32 of Care and Support Statutory Guidance and there is no fault.
68. The draft care and support plan, which Ms E received in September, explained any future respite provision would need to be organised so Mr F had support to familiarise himself with a new environment. This addressed Ms E's concerns about the specific impact of Mr F's disability on any change to his care arrangements. I find the Council had due regard to Ms E's views in line with the *Davey* case (paragraph 20). However, the draft care and support plan was faulty because it did not set out revisions needed to Mr F's care arrangements: there was no alternative named respite provision for Mr F set out on the plan although Kentish Road was not going to be available from December. The plan should have set out Mr F's future respite provision and the failure to do so meant the plan was not in line with section 27 of the Care Act 2014. Recognising this, the Council prepared a final care and support plan in November, naming Weston Court. The Council accepts it never sent Ms E a copy of the final plan. While it was appropriate for officers to respect Mr F and Ms E's wish not to be intruded upon when they were dealing with the aftermath of his serious injury, the Council should still have sent them the final care and support plan by post before Kentish Road closed and the failure to do so was fault.
69. The chief executive advised Ms E in an email that officers considered Weston Court was a suitable respite placement. This did not absolve the Council of its responsibility to ensure Ms E had a copy of the final care and support plan which set out the future respite arrangements. The Council has recognised that its communication about future respite arrangements for Mr F was not timely and this was fault which caused Ms E and Mr F avoidable uncertainty and confusion.
70. The records of the placement team's attempts to find an appropriate residential care home willing to take Mr F as a respite client are numerous. However, there

is no evidence that the placement team identified a home with a vacancy that was willing to take Mr F. The records indicate that any potential placements fell through or were not pursued for various reasons. But there is no evidence that this was due to Ms E unreasonably declining suitable placements that were willing to take Mr F.

71. Delays in opening Weston Court meant there was no opportunity for any visits to transition to the new service before Kentish Road closed, which the Council has already recognised as a fault.
72. The Council has recognised it should have carried out an assessment of Mr F's mental capacity to make decisions about respite care. The failure to do so is not in line with the Mental Capacity Act 2005 and is fault. It is not possible to say whether the outcome would have been any different had a capacity assessment taken place.
73. The Council was required to appoint an advocate for Mr F, who has some communication difficulties, if it did not consider there was an appropriate person to represent his views. Ms E was an appropriate person to represent Mr F and so I do not regard the failure to involve an advocate to be fault. I recognise the Council has offered an advocate in any event. It is up to Mr F to decide whether he wants an advocate and he cannot be forced to have one if he does not so wish.
74. The Council should also have carried out a further formal review of the care and support plan in November 2017 when Mr F's injury became known as this was a significant change in his condition. The review would have determined whether Mr F's eligible needs had changed such that a revision to the care and support plan was needed, including revisions to respite arrangements. The failure to carry out a prompt review was fault. I note the social worker tried to make urgent alternative care arrangements and liaised with NHS staff to provide additional support and advice, but there should still have been a formal care and support plan review in November. I recognise the Council did carry out a fresh assessment of need in April 2018, but this was not timely as it was five months after Mr F's injury. The delay was fault. I note the family said in November 2017 they wanted the search for respite care to cease. But the evidence indicates that they meant 'for the time being' because they were in shock. Later emails from Ms E are clear that she wanted the Council to source respite care.
75. The Council also cancelled the Kentish Road booking for September at late notice due to staffing problems. I do not conclude this was fault though as there is not enough evidence to suggest the staffing problems were foreseeable or within the Council's control. I have also taken into account that the social worker offered to arrange live-in carers as an alternative. I accept the family did not like this idea, but it would have provided an urgent solution and enabled Ms E to go on her trip.
76. Ms E also had to cancel a work trip in November because of the lack of respite care. I accept this caused her avoidable inconvenience because she was not at the time aware that the Council's formal offer of respite care was Weston Court because she had not received a copy of the final care and support plan.
77. I also note Ms E arranged informal care to cover a second work trip in April 2018. The social worker offered Ms E a direct payment to pay the informal carers. She declined. I understand her reasons, but I have no grounds to criticise the Council as the payment would have been a means of meeting Mr F's respite needs, albeit not the family's preferred way.

Ms E

78. There should also have been a review of Ms E's carer's assessment as there was a change in circumstances and she should have had a carer's support plan that set out her respite care needs. The Council's records suggest Ms E did not pursue this issue in 2015, but given her caring and work commitments, I consider it unreasonable of the Council not to have checked with her about what she wanted to do. And the lack of a carer's support plan was fault and not in line with Care and Support Statutory Guidance. However, I cannot conclude that any injustice arose because Mr F's care and support plan contained his respite entitlement and the approach of providing a service of benefit to the carer, directly to the adult is permitted, although the law required the Council to provide a carer's support plan as well.

Did the fault cause injustice?

79. The faults set out in the previous section (Was there fault?) caused avoidable distress, inconvenience and uncertainty about future respite care for Mr F and Ms E.

Agreed action

80. During my investigation, the Council offered to carry out reviews of Mr F's care and support plan and of Ms E's carer's assessment and draw up a carer's support plan for her. The Council also offered to appoint an advocate for Mr F, carry out a mental capacity assessment and apologise for the avoidable distress and confusion caused by its failure to send final care and support plans in good time. The Council will also make the payments described in paragraph 64 in recognition of the injustice caused. I am satisfied these actions remedy the injustice and they are in line with our published Guidance on Remedies. The Council should complete them within two months of my final decision.

Final decision

81. There was fault in the way the Council made decisions about Mr F's future respite care. This caused Mr F and his sister Ms E avoidable uncertainty and distress. To remedy the injustice the Council has agreed to apologise, carry out further reviews and a mental capacity assessment and make a payment to reflect the loss of respite care during the period of closure. This action remedies the injustice caused. I have completed my investigation.

Parts of the complaint that I did not investigate

82. I discontinued my investigation of the complaint about the closure of Kentish Road. Shortly after Ms E and others complained to us, the Council issued an internal report which found flaws in the way the Council made the decision to close. An Ombudsman's investigation could add nothing further to the report and actions already taken in response to the report. And, as the service has now reopened, there is no ongoing injustice to those affected by the closure. So it would not be an appropriate use of our resources to continue investigating this complaint when our focus is on complaints where there is significant injustice requiring a remedy.
83. I recognise that some carers would like Kentish Road to be open all the time and not just at weekends. But the Care Act makes it clear that councils can offer a range of services to meet eligible needs and there is no legal requirement for a

council to run a specific care provision full-time. So there would be no grounds for me to recommend this.

Investigator's decision on behalf of the Ombudsman

26 February 2019

Complaint reference:
18 002 003

Complaint against:
Southampton City Council

The Ombudsman's final decision

Summary: There was fault in the way the Council made decisions about Ms Q's future respite care. This caused Ms Q and her mother Mrs P avoidable uncertainty and distress. To remedy the injustice the Council has agreed to apologise, carry out further reviews and a mental capacity assessment, appoint an advocate and make a payment to reflect the loss of respite care during the period of closure. This action is an appropriate remedy for the injustice caused.

The complaint

1. Mr and Mrs P and other carers complain about Southampton City Council's (the Council's) offer of respite care following the closure of Kentish Road, a care home providing respite care for adults with learning disabilities. They say they were not properly consulted about the proposed alternatives and consider these unsuitable
2. They also complain about the decision-making which led to Kentish Road's closure.
3. Mr and Mrs P seek a payment for losses and want the Council to re-open Kentish Road.

What I have investigated

4. I have investigated the complaint at paragraph 1. My reasons for stopping investigating the complaint at paragraph 2 are at the end of this statement.

The Ombudsman's role and powers

5. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
6. We have the power to start or discontinue an investigation into a complaint within our jurisdiction. (*Local Government Act 1974, sections 24A(6), as amended*)
7. The Court of Appeal said our powers to decline to investigate a complaint (or to discontinue an investigation) are wide and that it will be '*clearly right that the Ombudsman must prioritise complaints which appear to him to involve significant injustice as opposed to those which do not*' (*R(Abernathy) v LGO [2002] EWCA Civ 552*)

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8. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

How I considered this complaint

9. I considered the complaint, the Council's response to my enquiries and documents described later in this statement. Both parties saw a draft of this statement and I took their comments into account.

What I found

Relevant law and guidance

10. Respite care is a service to give a carer time away from caring for an adult with care and support needs. Councils provide respite care for adults with disabilities under the legal framework described in the following paragraphs.
11. A council must carry out an assessment for any adult with an appearance of need for care and support. The assessment must be of the adult's needs and how they impact on their wellbeing and the outcomes they want to achieve. It must also involve the individual and where appropriate their carer or any other person they might want involved. (*Care Act 2014, section 9*)
12. Statutory guidance requires a council to carry out an assessment over a suitable and reasonable timescale considering the urgency of needs and any variation in those needs. Local authorities should tell the individual when their assessment will take place and keep the person informed throughout the assessment. (*Care and Support Statutory Guidance, paragraph 6.29*)
13. The Care Act spells out the duty to meet eligible needs (needs which meet the eligibility criteria). (*Care Act 2014, section 18*)
14. An adult's needs meet the eligibility criteria if they arise from or are related to a physical or mental impairment or illness and as a result the adult cannot achieve two or more of the following outcomes and as a result there is or is likely to be a significant impact on well-being:
 - Managing and maintaining nutrition
 - Maintaining personal hygiene
 - Managing toilet needs
 - Being appropriately clothed
 - Making use of the home safely
 - Maintaining a habitable home environment
 - Accessing work, training, education
 - Making use of facilities or services in the community
 - Carrying out caring responsibilities.

(Care and Support (Eligibility Criteria) Regulations 2014, Regulation 2)
15. The Care Act explains the different ways a council can meet eligible needs by giving examples of services it may provide including: accommodation in a care home, care and support at home (such as outreach support), counselling and social work and information advice and advocacy. (*Care Act 2014, section 8*)

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16. If a council decides a person is eligible for care, it should prepare a care and support plan which specifies the needs identified in the assessment, says whether and to what extent the needs meet the eligibility criteria and specifies the needs the council is going to meet and how this will be done. It should set out the cost of care in a personal budget. The council should give a copy of the care and support plan to the person. (*Care Act 2014, sections 24 and 25*)
 17. Statutory Guidance explains a council should review a care and support plan at least every year, upon request or in response to a change in circumstances. (*Care and Support Statutory Guidance, Paragraph 13.32*)
 18. A council should revise a care and support plan where circumstances have changed in a way that affects the care and support plan. Where there is a proposal to change how to meet eligible needs, a council should take all reasonable steps to reach agreement with the adult concerned about how to meet those needs. (*Care Act 2014, sections 27(4) and (5)*)
 19. Statutory guidance is silent about timescales for the completion of care and support plans and/or reviews of the same. In the absence of a legal timescale, we expect a council to act in a timely manner and to provide a copy of a care plan or review within a reasonable timescale after completing it.
 20. The High Court said an individual's wishes are not the same as their needs and wishes are not the paramount consideration. A council has to have 'due regard' to an adult's wishes as a starting point, but social workers are entitled to exercise their professional skills and judgement in deciding how to meet eligible needs. (*R (Davey) v Oxfordshire County Council [2017] EWHC 354 (Admin)*)
 21. A council must carry out a carer's assessment where it appears a carer may have needs for support. The assessment must include an assessment of the carer's ability and willingness to continue in the caring role, the outcomes the carer wishes to achieve in daily life and whether support could contribute to achieving those outcomes (*Care Act 2014, section 10*)
 22. The Act makes clear that the local authority is able to meet the carer's needs by providing a service directly to the adult needing care. The carer must still receive a support plan which covers their needs, and how they will be met. (*Care and Support Statutory Guidance 2014*)
 23. When carrying out needs assessments and preparing and revising care and support plans, councils should arrange an independent advocate for a person who has substantial difficulty in understanding, retaining, weighing up information and communicating their wishes and feelings. There is no need for an advocate if the council is satisfied there is an appropriate person (who must not be a paid carer) who could support the person's involvement. (*Care Act 2014, section 67*)
 24. The legal framework for adults who lack mental capacity to make decisions is in the Mental Capacity Act 2005. If a professional considers a person lacks mental capacity to decide on their care arrangements, then the professional should carry out or arrange for an assessment of the person's capacity. If that assessment concludes the person lacks mental capacity to decide on their care or living arrangements, then the decision-maker should involve relatives and other professionals before making a decision in the person's best interests. If agreement cannot be reached about a person's best interests, then the Court of Protection can make welfare orders.

What happened

Background

25. Kentish Road is a council-run residential care home providing respite care for up to eight adults with learning disabilities. Consultation about a proposal to close it started in 2014, with a decision to close taken in 2015. The decision was unpopular with carers and the subject of local media interest and a campaign.
26. Papers for a meeting of the Council's overview and scrutiny committee in September 2017 indicate the Council expected to save £300,000 a year from the closure and provision of alternative respite care.
27. In October 2017, the Council wrote to all carers explaining Kentish Road was staying open until the end of November, pending further consideration by members. Members elected to close the unit and this happened at the beginning of December.
28. Weston Court is a three-bed respite service for adults with learning disabilities. The Council commissioned it for respite care when Kentish Road closed. Weston Court is managed by an independent care provider. It has one member of staff during the day and a sleep-in support worker at night. Waking night support and one to one support are available when required. The respite service is part of a larger care home with shared facilities including a laundry, garden and lounges. The Council offered Weston Court as one of several options for respite to those who have complained to us. Other possibilities for respite care included:
 - Shared Lives which is housing and support provided in the family homes of trained and experienced carers;
 - U care home which is an established respite unit. Unfortunately, U care home did not have enough places to accept all of the people who had been using Kentish Road for respite and it was not suitable for many of the Kentish Road clients;
 - Outreach support using a direct payment.
29. The Council declined to investigate any complaints about the closure of Kentish Road and so eight carers complained to us. Soon after we received the complaint, the Council decided to re-open Kentish Road. It has been open since July 2018 at weekends for respite care. The Council had also commissioned an independent review of the closure by the time the complainants came to us. The report of that review came out shortly after the complaint to us. The complainants asked us to continue with our investigation.
30. The independent review was an internal report for senior officers and members to learn lessons and improve practice for future service change and was not for sharing with members of the public. It concluded:
 - At the time of the original decision in 2015, people did not have up to date care and support plans and annual reviews had not taken place. And, there were no assessments of the mental capacity of clients to make decisions around their care and support. Transition planning was delayed or limited because carers rejected alternative provision;
 - Delays in completing needs assessments meant there was no information available to commissioners to identify and procure suitable alternative provision and this prevented a strategic approach to commissioning;

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- Consultation on the original decision was not specific enough, did not identify a range of alternatives and there may have been an element of predetermination;
 - Communication with disabled people and their carers was poor. The lack of engagement caused distress. There was real concern from carers about there being no (or at least not enough) alternative provision in Southampton, other than one unit.
31. The Council's position is:
- While the subsequent decision in 2017 remedied many of the process flaws identified in the earlier decision, the report recommended changes to similar projects in future, to avoid the risk of recurrence. It accepts the report's findings and has outlined a skeleton action plan. Some changes have already been implemented;
 - It decided to reopen Kentish Road due to feedback from carers about its value and to offer additional choice. It considered there was more than enough respite care for those who needed it (in fact, there would be an oversupply) The Council intended to run Kentish Road at weekends and it reopened at the beginning of July 2018;
 - It accepted the decision to close Kentish Road created uncertainty for carers and adults.
32. I asked the Council how it intended to allocate respite at Kentish Road as there would likely be a high demand for the service at first. The Council said it would prioritise carers who had not received any respite since the closure. For those who had received respite care at other centres, it was considering individually whether it was in their best interests to move back to Kentish Road.

Mr and Mrs P and Ms Q

33. Ms Q is an adult with learning disabilities living at home with her parents. She receives a package of council-arranged and funded care, which included respite care at Kentish Road until it closed in December 2017.
34. A carers assessment took place by phone in August 2017 and a review of Mrs P's carer's support plan took place in September 2017. It said she was physically disabled and the main carer for Ms Q. Mrs P was eligible for carer's services and the plan set out her carer's personal budget.
35. A review of Ms Q's care and support plan took place in September. This noted she enjoyed going to Kentish Road as she saw her friends there. The social worker offered the family a payment to arrange respite care themselves. They did not want this as they felt it would be too much work.
36. A draft care and support plan for Ms Q in September described her support needs and personal outcomes and set out her personal budget which included funding for 28 nights respite care each year. The plan said the Council was *'to identify an appropriate alternative respite provision'*
37. Mr and Mrs P wrote to the Council in September saying they needed more respite care.
38. An updated care and support plan in November named Weston Court as the respite offer that would meet Ms Q's needs. It suggested the social worker had given the family information about Weston Court but they did not follow this up. Mrs P told me the updated plan was posted through her letter box the day before

Kentish Road closed, and says this meant she had no time to consider the contents of the plan.

39. In December, the social worker visited the family. She noted they had not seen Weston Court. Mrs P asked the social worker if Ms Q could have respite at T care home. This was not possible as it was in a different area and was not taking out of area clients.
40. Ms Q and Mrs P were both unwell and in hospital in March 2018. The Council agreed additional support for Ms Q temporarily.
41. A review of the care and support plan in May 2018 noted Ms Q had not had any respite care since Kentish Road closed. Mr and Mrs P did not like Weston Court's location or size. The social worker also considered Shared Lives would be a suitable option for Ms Q, but her parents did not want this.
42. The social worker referred Ms Q back to Kentish Road in June, so she could be considered for respite there when it opened the following month.
43. The Council told me:
 - It had not carried out a timely review of respite care and its carer's assessment and support plan did not consider Ms Q's needs for respite;
 - The care and support plan with the alternative respite care offer was not available until just before the Council made the final decision to close Kentish Road. This created uncertainty;
 - Weston Court is not the same as Kentish Road, but it has a large community room and kitchen and support offered to develop independence;
 - Transition arrangements were lacking; Weston Court did not open until December 2017 (because of a delay in registering it with the Care Quality Commission) meaning there was no opportunity for a taster session;
 - It did not assess and record Ms Q's mental capacity to make a decision on where she received respite care;
 - It would have been appropriate to involve an independent advocate to ensure Ms Q's voice was heard and to facilitate their involvement in the assessment as far as possible;
 - The Council decided to re-open Kentish Road at the weekends (the period of highest demand) following feedback from carers about how much they valued it and to offer additional choice.
44. The Council offered to:
 - Carry out a fresh assessment of Mrs P's needs as a carer and agree a carer's support plan and personal budget to meet identified needs, including a review of the number of nights of respite care required;
 - Review Ms Q's care and support plan
 - Appoint an independent advocate for Ms Q
 - Carry out an assessment of Ms Q's mental capacity to choose between respite options
 - Make a payment of £4,000 to Mrs P to reflect the 16 nights respite Ms Q did not receive (at £250 a night) plus £500 to reflect her avoidable time and trouble
 - Apologise.

Was there fault causing injustice?

45. The decision to close Kentish Road meant the Council was required, under the Care Act, Mental Capacity Act and Care and Support Statutory Guidance to:
- Review Ms Q's care and support plan as there was a change in circumstances;
 - Take reasonable steps to agree any proposals to change services to meet eligible needs, having due regard to their wishes as a starting point;
 - Revise the care and support plans because of a change affecting the plan;
 - Carry out an assessment of their mental capacity to decide about proposed respite care arrangements. If the outcome was Ms Q lacked mental capacity, make decisions about respite care in her best interests;
 - Arrange an advocate if the Council considered Ms Q had significant difficulties taking part in the review, but only if there was no suitable person to assist her.
46. The Council carried out reviews in September 2017; this was two and a half months before Kentish Road closed and I consider this was in good time and there is no fault. The review noted Mrs P's concerns about changes to respite. I am satisfied the review was in line with paragraph 13.32 of the Care and Support Statutory Guidance and there is no fault
47. I recognise Mrs P's view was Weston Court was unsuitable, but I consider the Council took reasonable steps to reach agreement on the proposed changes by discussing her concerns and offering her a visit, which she did not take up. I find the Council had due regard to Mrs P's views in line with the *Davey* case (paragraph 20), and I have no grounds to criticise officers' view that Weston Court could have met Ms Q's needs.
48. The Council issued a revised care and support plan in November 2017. This was in line with section 27 of the Care Act. However, it was very close to the date when Kentish Road was due to close and should have been issued at the same time as the review so the parties were informed in good time about the proposed changes to care. The delay created avoidable uncertainty for Mrs P and Ms Q about the new respite arrangements.
49. Delays in opening Weston Court meant there was no opportunity for an overnight visit to transition to the new service before Kentish Road closed, which the Council has already recognised as a fault.
50. The Council has recognised it should have carried out an assessment of Ms Q's mental capacity to make decisions about respite care. The failure to do so is not in line with the Mental Capacity Act 2005 and is fault. It is not possible to say whether the outcome would have been any different had a capacity assessment taken place.
51. The Council was required to appoint an advocate for Ms Q who has significant communication difficulties, if it did not consider there was a suitable person to represent her views. Mrs P was an appropriate person to represent Ms Q and so I do not regard the failure to involve an advocate to be fault. I recognise the Council has offered an advocate in any event.

Mrs P

52. The Council reviewed Mrs P's carer's support plan at the same time as the review of Ms Q's assessment. This is good practice and there is no fault.
53. The Council has accepted there was no review of the number of nights of respite required and during this investigation, agreed to carry out a review. Any agreed

changes to the number of nights should be set out in both the carer's support plan and in Ms Q's care and support plan.

Agreed action

54. During my investigation, the Council offered to carry out reviews, appoint an advocate, carry out a mental capacity assessment and apologise for the avoidable distress and confusion caused by its failure to send final care and support plans in good time. The Council will also make the payments described in paragraph 44 in recognition of the injustice caused. These actions are an appropriate remedy for the injustice caused and the Council should complete them within two months of my final decision.

Final decision

55. There was fault in the way the Council made decisions about Ms Q's future respite care. This caused Ms Q and her mother Mrs P avoidable uncertainty and distress. To remedy the injustice the Council has agreed to apologise, carry out further reviews, appoint an advocate, complete a mental capacity assessment and make a payment to reflect the loss of respite care during the period of closure. This action is an appropriate remedy for the injustice caused. I have completed my investigation.

Parts of the complaint that I did not investigate

56. I discontinued my investigation of the complaint about the closure of Kentish Road. Shortly after Mrs P and others complained to us, the Council issued an internal report which found flaws in the way the Council made the decision to close. An Ombudsman's investigation could add nothing further to the report and actions already taken in response to the report. And, as the service has now reopened, there is no ongoing injustice to those affected by the closure. So it would not be an appropriate use of our resources to continue investigating this complaint as our focus is on complaints where there is significant injustice requiring a remedy.
57. I recognise that some carers would like Kentish Road to be open all the time and not just at weekends. But the Care Act makes it clear that councils can offer a range of services to meet eligible needs and there is no legal requirement for a council to run a specific care provision full-time. So there would be no grounds for me to recommend this.

Investigator's decision on behalf of the Ombudsman

27 February 2019

Complaint reference:
18 001 551

Complaint against:
Southampton City Council

The Ombudsman's final decision

Summary: There was fault in the way the Council made decisions about Ms L's future respite care. This caused Ms K and Ms L avoidable uncertainty and distress. To remedy the injustice the Council has agreed to apologise, carry out further reviews and a mental capacity assessment and make a payment to reflect the loss of respite care during the closure.

The complaint

1. Ms K and other carers complain about Southampton City Council's (the Council's) offer of respite care following the closure of Kentish Road, a care home providing respite care for adults with learning disabilities. They say they were not properly consulted about the proposed alternatives and consider these unsuitable.
2. They also complain about the decision-making which led to Kentish Road's closure.
3. Ms K seeks a payment for her losses and wants the Council to re-open Kentish Road.

What I have investigated

4. I have investigated the complaint at paragraph 1. My reasons for stopping investigating the complaint at paragraph 2 are at the end of this statement.

The Ombudsman's role and powers

5. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
6. We have the power to start or discontinue an investigation into a complaint within our jurisdiction. (*Local Government Act 1974, sections 24A(6), as amended*)
7. The Court of Appeal said our powers to decline to investigate a complaint (or to discontinue an investigation) are wide and that it will be 'clearly right that the Ombudsman must prioritise complaints which appear to him to involve significant injustice as opposed to those which do not' (*R(Abernathy) v LGO [2002] EWCA Civ 552*)

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8. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

How I considered this complaint

9. I considered the complaint, the Council's response to my enquiries and documents described later in this statement. Both parties saw a draft of this statement and I took comments into account.

What I found

Relevant law and guidance

10. Respite care is a service to give a carer time away from caring for an adult with care and support needs. Councils provide respite care for adults with disabilities under the legal framework described in the following paragraphs.
11. A council must carry out an assessment for any adult with an appearance of need for care and support. The assessment must be of the adult's needs and how they impact on their wellbeing and the outcomes they want to achieve. It must also involve the individual and where appropriate their carer or any other person they might want involved. (*Care Act 2014, section 9*)
12. Statutory guidance requires a council to carry out an assessment over a suitable and reasonable timescale considering the urgency of needs and any variation in those needs. Local authorities should tell the individual when their assessment will take place and keep the person informed throughout the assessment. (*Care and Support Statutory Guidance, paragraph 6.29*)
13. The Care Act spells out the duty to meet eligible needs (needs which meet the eligibility criteria). (*Care Act 2014, section 18*)
14. An adult's needs meet the eligibility criteria if they arise from or are related to a physical or mental impairment or illness and as a result the adult cannot achieve two or more of the following outcomes and as a result there is or is likely to be a significant impact on well-being:
- Managing and maintaining nutrition
 - Maintaining personal hygiene
 - Managing toilet needs
 - Being appropriately clothed
 - Making use of the home safely
 - Maintaining a habitable home environment
 - Accessing work, training, education
 - Making use of facilities or services in the community
 - Carrying out caring responsibilities.
- (Care and Support (Eligibility Criteria) Regulations 2014, Regulation 2)*
15. The Care Act explains the different ways a council can meet eligible needs by giving examples of services it may provide including: accommodation in a care home, care and support at home (such as outreach support), counselling and social work and information advice and advocacy. (*Care Act 2014, section 8*)

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 21. A council must carry out a carer's assessment where it appears a carer may have needs for support. The assessment must include an assessment of the carer's ability and willingness to continue in the caring role, the outcomes the carer wishes to achieve in daily life and whether support could contribute to achieving those outcomes *(Care Act 2014, section 10)*
 22. The Act makes clear that the local authority is able to meet the carer's needs by providing a service directly to the adult needing care. The carer must still receive a support plan which covers their needs, and how they will be met. *(Care and Support Statutory Guidance 2014)*
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What happened

Background

25. Kentish Road is a council-run residential care home providing respite care for up to eight adults with learning disabilities. Consultation about a proposal to close it started in 2014, with a decision to close taken in 2015. The decision was unpopular with carers and the subject of local media interest and a campaign.
26. Papers for a meeting of the Council's overview and scrutiny committee in September 2017 indicate the Council expected to save £300,000 a year from the closure and provision of alternative respite care.
27. In October 2017, the Council wrote to all carers explaining Kentish Road was staying open until the end of November, pending further consideration by members. Members elected to close the unit and this happened at the beginning of December.
28. Weston Court is a three-bed respite service for adults with learning disabilities. The Council commissioned it for respite care when Kentish Road closed. Weston Court is managed by an independent care provider. It has one member of staff during the day and a sleep-in support worker at night. Waking night support and one to one support are available when required. The respite service is part of a larger care home with shared facilities including a laundry, garden and lounges. The Council offered Weston Court as one of several options for respite to those who have complained to us. Other possibilities for respite care included:
 - Shared Lives which is housing and support provided in the family homes of trained and experienced carers;
 - U care home which is an established respite unit. Unfortunately, U care home did not have enough places to accept all of the people who had been using Kentish Road for respite and it was not suitable for many of the Kentish Road clients;
 - Direct payments and outreach support.
29. The Council declined to investigate any complaints about the closure of Kentish Road and so eight carers complained to us. Soon after we received the complaint, the Council decided to re-open Kentish Road. The Council had also commissioned an independent review of the closure by the time the complainants came to us. The report of that review came out shortly after the complaint to us. The complainants asked us to continue with our investigation.
30. The independent review was an internal report for senior officers and members to learn lessons and improve practice for future service change and was not for sharing with members of the public. It concluded:
 - At the time of the original decision in 2015, people did not have up to date care and support plans and annual reviews had not taken place. And, there were no assessments of the mental capacity of clients to make decisions around their care and support. Transition planning was delayed or limited because carers rejected alternative provision;
 - Delays in completing needs assessments meant there was no information available to commissioners to identify and procure suitable alternative provision and this prevented a strategic approach to commissioning;

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- Consultation on the original decision was not specific enough, did not identify a range of alternatives and there may have been an element of predetermination;
 - Communication with disabled people and their carers was poor. The lack of engagement caused distress. There was real concern from carers about there being no (or at least not enough) alternative provision in Southampton, other than one unit.
31. The Council's position is:
- While the subsequent decision in 2017 remedied many of the process flaws identified in the earlier decision, the report recommended changes to similar projects in future, to avoid the risk of recurrence. It accepts the report's findings and has outlined a skeleton action plan. Some changes have already been implemented;
 - It decided to reopen Kentish Road due to feedback from carers about its value and to offer additional choice. It considered there was more than enough respite care for those who needed it (in fact, there would be an oversupply) The Council intended to run Kentish Road at weekends and it reopened at the beginning of July 2018;
 - It accepted the decision to close Kentish Road created uncertainty for carers and adults.
32. I asked the Council how it intended to allocate respite at Kentish Road as there would likely be a high demand for the service at first. The Council said it would prioritise carers who had not received any respite since the closure. For those who had received respite care at other centres, it was considering individually whether it was in their best interests to move back to Kentish Road.

Ms K and Ms L

33. Ms K is a single parent and the main carer for her adult daughter Ms L who has learning disabilities. Ms L is eligible for social care services and receives council-funded day care and overnight respite care, which was at Kentish Road until it closed. Ms K also gets a small direct payment which she uses for extra support to help Ms L access the community.
34. A review in September 2017 concluded Ms L remained eligible for social care services. It said:
- Ms L used signs to communicate and her mother was an appropriate person to involve her in the assessment;
 - The Council funded 40 nights a year of overnight respite care which Ms K was happy with. Ms L stayed with her father at weekends;
 - Ms K was interested in Ms L having respite at U care home. The social worker thought this may a step back for Ms L in terms of not promoting her independence and Ms K agreed with this;
 - Ms K did not want Ms L to go to Shared Lives for respite. They liked Kentish Road because Ms L could see her friends there.
35. A care and support plan of November 2017 set out Ms L's eligible needs and outcomes and described the services and funding she would receive. It set out her personal budget, which included funding for day care, 40 nights respite, outreach support and a small direct payment for extra outreach support. The plan said Weston Court was suitable for respite care. The care and support plan also

said Ms K had had a carer's assessment in the past (in 2010) but did not want another one.

36. The case notes indicate a social worker offered to arrange a visit to Weston Court, but neither Ms K nor Ms L wanted to visit. Ms K was hoping Kentish Road would reopen and was unhappy with Weston Court as Ms L would not see her friends and it was too far away. The social worker offered to 'convert' some of the respite nights into hours of outreach support for Ms K, but Ms L declined this. Ms K was upset Ms L could not go to U care home. The social worker explained U care home was for those who had more severe learning and physical disabilities.
37. When Kentish Road reopened in June 2018, Ms L's social worker referred her there. She has been booked in to receive respite care there for some weekends.
38. The Council's position is:
- It accepted it did not carry out a timely review of Ms K's need for respite;
 - There should have been a formal assessment of Ms L's mental capacity around respite care;
 - Ms L should have had an independent advocate to ensure his involvement in the needs assessment and care and support planning;
 - It accepted the decision to close Kentish Road created uncertainty for carers and clients;
 - There was a delay sending final versions of the care and support plan to Ms L;
 - There was no chance for Ms L to have an overnight stay at Weston Court as a transition because it did not open until December 2017;
39. The Council offered to:
- Carry out a review of Ms K's needs as a carer, agree a carer's support plan and personal budget. This will include a review of the number of nights of respite care needed to maintain her wellbeing and continue in her caring role
 - To carry out an assessment of Ms L's mental capacity to decide on respite care options;
 - To appoint an independent advocate for Ms L;
 - To carry out a review of Ms L's care and support plan
 - To pay Ms K £500 for her avoidable time and trouble in complaining and £6250 to recognise the Council's failures. This is the cost of the respite care she was entitled to and did not receive (23 nights at £250 a night) when Kentish Road was closed;
 - To apologise.

Was there fault?

Ms L

40. The decision to close Kentish Road meant the Council was required, under the Care Act, Mental Capacity Act and Care and Support Statutory Guidance to:
- Review Ms L's care and support plan as there was a change in circumstances;
 - Take reasonable steps to agree any proposals to change services to meet eligible needs, having due regard to Ms L's (and Ms K's) wishes as a starting point;

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- Revise the care and support plan because of a change affecting the plan;
 - Carry out an assessment of Ms L's mental capacity to decide about proposed respite care arrangements. If the outcome was she lacked mental capacity, make decisions about respite care in his best interests;
 - Arrange an advocate if the Council considered Ms L had significant difficulties taking part in the review, but only if there was no suitable person to assist him.
41. The Council carried out a review in September 2017; this was three months before Kentish Road closed and I consider this was in good time. The review recorded Ms K's concerns about changes to respite. I am satisfied the review noted Ms K's views and was in line with paragraph 13.32 of Care and Support Statutory Guidance and there is no fault.
42. I recognise Ms K's view was Weston Court was unsuitable, but the notes suggest neither she nor Ms L visited the scheme before it opened and so it would not seem this view was based on experience, more a concern about change. I consider the Council took reasonable steps to reach agreement on the proposed changes by offering visits and also offering other alternatives like additional outreach support, instead of overnight respite. I find the Council had due regard to Ms K's views in line with the *Davey* case (paragraph 20), and I have no grounds to criticise officers' view that, Weston Court could have met Ms L's needs.
43. The Council issued a revised care and support plan in November 2017. This was in line with section 27 of the Care Act. However, it was very close to the date when Kentish Road was due to close and should have been issued at the same time as the review so that Ms K and Ms L were informed in good time about the proposed changes to care. The delay created avoidable uncertainty for Ms K and Ms L about future respite.
44. Delays in opening Weston Court meant there was no opportunity for an overnight visit to transition to the new service before Kentish Road closed, which the Council has already recognised as a fault.
45. The Council has recognised it should have carried out an assessment of Ms K's mental capacity to make decisions about respite care. The failure to do so is not in line with the Mental Capacity Act 2005 and is fault. It is not possible to say whether the outcome would have been any different had a capacity assessment taken place.
46. The Council was required to appoint an advocate for Ms L, who has significant communication difficulties, if it did not consider there was a suitable person to represent his views. Ms K was an appropriate person to represent Ms L and so I do not regard the failure to involve an advocate to be fault. I recognise the Council has offered an advocate in any event.

Ms K

47. The Council should have reviewed Ms K's carer's assessment. I note this appears to have been offered and refused because Ms L's care and support plan said Ms K did not want another carer's assessment. There should have also been a carer's support plan on file for Ms K. The lack of a carer's support plan was fault and not in line with Care and Support Statutory Guidance. However, I cannot conclude that any injustice arose because Ms L's care and support plan contained her respite entitlement and the approach of providing a service of benefit to the carer, directly to the adult is permitted, although the law required the Council to provide a carer's support plan as well.

Did the fault cause injustice?

48. The Council's failure to send a copy of Mr Ms L's revised care and support plan in good time and the failure to have in place timely transition arrangements to the new service caused Ms K and Ms L avoidable distress and uncertainty about future respite care.

Agreed action

49. During my investigation, the Council offered to carry out reviews of Ms L's care and support plan and of Ms K's carer's assessment and draw up a carer's support plan for her. The Council also offered to appoint an advocate for Ms L, carry out a mental capacity assessment and apologise for the avoidable distress and confusion caused by its failure to send final care and support plans in good time. The Council will also make the payments described in paragraph 39 to reflect the injustice caused. These actions are an appropriate remedy for the injustice I have identified and the Council should complete them within two months of my final decision.

Final decision

50. There was fault in the way the Council made decisions about Ms L's future respite care. This caused Ms K and Ms L avoidable uncertainty and distress. To remedy the injustice the Council has agreed to apologise, carry out further reviews and a mental capacity assessment and make a payment to reflect the loss of respite care during the period of closure. This action is an appropriate remedy for the injustice. I have completed my investigation.

Parts of the complaint that I did not investigate

51. I discontinued my investigation of the complaint about the closure of Kentish Road. Shortly after Ms K and others complained to us, the Council issued an internal report which found flaws in the way the Council made the decision to close. An Ombudsman's investigation could add nothing further to the report and actions already taken in response to the report. And, as the service has now reopened, there is no ongoing injustice to those affected by the closure. So it would not be an appropriate use of our resources to continue investigating this complaint as our focus is on complaints where there is significant injustice requiring a remedy.
52. I recognise that some carers would like Kentish Road to be open all the time and not just at weekends. But the Care Act makes it clear that councils can offer a range of services to meet eligible needs and there is no legal requirement for a council to run a specific care provision full-time. So there would be no grounds for me to recommend this.

Investigator's decision on behalf of the Ombudsman

20 February 2019

Complaint reference:
18 001 758

Complaint against:
Southampton City Council

The Ombudsman's final decision

Summary: There was fault in the way the Council made decisions about Mr N's and Mr O's future respite care. This caused them and their mother Ms M avoidable uncertainty and distress. To remedy the injustice the Council has agreed to apologise, carry out further reviews and a mental capacity assessment and make a payment to reflect the loss of respite care during the period of closure. This action is an appropriate remedy for the injustice caused.

The complaint

1. Ms M and other carers complain about Southampton City Council's (the Council's) offer of respite care following the closure of Kentish Road, a care home providing respite care for adults with learning disabilities. They say they were not properly consulted about the proposed alternatives and consider these unsuitable
2. They also complain about the decision-making which led to Kentish Road's closure.
3. Ms M seeks a payment for her losses and wants the Council to re-open Kentish Road.

What I have investigated

4. I have investigated the complaint at paragraph 1. My reasons for stopping investigating the complaint at paragraph 2 are at the end of this statement.

The Ombudsman's role and powers

5. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
6. We have the power to start or discontinue an investigation into a complaint within our jurisdiction. (*Local Government Act 1974, sections 24A(6), as amended*)
7. The Court of Appeal said our powers to decline to investigate a complaint (or to discontinue an investigation) are wide and that it will be '*clearly right that the Ombudsman must prioritise complaints which appear to him to involve significant injustice as opposed to those which do not*' (*R(Abernathy) v LGO [2002] EWCA Civ 552*)

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8. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

How I considered this complaint

9. I considered the complaint, the Council's response to my enquiries and documents described later in this statement. Both parties had a chance to comment on a draft of this statement and I took any comments into account.

What I found

Relevant law and guidance

10. Respite care is a service to give a carer time away from caring for an adult with care and support needs. Councils provide respite care for adults with disabilities under the legal framework described in the following paragraphs.
11. A council must carry out an assessment for any adult with an appearance of need for care and support. The assessment must be of the adult's needs and how they impact on their wellbeing and the outcomes they want to achieve. It must also involve the individual and where appropriate their carer or any other person they might want involved. (*Care Act 2014, section 9*)
12. Statutory guidance requires a council to carry out an assessment over a suitable and reasonable timescale considering the urgency of needs and any variation in those needs. Local authorities should tell the individual when their assessment will take place and keep the person informed throughout the assessment. (*Care and Support Statutory Guidance, paragraph 6.29*)
13. The Care Act spells out the duty to meet eligible needs (needs which meet the eligibility criteria). (*Care Act 2014, section 18*)
14. An adult's needs meet the eligibility criteria if they arise from or are related to a physical or mental impairment or illness and as a result the adult cannot achieve two or more of the following outcomes and as a result there is or is likely to be a significant impact on well-being:
- Managing and maintaining nutrition
 - Maintaining personal hygiene
 - Managing toilet needs
 - Being appropriately clothed
 - Making use of the home safely
 - Maintaining a habitable home environment
 - Accessing work, training, education
 - Making use of facilities or services in the community
 - Carrying out caring responsibilities.
- (Care and Support (Eligibility Criteria) Regulations 2014, Regulation 2)*
15. The Care Act explains the different ways a council can meet eligible needs by giving examples of services it may provide including: accommodation in a care home, care and support at home (such as outreach support), counselling and social work and information advice and advocacy. (*Care Act 2014, section 8*)

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Ms M, Mr N and Mr O.

33. Mrs M lives with her two adult sons who have learning disabilities, Mr N and Mr O. Both have eligible needs and receive care and support services from the Council including day services and support to attend a gym. They attended Kentish Road for respite care before its closure.
34. A carer's assessment for Ms M in 2015 said she was the sole carer for Mr N and Mr O. It said she wanted some time to herself so she could have a break from caring. The Council's records suggest Ms M was offered and rejected a carer's direct payment.

Mr N

35. A review of Mr N's care and support plan took place in September 2017. It concluded Mr N was eligible for care. The review was arranged because of the closure of Kentish Road and the need to identify alternative respite care for him. Mr N was noted to be anxious about Kentish Road closing. He had visited a Shared Lives property but did not want to go and Ms M felt the stairs there were too narrow for him as he had poor balance, an unsteady gait and was at high risk of falls.
36. Ms M also had concerns about Weston Court. She visited and felt it was too small for Mr N because of his problems with walking. She was also worried about access to outside space.
37. An undated draft care and support plan for Mr N said '*Weston Court was to be explored via an open day in September 2017.*'

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38. A final care and support plan in the middle of November 2017 said Mr N did not need one to one support to stay safe but may require supervision. The plan described Mr N's care and support needs and outcomes and set out the care services and funding the Council had agreed. The plan named Weston Court as the suitable respite care provision and set out his personal budget and entitlement to 28 nights a year of respite care. It noted a physiotherapist was going to visit Weston Court with Ms M to discuss her concerns.
 39. Council and NHS staff had discussions with Ms M about the respite arrangements for Mr N and his brother between December and June 2018. I have summarised these discussions in the next section (Mr O.) Despite several attempts at seeking a resolution, there was no agreement and so Ms M did not get any respite until Kentish Road reopened.
 40. A care and support plan of June 2018 was similar to the plan described in paragraph 38. The update was that Mr N was going to have respite care at Kentish Road when it opened.

Mr O

41. A social worker carried out a review in September 2017. Mr O remained eligible for care services. The review noted Mr O and Ms M were both anxious about the closure of Kentish Road.
42. An undated draft care and support plan for Mr O described his needs and services. Mr O had worse balance and mobility and spoke less than his brother. They spent much time together but had different interests and personalities. The plan said Weston Court was to be considered as a respite option but this need to be explored further and Ms M was concerned about the size of the building. It set out Mr O's personal budget and entitlement to 28 nights of respite per year.
43. Ms M and the social worker spoke in October 2017. Ms M said Mr O needed space to get around safely and she was worried about trip hazards due to the size of Weston Court. Ms M said she would prefer U care home. The social worker explained U care home was for people with complex physical health needs. The social worker suggested Ms M speak to the manager at Weston Court about her concerns, but Ms M was reluctant to visit as she felt it was not suitable.
44. The social worker set up a visit to Weston Court with a physiotherapist. The physiotherapist noted Kentish Road was probably the ideal environment for Mr O as it was more spacious than Weston Court. She noted Mr O tripped and fell in many environments and that Weston Court had no stairs.
45. The physiotherapist and Ms M met at Weston Court in November. The physiotherapist's view was that furniture could easily be moved to accommodate Mr O's needs and reduce risks. There was a shower seat Mr O could use when showering to reduce the risk of falling.
46. A care and support plan of November 2017 set out Mr O's respite care service at Weston Court.
47. Ms M met with the social worker and a manager in November. She repeated her concerns about space. The manager and social worker explained that falls could not be prevented and even in a large space Mr O could trip and fall because of his balance. They discussed another possible respite option, but Ms M declined this. A senior manager confirmed to Ms M that the Council considered Weston Court was a suitable respite option for Mr O and that a specialist physiotherapist

had made recommendations about moving furniture to maximise space and minimise the risk of trips.

48. Ms M and the social worker spoke in January 2018. Ms M reported Mr O had been having more falls. The social worker was concerned about the impact of caring for Mr O and Mr N without any respite care. Ms M reported high levels of stress.
49. The social worker and physiotherapist visited Ms M in February. She had been unwell with a virus and professionals were concerned about her poor health and the demands on her as a carer. Ms M remained concerned about the space at Weston Court and reported an increase in Mr O's falls. The physiotherapist and Ms O visited Weston Court again in March. Ms M said the living room was a lot better as the sofa had been moved. The physiotherapist said Mr O and Mr N could shower safely at Weston Court using the shower seat that was already there. A staff member could stay behind the shower curtain to protect their privacy and dignity.
50. The social worker spoke to Ms M in April and Ms M said her sons were concerned there would be nothing for them to do at Weston Court. The social worker said there would be activities arranged. The social worker spoke to Mr N and Mr O. They could not decide whether they would go to Weston Court or not.
51. At a later visit in May, Mr N said he would not go to Weston Court. Mr O said he would do whatever his brother was doing. Mrs M told the social worker she did not feel she could force her sons to go to Weston Court.
52. A care and support plan for Mr O in June 2018 is mostly the same as the earlier plan of November 2017. It noted Ms M had not had any overnight respite since Kentish Road closed. The plan for respite was for Mr O to go to Kentish Road now it had reopened.
53. The social worker asked Ms M if she wanted a carer's assessment. Ms M said she did not; but she was worn out and wanted respite at Kentish Road.
54. The Council told me:
 - It had not carried out a timely review of respite care and its carer's assessment did not consider Ms M's needs for respite;
 - The care and support plans for Mr N and Mr O with the alternative respite care offer was not available until just before the Council made the final decision to close Kentish Road. This created uncertainty;
 - Weston Court is not the same as Kentish Road, but it has a large community room and kitchen and support offered to develop independence;
 - Transition arrangements were lacking; Weston Court did not open until December 2017 (because of a delay in registering it with the Care Quality Commission) meaning there was no opportunity for a taster session;
 - It did not assess and record Mr N's or Mr O's mental capacity to make a decision on where they receive respite care, but Mr N is capable of representing himself and so there was a presumption of capacity;
 - It would have been appropriate to involve an independent advocate to ensure Mr N and Mr O's voices were heard and to facilitate their involvement in the assessment as far as possible;

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- The Council decided to re-open Kentish Road at the weekends (the period of highest demand) following feedback from carers about how much they valued it and to offer additional choice.

55. The Council offered to:

- Carry out a fresh assessment of Ms M's needs as a carer and agree a carer's support plan and personal budget to meet identified needs, including a review of the number of nights of respite care required;
- Review Mr N and Mr O's care and support plans;
- Appoint an independent advocate for Mr N and Mr O;
- Carry out an assessment of their mental capacity to choose between respite options;
- To make a payment of £8,000 to Ms A to reflect the 16 nights respite Mr N and Mr O did not receive (at £250 a night) plus £500 to reflect her avoidable time and trouble;
- To apologise.

Was there fault?

56. The decision to close Kentish Road meant the Council was required, under the Care Act, Mental Capacity Act and Care and Support Statutory Guidance to:

- Review Mr N and Mr O's care and support plan as there was a change in circumstances;
- Take reasonable steps to agree any proposals to change services to meet eligible needs, having due regard of their wishes as a starting point;
- Revise the care and support plans because of a change affecting the plan;
- Carry out an assessment of their mental capacity to decide about proposed respite care arrangements. If the outcome was he lacked mental capacity, make decisions about respite care in his best interests;
- Arrange an advocate if the Council considered Mr N and Mr O had significant difficulties taking part in the review, but only if there was no suitable person to represent them.

57. The Council carried out reviews in September 2017; this was two and a half months before Kentish Road closed and I consider this was in good time and there is no fault. The review noted Ms M's concerns about changes to respite care and sought an opinion from a specialist physiotherapy who confirmed Weston Court was suitable. I am satisfied the review was in line with paragraph 13.32 of the Care and Support Statutory Guidance and there is no fault.

58. I recognise Ms M's view was Weston Court was unsuitable, but I consider the Council took reasonable steps to reach agreement on the proposed changes by discussing her concerns and involving a physiotherapist who confirmed the layout of Weston Court could be made suitable for Mr O. I find the Council had due regard to Ms M's views in line with the *Davey* case (paragraph 20), and I have no grounds to criticise officers' view that, Weston Court could have met Mr N and Mr O's needs.

59. The Council issued a revised care and support plan in November 2017. This was in line with section 27 of the Care Act. However, it was very close to the date when Kentish Road was due to close and should have been issued at the same

time as the review so the parties were informed in good time about the proposed changes to respite care. The delay created avoidable uncertainty for Ms M, Mr N and Mr O about future respite.

60. Delays in opening Weston Court meant there was no opportunity for an overnight visit to transition to the new service before Kentish Road closed, which the Council has already recognised as a fault.
61. The Council has recognised it should have carried out an assessment of Mr N's and Mr O's mental capacity to make decisions about respite care. The failure to do so is not in line with the Mental Capacity Act 2005 and is fault. It is not possible to say whether the outcome would have been any different had a capacity assessment taken place.
62. The Council was required to appoint an advocate for Mr N and Mr O, who have significant communication difficulties, if it did not consider there was a suitable person to represent his views. Ms M was an appropriate person to represent them and so I do not regard the failure to involve an advocate to be fault. I recognise the Council has offered an advocate in any event.

Ms M

63. The Council should have offered Ms M an updated carer's assessment when it was reviewing Mr N's and Mr O's care and support plans. It has now offered a carer's assessment and the records suggest Ms M declined this.
64. There should also have been a carer's support plan for Ms M. The lack of a carer's support plan was not in line with statutory guidance and so is fault. However, I cannot conclude that any injustice arose because Ms M's care and support plan contained her respite entitlement and the approach of providing a service of benefit to the carer, directly to the adult is permitted, although the law required the Council to provide a carer's support plan as well.

Agreed action

65. During my investigation, the Council offered to carry out reviews of Mr N's and O's care and support plans and of Ms M's carer's assessment and draw up a carer's support plan for her. The Council also offered to appoint advocates, carry out mental capacity assessments and apologise for the avoidable distress and confusion caused by its failure to send final care and support plans in good time. The Council will also make the payments described in paragraph 55 in recognition of the injustice caused. These actions are an appropriate remedy for the injustice caused and the Council should complete them within two months of my final decision.

Final decision

66. There was fault in the way the Council made decisions about Mr N's and Mr O's future respite care. This caused them and their mother Ms M avoidable uncertainty and distress. To remedy the injustice the Council has agreed to apologise, carry out further reviews and a mental capacity assessment and make a payment to reflect the loss of respite care during the period of closure. I have completed my investigation.

Parts of the complaint that I did not investigate

67. I discontinued my investigation of the complaint about the closure of Kentish Road. Shortly after Ms M and others complained to us, the Council issued an internal report which found flaws in the way the Council made the decision to close. An Ombudsman's investigation could add nothing further to the report and actions already taken in response to the report. And, as the service has now reopened, there is no ongoing injustice to those affected by the closure. So it would not be an appropriate use of our resources to continue investigating this complaint as our focus is on complaints where there is significant injustice requiring a remedy.
68. I recognise that some carers would like Kentish Road to be open all the time and not just at weekends. But the Care Act makes it clear that councils can offer a range of services to meet eligible needs and there is no legal requirement for a council to run a specific care provision full-time. So there would be no grounds for me to recommend this.

Investigator's decision on behalf of the Ombudsman

11 March 2019

Complaint reference:
18 003 855

Complaint against:
Southampton City Council

The Ombudsman's final decision

Summary: There was fault in the way the Council made decisions about Ms D's future respite care. This caused Ms C and Ms D avoidable uncertainty and distress. To remedy the injustice the Council has agreed to apologise, carry out further reviews and a mental capacity assessment and make a payment to reflect the loss of respite care during the period of closure. This action is an appropriate remedy for the injustice.

The complaint

1. Ms C and other carers complain about Southampton City Council's (the Council's) offer of respite care following the closure of Kentish Road, a care home providing respite care for adults with learning disabilities. They say they were not properly consulted about the proposed alternatives and consider these were unsuitable.
2. They also complain about the decision-making which led to Kentish Road's closure.
3. Ms C seeks a payment for her losses and wants the Council to re-open Kentish Road.

What I have investigated

4. I have investigated the complaint at paragraph 1. My reasons for stopping investigating the complaint at paragraph 2 are at the end of this statement.

The Ombudsman's role and powers

5. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
6. We have the power to start or discontinue an investigation into a complaint within our jurisdiction. (*Local Government Act 1974, sections 24A(6), as amended*)
7. The Court of Appeal said our powers to decline to investigate a complaint (or to discontinue an investigation) are wide and that it will be '*clearly right that the Ombudsman must prioritise complaints which appear to him to involve significant injustice as opposed to those which do not*' (*R(Abernathy) v LGO [2002] EWCA Civ 552*)

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8. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

How I considered this complaint

9. I considered the complaint, the Council's response to my enquiries and documents described later in this statement. Both parties received a draft of this statement and I took comments into account.

What I found

Relevant law and guidance

10. Respite care is a service to give a carer time away from caring for an adult with care and support needs. Councils provide respite care for adults with disabilities under the legal framework described in the following paragraphs.
11. A council must carry out an assessment for any adult with an appearance of need for care and support. The assessment must be of the adult's needs and how they impact on their wellbeing and the outcomes they want to achieve. It must also involve the individual and where appropriate their carer or any other person they might want involved. (*Care Act 2014, section 9*)
12. Statutory guidance requires a council to carry out an assessment over a suitable and reasonable timescale considering the urgency of needs and any variation in those needs. Local authorities should tell the individual when their assessment will take place and keep the person informed throughout the assessment. (*Care and Support Statutory Guidance, paragraph 6.29*)
13. The Care Act spells out the duty to meet eligible needs (needs which meet the eligibility criteria). (*Care Act 2014, section 18*)
14. An adult's needs meet the eligibility criteria if they arise from or are related to a physical or mental impairment or illness and as a result the adult cannot achieve two or more of the following outcomes and as a result there is or is likely to be a significant impact on well-being:
 - Managing and maintaining nutrition
 - Maintaining personal hygiene
 - Managing toilet needs
 - Being appropriately clothed
 - Making use of the home safely
 - Maintaining a habitable home environment
 - Accessing work, training, education
 - Making use of facilities or services in the community
 - Carrying out caring responsibilities.

(*Care and Support (Eligibility Criteria) Regulations 2014, Regulation 2*)
15. The Care Act explains the different ways a council can meet eligible needs by giving examples of services it may provide including: accommodation in a care home, care and support at home (such as outreach support), counselling and social work and information advice and advocacy. (*Care Act 2014, section 8*)

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16. If a council decides a person is eligible for care, it should prepare a care and support plan which specifies the needs identified in the assessment, says whether and to what extent the needs meet the eligibility criteria and specifies the needs the council is going to meet and how this will be done. There should be a personal budget setting out the cost of care. The council should give a copy of the care and support plan to the person. *(Care Act 2014, sections 24 and 25)*
 17. Statutory Guidance explains a council should review a care and support plan at least every year, upon request or in response to a change in circumstances. *(Care and Support Statutory Guidance, Paragraph 13.32)*
 18. A council should revise a care and support plan where circumstances have changed in a way that affects the care and support plan. Where there is a proposal to change how to meet eligible needs, a council should take all reasonable steps to reach agreement with the adult concerned about how to meet those needs. *(Care Act 2014, sections 27(4) and (5))*
 19. Statutory guidance is silent about timescales for the completion of care and support plans and/or reviews of the same. In the absence of a legal timescale, we expect a council to act in a timely manner and to provide a copy of a care plan or review within a reasonable timescale after completing it.
 20. The High Court said an individual's wishes are not the same as their needs and wishes are not the paramount consideration. A council has to have 'due regard' to an adult's wishes as a starting point, but social workers are entitled to exercise their professional skills and judgement in deciding how to meet eligible needs. *(R (Davey) v Oxfordshire County Council [2017] EWHC 354 (Admin))*
 21. A council must carry out a carer's assessment where it appears a carer may have needs for support. The assessment must include an assessment of the carer's ability and willingness to continue in the caring role, the outcomes the carer wishes to achieve in daily life and whether support could contribute to achieving those outcomes *(Care Act 2014, section 10)*
 22. The Act makes clear that the local authority is able to meet the carer's needs by providing a service directly to the adult needing care. The carer must still receive a support plan which covers their needs, and how they will be met. *(Care and Support Statutory Guidance 2014)*
 23. When carrying out needs assessments and preparing and revising care and support plans, councils should arrange an independent advocate for a person who has substantial difficulty in understanding, retaining, weighing up information and communicating their wishes and feelings. There is no need for an advocate if the council is satisfied there is an appropriate person (who must not be a paid carer) who could support the person's involvement. *(Care Act 2014, section 67)*
 24. The legal framework for adults who lack mental capacity to make decisions is in the Mental Capacity Act 2005. If a professional considers a person lacks mental capacity to decide on their care arrangements, then the professional should carry out or arrange for an assessment of the person's capacity. If that assessment concludes the person lacks mental capacity to decide on their care or living arrangements, then the decision-maker should involve relatives and other professionals before making a decision in the person's best interests. If agreement cannot be reached about a person's best interests, then the Court of Protection can make welfare orders.

What happened

Background

25. Kentish Road is a council-run residential care home providing respite care for up to eight adults with learning disabilities. Consultation about a proposal to close it started in 2014, with a decision to close taken in 2015. The decision was unpopular with carers and the subject of local media interest and a campaign.
26. Papers for a meeting of the Council's overview and scrutiny committee in September 2017 indicate the Council expected to save £300,000 a year from the closure and provision of alternative respite care.
27. In October 2017, the Council wrote to all carers explaining Kentish Road was staying open until the end of November, pending further consideration by members. Members elected to close the unit and this happened at the beginning of December.
28. Weston Court is a three-bed respite service for adults with learning disabilities. The Council commissioned it for respite care when Kentish Road closed. Weston Court is managed by an independent care provider. It has one member of staff during the day and a sleep-in support worker at night. Waking night support and one to one support are available when required. The respite service is part of a larger care home with shared facilities including a laundry, garden and lounges. The Council offered Weston Court as one of several options for respite to those who have complained to us. Other possibilities for respite care included:
 - Shared Lives which is housing and support provided in the family homes of trained and experienced carers;
 - U care home which is an established respite unit. Unfortunately, U care home did not have enough places to accept all of the people who had been using Kentish Road for respite and it was not suitable for many of the Kentish Road clients;
 - Direct payments with outreach support.
29. The Council declined to investigate any complaints about the closure of Kentish Road and so eight carers complained to us. Soon after we received the complaint, the Council decided to re-open Kentish Road. The Council had also commissioned an independent review of the closure by the time the complainants came to us. The report of that review came out shortly after the complaint to us. The complainants asked us to continue with our investigation.
30. The independent review was an internal report for senior officers and members to learn lessons and improve practice for future service change and was not for sharing with members of the public. It concluded:
 - At the time of the original decision in 2015, people did not have up to date care and support plans and annual reviews had not taken place. And, there were no assessments of the mental capacity of clients to make decisions around their care and support. Transition planning was delayed or limited because carers rejected alternative provision;
 - Delays in completing needs assessments meant there was no information available to commissioners to identify and procure suitable alternative provision and this prevented a strategic approach to commissioning;

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- Consultation on the original decision was not specific enough, did not identify a range of alternatives and there may have been an element of predetermination;
 - Communication with disabled people and their carers was poor. The lack of engagement caused distress. There was real concern from carers about there being no (or at least not enough) alternative provision in Southampton, other than one unit.
31. The Council's position is:
- While the subsequent decision in 2017 remedied many of the process flaws identified in the earlier decision, the report recommended changes to similar projects in future, to avoid the risk of recurrence. It accepts the report's findings and has outlined a skeleton action plan. Some changes have already been implemented;
 - It decided to reopen Kentish Road due to feedback from carers about its value and to offer additional choice. It considered there was more than enough respite care for those who needed it (in fact, there would be an oversupply) The Council intended to run Kentish Road at weekends and it reopened at the beginning of July 2018;
 - It accepted the decision to close Kentish Road created uncertainty for carers and adults.
32. I asked the Council how it intended to allocate respite at Kentish Road as there would likely be a high demand for the service at first. The Council said it would prioritise carers who had not received any respite since the closure. For those who had received respite care at other centres, it was considering individually whether it was in their best interests to move back to Kentish Road.

Ms C and Ms D

33. Ms C is the main carer for her adult daughter, Ms D who has learning disabilities and challenging behaviour. She can speak and also uses sign language. Ms D has eligible needs and has a care and support plan which includes day care, care in the home and 35 nights a year of respite care.
34. A carer's assessment for Ms C took place in September 2017. The outcome was Ms C had eligible needs as a carer. A carer's support plan of October 2017 gave Ms C a payment of £34 a month to support her with transport and to enable her to socialise with friends.
35. A review of Ms D's care and support plan took place in September. The social worker completing the review noted Ms D had substantial difficulty being involved and there was previously an advocate which Ms C had felt was unnecessary because in her view, Ms D could express her views without an advocate. The review noted Ms C and Ms D's concerns about the closure of Kentish Road and in particular, Ms C's view that respite should be in a social setting. Ms C was concerned that there was a history of Ms D making allegations against others and this may be an issue in a new respite setting. Ms D was anxious about not knowing what the respite arrangements were going to be. Ms C felt there were too many changes and said she would like more respite care for Ms D.
36. In October 2017, Ms C complained to the social worker about respite care and other issues. She said she wanted an extra 56 nights a year of respite because she was experiencing a recurrence of chronic health problems and had additional caring responsibilities for other relatives. Ms C complained formally about the

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- failure to review Ms D's respite. The Council responded saying it would deal with the complaint through lawyers as Ms C had instructed a solicitor.
37. In November 2017, the Council sent Ms C a copy of Ms D's care and support plan which said Ms D was entitled to 35 nights of respite care a year and that Weston Court was suitable for this.
38. Ms C put forward two alternative proposals for Ms D's respite care. A senior manager explained one of those options was not available as it was in a neighbouring local authority and that authority reserved the unit for its own residents. The other option Ms C put forward, U care home, had no capacity. The senior manager also told Ms C that the Council considered Weston Court was suitable for Ms D, but the social worker would continue to find an alternative that Ms C and D were happy with.
39. Ms C contacted her local councillor. She met with a senior manager of the Council to discuss her concerns about respite care and other issues not part of this complaint. The Council told me the senior manager offered to arrange an advocate for Ms D at the meeting.
40. Ms C emailed the social worker at the end of April 2018 saying she needed a break and asking for some respite, possibly outreach support (where a respite carer would come to their home) or at U care home. The social worker replied saying the Council would not use outreach support as respite on an overnight basis due to cost and there was no capacity at U care home. However, Ms D could have respite at Weston Court and she could visit beforehand should she wish. Ms C replied saying she did not want overnight outreach support. The social worker asked her to give details of how many hours outreach support she needed and to explain who would be caring for Ms D overnight. It does not appear that the idea of respite care in the home was pursued by either the Council or Ms C and it was never formally set out on Ms D's care and support plan.
41. The Council decided to open Kentish Road at the weekends starting in July. A manager emailed Ms C in June 2018 to tell her that there would be an open day at Kentish Road and she could discuss her preferred dates there. The social worker confirmed she had referred Ms D to Kentish Road and it would try and arrange respite as soon as possible
42. Ms C emailed the social worker and a senior manager asking for dates for respite at Kentish Road to tie in with her visiting relatives abroad. The response was that those who had not been accessing respite would be prioritised. Others who had been getting respite elsewhere, could in principle return to Kentish Road, depending on how disruptive it was to the individual and taking into account relatives' views on this.
43. The Council said:
- It did not carry out a timely review of Ms C's needs as a carer to determine how many nights of respite were needed to sustain caring arrangements for Ms D;
 - Ms D should have been able to access respite for 20 nights during the period Kentish Road was closed, but there was no agreement on a suitable alternative;
 - It did not complete a mental capacity assessment for Ms D regarding decisions about her respite care;

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- It should have commissioned an independent advocate to ensure Ms D's views were heard, although Ms C was an appropriate person to support her;
 - The care and support plan, including confirmation of a suitable alternative respite provision was not finished until shortly before Kentish Road closed and this created uncertainty and delay.

44. The Council offered to:

- Apologise;
- Appoint an advocate for Ms D;
- Carry out a full review of Ms C and Ms D's needs, including a review of the number of respite nights needed;
- Carry out a mental capacity assessment for Ms D on her capacity to choose respite care;
- To carry on paying the current carers payment of £34 a month;
- To pay Ms C £5000 based on the cost of 20 nights of respite care she missed out on and £500 for her avoidable time and trouble.
- To apologise.

Was there fault?

45. The decision to close Kentish Road meant the Council was required, under the Care Act, Mental Capacity Act and Care and Support Statutory Guidance to:

- Review Ms D's care and support plan as there was a change in circumstances;
- Take reasonable steps to agree any proposals to change services to meet eligible needs, having due regard to Ms D's (and Ms C's) wishes as a starting point;
- Revise the care and support plan because of a change affecting the plan;
- Carry out an assessment of Ms D's mental capacity to decide about proposed respite care arrangements. If the outcome was she lacked mental capacity, make decisions about respite care in her best interests;
- Arrange an advocate if the Council considered Ms D had significant difficulties taking part in the review, but only if there was no suitable person to assist her.

46. The Council carried out a review in September 2017; this was three months before Kentish Road closed and I consider this was in good time. The review recorded Ms C's concerns about changes to respite. I am satisfied the review noted Ms C's views and was in line with paragraph 13.32 of Care and Support Statutory Guidance and there is no fault.

47. I recognise Ms C's view that Weston Court was unsuitable, but the notes suggest this was a concern about any change in the social arrangements at respite care for her daughter. There is no requirement on a council to preserve respite arrangements permanently. I consider the Council took reasonable steps to reach agreement on the proposed changes by offering visits and also exploring other alternatives like additional outreach support, instead of overnight respite. I find the Council had due regard to Ms C's views in line with the *Davey* case (paragraph 20), and I have no grounds to criticise officers' view that, Weston Court could have met Ms D's needs.

48. The Council issued a revised care and support plan in November 2017. This was in line with section 27 of the Care Act. However, it was very close to the date

when Kentish Road was due to close and should have been issued at the same time as the review so that Ms C and Ms D were informed in good time about the proposed changes to care. The delay created avoidable uncertainty for Ms C and Ms D about future respite.

49. Delays in opening Weston Court meant there was no opportunity for an overnight visit to transition to the new service before Kentish Road closed, which the Council has already recognised as a fault.
50. The Council has recognised it should have carried out an assessment of Ms D's mental capacity to make decisions about respite care. The failure to do so is not in line with the Mental Capacity Act 2005 and is fault. It is not possible to say whether the outcome would have been any different had a capacity assessment taken place.
51. The Council was required to appoint an advocate for Ms D, who has significant communication difficulties, if it did not consider there was a suitable person to represent his views. Ms C was an appropriate person to represent Ms D and so I do not regard the failure to involve an advocate to be fault. I recognise the Council has offered an advocate in any event.

Ms C

52. The Council carried out a carer's assessment for Ms C and a carer's support plan in September 2017 set out her personal budget. This is in line with section 10 of the Care Act 2014 and statutory guidance and there is no fault.
53. The Council has acknowledged it should have reviewed the number of nights of respite Ms C was entitled to when she asked for more nights. Also, it should have set out her respite entitlement in the carer's support plan and the failure to do this was not in line with statutory guidance and is a further fault.

Agreed action

54. During my investigation, the Council offered to carry out reviews of Ms D's care and support plan and of Ms C's carer's assessment and carer's support plan for her. The Council also offered to appoint an advocate for Ms D, carry out a mental capacity assessment and apologise for the avoidable distress and confusion caused by its failure to send final care and support plans in good time. The Council will also make the payments described in paragraph 44 in recognition of the injustice caused. These actions are an appropriate remedy for the injustice and the Council should complete them within two months of my final decision.

Final decision

55. There was fault in the way the Council made decisions about Ms D's future respite care. This caused Ms C and Ms D avoidable uncertainty and distress. To remedy the injustice the Council has agreed to apologise, carry out further reviews and a mental capacity assessment and make a payment to reflect the loss of respite care during the period of closure. This action is an appropriate remedy for the injustice. I have completed my investigation.

Parts of the complaint that I did not investigate

56. I discontinued my investigation of the complaint about the closure of Kentish Road. Shortly after Ms C and others complained to us, the Council issued an internal report which found flaws in the way the Council made the decision to

close. An Ombudsman's investigation could add nothing further to the report and actions already taken in response to the report. And, as the service has now reopened, there is no ongoing injustice to those affected by the closure. So it would not be an appropriate use of our resources to continue investigating this complaint as our focus is on complaints where there is significant injustice requiring a remedy.

57. I recognise that some carers would like Kentish Road to be open all the time and not just at weekends. But the Care Act makes it clear that councils can offer a range of services to meet eligible needs and there is no legal requirement for a council to run a specific care provision full-time. So there would be no grounds for me to recommend this.

Investigator's decision on behalf of the Ombudsman

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11 March 2019

Complaint reference:
17 015 361

Complaint against:
Southampton City Council

The Ombudsman's final decision

Summary: There was fault in the way the Council made decisions about Mr B's future respite care. This caused avoidable uncertainty and distress. To remedy the injustice the Council has agreed to apologise, carry out further reviews and a mental capacity assessment and make a payment to reflect the loss of respite care during the period of closure. This action is an appropriate remedy for the injustice.

The complaint

1. Ms A and other carers complain about Southampton City Council's (the Council's) offer of respite care following the closure of Kentish Road, a care home providing respite care for adults with learning disabilities. They say they were not properly consulted about the proposed alternatives and consider these unsuitable
2. They also complain about the decision-making which led to Kentish Road's closure.
3. Ms A seeks a payment for her losses and wants the Council to re-open Kentish Road.

What I have investigated

4. I have investigated the complaint in paragraph 1. My reasons for stopping investigating the complaint at paragraph 2 are at the end of this statement.

The Ombudsman's role and powers

5. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
6. We have the power to start or discontinue an investigation into a complaint within our jurisdiction. (*Local Government Act 1974, sections 24A(6), as amended*)
7. The Court of Appeal said our powers to decline to investigate a complaint (or to discontinue an investigation) are wide and that it will be '*clearly right that the Ombudsman must prioritise complaints which appear to him to involve significant injustice as opposed to those which do not*' (*R(Abernathy) v LGO [2002] EWCA Civ 552*)

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8. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

How I considered this complaint

9. I considered Ms A's complaint to us and supporting documents. I also considered the Council's response to my enquiries and the documents described later in this statement. Both parties saw a draft of this statement and I took comments into account.

What I found

Relevant law and guidance

10. Respite care is a service to give a carer time away from caring for an adult with care and support needs. Councils provide respite care for adults with disabilities under the legal framework described in the following paragraphs.
11. A council must carry out an assessment for any adult with an appearance of need for care and support. The assessment must be of the adult's needs and how they impact on their wellbeing and the outcomes they want to achieve. It must also involve the individual and where appropriate their carer or any other person they might want involved. (*Care Act 2014, section 9*)
12. Statutory guidance requires a council to carry out an assessment over a suitable and reasonable timescale considering the urgency of needs and any variation in those needs. Local authorities should tell the individual when their assessment will take place and keep the person informed throughout the assessment. (*Care and Support Statutory Guidance, paragraph 6.29*)
13. The Care Act spells out the duty to meet eligible needs (needs which meet the eligibility criteria). (*Care Act 2014, section 18*)
14. An adult's needs meet the eligibility criteria if they arise from or are related to a physical or mental impairment or illness and as a result the adult cannot achieve two or more of the following outcomes and as a result there is or is likely to be a significant impact on well-being:
- Managing and maintaining nutrition
 - Maintaining personal hygiene
 - Managing toilet needs
 - Being appropriately clothed
 - Making use of the home safely
 - Maintaining a habitable home environment
 - Accessing work, training, education
 - Making use of facilities or services in the community
 - Carrying out caring responsibilities.
- (Care and Support (Eligibility Criteria) Regulations 2014, Regulation 2)*
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What happened

Background

25. Kentish Road is a council-run residential care home providing respite care for up to eight adults with learning disabilities. Consultation about a proposal to close it started in 2014, with a decision to close taken in 2015. The decision was unpopular with carers and the subject of local media interest and a campaign.
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 - Shared Lives which is housing and support provided in the family homes of trained and experienced carers;
 - U care home which is an established respite unit. Unfortunately, U care home did not have enough places to accept all of the people who had been using Kentish Road for respite and it was not suitable for many of the Kentish Road clients;
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 - It accepted the decision to close Kentish Road created uncertainty for carers and adults.
32. I asked the Council how it intended to allocate respite at Kentish Road as there would likely be a high demand for the service at first. The Council said it would prioritise carers who had not received any respite since the closure. For those who had received respite care at other centres, it was considering individually whether it was in their best interests to move back to Kentish Road.
- Ms A and Mr B**
33. Ms A is the only carer for her adult son, Mr B who has severe learning disabilities and can only speak a few words. He lives at home with Ms A and is eligible for social care. The Council arranges and funds a care package for Mr B, which includes respite care. He went to Kentish Road until it closed.
34. A review of Mr B's care and support plan took place in June 2017. This noted Mr B previously went to U care home for respite care. The review noted Ms A was a single parent and had caring responsibilities for another relative. She had no other informal support in her caring role. Mr B got 84 nights a year of respite care. Ms A's view was Mr B should have respite at U care home and she wanted a three-month transition period so Mr B could get used to U care home.
35. Mr B's social worker discussed respite arrangements with Ms A in July. The social worker gave her options for respite including a care provider taking Mr B out in the evenings after college. Ms A said Mr B did not like staying out late. She said she did not mind having more than one location for respite care.
36. Internal emails between council officers in August suggested U care home might be able to provide all Mr B's respite nights. Later emails indicated this was not the case because U care home had a waiting list and could in fact only provide Mr B with 30 nights for the financial year ending March 2018. The total number of nights per year available at U care home for all former Kentish Road clients was 300.
37. Ms A spoke to a service manager in August. He told her:

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- The Council was commissioning alternative respite and this would be available shortly;
 - He could not discuss individual cases, but the places at U care home would be shared fairly;
 - Weston Court was available as an alternative.
38. Ms A told the service manager she was not happy with the Council's plans and said there had not been a transition to the new arrangements.
39. A further review of Mr B's care and support plan took place in September. The record of this review is similar to the review in June described above.
40. A draft care and support plan in September described Mr B's care needs and the services the Council provided to meet those needs. It also set out Mr B's personal budget. Services included 84 nights a year of respite care. The care and support plan said Mr B was *'to be supported to use Weston Court'* and that initial respite was to be at U care home.
41. Ms A emailed the social worker saying she was concerned Mr B would not be with his friends in respite care as the client group in U care home was different. She was concerned Mr B would be isolated. Ms B also said staff at U care home had told her there was no capacity for them to take Mr B.
42. Ms A and the social worker discussed respite arrangements again in the middle of September. The social worker proposed Mr B received respite care at Weston Court and U care home.
43. Ms A and the social worker met again in November. The social worker told Ms A Mr B could have 48 nights at U care home and that the Council's view was that Weston Court could meet his needs. Ms A was concerned about the lack of space at Weston Court. The social worker said Weston Court was bigger than the family home and Mr B's social interaction was maintained at day care and so isolation was not a concern. Ms A sent an email to the social worker refusing Weston Court.
44. The Council updated Mr B's care and support plan in November (because some carers told officers respite arrangements were not clear). The new plan for Mr B said respite was 84 nights a year and would be at U care home for six months and then at Weston Court. The plan noted Ms A had visited Weston Court and felt there was not enough space.
45. The social worker visited Ms A to discuss the care and support plan. Ms A said Mr B needed a garden, a sensory room and more space. She said she wanted amendments to the care and support plan to reflect this. The social worker later checked with staff at Kentish Road who told her Mr B never asked to go in the garden when he stayed there.
46. The Council told us it offered to make up half Mr B's respite care (so the nights U care home could not provide) with a direct payment that Ms A could use to purchase 630 hours of home care and support (based on 15 hours a night) so Mr B could receive respite care at home to replace the care Ms A normally provided. The records indicate Ms A arranged respite care for Mr B using an outreach support worker. This was because there was no availability at U care home in December 2017. The social worker offered two other placements in other care homes in December, but Ms A rejected these.

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47. Ms A visited T care home in January 2018, which was not in the Council's area. The social worker asked if this service would accept Southampton clients, but it would not.
48. A carer's assessment for Ms A took place in January 2018. It described the care she carried out, what she wanted to achieve and said she had eligible carer's needs. A carer's support plan set out a carer's personal budget for Ms A that she could use flexibly. The plan suggested Ms A was due 17 nights of respite care.
49. In February, Ms A asked the social worker if Mr B could have 48 nights at U care home and the remainder at a X care home. A service manager refused this, because Ms A said the care home required one to one support at X care home and this was too expensive. The service manager told Ms A again that Weston Court was suitable for Mr B and there was no need for any parent to be without respite.
50. Mr B's social worker visited Ms A in May 2018. He noted the Council had agreed Mr B could have 15 hours of outreach support for each respite night the Council had not provided.
51. In June 2018, the Council decided to reopen Kentish Road and Mr B's social worker referred him there. The social worker also asked Ms A about advocacy for Mr B and Ms A refused this.
52. The Council told me:
- It had not carried out a timely review of respite care and its carer's assessment did not consider Ms A's needs for respite;
 - The care and support plan with the alternative respite care offer was not available until just before the Council made the final decision to close Kentish Road. This created uncertainty;
 - It considered Weston Court was a suitable respite location for Mr B with capacity to provide all the nights agreed;
 - Weston Court is not the same as Kentish Road, but it has a large community room and kitchen and support offered to develop independence;
 - Transition arrangements were lacking; Weston Court did not open until December 2017 (because of a delay in registering it with the Care Quality Commission) meaning there was no opportunity for a taster session;
 - It did not assess and record Mr B's mental capacity to make a decision on where he receives respite care. A social worker completed a mental capacity assessment in June 2018 and the outcome of this was Mr B had capacity to consent to receiving respite care at Weston Court. The assessment did not consider whether Mr B had capacity to weigh up and express a preference between alternative options;
 - It would have been appropriate to involve an independent advocate to ensure Mr B's voice was heard and to facilitate his involvement in the assessment as far as possible;
 - The Council decided to re-open Kentish Road at the weekends (the period of highest demand) following feedback from carers about how much they valued it and to offer additional choice;
 - Its records showed that Mr B went to U care home for respite care for 33 nights between December 2017 and July 2018 (which is fewer than the 49 nights if allocated pro-rata);

- Mr B is booked to receive 26 nights at Kentish Road between July and December 2018. And he can go to U care home for the remaining nights so there has not been a failure to provide respite up to the agreed 84 nights
- The current plan is for Mr B's respite nights to be split equally between U care home and Kentish Road.

53. The Council has offered to:

- Carry out a fresh assessment of Ms A's needs as a carer and agree a carer's support plan and personal budget to meet identified needs, including a review of the number of nights of respite care required;
- Review Mr B's care and support plan;
- Appoint an independent advocate for Mr B;
- Carry out an assessment of Mr B's mental capacity to choose between respite options'
- To make a payment of £4000 to Ms A to reflect the 16 nights respite Mr B did not receive (at £250 a night) plus £500 to reflect her avoidable time and trouble
- To apologise.

Was there fault?

54. The decision to close Kentish Road meant the Council was required, under the Care Act, Mental Capacity Act and Care and Support Statutory Guidance to:

- Review Mr B's care and support plan as there was a change in circumstances;
- Take reasonable steps to agree any proposals to change services to meet eligible needs, having due regard to Mr B's (and Ms A's) wishes as a starting point;
- Revise the care and support plan because of a change affecting the plan;
- Carry out an assessment of Mr B's mental capacity to decide about proposed respite care arrangements. If the outcome was he lacked mental capacity, make decisions about respite care in his best interests;
- Arrange an advocate if the Council considered Mr B had significant difficulties taking part in the review, but only if there was no suitable person to assist him.

55. The Council carried out a review in June 2017; this was six months before Kentish Road closed and I consider this was in good time and there is no fault. The review noted Ms A's concerns about changes to Mr B's respite care and that she wanted him to go to U care home when Kentish Road closed. I am satisfied the review was in line with paragraph 13.32 of the Care and Support Statutory Guidance and there is no fault.

56. The Council issued a revised draft care and support plan in September 2017 setting out the agreed respite offer of U care home for some of Mr B's respite entitlement. It sent a further care and support plan in November naming Weston Court as a second option because U care home could not provide all of Mr B's agreed respite nights. I recognise Ms A did not share the Council's view that Weston Court was suitable, but I consider the records evidence it considered her concerns and addressed those concerns in respect of size and social isolation. And officers met with her to discuss the concerns and offered a further option of converting some of the respite nights into home care support. I note agreement could not be reached about the suitability of Weston Court. I consider the Council

had due regard to Ms A's wishes in line with the Davey case (paragraph 20) and there are no grounds for me to criticise the view that Weston Court could have met Mr B's needs.

57. Delays in opening Weston Court meant there was no opportunity for Mr B to have an overnight visit to transition to the new service before Kentish Road closed, which the Council has already recognised as a fault.
58. The Council has recognised it should have carried out an assessment of Mr B's mental capacity to decide on the options of respite care available to him (as opposed to an assessment of his capacity to consent to Weston Court, which was completed in June 2018). That assessment should have been done before Kentish Road closed. The failure to do so means the Council did not act in line with the Mental Capacity Act and so is at fault. It is not possible for me to say whether the outcome would have been any different had a capacity assessment taken place at the right time
59. The Council was required to appoint an advocate for Mr B, who has significant communication difficulties, if it did not consider there was a suitable person to represent his views. Ms A was an appropriate person to represent Mr B and so I do not regard the failure to involve an advocate to be fault. I recognise the Council has offered an advocate in any event, which Ms A does not feel is necessary.

Ms A

60. I consider the Council acted in line with the Care Act and Care and Support Statutory Guidance through a carer's assessment and carer's support plan in January 2018 setting out respite entitlement. Although this should have taken place at the same time as Mr B's care and support plan review (so in anticipation of the closure of Kentish Road and not after the event), I do not consider this caused any injustice as the respite entitlement was set out in Mr B's care and support plan.

Did the fault cause injustice?

61. I found no fault in the way the Council dealt with the review of Mr B's care and support plan. And, although I consider there was delay in completing Ms A's carer's assessment and carer's support plan, there is no injustice to her as Mr B's respite entitlement was set out on his plan.
62. There was some fault in the failure to have in place arrangements for Mr B to transition to Weston Court. The Council accepts this and I consider this caused avoidable uncertainty and distress. The Council has proposed actions and payments which I consider remedy the injustice.

Agreed action

63. During my investigation, the Council offered to carry out reviews of Mr B's care and support plan and of Ms A's carer's assessment and support plan. The Council also offered to appoint an advocate for Mr B, carry out a mental capacity assessment and apologise for the avoidable distress and uncertainty. The Council will also make the payments described in paragraph 53 in recognition of the injustice caused. These actions are an appropriate remedy for the injustice caused and the Council should complete them within two months of my final decision

Final decision

64. There was fault in the way the Council made decisions about Mr B's future respite care. This caused avoidable uncertainty and distress. To remedy the injustice the Council has agreed to apologise, carry out further reviews and a mental capacity assessment and make a payment to reflect the loss of respite care during the period of closure. This action is an appropriate remedy for the injustice. I have completed my investigation.

Parts of the complaint that I did not investigate

65. I discontinued my investigation of the complaint about the closure of Kentish Road. Shortly after Ms A and others complained to us, the Council issued an internal report which found flaws in the way the Council made the decision to close. An Ombudsman's investigation could add nothing further to the report and actions already taken in response to the report. And, as the service has now reopened, there is no ongoing injustice to those affected by the closure. So it would not be an appropriate use of our resources to continue investigating this complaint as our focus is on complaints where there is significant injustice requiring a remedy.
66. I recognise that some carers would like Kentish Road to be open all the time and not just at weekends. But the Care Act makes it clear that councils can offer a range of services to meet eligible needs and there is no legal requirement for a council to run a specific care provision full-time. So there would be no grounds for me to recommend this.

Investigator's decision on behalf of the Ombudsman

20 February 2019

Complaint reference:
18 004 527

Complaint against:
Southampton City Council

The Ombudsman's final decision

Summary: There was fault in the way the Council made decisions about Mr H's future respite care. This caused avoidable uncertainty and distress. To remedy the injustice the Council has agreed to apologise, carry out further reviews and a mental capacity assessment and make a payment to reflect avoidable distress and uncertainty. This action is an appropriate remedy for the injustice.

The complaint

1. Ms G and other carers complain about Southampton City Council's (the Council's) offer of respite care following the closure of Kentish Road, a care home providing respite care for adults with learning disabilities. They say they were not properly consulted about the proposed alternatives and consider these unsuitable.
2. They also complain about the decision-making which led to Kentish Road's closure.
3. Ms G seeks a payment for her losses.

What I have investigated

4. I have investigated the complaint in paragraph 1. My reasons for stopping investigating the complaint at paragraph 2 are at the end of this statement

The Ombudsman's role and powers

5. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
6. We have the power to start or discontinue an investigation into a complaint within our jurisdiction. (*Local Government Act 1974, sections 24A(6), as amended*)
7. The Court of Appeal said our powers to decline to investigate a complaint (or to discontinue an investigation) are wide and that it will be '*clearly right that the Ombudsman must prioritise complaints which appear to him to involve significant injustice as opposed to those which do not*' (*R(Abernathy) v LGO [2002] EWCA Civ 552*)

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8. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

How I considered this complaint

9. I considered Ms G's complaint to us and supporting documents. I also considered the Council's response to my enquiries and the documents described later in this statement. Both parties had a chance to comment on a draft of this statement and I took comments into account.

What I found

Relevant law and guidance

10. Respite care is a service to give a carer time away from caring for an adult with care and support needs. Councils provide respite care for adults with disabilities under the legal framework described in the following paragraphs.
11. A council must carry out an assessment for any adult with an appearance of need for care and support. The assessment must be of the adult's needs and how they impact on their wellbeing and the outcomes they want to achieve. It must also involve the individual and where appropriate their carer or any other person they might want involved. (*Care Act 2014, section 9*)
12. Statutory guidance requires a council to carry out an assessment over a suitable and reasonable timescale considering the urgency of needs and any variation in those needs. Local authorities should tell the individual when their assessment will take place and keep the person informed throughout the assessment. (*Care and Support Statutory Guidance, paragraph 6.29*)
13. The Care Act spells out the duty to meet eligible needs (needs which meet the eligibility criteria). (*Care Act 2014, section 18*)
14. An adult's needs meet the eligibility criteria if they arise from or are related to a physical or mental impairment or illness and as a result the adult cannot achieve two or more of the following outcomes and as a result there is or is likely to be a significant impact on well-being:
- Managing and maintaining nutrition
 - Maintaining personal hygiene
 - Managing toilet needs
 - Being appropriately clothed
 - Making use of the home safely
 - Maintaining a habitable home environment
 - Accessing work, training, education
 - Making use of facilities or services in the community
 - Carrying out caring responsibilities.
- (Care and Support (Eligibility Criteria) Regulations 2014, Regulation 2)*
15. The Care Act explains the different ways a council can meet eligible needs by giving examples of services it may provide including: accommodation in a care

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Ms G and Mr H

33. Mr H has learning disabilities, a visual impairment and poor mobility. He lives with his sister Ms G and her family. Mr H receives a care arranged and funded by the Council including five days a week at a day centre and respite care at Kentish Road until its closure at the end of 2017.
34. A carer's assessment for Ms G in 2017 concluded she had eligible needs as a carer and she received a carer's direct payment of £34 a month. There was no reference to respite care needed to sustain the caring role. There was no carer's support plan.
35. A social worker carried out a review of Mr H in July 2017. This concluded he was eligible for social care services. A care and support plan in September 2017 set out Mr H's care needs and personal outcomes and described the services the Council agreed to fund. It set out a personal budget for Mr H. The plan named Weston Court as a suitable respite service and he had 60 nights of respite care a year.
36. Mr H had a paid advocate, but his social worker, who was new to the case, only became aware of this following the assessment. The records indicate the social worker and advocate visited Mr H and Ms G to discuss his care and support plan in November. During the meeting, Ms G raised some concerns about Weston Court; its location, size, lack of en suite facilities, transport and about whether the opportunities for Mr H to socialise would be similar to Kentish Road.

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37. Ms G and Mr H visited Weston Court before Kentish Road closed and Mr H said he would be happy to go there. The records show he had 35 nights at Weston Court. He continues to go to Weston Court since Kentish Road reopened.
38. The Council told me:
- It had not carried out a timely review of Ms G's carer's assessment
 - Mr H had an independent advocate
 - The care and support plan with the alternative respite care offer was not available until just before the Council made the final decision to close Kentish Road. This created uncertainty;
 - It considered Weston Court was a suitable respite location for Mr H with capacity to provide all the nights agreed;
 - Transition arrangements were lacking; Weston Court did not open until December 2017 (because of a delay in registering it with the Care Quality Commission) meaning there was no opportunity for a taster session;
 - It did not assess and record Mr H's mental capacity to make a decision on where he receives respite care;
 - The Council decided to re-open Kentish Road at the weekends (the period of highest demand) following feedback from carers about how much they valued it and to offer additional choice.
39. The Council has offered to:
- Carry out a review of Ms G's needs as a carer and agree a carer's support plan and personal budget to meet identified needs, including a review of the number of nights of respite care required;
 - Review Mr H's care and support plan, ensuring it seeks an advice from an occupational therapist and other health professionals taking into account Mr H's mobility needs;
 - Appoint an independent advocate for Mr H;
 - Carry out an assessment of Mr H's mental capacity to choose between respite options'
 - To make a payment of £250 to Ms G to reflect her avoidable distress due to the fault identified;
 - To apologise.

Was there fault?

40. The decision to close Kentish Road meant the Council was required, under the Care Act, Mental Capacity Act and Care and Support Statutory Guidance to:
- Review Mr H's care and support plan as there was a change in circumstances;
 - Take reasonable steps to agree any proposals to change services to meet eligible needs, having due regard to Mr H's (and Ms G's) wishes as a starting point;
 - Revise the care and support plan because of a change affecting the plan;
 - Carry out an assessment of Mr H's mental capacity to decide about proposed respite care arrangements. If the outcome was he lacked mental capacity, make decisions about respite care in his best interests;

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- Arrange an advocate if the Council considered Mr H had significant difficulties taking part in the review, but only if there was no suitable person to assist him.
41. The Council carried out a review of Mr H's care and support plan in July 2017. This was in good time before the intended closure of Kentish Road and there is no fault. The revised care and support plan, which was discussed with Ms G and Mr H's advocate shortly before Kentish Road closed, set out Weston Court as the named respite provision. I consider the Council acted in line with Care and Support Statutory Guidance and with the Care Act 2014 and the *Davey* case in paragraph 20 and so there is no fault.
 42. Delays in registering Weston Court meant there was no opportunity for Mr H to have a taster overnight stay before it opened. The Council has already recognised this as a fault.
 43. The Council should have assessed Mr H's mental capacity to make relevant decisions around respite care. It accepts this was a fault.

Ms G

44. The Council accepts it should have reviewed Ms G's carer's assessment. I note Mr H's respite entitlement was in his care and support plan, but the Council should have also completed a carer's support plan for her. The failure to do so is fault.

Did the fault cause injustice?

45. I found no fault in the way the Council dealt with the review of Mr H's care and support plan. Although there was no carer's support plan for Ms G, I do not consider this caused her injustice as the respite entitlement was set out on Mr H's care and support plan.
46. There was some fault in the failure to have in place arrangements for Mr H to transition to Weston Court. The Council accepts this and I consider this caused avoidable uncertainty and distress. The Council has proposed actions and a payment which I consider remedy the injustice.

Agreed action

47. During my investigation, the Council offered to carry out reviews of Mr H's care and support plan and of Ms G's carer's assessment and support plan. The Council also offered to appoint an advocate for Mr H, carry out a mental capacity assessment and apologise for the avoidable distress and uncertainty. The Council will also make the payments described in paragraph 39 in recognition of the injustice caused. These actions are an appropriate remedy for the injustice and the Council should complete them within two months of my final decision

Final decision

48. There was fault in the Council's lack of transition planning for Mr H's future respite care. This caused avoidable uncertainty and distress. To remedy the injustice the Council has agreed to apologise, carry out further reviews and a mental capacity assessment and make a payment to reflect avoidable distress and uncertainty. I have completed my investigation.

Parts of the complaint that I did not investigate

49. I discontinued my investigation of the complaint about the closure of Kentish Road. Shortly after Ms G and others complained to us, the Council issued an internal report which found flaws in the way the Council made the decision to close. An Ombudsman's investigation could add nothing further to the report and actions already taken in response to the report. And, as the service has now reopened, there is no ongoing injustice to those affected by the closure. So it would not be an appropriate use of our resources to continue investigating this complaint as our focus is on complaints where there is significant injustice requiring a remedy.
50. I recognise that some carers would like Kentish Road to be open all the time and not just at weekends. But the Care Act makes it clear that councils can offer a range of services to meet eligible needs and there is no legal requirement for a council to run a specific care provision full-time. So there would be no grounds for me to recommend this.

Investigator's decision on behalf of the Ombudsman

19 February 2019

Complaint reference:
18 005 181

Complaint against:
Southampton City Council

The Ombudsman's final decision

Summary: There was fault in the way the Council made decisions about Mr J's future respite care. This caused avoidable uncertainty and distress. To remedy the injustice the Council has agreed to apologise, carry out further reviews and a mental capacity assessment and make a payment to reflect avoidable distress and uncertainty. This action is an appropriate remedy for the injustice.

The complaint

1. Ms I and other carers complain about Southampton City Council's (the Council's) offer of respite care following the closure of Kentish Road, a care home providing respite care for adults with learning disabilities. They say the proposed alternatives were unsuitable.
2. They also complain about the decision-making which led to Kentish Road's closure.
3. Ms I wants Kentish Road to re-open and a payment to reflect her losses.

What I have investigated

4. I have investigated the first complaint. My reasons for stopping investigating the second complaint are at the end of this statement.

The Ombudsman's role and powers

5. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
6. We have the power to start or discontinue an investigation into a complaint within our jurisdiction. (*Local Government Act 1974, sections 24A(6), as amended*)
7. The Court of Appeal said our powers to decline to investigate a complaint (or to discontinue an investigation) are wide and that it will be '*clearly right that the Ombudsman must prioritise complaints which appear to him to involve significant injustice as opposed to those which do not*' (*R(Abernathy) v LGO [2002] EWCA Civ 552*)

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8. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

How I considered this complaint

9. I considered the complaint, the Council's response to my enquiries and documents described later in this statement. Both parties saw a draft of this statement and I took comments into account.

What I found

Relevant law and guidance

10. Respite care is a service to give a carer time away from caring for an adult with care and support needs. Councils provide respite care for adults with disabilities under the legal framework described in the following paragraphs.
11. A council must carry out an assessment for any adult with an appearance of need for care and support. The assessment must be of the adult's needs and how they impact on their wellbeing and the outcomes they want to achieve. It must also involve the individual and where appropriate their carer or any other person they might want involved. (*Care Act 2014, section 9*)
12. Statutory guidance requires a council to carry out an assessment over a suitable and reasonable timescale considering the urgency of needs and any variation in those needs. Local authorities should tell the individual when their assessment will take place and keep the person informed throughout the assessment. (*Care and Support Statutory Guidance, paragraph 6.29*)
13. The Care Act spells out the duty to meet eligible needs (needs which meet the eligibility criteria). (*Care Act 2014, section 18*)
14. An adult's needs meet the eligibility criteria if they arise from or are related to a physical or mental impairment or illness and as a result the adult cannot achieve two or more of the following outcomes and as a result there is or is likely to be a significant impact on well-being:
 - Managing and maintaining nutrition
 - Maintaining personal hygiene
 - Managing toilet needs
 - Being appropriately clothed
 - Making use of the home safely
 - Maintaining a habitable home environment
 - Accessing work, training, education
 - Making use of facilities or services in the community
 - Carrying out caring responsibilities.

(*Care and Support (Eligibility Criteria) Regulations 2014, Regulation 2*)
15. The Care Act explains the different ways a council can meet eligible needs by giving examples of services it may provide including: accommodation in a care home, care and support at home (such as outreach support), counselling and social work and information advice and advocacy. (*Care Act 2014, section 8*)

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16. If a council decides a person is eligible for care, it should prepare a care and support plan which specifies the needs identified in the assessment, says whether and to what extent the needs meet the eligibility criteria and specifies the needs the council is going to meet and how this will be done. It should set out the cost of care in a personal budget. The council should give a copy of the care and support plan to the person. (*Care Act 2014, sections 24 and 25*)
 17. Statutory Guidance explains a council should review a care and support plan at least every year, upon request or in response to a change in circumstances. (*Care and Support Statutory Guidance, Paragraph 13.32*)
 18. A council should revise a care and support plan where circumstances have changed in a way that affects the care and support plan. Where there is a proposal to change how to meet eligible needs, a council should take all reasonable steps to reach agreement with the adult concerned about how to meet those needs. (*Care Act 2014, sections 27(4) and (5)*)
 19. Statutory guidance is silent about timescales for the completion of care and support plans and/or reviews of the same. In the absence of a legal timescale, we expect a council to act in a timely manner and to provide a copy of a care plan or review within a reasonable timescale after completing it.
 20. The High Court said an individual's wishes are not the same as their needs and wishes are not the paramount consideration. A council has to have 'due regard' to an adult's wishes as a starting point, but social workers are entitled to exercise their professional skills and judgement in deciding how to meet eligible needs. (*R (Davey) v Oxfordshire County Council [2017] EWHC 354 (Admin)*)
 21. A council must carry out a carer's assessment where it appears a carer may have needs for support. The assessment must include an assessment of the carer's ability and willingness to continue in the caring role, the outcomes the carer wishes to achieve in daily life and whether support could contribute to achieving those outcomes (*Care Act 2014, section 10*)
 22. The Act makes clear that the local authority is able to meet the carer's needs by providing a service directly to the adult needing care. The carer must still receive a support plan which covers their needs, and how they will be met. (*Care and Support Statutory Guidance 2014*)
 23. When carrying out needs assessments and preparing and revising care and support plans, councils should arrange an independent advocate for a person who has substantial difficulty in understanding, retaining, weighing up information and communicating their wishes and feelings. There is no need for an advocate if the council is satisfied there is an appropriate person (who must not be a paid carer) who could support the person's involvement. (*Care Act 2014, section 67*)
 24. The legal framework for adults who lack mental capacity to make decisions is in the Mental Capacity Act 2005. If a professional considers a person lacks mental capacity to decide on their care arrangements, then the professional should carry out or arrange for an assessment of the person's capacity. If that assessment concludes the person lacks mental capacity to decide on their care or living arrangements, then the decision-maker should involve relatives and other professionals before making a decision in the person's best interests. If agreement cannot be reached about a person's best interests, then the Court of Protection can make welfare orders.

What happened

Background

25. Kentish Road is a council-run residential care home providing respite care for up to eight adults with learning disabilities. Consultation about a proposal to close it started in 2014, with a decision to close taken in 2015. The decision was unpopular with carers and the subject of local media interest and a campaign.
26. Papers for a meeting of the Council's overview and scrutiny committee in September 2017 indicate the Council expected to save £300,000 a year from the closure and provision of alternative respite care.
27. In October 2017, the Council wrote to all carers explaining Kentish Road was staying open until the end of November, pending further consideration by members. Members elected to close the unit and this happened at the beginning of December.
28. Weston Court is a three-bed respite service for adults with learning disabilities. The Council commissioned it for respite care when Kentish Road closed. Weston Court is managed by an independent care provider. It has one member of staff during the day and a sleep-in support worker at night. Waking night support and one to one support are available when required. The respite service is part of a larger care home with shared facilities including a laundry, garden and lounges. The Council offered Weston Court as one of several options for respite to those who have complained to us. Other possibilities for respite care included:
 - Shared Lives which is housing and support provided in the family homes of trained and experienced carers;
 - U care home which is an established respite unit. Unfortunately, U care home did not have enough places to accept all of the people who had been using Kentish Road for respite and it was not suitable for many of the Kentish Road clients;
 - Direct payments and outreach support.
29. The Council declined to investigate any complaints about the closure of Kentish Road and so eight carers complained to us. Soon after we received the complaint, the Council decided to re-open Kentish Road. The Council had also commissioned an independent review of the closure by the time the complainants came to us. The report of that review came out shortly after the complaint to us. The complainants asked us to continue with our investigation.
30. The independent review was an internal report for senior officers and members to learn lessons and improve practice for future service change and was not for sharing with members of the public. It concluded:
 - At the time of the original decision in 2015, people did not have up to date care and support plans and annual reviews had not taken place. And, there were no assessments of the mental capacity of clients to make decisions around their care and support. Transition planning was delayed or limited because carers rejected alternative provision;
 - Delays in completing needs assessments meant there was no information available to commissioners to identify and procure suitable alternative provision and this prevented a strategic approach to commissioning;

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- Consultation on the original decision was not specific enough, did not identify a range of alternatives and there may have been an element of predetermination;
 - Communication with disabled people and their carers was poor. The lack of engagement caused distress. There was real concern from carers about there being no (or at least not enough) alternative provision in Southampton, other than one unit.
31. The Council's position is:
- While the subsequent decision in 2017 remedied many of the process flaws identified in the earlier decision, the report recommended changes to similar projects in future, to avoid the risk of recurrence. It accepts the report's findings and has outlined a skeleton action plan. Some changes have already been implemented;
 - It decided to reopen Kentish Road due to feedback from carers about its value and to offer additional choice. It considered there was more than enough respite care for those who needed it (in fact, there would be an oversupply) The Council intended to run Kentish Road at weekends and it reopened at the beginning of July 2018;
 - It accepted the decision to close Kentish Road created uncertainty for carers and adults.
32. I asked the Council how it intended to allocate respite at Kentish Road as there would likely be a high demand for the service at first. The Council said it would prioritise carers who had not received any respite since the closure. For those who had received respite care at other centres, it was considering individually whether it was in their best interests to move back to Kentish Road.

Ms I and Mr J

33. Ms I is the carer for her two children, both of whom have learning disabilities. One, Mr J, is an adult, who cannot speak and communicates with sign language and pictures. Mr J has eligible needs and has a care and support plan which includes day care, a college placement (now ended), a direct payment for outreach support to access the community. The care and support plan also included council-arranged respite care, which was at Kentish Road until it closed.
34. The most recent carer's assessment for Ms I was in August 2015. It said she would like more respite for Mr J so she could care for her other child. She was eligible for support as a carer, as she could not carry out other caring responsibilities. There was no carer's support plan for Ms I.
35. Emails from Mr J's social worker to Ms I in summer 2017 said U care home (a home offering overnight respite care) was not an option for Mr J as it was reserved for people with physical disabilities. The social worker told Ms I there was no entitlement to a fixed number of respite nights; people were assessed and allocated respite depending on their needs and circumstances.
36. There was a review of Mr J's care and support plan in September. Mr J knew a review was taking place but he did not want to take part. The review noted:
- Mr J had been to an alternative respite unit (Y care home) for a trial. Staff felt they could not meet his needs;

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- Ms I did not want Mr J to go to Weston Court. She felt the social element at Kentish Road was hugely important for Mr J. Weston Court was a smaller unit and so she was worried there would be no opportunities for Mr J to socialise;
 - Mr J had 19 respite nights, Ms I wanted him to have 24 a year so he could go once a fortnight for one night. She wanted any new respite provision to foster his independence;
 - Ms I would benefit from Mr J's outreach support being reduced and his respite being increased to 24 nights a year.
37. A draft care and support plan in September described one of Mr J's personal outcomes as '*to find alternative respite provision which provides social opportunities.*' The services provided by the Council included 19 respite nights a year. The yearly allowance of respite nights was to be reviewed.
38. A further care and support plan in November said the intention was to decrease Mr J's outreach support and increase his respite. The plan noted the social worker considered Weston Court could meet Mr J's care and support needs and that Mr J could attend at the same time as his friends. (However, Ms I told me the care manager never told her Weston Court was suitable for Mr J). The plan also noted Ms I's concern that Mr J would be socially isolated. The respite services provided by the Council were still 19 nights a year.
39. There was a further review of Mr J's care and support plan in February 2018. The social worker noted '*it was recognised when I first worked with Mr J that his 19-night respite allocation should be increased to allow for more regular breaks (twice a month) but we agreed that until a new respite provision is found, there is little value in increasing nights.*' Managers at a funding panel had agreed Ms I could convert each residential respite night into 15 hours of outreach support as a temporary solution instead of accessing overnight respite care.
40. In January 2018, the social worker and Ms I met. Ms I was disappointed the Council had confirmed the decision to close Kentish Road and felt there was no option other than Weston Court.
41. In February, the social worker confirmed Mr J's respite nights could be converted into 15 hours of outreach support per night. The Council told me Ms I used a direct payment to arrange outreach support.
42. In June, the social worker emailed Ms I saying Kentish Road was reopening and Mr J was entitled to 13 nights over the next 6 months.
43. The records noted the social worker's view that Mr J lacked mental capacity to consent to respite care. The social worker recorded:
- He did not communicate with her other than to sign 'hello';
 - His autism limited him from taking part in discussions about his care;
 - He could only communicate his immediate needs in simple sign language;
 - He could not communicate whether or not he understood what respite care was.
44. The Council's position is:
- It accepted it did not review the carer's assessment of August 2015 and offered to do so in July 2018, but Ms I refused. (Ms I told me she has changed her mind and will take part in a carer's assessment);

- Weston Court was a different service from Kentish Road, but it gave opportunities to promote independence, including the use of a large kitchen and the chance to engage with other tenants of the supported living scheme;
- It offered Ms I a further option – to convert the nights of respite care into outreach support hours – this gave Ms I 390 extra hours of support a year or 7.5 hours a week. Ms I had used this to fund a support worker;
- There should have been a formal assessment of Mr J’s mental capacity around respite care;
- Mr J should have had an independent advocate to ensure his involvement in the needs assessment and care and support planning;
- It decided to reopen Kentish Road due to feedback from carers about its value and to offer additional choice. Mr J was booked in for respite care there for 12 nights up to the end of 2018;
- It accepted the decision to close Kentish Road created uncertainty for carers and clients;
- There was a delay sending final versions of the care and support plan to Ms I;
- There was no chance for Mr J to have an overnight stay at Weston Court as a transition because it did not open until December 2017;
- In the period between Kentish Road closing and the Council deciding Ms I could convert her respite nights in to outreach support hours, no arrangements were in place for respite and this was equivalent to 6.5 nights of respite that she did not receive.

45. During this investigation, the Council offered to apologise and:

- Carry out a full review of Ms I’s needs as a carer, review the number of nights of respite needed to enable her to maintain her wellbeing and support her other child and confirm the outcome promptly;
- Review Mr J’s care and support plan and confirm the outcome promptly;
- Carry out a mental capacity assessment for Mr I regarding respite care and appoint an advocate to help him take part in assessments and decisions about his care and support;
- Pay Ms I £1125 representing the 6 nights of respite care she should have had and did not take as outreach support, plus £500 for her avoidable time and trouble in complaining.

Was there fault?

46. The decision to close Kentish Road meant the Council was required, under the Care Act, Mental Capacity Act and Care and Support Statutory Guidance to:

- Review Mr J’s care and support plan as there was a change in circumstances;
- Take reasonable steps to agree any proposals to change services to meet eligible needs, having due regard to Ms I’s (and Ms J’s) wishes as a starting point;
- Revise the care and support plan because of a change affecting the plan;
- Carry out an assessment of Mr J’s mental capacity to decide about proposed respite care arrangements. If the outcome was he lacked mental capacity, make decisions about respite care in his best interests;

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- Arrange an advocate if the Council considered Mr J had significant difficulties taking part in the review, but only if there was no suitable person to assist him.
47. The Council carried out a review of Mr J's care and support plan in September 2017. This was in good time before the intended closure of Kentish Road and there is no fault. The revised care and support plan, which was discussed with Ms I and Mr J shortly before Kentish Road closed, set out Weston Court as the named respite provision. I consider the Council acted in line with Care and Support Statutory Guidance and with the Care Act 2014 and the *Davey* case in paragraph 20 and so there is no fault. The Council attempted to address concerns about socialising at Weston Court by suggesting Mr J's friends could attend at the same time. I consider the Council had due regard to Ms I and Mr J's wishes, although agreement could not be reached on Weston Court. In addition, the Council acted flexibly and without fault by agreeing the overnight respite entitlement could be converted into outreach hours instead. This meant that Ms I benefitted from most of Mr J's respite entitlement pro-rata, during the period Kentish Road was closed.
 48. Delays in registering Weston Court meant there was no opportunity for Mr J to have a taster overnight stay before it opened. The Council has already recognised this as a fault.
 49. The Council was required to appoint an advocate for Mr J, who has significant communication difficulties, if it did not consider there was a suitable person to represent his views. Ms I was an appropriate person to represent Mr J and so I do not regard the failure to involve an advocate to be fault. I recognise the Council has offered an advocate in any event.
 50. The Council has carried out an assessment of Mr J's capacity to make decisions about respite care. This is in line with the Mental Capacity Act, but the Council should have completed it before the changes to his care plan were agreed. So it was too late and this is fault.

Ms I

51. The Council accepts it should have reviewed the number of respite nights Ms I could have, in particular because she asked for more. The Council accepts there should have been a review of the carer's assessment, although I note Ms I has recently declined a further assessment. I note Mr J's respite entitlement was in his care and support plan, but the Council should also have completed a carer's support plan for Ms I. the failure to do so is fault.

Did the fault cause injustice?

52. I found no fault in the way the Council dealt with the review of Mr I's care and support plan. Although there was no carer's support plan for Ms J, I do not consider this caused her injustice as the respite entitlement was set out in Mr J's care and support plan.
53. There was some fault in the failure to have in place arrangements for Mr J to transition to Weston Court. The Council accepts this and I consider this caused avoidable uncertainty and distress. The assessment of Mr J's mental capacity was too late. The Council has proposed actions and a payment which I consider remedy the injustice.

Agreed action

54. During my investigation, the Council offered to carry out reviews of Mr J's care and support plan and of Ms I's carer's assessment. The Council also offered to appoint an advocate for Mr J, carry out a mental capacity assessment and apologise for the avoidable distress and uncertainty. The Council will also make the payments described in paragraph 45 in recognition of the injustice caused. These actions are an appropriate remedy for the injustice and the Council should complete them within two months of my final decision

Final decision

55. There was fault in the way the Council made decisions about Mr J's future respite care. This caused avoidable uncertainty and distress. To remedy the injustice the Council has agreed to apologise, carry out further reviews and a mental capacity assessment and make a payment to reflect avoidable distress and uncertainty. This action is an appropriate remedy for the injustice and I have completed my investigation.

Parts of the complaint that I did not investigate

56. I discontinued my investigation of the complaint about the closure of Kentish Road. Shortly after Ms I and others complained to us, the Council issued an internal report which found flaws in the way the Council made the decision to close. An Ombudsman's investigation could add nothing further to the report and actions already taken in response to the report. And, as the service has now reopened, there is no ongoing injustice to those affected by the closure. So it would not be an appropriate use of our resources to continue investigating this complaint as our focus is on complaints where there is significant injustice requiring a remedy.
57. I recognise that some carers would like Kentish Road to be open all the time and not just at weekends. But the Care Act makes it clear that councils can offer a range of services to meet eligible needs and there is no legal requirement for a council to run a specific care provision full-time. So there would be no grounds for me to recommend this.

Investigator's decision on behalf of the Ombudsman

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Kentish Road Independent Review Oversight Board Terms of Reference

Purpose

To ensure the accepted recommendations arising from the independent review of the Kentish road closure are implemented within an agreed timescale.

Aims and Objectives

- To task lead officers to develop actions plans for each accepted recommendation
- To monitor the action plans to ensure they are delivered to agreed timescale
- To provide assurance to the chief executive and the director of quality and assurance that the lessons learnt from the review are addressed within action plans or as part of other work areas.
- To address any obstacles to the actions required, including resource issues, and to escalate as appropriate.

Membership	
Director of Adult Social Services (Chair)	
Service Director – Adults, Housing and Communities	
Service Director – Quality and Integration	
Service Director – Human Resources and Organisational Development	
Principal Social Worker & Service Lead Adult Social Care Improvement	
Service Lead – Programme Management	
Senior Solicitor	
Finance Business Partner	
Communication Manager	

Reports to

- Chief Executive and Director of Quality and integration
- Specific issues may need to be referred to other forums as appropriate – this will be identified and agreed with the Chief Executive and Director of Quality and Integration.

Roles and Responsibilities

- To receive reports on the following areas detailing progress against action plan, risk and issues:
 - Project management
 - Adult social care development plan
 - Commissioning
 - Kentish Road respite service
- To agree the actions proposed will address the issues identified in the report
- To ensure actions proposed are in keeping with legislative requirements, council policies and procedures and reflect good quality
- To ensure that all action plans and relating work programmes are delivered within agreed timescales
- To monitor the results of actions undertaken and ensure there is evidence of implementation, impact and sustainability
- To identify any blocks or barriers and agreed actions to address these
- To identify any resource issues and escalate these appropriately
- To monitor risks in implementing the action plans, develop mitigating actions and refer to the corporate risk register as necessary
- To identify any additional issues to be addressed and to ensure these are referred to appropriate forums/managers for action
- To provide updates to the Chief Executive and Director of Quality and Integration

Frequency of meetings

- Monthly for 6 months, commencing September 2018
- To be reviewed at meeting in December 2018

Report of the Independent Review of Kentish Road Respite Centre closure

Review by Susan Allan Consultancy Ltd

Name of reviewer: Susan Allan B.A. M.Sc CQSW

RECEIVED BY THE COUNCIL ON 4/6/2018.

Susan Allan Consultancy Ltd



Report of the independent review of Kentish Road Respite Centre closure

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Section 1A: Executive summary

Introduction

1. This is the report of the investigation into the events and circumstances leading to the closure of the Kentish Road respite service provision, which provided respite care for adults with learning disabilities, for many years until its closure in November 2017. The period of the review is from the period leading to the Cabinet decision, in July 2014, to authorise a period of consultation regarding proposals to re-provide and redesign three separate care services for vulnerable adults, including Kentish Road, until its closure.
2. The report details shortcomings in processes and governance that led to delays, distress to service users and carers and adverse media attention. These shortcomings were sustained for a period of nearly three years, the time it took to implement the decision to close the provision. The shortcomings relate to:
 - (i) adherence to SCC's governance procedures;
 - (ii) compliance with legislation;
 - (iii) quality and timeliness of assessment and planning processes;
 - (iv) engagement and consultation with stakeholders;
 - (v) the structure and capacity of the organisation to implement the decision; commissioning processes;
 - (vi) the implications of a serious incident;
 - (vii) the impact of the threat of judicial review and the impact of campaigning against the decision by some of the carers of the service users at Kentish Road.
3. This investigation and report was commissioned by the Director of Adult Social Services. Cabinet had decided that there should be a review of the processes that had been followed after the final decision was made to close the centre in November 2017.
4. The terms of reference set out that the report should address a number of issues that had already been identified and should make recommendations that support any 'lessons learnt', reflect the underlying causes of the issues raised, and offer guidance on how similar projects should be managed in the future.

Decision-making and governance

5. The decision, in 2014, to review some provider services which were run by the Council from its own buildings was based on a dual rationale:
 - (i) The need to offer a more personalised service with increased choice and greater take up of direct payments.
 - (ii) The need to reduce the cost of provision and make savings at a time of significant financial austerity.
6. These two aspects were included in all the reports which went to Cabinet and to Overview and Scrutiny Management Committee (OSMC). Both have validity. However, when the decision was taken in January 2015 to close the respite care provision by April 2015, the needs of service users had not been assessed. There had been no scoping, market appraisal or commissioning of additional places, and no matching of individual needs to available provision. It was known that the alternatives for individuals with higher needs,

traditionally met by the Council's own service, were insufficient to meet the demand after closure. The timescale for implementation, of less than three months after the decision was confirmed following OSMC's 'call-in' in January 2015, was therefore unrealistic and unattainable.

7. The implementation of the decision to close the respite provision at Kentish Road was characterized by a lack of adherence to the Council's governance arrangements. There were at least five Cabinet decisions that were not complied with, or only partially complied with and/or timescales were not met by officers implementing the project. In addition, two progress reports had been required by Cabinet but these were not provided by officers.
8. Cabinet was misled, albeit unintentionally, on 15.9.15 about the purpose and scope of the review of replacement care, which started in October 2015. This review had been the reason given for delaying the closure date. It was strategic and its scope did not include the specific alternative provision to Kentish road as the report implied.
9. Cabinet was not kept informed of the changing business case regarding the savings to be accrued from the closure of Kentish road. It was not until OSMC in September 2017 that the financial modelling was reworked and reported to Cabinet in November 2017, some thirty-five months after the first estimates had been reported to Cabinet. An analysis of the changing business case is the subject of a separate report being undertaken internally by SCC.
10. Throughout the period of the review OSMC asked pertinent and challenging questions and persisted in its attempt to monitor the quality and timeliness of implementation. However, I was told that responses to questions often came in late, on the date of the next meeting and often did not fully address the matter in hand, or give sufficient detail to provide a basis for OSMC to make judgments. On occasions, reports to OSMC contained misleading information or omitted relevant information.
11. A significant failure in governance related to the Service Director's delegated responsibilities, arose from a letter sent in his name in April 2017, to the carers of service users at Kentish Road, giving six month's notice of closure. The letter breached the legitimate expectation that the matter would return to Cabinet. It should not have been sent before: Cabinet endorsement; the completion of assessments and care plans, and the completion of procurement arrangements regarding new alternative provision.

Assessments, care plans and transition plans and issues of compliance with legislation

12. I was told that, at the time that the decision was made to close the provision at Kentish Road, the annual reviews of assessments of individual needs were not up-to-date and care plans were generally not being used. The Care Act 2014, which should have been implemented with effect from April 2015, imposed more challenging requirements with regard to care and support assessments, plans and reviews for both service users and carers. The issue of assessments and care and support plans became a major issue for the entire period covered by this review.
13. A report to the meeting of Cabinet on 20.1.15 stated that there would be a team of four experienced social workers and a senior practitioner engaged on the task of assessments and care and support plans. However, this group was solely engaged in assessing the needs

of the day care service users and did not ever move on to the Kentish Road service users. I was told that Kentish Road assessments at this stage had been “put on the back burner.”

14. The care and support assessments and care plans were allocated to one newly qualified social worker (NQS) in December 2016, and to another the following April. They lacked both experience and training in undertaking assessments and plans and the task became more challenging following the implementation of the Care Act 2014. The team manager described the context of significant service pressures involving high risk situations, which explained why it was expedient for her to allocate the assessments to the two NQS's. However this judgment indicated a lack of senior management overview encompassing Cabinet expectations, savings commitments and the possible consequences in terms of risk of judicial review and adverse media attention, if the process was not completed in a timely and legally compliant way.
15. The continuing delay in producing Care Act compliant assessments and care and support plans for the Kentish Road service users and their families was documented in email correspondence from Legal Services. It became unavoidably apparent to senior managers in August 2017, when notification of a proposed claim for judicial review was received. A Task Group was convened and chaired by the previous Chief Executive to address the deficits in practice, legal compliance and commissioning practice arising from this. Following her intervention it was possible to offer reassurance to Cabinet on 14.11.17 that “assessments of the individual social care needs have been completed under the Care Act 2014,” two and a half years after the implementation of the new Care Act.
16. A further aspect of non-compliance with the Care Act 2014 was the way in which the funding panel linked agreement to expenditure on care packages to the assessment rather than to the care and support plan. I was given conflicting advice about whether this practice, which is illegal under the Act, is still current.
17. This review has identified a significant issue relating to a lack of consideration given to the provisions of the Mental Capacity Act 2005 in the undertaking of assessments and care plans. This includes the failure to provide evidence that assessment of capacity had been undertaken at two stages of the care assessment process: firstly, evidencing assessing capacity to undertake an assessment and secondly, reassessing and undertaking the formal measures required by the Court of Protection associated with deprivation of liberty at the point when a plan is made, and before a person moves into residential care. It is of concern that practitioners and managers, who were trained in the provisions of the Mental Capacity Act 2005, argued, without foundation, that the provisions did not apply to respite care.
18. The failure to take account of the provisions of the Mental Capacity Act 2005 led practitioners and managers to be slow to recognize when conflicts of interests between service users and their carers arose, when issues of lack of capacity were present, and when advocates should be appointed. No new advocates were appointed to support the assessment process at the time that carers were rejecting respite services on behalf of service users and no cases were referred to the Court of Protection.
19. Transition planning was delayed or limited for many of the Kentish road service users due to the delays in securing alternative provision for them or to lack of agreement with carers about its suitability. Those who transferred provision early in the process, or into Shared Lives or Rose Road, had transition plans agreed with the provider services. A further 24,

who were waiting for Weston Court, after the closure of Kentish Road, had to wait two months or more to transition to the new service and so lacked continuity in their transition planning.

Other issues of compliance with legislation

20. The decision to close the replacement care provision at Kentish Road was enabled by, and supported national policy imperatives reflected in the legislation listed in Appendix 5. There were significant breaches in compliance with three pieces of legislation. Two of these, the Care Act 2014 the Mental Capacity Act 2005 have been referred to above. The third is the Equality Act 2010. The letter outlining the case for judicial review set out eight grounds of non-compliance with legislation, including illegal actions or omissions, which included breaches of the Equality Act 2010. The letter also cited breaches to Articles 8 and 14 of European Convention of Human rights to respect privacy for private and family life and to prohibit discrimination on any ground.

Engagement and consultation with stakeholders

21. The duty to consult derives from public law and case law and enshrines good practice when local government proposals have an impact upon local communities or particular groups within them. The decision to consult on the proposal to close the respite provision at Kentish Road and to re-provide the service in other ways took account of: The Gunning Principles (1985); The Local Government and Public Involvement in Health Act 2007; The Cabinet Office Principles (July 2012); The Equality Act 2010 (the Act and The Care Act 2012 (and regulations)).
22. There were two consultation exercises undertaken during the period of this review. However, neither was solely focused on the closure of the Kentish Road provision or on a range of identified alternatives. There was no attempt to engage or consult specifically in relation to the plans for replacing the Kentish Road respite provision after the initial consultation, which was in July 2014, prior to the decision to close the service. This represents a lost opportunity to use the views, experiences and ideas of those who were affected to influence the design of the re-provided service. It was also contrary to legislation and guidance. It may be the case that, had there been continuing attempts to consult with service users, families and stakeholders and to develop methods of co-production in order to steer the re-provision of the service, this may have pre-empted the complaints, campaigning and negative publicity that characterised the latter stages of the process.
23. The proposed consultation, even before being undertaken, was linked to a commitment to making savings derived from closure, as set out in the first Cabinet report of July 2014. Doubts have been raised to me during the course of the interviews for this review as to whether the consultation of July 2014 was meaningful, or that the responses considered with an open mind and taken into account in the recommendations to Cabinet. Interviewees perceived that the commitment to make savings pre-determined the outcome of the consultation, which was to proceed with service closure.
24. A further consultation was undertaken as part of a wider review of replacement care for adults from January to April 2016. This was a strategic review, which identified the need to consider how replacement care services could be provided in a fair and equitable way for all age groups and all client groups. The scope of the review did not include the identification of alternative respite care for the service users at Kentish Road. The findings

of the review were incorporated into other work streams such as the Adult Social Care Policy. They were not, however, presented to Cabinet, in line with the prior decision on 15.9.15 for a report by 31.3.16, although the review was mentioned in a later Cabinet report on 14.11.17. My view is that the findings of the review, if presented in a report to Cabinet, would not have served the purpose it intended.

25. There was no further formal consultation in relation to Kentish Road Attempts to engage with service users, families and stakeholders thereafter were sporadic and reactive. I conclude, therefore that the clarity and scope of the consultation exercises did not represent meaningful engagement, consistent with the statutory requirements.

The structure, organization and capacity to deliver the project

26. This was a complex project, requiring close management and oversight of a number of parallel streams of activity:
- Adherence to due process and governance arrangements.
 - Ensuring timeliness and quality of care assessment and planning, compliant with the Care Act 2014 and Mental Capacity Act 2005.
 - Commissioning arrangements including engagement and consultation.
 - Ongoing financial modelling.
 - Management of communications and the media.
 - The management of service quality issues and staffing issues at Kentish Road.
27. After an initial period of project management to oversee the first consultation in July 2014, the implementation of the project to close the provision at Kentish Road was treated as 'business as usual' and there was no dedicated project management resource allocated to it. This continued throughout the period 2015 -2017. In my view, this is the primary reason that the project consistently failed to meet deadlines and to coordinate work streams.
28. The lack of project management led to poor integration between the operational, financial, commissioning and governance strands. There were no clear lines of accountability for overall implementation of the project below Director level. The 'business as usual' approach failed as delay became entrenched in every aspect of the project delivery and the lack of coordination resulted in missed deadlines relating to Cabinet decisions.
29. Management responsibility and accountability was located with the Directors, initially the Director of People and latterly the Service Director, Adults, Housing and Communities. During the period covered by this review there were four Directors, including two interims. Rapid changes at this level impeded the continuity of implementation. Successive interims would have taken time to understand the complexity of the project, with its flawed timescales and financial projections. They may have been reluctant to lead a radical reconsideration of the feasibility of the delivery of the project at any stage.
30. The delivery of the project was the responsibility of heads of service, service managers and team managers across adult social care. None of them had responsibility for the totality of the project and its work streams. A siloed approach was particularly evident between the operational, provider and commissioning parts of the service. There was nobody coordinating their efforts below Director level.
31. There was poor internal and external communication throughout the period of this review,

including:

- Between senior and middle managers.
 - Between officers and elected Members, including within the formal governance process.
 - Between the Council and service users and their carers in relation to information giving, updates, consultation and engagement in the choice and design of the required re-provision.
32. A remodelling of responsibilities meant that the senior management of the operational teams did not have experience or expertise in adult social care; this was particularly pertinent to the oversight of the care and support assessment and planning processes for the social workers undertaking assessments. The senior managers did not have the technical expertise to oversee the issues of legal compliance in relation to assessments and no direct experience of the challenges of work in adult social care. The accountability for social work decision-making was inappropriately located with a team manager, with no senior officer qualified or experienced to challenge or professionally support her decisions.
33. There were deficits in the resources available to support implementation of the project, which could not have been entirely overcome by robust project management alone. In addition to a lack of a project manager, these resource deficits included: social work capacity; technical support to update PARIS; staffing capacity with regards to engagement and consultation; timely training in the relevant legal requirements; professional social work challenge, guidance and management oversight; oversight and support for financial modelling; Communications support to liaise with external stakeholders.

Commissioning

34. The review identified a number of issues relating to the commissioning and procurement processes. Most significantly, there was no strategic commissioning approach taken, that is a cyclical process that incorporates review of needs and best practice, consultation, market review, planning and procurement.
35. There was a lack of clarity between the operational and commissioning sides of the service. The ICU had the expertise to lead the re-provision of the Kentish Road service but was not given any delegated responsibility by the operational side of the service beyond requests for help with specific tasks.
36. The commissioning process was based upon broad banding categories of need rather than on personalized analysis of need. This is poor practice as it does not take account of personalised needs of individuals.
37. There was a lack of alignment between the assessment and commissioning processes. The delays in completing assessments of need for the Kentish Road service users in turn delayed the information available from the assessments that were required to guide commissioners in the identification and procurement of suitable alternative respite provision. The focus on assessing and supporting transition to the new day care service model further delayed consideration of respite needs, even though these could, in many cases, have been considered as part of one holistic assessment.

The implications of [REDACTED] and staffing issues

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40. These matters served to compound existing known challenges to the service standards at Kentish Road. The two previous Care Quality Commission (CQC) inspections in October 2015 and November 2016 had given an overall rating of “requires improvement” and issues were raised about the effectiveness of the service and its leadership.
41. The senior manager was managing a complex set of circumstances, including staffing shortages, in the final year that the centre was open. Taken together, these issues resulted in the need to reduce the service from September 2017 and it was suspended between the 3rd and 6th November 2017. The reducing service limited the choices for Cabinet in its meeting of 14.11.17 as the report from the Service Director of Adults, Housing and Communities advised that if the decision was made to keep the current service open after 30.11.17 it would have to close for a short period for the recruitment and training of new and locum staff.

The impact of the threat of Judicial Review

42. The Council received notification of a proposed claim for judicial review on 18.8.17 and this was followed by a letter before action dated 30.8.17. The challenges set out in the ‘letter before claim’ related: to the letter of 27.4.17, sent to carers, in which they were informed the service would close on 31.10.17; the ongoing decision-making process; the ongoing implementation of the decision; and ongoing failures by the Council to comply with its duty towards the client. The pre-action protocol letter dated 30.8.17, set out eight alleged illegal actions or omissions.
43. Legal Counsel was sought in the matter and the advice received was that unless remedial action was taken the proposed claimant would “have a good prospect of persuading a court that the decision-making process has been unlawful.” However, if evidence of such remedial action could be provided “the grounds raised by the proposed claimant are likely to fall away.”
44. Counsel’s advice was that there did need to be a further Cabinet decision to confirm the timing of the closure. The evidence that Cabinet would need to see concerned the completion of assessments, the availability and offer of suitable alternative provision, a business case that showed that the cost of the new provision was less than keeping Kentish Road open and an updated equality and safety impact assessment (ESIA).
45. There followed a period of intense activity to ensure that Counsel’s advice was followed and the required evidence that was produced. The activity was overseen by a task group that

was convened by the previous Chief Executive and involved senior officers.

46. Staff were instructed by the task group to review and edit the remaining 30 service users' care and support assessments and care plans within two weeks, to ensure their adherence to the Care Act 2014.
47. The matter was programmed at OSMC on 14.9.17, at full Council on 20.9.17 and at Cabinet on 14.11.17. An ESIA was prepared and formed part of the papers available to Cabinet.
48. A further impact of the notification of proposed judicial review was that it led to a broadening of the base of the dissent and campaigning against the closure, which extended beyond "two or three individuals" to a wider group of carers. The increasing anger and resentment of carers led them to become less cooperative with social workers and many refused to accept offers of alternative provision.
49. The impact of the letter before action in relation to judicial review was a turning point in the understanding of senior managers about how far off-track the arrangements to safely close the unit were, resulting in the concerted programme of activities personally led by the previous Chief Executive to remedy the deficits outlined in the letter.

The service user experience and impact of the media

50. I have not explicitly sought the views of service users and carers in undertaking this review as this was outside the scope of the review. However the distress caused by the initial decision to close the service and by the subsequent delays in the implementation and lack of engagement has been clear from scrutiny of the documents and media and from interviews with officers.
51. Carers expressed concerns during the first public consultation regarding the future of respite services at Kentish Road in July 2014. These included: potential loss of friendships; that transport may not be provided; the impact of change upon service users; the perceived need to increase the capacity of services and the belief that equivalent respite provision did not exist in Southampton. There was dissatisfaction expressed that the Council had not been clear about the alternatives that would be provided and had not provided sufficient information to allow those who would be affected by any change to make informed decisions.
52. There was validity to some of the concerns expressed about the limited availability of alternative provision. At the time, there was no other equivalent alternative respite provision to Kentish Road, other than at Rose Road and there had been no attempt to stimulate market alternatives or steps taken towards the commissioning of new provision. Some service users had already had their provision changed from Rose Road to Kentish Road, as part of a previous savings exercise, and were later to return to Rose Road following the closure of Kentish Road.
53. The time gap between the original Cabinet decision in December 2014 and implementation was a period of nearly three years during which there was little contact with families except for assessment purposes. There was limited engagement with them in the final year. They were given contradictory information made about the possibility of new provision at Weston Court. Due to the long time delay and the poor quality of information given to

families, the letter giving six month's notice of the closure of Kentish Road understandably came as a shock to many carers, who may have thought or hoped that the proposal had been shelved. They had had assurance, in the form of a Cabinet decision, that the provision would not close until all assessments had been completed and all service users had alternative provision. The unexpected arrival of the letter fuelled their anger, resentment and anxiety about the future.

54. The ambition to achieve more choice and flexibility of provision as articulated in the early Cabinet reports was not realised for many of the service users. In some cases, carers were offered no choice of provision but only a single option - albeit that the offers were confirmed as being appropriate in the view of the Portsmouth City Council Principal Social Worker, who reviewed the suitability of the proposed provision of ten of the service users whose carers had refused their offers. I conclude that it is possible, though by no means certain, that if there had been a different approach taken to information giving, consultation and co-production, carers' attitudes may not have become so entrenched and they may have been more willing to at least consider the offers made to them.
55. The carers' anger gave rise to campaigning action, which gathered momentum after the letter giving notice of closure was sent in April 2017. The distress of families and the negative publicity together resulted in the issue becoming emotionally charged. This had an impact upon operational staff undertaking assessments, the staff at Kentish Road were put under pressure from media attention and elected Members were also put under pressure from members of the public who made direct contact with them.
56. Elected Members had not been kept informed about the process by officers through Cabinet or briefing process and so had to decide their own positions on the closure issue. Whilst the Leader gave support to sustaining the decision that had been made in principle nearly three years earlier, other Councillors took a contrary view and supported the campaigners. The matter became increasingly political and the risk to the Council's reputation increased. The pervasive emotion and the political pressure associated with it made it more difficult for officers to move forward objectively, whilst their actions were in the political and media spotlight.
57. The decision to reopen Kentish Road in the future appears to be a reactive response to the difficult situation that elected Members were placed in, together with adverse publicity and the strength of feeling of a small group of carers, who had not accepted the offer of alternative provision. Whilst it will add to choice and geographical spread of respite provision in the city, it could undermine what the Council was trying to achieve; it is costly and will require new staff and a new registered manager to be employed after the original staff group has been dismissed.

Overall conclusion and learning

58. The conclusions and learning arising from this review are implicit in the above narrative and are set out in Section 9. They relate to a broad range of areas and activities. Staff and managers at all levels had identified many of the core failings described in this review at the time leading to and following the decision to close the Kentish Road Centre. These lead me to offer the following observations:
 - The difficulties that occurred are not linear; they are dynamic and multi-dimensional.

- Quick solutions can lead to unanticipated problems in the medium and longer-terms.
- The social care landscape is a whole-system that needs to be managed as such. Breaking it down, as I have in this review, to component parts is necessary to establish cause and effect, but equally, each part needs to be treated as interdependent.

59. The overarching learning, therefore, is that the Council needs to ensure that an integrated approach to the management of major service change is adopted from now on.

Section 1B: Recommendations

60. In my view, the previous Chief Executive should agree with the Cabinet how the implementation of the following recommendations will be monitored to mitigate the risk of recurrence of similar failures arising in future projects.
1. To ensure that for all major changes to service provision, particularly those concerning vulnerable people, that industry recognised project management principles are implemented. This includes a project initiation document (PID), the establishment of a project board chaired by a senior officer of the Council, a project plan and a designated project lead. For Cabinet to be sure that this is always complied with, it will be necessary to amend the report template to require the attachment of the PID and/or the name of the Project Lead responsible for coordinating operational/financial/commissioning/governance work streams. The amendment to the report template to ask whether the implementation of the project takes account of other concurrent major initiatives and, if so, requires assurance that the resources are sufficient to support multiple projects.
 2. The project plan to include delegation of responsibility for ensuring that internal and external communications are robust and support legal compliance.
 3. The project plan to ensure adherence to the Public Service Equality Duty (PSED) under the Equality Act 2010, including through the development of Equality and Safety Impact Assessments (ESIA) at every stage of the decision making process.
 4. To amend the Cabinet report template in the finance section to provide a tick box on whether the matter has been considered at Cabinet before, and, if so, to require that the financial business case has been updated or confirmed.
 5. To provide an external consultancy role to the Overview and Scrutiny Management Committee (OSMC), to provide expert advice and guidance on appropriate challenge in the area of health and adult social care for a period of one year.
 6. Democratic Services to establish a system for tracking the implementation of Cabinet decisions, similar to the OSMC tracker, so that decisions requiring action within timescales are brought forward to Cabinet as required.
 7. The Council to commission independent audits of:

- Care and support assessments and plans within learning disability services to assess quality and compliance with the Care Act 2014 and the Mental Capacity Act 2005. This to include the assessments and care and support plans of carers, which are outsourced on behalf of the Council.
- The decision making at the funding panel to ensure decisions follow from care and support plans and not from assessments, in compliance with the Care Act 2014.
- The extent of non-compliance with the Mental Capacity Act in the Deprivation of Liberty Safeguards (DoLS) team in relation to applications for deprivation of liberty safeguards that are not taken forward.

Note: an independent audit is recommended because there is a pervasive lack of understanding of the legislation amongst staff and managers, which would impede the accuracy of the audits undertaken internally.

8. Following the audit, and depending on its findings, to provide training for relevant staff and managers, and a scheduling of a re-audit to track improvement.
9. To implement changes in the line of accountability for social work services at senior level to ensure that accountability for decision-making and management oversight is provided by a senior manager who has a professional social work qualification, expertise and experience.
10. To ensure that all changes relating to service redesign are commissioned by the Integrated Commissioning Unit (ICU), and that there is an agreed and clear delegation of responsibilities and activities between the operational service and the ICU.
11. To ensure that public consultation, engagement and co-production approaches are included in project plans and undertaken, where required, in line with legislation. Further to ensure that these continuously inform the service design and decision making process throughout the life of the project.
12. To procure services as part of the final stage of the commissioning cycle only when a rigorous assessment of need has been undertaken, including the use of collated information arising from individual assessments of need, when concerning the provision of specialist services.
13. The remit of project boards to ensure compliance with the Council's HR policies in relation to managing change and major incidents, so that the staffing implications and capacity and cover issues are planned rather than reactive.
14. To ensure that the re-provision of 32B Kentish Road utilises full engagement and a co-production with service users.
15. To undertake a review of respite services across adult services, in line with the recommendation of the earlier strategic review of October 2015 to ensure consistency, equity and fairness in respite provision across all groups of service users.

Section 2: Scope of the review

61. Southampton City Council (SCC) operated the Kentish Road Respite Centre to provide respite care for adults with learning disabilities for a number of years, until its closure in November 2017. The decision to close the Centre had been taken by Cabinet nearly three years earlier, as implementation of the decision had been delayed. The closure decision and implementation process resulted in distress caused to the carers of the service users, to public opposition and a media campaign that was sustained for much of the period. Criticism was expressed by opposition members, by carers at public meetings, public attendance at Cabinet and Overview and Scrutiny Committee (OSMC) meetings and Cabinet meetings, and in a letter before judicial review action. These criticisms concerned acts of omission relating to governance requirements following the initial Cabinet decision and to the activities that were either taken, omitted or delayed in relation to implementation of the decision. When the final decision was made to close the centre in November 2017, Cabinet decided that there should be a review of the processes that had been followed with identification of any lessons that needed to be learnt for the future.
62. This investigation and report was commissioned by the Director of Adult Social Services in order to meet the Cabinet requirement.
63. The Terms of Reference, including reasons for this review, are provided at Appendix 1.
64. The people interviewed as part of the review process are listed at Appendix 2. References to job titles through the report may be inaccurate because of changes to the management structure and the scope of posts during the course of the review. The interviews were an invaluable way of gaining information outwith of the formal reports and information that had been set out formally in correspondence and emails. It painted a picture of the prevailing thinking throughout the period of review, often with the benefit of hindsight. Interviewees were honest and reflective and brought a sharp sense of the lived experience to the events over the three-year period. Their views helped to form the rationale for the judgments included in this report.
65. An analysis of the business case used to support the implementation of the closure decision is being undertaken separately by SCC.
66. The list of documentation used to inform the review is included at Appendix 3.
67. The way in which the closure decision links to the Council's strategic objectives is set out in Appendix 4 and the relevant legislation statutory guidance is summarised at Appendix 5.
68. A list of abbreviations is given at Appendix 6.
69. The scope of this report fulfils the full terms of reference, but its structure has been modified from the structure proposed in the terms of reference, following the collection of information and with the agreement of its commissioner, the Director of Adult Social Services.

Section 3: Kentish Road-related chronology (July 2014-November 2017)

70. The factual events leading to the closure of Kentish Road from the period leading up to the Cabinet report in July 2014 to the Cabinet date in November 2017, when a decision was made to close the unit are set out in Table 1. Activities which are indicated as contributing to delay, or causing, or leading to poor practice are discussed more fully in Section 4. (Sections in bold outline areas that were not fully complied with.)

Table 1

Date	Activity	Did this contribute to delay or reflect poor operational practice?	Paragraph or table reference for detail
15.7.14	Cabinet approved a public consultation on the future of respite care services. Savings were included within the mini budget proposals to be agreed on 16 th July 2014, before the consultation took place.	N Y	73 - 76
23.7.14- 23.10.14	Public consultation on the future of respite services.	N	155 – 162 198-203
4.12.14	OSMC recommended that decisions on the future of respite services for adults with learning disabilities be deferred until the assessments of all service users and carers were completed and that the users' dignity and needs be respected through the process and not be affected by financial issues.	N	77
9.12.14	Cabinet decided to defer its decision on Kentish Road until 16.12.14 "to allow people to consider the additional recommendations (from OSMC) and some further consultation with stakeholders".	N	77
16.12.14	Cabinet authorized the phased closure of Kentish Road, resulting in the eventual total closure by April 2015. Certain checks and conditions were applied to the decision in a further six recommendations, which were confirmed after call-in (see 20.1.15). An Equality and Safety Impact Assessment was included as an Appendix of the Cabinet report.	Y	77, 78, 214-216, 218, 219, 222
15.1.15	The decision was called in by OSMC, which made a number of recommendations.	N	78

Date	Activity	Did this contribute to delay or reflect poor operational practice?	Paragraph or table reference for detail
	The reason cited by the chair of OSMC was 'insufficient consideration of consultation feedback'.		
20.1.15	<p>Cabinet meeting considered the recommendations of OSMC and set out modifications to their decisions of 16.12.14.</p> <p>The decision confirmed a planned closure of Kentish Road on a phased basis resulting in full closure by April 2015. Amongst the decisions were:</p> <p>To note that the needs of current service users and their carers will be thoroughly assessed prior to and following their moves.</p> <p>To note that it is anticipated that the assessments will be completed by 28 February 2015.</p> <p>To note that no service will be closed or withdrawn until all assessments have been completed and individuals with eligible social care needs have been supported to move to suitable alternatives.</p> <p>To require a progress report at the Cabinet meeting in March 2015.</p>	Y	78 -82
March 2015	No progress report was made to Cabinet in March 2015 as agreed on 20.1.15	Y	83
April 2015	Market engagement events facilitated by the Integrated Commissioning Unit (ICU) to encourage providers to make proposals for 'developing commissionable solutions' for alternatives to the Kentish Road provision, for which there was a gap in the market at that time.	N	177
11.6.15	<p>OSMC requested:</p> <p>1.An audit trail detailing advice from the Director of People to the Leader / Cabinet</p>	Y	84 – 89, 222

Date	Activity	Did this contribute to delay or reflect poor operational practice?	Paragraph or table reference for detail
	Member relating to the timings of assessments and the decision making process. 2. An update on the alternative options available to the services provided at Kentish Road.		
15.9.15	Cabinet decided to postpone the implementation of its decision to close the service pending the outcome of a "further review" and the continued evaluation and development of suitable alternatives. It requested a report on the outcome of a further review on the provision of replacement care, to be led by the Integrated Commissioning Unit (ICU), by 31st of March 2016.	Y	90 – 91, 165
14/15.10.15	Care Quality Commission (CQC) Inspection.	Y	152,195,233
October 2015	The ICU commenced a review of replacement care and respite arrangement encompassing all age groups and client groups.	N	165, 178
15.3.16	Notice issued to withdraw the decision to consider the report the Cabinet member for Health and Adult social care, which was to provide an update on the development of suitable alternatives to Kentish Road, as requested by Cabinet 15 September 2015.	Y	94
31.3.16	No report had been presented to Cabinet on the outcome of the further review on the provision of replacement care as required by this date.	Y	94
9 th -16 th . 11.16	CQC Inspection.	Y	152, 190, 228
27.4.17	Letter sent by the Service Director, Adults, Housing and Communities to inform the carers of service users that the Kentish Road respite provision will close on 31.10.17.	Y	96 -100
18.8.17	Notification of proposed claim for judicial	Y	191 - 196

Date	Activity	Did this contribute to delay or reflect poor operational practice?	Paragraph or table reference for detail
	review. Advice from Counsel was sought [REDACTED]		
September 2017	Kentish Road Task Group set up by the previous Chief Executive to assist in planning to mitigate the risks of judicial review and achieve a smooth transition for service users at Kentish Road.	N	195, 230
September 2017	The operating hours at Kentish Road were reduced to weekends only, due to staff shortages over and above the proposed redundancies.	Y	189
14.9.17	Meeting of OSMC: proposed 13 actions reflecting its concerns about the proposed closure, including that the Cabinet Member removes the proposed closure date of 31st of October and reconsiders the timeframe for the closure.	Y	102 - 108
9.11.17	Scrutiny Monitoring listed all actions from 14.9.17 meeting as complete.	N	108
20.9.17	Full Council. A petition had been received opposing the closure, containing 2,223 signatures. Council approved a motion incorporating in full the recommendations made by OSMC, which included revisiting the 31 st October 2017 closure date.	Y	109
14.11.17	Cabinet decision to close Kentish Road on 30.11.17. Cabinet noted the proposed use of the annexe at Kentish Road (32B Kentish Road) to provide a smaller, reconfigured respite service with an independence focus. A further Equality and Safety Impact Assessment was submitted with the Cabinet report.	N	110 - 113
29.11.17	OSMC called in the decision and resolved that that Cabinet reconsider the called in decision.	N	

Date	Activity	Did this contribute to delay or reflect poor operational practice?	Paragraph or table reference for detail
	The grounds for the call in related to the financial savings upon which the decision was predicated; the limited detail provided on alternatives and the case that it will improve choice and outcomes for service users.		
30.11.17	<p>Special Cabinet rejected OSMC's recommendation that Cabinet agrees to keep the service open pending a procurement exercise for the existing site. It accepted the following recommendations:</p> <p>That effective and proactive transition plans are put in place immediately and resourced appropriately.</p> <p>That a detailed protocol is developed detailing the range of services to be provided at Weston Court and how usage is to be prioritised.</p> <p>That Cabinet reviews the processes that have been followed relating to the Kentish Road Respite Service decision and identifies any lessons that need to be learnt for any future decisions of this nature.</p>	N	

Section 4: Decision-making and governance

71. The rationale and drivers for change to the way in which respite care services for adults were delivered, including the proposal to close the provision at Kentish Road were set out in Cabinet reports on 9th and 16th December and on 20th January 2015. They were:

- The need to move towards more personalised forms of care, where individuals can exercise more choice and control.
- The requirement to offer direct payments to individuals, which was both a national and local priority. At the time Southampton was performing in the bottom of all councils nationally around this performance indicator, standing at 6% compared with a national average of 21%. As a Council run service, respite at Kentish Road could not be purchased with direct payments and, as it currently provided the majority of respite needs for people with learning disabilities, the indicator was unlikely to improve unless a more diverse range of externally commissioned provision was used.
- The projected saving was estimated as £300,000 recurring per year from 2015/6.

- The predicted future needs of service users approaching adulthood where the take up of direct payments was predicted to be higher.
 - The service was running at only 73% capacity in December 2014 and this was likely to fall in line with any increase in direct payments.
72. The democratic decision making process is outlined in the above chronology. This also reflects my view on the way in which decisions and actions taken, or not taken, contributed either to the protracted timescales in implementing the closure decision or to poor operational practice, which impacted upon the timescales and outcomes for service users and their families. This section of the report gives more detail on the activity categorized as contributing to delay or reflecting poor operational practice.
73. The report to Cabinet on 15 July 2014 made recommendations to “re-provide and redesign” the respite provision at Kentish Road. The report rightly noted that proposals to change a service requires consultation with those affected, including staff, service users, carers and other stakeholders, at a time when proposals are still at a formative stage. It set out the rationale behind the proposal, which was sound but it included indicative savings that were neither robust nor feasible. The decision of the Cabinet was:
- (i) To authorise the Director of People to initiate a process of consultation regarding proposals to re-provide and redesign the care services for adults.
 - (ii) To note the indicative savings to be realised should proposals for re-provision and re-design be subsequently taken forward.
74. The financial imperative was reflected in projected savings of £200,000 in 2014/15, rising to £300,000 per year thereafter. These savings were included within the mini-budget proposals in July 2014.
75. Whilst it is recognised that the Council had to make decisions on service redesign within a very constrained financial context, in this case, the savings estimates and the timescales in which they were to be achieved were unrealistic. The essential steps along the way had not been started. These were: the assessment, collation and analysis of individual needs, scoping of required capacity and engagement with stakeholders and the market, leading to costing and procurement or commissioning.
76. The consultation proposed in the Cabinet report of July 2014 covered a range of adult provider services, including day services, Woodside Lodge and Kentish Road. The report noted that Southampton, was a higher than average user of ‘in-house’ care for people with learning disabilities so that the opportunity to deliver savings or increase direct payments through re-provision of these services was seen as substantial.
77. The matter was due to return to Cabinet for a decision on the closure of services on 9.12.14. However, on 4.12.14 OSMC recommended that decisions on the future of respite services be deferred until the assessments of all service users and carers were completed and that the users’ dignity and needs be respected through the process and not be affected by financial issues. Cabinet decided to defer its decision on Kentish Road until 16.12.14 “to allow people to consider the additional recommendations (from OSMC) and some further consultation with stakeholders.” On 16.12.14 Cabinet authorised the phased closure of Kentish Road, **resulting in the eventual total closure by April 2015.**

78. The decision was 'called in' by OSMC on the basis that there had been insufficient consideration of consultation feedback' and a number of recommendations were made. The matter was reconsidered at Cabinet on 20.1.15. On that date Cabinet received representations from members of the public and Mencap. It confirmed the decision to close the service, subject to OSMC's recommendations, which are summarised below (my numbering and emphasis outlining areas that were not fully complied with):
1. To consider the responses received during the public consultation.
 2. To note the intention to move the provision of respite care towards individual packages of care that makes increased use of direct payments.
 3. To note that the **needs of current service users and their carers will be thoroughly assessed prior to and following their moves** to ensure that these needs continue to be met and to reduce any impact on their wellbeing.
 4. To authorise a phased closure of Kentish Road beginning with supporting clients with lower needs, followed by those with higher needs to access alternative respite options resulting in the **eventual total closure of the Kentish Road service by April 2015.**
 5. To approve the establishment of a dedicated team of experienced social work practitioners to complete a thorough assessment of the needs of all individuals who currently receive a directly provided day or respite service.
 6. The Council will then seek to carry out an annual assessment of individuals' and carers' needs.
 7. To note that it is anticipated that **the assessments will be completed by 28 February 2015.**
 8. To note that **no service will be closed or withdrawn until all assessments have been completed and individuals with eligible social care needs have been supported to move to suitable alternatives.**
 9. To require a **progress report at the Cabinet meeting in March 2015.** This report will include a list of costed options for respite care.
79. Seven of the 10 decisions above were either never implemented or were subject to delay. Decisions 5 (in relation to Kentish Road assessments), 6, 8 and 9 were not implemented and Recommendations 3, 4, and 7 were not implemented within given or appropriate timescales.
80. The Cabinet report noted that "an analysis of market capacity" indicated that the capacity for respite provision showed limited availability for those service users, estimated as 22 clients, 29% of the total, in the banding of those with the most complex needs. The categorisation of service users into bands 1-3 was not based on any systematic assessment or review of needs and therefore was necessarily approximate, resulting from a desktop exercise.
81. The need to commission (or to stimulate the market to provide) specifically for Band 3 service users led to the decision for a phased implementation of the closure of Kentish Road, beginning with supporting clients with lower needs, followed by those with higher needs to access alternative respite options. However, the target set out for the eventual total closure of the Kentish Road service by April 2015 was unattainable, being a mere 10 weeks after the decision was confirmed at the Cabinet meeting of 20th January 2015.
82. In summary, when the decision was taken in January 2015 to close the respite care provision by April 2015, service users' needs had not been assessed, there had been no scoping, market appraisal or commissioning of additional places, and no matching of

individual needs to provision. It was known that the alternatives for individuals with higher needs, traditionally met by the council's own service, were insufficient to meet the need. There was no realistic possibility of undertaking all these required actions within three months.

83. There was no progress report made to Cabinet in March 2015, as requested at the meeting on 20.1.15 and there is no evidence that significant progress was being made with any of the required activities set out above.

84. There is evidence of concern expressed by OSMC at its meeting on 11.6.15, when the Committee requested:

1. An **audit trail** detailing advice from the Director of People to the Leader/Cabinet Member relating to the timings of assessments and the decision making process.
2. An update on the alternative options available to the services provided at Kentish Road.

85. The recorded response to the first request was:

"Assessments of need will be carried out ... and the options for future care and support will be considered."

*"The former Director of People advised during the scrutiny meeting prior to the Cabinet decisions, and at the scrutiny meeting when the decisions had been called in, that *these assessments could be carried out after any decision to close services had been made.*"*

86. The implication is that assessments could be carried after a Cabinet decision had been made. However, the requirement to undertake assessments and care and support plans annually is contained in the Care Act 2014 and was not contingent on a Cabinet decision. At this stage, the appointed team of four social workers and one senior practitioner were working on assessments in relation to day care services and Woodside Lodge and not in relation to Kentish Road.

87. The recorded response to the second request was:

"Comprehensive reviews of individuals' needs are scheduled to be completed by 31.7.15 and this will inform an analysis of the alternative options to the service provided at Kentish Road, to be considered by Cabinet on 15 September 2015."

88. Assessments were not completed until September 2017 and a systematic review of options did not start until July 2016. This led to a recommendation to Cabinet decision in September 2015, to delay the implementation of the closure decision.

89. In my view, this response to OSMC does not comply with Care Act 2014 requirements for assessments and care plans, nor does it meet the OSMC expectation of an **audit trail** or supporting timeline.

90. On 15.9.15, Cabinet resolved to postpone the implementation of its decision to close the service, on the basis of a report and recommendations presented:

"Delaying implementation of the decision to close Kentish Road would enable the 47 individuals deemed to require its support to continue to receive this and is considered

to be the best way of managing risks pending a wider joint review of respite provision and the continued development of suitable alternatives.”

91. **Cabinet confirmed its earlier commitment made not to close the service at Kentish Road until individuals had been supported to move to suitable alternatives** and agreed that it would not close until 30.9.16 at the earliest. It requested a report on the outcome of a **further review** on the provision of replacement care, to be led by the ICU, by 31.3.16.
92. The ‘further review of respite provision’ – now known as replacement care since the implementation of the Care Act 2014 – commenced in October 2015. It encompassed all age groups and client groups. Its brief was strategic, to establish guidance on the principles of commissioning to ensure compliance with the Care Act 2014, a move towards community based support at the best cost, and equity of access across age groups and client groups.
93. The principles established by the review could have informed the “evaluation and development of suitable alternatives” referred to in the Cabinet decision of 15.9.15. However, the officers undertaking the market development work specific to Kentish Road from July 2016 were not aware of the existence of the review and the Cabinet was not aware that the review did not have in its scope the identification of specific alternatives to replacement care at Kentish Road.
94. Cabinet had requested a report on the outcome of the review by 31.3.16. Two reports were prepared for Cabinet on 15.3.15, one written by a senior manager in Health and Adult Social Care and the second by a commissioning officer at the ICU. Neither report was presented as notice was issued to withdraw the decision to consider the report the Cabinet member for Health and Adult Social Care, which had been to provide an update on the evaluation development of suitable alternatives to Kentish Road, as previously requested by Cabinet. The reason given was that “further work is needed to ensure that there is sufficient capacity in the alternative residential care provision, for those individuals with the most complex needs for whom non-residential alternatives are not considered appropriate.”
95. The further work that was needed was not part of the remit of ICU’s strategic review and did not commence until July 2016, although the ICU had undertaken some market engagement events in April 2015 in anticipation that additional provision would be needed.
96. The matter was not considered at Cabinet again until 14.11.17, a period of 26 months after Cabinet had issued its request for a report on the outcome of the review. By then, a decision to close had been confirmed in a letter sent on 24.4.17 to inform the carers of service users that the Kentish Road respite provision would close on 31.10.17.
97. The decision to send the letter giving notice of closure had been agreed with the Cabinet Member but not by Cabinet. The letter expressed that SCC “remain fully committed to ensuring that the alternative arrangements will meet you and your loved ones needs.” The decision reflected that SCC was assuming that the service users’ needs could be met elsewhere but there was no evidence to support this at this time, or that senior managers had oversight of the status of the assessment work and its impact upon commissioning requirements.

98. There are similarities between this decision to close Kentish Road within six months with case law arising from R(B) v Worcestershire CC (2009) EWHC 2915 concerning a local authority's decision to close a day care centre when the judge decided that "when this decision was taken the Council was not in a position at the time it took the decision to reach a rational conclusion that the new arrangement would meet the needs of the claimants."

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100. This 'legitimate expectation' to return to Cabinet to endorse the timescale of the decision to close followed from Cabinet's requirement for a progress report in respect of the review of replacement care. The consequent lack of Cabinet endorsement and information given to elected Members contributed to a fragmented approach to responses to the public by elected Members during the ensuing period of public campaigning against the decision.

101. Given the assurances offered at Cabinet on 20.1.15 that: "The respite services at Kentish Road ... will not close until all service users have been reassessed and, where appropriate a suitable alternative service provided..." it was unsurprising that after the letter giving notice to close the provision was sent in April 2017, families were described as feeling let down. Some became non-cooperative with social workers undertaking assessments after that date.

102. The matter was discussed at OSMC on 14.9.17 when a paper was received providing an update on the proposed closure. The report did not provide any update on the business case or projected savings. It provided information about the number of individuals who had been supported to transition to an alternative or had stopped using respite care as follows:

Breakdown of individuals who have transitioned to alternatives or respite no longer needed

Transition status	Number	%
Still using Kentish Road but suitable alternatives offered	35	49
Completed transition to alternative or respite no longer needed	32	45
Transition ongoing	2	3
Transition not possible due to hospital admission	1	1
Not applicable	1	1
Total	71	99

103. The report did not offer information on the number of individuals for whom carers had rejected the proposed alternative provision, a figure of at least 10.

104. The report stated that the occupancy rate in August 2017 was 51% and there had been a further reduction in service from 4.9.17, because of staff shortages. Staff numbers at Kentish Road had been depleted due to factors such as leave and sickness. See Section 8 on the implications of a serious incident and staffing issues.

105. The report stated that “all of these individuals needs have been assessed by social work practitioners in accordance with the Care Act 2014”, referring to the needs of the 71 people receiving respite at Kentish Road at the time of the decision to close in 2015. **This was not correct** as there could be no assurance that assessments and care and support plans were Care Act 2014 compliant until the final 30 were reviewed and edited in September 2017. Section 5 provides evidence to indicate that many of the first 40 assessments and plans to be undertaken were far from Care Act 2014 compliant.
106. OSMC recommended that the timeframe for closure date be reconsidered and the matter returned to Cabinet. In a further twelve recommendations, OSMC proposed actions including: a re-assessment of the financial business case, development of a communications and transition plan, information provided to, and engagement with carers, issues related to the proposed development of Weston Court as an alternative provision and in relation to the adequacy of staffing.
107. OSMC exercised its challenge role with a request for a response to some relevant and pertinent questions relating to: the current position regarding completed and outstanding assessments; care and support plans and a breakdown of the numbers who had received, accepted and rejected offers of alternative care. It requested external validation for statistics and an explanation of the stages that needed to be followed from assessment to completing the transition. It also requested the Cabinet Member to continue to discuss the future use of the Kentish Road facility with the charities that had expressed an interest in running the service, and report progress back to the Committee.
108. The OSMC monitoring form of 9.11.17 recorded as complete all the responses required by OSMC.
109. The proposed closure was subsequently considered at a meeting of the full Council on 20.9.17, following receipt of the petition opposing the closure, containing 2,223 signatures. The Council approved a motion incorporating in full the recommendations made by OSMC, which included revisiting the closure date of 31.10.17, set out in the letter to carers giving notice to close, written on 27.4.17.
110. Cabinet considered many of the issues raised by OSMC and endorsed at full Council on 14.11.17. The report to Cabinet noted that suitable alternative arrangements had been identified for the remaining 30 individuals who were currently using Kentish Road, following an assessment of their needs and the further development of a range of alternatives. It recommended that the closure proceed in accordance with the Cabinet’s earlier decision. Cabinet decided to approve the closure of the current service on 30.11.17, whilst noting the proposed future use of the annexe at 32B Kentish Road to provide a smaller, reconfigured respite service.
111. The decision by Cabinet to close the provision at Kentish Road was based upon the following information:
- Care assessments had been completed and sent to the individuals concerned and their carers, along with draft care and support plans and information about the alternative respite arrangements available.

- Details of work completed since September 2015 to review the provision of replacement care and to develop a range of suitable alternatives to Kentish Road.
- A proposal on the use of the annexe at 32B Kentish Road to provide a smaller respite service with an independence focus.
- The revised financial business case associated with the proposed closure.
- The lack of sustainability of the Kentish Road provision, given that it would require capital investment in the longer term and staffing provision would be insufficient after 30.11.17.

112. The report to Cabinet on 14.11.17 indicated that at that time, 30 individuals were still using Kentish Road. The care and support plans and alternative arrangements had been agreed and signed by carers of seven people, there was agreement in principle by a further 13 people but no agreement had been reached for 10 people. This outcome was not in line with the earlier Cabinet decision of 20.1.15 that **“no service will be closed or withdrawn until all assessments have been completed and individuals with eligible social care needs have been supported to move to suitable alternatives.”**

113. The business case was updated in the Cabinet report, noting a significant reduction in expected savings (see separate SCC internal financial analysis report).

114. The respite provision at Kentish Road closed in accordance with the Cabinet decision on 30.11.17. The use of the alternative provision at Weston Court was not available at the time of closure as it was delayed due to the CQC registration process. It did not open until January 2018. The proposed new scheme in the annexe at 32B Kentish Road would not open before the old centre closed but was expected to open within a year. Ten carers of service users did not accept the alternative provision offered and 9 are waiting for the opening of the annexe at Kentish Road. A further 24 had a gap in provision from the time of the closure until Weston Court opened in January 2018. At the time of writing, 12 of the 24 referred to Weston Court have started, one was turned down and the remaining people are at stages of introduction.

The Equalities Act 2010: Issues of non-compliance

115. During the 40-week period that followed the first Cabinet report proposing a public consultation to inform the re-provision of the Kentish Road respite care service, there was only one ESIA prepared. This followed the public consultation and was made available in the members’ rooms for the Cabinet meeting of 16.9.14 and 20.1.15. The earlier Cabinet report of 15.7.14, which sought authority to initiate the consultation, stated that no ESIA was required at this stage. This breaches the principle that the aims of the public service equality duty (PSED), set out in Appendix 5, are best achieved at the earliest possible stage in a decision-making process, and would, in any event, have helped to inform the consultation questions. The ESIA stressed the potential benefits arising from the review of respite services. It suggested that: “the changes will provide a more equitable and transparent approach to the provision of replacement care.... The change will have a positive impact for several groups of people.” Whilst stressing the benefits of the improved transparency and consistency, the ESIA acknowledged only one negative effect for people with disabilities, which was that there might be some resulting reductions in their packages of replacement care. The ESIA was broad brush and necessarily could not provide any refined analysis at such an early stage of planning for change. It did not, for example, offer

any analysis of the ability of alternative provision to meet the needs of the service users.

116. The failure to develop any further ESIA's as the matter progressed, until the month of the closure in November 2017, in spite of concerns raised by councillors, stakeholders and families means that there is a deficit in terms of an audit trail to evidence the Council's conformity with the PSED.
117. A further way of developing an evidence base for decision-making with regard to the PSED is through engagement with people affected by the decision, particularly when they have protected characteristics such as learning disability. Such engagement demonstrates that public authorities understand the impact of their decisions, although to achieve this it must be meaningful and taken into account to inform the decision. There were two periods of consultation in relation to the Kentish Road decision. The strengths and limitations of these are discussed in section 6.
118. The formal letter before the claim for judicial review in relation to this matter, dated 30.8.17 cited two alleged breaches of the Equality Act. The first related to case law (R (Bracking) v Secretary of state for work and Pensions (2013) EWCA Civ 134) which established at appeal that the decision to close a provision (the Independent Living Fund) was unlawful because the Minister had not properly understood the likely consequences of the decision at the time it was made, and that there had not been sufficient focus on the precise statutory requirements under the PSED, for example, the need to advance equality of opportunity for disabled people.
119. The second breach in the letter regarding judicial review cited Section 19, the prohibition on direct discrimination, which states that it is unlawful for a public authority to unlawfully discriminate against a person with a protected characteristic, in this case in relation to disabled people and women.
120. My view is that there is insufficient evidence that the Council complied with the PSED and that there were breaches of the Equality Act as outlined above.

Other relevant legislation and statutory guidance.

121. The decision to close the respite care provision at Kentish Road was enabled by, and supported national policy imperatives reflected in the legislation listed in Appendix 5. This also gives further detail on the general provisions of the Care Act 2010, the Mental Capacity Act (MCA) 2005 and the Equality Act 2010. An understanding of the provisions of these three pieces of legislation is most pertinent to the actions and omissions evident in the implementation of the decision to close the provision at Kentish Road. More detailed information on issues of non-compliance with the Care Act 2014 and the Mental Capacity Act 2005 is included in Section 5, together with details of the alleged breaches of the Care Act 2010 that were cited in the letter before claim in relation to judicial review. Issues of non-compliance with the Equality Act 2010 in relation to Kentish Road are covered above and in Section 8.

Section 5: Assessments, care plans and transition plans and issues of compliance with legislation.

122. Managers told me that, at the time that Cabinet made the decision to close the respite provision at Kentish Road, the reviews of care assessments were not up to date and separate care plans were generally not being used as plans were incorporated into the assessment. From this I conclude that SCC was ill prepared for the implementation of the Care Act 2014, in relation to the service users at Kentish Road. The new legal requirement to provide separate care and support assessments and plans annually and for care and support plans for carers presented particular challenges. The issue of assessments and care and support plans became a major issue for the entire period covered by this review.
123. The Cabinet reports of 15.9.15 stated that the outcomes of assessments of the 67 individuals using the service at this time were:
- 10 individuals were being supported to receive short-term replacement care from Shared Lives.
 - 10 individuals can had their needs met by alternative provider or other arrangements.
 - No suitable alternative had been identified 47 individuals.
124. There is no evidence, however, that individual assessments had been undertaken or that care and support plans had been developed for the 67 individuals. The focus of assessment work in the learning disability team at this time was in relation to the review of provision of day services. The initiative to update assessments and create care and support plans for the service users at Kentish Road would follow, relying upon the allocation of this work to two newly qualified social workers (NQSWs). Both began work on the task in December 2016 and April 2017 respectively. It seems likely that the statement in the Cabinet report was based upon the desktop exercise by a service manager, which divided the level of service users' needs into three broad bandings rather than on any evidence or analysis of individual needs. This practice works against the matching of commissioning to personalised need and means that the procured provision may not meet the specific needs of individuals.
125. Cabinet had been led to expect from the report for its meeting on 20.1.15, that there would be a team of four experienced social workers and a senior practitioner engaged on the task of assessments and care and support plans. As noted already, this group of staff was engaged in assessing the needs of the day care service users and did not ever move on to the Kentish Road service users. Kentish Road assessments at this stage were "put on the back burner". Some service users were common to both services but it appears from interviews that an integrated approach was not taken, with separate assessments generally undertaken in relation to each service.
126. The decision to allocate the task of the Kentish Road assessments to one NQSW in December 2016, and to another the following April seems a curious one, given the degree of delay in implementing the project and non-compliance with the Care Act 2014. Both eventually attended training on assessment, the Care Act 2014 and the Mental Capacity Act 2005 as part of their Assisted and Supported Year in Employment programme and a further two hour session on the Care Act as part of SCC's internal training programme. The latter was available only from January 2018. However both workers told me initially that

they had had no training and felt – and still feel- insufficiently prepared to undertake care assessment and planning to the standard that they would want. This suggests that the level of training they received was inadequate. The team manager described the context of significant service pressures, dominated by safeguarding and crisis work that is not suitable for a NQSW. In this context one can understand why it was expedient to allocate the assessments to the two NQSW's but it does indicate that nobody was looking at the wider picture of Cabinet expectations, savings commitments and the risk of judicial review and adverse media attention if the process was not completed in a timely and legally compliant way.

127. There is further evidence in one of the two the Cabinet reports of 15.3.16 that had been prepared but later withdrawn, that the use of Care Act compliant assessments and plans had not yet been established, although implementation of the Act had been from April 2015. The report stated:

“During the course of the (ICU) review it has become clear that in order to provide replacement care in the future we need to address the access arrangement, which includes how eligibility is established. Under the Care Act and the Children and Families Act this requires a focus on the carer and parent carer and how their needs are being met. This requires us to have clear arrangements in place.”

128. In the second of the two reports that were withdrawn, the message that the implementation of the Care Act 2014 had not started is even clearer:

“Initial findings from the review showed we needed to establish a clear and transparent process that underpins access to replacement care. This includes:

- The need to be Care Act compliant
- A change to the way assessments are carried out properly to reflect the needs of the carer
- Ensuring services are provided in a fair and equitable way.”

129. There is an email trail from 2015 extending to January 2018 in which Legal Services continuously state their view to operational managers, the PARIS team and the training team that the assessments and care and support plans being prepared were not compliant with the Care Act. The grounds given were, variously that:

- Eligibility criteria were being incorrectly applied and Legal Services were “reviewing and amending new assessments” (July 2015)
- “It has come to my attention that no formal Care Act training – in particular eligibility and assessment – has been given.” (July 2015)
- The eligibility criteria, decision and authorisation section were being left uncompleted: “which is the whole point of the assessment”. (September 2015)
- Care Act forms dating from the time before the implementation of the Act in April 2015 were still in use and so decisions regarding eligibility were flawed (November 2015)
- “I am concerned that SCC has not been using a lawful care and support plan (May 2017)
- “Whenever I make an application to the court of Protection I have to amend the care needs assessment and advise the social worker to produce a care plan.” (September 2017)

- “To date, there are still gaps in knowledge and I always have to amend assessments before filing at Court.” (January 2018.)
- Concern about whether independent advocate should be appointed in situations where the carer receives payment for caring and could not, under the terms of the act be described as independent. (January 2017). (See
- s 138 and 143).
- Concern that details appropriately relating to the care and support plan was being placed in the assessment (January 2017).

130. Legal Services attempted to support the transition from the old format of assessments and care plans to a new Care Act 2014 compliant care and support assessment and plan by developing both a checklist and pro-forma for assessments and plans. The challenge was to establish the implementation of the new format, which took a matter of years. Meanwhile Legal Services were regularly consulted by social workers, who were described as having a “complete lack of knowledge on the 2014 Act.”

131. The lack of confidence in the Care Act 2014 compliance of the assessments and care and support plans came to a head in August 2017, when notification of a proposed claim for judicial review was received. A Task Group chaired by the previous Chief Executive to address the issues arising from this gave instructions that the assessments and care and support plans for the remaining 30 residents at Kentish Road should be reviewed and edited to ensure compliance with the Act. This action enabled reassurance to be given to Cabinet on 14.11.17 that “assessments of the individual social care needs have been completed under the Care Act 2014.”

132. There are differences in the views of the operational managers and Legal Services as to the extent to which the assessments and plans were non-compliant with the Care Act. The professional social work view was that Legal Services’ new assessment format gave insufficient attention to what the service user could achieve, with assistance, focusing instead on what they were unable to achieve, which fed into the eligibility criteria. They therefore persisted in putting the contextual information, which should have been located in the care plan, into the assessments.

133. One SCC solicitor estimates that, over the period of this review she reviewed 20-30 of the Kentish Road service users’ assessments and care and support plans. She had cause to question judgments contained in every one, either relating to the use of independent advocates (see paras 138 and 143) or to the under or over estimation of the eligibility of service users. Her view was that: “If you’re up against judicial review you should put your best people on it, not NQSW’s.” The continuing legal concerns about assessments and plans latterly led to the decision to ask the principal social worker and team manager to check all assessments and care and support plans. This was in addition to the checks carried out by the solicitor.

134. An idiosyncratic approach to the writing of assessments and care plans developed as the social workers encountered resistance from carers to the proposed alternative respite placement, or when placement solutions could not be found. Because the funding was associated with the assessment, not the plan, “the assessment became never-ending, a way of keeping the dialogue open with the carers.” The assessment period became extended because assessments could not be signed out off without the carer’s agreement to the plan. I was told that a management directive was given by the Service Director that

assessments should be closed within three months but the social workers found this difficult to implement where suitable alternative provision had not been identified, or when carers would not agree to it. It was not until September 2017, after all the assessments had been reviewed and care and support plans developed (but not all agreed) and hand-delivered on the day of an OSMC meeting, that assurance could be given that all carers had received assessments and care and support plans. Social workers described being 'tied in knots' with pressure from Cabinet, OSMC, managers and families.

135. I was given contradictory accounts about whether assessments are being used by the funding Panel to determine funding for individuals, which would be in contravention of the Care Act 2014. One manager commented: "the panel receives care assessments and then a service is commissioned within a spending envelope. The care and support plan is then a *fait accompli*." It is unlawful to link funding to the assessment, in this way, as funding decisions should be based upon the care and support plan, not on the assessment. However, it explains why there was so much apparently extraneous detail in the assessments and why undertaking care and support plans was given less attention than the assessments and were not well established until August 2017. I am unclear whether funding decisions are currently based on the assessments or on the care and support plans being presented to Panel, due to differing reports.
136. The implementation of the new care and support plan format was further impeded because of long delays in building it into the Paris system. I was told that the care and support plan template, developed by Legal Services is still used as a Word document and is not yet available on Paris.
137. A lack of confidence in the offers of replacement provision for the remaining Kentish Road service users, contained in care and support plans, led to a request for an independent review of the plans of the 10 people who had not reached agreement. This followed the letter before action in relation to judicial review and was undertaken by the Principal Social Worker at Portsmouth City Council in September 2017. She considered that the alternatives offered were appropriate and sufficient to meet the needs and further, that in some cases she considered that the Shared Lives community based service may equally have been appropriate, rather than residential respite provision being offered.
138. A further contravention of the Care Act 2014 relates to the use of independent advocates. Section 67 of the Act places duty on local authorities to arrange independent advocacy if the authority considers that an individual who would have substantial difficulty in participating in their assessment and/or the preparation of the care and support plan has no one appropriate available to support and represent their wishes. The statutory guidance states that independent advocate should be provided if there is no appropriate individual available to support and represent the person's wishes *who is not paid* or professionally engaged in providing care. This means that if the carer is receiving a payment, as many were following the implementation of the Act, they could not be regarded as an independent advocate. The solicitor's view was that social workers were ticking the box to indicate that an independent advocate was not required when there was a caring member of the family available, regardless as to whether they were receiving payment. The social workers undertaking assessments confirmed that no new referrals for independent advocates were made during the period of the review.

139. The delay in completing assessments and agreeing care and support plans had an impact on the transition arrangements for the individuals moving from Kentish Road to an alternative provision. Those moving to Shared Lives and Rose Road had an appropriate introduction to the new care provision. However, the delay in the opening of Weston Court meant that for the 24 individuals who were referred there, there was no possibility of a transition plan until it opened in January 2018, although visits to the building had been offered prior to this. This meant that for the period between the closure of Kentish Road on 30.11.17 and the opening of Weston Court, service users were left with uncertainty about the details of the care, which was under consideration.

Issues of non-compliance with the Mental Capacity Act 2005

140. Every service user receiving care at Kentish Road should have been subject to a mental capacity assessment, even before the decision to close was made, because their capacity to participate in the social care assessment and to make decisions for themselves was affected by their learning disability. The SCC Adult Health and Social Care Planning Support Policy is clear on this matter:

‘It must be assumed that an individual has capacity unless it has been established that they lack capacity. The practitioner will establish that the individual has the mental capacity to fully understand and be involved with the assessment by checking they understand the questions being asked, are capable of providing answers, understand the implications on their personal circumstances of the overall process and have the capacity to express their wishes and feelings. Where an individual appears to lack the capacity to assess their own support needs, an assessment under the Mental Capacity Act (MCA) 2005 will be undertaken.’

141. There is no evidence that any mental capacity assessments have been undertaken for the people using the Kentish Road service during the period of this review, or indeed before that. The Learning Disability Team Manager stated that in her professional opinion approximately one third of the Kentish Road service users could be assumed to have capacity. However, capacity is specific to each decision, so if the assessment was leading to a decision to move a person to a setting where they are likely to be deprived of their liberty, they would need to be assessed as having capacity to agree with that decision. The authority needs to check the person’s capacity to agree to an assessment which may result in a move, whether or not deprivation of liberty (DoLS) will then follow. This means that **there needs to be evidence that capacity has been assessed before the assessment is undertaken.**

142. If a mental capacity assessment indicates that a person does not have capacity, then a best interest decision is required before a decision regarding care is implemented. Good practice would determine that the best interest decision would follow on from an agreed care plan and should be in place before the move to the care provision is implemented. The best interest decision is based on a multidisciplinary exercise and must include the person in some way, his representative or advocate, together with the care agency. There is no evidence of any best interest decisions in relation to any service users at Kentish Road.

143. I was told that the practice in Southampton is to avoid the use of mental capacity assessments when care and support assessment and planning is in progress and instead use provision of Section 67 of the Care Act 2014. This applies when a person or

representative would have 'substantial difficulty' in involving himself in the process and states that they must have an advocate, who is not a paid carer. In my view, this provision in the Care Act does not replace the requirement in the MCA to undertake a capacity assessment; indeed it should follow from it. This is reflected in the expectation at SCC that every referral for an advocate should attach a mental capacity assessment. In practice, I was told that when referrals were made for advocates, the information given would be that the person lacks capacity, but that this is not based on the use of a checklist, toolkit or written assessment, other than in a 'very few cases.'

144. A further reason why assessments were not undertaken under the MCA was that the two social workers undertaking the assessments did not think they were needed for respite and the people they assessed were already in respite care at Kentish Road. The Principal Social worker shared this view and the team manager acknowledged that the imperative for her was to complete the care and support assessments rather than focus on the issue of mental capacity.
145. The MCA provides that when the service users are accommodated in residential care, for any period of 24 hours or longer the provider, that is, the manager, in the case of Kentish Road, makes a judgment about whether their liberties are restricted. If so, a further mental capacity assessment is undertaken in relation to their capacity to agree to this restriction. If they are found to lack capacity to agree, the provider is required to submit an application for DoLS to the local authority. The requirement on the local authority is to undertake a DoLS assessment leading to a further best interest decision in relation to their deprivation of liberty at the placement. It is unlikely that any of the service users at Kentish Road were free to leave without agreement or supervision and consequently DoLS standard authorisations would have been required. If they were not required there should be evidence that DoLS have been considered, using a standardised assessment toolkit. There is no evidence of any standard authorisations or the use of any assessment toolkits for any of the Kentish Road service users.
146. In Southampton, as in many local authorities, there is a significant pressure, resulting in delay and non-compliance in relation to DoLS assessments. The Association of Directors of Adult Social Services (ADASS) has developed a prioritisation tool, which identifies criteria by which applications will be assessed. They are: duration of the stay, the intensity or extent to which a person will be deprived of personal liberty and issues of objection from the person or his representative. In this area of work, the Court of Protection mandates the local authority, and I was told that the Court of Protection considers a seven-day period of deprivation of liberty to be "a negligible period of time". It is unlikely that the Court of Protection would ever have made such a statement. In a residential setting a deprivation of liberty could occur within a few hours. The ADASS guidelines do not represent compliance with the provisions of the Mental Capacity Act 2015.
147. The DoLS team does not process any application of less than two weeks, including where the cumulative period amounts to 80 days in any year, as is the case with many of the Kentish Road service users. Consequently, although DoLS applications were received at the local authority from the manager at Kentish Road, the team did not process any of them.
148. The manager at Kentish Road was able to self-authorise DoLS for a period of seven days, which could be extended for a further seven days, to be repeated for every subsequent respite period. The Act allows for a second seven-day period to cover exceptional circumstances where it is not possible to complete the assessments for a standard

authorisation quickly. Anything beyond 14 days is illegal unless sanctioned by the Court of Protection. An urgent self-authorisation should trigger an immediate referral for an assessment for a standard authorisation. This means that SCC were non-compliant for any service user in residence at Kentish Road for longer than a single seven-day period or continuous 14 day period in any year.

149. The DoLS team at SCC were audited by external auditors at Hampshire County Council and Portsmouth City Council and were given the rating of limited assurance, reflecting limited compliance in its DoLS provision. The resulting risk to the authority is included on the strategic risk register.
150. For those service users who moved on from Kentish Road to community based provision, like Shared Lives, the requirement under the MCA, is for authority for the deprivation of liberty to be sought from the Court of Protection. The Local Authority makes application to the Court of Protection, submitting the application form, together with the mental capacity assessment and care plan, justifying why the provision is in the person's best interest. In Southampton, these applications were reviewed by Legal Services and none had been submitted for the ten individuals who moved from Kentish Road to Shared Lives, even given that four of these had been permanent placements.
151. At the time of closure, there were many Kentish Road service users for whom agreement had not been given by the carer to the offer of replacement care that was being made. In November 2017, there were 10 people for whom agreement had not been reached and currently I am told that there are eight. Social workers describe how carers were initially viewed as appropriate representatives, but as the time of closure loomed they failed to impartially represent the service users' interests, instead representing their own views. In such situations, guardianship should be considered under Sections 7 and 8 of the Mental Health 1983. I was told that the reason for not doing so was the perceived importance of maintaining positive engagement with families and because the respite care was deemed to be primarily for the benefit of the carer. There is an inconsistency in this judgment, given that the respite is generally provided as part of the service user's assessment and care and support plan and not that of the carers, implying benefit to the service user. However, in the case of the carers who did not agree, and still do not agree to the proposed provision, it is essential that there is clarity on the purpose of the respite care for the service user and an assessment of the capacity of the person to refuse it. Where respite is considered to be in the best interest of the service user, applications for guardianship should at least be considered.
152. The Care Quality Commission (CQC) also identified non-compliance with the MCA in their inspections of October 2015 and November 2016. These indicated a lack of consent for people to be monitored through the use of listening devices in their rooms, in breach of Regulation 10 of the Act and a breach relating to the information being sent home, detailing what people had done during their stays.

Section 6: Engagement and consultation with stakeholders

153. The duty to consult derives from public law and case law and enshrines good practice when local government proposals have an impact upon local communities or particular groups within them.

154. The decision to consult on the proposal to close the respite provision at Kentish Road and to re-provide the service in other ways took account of the following statutory or case law requirements:

(i) The Gunning Principles (1985), derived from case law specify how consultations should be conducted. The principles are:

- Consultation should occur when proposals are at a formative stage;
- Consultations should give sufficient reasons for any proposal to permit intelligent consideration;
- Consultations should allow adequate time for consideration and response;

(ii) The Local Government and Public Involvement in Health Act 2007 which placed a new general duty on every local authority in England to take such steps as it considers appropriate to secure that representatives of local persons are involved in the exercise of any of its functions, among other things by being consulted about the exercise of the function. It became necessary for every local authority, before starting the decision-making process, positively to consider whether public consultation is appropriate.

(iii) The Cabinet Office principles (July 2012): provides guidance in seven consultation areas:

- When to consult - formal consultation should take place at a stage when there is scope to influence the policy outcome
- Duration of consultation: consultations should normally last for at least 12 weeks.
- Clarity of scope and impact: consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
- Accessibility: consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
- The burden of consultation should be kept a minimum.
- Consultation responses should be analysed and clear feedback provided to participants following the consultation.
- Capacity to consult: officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

The Principles indicate that thought should be given to achieving real engagement rather than following bureaucratic process. There must be clear evidence that the decision maker has considered the consultation responses, or a summary of them, before taking its decision.

(iv) The Equality Act 2010 (the Act) included the public service equality duty to understand the effect of their policies and practices on equality. This includes looking at evidence, engaging with people, staff, service users and others and considering the effect of what they do on the whole community.

(v) The Care Act 2012 (and regulations) requires that when a council makes proposals for how it will fulfil its statutory function there may be a requirement to consult on

those proposals. The duty to consult will depend on a number of criteria of which the following are most relevant to the Kentish Road decision:

- When there is a change in the way a council is discharging its function.
- Where the proposals impact negatively on individuals, for example, if a group is identified as being likely to be worse off as a result of the change (for example in terms of outcomes, services or finances).

155. There were two consultation exercises undertaken during the period of this review. However, neither was solely focused on the closure of the Kentish Road provision or on a range of identified alternatives. Whilst the first consultation, started in July 2014, was appropriately held at the beginning of the process, there was no further attempt to engage or consult. This represents a lost opportunity to use the views, experiences and ideas of those who were affected to influence the design of the re-provided service. It is arguable that had there been continuing attempts to consult with service users, families and stakeholders and to develop methods of co-production, to steer the re-provision of the service, this may have pre-empted the complaints, campaigning and negative publicity that characterised the latter stages of the process.
156. Given that 77% of the respondents to the first consultation expressed opposition to the closure of the service at Kentish Road, it could never be clear to stakeholders how their contribution informed the final outcome. It has already been noted that the consultation was linked, in the first Cabinet report of July 2014, to a commitment to savings derived from closure, that were incorporated into the budget proposals before the consultation had been undertaken. This casts doubt, in the opinions of some of the officers interviewed for this review, over whether the consultation of July 2014 was meaningful or that the responses were considered with an open mind and taken into account in the recommendations to Cabinet. They perceive that the commitment to make savings pre-determined the outcome of the consultation, which was to proceed with service closure.
157. The first public consultation ran from 24 July 2014 to 23 October 2014 and was led personally by the Director of People. During this time, the families and carers of users of Kentish Road were invited to attend six meetings held at Kentish Road. The meetings were well attended and supported by independent advocates. In addition, there were two public meetings held at the Civic Centre. Information about the consultation was published on the council's website and was covered by the Daily Echo and BBC Radio Solent. Two meetings were held with the Council's partners and care providers and at Consult and Challenge (Spectrum Centre for Independent Living) and Southampton Healthwatch.
158. The Cabinet Report of 9.12.14 stated that a number of options for Kentish Road were presented during the consultation:
- (a) For it to remain open.
 - (b) For it to be closed with current service users being supported to move to suitable alternative care settings such as Shared Lives.
 - (c) For users and their families to be offered a direct payment to be able to purchase their own form of respite care, for example, utilising a direct form of respite such as a supported family holiday.
 - (d) For care to be purchased for individuals requiring respite care in private or voluntary sector homes.

159. A perusal of the detailed notes of the public meetings and the accompanying PowerPoint do not suggest that the alternatives at the consultation were so stark and clear. For instance the PowerPoint lists the possible changes as: direct payments; personal assistants; making better use of what else is available; support for carers; support for employment and social enterprises. The public meetings covered proposals relating to Woodside Lodge and day services as well as Kentish Road, which necessarily limited the scope for discussion specifically on Kentish Road. I have been unable to find out what the consultation questions were in a questionnaire, which was part of the consultation methodology, as, although requested, it has not been possible to locate the document. The recollection of an officer undertaking the consultation was that it focussed on personal budgets and more choice and was not specific to closing the service.
160. The Cabinet report of 9.12.14 records “the overwhelming response from families was to keep Kentish Road open.” Independent advocates worked separately with the users of Kentish Road and recorded the views of 28 service users of whom: 9 individuals (32%) agreed that the Council should look at different ways of meeting the needs of people who use respite services at Kentish Road; 3 individuals (10%) gave no reply or said they did not mind. The remaining individuals (16 or 58%) felt that the Council should not make changes the provision of respite services at Kentish Road.
161. In total, 45 questionnaire responses were received related directly to respite services, including the 28 from service users. Of these, ten responses (22%), from all completed questionnaires agreed that the Council should reconsider the way it provides respite services.
162. In addition to the questionnaire responses, 13 letters and emails from those who had links to respite services were received. The respondents included relatives of service users, carers of services users, social workers and managers contacting on behalf of service users as well as local voluntary sector groups. The majority of responses were strongly in favour of ensuring respite facilities were retained as they were viewed as a valuable service. A number of people expressed concerns about where alternatives may be sourced from, should Kentish Road facilities not be provided in their current state.
163. Prior to the consultation on the future of the service at Kentish Road, a review of day care services was already being undertaken by the ICU. This was a well-planned piece of work, involving consultation, engagement and coproduction to explore possible improvements to internally and externally provided provision. The report presented to Cabinet on 16.12.14 merged a description of the ongoing consultation methodology with regard to day care services with the recently added consultation with respect to Kentish Road and Woodside Lodge. The officer who wrote the initial report on day care services described how her report was altered, while she was on leave, to extend to the other services. Her request to have her name removed from the report was refused by the Director of People. Given the very different approaches taken to consultation methodology, she felt that her integrity had been compromised in that an open and transparent consultation approach to the review of day care services had been used to support pre-determined closure proposals, in a way that was described to me as a “mockery of due process.”
164. There is considerable strength of opinion amongst nearly all the officers interviewed for this review that the decision to close the provision at Kentish Road arose from the belief the Director of People at the time, and the head of service, that savings could be made quickly. They arrived at estimates for savings that were not based upon the true cost of replacement care. I was told that they were not receptive to objections and concerns from

families, or from other officers, who were aware that stages of the usual commissioning cycle had been curtailed. The 77% finding from the consultation that families wished to retain Kentish Road could, for example, have been achieved by looking for an alternative provider or using a social enterprise model, using the building to operate a service which would then be eligible for direct payments, in line with the Council's priority. The commonly held officer view was that the primary driver was the intention from the start to realise savings by closing the service, supported by pressure to increase the uptake of personal budgets.

165. A further consultation was undertaken as part of a wider review of for adults from January to April 2016. This was a strategic review, which identified the need to consider how replacement care services can be provided in a fair and equitable way for all age groups and all client groups. This is an analysis of the state of play at the time in respect of all forms of replacement care and offered a strategic way forward with the issues identified. These included eligibility, equity of provision and the methodology to be used for assessing service users and carers in compliance with the Care Act 2014. **The scope of the review did not include the provision of alternative respite care for the service users at Kentish Road.** It established principles to inform the assessment of carers, "establishing criteria and resource allocation levels replacement care" and recommended establishing a clear implementation plan to support any changes. The findings of the review were incorporated into other work streams such as the Adult Social Care Policy. They were not, however, presented to Cabinet, in line with the prior decision on 15.9.15 for a report by 31.3.16, although the review was mentioned in a later Cabinet report on 14.11.17. **Indeed, the findings of the review, if presented in a report to Cabinet would not have served the purpose it intended.**

166. There was no more formal consultation in relation to Kentish Road, but there were some attempts to engage with service users, families and stakeholders, as follows:

- (i) The Director of Adults, Housing and Communities, the Director of Adult Social Services, other senior officers and practitioners attended an estimated three or four meetings of the Mencap Carers Lunch or Forum.
- (ii) As plans for the development of Weston Court progressed, families were latterly consulted and kept informed. At one stage, information was given to them that this proposed new provision was no longer being considered and later that it was, after all, to be commissioned. There then appears to have been an open and honest attempt at co-production to shape the development of the new service. This included visits to the new building during refurbishment.
- (iii) There was at least one attendance by an SCC representative at the Learning Disability Partnership Board in relation to this matter.
- (iv) In addition, there were meetings between councillors and members of the public and attendance by them at OSMC and Cabinet meetings. I do not believe that these encounters constitute engagement in the sense intended by the legislation and guidance.

167. The Carers' Forum met on a regular basis throughout the period of this review and a regular presence by SCC representatives to offer information, progress reports and invite suggestions throughout this time was an opportunity missed. A sustained and continuous

engagement may have provided reassurance and avoided the campaigning and negative publicity that followed the decision to close.

168. In my view the clarity and scope of the consultation exercises did not represent meaningful engagement, consistent with the statutory requirements. Only the first consultation referred specifically to Kentish Road and that was a joint consultation concerning two other services. Given that the questionnaire cannot be found, the report of the consultation is not specific to the consultation questions and that I have been given unclear information, I remain uncertain whether there was clarity about what was being consulted upon or whether there were any meaningful opportunities for respondents to have influenced the decision-making.

Section 7: The structure and organization and capacity to deliver the project.

169. This was a complex project, requiring close management and oversight of a number of parallel streams of activity:

- Adherence to due process and governance arrangements.
- Ensuring timeliness and quality of care assessment and planning, compliant with the Care Act 2014 and Mental Capacity Act 2005.
- Consultation, engagement and commissioning arrangements.
- Ongoing financial modelling.
- Management of communications and the media.
- The management of service quality issues and staffing issues at Kentish Road.

170. After an initial period of project management to oversee the first consultation in July 2014, the implementation of the project to close the provision at Kentish Road was treated as 'business as usual' and there was no dedicated project management resource allocated to it. In my view, this is the primary reason that the project consistently failed to meet deadlines and to coordinate work streams.

171. Management responsibility and accountability at, and above, Director level changed during this period due to the implementation of new structures. It was located with four successive Directors, including two Interims. During the period July 2014 – February 2016, the Director of People, accountable to the Chief Executive headed the structure, with the Head of Service for Adult Social Care reporting to this role. Following implementation of the new structure, the Service Director, Adults, Housing and Communities, appointed as a permanent post holder in March 2017, reported to the Chief Operating Officer, who, in turn is accountable to the Chief Executive. The statutory role of Director of Adult Social Services was located within the ICU was appointed to in October 2016 but does not have line management responsibility for operational services. It may be that rapid changes at Director level impeded the continuity of implementation of this complex project, with its flawed timescales and financial projections. Even so, there was no radical reconsideration by any post holder of the feasibility and delivery of the project.

172. The delivery of different aspects of the project was the responsibility of heads of service, service managers and team managers across adult social care. None that I interviewed, below heads of service, were familiar with the commitments contained within the Cabinet reports throughout the period and none of them had an understanding of the totality of the

project and its work streams. Managers were not clear where overall accountability for the project lay, below Director level. A siloed approach was particularly evident between the operational, provider and commissioning parts of the service. There was, in fact, no overall coordination below Director level.

173. A remodelling of responsibilities meant that the senior management of the operational social work teams did not have experience or expertise in adult social care; this was particularly pertinent to the oversight of the care and support assessment and planning processes for the team undertaking assessments. The Service Lead described her role as “responsible for managing the services in my area but not the professionals who work in the area, that’s why we have a Director of Adult Social Services and a Service Lead for adult social care.” The Director of Adult Social Services role, however, does not carry responsibility for casework decision-making, which rests at team manager level, with the Service Director of Adults, Housing and Communities and the Chief Operating Officer having ultimate accountability.

174. Two major contributing factors to the delay in delivering the project were the lack of alignment between the assessment and commissioning processes and the decision to concentrate staff resources on the assessments relating to day services. The focus on supporting transition to the new day care service model delayed consideration of respite needs, even though these could, in many cases, have been considered as part of one holistic assessment. A chicken and egg situation ensued in which the search for respite alternatives and the commissioning of new services depended upon the information derived from assessments, whilst the assessment process became protracted because alternative placements could not be found, or they were not acceptable to carers. I was told that failure to complete individual assessment in a timely way meant that that some offers of care preceded rigorous assessment and were not appropriate to meet the needs of the individuals concerned. Social workers were not routinely receiving information about the alternative provision and so were unable to offer carers information about potential options.

175. The ‘business as usual’ approach failed as delay became entrenched in every aspect of the project delivery. Deadlines relating to meeting Cabinet decisions were not being met and the matter was becoming highly emotive for both officers and elected Members. Much of this is attributable to the lack of project management and overall coordination, which would have addressed issues such as:

- Clarity on responsibilities, roles and accountabilities, particularly with regard to delegation to ‘operational services’, ‘provider services’ and the ICU.
- Adherence to the Council’s governance arrangements.
- The reworking of financial modelling as more information about the cost of alternative provision became available.

176. Robust project management alone could not have entirely overcome the impact of the deficits in the resources available to support implementation of the project. These deficits included, in addition to the lack of a project manager:

- Lack of additional social work capacity to complete assessments and plans.
- Lack of technical support to ensure that PARIS offered up to date assessment and care plan templates as they were being developed.
- Lack of staffing capacity to support a more authentic engagement and coproduction

approach with service users and their families.

- Lack of timely training in the legal requirements to support the assessment and planning process, that is in the Care Act 2014 and the Mental Capacity Act 2005.
- Lack of training in the Equality Act 2010, with regard to the development of ESIA's and the implications of the PSED when implementing major service changes.
- Lack of professional social work challenge, guidance and management oversight to the team manager responding to the implementation of the Care Act 2014.
- Inadequate oversight and support for financial modelling.
- Insufficient Communications support to liaison with external stakeholders,

Section 8: Other relevant issues identified by the reviewer

Commissioning

177. The first action taken to address the anticipated shortfall in the respite provision of the Kentish Road service users was a series of market events facilitated by the ICU in April 2015. This work was undertaken as part of a broader exercise to establish a market position statement, however commissioners took the opportunity to indicate a gap in the market in relation to respite care. A number of providers came forward to express willingness to provide based respite for people with learning disabilities and preliminary discussions were initiated. However there was a lack of clarity about the quantity and type of provision that was required, because of the delay in completing the assessments of the service users. It was not until July 2016 that an email within the ICU stated "there is some actionable intelligence and we can now proceed."
178. In September 2015 Cabinet was asked to delay the closure of Kentish Road until 30 September 2016 "to allow time for the ICU to coordinate a further review of replacement care." As previously noted this review was not scoped to include the commissioning of suitable alternative provision Kentish Road users. See paragraph 165.
179. The appraisal of market alternatives specific to Kentish Road, as opposed to day care services, led by the ICU began in July 2016. At this time there were 55 individuals receiving replacement care from the service. It was identified that 16 of the 55 had yet to have their needs met and would require a total of 598 hours respite care. This estimate was based on what the service users had already been receiving; there was never any attempt to review or modify the respite care offer when eligibility was confirmed.
180. The Kentish Road Project Group was set up in December 2016 to co-ordinate the development of new provision and the needs of the Kentish Road service users, using an action tracker model. The group, including commissioning and operational staff based their work on the desktop exercise undertaken by the service manager, which had categorised the needs of the service users into three bands. It was not until December 2016 that assessments were undertaken systematically, when a social worker was allocated to the task, with a second allocated to it in April 2017. The delays in completing care and support assessments meant that there could be no commissioning of provision based on the assessed individual or personalised needs of service users.
181. The consultation in relation to the strategic review of respite care had raised carers' anxieties about the need for emergency care to be available. This was never defined for those in the ICU undertaking the market development exercise and no beds were

commissioned for this. There was not adequate information regarding emergency respite requirements until the systematic reviews began in December 2016 and even then I was told that there was ambiguity about what constituted emergency respite.

182. The market development initiative, beginning in July 2016, explored the possibility of additional provision with Shared Lives, Weston Court, Minstead Lodge and with Clearwater. At the time of closure, additional bed nights were provided only by Shared Lives for 10 service users and at Rose Road who were contracted for 300 bed-nights, with the additional service provided for 24 service users at Weston Court following two months later. This new service provided 900 bed-nights but registration with the Care Quality Commission(CQC) had been delayed beyond the closure date of Kentish Road. The delay was due to capacity issues at CQC and concerns raised by families.

183. At the present time, all but one of the service users deemed to be eligible for a replacement care service have had an offer made but nine carers have not accepted the proposed provision and others are still transitioning into Weston Court. Of those who have not agreed their offers, four continue to campaign for the reopening of Kentish Road. One individual with complex needs has been offered a package of home based care.

184. The formal letter before the claim for judicial review in relation to this matter, dated 30.8.17, cited alleged breaches of the Care Act 2014 in relation to the market place duty (Section5). This requires local authorities to:

- Consider what services, facilities and resources are available in the area and to work with their communities to provide or arrange support services. The authorities are further required to help develop a market that delivers a wide range of sustainable high quality care and support services, with a focus on offering choice of provision.
- To provide comprehensive information and advice about the range of carers' support services in the local area, including specialist services.
- The Act also required that local authorities commissioning practices and the services delivered on their behalf comply with the requirements of the Equality Act 2010.

185. I concur that there were breaches in these elements of the Care Act 2014. At the time the decision was made in December 2014, there had been no appraisal of the market position with regards to respite care; and the search for market alternatives did not begin until July 2016. The publication of information on care alternatives in a brochure, and on the website did not occur until after the judicial review letter had been received.

186. I attribute some of the delay in the commissioning process to the lack of clarity on accountability for this aspect of the project. The ICU had the experience and expertise in commissioning practice but responsibility for the implementation of the entire project remained with the operational side of the service. The ICU "helped out" when they were asked to do so, for example with the 2014 consultation, the 2015 market position statement and strategic review and with the search for market alternatives from July 2016. If clear arrangements had been made to define and delegate a wider commissioning role for the ICU at the start of the process there may have been fewer delays and gaps.

Staffing issues

187

This had significant impact upon staffing and management levels. A number of staff members took sick leave and some eventually left the service. This occurred at the same time as the unit was facing closure when staffing levels were already challenged.

188. This all contributed to the fact that the senior manager was managing complex set of circumstances in the final year that the centre was open. These included:

- Service quality and staff competence issues.
- Demoralisation and loss of confidence within the staff group.
- Staff shortages following the issuing notices of redundancy in September 2017, compounded by sickness absences and redeployment trials.
- Absence of the service manager and of registered manager due to sickness.
- Reviews and investigations.
- Scrutiny by top-level managers and concerns expressed by elected Members.

189. Taken together, these issues had significant implications for the quality of service being offered, to the extent that the service became no longer viable on a full time basis. By 4.9.17 it had only been possible to safely operate a service at weekends because of staff shortages over the above the proposed redundancies. The service was suspended between the 3rd and 6th November 2017 and the Service Director of Adults, Housing and Communities advised Cabinet Members in his report of 14.11.17 that if the decision was made to keep the current service open after 30.11.17 it would have to close for a short period for the recruitment and training of new and locum staff.

190. Service quality issues were not new. The CQC had inspected the Centre in October 2015 and November 2016. The overall rating for the service was “requires improvement” and issues were raised about the effectiveness of the service and its leadership.. The service was popular with the carers of the individuals who use the service there but as the period of this review progressed, there

The impact of Judicial Review letter

191. The Council received notification of a proposed claim for judicial review on 18.8.17 and this was followed by a letter before action dated 30.8.17. The ‘letter before claim’ challenged the letter to carers of 27 April 2017, in which they were informed the service would close on 31.10.17 as well as “the ongoing decision-making process, the ongoing implementation of the decision ...and ongoing failures by the Council to comply with its duty towards the client.” The proposed action concerned one service user, but a second was joined to the action.

192. There were eight grounds set out in the pre-action protocol letter 30.8.17, alleging the following illegal actions or omissions:

- Irrationality/failure under the Care Act 2014 to assess the individual needs of service users.
- Breach of legitimate expectation that Kentish Road would not close before alternative provision was put in place.

- Unlawful failure to produce a review/report to Cabinet following the January 2015 cabinet decision.
- Breach of care duties under the Care Act 2014, following failure to complete a needs assessment and a carer's assessment.
- Breach of PSED under the Equality Act 2010 on the grounds that no equality impact assessment has been carried out since November 2014 and because SCC had failed to gather relevant information regarding what detrimental impact the closure would have on disabled adults and women.
- SCC failed to review alternative respite services and analyse their ability to meet the needs of service users who would no longer be able to access Kentish Road. Further, that SCC failed to consider the diversity and quality of services locally.
- Breach of marketplace duty by failing to review alternative respite provision, conclude reassessments of Kentish Road service users needs, and to make a projection of what the likely future needs a Kentish Road service users and other disabled adults will be.
- Breach of the prohibition on indirect discrimination, under the Equality Act 2010 on the basis that women and disabled people will be particularly negatively affected by the closure.
- Breach of articles 8 and 14 of European Convention of Human rights to respect privacy for private and family life and to prohibit discrimination on any ground.

193. Legal counsel was sought in the matter of the proposed judicial review proceedings. The advice set out the merits of the claim and advised that there did need to be a further Cabinet decision to confirm the timing the closure. Cabinet would need to see evidence that:

- Each service user's individual needs had been looked at.
- Each service user had alternative provision that had been assessed as appropriate and able to meet their needs.
- The cost of the new provision was less than keeping Kentish Road open.
- Updated ESIA.

194. The view was expressed that unless the above information was supplied to Cabinet, the proposed claimant "will have a good prospect of persuading a court that the decision-making process has been unlawful." However, if the above evidence could be provided "the grounds raised by the proposed claimant are likely to fall away."

195. There followed a period of intense activity to ensure that Counsel's advice was followed:

- A Kentish Road Task Group was convened by the Chief Executive, involving senior officers, to ensure adherence to the barrister's advice and to collate the evidence for this. To some extent, this duplicated the work of the existing Kentish Road Group, which was coordinating the processes of assessment planning and commissioning, but it operated as a more strategic level.
- Staff were instructed by the Task Group to review and edit the remaining 30 service users' care and support assessments and care plans within two weeks, to ensure their adherence to the Care Act 2014, This required a significant number of additional hours to be worked and caused a high degree of stress to the social workers allocated to the task.
- The matter was programmed at OSMC on 14.9.17, at full Council on 20.9.17 and at Cabinet on 14.11.17.

- An ESIA was prepared and formed part of the papers available to Cabinet.

196. A further impact of the notification of proposed judicial review was that it led to a broadening of the base of the dissent and campaigning against the closure, which extended beyond “two or three individuals” to a wider group of carers. The increasing anger and resentment of carers led them to become less cooperative with social workers and many refused to accept offers of alternative provision.

The service user experience and impact of the media

197. I have not explicitly sought the views service users and carers in undertaking this review as this is outside the scope of the review. However the distress caused by the initial decision to close the service, by the subsequent delays in the implementation and lack of engagement has been clear from the documents read and from interviews with officers.

198. The first public consultation regarding the future of respite services at Kentish Road took place between 23.7.14 and 23.10.14. I have already highlighted that it is unclear what the specific consultation questions were but the notes of the public meetings indicate a high level concern by carers about changes to respite provision. These concerns were summarised in a report on the consultation as:

- Potential loss of friendship that may result from a change in the way respite care is provided.
- Concern that transport may not be provided and that respite would therefore be inaccessible and not viable as a service.
- The impact of change upon service users and their ability to cope with this.
- There was a perceived need to increase the capacity of respite services, which were seen as being overstretched.
- The view was expressed that respite provision equal to Kentish Road did not exist in Southampton.

199. There was concern raised that the Council had not been clear about the alternatives that would be provided. They felt that more information was required to allow those who would be affected by any change to make informed decisions.

200. Carers expressed that respite facilities do not just bring benefits to the service users. They felt that the benefits brought to the carers were just as valuable and if such services were to be removed, both carers and service users would suffer as a result.

201. Reference was made to the fact that recent refurbishments had been made to Kentish Road and concern expressed that this money could now be considered to have been wasted.

202. These comments indicate that there was a high level of concern and anxiety at the time the original decision to close the provision at Kentish Road was made in December 2014. Whilst a certain degree of resistance to change is understandable and could have been expected, there were elements in the concerns that were valid. At that time, there was no other equivalent alternative respite provision to Kentish Road, other than at Rose Road, and there had been no attempt to stimulate market alternatives or steps taken towards the commissioning of new provision. Some service users had already have their provision changed from Rose Road to Kentish Road, as part of a previous savings exercise, and were later to return to Rose Road following the closure of Kentish Road. From the carers’ point of

view this undermined confidence in the Council's decision-making, and from the service user's perspective it was disruptive and distressing.

203. The concern over the loss of friendship groups persisted throughout the period covered by this review, and beyond, and some carers have given this as a reason for turning down the alternative respite they have been offered. Friendships made during respite care were important to some individuals who otherwise led socially isolated lives, with contact predominantly with family members, who in some instances were much older people.
204. The time gap between the original cabinet decision in December 2014 and implementation was a period of nearly three years during which there was little contact with families except for assessment purposes. There was limited engagement with them at the Mencap Forum/Carers' Group in January 2017 and following the letter giving notice of closure. At one Carers' meeting information was given that the proposed new provision at Weston Court was no longer going to be commissioned and they later found out, but apparently were not informed by the Council, that it was again proceeding.
205. Families were not engaged at all with the procurement of additional provision until the latter stage of the development at Weston Court. The procurement process, which started in July 2016, was seen as an exercise in securing sufficient bed-nights to meet the needs of the Kentish Road service users. It was not seen as a commissioning exercise, which involved carers in a co-production approach, in which they could participate as stakeholders, in line with the requirements of the Care Act 2014.
206. The quality of information given to families throughout the process was inadequate. The Service Director, Adults, Housing and Communities attended a carers' meeting on 30.1.17 and the notes of the meeting state that: "some carers felt it would be helpful to have a booklet about what's available." There had been a requirement for such information to be made available to the public since the implementation of the Care Act 2014. The Council had been committed, at consultation stage to providing a choice of provision - indeed that had been a driving force for the decision - but many carers were offered a single option. At the end of the process nine families had chosen not to take up the offer that had been made. The view of the Portsmouth City Council Principal Social Worker, who reviewed the suitability of the proposed provision of ten of the service users whose carers had refused their offers, the proposed provision was reasonable and appropriate. In some cases she considered that the community-based offer of Shared Lives would have been suitable, rather than the more expensive residential option. In my view it is possible, though by no means certain, if there had been a different approach taken to information giving, consultation and co-production, carers' attitudes may not have become so entrenched and they may have been more willing to at least consider the offers made to them.
207. Due to the long time delay, the letter giving six month's notice of the closure of Kentish Road understandably came as a shock to many carers who thought or hoped that the proposal had been shelved. They had had assurance, in the form of a Cabinet decision, that the provision would not close until all assessments had been completed and all service users had alternative provision. The unexpected arrival of the letter left them feeling shocked, anxious, let down and increasingly, as time went by, angry.
208. The carers' anger gave rise to campaigning action, led by a small group who influenced the larger group. The matter had received attention in the local media at the time the initial decision and the matter gathered momentum in the media after the letter giving notice of

closure was sent in April 2017. After this, the matter was regularly making front page news in the Echo:

“Kentish Road campaigners hold protest outside the Civic Centre”

“We are all at breaking point...that’s the cry from embattled campaigners who are continuing their fight to bring back an axed respite centre.”

“It’s the Council saying they know better than families”

“All we want for Christmas is our Centre back.”

‘...Civic chiefs performed a U-turn and revealed plans to re-open Kentish Road Respite Centre...’

“The worst decision the Council has ever made.”

209. The distress of families and the negative publicity together resulted in the issue becoming emotionally charged. This was evident in three ways:

- Operational staff were caught between the anger and emotional responses of families which impeded the progress of the assessment and care planning process on the one side and the directives coming down to them indirectly from Councillors and directly from senior managers to redress the delays in completing assessments on the other. They described this as stressful, a “horrendous period”.
- The staff at Kentish Road were put under so much pressure from media attention, particularly after a serious incident, that social workers and team managers from the Learning Disability Team were asked to support them at weekends on a rota basis and the senior manager was on 24 hour call.
- Councillors were also put under pressure from members of the public who made direct contact with them. They had not been kept informed about the process by officers through the Cabinet process and so had to take their own positions on the closure issue. Whilst the Leader gave support to sustaining the decision that had been made in principle nearly three years earlier, opposition Councillors took a contrary view and supported the campaigners.

210. The pervasive emotion and the political pressure associated with it made it more difficult for officers to move forward objectively, with assessments and care plans and arrangements for the closure of the centre, whilst they were in the political and media spotlight.

211. As opinions became increasingly polarised, the ability of officers to work collaboratively with carers and support them through a difficult time, whilst working through the suitability of alternative provision, was reduced. Transition planning, which had already been compromised by the delays in the assessment and commissioning processes was further set back by the erosion of the confidence of carers in the Council’s ability to make decisions that were in the best interests of the service users.

212. Failures in the Council’s communications with families therefore compounded the effects of

the concurrent delays in the assessment and commissioning processes and contributed to the strength of feeling amongst carers that resulted in adverse publicity and campaigning.

Section 9: Learning and conclusions

213. The learning and conclusions arising from this review relate to a broad range of areas and activity. Staff and managers at all levels had identified many of the core failings described in this review at the time leading to and following the decision to close the Kentish Road Centre. These lead me to offer the following observations:

- The difficulties that occurred are not linear; they are dynamic and multi-dimensional.
- Quick solutions can lead to unanticipated problems in the medium and longer-terms.
- The social care landscape is a whole-system that needs to be managed as such. Breaking it down, as I have in this review, to component parts is necessary to establish cause and effect, but equally, each part must be treated as interdependent.

The overarching learning, therefore, is that the Council needs to ensure that an integrated approach to the management of major service change is adopted from now on, with accountability clearly defined at Service director level or above.

214. The dual rationale and drivers for proposals to change to the way in which respite care services for adults were delivered, including the proposal to close the provision at Kentish Road, were:

- (i) The need to offer a more personalised service with increased choice and greater take up of direct payments.
- (ii) The need to reduce the cost of provision and make savings.

215. These two aspects were included in all the reports which went to Cabinet and OSMC processes and both have validity. However, when the decision was taken in January 2015 to close the respite care provision by April 2015, there had been a failure to assess service users' needs. There had been no scoping, market appraisal or commissioning of additional places, and no matching of individual needs to provision. The estimate of financial savings was not based upon accurate financial modelling, given that the costs of re-provision were as yet unknown. The timescale for implementation of less than three months after the decision was confirmed following call-in was therefore unrealistic and unattainable. The learning from this is twofold. Firstly, that a project of this nature should be subject to a project plan from the start and prior to a Cabinet decision, to give a considered and robust timescale for implementation. Secondly, where savings are included in a Cabinet report and included in the budget proposals but are untested and approximate, this should be made clear in the report together with a commitment to update the savings figures following the financial modelling and return to Cabinet if anticipated savings fall short of the estimate and thus other options need to be considered. (Recommendations 1,2,3,4)

216. The project appears never to have been viewed as such or seen to be in need of a plan to co-ordinate the different elements. There was no project management after the initial consultation in July 2014. This led to a lack of integration between operational, financial, commissioning and governance strands. There were no clear lines of accountability for implementation of the project below Director level. Senior managers expressed that they

were only peripherally involved within their own particular area of service delivery. The learning is the need for an identified project lead to co-ordinate work streams and ensure delivery for projects involving major service change, particularly in relation to vulnerable people. (Recommendation 1)

217. Poor internal and external communication was an issue throughout the period of this review. This includes:

- Between senior and middle managers.
- Between officers and elected Members, including within the formal governance process.
- Between the Council and service users and their carers in relation to information giving, updates, consultation and engagement in the choice and design of the required re-provision.

The learning is that good communications is an essential element of project management and failure to get it right leads to wasted time, complaints and distress at later stages.

(Recommendation 2)

218. The proposal to close Kentish Road was part of the Cabinet decision-making process which included two other service changes, which involved considerable time investment: the closing of Woodside Lodge and re-provision of day services. The learning is that the timing for the implementation of major service change projects should take account of other concurrent major initiatives and ensure that the resources are sufficient to support all the projects. (Recommendations 1)

219. It was not until OSMC in September 2017 that accurate financial modelling was achieved and reported to Cabinet in November 2017. The inaccuracy of the original savings targets became apparent as more information about the cost of alternative provision became available. If there had been a more robust grip of the costs of closing and re-providing the service at an earlier stage, it might have triggered a reconsideration of the basis for the whole project together with an exploration of alternatives, such as outsourcing the service or use of a social enterprise. (Recommendation 4)

220. During the period of the review there were four successive Directors within Health and Adult Social Care, of which two were interim, together with a remodelling of management responsibilities. This may have made it difficult for the post holders to review progress and challenge the viability of the project, particularly as there were savings targets built into the budget. The learning is for Cabinet and OSMC to be aware of this and exercise a cautious approach to projects presented with ambitious savings targets and timescales. (Recommendations 1,2,3)

221. As time went on, the driving force for the proposal became obscured. The public and media attention focused on savings and officers found it difficult to articulate, in the face of increasing pressure, how the closing of the Kentish Road provision would lead to better outcomes and choice for people with learning disabilities. The learning is for the project lead and Director to maintain channels of communication with other officers, senior managers, stakeholders, Cabinet Member and Cabinet, as appropriate, offering a clear explanation for the action being taken. (Recommendation 2)

222. The implementation of the decision to close the respite provision at Kentish Road was characterized by a lack of adherence to the Council's governance arrangements. There were five Cabinet decisions which were not wholly complied with and timescales were not met. Cabinet was misled, albeit unintentionally, about the purpose and scope of the review of replacement care, which started in October 2015 and was the reason given for the proposal to delay the closure date. OSMC asked pertinent questions and persisted in an attempt to monitor the quality and timeliness of implementation. I do not believe that there were deliberate attempts to mislead OSMC but I am told that responses to questions came in late, sometimes on the date of the next meeting and often did not fully address the matter in hand, or give sufficient detail to provide a basis for OSMC to make judgments. The learning is that Cabinet decisions, OSMC questions and recommendations need to be tracked and responded to in a timely way, so that deadlines are not missed without explanation, and that OSMC is supported with technical expertise to follow the lines of their enquiry. (Recommendations 5, 6)

223. There are a number issues relating to the assessment of service users' needs and care planning:

- (i) Care assessments and reviews were not up-to-date at the start of the project and delays persisted throughout the period of this review.
- (ii) The situation became more challenging when the Care Act 2014 was implemented in April 2015. There was resistance and delay in adopting the required new format for assessment and the newly introduced care and support plans. Assessments and plans were not assured of being Care Act 2014 compliant until a review, in relation to the remaining service users at Kentish Road, took place in September 2017, following an intervention by the previous Chief Executive.
- (iii) Care and support assessments were undertaken without regard for the provisions of the Mental Capacity Act 2005, resulting in almost total non-compliance. This includes the two stages of evidencing assessing capacity to undertake an assessment and reassessing and undertaking the formal measures required by the Court of Protection associated with deprivation of liberty at the point that a person moves into residential care.
- (iv) There was lack of certainty over the purpose of respite care: whether for the carer or the service user. This, combined with lack of compliance with the Mental Capacity Act 2005, meant that practitioners and managers were slow to recognize when conflicts of interests between service users and their carers arose and to appoint advocates. No new advocates were appointed to support the assessment process when carers were rejecting respite services on behalf of service users.
- (v) The late availability of alternatives meant, in many cases that transition plans and arrangements were not sufficient to support the move into the alternative respite provision, except where required or organised by the provider.
- (vi) Funding decisions made at the funding panel were, and possibly still are, linked to assessment, not to care and support plans. This is contrary to the Care Act 2014, and has apparently been used as a means of negotiating down the level of care packages before commitments are made in the care and support plans, which could be made subject to legal challenge if not met.

224. The learning from these issues relating to care and support assessments and plans is for team managers and senior managers to consider the implications for their practice and ensure they receive the training they need or refresh the training they have had, accept the guidance offered by Legal Services and plan to systematically transform practice in line with

the Care Act 2014 and the Mental Capacity Act 2005. (Recommendations 7, 8,)

225. The remodelling of the management structure and line management responsibilities within the service resulted in the team manager of the learning disability team having no access to social work professional support, advice, guidance or challenge outside of her peer group. The learning is that social work decision-making requires clear accountability based upon knowledge and expertise at a senior level. In my view this could be achieved with the addition of a service manager between the team managers and heads of service. (Recommendation 9)
226. There are a number of issues relating to service user engagement and commissioning and procurement processes:
- (i) There was no strategic commissioning approach taken, that is a process that incorporates: review of needs and best practice; consultation; market review; planning including alternatives and procurement.
 - (ii) The commissioning process was based upon broad banding categories of need rather than on personalized analysis of need. This is poor practice because it does not take account of personalised needs of individuals.
 - (iii) The consultation exercises did not represent sufficient or meaningful engagement consistent with the statutory requirements. It did not influence the commissioning process except latterly in relation to shaping the development of Weston Court. There was no attempt to use the expertise of carers in a co-production approach, in line with the requirements of the Care Act 2014.
 - (iv) There was a lack of clarity between the operational and commissioning sides of the service. The ICU had the expertise to lead the re-provision of the Kentish Road service but was not given any delegated responsibility by the operational side of the service beyond requests for help with specific tasks.
227. The learning is for greater integration between operational services and the ICU and a joint decision on the division of responsibilities between operational managers and the ICU, to be achieved at the project planning stage. (Recommendations 10, 11, 12)
228. Staffing shortages resulted from staff sickness [REDACTED] in December 2016 and these were compounded after the issuing of redundancy notices. The service was no longer viable on a full-time basis by September 2017. The learning from the staffing situation at Kentish Road from December 2017 is that managers need to plan at the earliest possible stage for the staffing implications of major incidents and the issuing of redundancy notices.
229. The letter to give six month's notice of closure was premature. Cabinet had asked for a progress report before the decision was implemented. The letter should have followed from: the completion of assessments and care plans; the certainty of procurement arrangements regarding new alternative provision; and Cabinet endorsement. The learning is the same as that relating to the need for project planning and adherence to governance structures, assessment requirements and the principles of good commissioning. (Recommendations 1, 2,3,6,7,8,9,11)
230. The impact of the letter before action in relation to judicial review was a turning point in the understanding of senior managers about how far off track the arrangements to safely close the unit were. Counsel's opinion was that there was a case to answer and the Council's

response was a concerted programme of activities led by the previous Chief Executive. Action followed to remedy the deficits outlined in the letter. However, the letter led to some duplication of effort between the Chief Executive's Task Group and the operational Kentish Road Group, which was coordinating assessments and procurement. More significantly it led to intense action in relation to governance with the requirement for reports to Cabinet and OSMC. The learning for this similarly relates to project planning and the need for adherence to governance structures and legislation, in order to avoid the need for time-consuming catch-up activities. (Recommendations 1, 2, 3, 6, 7, 8, 9, 10, 11, 12)

231. This review has identified the following resource deficits: included, in addition to the lack of a project manager:

- Project management
- Social work capacity to complete assessments and plans.
- Technical support to ensure that PARIS offered up-to-date assessment and care plan templates as they were being developed.
- Staffing capacity to support a more authentic engagement and coproduction approach with service users and their families.
- Timely training in the legislation to support the assessment and planning process and the Equality Act 2010.
- Social work challenge, guidance and management oversight to the Learning disability Team.
- Requirement and support for continuous financial modelling.
- Communications support to external relationship management.

(Recommendations 1, 2, 3, 4, 6, 7, 8, 9, 10)

232. The distress of families became focused by the sending of the letter giving six months' notice to close the centre, negative media attention and active campaigning against closure by families. This had a detrimental impact on social workers' relationships with families using Kentish Road. It placed elected Members in a challenging position with members of the public who "bombarded" them with concerns and questions. There were differences of opinion between some ward councillors and Cabinet Members, some of whom were supportive of closure, others campaigning to reopen it. The learning is that where there is a deficit of information provided, it is likely that there will be division of opinion and different political views of the issue. In this case, the basis for officer decision-making was not clear and councillors lacked information and guidance. The learning is to engage earlier with service users and carers experiencing major service changes and to improve the quality and timeliness of information to them, Cabinet Members and ward councillors.

(Recommendations 1, 2, 4, 11)

233. The Council was not compliant with its public service equality duty in relation to consultation and ESAs. The latter should have been reviewed and refreshed at key stages during the period of this review and before each Cabinet decision. The learning is that project managers and senior managers should refresh their understanding of the Equality Act 2010 and ensure that they comply with it. (Recommendation 3)

234. The decision to reopen Kentish Road appears to be a reactive and political response to adverse publicity and the strength of feeling of a small group of carers, who have not accepted the offer of alternative provision. Whilst it will add to choice and geographical

spread of respite provision in the city, it could undermine what the Council was trying to achieve; it is costly and will require new staff and a new registered manager to be employed after the original staff group has been dismissed. The learning is that sometimes elected Members are left with no choice but to make judgments and decisions outside of the advice and guidance of officers if this is not made available to them. This is particularly the case in situations when there is campaigning and negative media attention, which risk damage to the Council's reputation. (Recommendation 14)

Terms of reference

The full terms of reference, including reasons for this review are set out below. The scope of the review remains unaltered but the structure of the report contained within the terms of reference has been modified following the collection of information and as agreed with the commissioner, the Director of Adult Social Services.

The independent review will:

- Review relevant documentation relating to the scope of the review
- Interview relevant individuals to ascertain and verify the facts relating to this review
- Produce a final report which sets out a factual time line and summarising the conclusions, learning points and recommendations

Southampton City Council undertake to:

- Make every effort to ensure staff are available for interview
- Ensure access to all relevant files and information
- Make every effort to source additional information requested – such as individual care plans and service users records
- Make arrangements for adequate and confidential working space to be available during the required times
- Nominate an SCC link officer in order to facilitate access to and interpretation of SCC policies procedures and governance arrangements
- Nominate a business support link to assist with practical arrangements such as room bookings and contact information.

Details of matters to be reviewed

Kentish Road respite unit was a facility run by Southampton City Council which had been in operation for a number of years, providing respite stays for people with a learning disability and their families/carers.

Kentish Road closed completely on 4/12/2017. Prior to that the unit's opening days had been reduced to weekends only from 1/11/2017 due to unsafe qualified staffing levels. There was an active campaign by some families/carers of users for it to be retained. The process of closure included a number of public meetings, including Cabinet, Full Council and Overview and Scrutiny Management Committee over a period of over three years, starting in July 2014. At these meetings there was criticism by opposition members and carers of the decision to close the unit, the quality of the information and whether it was sufficient, consistent and up to date, the level of engagement with individuals and their families and the decision making process which was followed in implementing that decision. The criticisms related to actions (and lack of) taken in relation to the over-arching decision and in relation to the individuals who were accessing the service at that time

When the final decision was made Cabinet in November 2017 it informally agreed that a review would be undertaken to 'learn lessons' regarding the process followed.

Scope of independent review

Southampton City Council (SCC) have commissioned the review to determine:

- The factual events leading to the closure of Kentish Road including a chronology of decisions and action.
- The timescale to be considered is from the period leading up to the cabinet report in July 2014 to the cabinet date in November 2017 when a decision was made to close the unit.
- Whether decision-making and governance routes were followed appropriately and in line with Cabinet resolutions, the scheme of delegation, standing orders and line management accountability.
- Whether appropriate and adequate information was provided, updated and given to Cabinet Members, Council meetings and committees in a timely fashion and whether sufficient information was available at all times in order for the relevant decisions to be made.
- Whether there was a direct link to the strategic objectives which supported this decision and how well this was adequately communicated to relevant stakeholders
- Whether all relevant legislation, statutory guidance and governance was followed in relation to the decision and in relation to individuals affected by the decision, and specifically
 - The Care Act 2014
 - Legislation with regards to people who lack capacity including the Mental Capacity Act 2005
 - Consultation requirements - statutory and common law
 - Local Government Act 1972
 - Localism Act 2011
 - Southampton City Council's Constitution
- Whether best practice was demonstrated in relation to engagement and consultation with stakeholders including service users and carers, the involvement of independent advocates and transition arrangements.
- Whether appropriate and proportionate Care Act assessments and plans were produced at appropriate times and whether correct engagement with service users and carers was undertaken.
- Whether any other actions would have been beneficial e.g. transition plans for service users.
- Whether the structure and organisation of the implementation project was adequate — including how implementation was resourced, project managed, responsibility assigned, progress monitored and reviewed, risks assessed and mitigated and reporting arrangements.
- The aim of review is to identify any lessons for future change projects, especially where the decision is likely to be unpopular and lead to challenges, both legal and otherwise.

Final report and format

At the end of the review SCC require a report addressing the points detailed above and including recommendations relating to:

- 'lessons learnt' from the review

- underlying causes of the issues raised and how the risk of similar issues arising in a future project can be mitigated
- how a similar project should be managed in the future
- engagement and consultation with service users/carers and other stakeholders
- legislative and operational practice issues
- any future training needs and for whom

Information to be considered

SCC has determined that in order for the review to be fully independent and objective the reviewer will have the discretion to consider any information and interview anyone they feel relevant to the review. However, it is felt that this should include the following information as a minimum:

- Cabinet, Council and OSMC reports and any other reports which supported the decision and following actions
- Financial information/modelling used to support the decision
- Minutes of meetings relevant to the decision to close Kentish Road and its implementation
- Any project management documents and action plans
- Relevant email, correspondence and communications relating to the matter
- Information on individual service users as relevant – to support an analysis of whether actions met legal and practice requirements. Any CQC inspection and action plans
- Relevant national legislation and guidance, local standing orders, policy and procedures
- Interviews with relevant SCC officers involved in the process
- Staffing arrangements in place during the period identified, including resources allocated to both project planning and implementation and 'business as usual' requirements and whether this had any impact on outcomes

The independent reviewer will have access to all information and files requested and SCC will make every effort to make staff available for interview. In order to facilitate access to files and other documents and to assist with practical arrangements the following officers have been identified as links:

SCC Link officer [REDACTED]
 PA Support – to be provided by internal audit team

Any additional advice or assistance needed during the review should be raised with the link person who will make the appropriate arrangements.

SCC will prepare an initial pack of relevant documents for the start of the review and to assist timescales. This should not be taken as a complete pack of relevant documents and the reviewer will be free to request additional information as they feel necessary.

Confidentiality

All matters regarding individuals, the incident being investigated, staff involved and the involvement of an Independent Person are strictly confidential. The independent reviewer and any others supporting them will be required to sign a confidentiality agreement.

Insurance

Southampton City Council will indemnify Independent Reviewer / Persons in respect of all sums that they may become legally liable to pay arising out of the review (not that this is anticipated) and the production of any subsequent report on behalf of the Council. The indemnity is subject to the Independent Reviewer / Person acting in good faith and within the scope of his or her authority, and shall not apply where liability arises from wilful wrongdoing or negligence.

Interviewing staff

- A business support link person will facilitate access to staff by providing contact details and, where appropriate, inform the individual of the interview.
- All staff when being interviewed may, if they wish, be accompanied by a friend, work colleague or trade union representative. Independent Persons are encouraged to remind staff of their right to this support when arranging to interview staff. It must be noted that the review is simply that and any meetings and/or information given by anyone is not provided on the basis that any disciplinary action will/may follow.
- Staff have a right to copies of any notes taken of the meeting and the reviewer is encouraged to agree these with them and obtain signatures as a correct record.

Final Report

Independent reviews are bespoke pieces of work relating to a specific incident or set of circumstances and as such the reviewer should feel free to include headings relevant to the unique circumstances. The following headings are referenced as a guide as to the usual minimum information to be included in a final report:

- Review details
- Chronology
- List of interviewees and information considered
- The issues identified set out in a numbered list
- Analysis and findings for each issue including any underlying causes which impacted on the issue
- A record of relevant policy, practice and legislation
- Recommendations arising from the analysis including lessons for any future work of a similar/relevant nature
- Conclusions
- Any other relevant information
- Formatted in numbered pages and paragraphs

Additional items to note

- When including personal and or confidential information there is a wider duty to include only information that others need to know. Reviewers should ensure it is relevant to the situation and understanding of the issue/complaint and or resolution.
- It is best use plain language and avoid the use of jargon and technical terms.

The report will be shared in the first instance with the commissioning officer (in this case the DASS), Senior Leadership Team (SLT), Service Director Legal and Governance and with others by agreement with SLT.

Timescale for completing the review and submitting final report

The initial timescale is for the review to be completed by the end of May 2018, subject to review and agreement as the work progresses.

Data Protection:





- The independent reviewer must act on instructions from the Council with regard to the processing of personal data (for the avoidance of doubt, "processing" has the same meaning as defined in the Data Protection Act 1998).
- Whilst in their control, the independent reviewer must take appropriate technical and organisational measures against unauthorised or unlawful processing of the Council's personal data, and against accidental loss or destruction of, or damage to, the Council's personal data. This includes taking care at all times to keep client files in a secure place, and when not in use to be kept in a confidentially secure manner. Client files must not be left unattended in a vehicle or anywhere else.
- On the conclusion of the review, or at the request of SCC, all original papers/files should be returned to SCC and any copies returned or destroyed.
- The independent reviewer must notify the Council as soon as reasonably practicable upon becoming aware of any breach, or suspected breach, relating to the confidentiality or security of the personal information being processed on behalf of the Council.

Expenses

Daily rate agreed is £500 per day with an initial estimate of 10 to 12 days. It is acknowledged that additional days may be required which will be agreed by Internal audit.

Reasonable expenses in relation to travel and any other expenses agreed in advance and incurred by the independent reviewer will be reimbursed by SCC at the agreed rates. Payment will be made upon receipt of invoice.

List of interviewees

- | | | |
|-----|--|--|
| 1. |  | Team Manager, Deprivation of Liberties Team |
| 2. |  | Associate Director, ICU. Director of Adult Social Services |
| 3. |  | Internal Audit Manager |
| 4. |  | Community Care Solicitor |
| 5. |  | Senior Commissioning Manager, Learning Disabilities |
| 6. |  | Social Worker/Care Manager |
| 7. |  | Senior Solicitor, People and Courts |
| 8. |  | Team Manager, Learning Disability Team |
| 9. |  | Formerly, Principal Social Worker |
| 10. |  | Senior Commissioner |
| 11. |  | Senior Commissioner |
| 12. |  | Service Director – Adults, Housing and Communities |
| 13. |  | Social Worker/Care Manager |
| 14. |  | Senior Commissioner |
| 15. |  | Director, Quality and Integration (ICU) |
| 16. |  | Service Lead, Assessment Planning and Options |
| 17. |  | Service Lead, Adult Social Care |
| 18. |  | Senior Commissioner for Market Development |

List of documentation used to inform the review

Notes of public meetings taken during the consultation July to October 2014

PowerPoint presentations on the proposal to consult on the future of respite services, 7th July 2014 and 8th September 2014

Session notes on replacement care consultation 9th March 2016

Proposal for the future provision of replacement care – summary of consultation responses

Cabinet and OSMC reports relating to Kentish Road throughout the period of the review and OSMC Monitoring Report dated November 2017

Consultation document on the strategic review of replacement care October 2015

Review of Replacement Care for Adults: Final Report (undated)

Extract from the Officer Scheme of Delegation

Equality and safety impact assessments: November 2014 and November 2017

Copy of letter from Director of Adults, Housing and Communities to carers, giving six months notice of closure of the respite provision at Kentish Road

Notes of the Kentish Road Task Group, convened by the previous Chief Executive

Correspondence relating to notification a proposed claim to judicial review, including solicitors' letters, advice from counsel and email exchanges

Email exchanges between the legal services, the learning disability team, the Paris team and the training team regarding the non-compliance of assessments with the Care Act 2014

Specimen care and support assessment and plans

Care Quality Commission inspection reports on 32 Kentish Road: 2015 and 2016

Southampton Clinical Commissioning Group Quality Assurance Annual Audit 2017/18 relating to 32 Kentish Road

Kentish Road action tracker of progress of assessments and procurement

Correspondence concerning the review of ten care and support plans by the Principal Social Worker, Portsmouth City Council
Southampton City Council Adult Social Care and Support Planning Policy

Spreadsheet tracking care and support assessments, plans and placements for the Kentish Road service users

Southampton City Council chronology in relation to Kentish Respite Centre

The learning from Kentish Road closure – initial thoughts by the Director of Adult Housing and Communities

Notes of Carers' meeting 30 January 2017

Brown, R., Barber P., Martin M (2015) *The Mental Capacity Act: A Guide for Practice* (3rd edition). London Sage/Learning Matters.

Links to the Council's strategic objectives.

1. The proposal to close the replacement care provision at Kentish Road aligned to a number of key priorities set out in the City Council Plan 2013-16, including:
 - Improving health and keeping people safe by redesigning the way we deliver and commission services for children, young people, and adults.
 - Helping individuals and communities to work together and help themselves by increasing opportunities for self-reliance and community resilience.
 - Managing reduced budgets and increasing demand by making a significant contribution to the Council's savings gap of £72m.

2. It was also aligned to the following priorities set out in the Council Plan 2014-2017:
 - Prevention and early intervention
 - Protecting vulnerable people
 - A sustainable Council

3. It supported one of the Council's four key outcomes in Southampton City Council Strategy 2016 -2020: Supporting people in Southampton to live safe, healthy, independent lives.

4. The proposal also supported a key theme in Southampton's Healthier Lives in Healthier City - Southampton Health and Wellbeing Strategy 2013-2016: Building resilience and using preventative measures to achieve better health and well-being.

Relevant Legislation to and Statutory Guidance

This appendix lists the legislation and statutory guidance most relevant to the decision to close the respite centre at Kentish Road and provides further detail on the general provisions of the Care Act 2014, the Mental Capacity Act 2005 and the Equality Act 2010. An understanding of the provisions of these three pieces of legislation is most pertinent to the actions and omissions that characterized the implementation of the decision to close the provision at Kentish Road. More detailed information on the issues of non-compliance with the Care Act 2014 and the Mental Capacity Act (MCA) 2005 is included in Section 5, together with details of the alleged breaches of the Care Act 2014 that were cited in the letter before claim in relation to judicial review. Issues of non-compliance with the Equality Act 2010 in relation to Kentish Road are covered in Sections 4 and 8

Care Act 2014 www.legislation.gov.uk/ukpga/2014/23/contents/enacted

Care Act Statutory Guidance (2016 update) <https://www.gov.uk/guidance/care-and-support-statutory-guidance>

The Equality Act 2010 <https://www.legislation.gov.uk/ukpga/2010/15/contents>

Children Act 1989 www.legislation.gov.uk/ukpga/1989/41/contents

Children and Families Act 2014 www.legislation.gov.uk/ukpga/2014/6/contents/enacted

Data protection Act 1998 www.legislation.gov.uk/ukpga/1998/29/contents

Disabled persons (Employment) Act 1944 www.legislation.gov.uk/ukpga/Geo6/7-8/10

Health and Social Care Act 2012 www.legislation.gov.uk/ukpga/2012/7/contents/enacted

The Human Rights Act 1998 <https://www.legislation.gov.uk/ukpga/1998/42/contents>

Mental Capacity Act 2005 www.legislation.gov.uk/ukpga/2005/9/contents

Mental Health Act 1983 www.legislation.gov.uk/ukpga/1983/20/contents

The Public Services (Social Value) Act 2012 <http://www.legislation.gov.uk/ukpga/2012/3/enacted>

The Care and Support (Charging and Assessment of Resources) Regulations 2014
http://www.legislation.gov.uk/uksi/2014/2672/pdfs/uksi_20142672_en.pdf

The Local Authority Social Services Act <https://www.legislation.gov.uk/ukpga/1970/42>

The Care Act 2014

The Care Act 2014 provides an updated legal framework for care and support and introduces a number of new rights, responsibilities and processes. The Act created a single, consistent route to establishing an entitlement to public care and support for all adults with needs for care and support.

Most relevant to the process of closure of Kentish Road are its provisions in relation to: entitlement to public care and support; assessment of needs and determination of eligibility, the personalisation of care and support planning and the recognition, for the first time, of carers' legal rights to assessments and support. Carers are given legal rights to assessments and support in the same way as those they care for.

The Act follows the person's 'journey' in the care and support system. It begins with an assessment of their needs and a decision about whether their needs are eligible. Following the process of assessment the decision is made about whether the adult is entitled to care and support arranged by the local authority.

The Act and its guidance set out that assessments should be focused on what the person actually wants to achieve rather than what services should be provided. They support a personalised care and support system built around the individual.

The local authority has the duty to produce a plan that sets out the detail of what was agreed in the assessment, for both the person receiving care and the carer. For the latter, this can include participation in education, training and recreation which may require the provision of respite for the adult they are caring for.

The Care Act also requires local authorities to consider what services, facilities and resources are available in the area and to work with their communities to provide or arrange support services. The authorities are further required to help develop a market that delivers a wide range of sustainable high quality care and support services, with a focus on offering choice of provision.

Local authorities are required to provide comprehensive information and advice about the range of carers' support services in the local area, including specialist services.

The Act also required that local authorities commissioning practices and the services delivered on their behalf comply with the requirements of the Equality Act 2010.

The Act does not specifically refer to respite or replacement care but this is covered in the Guidance to the Act, under the provisions relating to the requirement to support carers.

The formal letter before the claim for judicial review in relation to this matter, dated 30.8.17, cited seven alleged breaches of the Care Act 2014:

1. Section 1: The wellbeing principle
2. Section 5: The market place duty
3. Section 9: The duty to conduct a needs assessment
4. Section 18: The duty to meet assessed needs for care and support
5. Section 10: The duty to conduct a carer's assessment
6. Section 20: The duty to meet eligible needs of carers
7. Section 24: The duty to provide a care and support plan

The Mental Capacity Act (MCA) 2005

The Mental Capacity Act 2005 provides a legal framework for decision-making for people over the age of 16 who are not capable of making certain decisions for themselves. It covers a broad range of decisions including personal welfare, medical and healthcare decisions as well as financial decisions

Section 2 of the Act states that: “ a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain.”

The MCA says that a person is unable to make their own decision if they cannot do one or more of four things:

- Understand the information relevant to the decision
- Retain that information long enough to be able to make the decision
- Weigh up the information available to make the decision
- Communicate their decision – this could be by talking, using sign language or even simple muscle movements such as blinking an eye or squeezing a hand.

Where an individual appears to lack the capacity to assess their own support needs, an assessment under the Mental Capacity Act (MCA) 2005 will be undertaken.

If a person has been assessed as lacking capacity then any action taken, or any decision made for or on behalf of that person, must be made in his or her best interests. Normally this will be the carer responsible for the day-to-day care, or a professional such as a doctor, nurse or social worker where decisions about treatment, care arrangements or accommodation need to be made. The Act provides a checklist of factors that decision-makers must work through in deciding what is in a person’s best interests.

The Mental Health Act 2007 amended the Mental Capacity Act 2005 by introducing deprivation of liberty safeguards (DoLS). These safeguards are needed if restrictions and restraint will be used to deprive a person of their liberty. They can only be used if the person is in a care home or a hospital. Each of these settings is required to make a DoLS application to the local authority for a standard authorisation when they are required. There are six assessments which have to take place before a standard authorisation can be given. Whether or not a person is in fact deprived of their liberty is determined by applying the test laid down in the Cheshire West case (2014):

- The person is not free to leave.
- They are under continuous supervision, and control.

DoLS can only be used if the person will be deprived of their liberty in a care home or hospital. If they are in other community settings the Court of Protection is required to consider authorising a deprivation of liberty under section 16 of the MCA.

The Equality Act 2010

The Equality Act 2010 imposes public sector equality duty upon local authorities, consisting of the general equality duty which is the overarching requirement or substance of the duty, and specific duties which are intended to facilitate performance of the general equality duty. The public sector equality duty replaced the former duties relating to race, disability and gender equality and came into force on 5 April 2011.

This requires that due regard is given to the three aims of the general equality duty:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.

- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

The second aim (advancing equality of opportunity) involves, in particular, having due regard to the need to:

- Remove or minimise disadvantages suffered by people due to their protected characteristics.
- Take steps to meet the needs of people with certain protected characteristics where these are different from the needs of other people.
- Encourage people with certain protected characteristics to participate in public life or in other activities where their participation is disproportionately low.

The general equality duty covers a range of protected characteristics, of which disability is of relevance to the decision concerning the closure of Kentish Road. Case law has stressed the importance of engagement in ensuring public authorities understand the impact of their decisions on protected groups. Judicial reviews and two Court of Appeal cases have declared key decisions of public bodies unlawful by reason of a failure to meet the public sector equality duty (PSED) under s.149 of the Equality Act 2010.

It is of particular relevance to the implementation of the Kentish Road closure decision that the above cases indicate the importance of ensuring that careful thought is given to the need to engage with relevant individuals and that the aims of the PSED are achieved at the earliest possible stage in a decision-making process. Not only should the PSED be considered at an early stage but Councils should document all stages of the decision making with regard to the PSED so that there is a clear audit trail should a decision be challenged.

The general equality duty does not set out a particular process for assessing impact on equality that public authorities are expected to follow. One vehicle to demonstrate that due consideration has been given to the PSED is the Equality Impact Assessment (EIA) which should consider the potential impact of any decision on groups of people with each of the protected characteristics.

The EIA should be provided to elected Members to ensure they have all of the relevant information about the effect of any decision on those with protected characteristics and can be shown to have had 'due regard' to the need to eliminate discrimination. The information given to the decision makers regarding any potential impact on those with protected characteristics should be specific, rather than a "vague idea" of how groups will be impacted. It should provide an evidence base for their decision-making.

Abbreviations

CQC	Care Quality Commission
DoLS	Deprivation of Liberty Safeguards
ESIA	Equality and Safety Impact Assessment
ICU	Integrated Commissioning Unit
MCA	Mental Capacity Act 2005
NQSW	Newly Qualified Social worker
OSMC	Overview and Scrutiny Management Committee
PARIS	The Council's electronic case management system
PSED	Public Service Equality Duty
SCC	Southampton City Council

SOUTHAMPTON CITY COUNCIL: TOP ORGANISATIONAL STRUCTURE JULY 2014 – JUNE 2018

July 2014



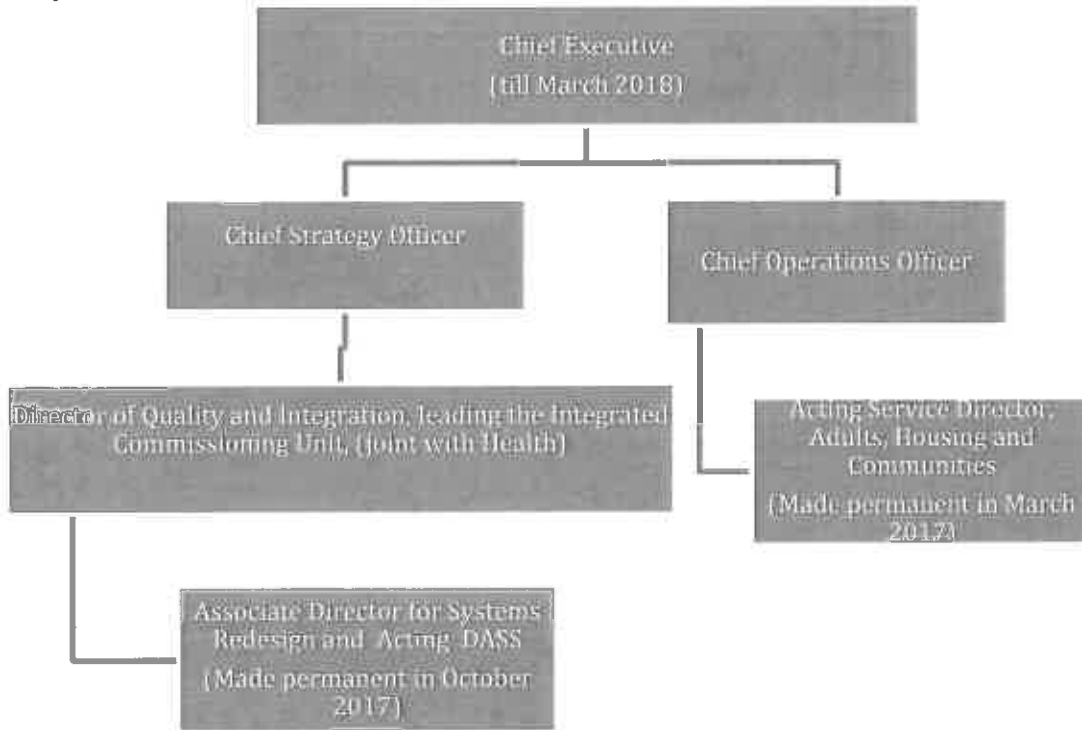
May 2015



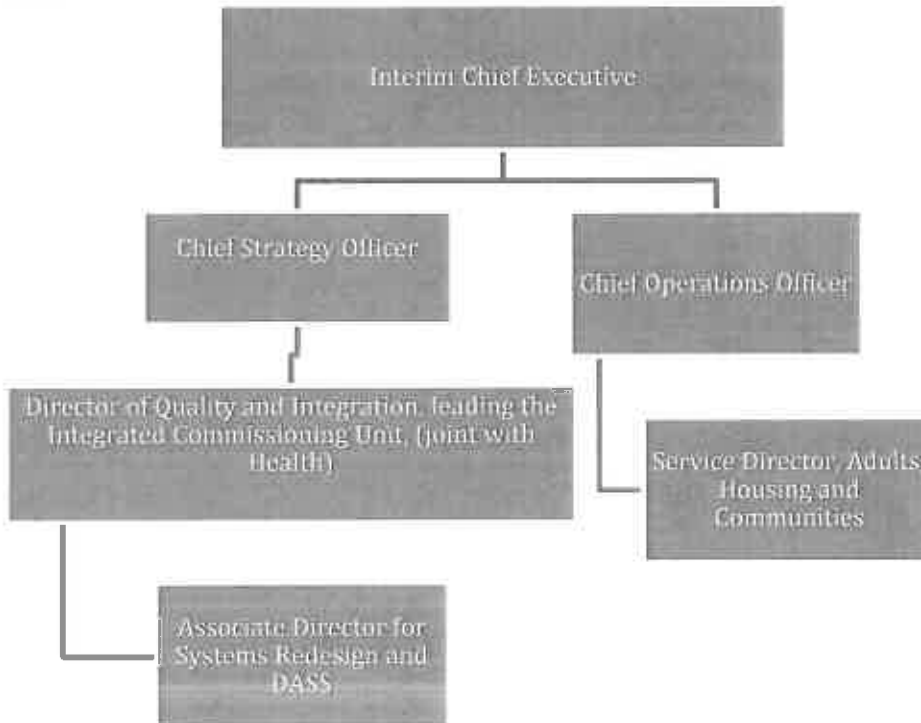
Feb 2016: changed senior management structure to deliver the new operating model for the council



Oct/ Nov 2016



April 2018



Action Plan for Recommendations from Independent Review Of Kentish Rd Respite Centre

Oversight of Action plan to be undertaken by Kentish Road Independent Review Oversight Board

Recommendation 1: To ensure that for all major changes to service provision, particularly those concerning vulnerable people, that industry recognised project management principles are implemented. This includes a project initiation document (PID), the establishment of a project board chaired by a senior officer of the Council, a project plan and a designated project lead. For Cabinet to be sure that this is always complied with, it will be necessary to amend the report template to require the attachment of the PID and/or the name of the Project Lead responsible for coordinating operational/financial/commissioning/governance work streams. The amendment to the report template to ask whether the implementation of the project takes account of other concurrent major initiatives and, if so, requires assurance that the resources are sufficient to support multiple projects.

<p>Action:</p>	<p>Lead: MH</p>	<p>Timescale: 5/9/18</p>	<p>Status: 5.9.18 – MH presented the Project Management Process and the Board agreed that the process would meet the recommendations in the Independent Review. It provides a structured approach to managing a project at an early stage and a way of tracking what needs to happen, who by and when. For a project to commence, the Service Director will have to sign off on the project brief. Projects will be overseen by Council Management Team to ensure timescales and processes are followed. 01/04/19 – Evidence reviewed that the Project Management process is being followed now. For example Next steps for Kentish Road and Residential home model are being overseen as part of Adults Transformation and a regular update goes to Council Management Team Programme Board.</p>	<p>RAG Status: Green</p>
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Recommendation 2: The project plan to include delegation of responsibility for ensuring that internal and external communications are robust and support legal compliance.

<p>Action:</p>	<p>Lead: MH</p>	<p>Timescale: 5/9/18</p>	<p>Status: 5/9/18 Covered in Project Management Process 01/04/19 – as above</p>	<p>RAG Status: Green</p>
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Recommendation 3: The project plan to ensure adherence to the Public Service Equality Duty (PSED) under the Equality Act 2010, including through the development of Equality and Safety Impact Assessments (ESIA) at every stage of the decision making process.

<p>Action:</p>	<p>Lead: MH</p>	<p>Timescale: 5/9/18</p>	<p>Status: 5/9/18 Covered in Project Management Process 01/04/19 – as above</p>	<p>RAG Status: Green</p>
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Recommendation 4: To amend the Cabinet report template in the finance section to provide a tick box on whether the matter has been considered at Cabinet before and, if so, to require that the financial business case has been updated or confirmed.

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Recommendation 5: To provide an external consultancy role to the Overview and Scrutiny Management Committee (OSMC), to provide expert advice and guidance on appropriate challenge in the area of health and adult social care for a period of one year.

Not Accepted: It is considered that SCC discharges its scrutiny function well. It has a dedicated Scrutiny Officer and has been previously held up as an example of best practice nationally. As and when required external expert assistance is already provided.

Recommendation 6: Democratic Services to establish a system for tracking the implementation of Cabinet decisions, similar to the OSMC tracker, so that decisions requiring action within timescales are brought forward to Cabinet as required.

<p>Action: Democratic Services to establish a system for tracking the implementation of Cabinet decisions, similar to the OSMC tracker, so that decisions requiring action within timescales are brought forward to Cabinet as required.</p>	<p>Lead: Democratic Services</p>	<p>Timescale: October 2018</p>	<p>Status: 5.9.18- This is being implemented by Richard Ivory working with democratic services and we are advised this will be in place by October cabinet 5.10.18- Richard Ivory has reported this is in place and ready to be rolled out following October Cabinet. 12/03/19 – This is now in place. Democratic Services have evidence of compliance.</p>	<p>RAG Status: Green</p>
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Recommendation 7: The Council to commission independent audits of:

Care and support assessments and plans within learning disability services to assess quality and compliance with the Care Act 2014 and the Mental Capacity Act 2005. This to include the assessments and care and support plans of carers, which are outsourced on behalf of the Council.

The decision making at the funding panel to ensure decisions follow from care and support plans and not from assessments, in compliance with the Care Act 2014.

The extent of non-compliance with the Mental Capacity Act in the Deprivation of Liberty Safeguards (DoLS) team in relation to applications for deprivation of liberty safeguards that are not taken forward.

Note: an independent audit is recommended because there is a pervasive lack of understanding of the legislation amongst staff and managers, which would impede the accuracy of the audits undertaken internally

<p>Action: LF to procure Audits through the Sub100k team. LF to give update at Board meeting</p>	<p>Lead: LF</p>	<p>Timescale: 5/9/18</p>	<p>Status: Completed</p>	<p>RAG Status: Green</p>
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<p>5.9.18-LF to send draft specification to be signed off by PJ</p>	<p>PJ</p>	<p>7/9/18</p>	<p>Completed</p>	
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<p>27/11/18 – NDTi have been procured to complete an independent audit – to start with 40 LD cases</p> <p>LF to share audit tool with legal (CE) to ensure that compliance with legislation is addressed</p> <p>Feedback on outcomes to be provided at March 19 meeting and actions agreed for Recommendation 8</p>	LF	<p>January 2019 – completion of audit</p> <p>March 19 – feedback</p>	<p>LF will meet with NDTi on 28/11/18 to discuss scope and timescales of audit work. Target completion date of January 2019.</p> <p>Ensure Deprivation of Liberty assessments have been completed for all KR residents. Detailed feedback to be provided to both Adult Social Care and to the Independent Review Oversight Boards.</p> <p>12/3/19. NDTi audit commenced 3/1/19. In addition actions to support changes in practice :</p> <ul style="list-style-type: none"> • Independent Review recommendations relating to social work practice were incorporated into Development Plan for Social Work Professional Practice. Developed and implemented by Principal Social Worker. (27/11/18). There is some slippage on actions. Development Plan implementation overseen by Adult Improvement Board • Learning disability integrated team – new integrated Service Manager in post has developed, and started implementing, a team development plan. Team now co-located • New Client Case management system procured which will significantly improve both record keeping and monitoring of compliance 	

Page 11	Recommendation 8: Following the audit, and depending on its findings, to provide training for relevant staff and managers, and a scheduling of a re-audit to track improvement.			
	Action: All recommendations in NDTi report accepted.	Lead: PJ	Timescale: March 20	<p>Status: 1/4/19 recommendations to be incorporated into Adult Transformation plan and overseen by Adult Improvement Board.</p> <p>Audit tool to be reviewed, as per recommendations from auditors. Snapshot audits to be completed by managers quarterly and then full audit repeated December 19.</p>
Recommendation 9: To implement changes in the line of accountability for social work services at senior level to ensure that accountability for decision-making and management oversight is provided by a senior manager who has a professional social work qualification, expertise and experience.				
Not accepted: The current operating model provides sufficient accountability for leadership and professional practice to be undertaken by Service Director and DASS, overseen by the Chief Executive.				
Recommendation 10: To ensure that all changes relating to service redesign are commissioned by the Integrated Commissioning Unit (ICU) and that there is an agreed and clear delegation of responsibilities and activities between the operational service and the ICU.				
Not accepted: The current operating model permits the operational re-design of adult social care to be undertaken by the operational service led by the service director, whilst commissioning activities are undertaken by the ICU. There is close working between the Integrated Commissioning Unit and the operational service.				
Recommendation 11: To ensure that public consultation, engagement and co-production approaches are included in project plans and undertaken, where required, in line with legislation. Further to ensure that these continuously inform the service design and decision making process throughout the life of the project.				

<p>Action: Ensure public consultation, engagement and co-production approaches are included as part of Project Management Process and implemented</p> <p>Develop Practice Guidance on public consultation, engagement and co-production approaches</p>	<p>Lead: MH</p> <p>JM</p>	<p>Timescale: 5/9/18</p> <p>1/9/19</p>	<p>Status: 5/9/18 Covered in Project Management Process 12/03/19 – The requirement for coproduction is covered in the Programme Management, but work is underway to provide additional guidance on how to deliver in practice. 01/04/19 - The work on future options for Kentish Road is a good example of co-production work taking place.</p>	<p>RAG Status: Amber</p>
<p>Recommendation 12: To procure services as part of the final stage of the commissioning cycle only when a rigorous assessment of need has been undertaken, including the use of collated information arising from individual assessments of need, when concerning the provision of specialist services.</p>				
<p>Action: 5/9/18- to be discussed and assurance given at the next meeting</p> <p>5/10/18 SR to speak with MH to see how this fits into the Project Management Process including undertaking individual reviews where there is service change or closure.</p> <p>27/11/18 SR to seek assurances on compliance</p>	<p>Lead: SR</p> <p>SR</p> <p>SR</p>	<p>Timescale: 5/10/18</p> <p>March 2018</p>	<p>Status: 5/9/18 SR indicated that contract processes are in place within ICU. Project paperwork will be reviewed to ensure compliance with specific question included. Link with project management process to be reviewed at next meeting.</p> <p>27/11/18 Processes within ICU mean that any commissioning decision is based on needs assessment and this is verified through use of CLCMC (The Contract Lifecycle Management Committee) and Joint Commissioning Board.</p>	<p>RAG Status: Green</p>
<p>Recommendation 13: The remit of project boards to ensure compliance with the Council's HR policies in relation to managing change and major incidents, so that the staffing implications and capacity and cover issues are planned rather than reactive.</p>				
<p>Action:</p>	<p>Lead: MH</p>	<p>Timescale: 5/9/18</p>	<p>Status: 5/9/18 Covered in Project Management Process</p>	<p>RAG Status: Green</p>
<p>Recommendation 14: To ensure that the re-provision of 32B Kentish Road utilises full engagement and a co-production with service users.</p>				
<p>Action:</p> <p>Page 180</p>	<p>Lead: PJ</p>	<p>Timescale: 5/10/18</p>	<p>Status: 5/9/18 Service is now operational, PJ to confirm at next meeting the input that service users had 5/10/18- Kentish Road has opened on a weekend only basis. Engagement was undertaken which resulted in changes including change of preferred building on the KR site. 7/11/18 post meeting update from CB: prior to the re-opening of KR there was an open day and during that day people were seen individually and there was an opportunity to discuss their needs. As the key driver was to reopen the unit as quickly as possible there was limited time to undertake a full co-production approach. However there is now full co-design on future use of the site. 27/11/18 Task and Finish group is working on longer term vision for Kentish Rd and this includes a stakeholder reference group. A survey seeking views regarding the service in its current form and options for the future of the site has commenced. 1/4/19 - evidence that Stakeholder group is actively involved in process</p>	<p>RAG Status: Green</p>
<p>Recommendation 15: To undertake a review of respite services across adult services, in line with the recommendation of the earlier strategic review of October 2015 to ensure consistency, equity and fairness in respite provision across all groups of service users.</p>				

<p>Action: 5/9/18 SR has identified resource to take this forward. Update and timescales to be discussed at next meeting</p> <p>27/11/18 Action owners to be identified to progress recommendations</p> <p>1/4/19 Post holder to continue with development of process for Carers in Southampton CiS and ASC around accessing replacement care.</p>	<p>Lead: SR</p> <p>SJ/PJ</p>	<p>Timescale: 5/10/18</p> <p>31/3/19</p> <p>Aug 19</p>	<p>Status: 5/9/18 SR has identified resource to take this forward. Update and timescales to be discussed at next meeting</p> <p>5/10/18 Review is underway, scoping document has been drawn up. Aim is to complete review by end of November.</p> <p>27/11/18 Review undertaken to update previous work. Recommendations to be considered and plan developed. Update at next meeting on progress> recommendations include:</p> <ul style="list-style-type: none"> •To put in place clear actions and requirements to improve joint working practices and information sharing between Carers in Southampton and its key partners. This will join up carers assessments •Revisit the Resource Allocation System (RAS) work previously undertaken, in partnership with Carers in Southampton with the aim of considering a replacement care specific RAS to be utilised once carer and cared for requirements are fully understood •To revisit the implementation of crisis/preventative support plans for carers •Investigate the use of a variety of options as alternatives to residential replacement care and pursue viable options. <p>01/04/19 Carer assessments process reviewed. Task and finish group in place. New staff member has started in post to improve process for accessing replacement care as well as assisting with carer assessments.</p>	<p>RAG Status: Amber</p>
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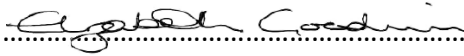
Financial Review: The Decision to close the Kentish Road Respite Centre

Review by Mark Somerset (Principal Auditor) – Internal Audit

Date - 5th June 2018

Approved By:

Chief Internal Auditor, Elizabeth Goodwin



Section 1 Introduction

1. This is a supplementary report to the full independent review into the closure of the Kentish Road Respite Centre completed by Susan Allan Consultancy. The full review was commissioned by the Director of Adult Services. Cabinet had decided that there should be a review of the processes that had been followed after the final decision was made to close the centre in November 2017.
2. The scope of this review includes the original financial model which supported the decision to close the centre in 2014 and the updated model presented to Cabinet in November 2017.
3. The key issues identified as part of this review relate to:
 - i. The financial methodology used in the 2014 decision
 - ii. Lack of evidence to support the figures presented
 - iii. Lack of a suitable audit trail
 - iv. Inaccurate reporting to Cabinet

Section 2 Executive Summary of Findings

Methodology

1. It is the opinion of Internal Audit that the methodology used to assess the financial implications of closing the centre in 2014 was found to be flawed. Whilst the approach was sound in that the cost of re-provision and any ongoing costs should be offset against the anticipated savings, the inclusion of the savings target figure in the calculation to leave a pot for Band 3 re-provision was not suitable.
2. The savings figure should have been the calculated balance. In using this methodology the Authority was saying we will save £200k in year 1 and any remaining funds would be used for re-provision of Band 3 clients. In reality the Authority has a legal obligation to provide this care and would have needed to meet the cost of re-provision whatever that cost may have been. It would have been more appropriate to ascertain the cost of Band 3 re-provision and used that figure to arrive at the expected savings.
3. The methodology was corrected in the 2017 calculations, whereby the full cost of re-provision for all clients was off set against the expected savings to calculate the anticipated savings figure. However it was noted that no provision for ongoing costs (previously £40k) was provided for in the 2017 calculation.
4. Whilst a consistent methodology was not used throughout the period of review this was justified as the changes lead to a more suitable model.

Verification of the Financial Information – 2014 Decision

5. A spreadsheet was provided by the Finance Business Partner to support the figures relating to the initial decision to close the centre. It was noted that the spreadsheet had been compiled by a now ex-employee. Testing was unable to verify or evidence a number of figures contained within the spreadsheet.
6. Figures detailing the occupancy/usage of Kentish Road at the time of the decision could not be traced back to source information. This information included the usage of the centre split between the different bandings of client. The figures were subsequently used to calculate the re-provision cost for Band 1 and 2 clients and the indicative budget left for Band 3 clients. Discussions with staff indicated that this work was completed by an ex-employee and that no supporting evidence was available to support the figures, nor where the information had been obtained from. As such no reliance could be placed on the accuracy of the re-provision costs.
7. A saveable budget figure of £365,000 was included in the calculation. No evidence or audit trail was available to determine how that figure had been calculated. However a review of prior year's budget and actual spend concluded that the figure was prudent and reasonable.
8. A calculation to determine the per night cost of the Shared Lives service (£38) was provided within the spreadsheet. This per night cost was then used to determine the cost of re-provision for Band 1 & 2 clients. Testing was unable to evidence an audit trail detailing how the figures used were determined. This included the starting cost per night as well as deductions for housekeeping and an average client contribution. Discussions with the Business Manager confirmed that the level of housekeeping and client contribution will be different for each client depending on their circumstances. As a result no reliance could be placed on the accuracy of this figure and in turn the cost of re-provision for Band 1 & 2 limits.
9. The cost of ongoing rates and security was listed as £40k in year 1. No audit trail or supporting evidence was available to determine how this figure had been calculated.
10. The methodology employed indicated that £89k would be left to provide respite care for Band 3 clients (an equivalent of £99.80 per night) and that this would be sufficient. The report to Cabinet indicated that one option for these clients would be at Rose Road. Testing was able to determine that the cost of a night at Rose Road at that time was £277.34 per night. As such testing concluded that there was not sufficient evidence to support the assertion that the £89k would be sufficient to cover the cost of Band 3 re-provision.

Verification of Financial Information – 2017 Decision

11. The Service Director for Adults, Housing & Communities provided a copy of the financial model to support the decision to close the centre in November 2017. This model provided information on each of the 43 clients the Authority was obligated to fund future respite for. It contained figures and calculations showing the number of nights respite required as well as the per night cost of future care. These were then multiplied to calculate the annual cost of re-provision. The total cost of re-provision was then off set against the savings from closure to provide an anticipated savings figure.
12. The figure to be saved by closing Kentish Road was noted as £453,000. This figure appeared reasonable based on emails with staff and prior budget figures. As in 2014 this was a prudent figure as actual spend in the previous year was £533,000.
13. Testing sought to evaluate the robustness of the figures and requested supporting information from the Service Director for Adults, Housing and Communities. Discussions confirmed that no evidence was available but that all the information could be found within

the Paris system. On the recommendation of the Service Director a meeting was scheduled with the Team Manager of the Learning Disabilities Team to review the information in Paris.

14. A sample of 15 clients was selected from the 43 contained within the model. Each client's Care Plan and/or Assessment were reviewed on Paris in order to determine if the number of nights and cost of provision were accurate.
15. Of the sample of 15 testing was able to confirm the correct number of nights for 2 clients (13%), 6 clients number of nights required were higher than stated in the model (40%) and 7 clients where the actual number of nights was under the amount stated on the model (47%).
16. Of the sample of 15
 - 6 of 15 (40%) were found to have an accurate per night cost
 - 8 of 15 (53%) had the cost per night understated in the model
 - 1 of 15 (7%) had the cost per night overstated in the model

Of the 8 that were overstated:

 - 5 were due to the cost per night at Weston Road being estimated at £190 when the true cost when it was procured was £250.
 - 1 client was allocated Shared Lives but refused and ended up going to Weston Court, therefore at the time the predicted cost was accurate.
 - For 1 client the cost of Direct payments was listed at £150 per night but was in the Care Plan as £231 and another was due to move to Rose Road where the predicted cost was £250 per night and the actual cost £373 per night
17. A comparison of the calculated cost (nights x cost per night) and the cost from Paris was conducted with the following results:
 - 1 clients overall cost was exactly as expected
 - 14 clients were not as expected due to a combination of incorrect estimates on cost per night and the number of nights required.
18. Across the 15 clients within the sample, estimations of re-provision costs contained within the model ranged from being £6910 overstated to £5977 understated when compared with the Care Plan in Paris. The net difference across the 15 clients showed that the figures in the model were understated by £6455 in terms of Year 1 cost. As no two clients are the same this figure cannot be accurately extrapolated in order to determine an estimation of how accurate the overall cost of re-provision was.
19. The summary tab of the model which was used to create the Appendix to the November 2017 report was found to be an accurate summary of the figures contained within the model. The total number of nights and calculated spend figures for all 43 clients had been accurately summarised.

Accuracy of Calculations

20. All calculations contained within the 2014 and 2017 models were found to have been accurately completed from a mathematical standpoint. This included calculations of savings and collating spending on re-provision. However due to the concerns noted in this report the overall figures cannot be said to be accurate as the source figures could not be verified.

Accuracy of Reporting to Cabinet

21. The reports to Cabinet in December 2014 and November 2017 were reviewed in order to confirm that the information contained within the financial models had been accurately reported to Members.
22. Paragraph 7 of the 2014 report states that the cost of an overnight stay at Shared Lives was £53 per night. Testing found that £53 per night is the gross cost before client contributions. The figures within the financial model state that the cost of a Shared Lives place was £38 per night and this figure has been used in all calculations. Therefore whilst this figure is not wrong it is misleading as it is not the amount that has been used in any re-provision calculations.
23. Paragraph 15 of the 2014 report detailed the number of nights required by each band of clients. Testing found that the number of nights quoted for each band did not correspond to the figures detailed in the model.

Banding	Model	Report	Difference
Band 1	765	853	88
Band 2	489	555	66
Band 3	872	983	111
Total	2126	2391	265

The figures quoted in the report equate to 82% of capacity rather than the 73% noted on the model. Whilst these figures were not accurately portrayed in the report testing found that they were not used in and therefore did not affect any subsequent calculations.

24. Apart from where noted above all other figures quoted in paragraphs 7, 14, 15, 29, 30, 31 & 32 of the December report to Cabinet were found to be accurate.
25. A review of the November 2017 report to Cabinet found that the financial information contained in paragraphs 24, 35, 36 and Appendix 1 was an accurate reflection of the financial model.

Overall Conclusions

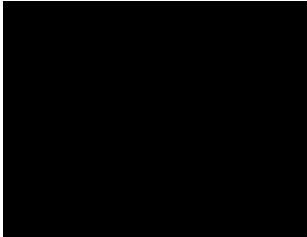
26. The financial model used to support the 2014 decision was flawed in its methodology and was not supported a robust audit trail and supporting evidence. Whilst it is accepted that at the time of this review the information is over 3 years old, given that the situation at the respite centre remained unresolved any information pertaining to its closure should have been retained.
27. Whilst a more suitable method was used in the 2017 model testing still found significant gaps in evidence and was unable to place any assurance on the accuracy of the figures in the model especially those pertaining to the estimated cost of re-provision.
28. Based on the testing conducted had there been a challenge from Members on the financial figures presented to them the Authority would not have been able to produce sufficient evidence to provide assurance that the figures were accurate or representative.

Section 3 – Scope

1. The full scope and purpose of the independent review into the Kentish Road Respite Centre can be found in the full report produced by Susan Allan Consultancy.
2. The purpose of this review was to:

- i. Review the methodology used to devise the original and amended business plans/justifications and comment on their adequacy and consistency
 - ii. Verify the contents of the original and amended business plans/justifications to confirm the figures used were accurate and any estimations were adequately supported. To include the proposed savings from the closure of the centre and the cost of provision of alternative arrangements.
 - iii. Verify any calculations were performed accurately
3. A list of staff contacted as part of this review can be found in Appendix 1. The list of documentation used to inform this review can be found in Appendix 2.

List of staff contacted as part of this review



Finance Business Partner
Finance Analyst
Service Director Adults, Housing & Communities
Business Manager
Team Manager – Learning Disabilities Team

List of Documentation and Files used to inform this review

Report presented to Cabinet in December 2014

Report presented to Cabinet and supporting Appendix 1 in November 2017

“Kentish Road Savings” Spreadsheet detailing the 2014 Financial Model

“Kentish Road Finance Tracker v4” spreadsheet detailing the 2017 Financial Model

Documents and data within the Paris system for a sample of 15 clients

Charges for Services within the Non-Residential Charging Policy and Other Services – intranet

Finance Process for the Shared Lives Scheme - intranet

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**Independent Adult Social Care Audits -
Final Report**

Southampton City Council

February 2019



About NDTi

NDTi is a not-for-profit organisation promoting equality for people who risk exclusion and need support to lead full lives. We make choice, control and opportunity for socially excluded people a reality in our communities. Our team works with government, local authorities, the NHS, voluntary and private sectors, user and family / carer led organisations to make change happen. We do this through supporting national policy development and working with local statutory and independent sector organisations to implement change.

We have a long track record of supporting individuals, teams and organisations through the design and delivery of a diverse range of development supports, training and facilitation programmes.

More information about the NDTi can be found on the website, alongside information about the extensive range of work that NDTi has been involved in developing and delivering over 20+ years. Current and previous clients include the Department for Education, Department of Health, Joseph Rowntree Foundation, the Winterbourne View Joint Improvement Team, NHS England, CQC, and Public Health England. Over the last three years, we have worked in almost every local authority area in England and many in other parts of the UK, particularly in Scotland, and we are proud of our reputation for high quality work.

Basis for this report

Southampton City Council (SCC) commissioned NDTi in November 2018 to undertake an independent audit of 80 case files of people with learning disabilities (LD) to provide assurance in relation to compliance with the Mental Capacity Act (MCA) 2005, the Deprivation of Liberty Safeguards (DoLS) 2009 and the Care Act (CA) 2014. The original specification was later amended by SCC to cover a cohort of 80 cases randomly selected across the whole of adult social care, not solely focussed on learning disability clients, to be split into 31 LD and 49 non-LD clients.

The primary aim was to obtain independent audits to inform the Council of their level of statutory compliance in specific areas of social care practice. The audit findings will be used to inform what, if any, actions are required to address areas of non-compliance, and any learning will support the wider aspects of the Council's quality assurance framework.

The main objectives of the audit were to provide:

- A set of tried and tested audit tools (to be agreed with the commissioners);
- Independent audits of the specified population;
- An audit report, to include findings and recommendations, which objective was subsequently amended to include an interim report on the LD case audits;
- Presentation to senior officers of the report, findings and recommendations, subsequently amended to include additional presentation of the interim report on LD cases as well.

The key themes to be explored via the audits were:

- Care Act compliance;
- MCA and DoLS compliance;
- Evidence of strength based / asset-based practice;
- Carers assessment and support;
- Service user involvement / person-centred practice;
- Use of Advocacy.

Process

NDTi associates Amanda Nally and Louise Close undertook an audit of 80 cases recorded on the PARIS system. Cases were selected by SCC and drawn from across adult teams in the City that were 'live' i.e. no more than three years old in terms of most recent interventions. The 31 LD cases were prioritised for audit and completed during January 2019 with an interim report provided:

<https://1drv.ms/w/s!AoFFt80VmaD5k0bKqEYGtUBcksmk> The findings of this report will be presented to Kentish Road Independent Review Oversight Board on 19th March 2019. **It is recommended that the interim report is read ahead of this final report as the findings are consistent across the audits, with any exceptions to this being noted in this final report.**

All 80 case file audits were conducted using a tool jointly developed as part of this contract by NDTi and SCC which was based on a selection of audit tools readily available from other Local Authorities. This report highlights our general findings, key issues in relation to the themes with elements of interpretative observations about each and our recommendations based on these.

Audit tool

Generally speaking the audit tool was helpful in that it ensured that auditors covered the ground in all cases consistently and had a common format to capture issues. The drop-down menus worked well and the additional space for comment was extremely helpful in terms of explaining more fully the field selected where necessary. However, it was sometimes difficult to find evidence to answer all questions; in part

this was an issue related to the PARIS system and in part to differences in recording practice between individual practitioners. When using the tool it appeared that some of the questions were out of step with working through the system itself, for example auditing case notes and management oversight as part of section one made the process cumbersome and would have been better placed towards the end of the tool.

Also, in designing the tool, auditors were asked to include a specific question to identify permissions around linking carers and client records, however PARIS does not actually have an option for workers to record this anywhere. There is a “permission to share” form contained within PARIS which includes family and carers along with other professionals and organisations, and so this was scored instead – as good where this form was signed and uploaded, met but requires work if the form contained within PARIS had been completed but there was no evidence of a signature and inadequate if no form was present at all.

A large part of the challenge for auditors was that the “approved care pathway” (referral, assessment, plan, review) appeared from the records to not always be followed by practitioners. In part this was undoubtedly because some people using SCC services, had had services for a very long time, hence the initial assessment phase was many years past and therefore outside the scope of audit timescales (more than three years old) and the introduction of the Care Act. However even in older cases there would sometimes be a plethora of “referrals” recorded, few of which actually were referrals, leading to much time being wasted seeking the linked assessment which did not actually exist. Additionally, there were many instances where it would appear that an assessment had been done but this had actually been recorded as a support plan, or where a review format had been used to record what was clearly an assessment.

Audit tool issues and observations:

- The audit tool is designed around scrutiny of specific *cases*, and these cases are often worked by several practitioners and teams over a period of time, which makes it difficult to draw conclusions about individual practitioner or team performance.
- The audit tool differentiates referral, assessment, support plan and review, but rarely are all four well represented on any one file; in practice, the customer journey only infrequently appears to mirror the ideal set out in the audit tool. In practice, auditors therefore sometimes found it helpful to “read across” between the different key stages and indeed case notes, making the whole process of auditing cumbersome and time consuming.
- The audit tool asks questions about the “carer”; in terms of the practice discovered through the audit there appears to be an assumption that someone is only a carer if they live with the person and provide personal care or similar. However for many of the cases reviewed, there is a family member who is very

involved and indeed in some cases is expressing difficulties in so being, but who seemingly because they do not live with the person and / or provide direct hands-on care has not been considered as a carer for the purposes of the Act requirement to offer assessment and support.

Compliance

The way referrals are recorded on PARIS make it difficult to see a flow and indeed often impossible to ascertain which among the many referrals recorded is in fact a referral triggering a new customer pathway to be followed. Each contact with the first point of contact team (FPOC) seems to be recorded as a referral and then instantly “closed”, when actually it may simply be the recording of a contact which has been passed on to an existing worker who already has the client allocated. Similarly for any out of hours contacts and safeguarding alerts, which appear as a new referral, often with limited or no information though occasionally there is an uploaded document, and then case is shown as closed. It is difficult to ascertain if this is a proportionate approach and if individuals have been appropriately signposted or simply “moved through the system”.

Where a referral does seem to be what is happening, the screening assessment format is rarely utilised in full and many times recording would seem to indicate that practice is simply to move people through to allocation. The screening assessment form includes a section entitled ‘alternatives NOT considered’ and this seems to simply be a list of alternatives that should be offered as an alternative to paid formal care, however, in practice it would seem that no one actually does anything with this list, so the file simply has this list with no explanation as to whether in fact information about any of these was discussed or passed on. Auditors query therefore if this is either being recorded wrongly or simply misunderstood by practitioners?

Within care plans where they are in place, almost invariably all paid support currently in place is listed under the "informal support" column rather than the "paid for from my personal budget" column. Auditors draw the conclusion from this that there is a lack of understanding that informal support does not mean that which is paid for, and that all paid support is technically from a person's personal budget, even where that budget is managed on their behalf by the council. It would appear that practitioners only consider support to be being “paid for from my personal budget” where a Direct Payment is in place, and there is rarely evidence of informal supports being explored or recorded, demonstrating a real lack of understanding of the purpose of the Care Act principles of choice, control and strengths based working.

A significant number of assessments and indeed reviews will detail under purpose “to assess to meet Care Act eligibility”. The detail that follows however is almost invariably purely deficit based as opposed to strengths based and therefore cannot

be said to be Care Act compliant, despite the fact that someone may be deemed eligible.

Examples:

75763 - 11/7/18 referral from hospital discharge team records “request a review within 6 weeks due to additional funding to facilitate discharge” Unable to find evidence that this review occurred so assume increased costs have continued.

24199 – Two referrals in 2018 for a review, but there is no evidence of review to date so assume this is still outstanding.

Practice: strength based practice/service user involvement/person centred practice

A recurring theme for auditors was: how much is something a recording issue and how much is it a practice issue? There were a small number of files audited which appear to demonstrate outstanding practice, although sadly this would relate to one aspect alone and not the whole case.

Examples:

42214 - Brilliant review & care plan – timely, well recorded in full on format. Couple of areas needing attention otherwise would have got outstanding.

6986 – really good assessment 2/18 but no plan to follow.

There were a significant number of cases where practice was deemed to be “met but requires improvement”, and usually this would be where there is some evidence of compliant practice and / or thoroughness, but an overall lack of a person centred or strength based approach. Outcomes were found to be consistently lacking in both how they were recorded and defined, more often than not being a record of what services were already in place or had been planned, or simply being cumbersome cut and paste sentences from the Care Act eligibility criteria. There was a consistently clear lack of evidence to support any sense that the concept of outcomes focussed working is widely understood, with outcome statements often reading as a record of a decision to continue with a current service or put a service in place to rectify a risk situation and / or maintain someone’s health or safety. It would not appear to be common practice to seek to explore and record with people aspirational or creative

outcomes beyond what could narrowly be defined as service based solutions to the presenting issues in the person’s life.

Once outcomes have been recorded, the evidence would seem to suggest that common practice is default to paid for / service solutions to meet these rather than look to explore the individual’s informal or community networks or indeed, to seek to build on their own strengths or potential.

Example:

The work, training, education or volunteering field is often left blank or has N/A in it or particularly prevalent for older people is the word “retired”, suggesting an assumption that people simply have no aspirations in this area of their lives.

Very few cases demonstrated a clear focus on the person’s strengths or network or on community assets. Social workers appeared to find it difficult to shift things in this direction and there was little evidence that they had local knowledge of technology, aids or adaptations or communities and the potential contribution of universal services. On occasions when informal or community supports are present, these would appear to have already been in place and / or were brought to the table by the individual themselves or their family and friends.

Practice issues and observations

- The characteristics and coverage of the record on file was very variable in terms of content, coverage and tone. Whole sections were often missing, and it appears to be acceptable practice to leave sections incomplete as these documents would often have a name and role of manager at the end, leading the auditors to assume this had been ‘signed off’.
- “Case recording” practice is particularly inconsistent. Usually very sparse and often confined to uploaded forms or email correspondence copied and pasted into case notes. There were occasional management oversight case notes, sometimes recorded as supervision, but little sense of a record of reflective practice.
- Sometimes the record on file appeared to be too narrow, and the perspective exclusively that of the case holder: there was rarely any sense of a close working relationship with commissioners, families or other partners and it was rarely clear why a person was using service x rather than service y, making it difficult therefore to answer the specific question as to “whether the most cost effective” solution had been found.
- There are numerous references in a case record to “care and support plans” which were rarely found on the system; occasionally there was an uploaded

paper document by this name and in one or two cases there was a PARIS support plan format partially completed.

- Some case records are very slim indeed, with few completed forms, little case recording and minimal or vague outcomes, and it is not always clear that a light-touch is justified in these cases.
- Risk assessment appears generally poor – with overreliance on standard wording to describe risks and actions to address risk. The risk assessment format on PARIS is not user friendly, so that where they have been completed, they are invariably difficult to read as words are squashed into a tiny unreadable space, however more often these were simply blank despite risks being alluded to in narrative elsewhere within the assessment / care plan. Those risks which are recorded are invariably concerned with health and safety and demonstrate a primary desire to keep people safe, sometimes with little reference to whether this in fact may interfere with their desire to live their life their way.
- Reviews are frequently late, and sometimes appear not to be happening at all. There are instances of a future review date being proposed or referrals requesting reviews take place, which are often blank and seem to be literally used as a way to pass work through internal teams, and in many cases these have not then taken place.
- There is very little evidence of strengths-based practice with people with complex or high levels of need, regardless of age.
- In a small number of instances, cases appear to be “de facto closed” with the last significant action some years in the past. In some of these cases there is quite a lot of activity in terms of “referrals” and case notes, perhaps recording a client contact around money which seem to have been dealt with at face value rather than perhaps being used as an opportunity to re-engage with the individual and check that everything is going ok for them – i.e. to reassess or review.
- A combination of poor case recording and lack of review sometimes make it difficult to track progress or ascertain someone’s story in order to judge if a proportionate approach has been taken. A particular issue is lack of continuity between assessment and review and between one review and the next, compounded by the regular lack of a care plan following assessment to identify outcomes that should be reviewed, whilst in other cases, the review which may have taken place one or more years after the initial assessment is substantially a cut and paste from an earlier assessment, demonstrating a potential lack of attention to detail and often resulting in errors.
- We saw evidence concerning management / organisational sign-off or agreement to a piece of work usually by way of a name and title at the end of a document or page. However this wasn’t always the case and often just a name would be recorded so the auditors were unable to conclude if that was indeed

management sign off, particularly where worker and manager names were the same.

- It is unclear whether there is a consistent understanding between workers and teams as to the role and purpose of the case record, raising the question as to what training, guidance and supervision about purpose, content and style of recording are provided to staff.
- The issue of several workers involved in a case may well go beyond that of inconsistent recording, to the question of what it is that constitutes good practice / consistent support for the particular person. It is well known that people's needs and wishes are better met by consistency in terms of the professionals they interact with, and this is demonstrably not the case within SCC practice.
- Care and support plans are likely to be held by providers, but don't appear to be routinely uploaded onto PARIS despite the fact that these are clearly a critical document in terms of monitoring and reviewing practice. There is a section on PARIS for care plans but this seems to be a purely financial tool, and whilst there is a form within the assessment tab to use for a care or support plan this is rarely and inconsistently used. In only one case did we find the tab for Individual Budget review had actually been utilised.

Carers assessment and support

Carers assessments and support plans conducted by Southampton Carers utilise a standard / set format for both. Although where complete these are often very detailed there was little evidence of a strength based approach or of creative or alternative options to meet need being explored particularly widely. Direct Payment's, where given, were frequently for relatively standard items such as gym membership or relaxation sessions, and these often bore no relation to the outcomes or needs stated in the assessment. There is also a major issue in that these forms are often password protected, meaning they are likely to be inaccessible to individual workers. Carer centre assessments on the whole are of better quality and detail than the social work ones however considerable development is again needed in terms of understanding and recording outcomes.

Example:

The carer has no hobbies, feels tired all the time, misses her family and wants to get back to work at some point, but the DP is going to be used to go to the gym and get a massage, neither of which things appear in any of the narrative as things she wants to do, and neither of which would appear to be particularly useful in terms of assisting her to meet her stated outcomes.

Advocacy

There is very little evidence of consideration being given to the use of advocacy. In several cases this was noted as not required as parents or carers or even paid workers from a support provider were regarded as “speaking for” the person, all of which are of course helpful but not the same as the provision of an independent advocate to work with a vulnerable adult to ascertain and amplify their own view of their life. In far too many cases this field is simply left blank, even where the client is recorded as having communication or understanding issues.

PARIS and Recording

Auditors were made aware at the onset that the system is in the process of being replaced. PARIS clearly brings certain merits in terms of a common format across services; it is relatively easy to navigate and up to a point it is relatively easy to trace information. However, within these broad parameters, there is a good deal of variation in the way in which practitioners capture and record information which detracts instantly from its usefulness as a recording system. Consequently, a recurring theme for us was: how much is a particular concern a recording issue and how much a practice issue? We worried that sometimes an action may have in fact happened, but has either not been recorded at all, or was buried somewhere unusual on the system. Referral in PARIS terms is inconsistent with the referral / first point of contact questions on the audit tool so these quickly became N/A. It is clear that the PARIS referral forms are used internally to move work through the system, with forms often entirely blank and cases referred, allocated and closed within minutes, and the use of the screening assessment format in these instances is completely unnecessary.

Poor spelling, grammar and language is a consistent issue as is the use of ‘cut and paste’ in documents. There were numerous examples of perceived ‘sloppy and lazy’ practice particularly around the recording of demographic information, and also some inappropriate comments and personal messages appear within case notes such as ‘did you have a nice holiday’ or ‘sorry I know you’re overloaded’ where the worker has simply copied an entire email onto the PARIS form.

Examples:

42214 – screening notes 3/9/18 state: “East duty dropped a clanger” “they (the person) has fallen through cracks”

42214 - 5/6/18 case note about a different unrelated person

Ticking ‘white British’ in one field seems to be assumed to explain all other fields, whereas it is of course possible to identify as white British ethnicity but have Italian nationality, Buddhist religion and east Asian cultural sensitivities.

A number of assessments had updates added into sections with that date of entry, however the original assessment date is maintained and therefore this is misleading when searching for the latest assessment. This will also be misrepresented on any performance data drawn from the system directly.

Auditors consistently found referrals, assessments, care plans and reviews in the wrong sections on PARIS named one thing only to emerge as another on reading. A significant amount of time was needed to locate and read through several to find one that actually was what it said it was in order to audit things correctly, and this difficulty and inefficient use of time will also apply to any SCC officer who is trying to ascertain quickly what the current situation is with a client. The issue about misleading performance data drawn down from the system also applies in this situation.

The audit tool steers us towards consideration of front line “practice”, but less so towards the work of managers. Managers clearly do intervene or comment on practice occasionally, but as far as we can see from the files we audited, this appears rare and it’s difficult to see any consistency in the sorts of situations where they do so. It is also open to question whether managers are scrutinising their workers recording practices sufficiently, as many of the issues we have uncovered during this audit would presumably be far less prevalent if so.

Our overall sense was that there is too much variability in what is recorded, and this makes the system potentially unhelpful and inefficient as a repository of information and record of practice. Auditors would like to emphasise that a new system will not eradicate this and there needs to be clarity and accountability from practitioners and management as to what constitutes good practice around recording; otherwise the new system will simply replicate the problems of the old.

PARIS and Recording Issues and observations

- Many blank forms were uploaded.
- Many incomplete forms were uploaded.
- Sometimes blank or incomplete forms relate to on-going work, but often they are historical. This makes the audit exercise and more importantly case oversight in daily practice more difficult than needs be.
- There was a good deal of duplicate information; similar information in different forms or in different places on the system. Again, this makes the audit exercise and daily oversight of practice more difficult.
- Our impression is that the PARIS system requires certain actions in a workflow to be completed before the next action can be initiated. Where the first action is incomplete and / or deemed superfluous, this has the perverse effect of inducing the leaving of blank or incomplete forms.

- Conversely, some important issues appear not to need to be addressed in order to move on to the next stage in the workflow.

Recommendations and suggested next steps

The findings of the audit do come with caveats, notably as a reflection of:

- A limited sample size.
- A methodology which makes it hard to distinguish recording issues from practice issues.
- The audits were purely desktop and therefore auditors were unable to include experiences from practitioners, family / carers and most importantly individuals whose cases have been audited.

With these important caveats then, the audit appears to point to issues relating to a number of different functions within the City Council, notably:

- Systems – PARIS and how it is used.
- Strengths based / person centred / outcomes focussed practice, the recording and oversight thereof.
- Community development – how practitioners come to know about and work with diverse communities, how they are enabled to draw on other SCC resources for this task.
- Process and accountability – minimum standards in case management, scrutiny and sign-off of care packages.
- Practitioner development and support, including supervision and accountability.

The recommendations and next steps which were documented in the interim report following the audits on LD cases have clear resonance now that the wider audit of all 80 cases has been completed, and given that the findings are consistent across all 80, it is recommended that the following key points for further development are considered to be relevant across the whole adult social care service.

1. Consideration should be given as to how the reports can be fully utilised to brief relevant staff groups across SCC as well as other stakeholders, including people who use SCC services and family carers, about the issues identified in the audit and to use these discussions as a foundation to develop co-produced solutions. Ideally this process would seem to present an opportunity for all to work together to co-produce a different culture of practice moving forward.
2. A review of internal learning and development needs is required, along with a targeted plan to develop understanding, skills and confidence of both practitioners and first line managers around:

- person centred, strengths-based approaches to assessment and care / support planning;
 - understanding of personal budgets and the principles of choice and control which underpin these, as distinct from Direct Payments;
 - working effectively with individuals, including the proper use of advocacy, family carers and with other professionals to take a holistic view of all resources available to people when planning to meet outcomes;
 - effective person centred, outcomes focussed reviews;
 - risk enablement and the promotion of choice and control;
 - case management and proportionality, including expectations around making and recording case notes and decisions.
3. There is a need to examine the overall culture of social work practice in Southampton, with development time set aside for practitioners and managers to think through what it means to be truly strengths based and what the implications of moving to enable more choice and control, as directed by the Care Act, mean for them and for teams. This should include an exploration of how supervision currently works, and consideration of other quality monitoring and performance development mechanisms, such as developing a culture of peer support and challenge.
 4. Working alongside commissioners both with and within communities to build a more thorough knowledge of the myriad resources available to people and to understand how these can be used to supplement and augment informal and paid support and how they are effectively accessed.
 5. With all of the above some benchmarking of the current picture will be required, outcomes for improvement clearly defined and milestones along the way identified in order to measure and review progress.

Appendix 1

The audit tool comprised 7 sections with the following number of questions in each:

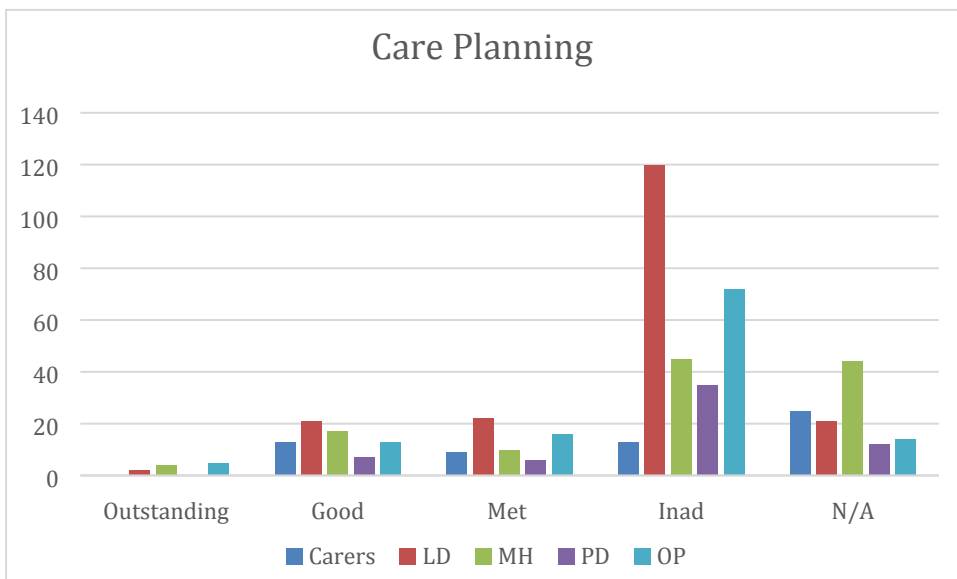
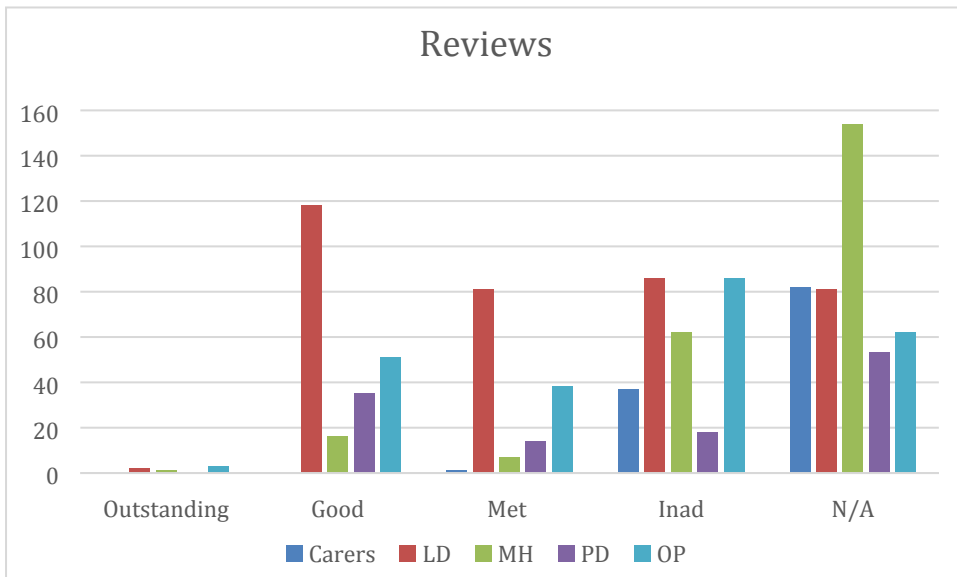
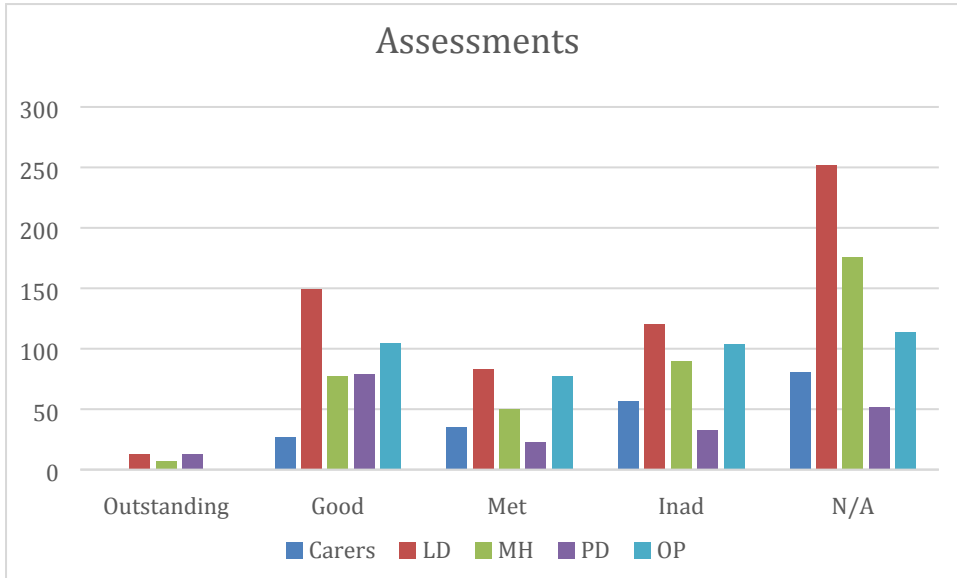
- Getting the basics right (12)
- Referral/First contact (6)
- Assessment (20)
- Care Planning (6)
- Reviews (12)
- Safeguarding (3)
- Carers (20)

The criteria used to determine the audit outcomes:

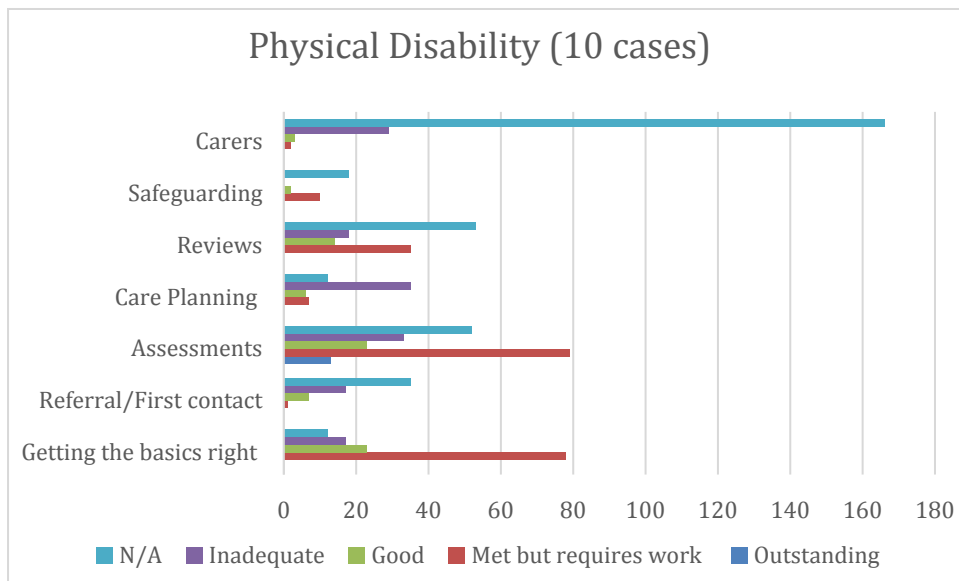
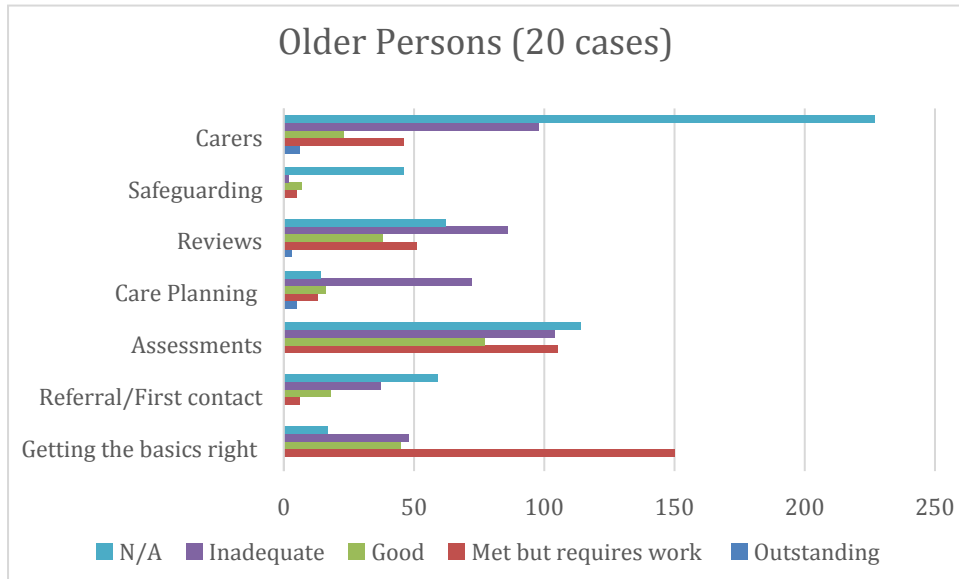
Outstanding Standard (4)
▪ As 'Good' plus work that is:
▪ Structured, detailed information and analysis
▪ Knowledgeable attention and application of the law, guidance, policy and procedures
▪ Exemplary practice
Good Standard (3)
▪ Areas of evidence complete
▪ Focussed assimilation and evaluation of information
▪ Well-structured and clear case record
▪ Practice Instruction followed
▪ Proportionate and robust
▪ Person at the centre of all decisions
Standard met but requires work (2)
▪ Only partial evidence present
▪ Limited evaluation of information
▪ Sufficient recording to evidence Care Act and other legislative compliance
Inadequate Standard (1)
▪ Areas of evidence insufficient or incomplete
▪ Poorly organised record
▪ No evaluation of information
▪ Practice Instructions not followed
▪ Insufficient recording to evidence Care Act or other legislative compliance
Not Applicable N/A
Statement or section not Applicable

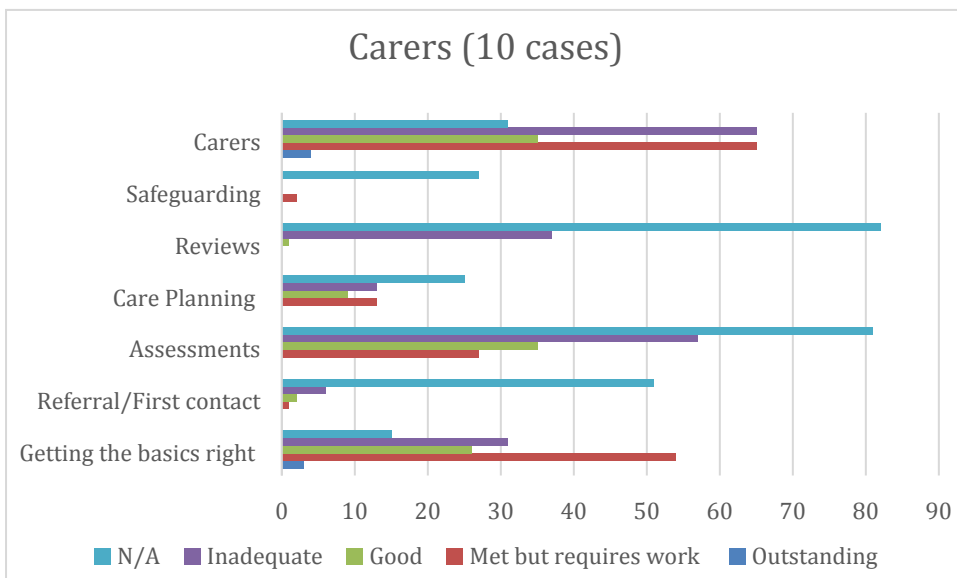
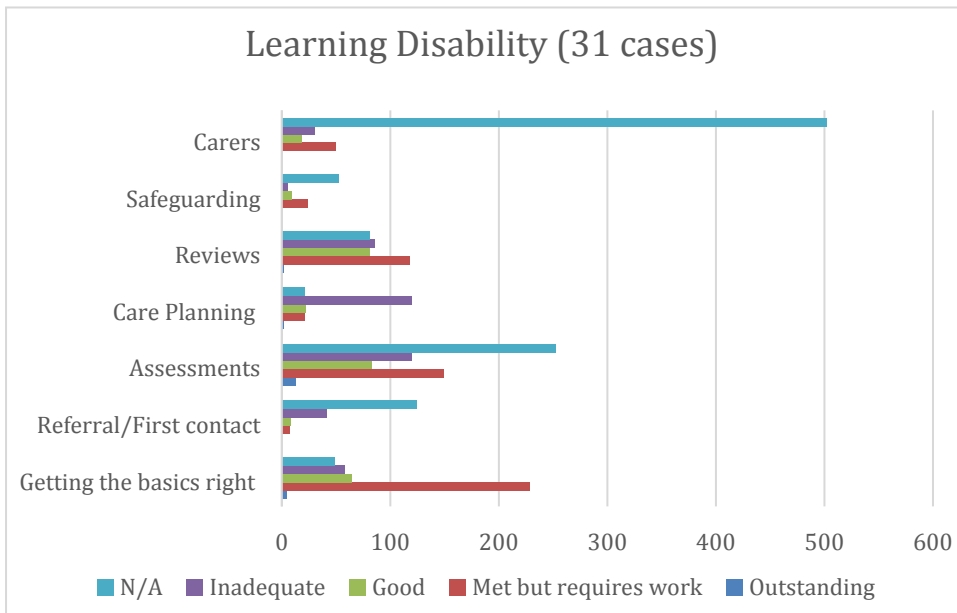
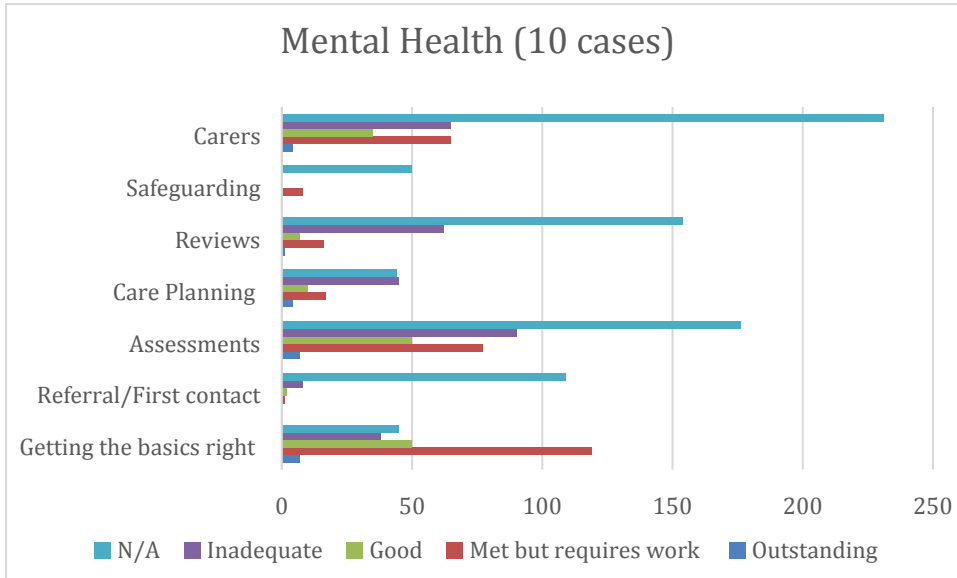
The following 3 graphs demonstrate each service area audit outcomes for Assessments (20 questions); care planning (6 questions); reviews (12 questions).

*Please take into consideration the different number of cases in each service e.g. LD has 31 cases x 20 questions in Assessment section = 620 whereas Mental Health has 10 cases x 20 = 200



The following graphs show the audit outcomes for each service area individually against each of the 7 sections in the audit tool.





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