

## **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.

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## **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.

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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;
  - 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.

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### **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



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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



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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

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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.

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## **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

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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**