

Report of the Independent Review of Kentish Road Respite Centre closure

Review by Susan Allan Consultancy Ltd

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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 (NQSW) 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 NQSW'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

38.

39.

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] [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."

99

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 ESAs 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



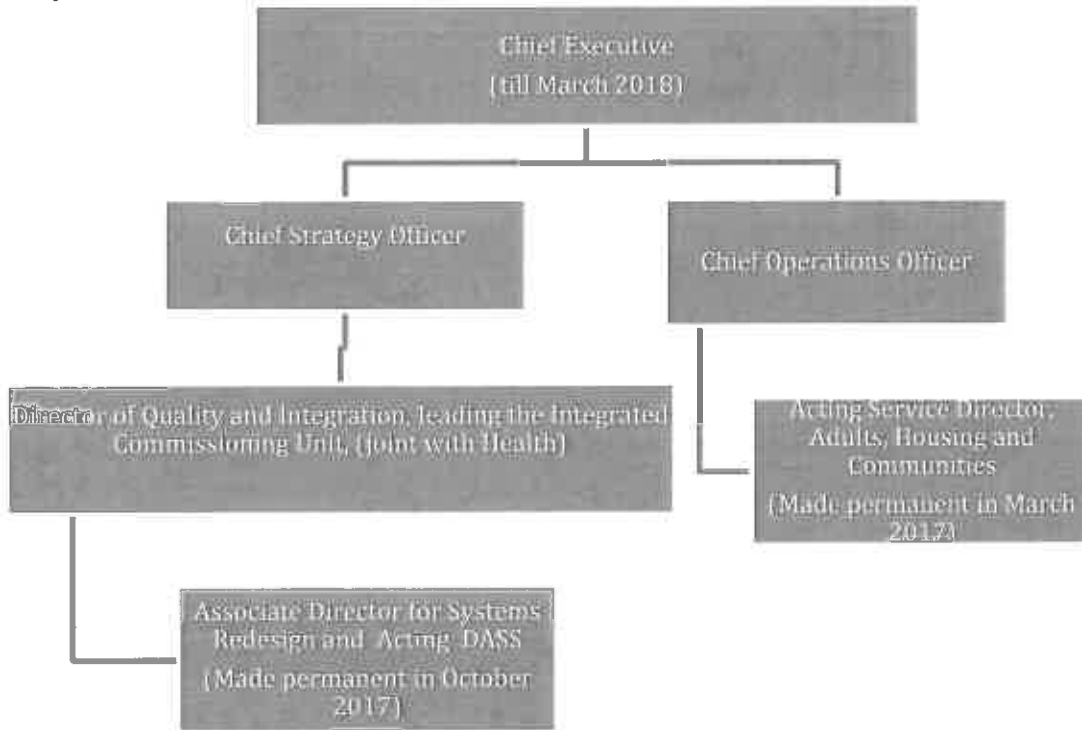
May 2015



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



Oct/ Nov 2016



April 2018

