

# Committee: Healthier Communities and Older People Overview and Scrutiny Committee

**Date:** 3<sup>rd</sup> July 2013

Agenda item: 7

Wards:

**Subject:** South West London Joint Overview and Scrutiny Committee on NHS  
Croydon Finances

Lead member: Councillor Peter McCabe, Vice-chair of the Healthier Communities and Older People overview and scrutiny panel.

Forward Plan reference number:

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## Recommendations:

- A. Panel members are asked to agree the findings and recommendations of the Joint Health Overview and Scrutiny Committee (JHOSC).
- B. Panel members are asked to forward the report to Merton Clinical Commissioning Group asking them to implement the relevant recommendations and report back to with progress to a future meeting of this Panel .

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## 1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. The vice chair, Cllr Peter McCabe will provide and update overview of the deliberations and findings of the South West London JHOSC on NHS Croydon finances. The Full Report is attached at Appendix A

## 2 DETAILS

- 2.1. In autumn 2012, this Panel were invited to join a south west London JHOSC to include the boroughs of Croydon, Merton, Richmond upon Thames, Sutton, Wandsworth and the Royal Borough of Kingston upon Thames. It was set up to conduct further enquiry following the serious misstatement of accounts at NHS Croydon in the 2010/11 financial year. When the 2010/11 final accounts for NHS Croydon were signed off in June 2011 they reported a £5.54million surplus. It later transpired that they had a deficit of around £22.73million.
- 2.2. Following the misstatement, NHS London commissioned an independent review by Ernst and Young which highlighted a number of systemic errors but found that no individuals were responsible nor was there any need for further enquiry.
- 2.3. The six south west London boroughs were not satisfied with this outcome and formed a JHOSC. The first meeting was held on the 6<sup>th</sup> September 2012 and agreed the following terms of reference:

To receive and review a report commissioned by NHS London from Ernst and Young into financial management and corporate governance

arrangements at NHS Croydon for the period relating to the FY10-11 Annual Accounts.

To inquire into what action has been taken by NHS South West London Cluster to address recommendations 5.3 to 5.19 of the NHS London report

To consider whether the recommendations are sufficient or whether further action should be taken.

## **FINDINGS AND RECOMMENDATIONS OF THE JHOSC**

- 2.4. One of the frustrations of the JHOSC was the lack of full co-operation from NHS bodies. Some individuals declined to speak with the committee. Furthermore, councillors were not able to ascertain or speak with the authors of the Ernst and Young report. These concerns were reflected in the final recommendations, where the JHOSC called upon the Secretary of State to clarify scrutiny powers.
- 2.5. The JHOSC made a total of ten recommendations directed at the NHS, Secretary of State and the CCG's. This Panel will have a role in monitoring the recommendations made to Merton CCG to ensure that they are agreed and implemented.
- 2.6. Panel members are asked to agree that the report and recommendations are forwarded to the CCG's for implementation with an invitation to a future scrutiny meeting to discuss implementation.

## **3 ALTERNATIVE OPTIONS**

The Healthier Communities and Older People Overview and Scrutiny Panel can select topics for scrutiny review and for other scrutiny work as it sees fit, taking into account views and suggestions from officers, partner organisations and the public.

Cabinet is constitutionally required to receive, consider and respond to scrutiny recommendations within two months of receiving them at a meeting.

- 3.1. Cabinet is not, however, required to agree and implement recommendations from Overview and Scrutiny. Cabinet could agree to implement some, or none, of the recommendations made in the scrutiny review final report.

## **4 CONSULTATION UNDERTAKEN OR PROPOSED**

- 4.1. The Panel will be consulted at the meeting

## **5 TIMETABLE**

- 5.1. The Panel will consider important items as they arise as part of their work programme for 2013/14

## **6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS**

- 6.1. None relating to this covering report

## **7 LEGAL AND STATUTORY IMPLICATIONS**

- 7.1. None relating to this covering report. . Scrutiny work involves consideration of the legal and statutory implications of the topic being scrutinised.

**8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS**

- 8.1. It is a fundamental aim of the scrutiny process to ensure that there is full and equal access to the democratic process through public involvement and engaging with local partners in scrutiny reviews. Furthermore, the outcomes of reviews are intended to benefit all sections of the local community.

**9 CRIME AND DISORDER IMPLICATIONS**

- 9.1. None relating to this covering report. Scrutiny work involves consideration of the crime and disorder implications of the topic being scrutinised.

**10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS**

- 10.1. None relating to this covering report

**11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT**

- South West London Joint Health and Overview and Scrutiny Committee on NHS Croydon Finances

**12 BACKGROUND PAPERS**

- 12.1.

# South West London Joint Health Overview & Scrutiny Committee (JHOSC) on NHS Croydon finances

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## Final Report

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# Glossary

## Audit Commission

The Audit Commission's role is to protect the public purse. They do this by appointing auditors to a range of public bodies in England, setting the standards that auditors are expected to meet and overseeing their work.

## Audit Committee

All NHS Boards are required to establish an Audit Committee. The Audit Committee supports the Board by critically reviewing governance and assurance processes on which the Board places reliance. These will include a risk management system and a performance management system, underpinned by an Assurance Framework.

## CCGs / Clinical Commissioning Groups

Groups of GPs that from April 2013 will be responsible for designing local health services, including the commissioning of health and care services

## Cluster

A management arrangement where a number of PCTs remain as statutory organisations, but operate as a single management team sharing resources, roles and functions. The South West London Cluster brought together the five PCTs of NHS Croydon, NHS Kingston, NHS Richmond, NHS Sutton & Merton and NHS Wandsworth.

## Ernst & Young

The firm commissioned by NHS London to investigate the financial management and corporate governance arrangements at NHS Croydon.

## External audit

An auditor who performs the audit of an organisation and who is independent of the entity being audited. For NHS Croydon, the external auditor was appointed by the Audit Commission.

## Internal audit

An, objective assurance and consulting activity designed to bring a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes.

## JHOSC / Joint Health Overview & Scrutiny Committee

A committee formed by two or more local authorities to investigate a significant issue relating to the provision of local health services.

## NHS Croydon

The PCT responsible for providing or commissioning health care services to residents of Croydon

## NHS South West London / NHS SWL

The Cluster arrangement of the five PCTs in South West London: NHS Croydon, NHS Kingston, NHS Richmond, NHS Sutton & Merton and NHS Wandsworth.

## Primary Care Trust / PCT

The organisation that works with local authorities and other agencies to provide primary health care locally

## Prior Period Adjustment

The correction of an error in the financial statements of a prior period

## Strategic Health Authority / SHA

Responsible for strategic management of the PCTs in their area and providing the link between the Department of Health and the PCT. The SHA sets plans and priorities and monitors performance. The SHA for the whole of London (including south west London) is NHS London.

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# 1. Introduction

**1.1** The South West London Joint Health Overview & Scrutiny Committee (JHOSC) on NHS Croydon finances ('the JHOSC') was established and appointed by the London Boroughs of Croydon, Merton, Richmond upon Thames, Sutton and Wandsworth and the Royal Borough of Kingston upon Thames following publication of a report by NHS London (the NHS London Report) that identified a serious misstatement of accounts at NHS Croydon in the 2010/11 financial year. When the discrepancies came to light, NHS London had commissioned an independent review by Ernst & Young (E&Y). NHS London's report was submitted to its Board on 28th June 2012 and to the NHS SWL Board on 26th July 2012. The NHS London Report described the E&Y review but did not append it, and the E&Y review remains unpublished, although this distinction is not readily apparent from the NHS London Report itself.

**1.2** When the 2010/11 final accounts for NHS Croydon were signed-off in June 2011, they reported a £5.54million surplus. However the NHS London Report of 28th May 2012 showed that the final accounts had been misstated by at least £28million and estimated that the true balance was a deficit of £22.73million. Not only had NHS Croydon overspent its budget, it had submitted final accounts which seriously misstated the true position. This caused considerable consternation for the six local authorities served by the South West London Cluster (NHS SWL), especially as NHS Croydon had until this time enjoyed a reputation for good financial management and performance.

**1.3** The NHS London Report highlighted the following factors as key to the accounting error:


- A failure of financial management and control, substandard financial processes and poor quality management reporting leading to an inaccurate picture being presented to the Board and Senior Management Team.

- Limited scrutiny and challenge by the Croydon PCT Board and Audit Committee, who relied too much on assurances from internal and external auditors.
- Additional complexity arising from Croydon PCT taking over the hosting of the London Specialised Commissioning Group (LSCG) and its £800m budget.
- A lack of leadership in the finance team at Croydon PCT when the Finance Director was off sick.
- Significant issues of operational leadership and continuity in the context of the move to a clustered organisation with four other South West London PCTs at the beginning of March 2011 – one month before the end of the financial year.

**1.4** Despite these observations, the report to the NHS SWL Board on 26th July 2012 stated that:

*“At their meeting on 28th June the NHS London Board regarded the circumstances giving rise to the misstatement as having been fully and thoroughly investigated by the independent accountants, and considered that there was no need for any further inquiry into what had happened. The priority now was to ensure that the lessons learned were applied across the NHS in London, and that the Action plan was comprehensively implemented by NHS SW London”*

**1.5** The six local authorities were not satisfied with these conclusions and in particular with the statement that there was no need for further inquiry. Notably, the NHS London Report acknowledged the depth of the misstatement but did not hold any individuals responsible, which gave rise to concern that professionally weak individuals might remain within the NHS system and continue to pose a risk to sound financial management.



**1.6** The six local authorities were also concerned that such a large overspend and the subsequent misstatement of accounts had occurred during a transitional period for the NHS. In February 2011, the South West London Cluster was formed with a single Chief Executive and shared management incorporating the five Primary Care Trusts of NHS Croydon, NHS Kingston, NHS Richmond, NHS Sutton & Merton and NHS Wandsworth. As a consequence of the Cluster arrangement, the financial liabilities of NHS Croydon now affected health services across south west London. Among the reported findings was a suggestion that the misstatement had been exacerbated by the uncertainty and upheaval of the transition period. The six local authorities were therefore concerned to ensure that NHS SWL was adequately prepared for the further organisational changes planned for April 2013 with the abolition of the PCTs and the creation of Clinical Commissioning Groups (CCGs).

**1.7** In order to progress these issues the six local authorities established and appointed the JHOSC. The Terms of Reference of the JHOSC were approved by each of the six participating authorities. They were noted and adopted at the JHOSC's first public meeting on 6th September 2012.

**1.8** The Terms of Reference were:

- To receive and review a report commissioned by NHS London from Ernst & Young (dated 28th May 2012) into financial management and corporate governance arrangements at NHS Croydon for the period relating to FY10-11 Annual Accounts;
- To inquire into what action has been taken by NHS South West London Cluster to address recommendations 5.3 to 5.19 of the report; and
- To consider whether the recommendations are sufficient or whether further action should be taken.

**1.9** As the Committee's deliberations progressed it became aware that the NHS London Report was not prepared by Ernst & Young, which gave rise to concern that the NHS London Report might have obscured more critical material in the E&Y review. However, recommendations 5.3 to 5.19 of the NHS London Report are said to reproduce the recommendations of the E&Y review.

**1.10** The JHOSC held a number of public meetings and invited those involved to discuss their experience of working with NHS Croydon and to answer Committee members' questions. The JHOSC is grateful for the participation of all who attended and their open and candid responses to questions. Unfortunately the JHOSC was not able to speak with everyone it had identified as having relevant experience. In the course of its deliberations, the Committee invited key officers from the NHS, such as the NHS Croydon Chief Executive and the NHS Croydon interim Deputy Finance Director, and key Non-Executive Directors, such as the Chairman of the NHS Croydon Board and Chairman of the NHS Croydon Audit Committee, who it anticipated would be able to assist it and to resolve queries. As these individuals declined to speak with the JHOSC, it has not been possible to gather all perspectives on how NHS Croydon operated in 2010/11. The Committee also sought to speak with the author(s) of the report presenting Ernst & Young's findings, but NHS London was not able to confirm who this was.

**1.11** In consequence of this the evidence available to the Committee was quite limited. The Committee's comments below are therefore necessarily confined to observations and recommendations rather than to findings of fact. The Committee regrets that it was not possible to run the scrutiny as planned because of lack of co-operation; nevertheless the evidence which it did receive leads the Committee to question some of the conclusions of the NHS London Report concerning the mechanism for the misstatement and responsibility for it – this is an aspect which urgently needs further investigation, by those who are able to do so.



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## 2. Legal framework

**2.1** Reports of local authority scrutiny committees do not often set out in detail their legal powers. However, NHS SWL raised concerns about the power of the JHOSC to carry out this type of scrutiny and out of courtesy the Committee feels that those concerns should be addressed. At the outset of the JHOSC's investigations, NHS SWL informed the Committee that the SWL Cluster's interpretation of the legislation was that the JHOSC had power only to require attendance of one officer of the local NHS Body to speak on behalf of the PCT, rather than specifying which officers it wished to speak to. NHS SWL also questioned whether the JHOSC had the power to investigate financial management and corporate governance on the grounds that regulations only required PCTs to provide information relating to *"the planning, provision and operation of health services"*. In consequence of their interpretation the NHS SWL only fielded one officer to assist the Committee.

**2.2** The powers of local authorities to establish overview and scrutiny committees in relation to health scrutiny functions are contained in the Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002 (SI 2002 No 3048) (*"the 2002 Regulations"*).

**2.3** The 2002 Regulations were made under provisions of the Health and Social Care Act 2001 and the National Health Service Act 1977 which have since been repealed. However, section 244 of the National Health Service Act 2006 (as amended by the Health and Social Care Act 2012) (*"the 2006 Act"*) now provides a power to make regulations *"as to matters relating to the health service in [local authorities'] area[s] which [they] may review and scrutinise"*. By section 244(2ZE) such regulations may authorise a local authority to arrange for its functions under the regulations *"to be discharged by an overview and scrutiny committee of the authority"*.

**2.4** Section 245 of the 2006 Act provides that regulations may be made under which *"two or more local authorities may appoint a joint committee of those authorities (a 'joint overview and scrutiny committee') and arrange for relevant functions in relation to any (or all) of those authorities to be exercisable by the committee"* (section 245(2)(a)).

**2.5** By virtue of the National Health Service (Consequential Provisions) Act 2006 (section 4 and Schedule 2, Part 1, paragraph 1), the 2002 Regulations now have effect as if made under sections 244 and 245 of the 2006 Act. It follows that the 2002 Regulations continue to provide vires to local authorities to establish overview and scrutiny committees (and joint committees) in relation to health matters.

**2.6** Regulation 2(1) of the 2002 Regulations provides:

*"An overview and scrutiny committee may review and scrutinise any matter relating to the planning, provision and operation of health services in the area of its local authority."*

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**2.7** Regulation 7(1) of the 2002 Regulations provides:

*“Two or more local authorities may appoint a joint committee (a ‘joint overview and scrutiny committee’) of those authorities and arrange for relevant functions in relation to any (or all) of those authorities to be exercisable by the joint committee subject to such terms and conditions as the authorities may consider appropriate.”*

**2.8** In 2003 the Department of Health issued guidance on Scrutiny. That guidance is still current but is now dated and needs to be reviewed. Paragraph 8.4 of the Department of Health’s statutory guidance ‘Overview and Scrutiny of Health – Guidance’ (July 2003) provides:

*“The Regulations ensure the maximum flexibility for local authorities to make the most of suitable arrangements to meet local circumstances whilst ensuring that NHS bodies are not burdened by multiple scrutiny exercises in one year.”*

**2.9** In the event the legal powers that joint committees currently hold meant that the JHOSC was not able to oblige attendance from employees of NHS London. Section 244 of the National Health Service Act 2006 as amended by section 190 of the Health and Social Care Act 2012 has made it clear now that for the future the JHOSC will be able to seek information from officers of relevant NHS Bodies not as now only from “local NHS Bodies”.

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# 3. Financial Background

**3.1** To assist the JHOSC in undertaking this review, a qualified accountant was engaged as an expert financial advisor. He was Bill Roots, a former Finance Director of two London Boroughs and then Chief Executive of Westminster City Council. He has held national positions within the accountancy profession and been an advisor to the local authority associations. He currently chairs a number of Boards and acts as a trouble shooter in the public sector.

**3.2** The Croydon Primary Care Trust (the Primary Care Trust) is a statutory body which came into existence on 1 April 2002 under The Croydon Primary Care Trust (Establishment) Order 2002. Primary Care Trusts (PCTs) are governed by Acts of Parliament, mainly the National Health Service Act 1977 (NHS Act 1977), the National Health Service and Community Care Act 1990 (NHS & CC Act 1990) as amended by the Health Authorities Act 1995 and the Health Act 1999 and the Health and Social Care Act 2001 and National Health Act 2006.

**3.3** The Trust is accountable to both the Secretary of State for Health and, for those funds which are deemed to be charitable, the Charity Commission.

**3.4** PCTs are subject to very detailed operational guidance and rules from the Department of Health covering:

- The composition and appointment of Board Members.
- The role of the Board.
- The creation and role of committees including formally establishing an Audit Committee
- Responsibilities and decision making roles and limitations.

**3.5** The Croydon PCT set out in its Standing Orders the issues to be reserved to the Board and other committees and set out the duties of key officers, such as the Chief Executive and the Director of Finance. Of particular relevance is Standing Order 2.8 which provides as follows

## **Role of Members**

The Board will function as a corporate decision-making body, Officer and Non-Officer Members will be full and equal members. Their role as members of the Board of Directors will be to consider the key strategic and managerial issues facing the PCT in carrying out its statutory and other functions.

### **(1) Executive Members**

Executive Members shall exercise their authority within the terms of these Standing Orders and Standing Financial Instructions and the Scheme of Delegation.

### **(2) Chief Executive**

The Chief Executive shall be responsible for the overall performance of the executive functions of the PCT. He/she is the Accountable Officer for the PCT and shall be responsible for ensuring the discharge of obligations under Financial Directions and in line with the requirements of the Accountable Officer Memorandum for PCT Chief Executives.

### **(3) Director of Finance**

The Director of Finance shall be responsible for the provision of financial advice to the PCT and to its members and for the supervision of financial control and accounting systems. He/she shall be responsible along with Chief Executive for ensuring the discharge of obligations under relevant Financial Directions.

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#### **(4) Non-Executive Members**

The Non-Executive Members shall not be granted nor shall they seek to exercise any individual executive powers on behalf of the PCT. They may however, exercise collective authority when acting as members of or when chairing a committee of the PCT which has delegated powers.

**3.6** The Board was responsible, inter alia, for approving the Annual Budget, the accounts and monitoring reports.

**3.7** The responsibilities of the Audit Committee, as stated in the NHS Audit Committee Handbook (2005), are:

- Advising the Board on internal and external audit services
- Reviewing the establishment and maintenance of an effective system of integrated governance, risk management and internal control across the whole of the organisation's activities (both clinical and non-clinical), that supports the organisation's objectives
- Monitoring compliance with and reviewing annually Standing Orders and Financial Regulations
- Reviewing schedules of losses and compensations and making recommendations to the Board
- Reviewing schedules of debtor and creditor balances over £5k and six months old
- Reviewing the annual financial statements prior to submission to the Board
- Approving the Annual Accounts
- Receiving regular reports and the monitoring of waivers issued

**3.8** The Chairman of the Audit Committee was expected to raise any acts of impropriety, ultra vires transactions or other important matters at a full meeting of the Board. The committee was also to be involved in the selection of the internal audit service provider.

**3.9** Other committees had equally well defined roles, as did officers. The Standing Orders clearly allocate responsibility to the Finance Director for "*Operational responsibility for effective and sound financial management and information*". They also set out a primary duty of the Chief Executive "*to see that the DoF discharges this function*" and further state that "*The Chief Executive and Director of Finance will, as far as possible, delegate their detailed responsibilities, but they remain accountable for financial control*" (Standing Order 10.2.4)

**3.10** The PCT's Financial Instructions are very comprehensive and cover all the material that one would expect in a public Trust. They provide the following for internal and external audit:

**3.11** Internal audit will review, appraise and report upon:

- the extent of compliance with, and the financial effect of relevant established policies, plans and procedures
- the adequacy and application of financial and other related management controls
- the suitability of financial and other related management data
- the extent to which the Trust's assets and interests are accounted for and safeguarded from loss of any kind arising from:
  - Fraud and other offences
  - Waste, extravagance and inefficient administration
  - Poor value for money or other causes



- Internal Audit shall also independently verify the Assurance Statements in accordance with guidance from the DOH
- Irregularities...are to be reported to the DOF immediately
- The Chief Internal Auditor (CIA) will normally attend the Audit Committee and has a right of access to all Audit Committee members, the Chairman and Chief Executive of the Trust
- The CIA is accountable to the DOF. The reporting system for internal audit shall be agreed between the DOF, the Audit Committee and the CIA. It shall be in writing and comply with the NHS Internal Audit Standards guidance. The system is to be reviewed every three years.

**3.12** The comments re external audit in what is otherwise a very detailed set of financial instructions are limited to:

*“The External Auditor is appointed by the Audit Commission and paid for by the Trust. The Audit Committee must ensure a cost effective service. If there are any problems relating to the service provided by the External Auditor then this should be raised with the External Auditor and referred to the Audit Commission if the issue cannot be resolved”*

**3.13** Internal audit has a primary role as an aid to management whether this be to members or officers. It looks to systems and processes to ensure that they are robust and deliver effective internal financial control. Annual audit coverage is normally based on a risk assessment of the issues facing an organisation and any particular concerns of management. Over time all systems should be

reviewed and it is important that recommendations made are implemented and followed up to this end. Internal Audit would not normally play a role in the closure of accounts transactions as such. But any system breaches should be identified when the system was next reviewed.

**3.14** External audit exists primarily to protect those not associated with the organisation (e.g. shareholders in companies and the public and funders in the public sector). However in undertaking its role it should also provide reassurance to those managing the organisation. The role of External Audit is laid down in international accounting standards; statements of recommended practice (SORPs) and professional practice requirements. Detailed guidance and best practice information is also provided by bodies such as the Audit Commission.

**3.15** The NHS London Report observes that there were deficiencies in the process for checking professional qualifications (paragraph 4.11), poor accounting practices (paragraph 4.16), significant control weaknesses (paragraph 4.82) ineffective financial controls (paragraph 4.83) insufficient senior supervision of the finance team (paragraph 4.83) invoices being left off ledger (paragraph 4.85) and deficiencies in controls (paragraph 4.87). Thus the issue for the JHOSC was not the absence of rules, systems and procedures but the lack of compliance with them and the question whether there was a case for thinking that further investigations of the actions or inactions of individuals might be warranted, contrary to the conclusions of the NHS London Report that no further inquiry was needed..

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# 4. Membership

**4.1** The JHOSC was established with twelve members, with each Borough appointing two councillors. The members of the JHOSC were:

- Cllr Alan Butler (London Borough of Richmond upon Thames)
- Cllr Kim Caddy (London Borough of Wandsworth)
- Cllr Jonathan Cardy (London Borough of Richmond upon Thames)
- Cllr Jason Cummings (London Borough of Croydon)
- Cllr Suzanne Evans (London Borough of Merton)
- Cllr Sean Fitzsimons (London Borough of Croydon)
- Cllr Heather Honour (London Borough of Sutton)
- Cllr Peter McCabe (London Borough of Merton)
- Cllr Sarah McDermott (London Borough of Wandsworth)
- Cllr Derek Osbourne (Royal Borough of Kingston upon Thames)
- Cllr Alan Salter (London Borough of Sutton)
- Cllr Margaret Thompson (Royal Borough of Kingston upon Thames)

**4.2** At its first meeting, the JHOSC appointed Cllr Cummings (LB Croydon) as Chairman and Cllr Butler (LB Richmond upon Thames) as Vice Chairman.

**4.3** Administrative support for the JHOSC was provided by the London Borough of Croydon. Mr Bill Roots, an expert financial advisor was also appointed.

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# 5. Methodology

**5.1** The work of the JHOSC was Member-led with inquiries being directed by the Committee. Mindful of the proposed reorganisation of local health services in April 2013, the JHOSC agreed at its first meeting on 6th September 2012 that it should seek to present its findings and recommendations early in the New Year. It was recognised that the intensive timescale had the potential to limit the scope of investigation, but it was felt that it was necessary to ensure there was an opportunity for the NHS to take into account the JHOSC's findings before the transition away from PCTs and towards CCGs.

**5.2** The JHOSC held four public meetings in different locations across south west London. At each meeting individuals who the Committee felt should be able to assist its investigation were invited to make statements or presentations before the Committee asked questions of them. In some instances people were not able to provide full answers at the meeting, so follow-up information was circulated to Members. The meetings conducted the following work:

## **Meeting one: 6th September 2012**

- Scene-setting presentation by the London Borough of Croydon officers
- Identification of potential respondents

## **Meeting two: 24th September 2012**

- Ann Radmore, Chief Executive of NHS South West London
- Dr Peter Brambleby, former Director of Public Health jointly employed by NHS Croydon and Croydon Council 2010-12

## **Meeting three: 29th October 2012**

- Ann Radmore, Chief Executive of NHS South West London
- John Power, chairman of the NHS Croydon Audit Committee 2007-08

## **Meeting four: 26th November 2012**

- Neil Yeomans, Deloitte LLP
- Pat Stothard, Deloitte LLP
- Martin Evans, Audit Commission
- Steve Warren, Audit Commission

A fifth public meeting was also held to consider and agree the JHOSC's Final Report.

**5.3** The public meetings and discussion with invited attendees was supplemented by a review of documents, including the NHS London Report. The JHOSC reviewed in excess of 80 documents and items of correspondence including the Standing Orders of NHS Croydon, national guidance on the role of senior officers and the Audit Committee and a number of public reports to the Boards and Audit Committee of NHS Croydon and NHS SWL, as well as the responses from persons invited to attend the JHOSC's meetings and answers to written questions. The list of documents reviewed by the JHOSC is included as Appendix B. Following the conclusion of the Committee's investigations, Mark Phillips submitted a number of documents in response to a draft of this report. The JHOSC noted with surprise that he still had access to a large number of NHS Croydon documents but having reviewed the documentation it concluded that it did not affect the Committee's findings or concerns.

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# 6. Timeline of events

**6.1** A timeline of events relevant to the key issues is set out below. The events listed are not exhaustive but list some of the key actions that occurred linked to the financial mismanagement at NHS Croydon in 2010/11.

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## 2002

NHS Croydon was established to commission and provide healthcare services

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## 2006

NHS-wide PCT restructure required new Non-Executive Directors (NEDs) to be appointed. Also required Audit Committee chairs to meet defined financial qualification. Chair of NHS Croydon's Audit Committee, David Fitze, required to stand-down both as a NED and as Audit Committee chair as he did not meet finance qualification requirement

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## April 2007

David Fitze re-appointed as ordinary NED. John Power appointed as NED and Audit Committee chairman (meeting new finance qualification in full)

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## 2007/08

NHS Croydon reported a £2.6million surplus for the 07/08 financial year

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## March 2008

John Power gave three months notice of his resignation

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## July 2008

John Power left. David Fitze appointed Audit Committee chairman

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## April 2010

NHS Croydon assumed responsibility for hosting LSCG (London Specialised Commissioning Group)

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## April 2010

Deloitte issued Head of Internal Audit Opinion for 2009/10

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## 2010/11

Stephen O'Brien, NHS Croydon Finance Director, had long periods of absence due to ill health. There is no formal delegation of responsibilities to Mark Phillips, Deputy Finance Director, but financial control was effectively vested in him whilst Mr O'Brien was absent. During these periods Caroline Taylor, Chief Executive, was responsible for Mr Phillips' line management

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## 2010/11

Monthly finance reports to the Board by Mark Phillips showed projected surpluses

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## 8th June 2010

NHS Croydon Accountable Officers (Caroline Taylor, Chief Executive and Stephen O'Brien, Director of Finance) signed-off 2009/10 accounts

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## 10th June 2010

Independent Auditor's Report for 2009/10 issued by the Audit Commission to the NHS Croydon Board

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## 28th February 2011

South West London Cluster formed:

- governance and management oversight for NHS Croydon formally passed to SWL Cluster
- Caroline Taylor, NHS Croydon Chief Executive left
- Stephen O'Brien, NHS Croydon Director of Finance left
- Ann Radmore, Chief Executive of SWL Cluster, assumed Accountable Officer role for NHS Croydon
- Jill Robinson, Director of Finance of SWL Cluster assumed Accountable Officer role for NHS Croydon
- David Fitze, NED/Audit Committee Chairman left
- Toni Letts, Chair of NHS Croydon, became a Vice Chair of the SWL Cluster



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**29th March 2011**

Budget setting paper for 2011/12 reported a surplus of £8.3m

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**29th March 2011**

Finance report (Month 10 January 2011) reported a surplus of £3.79m

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**6th April 2011**

Deloitte issued Head of Internal Audit Opinion for 2010/11

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**20th April 2011**

2010/11 accounts issued for External Audit. A clean 'true and fair' audit opinion was issued

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**20th May 2011**

Mark Phillips left SWL Cluster. Following his departure, his replacement began to identify issues with regards to budget setting for 2011/12, which indicated that the agreed budget lacked detail and transparency. NHS SWL also began to identify unpaid invoices for which there appeared to be no budgeted provision

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**8th June 2011**

2010/11 accounts signed-off by the Accountable Officers for NHS Croydon (SWL Cluster Director of Finance and Chief Executive) with a £5.54million surplus

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**9th June 2011**

Independent Auditor's Report for 2010/11 issued by Audit Commission to NHS Croydon Board

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**September 2011**

Following the identification of discrepancies, SWL Cluster commissioned an internal review of the issues. The findings indicated that the £5.54million surplus reported in the 2010/11 financial statements was not accurate.

SWL Cluster commissioned a further review by its internal auditors RSM Tenon. The results of this review were considered to be inconclusive by SWL Cluster, which referred the matter to NHS London

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**November 2011**

NHS London commissioned Ernst & Young to conduct an independent review of NHS Croydon's corporate governance, financial management and reporting arrangements

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**February 2012**

Dr Peter Brambleby, Director of Public Health jointly employed by NHS Croydon and Croydon Council, left

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**28th May 2012**

A report presenting Ernst & Young's findings was published by NHS London

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**28th June 2012**

NHS London Board received the E&Y findings and recommendations on NHS Croydon finances for 2010/11 in a report written by NHS London; the report was referred to NHS SWL

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**28th June 2012**

NHS London Board Update Report on NHS Croydon recommended that the Croydon deficit be treated as a prior period adjustment

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**6th July 2012**

Dr Peter Brambleby, Director of Public Health, sent a whistle-blowing letter to the Secretary of State for Health

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**26th July 2012**

NHS London report on E&Y findings considered by the SWL Cluster Board, which decided to treat the misstatement as a prior period adjustment

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**6.2** The following individuals were identified as being significant to the JHOSC's investigations. They were all invited to attend a meeting of the JHOSC to relay their experiences and perspectives. The Committee is grateful to those who chose to accept the invitation, as denoted by an asterisk.

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**Caroline Taylor**

Chief Executive, NHS Croydon (until February 2011)

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**Stephen O'Brien**

Director of Finance, NHS Croydon (until February 2011) who had extended periods of absence due to ill health in 2010/11

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**Mark Phillips**

Deputy Director of Finance, NHS Croydon (referred to as SFE1 in the NHS London Report) (until May 2011)

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**David Fitze**

NED and chair of the NHS Croydon Audit Committee 2007-11

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**Toni Letts**

Chair of NHS Croydon until February 2011

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**Ann Radmore\***

Chief Executive, NHS SWL Cluster (current)

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**Jill Robinson**

Director of Finance, NHS SWL Cluster (current)

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**Dame Ruth Carnall**

Chief Executive, NHS London (current)

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**Paul Baumann**

Director of Finance and Investment, NHS London (current)

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**John Power\***

Chair of Audit Committee April 2007 to July 2008

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**Dr Peter Brambleby\***

Director of Public Health, Croydon (March 2010 to February 2012)

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# 7. Deliberations and observations

**7.1** Early on in the JHOSC's deliberations, the Committee agreed that in order to understand how NHS Croydon operated in 2010/11, it would need to speak to the senior officers who were there at the time. The Chief Executive, Caroline Taylor, had left NHS Croydon in February 2011 when the Cluster arrangements were introduced. Since leaving NHS Croydon, Ms Taylor had remained in the employment of the NHS after being appointed Chief Executive of NHS North Central London. Similarly, Mark Phillips, the interim Deputy Director of Finance (who was in effect in charge of the finance team while the Director of Finance was absent on health grounds), had left NHS Croydon in May 2011 and had joined his previous manager, Caroline Taylor, at NHS North Central London. As both individuals were still engaged by the NHS and had remained in London, the JHOSC was of the view that both could and should be invited to attend a meeting to respond to the findings in the NHS London Report.

**7.2** Invitations were sent to Ms Taylor and Mr Phillips, who had by then left NHS North Central London. A personal email address was provided for Mr Phillips and an invitation was sent, but no response was received. Ms Taylor wrote to inform the Committee that she had consulted with her successor, Ann Radmore, and they did not believe it appropriate that Ms Taylor should attend. It was her view that all questions should be directed towards the current Chief Executive of NHS Croydon and the SWL Cluster, Mrs Radmore, and that the JHOSC did not have a right to speak to other officers. Whilst the Committee welcomed the

co-operation of Mrs Radmore, it could not agree that Mrs Radmore, an officer who did not work for the organisation and was not the "Accountable Officer" at the relevant time, was the most suitable person to explain events. Mrs Radmore attended a public meeting of the Committee on 24th September 2012. Prior to her attendance she wrote to the JHOSC Chairman to outline the areas on which she would and would not answer questions, arguing that the JHOSC could only consider matters relating to the "*planning, provision and operation of health services*", and that this did not necessarily include all aspects of financial management. The Committee found this to be an incredulous statement to make. Committee observed that the letter created an unnecessary hostile atmosphere between the NHS and the JHOSC, before it had even heard from any one involved.

**7.3** The Committee was concerned at the lack of cooperation from NHS London and Croydon PCT and questioned their appetite for understanding exactly what led to an overspend and the financial misstatement in excess of £28million. The JHOSC recognised that current legislation allowed only for officers from 'the local health body' to be required to attend. However given the magnitude of the financial misstatement involving public money the Committee expected a greater willingness from the NHS to assist in democratic scrutiny. In most health Scrutiny meetings, the NHS rarely limits itself to just one officer. This was an unexpected limitation to which committee will return in their recommendations.

**7.4** Having heard from a number of persons, the JHOSC later identified and invited Mrs Toni Letts and Mr David Fitze (the Chair of NHS Croydon and the Chair of the Audit Committee respectively) to attend. Both Mrs Letts and Mr Fitze declined and did not answer written questions sent to them. Mrs Letts wrote to explain that she believed the independent report to be detailed and forensic and that she therefore did not feel she had anything further to add and Mr Fitze stated that having already been interviewed by Ernst & Young he did not believe he could give any additional information that would impact on the JHOSC's findings. The justifications given for the preceding Chief Executive (Caroline Taylor), who still worked relatively locally, and two senior NEDs to not attend did not meet the Committee's expectation (and experience of past health scrutiny committees) that all public servants and holders of public office should be open, transparent and willing to account for their actions. The experiences of this JHOSC have therefore led to the conclusion that health scrutiny committees need additional powers to compel senior NHS officers to cooperate fully with scrutiny, with complete openness regarding financial management, and to attend meetings even if they no longer work within the scrutiny committee's administrative boundary. The Committee notes (in section 2 above) that these limitations have now been removed and replaced with the wording 'relevant NHS body'. It is considered that such a power will be of paramount importance in light of the wide-reaching organisational change that the NHS is undergoing with the majority of senior staff at PCTs changing jobs from April 2013. Clear guidance for relevant NHS bodies that NHS Officers and NEDs have a duty to cooperate with scrutiny committees may also be needed.

### Recommendations:

- i)** The Secretary of State for Health should take the opportunity of the imminent health reorganisation to revise the 2003 '*Overview and Scrutiny of Health – guidance*' to make explicit the power of health scrutiny committees to scrutinise the finances of local health services as falling within the meaning of the words "*planning provision and operation of health services*"
- ii)** In a reissue of the 2003 guidance, the Secretary of State for Health should ensure that health scrutiny committees, and joint health scrutiny committees, are empowered to compel senior NHS officers to cooperate fully with scrutiny, with complete openness regarding financial management, and to attend meetings even if they no longer work within the scrutiny committee's administrative boundary. The Secretary of State for Health should also explain that the power of health scrutiny committees extends to Non Executive Directors. The wording in the new legislation 'relevant NHS bodies' also needs to be given a wider interpretation in the revised guidance

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**7.5** Mrs Radmore attended two public meetings of the JHOSC and responded to all written correspondence. Mrs Radmore became Chief Executive of NHS SWL (incorporating all five PCTs, including NHS Croydon) on 28th February 2011. A little over three months later, she signed-off NHS Croydon's final accounts for the 2010/11 year on 8th June 2011, in her capacity as the Accountable Officer as defined by the PCT's Standing Orders. Given that she had assumed responsibility for the budgets of five PCTs so close to the end of a fiscal year, the JHOSC was keen to understand how she was able to satisfy herself that the final accounts were accurate. Mrs Radmore explained that she conducted a risk assessment of each set of accounts, which included a thorough discussion with the external auditor and with the senior finance officer who had been working on them. However the Committee noted her statement that in hindsight, she should have been more questioning of the accounts and more challenging of the reports of external audit. It is the Committee's view that when certifying the accuracy of a set of accounts, it is always necessary for any Chief Executive to satisfy themselves regarding the procedures and processes followed. However even greater care is needed during a transition or change in leadership. The JHOSC therefore believes that the Government should review the advice given to senior officers and Boards on the need for extra measures before signing off sets of accounts in periods of structural or senior personnel changes

### Recommendations:

**iii)** The CCGs and NHS London should review its processes and ensure that there is strategic support and a structured handover for chief executives who assume responsibility for the final accounts from before they were in post

**7.6** The JHOSC was informed by Mrs Radmore that she conducted a risk assessment to determine the approach to the management of each of the PCT budgets in South West London. For example, based on past performance Sutton & Merton was judged to require a more intensive audit, while Croydon's record was not a concern. The JHOSC also heard evidence from Dr Peter Brambleby, who described a culture where financial performance was not questioned or monitored closely. The Committee therefore began to develop a view that there existed an element of complacency in NHS Croydon and that the measures taken to assess the accounts were not sufficiently robust, which likely contributed to the ongoing financial mismanagement. A contributory factor to this was the requirement of PCTs to break even at the end of each financial year. The JHOSC was informed by Dr Brambleby that officers were under such pressure to achieve a balanced budget at year end that they were reluctant to challenge budgetary performance as long as the figures appeared to add up, which was easier to do prior to the recession and the relative reductions in funding. Ultimately the collective failure of NHS Croydon's management and Board (as summarised in paragraphs 4.92 and 4.93 of the NHS London Report) to, challenge the information presented in financial reports prevented the identification of such a large financial discrepancy, and the experiences of NHS Croydon should act as a reminder to the Boards and management of NHS and other public bodies that past good performance cannot be relied upon as an indicator of current performance.

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**7.7** During her responses to the Committee, Mrs Radmore stated it was her belief that the misstatement of accounts was ‘deliberately hidden’. She explained that at each year end NHS organisations were required to confirm payables and receivables balances with other NHS organisations, before the balances were recorded. It was Mrs Radmore’s reading that a series of actions were taken by a number of individuals that resulted in incorrect entries. Mrs Radmore said that she could not speculate why these actions were taken, and she neither confirmed nor denied whether incompetence was the cause. The poor accounting practices masked and prevented the £22million deficit from being identified sooner.

**7.8** Paragraph 3.27 of the NHS London Report describing the findings and recommendations of Ernst & Young outlines how Mark Phillips provided a revised version of the PCT98 form following his interview with Ernst & Young as part of their review. A number of significant revisions to the PCT98 form were identified, including an increase in disputed items from £16.35million to £20.51million. Mr Phillips did not offer a satisfactory explanation to Ernst & Young as to why these amounts varied across the different versions of the PCT98 and Ernst & Young reported that they did not view the document as being reliable. As noted above, Mr Phillips was invited to attend a JHOSC meeting to describe what happened, but he did not respond.

**7.9** Stephen O’Brien was the Director of Finance at NHS Croydon until February 2011 but was absent for extended periods due to ill health. Mr O’Brien declined to attend the Committee. During such periods of absence, Mr Phillips’ line manager was Caroline Taylor, the Chief Executive, who also declined to attend the Committee although she was the Accountable Officer at the time of the misstatement.

**7.10** In the absence of any evidence from Mr O’Brien, Ms Taylor or Mr Phillips, the JHOSC was not able to get a clear picture of the financial management activities at NHS Croydon and how they were supervised. However the information provided to the Committee by Mrs Radmore (and by Dr Brambleby, as described below) is consistent with the conclusion of the NHS London Report that there was insufficient senior supervision (paragraph 4.83) and it would appear that Mr Phillips was not suited to lead the finance team in Mr O’Brien’s absence. The Committee infers there is a strong likelihood that Mr O’Brien and Ms Taylor did not manage these aspects effectively.

### Recommendations:

**iv)** In accordance with Standing Orders, the “Accountable Officer” is accountable to the Secretary of State. The JHOSC recommends that the Secretary of State take an account from the Accountable Officer for that financial year, Caroline Taylor, as to how the misstatement of accounts came about and publish his findings.

**7.11** The Committee was interested to note the description of the culture of the organisation presented by Dr Peter Brambleby. Dr Brambleby was jointly appointed by NHS Croydon and Croydon Council from March 2010 to February 2012 as Director of Public Health. Since his resignation, Dr Brambleby has publicly expressed his concern at the wider systemic issues facing the NHS in general and at NHS Croydon in particular. In a letter to the Secretary of State for Health, Dr Brambleby described a culture of bullying and dishonesty and a “grim game of ‘pass the parcel bomb’”, of short-termism where “no-one dares admit mistakes”. During his evidence to the JHOSC, Dr Brambleby explained that this culture prevented any effective challenge or control of departmental budgets. He reported that he requested monthly updates on his budget but was never provided with complete monthly statements and that he never signed-off his allocated budget. In his second year in post, he was not allocated a budget at all. Dr Brambleby described that this had the effect of him running his department blind. He explained to the Committee that he had absorbed the NHS culture of ‘learned helplessness’: he, like many of his colleagues, did not fully understand NHS finances and so he stopped asking questions as long as the end balances were positive. This contribution from Dr Brambleby chimes with the comments in paragraph 4.17 and 4.18 of the NHS London report where the budget setting process was described to E&Y as “opaque” with budget holders having limited visibility of budgets. The JHOSC was concerned that there appeared to be a culture where budget holders were being given formal responsibility for budgets without any real expectation that they would manage them effectively. On the limited evidence it has been given, the JHOSC suspects that NHS Croydon in 2010/11 did not have budget managers suitably empowered to undertake budget monitoring and financial reporting and that the organisation’s

Board leadership did not do enough to ensure that difficult questions were asked by the Accountable Officer or Director of Finance. It also appears that too much reliance may have been placed upon the word of the finance department with further enquiry seemingly discouraged.. Dr Brambleby also observed that across the NHS there was a system that rewarded chief executives and finance directors for delivering balanced budgets, which encouraged the learned helplessness of limited challenge. It was on this basis that he disputed the assertion by NHS London that there had been no personal gain arising from the misstatement of accounts. The NHS employed a large number of interim appointments, including Mr Phillips, whose contracts were likely to be extended if they were judged to be a ‘safe pair of hands’ that did not ask too many questions. Similarly, as the NHS underwent significant transformations, senior officers would regularly find themselves needing to find new jobs within the new structures. The JHOSC accepts that these aspects may place additional pressure on senior executives and interim appointees.

### Recommendations:

- v) All budget holders at NHS SWL, and then at the CCGs/local authorities, should be made personally responsible and own their department’s budget. Budget management training should be a standard part of recruitment criteria and continuous training for all budget holders


**7.12** In light of Mrs Radmore's statement (noted in paragraph 7.7 above) in response to a direct question whether individuals took deliberate actions to hide the misstatement of accounts, the JHOSC sought to understand what investigation had taken place with a view to discovering whether those responsible could be held to account. Mrs Radmore reported that her reading of Ernst & Young's findings were that there was no personal gain for any of the officers involved and so she did not believe that disciplinary action was appropriate. The Committee found it incredible that officers whose actions or inactions resulted in overspending not being noticed during the relevant budget monitoring period and contributed to a budget misstatement on this scale, had not been held accountable in any visible way. The JHOSC thought long and hard about this and concluded that the need for further investigation would be less pressing and less apparent were it not for the fact that the individuals with significant involvement in the misstatement of accounts and deficient management are still employed within the NHS system. As elected representatives the committee felt that there is a need to protect the NHS and that the public needs confidence that it is proper that the officers concerned continue to fulfill senior roles within the NHS. It is the Committee's view that the NHS needs to do more to identify who contributed to the misstatement of accounts and take appropriate action.

### Recommendations:

**vi)** The NHS bodies should make a SMART (Specific, Measurable, Attainable, Relevant, Timed) commitment to help foster a culture of openness, honesty and challenge. These values should be intrinsic in the operation of the CCGs with an expectation that public servants should do more than the minimum required of them

**7.13** Since the publication of the report presenting Ernst & Young's findings, NHS London and NHS SWL have stated that despite the size of the financial discrepancy identified, there has been no adverse impact on the provision of local health services. At its meeting on 29th October 2012, Mrs Radmore (who was not employed within NHS Croydon at the relevant time) informed the JHOSC that the lack of effective financial oversight had meant that more money had been spent on healthcare in Croydon than the population actually needed. She argued that an excess of services had been provided, with the PCT not living within its means. The JHOSC challenged this argument and noted the counter argument made by Dr Brambleby (who was actually a budget holder within NHS Croydon at the relevant time) that whilst resources were spent on healthcare, they were not spent in the most efficient way and were unnecessarily wasted. Therefore by misdirecting funds and allowing expenditure on low priority items, resources were directed away from where they were needed most. Dr Brambleby cited examples where a sufficient audit trail of expenditure was not available and was shocked at the low priority given to accounting for every penny spent. He highlighted a scheme where high risk patients were identified, contacted and invited to undergo a screening process to identify health issues early on. Due to insufficient funds this programme had been ceased. Dr Brambleby explained that he had been shown documentation by Ernst & Young that initially approved the funding for the programme in 2010/11, but was then overturned as it had not been budgeted for in the accounts. The Committee cannot make an assessment of the validity of claims regarding which services were paid for as it believes that the financial management at NHS Croydon was so poor it is not possible to track the payments made. The JHOSC therefore failed to see how the overspend and subsequent deliberate financial misstatement could be said to not have had a detrimental impact on health services in Croydon.





The money available to NHS Croydon could and should have been spent more effectively with greater coordination to achieve better outcomes in patient care in 2010/11, but this was prevented by the failings in the PCT's governance and the failure to fulfil its duty to plan, provide and operate health services by spending public money as efficiently as possible.

**7.14** Since February 2011, the five PCTs in south west London have been managed under the Cluster arrangement. The JHOSC was concerned that the failings of NHS Croydon in 2010/11 could have a negative impact across the region, with the provision of health services being affected in each of the six Boroughs. At the JHOSC meeting on 29th October 2012, Mrs Radmore explained to the Committee that the Department of Health, Audit Commission and the NHS SWL Board had agreed that a Prior Period Adjustment be applied to the 2010/11 accounts. This meant that when the CCG assumed responsibility for delivering health services in 2013 it would not inherit an overspend. Mrs Radmore reported that that she was working with GP commissioners who had said that the circumstances had accelerated the process of finding new efficiencies that in a climate of reduced funding all CCGs would be required to do regardless. The Prior Period Adjustment had meant that the CCG would not need to adjust to an overspend, but to the existing spending plans already in the system. The JHOSC was concerned that the CCG was being asked to identify ways of reducing expenditure before it was statutorily operational. It was also of the view that being required to identify savings to accommodate NHS Croydon's financial mismanagement had the potential to harm Croydon CCG's ability to make the further savings required by reduced Government funding.

**7.15** Mrs Radmore described for the Committee how the budget of each PCT is subject to restrictions by the Department of Health. Each year, PCTs were only free to spend around 95% of their funding allocation, with the remaining amount being restricted by the Strategic Health Authority (SHA – in this instance NHS London). The money restricted by the SHA included a Non-Elective Threshold which was returned to PCTs only at the discretion of the SHA Director of Finance, and a 2% Non-Recurrent Reserve which was to be used only to support change and could only be used with the approval of the SHA. Mrs Radmore informed the JHOSC that NHS London had agreed to release approximately £8million of reserved funds to NHS SWL to help manage the financial risk. It was acknowledged that these funds were unlikely to have been returned to SWL without the misstatement of accounts, but also that they may have been used elsewhere in the region. The JHOSC welcomed the return of funds to NHS SWL to manage the risk and noted that further savings were necessary. Mrs Radmore outlined the programme of QIPP (Quality, Innovation, Productivity and Prevention) savings amounting to £16.5million. The Committee agreed that the work undertaken by NHS SWL to manage the liability created by NHS Croydon in 2010/11 should be acknowledged, but regretted the circumstances that meant that officers were focussing on addressing mistakes during a period of substantial transition. The JHOSC was also concerned that it remained unclear exactly how much the overspend of NHS Croydon in 2010/11 was and how much of the additional financial liability was the result of other factors such as reduced central funding and demographic changes. Whilst the Committee commended the programme of savings proposed, it was not yet possible to fully assess the ongoing impact of the misstatement of accounts until all proposed savings had been achieved.

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**7.16** The NHS London report presenting Ernst & Young's findings included a number of recommendations, all of which NHS SWL had approved and agreed to implement. Mrs Radmore provided the JHOSC with a detailed action plan outlining the progress made against each recommendation. The JHOSC welcomed the willingness of NHS SWL to address the weaknesses identified by Ernst & Young, however it was concerned that some of the timescales for completing the agreed actions were too vague. The status of many of the actions was listed as 'ongoing' or 'initial action complete' without a given completion date. The Committee was concerned that there did not appear to be a robust timetable in place to implement Ernst & Young's recommendations. Mrs Radmore agreed that this would be preferable, but that the transition in April 2013 meant that NHS SWL could not act beyond the end of the year. Mrs Radmore suggested that the chief officers from each CCG should assume responsibility for implementing the action plan post April 2013. The JHOSC supports this suggestion and recommends that the appropriate officer to lead on each recommendation is identified at the earliest opportunity.

### Recommendations:

**vii)** The Accountable Officer of each CCG in south west London should take personal responsibility for implementing Ernst & Young's recommendations, and report to the appropriate health scrutiny committee on the progress made


**7.17** The NHS London Report reproduces Ernst & Young' recommendations (at paragraphs 5.7 and 5.8) that a review be undertaken of the checks on job applicants' qualifications in the appointments process and that the number of interim appointments be monitored. The JHOSC noted these recommendations with interest as it found evidence that the culture of NHS Croydon prevented internal challenge. Members were alarmed to learn from the NHS London Report that the interim Deputy Director of Finance, Mark Phillips, did not meet the mandatory financial requirements and may not have been the only one on band 8 or 9 who was not appropriately qualified. As highlighted in the NHS London Report, the Financial Assurances Standards (FaST) for NHS finance teams require minimum qualifications for all senior finance employees and following his interview with Ernst & Young it emerged that Mr Phillips did not meet the mandatory financial requirements. The issue was exacerbated at NHS Croydon by the high number of staff departures in the year leading into the transition to the Cluster arrangement. As a result, the NHS Croydon finance team was (during the absence of the Director of Finance) being led by an unqualified manager and had approximately 50% of staff on interim appointments. There was a developing view within the JHOSC that these circumstances created an environment where long-term issues were not considered and accountability was low.

**7.18** Dr Brambleby described for the Committee how departmental managers were dissuaded from challenging finance reports and expected to accept verbal explanations without documentation. The JHOSC noted the comment in paragraph 4.15 of the NHS London Report that there was considered to be a lack of understanding of the financial position of NHS Croydon within the finance team. Turning to paragraph 4.16 of the report the JHOSC heard no evidence that would diminish the concern raised there over the general competence of the NHS Croydon finance team during FY10-11 before and after transition. Members of the NHS Croydon Finance Team transferred to the SWL Cluster and some may have transferred to other NHS bodies. The JHOSC had expressed its intention to speak with the relevant director for Human Resources regarding the hiring process, but NHS SWL did not consent to the JHOSC speaking to any officer other than Mrs Radmore. Therefore it was not possible for the JHOSC to ascertain whether due diligence had taken place and this alarms the Committee; it is very possible that some of those temporary or permanent staff who were unsupervised and possibly doing the wrong things in all innocence, are now scattered throughout the wider NHS with who knows what consequences. The JHOSC believes that it is good due diligence for the CCGs to review the required qualifications for all senior finance staff prior to or soon after the CCGs assuming statutory responsibility and that they should also take steps to ensure that budget holders are empowered to own and manage their budgets. The JHOSC recognises that in the year prior to a reorganisation there are likely to be increased interim appointments. However it recommends that Croydon CCG makes a commitment to ensure that the future level of interim employees is appropriate and that when they are appointed they are required to serve a sufficient notice period to ensure continuity of service.

### Recommendations:

- viii)** The CCGs in south west London should review the qualifications of those staff who in future will have responsibility for budgets or other financial matters prior to the CCG assuming statutory responsibility in April 2013
- ix)** CCGs should be required to monitor the number of interim employees, ensure there is sufficient oversight of interim employees with robust line management, and manage the risks accordingly

**7.19** The sufficiency of qualifications and experience of Board members was also an issue when the JHOSC heard evidence regarding the role of NHS Croydon's Audit Committee. The JHOSC considered the matter with Mr John Power, who was Chairman of the Audit Committee from April 2007 to July 2008. Mr Power succeeded Mr David Fitze as Chairman of the Audit Committee when a change in regulations required committee members to hold sufficient financial qualifications and experience. Mr Power described for the JHOSC how he pushed for a more robust approach to financial management and often challenged officers.. He became aware however that personal relationships were becoming untenable with senior officers and NEDs not welcoming his enthusiasm for scrutiny. He informed the JHOSC that he had since been made aware that there was significant criticism of him from his predecessor and the Director of Finance which undermined his position. Mr Power decided to stand down and he was replaced as Chair of the Audit Committee by his predecessor Mr Fitze. The JHOSC wrote to the then Chair of NHS Croydon, Mrs Toni Letts, to ask how Mr Fitze had fulfilled the criteria for the position in 2008 when he was not considered to be suitable in 2007. Mrs Letts forwarded the question to the Chief Executive of NHS SWL, Ann Radmore. In response, Mrs Radmore



explained that in 2008 Mr Fitze was re-appointed after a national advertisement and appointed by a panel that included the Chair of NHS Croydon, Mrs Letts. The JHOSC cannot draw any firm conclusions about the culture of the committee, but it does appear that the removal of Mr Power would have increased the risk that governance issues might fail to be identified.

**7.20** The JHOSC wished to better understand the roles of the Audit Committee and the Board. However the NEDs who were local councillors declined invitations to attend the JHOSC as they did not feel they could provide any information additional to Ernst & Young’s findings. Having heard the evidence from Mr Power, Dr Brambleby and from the internal auditors of NHS Croydon, Deloitte LLP, the JHOSC could see why the NHS London Report (at paragraph 4.92) observes that there was an increased likelihood that accounting irregularities would fail to be identified. The NHS London Report also observes (at paragraph 4.76) that there does not appear to have been recognition or escalation of issues raised by Internal Audit and that the recurrence of these issues, indicating that recommendations were not being implemented, reflected further deficiency in the internal control environment. The JHOSC reflected on the roles of the Audit Committee and the Board and concluded that in a period of transition and changing personnel they should have considered whether it was reasonable to draw comfort from the historical strength of internal control and financial performance. In this respect the JHOSC considers (by reference to paragraph 4.76 NHS London Report) that the Audit Committee had indicators that NHS Croydon was not implementing internal audit recommendations and that a review of the outstanding recommendations by the Audit Committee may have highlighted the increased risk which existed as a consequence of the transition to the Cluster arrangement

**7.21** In her evidence, Mrs Radmore described her disappointment with the performance of NHS Croydon’s internal auditors, Deloitte LLP, arguing that she would have expected them to identify the systemic issues. The JHOSC observed the statement in the NHS London Report that the internal auditor had chosen to conduct a ‘light touch’ audit, and sought clarification from the internal auditors whether this could have been a contributory factor. Evidence from the internal auditors was to the effect that ‘light touch’ did not mean less auditing activity, but activity of a different kind. The representatives from Deloitte LLP, Mr Neil Yeomans and Mr Pat Stothard, preferred to characterise it as a ‘focused approach’ rather than “light touch” as it focussed on reviewing documentation rather than interviewing managers – both were used, but the emphasis was on reviewing governance documentation. This approach was agreed with NHS Croydon as it was judged to be appropriate for an organisation in its final year, with the aim being to ensure the governance and financial controls were fit for purpose leading into the transition. The JHOSC noted that the areas on which the internal auditors focussed were based on annual risk registers and presented in an audit plan that was agreed by the Audit Committee.

**7.22** The JHOSC also took contributions from, the Audit Commission who had appointed NHS Croydon's external auditor. The Audit Commission's work was not included in the investigation by Ernst & Young, but an Audit Commission internal review of the appointed auditor's work was undertaken. The review found that the appointed auditor had fulfilled the minimum required of her, but that there was capacity for her to do more. The JHOSC challenged the Audit Commission's appointed auditor's assessment that the 2010/11 final accounts for NHS Croydon were 'true and fair' and sought to understand why it did not now believe this judgement to be inappropriate in light of the identified misstatement. The officers from the Audit Commission, Mr Martin Evans and Mr Steve Warren, explained that the 'true and fair' assessment was not given in error because, based on the evidence available at the time, it was correct. They conceded that given the Prior Period Adjustment, it was likely that the information provided to the external auditor to form an audit opinion was incorrect. The JHOSC was advised by an independent Accountant. The JHOSC is both surprised and concerned with the quality of the external audit end of year sign-off for NHS Croydon. While all external audits do require managers to give a statement confirming the accuracy of information, the JHOSC is advised that it is incumbent on external audit to assess the reliance to be placed on such statements. Given the position reported in the NHS London Report and taking into account the independent advice it has received, the JHOSC considers that there is reason to believe that the quality of the external audit fell short of the standard properly to be expected.

### Recommendations:

- x) NHS Boards and local authority Audit Committees in south west London should be advised of the limitations to the assurances obtained from internal and external audit reports in order that these Audit Committees adopt a more questioning attitude to the Accountable Officers who are ultimately responsible for financial management

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# 8. Conclusions

**8.1** The Committee wishes to place on record that there was an absence of full cooperation from the NHS bodies (NHS Croydon, the SWL Cluster and NHS London). The lack of full cooperation is part of the JHOSC's findings, which are presented below structured around the Committee's terms of reference.

**8.2 To receive and review a report commissioned by NHS London from Ernst & Young (dated 28th May 2012) into financial management and corporate governance arrangements at NHS Croydon for the period relating to FY10-11 Annual Accounts;**

The JHOSC attempted to receive the NHS London Report from its authors. The Committee felt that as the E&Y investigation had been commissioned by NHS London, NHS London should be given the opportunity to present it and to bring Ernst & Young to explain their work and their findings. However, NHS London declined to give evidence. The Committee then invited Ernst & Young to attend a meeting and speak to their own report. It then came to light that the report previously referred to as being Ernst & Young's, was not an Ernst & Young report, as they wrote to the JHOSC making it clear that it was an NHS London Report, written by NHS London based on the independent review of Ernst & Young. NHS London however subsequently wrote to state that the report was written by Ernst & Young. The JHOSC have not had sight of the Ernst and Young investigation report. The JHOSC cannot distinguish between the original or derivative findings of the E&Y investigation.

**8.3** NHS London reported the findings made by Ernst & Young in its review. Information received at first hand by the JHOSC was consistent with those findings. However there are two findings which the JHOSC considers incomplete. The NHS London Report found that the overspend was spent on healthcare within Croydon. The JHOSC observes that even if that is correct (which it cannot assess) the overspend was not spent in a planned way and it is therefore unlikely to have been spent efficiently or in accordance with agreed priorities. It is therefore not a good result.

**8.4** Secondly, the NHS London Report found that there was no evidence of personal gain associated with the mis-statement. The JHOSC observes that nevertheless it has not been ruled out that the mis-statement may have occurred as a result of individuals acting to safeguard their own positions, to the detriment of Croydon NHS. This would be entirely unacceptable and warrants further investigation. In any case, the issue for the JHOSC has not been about personal gain but personal responsibility. There is no evidence that any investigation was attempted to establish the extent of personal responsibility involved.

**8.5 To inquire into what action has been taken by NHS South West London Cluster to address recommendations 5.3 to 5.19 of the report**

Ann Radmore appeared before the JHOSC on two occasions, the second of which considered the actions taken by NHS SWL to address the recommendations of E&Y reported at paragraphs 5.3 to 5.19 of NHS London's report (see appendix A).

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**8.6** The Committee reviewed documentary evidence from NHS SWL and was able to see that there had been efforts made to address the concerns raised by the NHS London Report. The JHOSC acknowledges NHS SWL's work implementing the recommendations so far, but is concerned that there do not appear to be mechanisms in place to continue this work beyond April 2013. This report recommends that each CCG in south west London should make a commitment to continue monitoring the implementation of the NHS London Report's recommendations, with each CCG's chief officer assuming personal responsibility for doing so.

**8.7 To consider whether the recommendations are sufficient or whether further action should be taken**

The JHOSC supports the recommendations, whatever their genesis, but is concerned that no-one has been held to account for the financial mis-statement. Whilst it may be difficult to identify who was responsible for each factor contributing to the net result, the attempt should nevertheless be made. The purpose is not to attribute blame, but to ensure that such behaviours are not repeated or left unchallenged within the NHS, where they are particularly damaging. The JHOSC considers that further action should be taken by the NHS Bodies starting with a review of the NHS London Report and the underlying report from E&Y to NHS London.

**8.8** The JHOSC was keen to hear from the senior officers and NEDs at NHS Croydon, particularly Caroline Taylor, Stephen O'Brien, Mark Phillips, Toni Letts and David Fitze, and was disappointed at their reluctance to attend a committee of democratically elected representatives. The JHOSC considers that the Board and the Audit Committee may have been too passive and unchallenging on financial issues. The NHS Code of Accountability describes the expected role of NHS Boards:

*"The duty of an NHS board is to add value to an organisation, enabling it to deliver healthcare and health improvement ... It does this by providing a framework of good governance within which the organisation can thrive and grow... The role of an NHS board is to ... provide active leadership of the organisation"*

Given the scale of the errors which occurred it would seem unlikely that the Board of NHS Croydon met the expected standard. Information received by the JHOSC at first hand tends to confirm that view.

**8.9** Given the extent of the financial misstatement the JHOSC finds it extraordinary that responsibility has not been attributed other than at the most general level. The Committee is concerned that in the face of complex circumstances and the imminent transition to CCGs it may have been thought more important to move on. In the JHOSC's view that would miss an important opportunity to learn from these events. It would also be a failure not to take whatever steps are necessary to protect the NHS in future from serious financial mismanagement.

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# 9. Recommendations

In the light of the conclusions in paragraph 8 above we recommend:

**9.1** The Secretary of State for Health should take the opportunity of the imminent health reorganisation to revise the 2003 *‘Overview and Scrutiny of Health – guidance’* to make explicit the power of health scrutiny committees to scrutinise the finances of local health services as falling within the meaning of the words *“planning provision and operation of health services”*;

**9.2** In a reissue of the 2003 guidance, the Secretary of State for Health should ensure that health scrutiny committees, and joint health scrutiny committees, are empowered to compel senior NHS officers to cooperate fully with scrutiny, with complete openness regarding financial management, and to attend meetings even if they no longer work within the scrutiny committee’s administrative boundary. The Secretary of State for Health should also explain that the power of health scrutiny committees extends to Non Executive Directors. The wording in the new legislation ‘relevant NHS bodies’ also needs to be given a wider interpretation in the revised guidance;

**9.3** The CCGs and NHS London should review its processes and ensure that there is strategic support and a structured handover for chief executives who assume responsibility for the final accounts from before they were in post;

**9.4** In accordance with Standing Orders, the “Accountable Officer” is accountable to the Secretary of State. The JHOSC recommends that the Secretary of State take an account from the Accountable Officer for that financial year, Caroline Taylor, as to how the misstatement of accounts came about and publish his findings.

**9.5** All budget holders at NHS SWL, and then at the CCGs/local authorities, should be made personally responsible and own their department’s budget. Budget management training should be a standard part of recruitment criteria and continuous training for all budget holders;

**9.6** The NHS bodies should make a SMART (Specific, Measurable, Attainable, Relevant, Timed) commitment to help foster a culture of openness, honesty and challenge. These values should be intrinsic in the operation of the CCGs with an expectation that public servants should do more than the minimum required of them;

**9.7** The Accountable Officer of each CCG in south west London should take personal responsibility for implementing Ernst & Young’s recommendations, and report to the appropriate health scrutiny committee on the progress made;

**9.8** The CCGs in south west London should review the qualifications of those staff who in future will have responsibility for budgets or other financial matters prior to the CCG assuming statutory responsibility in April 2013;

**9.9** CCGs should be required to monitor the number of interim employees, ensure there is sufficient oversight of interim employees with robust line management, and manage the risks accordingly;

**9.10** NHS Boards and local authority Audit Committees in south west London should be advised of the limitations to the assurances obtained from internal and external audit reports in order that these Audit Committees adopt a more questioning attitude to the Accountable Officers who are ultimately responsible for financial management.



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# Appendices

<b>Appendix A:</b> <b>Recommendations extracted from the NHS London Report</b>	<b>31</b>
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# Appendix A

## Recommendations extracted from the NHS London report

**5.1** In the course of its work EY noted a number of issues and recommendations that it believed those with ongoing responsibility for corporate governance arrangements at NHS Croydon may wish to consider.

**5.2** The majority of the observations and findings from the review are in respect of the accounting and governance in place at CPCT in advance of the transition to the SWL Cluster management arrangements. EY did not carry out a detailed assessment of the corporate governance and financial management arrangements currently operated by SWL Cluster. Some of the recommendations set out below may therefore already have been considered by SWL Cluster and reflected in its management arrangements.

### Operational governance – financial controls

**5.3** The financial ledgers of a PCT should record and reflect on a timely and accurate basis all relevant accounting information, and the financial controls operated by management should be designed to achieve this end. In particular, NHS Croydon should ensure that:

- There is effective segregation of duties between staff who prepare and post journals and staff who authorise them
- All journal entries should be supported by appropriate and sufficient audit evidence as to the nature and purpose of the journal entry
- Invoices and credit notes should be entered onto the ledger when they are received and credit notes immediately matched to the corresponding invoice
- Appropriate authorisation limits are in place for posting in SBS
- The liabilities and adjustments recorded on the PCT98 form fully reflect the position as documented in NHS Croydon's records, agreed with other NHS entities and recorded on the financial ledger
- A clear audit trail exists to reconcile, on a monthly basis, the position on the ledger to that reported to the Audit Committee, Board and external stakeholders
- Management reports should be fully reconciled to feeder systems e.g. ACU activity and finance reports
- Budgets should be agreed with budget holders prior to the start of the financial year and any adjustments should be clearly documented and agreed with budget holders

**5.4** In addition, the adequacy of training procedures for staff should be reviewed, ensuring that the requirements of the NHS Manual for Accounts are appropriately communicated and understood, including by interim staff.

### Risks in respect of transitional arrangements

**5.5** In transitional periods a thorough risk assessment should be carried out in order to ensure appropriate consideration of overall risks impacting organisational and reporting structures, enabling management to assess sufficiency of controls. Specific risks to be considered should include:

- Retention of corporate memory and ensuring that appropriate procedures are in place in respect of handover of responsibilities upon staff departures
- Effective segregation of duties and whether appropriate delegation of authority is in place for key processes

**5.6** Consideration should be given to establishing a dedicated committee to identify issues and monitor risks in transitional periods and report to the Board accordingly.

### Staffing at NHS Croydon

**5.7** A review should be undertaken of the nature and extent of checks on qualifications applied by HR and senior management in the appointments process, including the extent of reliance on checks performed by agencies and third parties. Sufficient evidence should be obtained and verified prior to the appointment of any member of staff whether an external appointment, a transfer from another NHS entity or interim appointment.

**5.8** The extent of interim appointments in the finance department (and more widely at NHS Croydon as appropriate) should be monitored as a KPI, with consideration given to the appropriateness of interim appointments specifically for senior management positions and generally when their absolute number exceeds predetermined levels. The sufficiency of notice periods applied to interim senior management posts should be reviewed to ensure continuity of key roles.

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## LSCG hosting arrangements

**5.9** In the event that operation of a single ledger for NHS Croydon and LSCG is continued, the processes by which financial information is prepared, reviewed, delivered, processed and reported should be reviewed to ensure these operate in a timely manner. In particular, these should include review and confirmation by LSCG subsequent to the posting of financial data to ensure that the posting appropriately reflects the underlying position advised.

## Internal Audit

**5.10** SWL Cluster's Internal Auditors should conduct a series of reviews to ensure that the new cluster arrangements for financial control are appropriate.

## External Audit

**5.11** Given the extent of misstatement identified in this review, further investigation is warranted into the conduct of the FY10-11 external audit and the basis on which a clean, 'true and fair' audit opinion was issued.

**5.12** CPCT should determine the extent of any prior period adjustment required in respect of the misstatement identified in this review to ensure the FY10-11 and FY11-12 accounts are appropriately stated. This will then be subject to audit by EA as part of the year end audit.

**5.13** Year end audit arrangements for FY11-12 and FY12-13 should be reviewed in the context of the issues identified in this review to minimise the risk of the issues recurring.

## Board committees and oversight

**5.14** An effective Audit Committee will ensure the Executive, Internal and External Audit are subject to a robust level of challenge and scrutiny. The revised Audit Committee structure at SWL Cluster should ensure that it obtains objective evidence to be assured as to the appropriateness of SWL Cluster operations and is not overly reliant on the representations of senior management, Internal and External Audit.

**5.15** The Audit Committee should review all recommendations made by IA in FY09-10 and FY10-11 to assess whether the recommendations made reflect issues that may continue to have relevance under SWL Cluster management arrangements. The Audit Committee should further ensure that: responsibilities are appropriately assigned in respect of follow up of matters raised by IA; that timelines are defined for implementation of recommendations; and that progress against implementation is monitored and reported.

**5.16** Audit Committee NEDs should meet formally with Internal Audit and External Audit on a regular basis so that they can gain assurance with regard to internal control processes.

**5.17** The SWL Cluster Chair should appraise the composition of the Audit Committee, including on any subsequent changes, to ensure that NEDs are appropriately qualified and sufficiently experienced for robust function of the committee.

**5.18** To complement the work of the Audit Committee, the SWL Cluster should maintain its Joint Finance Committee, as a dedicated Finance Committee is best placed to oversee and challenge financial performance.

**5.19** Existing whistleblower mechanisms should be evaluated for effectiveness. Training should be provided to all stakeholders about the various avenues available to them to raise their concerns and satisfy their underlying rights and responsibilities.

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# Appendix B

## Index of evidence considered

### Audit Commission – AC:

- AC01** - Letter from Audit Commission to Ann Radmore, 4th April 2012
- AC02** - Letter from Audit Commission to Solomon Agutu, 3rd October 2012
- AC03** - Statement of responsibilities of auditors and of audited bodies, March 2012
- AC04** - Annual Audit Letter for Croydon Primary Care Trust, Audit 2010/11
- AC05** - Auditors' Local Evaluation for Croydon Primary Care Trust 2007/08
- AC06** - Opinion Audit Report for Croydon Primary Care Trust 2007/08
- AC07** - Annual Audit Letter for Croydon Primary Care Trust 2007/08
- AC08** - Annual Audit Letter for Croydon Primary Care Trust 2008/09
- AC09** - Letter from Audit Commission providing further information following their attendance at a JHOSC meeting, 29th November 2012

### Ann Radmore – AR:

- AR01** - Letter from Ann Radmore to Cllr Jason Cummings, 21st September 2012
- AR02** - Letter from Ann Radmore to Craig Bowdery, 25th October 2012
- AR03** - Written questions emailed to Ann Radmore, 21st November 2012
- AR04** - Letter from Ann Radmore to Craig Bowdery answering written questions, 3rd December 2012

### Ernst & Young – EY:

- EY01** - Email exchange between Solomon Agutu and Ernst & Young, 15th November 2012 to 12th December 2012

### Invitation letters – IL:

- IL01** - Invitation letter sent to Dame Ruth Carnall, 17th August 2012
- IL02** - Email trail of communications regarding Paul Baumann's attendance, 24th August to 19th October 2012
- IL03** - Email response from Paul Baumann, 6th November 2012
- IL04** - Email invite to Caroline Taylor, 11th September 2012
- IL05** - Response to invite from Caroline Taylor, 20th September 2012
- IL06** - Email invite to Mark Phillips, 10th October 2012
- IL07** - Invitation email sent to Tony Brzezicki and Agnelo Fernandes, 30th October 2012
- IL08** - Email response from Paula Swann, on behalf of Drs Brzezicki and Fernandes, 6th November 2012
- IL09** - Invitation letter to David Fitze, 31st October 2012
- IL10** - Response to invite from David Fitze, 6th November 2012
- IL11** - Invitation letter to Toni Letts, 31st October 2012
- IL12** - Response to invite from Toni Letts, 1st November 2012
- IL13** - Invitation letter to Tony Newman, 31st October 2012
- IL14** - Invitation letter to Sian Bates, 31st October 2012
- IL15** - Response to invite from Sian Bates, 8th November 2012
- IL16** - Invitation letter to Paul Gallagher, 31st October 2012
- IL17** - Response to invite from Paul Gallagher, 20th November 2012
- IL18** - Written questions emailed to David Fitze, 21st November 2012
- IL19** - Response from David Fitze to written questions, 24th November 2012
- IL20** - Written questions emailed to Toni Letts, 21st November 2012
- IL21** - Response to questions from Toni Letts, 28th November 2012
- IL22** - Written questions emailed to Paul Baumann, 21st November 2012
- IL23** - Response to questions from Paul Baumann, 21st December 2012

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### **John Power – JP:**

- JP01** - NHS Croydon Audit Committee minutes 26th June 2007 (highlights added by Mr Power)
- JP02** - NHS Croydon Audit Committee minutes 3rd July 2007 (highlights added by Mr Power)
- JP03** - NHS Croydon Audit Committee minutes 5th October 2007 (highlights added by Mr Power)
- JP04** - NHS Croydon Audit Committee minutes 13th December 2007 (highlights added by Mr Power)
- JP05** - NHS Croydon Audit Committee minutes 8th February 2008 (highlights added by Mr Power)
- JP06** - NHS Croydon Audit Committee minutes 6th May 2008 (highlights added by Mr Power)
- JP07** - NHS Croydon Annual Audit Committee report 2007/08
- JP08** - Email from John Power to Caroline Taylor 10th December 2007 (example of Mr Power commenting on governance structures)
- JP09** - Email from John Power to NHS Croydon Board 26th February 2008 (example of Mr Power giving forward notice of queries in advance of Board meetings)
- JP10** - Email from John Power to NHS Croydon Board 23rd March 2008 (example of Mr Power giving forward notice of queries in advance of Board meetings)
- JP11** - Email exchange between Craig Bowdery to John Power, 21st-23rd November 2012, written questions and answers
- JP12** - Croydon PCT Audit Committee attendance, 2007-08
- JP13** - Letter from John Power to the Croydon Advertiser, 16th November 2012
- JP14** - Written questions emailed to John Power, 21st November 2012
- JP15** - Response to written questions from John Power, 23rd November 2012
- JP16** - John Power's record of NHS Croydon Audit Committee attendance, June 2007 to May 2008
- JP17** - Letter from John Power to Croydon Advertiser, 16th November 2012

### **NHS Croydon reports – NHSC:**

- NHSC01** - Croydon Primary Care Trust Annual Accounts 2010-11
- NHSC02** - NHS Croydon Annual Report 2010/11
- NHSC03** - Report to NHS Croydon Board meeting 29th March 2011: Budget setting 2011/12
- NHSC04** - Report to NHS Croydon Board meeting 1st December 2009: Finance Report
- NHSC05** - Report to NHS Croydon Board meeting 25th May 2012: Finance Report
- NHSC06** - Report to NHS Croydon Board meeting 29th March 2011: Finance Report
- NHSC07** - Report to NHS Croydon Board meeting 1st December 2009: Revised Audit Committee Terms of Reference
- NHSC08** - Report to NHS Croydon Board meeting 20th July 2010: Minutes of the Board's Committees (including Audit Committee minutes from 2nd February 2010, 4th May 2010 and 11th May 2010)

### **NHS London reports – NHSL:**

- NHSL01** - Report to NHS London Board, 28th June 2012: 2011/12 Update on London Financial Position
- NHSL02** - Report to NHS London Board, 28th June 2012: Report further to independent review commissioned by NHS London into financial management and corporate governance arrangements at NHS Croydon for the period relating to the FY10-11 Annual Accounts (*includes the Ernst & Young terms of reference*)
- NHSL03** - Report further to independent review commissioned by NHS London into financial management and corporate governance arrangements at NHS Croydon for the period relating to the FY10-11 Annual Accounts

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### **Dr Peter Brambleby – PB:**

**PB01** - Letter from Dr Peter Brambleby to Andrew Lansley MP, 5th July 2012

**PB02** - Letter from Dr Peter Brambleby to Niall Dickson, 5th July 2012

**PB03** - Letter from Department of Health to Dr Peter Brambleby, 6th August 2012

**PB04** - Letter from Dr Peter Brambleby to Department of Health, 8th September 2012

**PB05** - Email from Dr Peter Brambleby to Jon Rouse and Ann Radmore, 8th August 2012

**PB06** - Email from Dr Peter Brambleby to Craig Bowdery, 26th November 2012, and *Health Service Journal* article ‘NHS chief executives highlight ‘climate of fear’’

### **Policies and procedures – PP:**

**PP01** - Croydon Health Services NHS Trust Standing Orders, Reservation and Delegation of Powers and Standing Financial Instructions, January 2011

**PP02** - The role of the Finance Director in a patient-led NHS: a guide for NHS Boards, June 2006

**PP03** - Primary Care Trusts Manual for Accounts 2010/11

**PP04** - Financial Assurance Standards (FASt) for NHS Finance Teams, June 2006

**PP05** - NHS Audit Committee Handbook, 2005

**PP06** - NHS Audit Committee Handbook, 2011

**PP07** - Code of Conduct and Code of Accountability in the NHS, July 2004

### **NHS South West London reports – SWL:**

**SWL01** - Report to Joint Board meeting 26th July 2012: Report on the NHS London Report into Financial Management and Corporate Governance Arrangements at NHS Croydon for the Period Relating to the Financial Year 2010-11 Annual Accounts

**SWL02** - Cluster responses and action plan to the recommendations contained in the report commissioned by NHS London into financial management and corporate governance arrangements at NHS Croydon (appended to SWL01)

**SWL03** - Report to Joint Board meeting 26th July 2012: Finance Report – June 2012 (month 3)

**SWL04** - Report to Joint Board meeting 19th May 2011: Finance Report – 2010/11 Year End Position

**SWL05** - Report to Joint Board meeting 3rd November 2011: Minutes of Board Sub Committees (*the minutes from the Audit Committee signing-off NHS Croydon's Annual Accounts for 2010-11 can be found from page 18*)

**SWL06** - Written response to queries raised at 29th October 2012 JHOSC meeting

**SWL07** - Breakdown of QIPP savings, 2011/12

**SWL08** - Breakdown of QIPP savings, 2012/13

**SWL09** - Report to Joint Board meeting 15th November 2012: The Board Assurance Framework and NHS SWL Key Risks Report

# Appendix C

## South west London joint health overview and scrutiny committee on NHS Croydon finances

**Minutes of the meeting held on Thursday 6th September 2012 at 7:00pm in the Civic Offices, Sutton**

### MINUTES – PART A

**Present:** Councillors Alan Butler, Jonathan Cardy, Jason Cummings, Suzanne Evans, Sean Fitzsimons, Heather Honour, Kim Caddy, Peter McCabe, Sarah McDermott, Alan Salter and Margaret Thompson

#### A01/12 APOLOGIES FOR ABSENCE

Apologies for absence were received from Cllr Derek Osbourne.

#### A02/12 DISCLOSURES OF INTEREST

There were no disclosures of interests.

#### A03/12 ELECTION OF CHAIRMAN AND VICE-CHAIRMAN RESOLVED –

That Cllr Jason Cummings (Croydon) be elected as Chairman and Cllr Alan Butler (Richmond) be elected as Vice-Chairman.

#### A04/12 TERMS OF REFERENCE

The Committee received and noted the Terms of Reference, as agreed at a meeting of the full Council in each Borough as follows:

- To receive and review a report commissioned by NHS London from Ernst & Young (dated 28 May 2012) into financial management and corporate governance arrangements at NHS Croydon for the period relating to FY10-11 Annual Accounts;
- To inquire into what action has been taken by NHS South West London Cluster to address recommendations 5.3 to 5.19 of the report; and
- To consider whether the recommendations are sufficient or whether further action should be taken.

#### A05/12 RULES OF PROCEDURE

The Committee received the draft Rules of Procedure, outlining how the JHOSC's work would be conducted. Members questioned whether time limits for speakers should be added, but it was agreed that this could prove impractical for some witnesses. It was however agreed that a schedule with indicative timings would be devised for each meeting. Officers informed the Committee that the third bullet point of paragraph 6.1 was not appropriate for this JHOSC and as such it should be deleted.

#### RESOLVED –

That the draft Rules of Procedure be agreed and adopted, with the above amendments.

#### A06/12 SCENE-SETTING PRESENTATION

Solomon Agutu, Head of Democratic Services & Scrutiny at Croydon Council, gave Members a verbal outline of the events that led to the commissioning of the independent report by Ernst & Young looking at the finances of NHS Croydon. He also reported that Mr Bill Roots, an accountant by profession, and previously Chief executive of Westminster Council, had been retained to assist the JHOSC.

The Committee discussed issues that members felt should be focussed on and considered potential witnesses for future meetings. It was agreed that the following individuals should be invited to speak with the Committee, although it was recognised that the power to require an individual's attendance was limited to those currently employed by health bodies in the South West London area:

- Ann Radmore, Chief Executive, NHS South West London
- Caroline Taylor, former Chief Executive, NHS Croydon
- Stephen O'Brien, former Director of Finance, NHS Croydon
- Mark Phillips, former Deputy Director of Finance, NHS Croydon
- Paul Baumann, Director of Finance & Investment, NHS London
- Representatives from Ernst & Young
- A director from Human Resources who could answer questions regarding the culture of NHS Croydon
- John Power, Chairman of the NHS Croydon Audit Committee 2007-June 2008
- David Fitze, Chairman of the NHS Croydon Audit Committee September 2008 to present
- Dr Peter Brambleby, former Director of Public Health, jointly employed by Croydon Council and NHS Croydon

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Members of the Committee considered areas on which they wished to focus and agreed that the following issues should be included in the JHOSC's investigations:

- To what extent was the £22million deficit identified in Ernst & Young's report the full extent of the financial mismanagement – was there a history of hidden deficits prior to 2010/11?
- The arrangements for the management of the budget for the LSCG (London Specialist Commissioning Group) by NHS Croydon and how it was kept distinct from NHS Croydon's main budget
- The culture of the finance department at NHS Croydon in 2010/11
- How the money that formed the deficit was spent and whether health services for residents was affected by financial mismanagement
- Any evidence that fraudulent actions caused the deficit
- The decision for the audit by Deloitte to be a 'light touch' audit

The Committee also discussed the possibility of recording meetings to ensure that absent Members did not miss a witness' testimony and to allow greater public access. Some Members argued that recording the meetings could dissuade witnesses to be frank and open and that it would not be a productive use of limited resources. The Committee voted on the possibility of recording meetings and agreed that officers should explore the practicalities and costs involved.

Officers invited Committee Members to consider what background documents they wanted to help inform and guide their investigations. It was agreed that officers should seek to obtain and circulate the following documents:

- The monthly finance management reports to the NHS Croydon Board in 2010/11
- The finance reports that were submitted to the NHS Croydon Audit Committee in 2010/11 and minutes of those meetings
- A job description of the CEO and Director of Finance of NHS Croydon in 2010/11
- The report of the internal review conducted by RSM Tenon in September 2011 and the terms of reference
- Details of Stephen O'Brien's dates of absence during 2010/11
- The Audit Commission's report showing its assessment of NHS Croydon in 2010/11
- Board minutes showing how NHS South West London proposed to apportion the deficit across the five PCTs
- Dr Peter Brambleby's whistle-blowing letter to NHS London and the Secretary of State

#### **A07/12 TIMETABLE AND WORK PROGRAMME**

The Committee agreed that it should complete its investigations and report before the end of 2012. The Final Report would therefore be agreed at a meeting on 13th December 2012.

#### **A08/12 DATES OF FUTURE MEETINGS**

The Committee agreed that the next meeting would take place on 24th September 2012. Four further meetings would be scheduled for dates to be confirmed by officers.

The meeting closed at 8:58pm



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## South west London joint health overview and scrutiny committee on NHS Croydon finances

**Minutes of the meeting held on Monday 24th September 2012 at 7:30pm in the Civic Offices, Sutton**

### MINUTES – PART A

**Present:** Councillors Jonathan Cardy, Jason Cummings (Chairman), Suzanne Evans, Sean Fitzsimons, Kim Caddy, Peter McCabe, Alan Salter and Margaret Thompson

#### A09/12 APOLOGIES FOR ABSENCE

Apologies for absence were received from Cllr Derek Osbourne, Cllr Alan Butler, Cllr Heather Honour and Cllr Sarah McDermott

#### A10/12 DISCLOSURES OF INTEREST

There were no disclosures of interests.

#### A11/12 MINUTES OF THE LAST MEETING

##### RESOLVED –

That the minutes of the meeting held on 6th September 2012 be approved as a correct record and signed by the Chairman.

#### A12/12 NHS SOUTH WEST LONDON

Ann Radmore, Chief Executive of NHS South West London, and her legal adviser, Mr Gerard Hanratty, attended the meeting and answered the Committee's questions.

The Chairman circulated a copy of a letter from Ann Radmore that he had received that afternoon. Referring to the letter, he asked whether Mrs Radmore would be answering questions relating to events prior to her taking her post in February 2011 and if she could not, whether an alternative witness would be attending a future meeting. Mrs Radmore explained that she would be able to provide general observations and information from the archives, but that ultimately she was not the chief executive officer for health services in the Croydon area prior to February 2011. Mrs Radmore informed the committee that she had received legal advice and was of the view that the JHOSC could only require her to attend and not officers previously employed by NHS Croydon. She also argued that other any individuals who did attend meetings of the JHOSC were doing so in a personal capacity and as such did not speak for NHS Croydon. The Chairman expressed his disappointment at what he viewed to be a threatening and non-cooperative

tone to Mrs Radmore's letter. He explained that the JHOSC would be seeking to invite relevant witnesses that had been employed by NHS Croydon in addition to Mrs Radmore, as it would be difficult for the committee to complete its investigations having only spoken to the current Chief Executive who wasn't present during the period in question.

The Committee expressed its disappointment and questioned whether Mrs Radmore was interested in finding the cause of the identified deficit. Mrs Radmore explained that she was trying to cooperate with the JHOSC and her letter was not intended as a threat. However she believed that the Committee only had a power to require her attendance and not others, and that she could not comment on the actions and motivations of others. She argued that the Committee should be focussing on the consequences of the system failure for local residents and that she would help to inform members of this. Members were concerned that such an approach would not lead to lessons being learned or reduce the chances of a similar accounting discrepancy arising in future.

Mrs Radmore stated that it was not her intention to conduct a whitewash of events but that the NHS had to respect the confidentiality of certain information. Mr Hanratty explained that the NHS had a statutory responsibility to respect the rights of individuals and that as such Mrs Radmore would not be able to comment on the specific roles or actions of individuals. If she did, the NHS could be liable for breaching laws on confidentiality and data protection and subsequent fines from the Information Commissioner.

The Committee noted that Mrs Radmore became the accountable officer for NHS Croydon at the end of February 2011, and that as such she signed-off and was responsible for the 2010/11 accounts. She was therefore asked whether she would comment on events at the start of the financial year when the discrepancies identified by Ernst & Young took place. When Mrs Radmore explained that she couldn't comment on or be held responsible for actions at the PCT from before she joined, Members asked why she decided to sign off the 2010/11 accounts, and what extra checks she took to satisfy herself they were accurate. Mrs Radmore informed the Committee that she conducted a risk assessment of each set of the accounts before signing them. This included a discussion with the external auditor Mrs Radmore also discussed the accounts with the senior finance officer who had been working on them and noted the positive review by the Audit Committee. She also had detailed discussions with the Finance Director for NHS SWL and the governance and finance leads in each of the five PCTs. Mrs Radmore informed the Committee that she did not check the PCT98 entries, something that she would subsequently ensure she would do in future. Mrs Radmore explained that she

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reviewed the evidence available and in the case of each PCT made a judgement based on that evidence.

The Committee remarked that at every stage of the process, there were substantial variations in the accounting. It was suggested therefore that in future officers should look at the detailed figures rather than just the headline totals. Mrs Radmore highlighted that it took Ernst & Young six months to find the discrepancy when they knew they were looking for something, and that NHS Croydon had a strong financial record. She explained therefore that her key learning from the experience was to be more questioning of the accounts, regardless of past performance, and to ask more questions of external audit. She also felt that members of the Board should have been more questioning of the opinions given by external audit, which was a lesson that was also applicable to local authorities. She also suggested that it might not be appropriate for any individual to sign end of year accounts after such a short period in charge, which was a particularly pertinent issue during the ongoing reorganisation of the NHS.

The Committee asked whether the 'light touch' audit was applied for all five PCTs and how this approach was agreed. Mrs Radmore explained that a risk assessment was conducted in each instance, with an appropriate judgement made for each PCT. It was decided that Sutton and Merton for example should be subjected to a more intensive audit. She informed the Committee that ultimately the appropriate approach was decided by the external auditor and that as the accountable officer she did not and should not interfere. She also described how the SWL Director of Finance met with the outgoing Finance Directors from each PCT and she conducted a detailed handover with the departing Chief Executives. She then triangulated the views and formed an opinion of the financial status of each PCT. Mrs Radmore remarked that there could be lessons to be learned for the NHS in London regarding handovers and transitions of leadership.

Mr Bill Roots, advisor to the JHOSC, highlighted that paragraph 4.34 of the Ernst & Young report states that the light touch audit was conducted by internal audit, and not by external audit as stated by Mrs Radmore. Mr Roots explained that as an external auditor the Audit Commission could not adopt a light touch approach as it had to follow statutory codes of practise. It was therefore asked why Mrs Radmore had not looked in detail at the level and standard of work conducted by her external auditor. She explained that she was not satisfied with the performance of the external auditor and had written to external audit to voice her concern. Mrs Radmore informed the Committee that the Audit Commission were clear the process had not been perfect and that it had conducted a review, the conclusions of which had been sent to her.

The Committee questioned whether the accounting of the LSCG (London Specialised Commissioning Group) had been satisfactory, specifically the decision to hold a single ledger for LSCG and NHS Croydon spending. Mrs Radmore explained that the accepted model for hosted bodies was to not have a separate ledger, and that she reflected that possibly separate ledgers would have been better. She also however highlighted that were examples in other health authorities where the single ledger approach had proven successful. Members were also informed that the PCT Board received monthly management reports that separated the funds so that discrepancies were not masked.

Mrs Radmore was asked about the progress by NHS SWL in implementing the recommendations made by Ernst & Young in their report. She explained that there was a detailed action plan that she could provide the Committee that detailed the progress made. The Committee noted that the NHS SWL Board had agreed all of the recommendations without amendment and that many had already been achieved, with the responsible officers identified into 2012/13 and 2013/14.

Members asked about the performance and composition of the Audit Committee, with particular reference to paragraphs 5.14 and 5.17 of the Ernst & Young report that argued that members of the Audit Committee needed to be suitably qualified. Mrs Radmore replied that a review had been conducted by the Chair of the South West London Cluster who was satisfied that all members of the committee were appropriately qualified. Mrs Radmore was not aware of any changes to membership as a result of the review. The Committee questioned whether the Audit Committee was capable of preventing further financial mismanagement if there had been no change in membership. Mrs Radmore argued that the capability of the Audit Committee to detect this sort of mismanagement would not be improved by altering its composition. The Chairman highlighted paragraph 5.14 of the Ernst & Young report that stated that an effective Audit Committee would ensure 'a robust level of challenge and scrutiny' for the executive, internal and external audit. He argued that this had not happened and suggested that NHS SWL was giving the impression that nothing and no-one had changed. Mrs Radmore explained that she did not share this impression and emphasised that there were two different Audit Committees: that of NHS Croydon up to March 2011 and then that of NHS South West London from March 2011 onwards. She did accept that the NHS SWL Audit Committee did sign off the 2010/11 Croydon accounts, however she questioned whether any Audit Committee was capable of detecting the misstatement of accounts. She suspected that the misstatement of accounts was probably deliberately hidden by someone.

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Recognising that Mrs Radmore was not satisfied by the performance of the external auditor, Members asked whether efforts had been made to recover the public money that was used to pay for its services. Mrs Radmore explained that the NHS SWL Board had considered whether to pursue recovery of costs, but had decided against it as it would likely involve court action with limited chances of success. When asked what sanctions had been taken against the auditors, Mrs Radmore informed the JHOSC that NHS SWL was no longer employing Deloitte. However she was cautious against extrapolating an auditor's performance from one instance as she was not in a position to comment on the firm's work elsewhere.

The Committee highlighted Mrs Radmore's assumption that the financial discrepancy was deliberately hidden and asked her to elaborate. She explained that at each year end NHS organisations were required to confirm payables and receivables balances with other NHS organisations, before the balances are entered onto a PCT98 form. It was Mrs Radmore's reading that a series of actions was taken by a number of individuals that resulted in incorrect PCT98 entries. She explained that she couldn't speculate why these actions were taken and neither confirmed or denied whether incompetence was the cause. She described to the Committee that the actions taken did not create the £22million deficit, but they did mask it and prevented it from being identified sooner.

Members sought to ascertain whether the actions taken to mask the deficit resulted in personal gain for any of the officers involved. Mrs Radmore relied on the conclusion of Ernst & Young that there was no personal gain for any of the officers and as such she couldn't see how this could be the cause of the deficit. Pursuing Mrs Radmore's suspicion that deliberate actions were taken to conceal the deficit, Members asked whether any of the officers responsible had been held accountable. Mrs Radmore confirmed that no one had been dismissed or disciplined. The Chairman expressed the opinion that he found it incredible that officers who had taken deliberate action to conceal a £22million deficit had not been punished in any way. Mrs Radmore reiterated that the individuals involved made no personal gain and as such disciplinary procedures were not appropriate. It was her view that this was an instance of system failure rather than individual self-interest.

Members of the JHOSC considered why individuals might choose to take action to hide the deficit if not for personal gain and suggested that keeping your job was in itself a personal gain. Mrs Radmore referred the Committee to Ernst & Young's report and their conclusions and reminded Members that it was independent and extensive. Members asked whether any of the individuals that Mrs Radmore believed took the

deliberate actions were still employed by the NHS. Mrs Radmore confirmed that to the best of her knowledge, they were not. She also confirmed that information on the actions taken would be provided to professional organisations if they asked regarding one of their members. The Committee also asked whether any senior staff employed by NHS Croydon were eligible for a bonus payment upon delivery of balanced accounts. Mrs Radmore thought it was unlikely but undertook to check and report back to the Committee.

Mr Roots drew the Committee's attention to paragraphs 3.27 to 3.29 of the Ernst & Young report, which stated that the individual referred to as SFE1 was unable to provide correct figures and when challenged by Ernst & Young he provided a revised PCT98 form. Mr Roots also highlighted that the NHS manual for closing accounts had over 300 paragraphs of guidance and suggested that this was clear evidence of officer incompetence rather than system failure. Mrs Radmore stated that her reading of the Ernst & Young report was that the cause was system failure.

Members of the Committee noted that the remit of Ernst & Young did not include establishing where the £22million deficit was spent and questioned whether the possibility of fraud had been fully explored. Mrs Radmore repeated that the accounts were misstated through poor financial management and control. She also highlighted that Ernst & Young reviewed 600,000 documents and had reached the conclusion that ultimately the money had paid for health services.

The Chairman noted that the JHOSC had still to consider the ongoing effect of the prior period adjustment and requested that Mrs Radmore or her colleagues cover this at a future meeting. Mrs Radmore was thanked for her time and answers.

#### **A13/12 DR PETER BRAMBLEBY**

Dr Peter Brambleby joined the meeting and informed the Committee that he had worked with the NHS for 31 years, with the last 10 being in Public Health for three different PCTs. He explained that he had been the Director of Public Health in Croydon from March 2010 to February 2012. He was employed by both Croydon PCT (70%) and Croydon Council (30%) and was a member of both Senior Management Teams. Dr Brambleby was not an accountant but was the budget-holder for Public Health. He described to the Committee how quite soon after starting in Croydon he became concerned at how the organisation operated and had made the decision to resign at the earliest opportunity after just six months in post as he felt that it was not possible for him to do his job effectively. Dr Brambleby applauded the new administration of NHS SWL in their efforts to address the issues and he had welcomed the opportunity to speak to Ernst & Young in some

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depth as part of their review. He was however disappointed that those responsible had not been identified and held accountable. He also challenged the assertion by NHS SWL that the financial mismanagement had not impacted upon the quality of care for patients. Ultimately he was concerned that the lessons had not been learned.

Members of the Committee noted that Dr Brambleby had concerns early on in the role and asked whether he communicated these concerns to senior colleagues. Dr Brambleby confirmed that he drew his managers' attention to the issues as soon as he became aware of them and took action to try to rectify the situation. He highlighted examples where proper accounting and financial control had not been applied, including payments to four GPs which had no explanatory paperwork to explain what the payments were for. Dr Brambleby wrote to the GPs concerned to ascertain what services they were providing the PCT. Of the four, one replied to say that they no longer provided the services, one still did and two did not reply, even after Dr Brambleby stopped their payments. He also informed the Committee that he had been contacted by a member of staff who was on a seven year secondment and wished to return, but there was no paperwork to confirm their appointment. In both instances Dr Brambleby was shocked at the lack of an audit trail and the low priority given to accounting for every penny spent.

Dr Brambleby wrote to the then Chief Executive of the PCT (Caroline Taylor) to question how the situation could be improved and to enquire whether the counter-fraud team would be in a position to help. It was Dr Brambleby's proposal that he conduct a without prejudice 'deep dive' to identify and correct the issues. The Chief Executive forwarded the suggestion to the interim Director of Finance (Mark Phillips). Following several months of chasing by Dr Brambleby, the Director verbally informed him that there was nothing to find and did not produce a report outlining his investigations or findings. Dr Brambleby informed the JHOSC that it was common for managers to have to accept the word of the Finance team rather than have it in writing or in a formal report. He described it as a 'word of mouth' culture with a reliance on spoken promises and assurances rather than a quantifiable audit trail.

Members asked Dr Brambleby whether he thought his experience was isolated or if he knew of other managers with similar concerns. He explained that he was sure he was not alone in being troubled by the financial practises of the PCT. He gave an example of a Deputy Chief Executive who joined shortly after he did but left the organisation citing the difficulties caused by the culture and accounting of the PCT. He

also described another instance where he employed someone based on the funding for elements of Emergency Planning being transferred to his budget, only to find that the expected £30,000 was not added to his budget. Neither Dr Brambleby nor his colleague from Emergency Planning knew where the money had gone. Dr Brambleby also described how managers received updates on their budgets. He explained that he requested monthly updates but that he was never provided with complete monthly statements. The Committee noted that Dr Brambleby never signed off his part of the budget and that in his second year in post he was not allocated a budget at all. Dr Brambleby described that this had the effect of his running his department blind. The Committee was also informed that audit had never asked Dr Brambleby about the performance of his budget and that Management Team meetings focussed more on hospital budgets rather than departmental ones.

Dr Brambleby explained that despite having misgivings early on, he remained in post because he felt he had other responsibilities, principally to improve public health in Croydon. He also described how he had absorbed the NHS culture of learned helplessness: he did not understand finances and so he stopped asking questions. The Committee were informed that Dr Brambleby had spoken to senior physicians from across the country and the overwhelming view was that they did not understand finance reports. It was his view that the culture across the NHS needed changing. He described the learned helplessness culture and noted that the NHS was a dangerous and transitional world for those pursuing a long-term career in health. He also informed the Committee that across the NHS was a system that financially rewarded chief executives and finance directors for delivering balanced budgets, which encouraged the learned helplessness culture of not asking too many questions. It was on this basis that he challenged the statement that there was no personal gain arising from the misstatement of accounts. Similarly the NHS employed a large number of interim appointments whose contracts were more likely to be extended if they were judged to be a 'safe pair of hands'.

When asked who he thought should accept responsibility, Dr Brambleby explained that the accountable officers (the Chief Executive and Finance Director) and all Board members shared responsibility. He believed that as a Board member he should have been more searching in his challenge of financial control and as such he had resigned. Dr Brambleby expressed his regret at how close he and his colleagues were to doing a good job and recognised that the work was incomplete. He commended Amanda Philpot (Croydon Borough Managing Director for NHS SWI) who finally listened to and responded to his concerns, and said that the new finance team at NHS SWL had acted positively to the issues identified.

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Dr Brambleby stated that he categorically believed that the financial mismanagement had had a disastrous impact on patients. For example there used to be a scheme where high risk patients were identified, contacted and invited to undergo a screening process to identify health issues early on. Due to insufficient funds this programme had been ceased. Dr Brambleby explained that he had been shown documentation by Ernst & Young that was signed by Mark Phillips (Deputy Director of Finance, referred to as SFE1) and Toni Letts (Chair of NHS Croydon Board) that initially approved the funding for the programme in 2010/11, but was then overturned as it hadn't been budgeted for in the accounts.

The Committee asked Dr Brambleby what the response was when he raised his concerns with the then Chief Executive. He explained that effectively nothing tangible happened. Following the assertion that there was not an equality of influence with the finance team dominating proceedings at Board level, the Chief Executive arranged for some team building exercises. Dr Brambleby informed the Committee that the limited actions taken had little effect on the organisation.

Dr Brambleby expressed his view that the individual most liable was from an unsuitable background to be responsible for the finances of such a large organisation [REDACTED]. Dr Brambleby was concerned at the lack of accuracy and honesty in efforts to quantify the impact of investments in public health. He had communicated these concerns to the Director of Public Health for London when the said individual went on to work for NHS London before the same individual was then employed by Caroline Taylor at NHS North Central London. Following a query from the Committee, Dr Brambleby explained that whilst he was unsure whether these subsequent positions involved higher remuneration, they were of a higher status and reputation.

Dr Brambleby noted that NHS SWL claimed that every penny of the deficit had gone towards the provision of health services. However he explained his concern that the money was not allocated in the most effective way to produce the best results. He suggested that some funds might have been allocated to failing trusts. He explained that without a proper audit trail, it meant that money was spent on unknown procedures by unknown providers. He therefore challenged the assertion by NHS SWL that the financial mismanagement had not impacted upon the quality of patient care. Recognising that local NHS services were about to undergo another year of transition and change, Dr Brambleby informed the JHOSC that he was not at all confident that a similar instance of financial mismanagement would be prevented in future. He believed that the culture of the NHS needed changing with a root and branch review of the finance function, but that the Chair of NHS London, the Secretary of State and the Chief Medical Officer did not acknowledge the problem.

Dr Brambleby was thanked for his attendance and frank answers and agreed to answer any further questions that the JHOSC may have.

#### **A14/12 DATES OF FUTURE MEETINGS**

The following dates were agreed for future meetings:

- Thursday 11th October 2012
- Monday 29th October 2012
- Wednesday 7th November 2012
- Monday 26th November 2012
- Thursday 13th December 2012

The meeting closed at 9:50pm.

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## South west London joint health overview and scrutiny committee on NHS Croydon finances

**Minutes of the meeting held on Monday 29th October 2012 at 7:30pm in the Guildhall, Kingston upon Thames**

### MINUTES – PART A

**Present:** Councillors Kim Caddy, Jonathan Cardy, Jason Cummings (Chairman), Suzanne Evans, Sean Fitzsimons, Peter McCabe, Alan Salter and Margaret Thompson

#### A15/12 APOLOGIES FOR ABSENCE

Apologies for absence were received from Cllrs Alan Butler, Heather Honour and Derek Osbourne

#### A16/12 DISCLOSURES OF INTEREST

There were no disclosures of interests.

#### A17/12 MINUTES OF THE LAST MEETING

The Chairman circulated an amended version of the unconfirmed minutes of the last meeting showing some amendments requested by Mrs Radmore and Dr Brambleby (copy attached to the signed minutes).

#### RESOLVED –

That the amendments requested by Mrs Radmore and Dr Brambleby be agreed and the amended minutes of the meeting held on 24th September 2012 be approved as a correct record and signed by the Chairman.

#### A18/12 NHS SOUTH WEST LONDON

Ann Radmore, Chief Executive of NHS South West London, and her legal adviser, Mr Gerard Hanratty, attended the meeting and answered the Committee's questions.

Mrs Radmore gave a presentation to the Committee that outlined how NHS South West London managed financial risk in 2011/12. She explained how the funding for PCTs was managed by the NHS, and how the funding structure included the putting aside of contingencies and reserves. Mrs Radmore reported that it was believed that the misstatement of accounts had arisen from a failure of oversight within the financial system and NHS Croydon living beyond its means

in 2010/11. New systems had therefore been put in place in Croydon PCT and the Croydon Clinical Commissioning Group (CCG) to ensure this could not happen again. Mrs Radmore also described a number of initiatives that had been implemented to reduce the amount of excess spending planned for in 2010/11 and some reserved funds from NHS London and the Department of Health that had been returned to NHS Croydon to help meet the statutory requirement to break even.

Members of the Committee noted Mrs Radmore's assertion that there had been no adverse affect to healthcare in south west London and asked how this could be the case when so much money had been misspent. Mrs Radmore explained that the lack of financial oversight had meant that more money had been spent on healthcare in Croydon than the population actually needed. She argued therefore that an excess of services had been provided with the PCT not living within its means. The challenge for the cluster was now to ensure that each PCT used more effective and efficient means to deliver the services required, within the budgets allocated. Members suggested that funds could have been spent in a more effective way to achieve better results with the available resources, and that the financial mismanagement thereby impacted on patient outcomes across south west London. Mrs Radmore agreed that it could be argued that resources could have been spent more effectively, but did not believe that this indicated an adverse impact on patient health.

The Committee asked whether it was thought that there would be a negative impact in future years. Mrs Radmore explained that the problem in 2011/12 was that the spending built into the system from the previous year was £28million in excess of available funds. This was addressed in 2011/12 not by cutting services but by reviewing the spending committed to in 2010/11 and by finding more efficient approaches to delivering services. Members suggested that such efficiencies could have been identified regardless of the financial mismanagement, and that therefore more funds could have been available. Mrs Radmore explained that the reductions in services for 2011/12 were required because the services planned in 2010/11 were in excess of what was required and what could be afforded.

Members of the Committee highlighted Mrs Radmore's statement at the previous meeting that she did not think any of the officers involved at NHS Croydon had received a financial bonus and asked for confirmation of this. Mrs Radmore reported that she had since checked and could confirm that there had been no bonuses paid to employees on contract with the NHS and that interim appointments were not eligible for any bonus schemes.

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Mrs Radmore was asked what steps were taken by GP commissioners to adjust to the overspending. She explained that the GPs involved in the CCG had said that the circumstances had accelerated the process of finding new efficiencies that all CCGs would be required to do regardless. The Prior Period Adjustment had meant that the CCG would not need to adjust to an overspend, but to the spending plans already in the system. Mrs Radmore stated that all CCGs nationally would need to find similar efficiencies and that Croydon CCG had needed to do so quicker.

The Committee challenged Mrs Radmore's assertion that the misstatement of accounts was caused by a system error. She was asked how she had come to this conclusion, bearing in mind paragraph 1.7 of the Ernst & Young report suggested that the cause was in fact poor management oversight and deficiencies in NHS Croydon's operational control environment. Mrs Radmore explained that in her view, failings identified by Ernst & Young such as invoices not be entered onto the system on time constituted a failure of the system. She believed that the failure of the rules and operating systems used in 2010/11 were to blame rather than individuals.

Members of the Committee noted that NHS SWL had sought to achieve savings by identifying more efficient means of delivering services. Members asked why this was necessary and questioned why the additional services committed to in 2010/11 could not just be ceased to prevent an overspend. Mrs Radmore explained that efficiencies needed to be identified because the spending commitments were not on specific projects but across a broad range of services. It was therefore difficult to identify precisely where the £28million overspend was and addressing it required more than stopping individual contracts.

The Committee highlighted the £8million formed of the Non Elective threshold and the Non-Recurrent Reserve that NHS London agreed could be used to manage the 2011/12 position for NHS SWL. It was asked whether these funds could or should have been spent on providing health services rather than addressing the financial mismanagement. Mrs Radmore explained that every PCT was required to allocate a portion of its budget to the Strategic Health Authority (SHA). The SHA could then decide to commit the funds for health services or projects across London and Mrs Radmore cited the example of Sutton and Merton PCT receiving funds in recent years to reduce waiting times. NHS SWL had applied to NHS London for the release of these funds to manage the financial risk. Mrs Radmore informed the Committee that the Non-Recurrent Reserve was created to ensure there was financial headroom and flexibility to support change and was not normally available to fund medical procedures. It was revenue funding and so not available for capital expenditure. Members of the

Committee also asked for a breakdown of the £16.5million QIPP (Quality Innovation Productivity and Prevention) saving, which Mrs Radmore undertook to provide.

Members considered the transition of responsibility to the CCG in April 2013. It was asked how the budgets for the CCG could be set if it was not know where the overspend was. Mrs Radmore assured the Committee that it was known where the overspends were. She also explained that the CCG would be responsible for around two thirds of the commissioning currently done by the PCT, with the remaining services being transferred to bodies such as the National Commissioning Board and the local authority. CCG budgets would be set using census data from 2011, which due to population changes could offer a better deal for boroughs such as Croydon, while others like Kingston upon Thames had the potential to lose out. The financial liabilities were being transferred with the responsibilities and the CCG would therefore start its life with a balance sheet. Budgets were being calculated based on the maximum anticipated liability of £25million this year and £18million in 2013/14, although the actual figures could be lower.

The Committee asked Mrs Radmore if she was aware of any changes to the entry level threshold for patients to receive services as a result of NHS Croydon's finances and the drive for greater efficiency. She explained that there was a wide range of services now being provided by GPs with specialist knowledge rather than referring patients to hospitals as part of the QIPP savings. Mrs Radmore agreed to check on the detailed changes and report back to the Committee.

Mrs Radmore circulated a detailed action plan from NHS SWL to address the recommendations made by Ernst & Young. She explained that it had been agreed by NHS London and showed the progress being made against each recommendation. Noting the request from Members at the previous meeting, Mrs Radmore explained that the review of the Audit Committee members had been completed and that the Chair of the cluster was satisfied that the level of knowledge and experience was appropriate. The Committee asked Mrs Radmore to comment on the absence of deadlines for completion of tasks and the difference between actions marked as 'ongoing' and 'initial action complete'. Mrs Radmore agreed that it would be preferable to have a more robust timetable for completion of the required tasks, but that the transition in April 2013 meant that NHS SWL could not act beyond the end of the year. It was therefore imperative to ensure that those responsible for local health services from 2013 continued to follow the action plan. Mrs Radmore had suggested to colleagues that the chief officer from each of the six CCGs in south west London should be responsible for implementing the action plan, but this was a decision for the CCGs.

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The Committee noted the actions identified in lines 22a, 22b, 22c and 23 of the action plan to consolidate the Audit Committee's role as a challenging presence. It was asked however if more needed to be done to change the culture of the organisation to encourage questioning and accountability. Mrs Radmore explained that she believed the formation of the cluster had helped to establish a culture of challenge and an expectation that difficult conversations should take place. In her 18 months as Chief Executive of the cluster she had not observed any evidence that the culture needed improving. Members challenged this statement and asked how they could be reassured that senior staff and Board members were capable of ensuring the necessary changes were made, with the example of the Chair of the Board's judgement that the members of the Audit Committee had sufficient knowledge cited. Mrs Radmore agreed that if it was an ongoing organisation they would need to look at culture and quality of the staff. However it was now more important to ensure the transition to the CCG was successful and that the right people were recruited by the CCG. The specification for CCG staff was part of an ongoing national debate and the CCGs themselves were being consciously constructed to be open and transparent.

Members of the Committee highlighted line 10a that stated that in transitional periods a thorough risk assessment should be undertaken to enable management to assess the sufficiency of controls. The Committee agreed that if it were to understand whether lessons from the Ernst & Young review had been learned, it would need to review the risk assessment. Mrs Radmore therefore agreed to share the risk assessments with the Committee. The Committee also noted the reviews to whistle-blowing mechanisms in lines 26a-d. Members asked whether Mrs Radmore thought it was appropriate to review the whistle-blowing mechanisms if her assertion that the misstatement of accounts was the result of a system failure rather than individuals was accurate. Mrs Radmore explained that she thought it was appropriate to review the whistle-blowing procedures as part of the wider review of systems. She also confirmed that she was not aware of any instances where staff had utilised the whistle-blowing procedures.

The Committee considered the evidence it had received at a previous meeting that budget-holders at NHS Croydon were kept uninformed about their budgets to reduce challenge to the finance department, and asked Mrs Radmore whether this had been addressed. She confirmed that there was now a robust process that allowed all budget-holders to review their allocation. Invoicing and reporting was now automatic and provided upon request with regular briefings. Members asked whether there had been more challenge from budget-holders since the report. Mrs Radmore confirmed that there had been

more challenge, with managers recognising that NHS Croydon in 2010/11 was a pertinent example of why they needed to do so.

The Chairman thanked Mrs Radmore for her attendance and for agreeing to answer in writing any supplementary questions that the Committee might have.

#### **A19/12 Mr John Power and the role of the Audit Committee**

Mr John Power, Chair of the Audit Committee at NHS Croydon from April 2007 to July 2008, attended the meeting and answered the Committee's questions.

Mr Power explained that he became Chair of NHS Croydon's Audit Committee in 2007 when a change in national regulations required Audit Committee chairs to be qualified financially, meaning primarily substantial, recent and relevant experience of running a large and complex financial organisation. All PCT Non-Executive Directors (NEDs) were required to stand down, including the Chairman who did not meet the requirement. Mr Power was appointed Chairman, with his experience including running a complex £2.3billion budget as Finance Director at the Ministry of Defence, and the previous Chairman was re-appointed as an ordinary NED on the Committee. Mr Power explained that his tenure seemed to be going well until 2008 when it became apparent that the personal chemistry was not right. He gave three months notice of resignation, during which he continued in his Audit Committee Chairman and broader NED duties, and departed in July 2008.

Mr Power informed the Committee that during his Chairmanship of the Audit Committee he identified a number of issues that he felt needed addressing. These included the allocation and ownership of budgets, where he felt that there was little ownership by Executive Directors. He also believed that comparisons should be made between current and past reports submitted to the Audit Committee and the Board so that NEDs could understand how what they were being told was changing over time to appreciate the full picture. Similarly he argued for greater detail to be included in the minutes of the Audit Committee, including any identified shortcomings, as this was the only way in which all directors would gain sight and be able to discharge their overall interest and responsibility for good governance. He believed strongly that this should be based on inclusive participation by all on the Committee, noting that this was not forthcoming from all. Mr Power informed the JHOSC that such an approach was resented by some of his colleagues at the time. He also pushed for the adoption of a tracker table to monitor the progress of weaknesses identified by the Audit Committee and recommendations made by internal audit. Mr Power believed



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that such a tracker was important as this was not being recorded adequately either by the internal auditors, Deloitte, or the PCT. He produced one himself as an essential aid to chairing the Committee. There had been a lack of enthusiasm for the tracker from the Director of Finance, but it was finally adopted at Mr Power's final meeting.

Mr Power highlighted that the Ernst & Young report had recognised that he had raised issues of significance in light of their findings, and they had concluded that his removal had put at risk the robustness with which they would subsequently be challenged. He did not necessarily believe that if his concerns had all been addressed, then the Audit Committee would have been able to identify every error. For example it would not have been in a position to observe the general failure to post and link invoices. However Mr Power noted that Ernst & Young had found limited evidence of challenge in the Audit Committee, and a culture of limited scrutiny and challenge and misplaced confidence overall, and he believed that there were a number of issues where it should have been possible for the Audit Committee and Board to identify and address earlier. The issues, and the paragraph of the Ernst & Young report that identified them, are as follows:

- 4.18: ownership and responsibility of budgets
- 4.22: issues with the acute revenue budget
- 4.24: consistent over performance by the Acute Commissioning Unit
- 4.36: only three out of 21 final reports submitted on time
- 4.41-4.44: failure by the Audit Committee to recognise or escalate important issues reiterated by the Internal Auditors in two successive years.

The Committee asked Mr Power for his view on the quality of reports provided by officers. Mr Power explained that he had no reason to believe that reports were not accurate, although the format that information was presented in was not always ideal.

Mr Power was also asked to comment on the relationship of the PCT with external audit. He explained that it was satisfactory, but that external audit was in many ways a standard ritual with fixed areas of focus, whereas internal audit could be directed more towards specific areas of interest. Mr Power also commented that he was surprised to learn that Deloitte had later decided upon a 'light touch' audit, although he acknowledged that he was not engaged in the decision. Members asked if Mr Power would have expected external audit to detect off-ledger transactions, and he confirmed that he would.

The Committee discussed the reasons behind Mr Power's departure from NHS Croydon and asked if he left voluntarily or if he was asked to go. Mr Power explained that he thought it was a bit of both. He had a history of handling delicate situations having worked in diplomatic roles in settings such as Bosnia and Sierra Leone and knew how to work well with people, however he came to realise that the chemistry was wrong. He was concerned to learn latterly of persistent criticism behind his back from his predecessor in particular, joined by the Director of Finance, though the Board as a whole had identified a "strong Audit Committee Chair" as a PCT strength in a facilitated SWOT Analysis, and had endorsed an excellent report on the Audit Committee for his year. There was also a sense of a clique existing on the Board, perhaps engendered by certain close external relationships and role reversals in local politics and day jobs, with three of the NEDs being Croydon Councillors. He could accept that not all might appreciate his level of scrutiny and challenge, and he would have welcomed open debate, but found this backbiting culture at odds with the straight and open relationships he was used to in Central Government, the Forces and elsewhere in the NHS. Matters became untenable, and he explained that if this had been his full time career he would have challenged the PCT head on, for he believed things to have been handled badly in HR terms. However, post-retirement, he did such NED jobs both to put something back in and for enjoyment. He had ceased to enjoy this one so he resigned and had since been appointed to similar NHS posts. He noted that following his departure he was replaced as Chair of the Audit Committee by his predecessor and prime critic, the same individual who had apparently not been deemed suitably qualified in 2007. The Committee asked Mr Power to confirm the individuals to whom he was referring. His predecessor and successor as Chair of the Audit Committee was David Fitze, the Chair of the Board was Toni Letts and the other councillor on the Board was Tony Newman.

The Chairman thanked Mr Power for his attendance and openness, and for agreeing to answer in writing any supplementary questions the Committee may have.

The Chairman informed the Committee that the next meeting was scheduled for the following week on 7th November 2012, and that it had not yet been possible to confirm witnesses. Given the limited time to prepare and despatch committee papers, he proposed to adjourn the meeting until then. The Committee agreed to adjourn the meeting.

*The meeting adjourned at 9:59pm.*

*The Committee reconvened at 7pm on 7th November 2012.*

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### **A20/12 Date of future meetings**

The Chairman informed the Committee that it had not been possible to confirm any witnesses for the meeting. The Committee agreed the following dates of future meetings:

- Monday 26th November 2012 at the Royal Borough of Kingston upon Thames, 7pm
- Thursday 13th December 2012 at the London Borough of Croydon, 7pm

The meeting closed at 7:02pm

## **South west London joint health overview and scrutiny committee on NHS Croydon finances**

### **Minutes of the meeting held on Monday 26th November 2012 at 7:30pm in the Guildhall, Kingston upon Thames**

#### **MINUTES – PART A**

**Present:** Councillors Alan Butler (Vice Chairman) Kim Caddy, Jonathan Cardy, Jason Cummings (Chairman), Suzanne Evans, Sean Fitzsimons, Peter McCabe, Sarah McDermott, Alan Salter and Margaret Thompson

#### **A21/12 APOLOGIES FOR ABSENCE**

Apologies for absence were received from Cllrs Heather Honour and Derek Osbourne

#### **A22/12 DISCLOSURES OF INTEREST**

There were no disclosures of interests.

#### **A23/12 MINUTES OF THE LAST MEETING**

##### **RESOLVED –**

That subject to the addition of Cllr Sarah McDermott as being present, the minutes of the meeting held on 29th October 2012 be approved as a correct record and signed by the Chairman.

#### **A24/12 THE ROLE OF INTERNAL AUDIT AT NHS CROYDON**

Neil Yeomans and Pat Stothard of Deloitte LLP, NHS Croydon's internal auditor in 2010/11, were in attendance for this item.

Members of the Committee queried the relationship between NHS Croydon's Audit Committee and Deloitte LLP, in their capacity as the internal auditors, and questioned whether Deloitte LLP ever made recommendations to the Committee. The JHOSC was informed that the auditors made a number of recommendations in 2010/11 regarding financial controls. None of these were thought to be high risk enough to warrant a priority one rating, but there were some priority twos and threes. The witnesses explained that they liaised with the Audit Committee and regularly reported on the status of the recommendations with an annual summary report. They also stated that over time the recommendations were largely implemented. The Committee challenged this and cited the report presenting Ernst & Young's findings which reported that

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44% and 13% of recommendations had not been implemented. The witnesses explained that these figures reflected the fact that some of the recommendations were not yet due to be implemented, so were still outstanding. They reiterated that any outstanding were highlighted to both the Audit Committee and to the management of NHS Croydon.

The Chairman stated that a lot of people might have expected internal auditors to detect financial mismanagement of the scale seen at NHS Croydon in 2010/11. He asked the witnesses whether they thought it acceptable that the auditors did not detect anything. The witnesses explained that as internal audit, their role was to assist the Board, directed by the Audit Committee, in managing risks in order to deliver strategic directives. They also informed the JHOSC that the financial irregularities occurred in an area that they would not normally investigate unless otherwise directed. They reported that the areas on which they focussed were similar to those they did in other PCTs.

The JHOSC sought the views of the witnesses on how the Audit Committee functioned. They explained that it functioned as many other did in their experience – it asked questions of management and received answers from them. The witnesses were also asked for their opinion on the report presenting Ernst & Young's findings and whether they agreed with the conclusions reached. They responded that Ernst & Young spent six months looking at thousands of documents and that as they had not they could not challenge the conclusions reached. They made representations to Ernst & Young as part of their review and they only had two reservations regarding the final report: the percentage of recommendations it stated as being outstanding did not take into account the agreed timetables; and references to a 'light touch' internal audit.

Members asked what was involved in a 'light touch' audit and questioned whether it was appropriate. The witnesses explained that they referred to it as a 'focussed approach' rather than light touch and it referred to the balance between reviewing documentation and interviewing people as part of an audit. There was no difference in the amount of time or effort spent on an audit, but the focussed approach looking at governance documentation was agreed with the management of NHS Croydon as being the most appropriate. The witnesses explained that as it was the final year before the adoption of the Cluster arrangement, it was agreed that conducting a governance audit and using less of the management's time with interviews was a more efficient use of time. This approach was made clear in all reports to NHS Croydon. The JHOSC asked whether this approach would be capable of detecting the misstatement of accounts, and the witnesses explained that if the documents were not disclosed, then it would not be

detected. Similarly, focussing on interviews with individuals would rely upon questions being answered truthfully.

The witnesses described for the Committee how the audit activity was planned in a three year audit plan agreed with the Audit Committee. Annual risk registers were agreed with all managers, not just those in finance, and used to form that year's audit plan. High risk services were audited every year, with lower risk expenditure reviewed less frequently as part of the cycle. The three year rolling programme was reviewed constantly by Deloitte LLP, management and the Audit Committee to determine if the identified risks were accurate. The witnesses confirmed that the Director of Finance had sight of draft audit plans for 2010/11 and that there were no alterations made to the plan requested by the Director of Finance or the Audit Committee. The JHOSC was also informed that internal audit was not normally directed to look at year end accounts as this covered by external audit. In line with the approach at other PCTs, internal audit would only look at them if the Board or Audit Committee indicated that they were higher risk for some reason. When challenged by the Committee about their responsibility, the internal auditors explained that their function was to look at the circumstances of NHS Croydon and to judge which areas needed further investigation. They reported that they were not aware of any evidence that suggested there was a need to look outside of the of the agreed audit plan. They also confirmed that they charged £60,000 a year to deliver internal audit services for the PCT, which involved 230 days.

Members of the Committee highlighted the periods when the Director of Finance, Stephen O'Brien, was absent due to ill health and questioned whether this had an impact. The witnesses explained that they did not believe there had been an impact as any issues or changes to the audit plan were discussed with him and he had always been available if they needed him.

Mr Yeomans and Mr Stothard were asked if they thought the transition to the Cluster arrangement represented a significant risk for internal audit. They explained that they acknowledged that the transition brought with it some additional risk, but it was not significant. They sought documentary evidence of everything they were told, and as such they were not reliant on corporate memory, but on the documentation. It was in recognition of the risk that they agreed to conduct the internal audit with the 'focussed approach' on documentation to ensure all governance arrangements were in place prior to the transition. They also explained that from their perspective, the staff and skills of the finance team were not a risk as they received assistance whenever they requested it.

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The Committee questioned whether an internal auditor should consider a PCT's spending commitments. The witnesses explained that their role was to look at controls and processes to manage risk and so allow management to deliver the organisation's strategic objectives. As such, they would not normally consider the spending commitments made. The misstatement of accounts would likely only have been brought to the attention of internal audit had external audit identified any issues at the previous year's end or if the Board or Audit Committee had any specific concerns.

The Chairman thanked Mr Yeomans and Mr Stothard for their attendance and answers to the Committee's questions.

#### **A25/12 THE ROLE OF EXTERNAL AUDIT AT NHS CROYDON**

Martin Evans and Steve Warren from the Audit Commission, which had appointed a Senior Manager from its in-house Audit Practice as the external auditor of NHS Croydon in 2010/11, were in attendance for this item. The Committee noted that the Audit Commission had provided documentary evidence in the form of a letter to Ann Radmore outlining the findings of the Commission's internal review of the audit of NHS Croydon, the statement of responsibilities between the auditor and the audited body, the Annual Audit Letter for NHS Croydon for 2010/11 and a statement on the roles of the Commission and the appointed auditor, and the background to the findings of the Commission's internal review.

The JHOSC asked the witnesses to give their response and view on the findings of Ernst & Young. They explained that the remit given to Ernst & Young was to look at the financial management of the PCT and it excluded the role of external audit. They noted that the report was the product of a detailed investigation that cost in excess of £1million and that Ernst & Young knew what they were looking for. With this in mind, the witnesses did not think it was appropriate to comment on the findings.

The Committee noted that the Audit Commission was of the view that an incorrect opinion was not given on the 2010/11 accounts for NHS Croydon. Given that since the opinion was given a Prior Period Adjustment was applied to the accounts, the JHOSC asked how it could be said that the original opinion given was accurate. The witnesses explained that the opinion given by the auditor was given in real-time on the information presented and based on the available information, the correct opinion was given. They informed the Committee that, in conducting the audit, the auditor was governed by statute and professional standards and that there were a number of procedures that she was required to follow. Following the identification of the financial discrepancies, the Audit Commission conducted a review of the auditor's work. The

review found that all of the required procedures had been followed and that the auditor had fulfilled the minimum level required of her, but that she could have done more. It also found that whilst her work was satisfactory, in some instances this work was not sufficiently documented.

Members of the JHOSC highlighted that Mrs Radmore, Chief Executive of NHS South West London, had stated at a previous meeting that she believed actions had been taken to deliberately hide the misstatement of accounts. The witnesses were asked therefore if they believed they were lied to. They explained that they did not know and that only Ernst & Young could comment on that and they did not attribute blame. However given the subsequent Prior Period Adjustment, they agreed that the information on which the opinion was based was likely to be wrong.

The Committee discussed the auditor's consideration of risks and questioned whether she should have identified a need for greater investigation. The witnesses explained whilst she was aware of risks such as increased expenditure, she concluded that the systems in place were sufficient to manage the risk. It was acknowledged however that she didn't document her consideration of the risks properly. The Committee was also informed of the support structures in place for auditors, with the Audit Commission providing structured training, peer support, line management and quality control. Members asked if the auditor required any additional support during her time working with NHS Croydon. The witnesses undertook to investigate. Since the meeting, they have informed the Committee that the auditor did not seek advice or support from the Audit Practice's Standards & Technical Team in respect of this audit. The auditor also concluded that no points of contention arose in the course of the audit that would have required the Audit Practice to appoint an Engagement Quality Control Reviewer (a further review of higher risk engagements).

The JHOSC questioned how the external audit took account of the risks presented by the transition to the Cluster arrangement. The witnesses explained that the additional risks arising out of the transition were taken account of in the agreed Audit Plan. It was judged that there were no risks that were significant enough to warrant additional measures, however the Audit Commission's internal review highlighted the issue of whether a number of cumulative risks should require a reassessment. The witnesses also highlighted that similar cluster arrangements had been put in place across the country and so auditors were familiar with such management structures.

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Members sought clarification on the roles of Mark Phillips (the interim Deputy Director of Finance) and Stephen O'Brien (the Director of Finance) and asked who was the lead contact for the auditor. The witnesses reported that both individuals were key contacts but as they were not part of the engagement team, they could not comment whether either of them indicated there were issues of concern. The witnesses did comment that they were aware that the auditor did have some difficulty obtaining explanations for some records and that Mr Phillips' assistance was needed even after he had left the organisation because he was the only one who knew about some of the documentation.

The JHOSC asked the witnesses the hypothetical question of who should detect the issue if someone realised there had been an error resulting from poor financial control, and then chose to hide it. The witnesses explained that the organisation's management was responsible for implementing a system of internal controls, but also recognised that an individual could choose to work around the system. They also commented that in some instances, organisational restructuring could lead to controls breaking down. The witnesses expressed their sympathy for the management of the SWL Cluster having to sign-off accounts from the year before they assumed responsibility, but emphasised that ultimately this was what was required of them. The JHOSC questioned what the role of external audit was therefore, if it was not to detect financial mismanagement such as at NHS Croydon in 2010/11. The witnesses acknowledged that there were limitations to an audit and that there was an expectation gap between what organisations expected of auditors and what they were capable of delivering.

The Committee discussed the relationship between the auditor and the Audit Committee and senior officers, with Members commenting that the Ernst & Young report suggested external audit was not sufficiently challenging. The witnesses explained that Ernst & Young's focus was not on the quality of the audit and that they did not have access to the auditor's working papers. They also reported that the auditor recognised that there were some issues with relationships with NHS Croydon. When the Audit Commission's review team spoke with Paul Gallagher, Director of Finance at NHS SWL, they concluded that the auditor was passive, rather than proactive, in her relationship with the NHS Croydon Audit Committee. She did not drive the relationship in the way an auditor was expected to and, whilst this was not a disciplinary issue, it did explain why the relationship deteriorated. The Committee asked whether the relationship broke down because the auditor was too passive or because of how she was treated by the Audit Committee. The witnesses explained that they couldn't say for certain, but that they expected it was a little of both.

The JHOSC asked how much the Audit Commission charged for external audit services to NHS Croydon. The witnesses explained that they charged £250,000 a year. In addition to the £60,000 for the Commission's internal review and the £1million spent on Ernst & Young's review, Members questioned whether this was a good use of public money. The witnesses also identified the internal costs and time spent by NHS Croydon, but stated that it was for NHS London to determine whether Ernst & Young's report was value for money. It was also highlighted that the report led to the Prior Period Adjustment and additional funds being allocated to NHS SWL.

Members explored the previous performance of the auditor and asked the witnesses whether the Audit Commission had been made aware of any issues regarding performance. The witnesses explained that no such concerns had been communicated and that the Audit Commission was only made aware of the financial discrepancies in December 2011, at which point it moved to instigate a review to understand the role and performance of the external auditor. The Committee was also informed that an EQCR had reviewed a previous audit opinion from the auditor and judged the work to be of a good quality and that NHS London and NHS SWL had concurred with the auditor's assessment that NHS Croydon was a 'low risk' PCT.

The Chairman thanked the witnesses for their attendance and for answering the Members questions.

#### **A26/12 DATES OF FUTURE MEETINGS**

The Chairman informed the Committee that no further meetings were currently scheduled and that if further meetings were required, Members and the public would be informed.

The meeting closed at 9:47pm.

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## South west London joint health overview and scrutiny committee on NHS Croydon finances

### Minutes of the meeting held on Monday 11th March 2013 at 7:00pm in the Town Hall, Croydon

#### MINUTES – PART A

Present: Councillors Alan Butler (Vice Chairman), Kim Caddy, Jonathan Cardy, Jason Cummings (Chairman), Suzanne Evans, Sean Fitzsimons, Peter McCabe, Sarah McDermott and Margaret Thompson

#### A01/13 APOLOGIES FOR ABSENCE

Apologies for absence were received from Cllrs Heather Honour, Alan Salter and Derek Osbourne

#### A02/13 DISCLOSURES OF INTEREST

There were no disclosures of interests.

#### A03/13 EXEMPT ITEMS

**RESOLVED** – that the allocation of items between Part A and Part B of the agenda be confirmed.

#### A04/13 CAMERA RESOLUTION

**RESOLVED** – That, under Section 100A(4) of the Local Government Act, 1972, the press and public be excluded from the meeting for the remainder of the meeting on the grounds that it would involve the likely disclosure of exempt information falling within those paragraphs indicated in Part 1 of Schedule 12A of the Local Government Act 1972, as amended.

#### SUMMARY OF PART B DISCUSSION

*The remainder of the meeting included disclosure of exempt information (as defined by paragraph 1 of Schedule 12A in Part 1 of the Local Government Act 1972: 'Information relating to any individual' and paragraph 5: 'Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings'. The minutes of the discussion are therefore also exempt and not available to the public. A summary of the discussion is below, as required by section 100C(2) of the Local Government Act 1972.*

#### A05/13 COMMENTS RECEIVED ON THE DRAFT FINAL REPORT

The Committee was informed that a draft version of the Final Report had been shared with witnesses and those individuals named within it. The comments received had been circulated in advance of the meeting and the Committee considered them. A significant amount of further evidence from the former interim Deputy Finance Director at NHS Croydon was submitted after the other comments had been circulated, and was therefore circulated at the meeting. Given the amount of new evidence submitted following the conclusion on the Committee's investigations, it was agreed that Mr Roots would review it and prepare a report on its contents for Members' consideration.

#### A06/13 THE FINAL REPORT OF THE SWL JHOSC ON NHS CROYDON FINANCES

Nick Cunningham (Wragge & Co) and Gabriel Macgregor (Head of Corporate Law, LB Croydon) were in attendance for this item.

The Committee considered the draft Final Report and the accompanying legal advice. In light of some of the comments made and the advice from counsel, Members agreed that the draft version of the Report could not be considered or approved without amendment. The Committee therefore agreed that a further meeting of the JHOSC be arranged in order to consider and approve the revised Final Report.

The meeting closed at 9:26pm