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Rt Hon Jeremy Hunt MP  
Secretary of State  
Department of Health  
Richmond House  
79 Whitehall  
London  
SW1A 2NS

Dear Secretary of State,

**Report of the Trust Special Administrator published on 8 January 2013**

I am writing to you on behalf of the London Borough of Lewisham ("the Council") about the report of the Trust Special Administrator ("the TSA") which was published on 8 January 2013 ("the report"). I realise that you have a good deal of material and advice to consider, so this letter is relatively short. It concerns only the proposals in the report which affect Lewisham Hospital. ("the Lewisham proposals"). The proposals, as you acknowledged in answer to a question in the House of Commons from Dame Joan Ruddock, the Member of Parliament for Lewisham, Deptford, on 8 January 2013, will lead to a "major reconfiguration" of services in Lewisham.

The Council recognises that there are significant challenges for the health service in South East London. Part of the reason why I am writing to you is that the Lewisham proposals, if you adopt them, will have a serious impact on the quality of healthcare in Lewisham. They have caused great and understandable local concern. Lewisham is the 31<sup>st</sup> most deprived local authority area in England, and the 15<sup>th</sup> most ethnically diverse. It has a fast-growing

population. Lewisham Hospital is a successful and highly regarded hospital, and works closely with the Council, using closely and well integrated services, to meet the needs of the local population. Life expectancy for men and for women is lower than the London average. Almost 60 % of the local population attend Lewisham Hospital for their acute healthcare needs.

If you implement the TSA's proposals, Lewisham Hospital will lose its fully admitting emergency department, its 24/7 surgical and medical in-patients' service, and its 'excellent' (as per the Health Care Commission) in-patient paediatric service, its critical care and obstetric-led units, and its complex in-patient surgery unit (compare figures 37 and 38 in the report). The proposal that Lewisham Hospital should no longer provide emergency care (report, paragraph 52), I suggest, can only have been made if Queen Mary's Hospital was taken as a 'fixed point': a decision for which there is no coherent rationale. The reasoning in paragraph 83 of the report, which supports the proposal that Lewisham Hospital should no longer have an obstetric-led maternity unit shows that this proposal, in turn, wholly depends on the former proposal. The proposals also have a major impact on Lewisham Hospital's highly regarded paediatric service, which given its close links with community paediatric services, the Council sees as very damaging to the children of Lewisham.

The Council believes that, on their merits, the proposals which affect Lewisham Hospital are flawed. The Council commissioned a report from consultants, frontline. This report was submitted to the TSA, and a copy accompanies this letter. The frontline report is a thorough and compelling analysis of the defects and errors in the TSA's draft report, many of which are carried into the report. Those criticisms are summarised in the Council's response, dated 12 December 2012, to the TSA's draft report ("the response"), which I also attach.

But there are two more fundamental, and linked, reasons why the Lewisham proposals are wrong, and why you, as the Secretary of State, cannot, in any decision which you take on the report, implement them as they stand. This is the second element in the Council's reasons for this letter.

First, you cannot be confident that the Lewisham proposals meet the four tests. You have publicly committed yourself to meeting those tests; in the answer, given to Dame Joan Ruddock MP and to the House of Commons, to which I refer in the first paragraph of this

letter. The four tests, of course, are that any changes must have the support of GP commissioners; the public, patients and local authorities must have been genuinely engaged in the process; the recommendations must be underpinned by a clear clinical evidence base; and the changes must give patients a choice of good-quality providers.

Second, the Lewisham proposals are unlawful. The TSA's first four recommendations are legally uncontroversial, from the Council's perspective (report, pages 36-62). That is because they concern SLH, the Trust to which the TSA was appointed. However, in Chapter 5 of his report, the TSA then addresses "the financial and clinical state of the whole health economy in South East London". The Council's firm view, on legal advice, is that the TSA has no power, under the relevant statutory regime, to consider, or to make recommendations to you, about anything other than the affairs of the Trust to which you appointed him. If the TSA had no power to make the Lewisham proposals, it follows, that you, as the Secretary of State, have no power to implement them in your decision on his report. The Council explained the legal position to the TSA, in section 8 of the response (which, as I said above, is attached). I gather that you are, rightly, in my view, concerned about this issue, as, in the answer to Dame Joan Ruddock MP, you said that you had already taken legal advice on this point, and would be getting 'fresh legal advice' on it.

There are strong hints in the TSA's report that he was told to look (presumably by you, or by your officials), not only at SLH, but at wider issues in South East London (see the fifth sentence on page 6 of the report, and the last sentence of paragraph 1, on page 63). I understand that this possibility was mooted in the consultation which preceded his appointment; but that does not give him, or you, any power not conferred by statute. It is to be noted that there are no such instructions in his published terms of appointment. If, and I hope that it does not, this matter goes further, the Council will be asking for disclosure of all unpublished 'guidance' given to the TSA before he embarked on his task. Any assumption by the TSA, or instruction from you, or from your officials, that he should make recommendations affecting NHS Trusts other than SLH, would be contrary to your own guidance, 'Statutory Guidance for Trust Special Administrators appointed to NHS Trusts' 5 July 2012, second bullet in text box at foot of page 6, "The regime does not provide - a back-door approach to reconfiguration". It would also be unlawful.

Moreover, the report also suggests (paragraphs 95-96, and bullet two on page 23 of Appendix

F) that the TSA's intention is that his proposals are a means of circumventing the procedures which should and do apply to major reconfigurations of services in the NHS. The reason why he wishes to do this is clear enough: adopting those procedures could, in his view, take two years, or more (report, paragraph 96). I do not know how long the correct procedures would take. But their scope is necessarily broader than the statutory process governing the TSA, so I would expect that they could not be completed in the abbreviated timescale of that process. The correct procedure includes compliance with provisions made by and under sections 242 and 244 of the National Health Service Act 2006, with guidance issued by your Department in 2008, 'Changing for the Better', with Sir David Nicholson's letter dated 29 July 2010 on service reconfigurations, and with the NHS London Service Reconfiguration Guide (version of 3 December 2011).

The Council views these issues with great concern. This concern is only increased by the facts that, in its submission to the TSA, the Council pointed out clearly that such an approach would be unlawful, and that the TSA nowhere in his report addresses those concerns. The only reference we have been able to find to that argument in the report and in its attachments is a brief summary in the first paragraph of section 10.6 of Appendix I to (the consultation report); and it may be that paragraph 95 of the report is a veiled reference to this argument. The Council considers that you, too, should view these issues with concern, as, if you adopt the approach in the TSA's report, without proper consultation and patient engagement, not only will you act unlawfully, but that approach will put you at odds with the position adopted by the Prime Minister in an undertaking very recently given to Parliament.

On 9 January 2013, Dame Joan Ruddock MP referred in the House of Commons to the Lewisham proposals, and recalled the coalition promise to end forced closures of A and E and maternity services. The Prime Minister said, "What the Government and I specifically promised was that there should be no closures or reorganisations unless they had support from the GP commissioners, unless there was proper public and patient engagement and unless there was an evidence base. Let me be absolutely clear: unlike under the last Government when these closures and changes were imposed in a top-down way, if they do not meet those criteria, they will not happen." (Hansard, 9 January 2013: columns 313-14). This promise echoes the clear representation in the 2012 TSA guidance, which I have already mentioned, that the 'unsustainable providers regime', as it is known, would not be used as a back-door route to major reconfigurations of NHS services.

There is, of course, a link between these two problems which the TSA's report creates for you. The procedure which the TSA has followed here was designed by Parliament for the sole purpose of remedying problems in the NHS Trust to which the TSA was appointed, that is, here, South London Healthcare NHS Trust ("SLH"). The procedure was not designed to lead to a major reconfiguration of the services delivered by Lewisham Healthcare NHS Trust. The timetable is far too short to consider recommendations with such wide ramifications, and the scope of mandatory consultation is too narrow to enable the appropriate range of considered views to be expressed and taken into account. The TSA was, quite simply, not appointed to make, and had no power to make, recommendations in relation to Lewisham Hospitals NHS Trust. Unsurprisingly, this procedure has no safeguards for the interests of the patients who are served by NHS Trusts other than SLH, and no provision for mandatory consultation of local authorities in whose areas such other Trusts operate.

That is not to say that a major reconfiguration of the services delivered by NHS Trusts in South East London is impossible. But if it is to happen, it must be preceded by procedure which complies with the various rules I refer to above. As the TSA himself recognises, that could take two years or more. I will explain in the ensuing paragraphs of this letter why I say these two problems mean that you cannot, in response to the TSA's report, make a decision to implement the Lewisham proposals.

First, you cannot be confident that the four tests are met because they can only be met if proposals start from an analysis of patient need in the area served by Lewisham Hospital (hence the reference to commissioners' support and a clear clinical evidence base), and have been the subject of proper consultation of patients in Lewisham, and the Council which complies with the applicable legislation and guidance.

The position here, by contrast, is that the Lewisham proposals have not emerged from, and have not involved a proper analysis of, the needs of patients in Lewisham. They are not based on clinical evidence coming specifically from Lewisham. Neither patients in Lewisham, nor the Council, have been properly engaged, or consulted, about them. The Council's health overview and scrutiny committee ("OSC") was not formally consulted by the TSA, nor did you direct him to consult the Council's OSC in your direction dated 19 July 2012.

The TSA wrote to the chairs of the Lambeth, Southwark, and the Council's OSCs inviting them to a meeting on 15 October 2012. The chair of the Council's OSC, Councillor Muldoon, was not able to go to that meeting, and so the TSA came to see him, instead, on 16 October 2012. The TSA did not tell Councillor Muldoon what his plans for Lewisham Hospital were, or ask for his, or the Council's views about those plans. On 29 October 2012, the TSA wrote to Councillor Muldoon "as someone whose views" the TSA "was keen to hear and consider in order to inform my final recommendations" to invite him to provide a formal written response to the TSA's draft recommendations, by 13 December 2012. The TSA was then invited by the Council to meet Councillor Muldoon and the Vice Chair of the Council's Healthier Communities Select Committee on 10 December 2012, and to attend a meeting of that committee on 12 December 2012 at 7pm. However, on 21 November 2012, Councillor Muldoon wrote to the TSA to say that the Council had later agreed to consider its response to the consultation on the TSA's draft report in a different forum so that it was no longer intended to discuss the TSA's draft report at that committee's meeting on 12 December. As a result, Councillor Muldoon told the TSA that there was no longer any need for him to come to the meeting on 12 December. The meeting on 10 December 2012 did take place. The TSA provided the Council's representatives with an up-date and answered some of their questions. This limited contact with the chair of the Council's OSC (some of it at his, not the TSA's instigation) does not meet the legal requirements for consultation of relevant OSCs when there is a major reconfiguration of services.

The four tests assume that in an area where a major reconfiguration of services is proposed, the procedure set out in the legislation and in the guidance has been followed. By contrast, the TSA's starting point is the dire financial situation of the Trust to which he was appointed, and his desire to arrive at a financial 'fix' for the problems of that Trust. Further, he was only required by statute, and by your direction, to consult those who would be directly affected by proposals for the future of that Trust.

Second, and more fundamentally, for the reasons which are set out in section 8 of the response, the Lewisham proposals are, in any event unlawful. The TSA had no power to make them. It follows that you, in making a decision on his report, have no power to implement them, either. Proposals for a major reconfiguration of services affecting Lewisham Hospital (as opposed to SLH) can only be implemented after the procedures I have referred to

above, have been followed.

I very much hope that you will not decide to implement the Lewisham proposals. If you do, I must put you on notice that the Council may, if so advised, apply for judicial review of any part of your decision which seeks to implement them.

Yours truly,

**Sir Steve Bullock**  
**Mayor of Lewisham**

