



**REPORT OF INVESTIGATION
INTO THE PRESENCE OF
PERSON IDENTIFIABLE DATA
ON THE FORMER LAW HOSPITAL SITE**

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1. INTRODUCTION

Following the discovery of Person Identifiable Data (PID) on the site of the former Law Hospital, an investigation into the circumstances was immediately launched. This report describes the incident and the PID found, describes the investigation process and sets out a number of recommendations in relation to records management during the partial or full retraction from NHS premises.

2. CIRCUMSTANCES OF THE INCIDENT

2.1 At 9.30 am on Friday 11 July 2008, the NHS Lanarkshire Communications Department received a call from Eleanor Bradford of the BBC who indicated that the BBC had been contacted by an amateur photographer who had accessed the site of the former Law Hospital on Thursday 10 July 2008 and had found what he described as patient information. The BBC subsequently visited the site with the photographer on the evening of Thursday 10 July 2008 and filmed some items of person identifiable material. These included:

- a list of patient names from an Orthopaedic Clinic
- a black book with patient names and treatment they had received
- two x-rays with patient names on them

2.2 These events were subsequently reported on BBC radio news at 12.00 noon and on the BBC television news at 1.30 pm on Friday 11 July 2008.

3. RETRACTION FROM LAW HOSPITAL AND TRANSFER TO WISHAW GENERAL HOSPITAL

3.1 Law Hospital (650) beds served as one of Lanarkshire's 3 major Acute Hospitals until May 2001, when services, in their entirety, transferred to the new Wishaw General Hospital, some 5 miles away at Netherton (633 beds). At the same time, services at Bellshill Maternity Hospital (160 beds), transferred to new facilities in the Maternity and Neonatology Unit within Wishaw

General Hospital. All patients and their Medical Records ¹ (approximately 300,000), plus approximately 3 million x-ray films, were successfully transferred at the time of the moves, and no records were retained at either the Law Hospital site or the Bellshill Maternity Hospital site.

- 3.2** Two months earlier in March 2001 the majority of the beds (320) at Hairmyres Hospital and beds (40) from Stonehouse Hospital transferred to the facilities in the new Hairmyres Hospital adjacent to the old hospital buildings on the Hairmyres site. All patients, their medical records (approximately 200,000) and x-ray films (approximately 3 million) were successfully transferred, and no records or x-rays were retained at either the former Hairmyres Hospital site or the Stonehouse Hospital site, other than operational documents.
- 3.3** Whilst the former Bellshill Maternity Hospital site was sold to a developer for new build housing, the land and buildings on the former Law Hospital site remain in the ownership of NHS Lanarkshire, and are currently the subject of a disposal exercise.
- 3.4** In light of the confirmed plans to transfer the services from Law Hospital to the new Wishaw General Hospital, the Law Hospital site was declared surplus in October 1997 and the Board instructed a Property Advisor about sale and planning representations. The initial valuation indicated a “negative” value due to abnormal costs including demolition, relocation and undermining issues. A marketing campaign was followed, leading to a guaranteed minimum price of circa £120,000, the sale was suspended due to a “Crichel Down” claim. From 2002 the site was remarketed following clarification on title and a Consortium of developers was selected. Missives were concluded in March 2005 with detailed planning permission being achieved in 2007. Currently, the Statutory Consents are progressing with the title transfer expected in 2009. The Law Hospital site only offered an economic solution after the second marketing period in 2002, and it was expected that this would have completed by 2006. However, complications on achieving the Statutory Consents, and the recent downturn in the housing market, both of which are outwith the Board’s direct control, further delayed the conclusion to the sale of the site.

¹ A ‘Medical Record’ is a structured file containing a range of individual document types, including: diagnostic reports; nursing notes; clinical correspondence; operation notes, etc. that are relevant to a patient clinical history. It is this document that is used by clinicians, in its entirety, to assess, diagnose, treat and discharge patients during episodes of care.

- 3.5** Demolition costs for the buildings on the Law Hospital site were, at the time of the retraction in 2001, of the order of £1m, including the cost of specialist asbestos removal. Demolition did not proceed because the cost along with the risk inherent in asbestos clearance was not considered to be economic. This was the case especially against the expectation at that time, that disposal of the site would have happened much sooner than has turned out to be the case.
- 3.6** Over the years since 2001, the Board has incurred costs of approximately £850,000 for security on the Law site.
- 3.7** Currently, the part of the site which remains in daily use is the former William Smellie Memorial Maternity Unit, now Law House. The building accommodates Human Resources, Health Promotion and Property and Support Services Management Staff. There is only one main access road to the site, and this is the means of pedestrian and vehicular access. There is a traffic barrier at the main entrance and security staff are accommodated in a portacabin which sits alongside. Since the discovery of Patient Identifiable Data on the site, the use of the traffic barrier and the need to question visitors has been reinforced. Law Hospital is a large, sprawling site, mostly surrounded by fields, and there are, therefore, a number of other means of accessing the site.
- 3.8** Patrols are undertaken on an irregular routine to ensure no set pattern can be observed. Patrols average one per hour during daylight of all remote areas of the site which covers 83 acres. Electronic key stations are fitted to buildings at these remote points in order that records of the patrol are held. Only part of the site has street lighting and the guards patrol a reduced area on average once per hour, during darkness. This is necessary for the Health and Safety of the security personnel. A log book of site security incidents is maintained daily and issued to PSSD weekly. Actions required on the incidents recorded are implemented. The site has one occupied building with over 200 people working/visiting during a normal working day and the premises are locked down after hours and intruder alarms set. At the main entrance to the site there is a base for the security guard and dog and a lockable barrier which is secured after normal working hours.
- 3.9** Despite the security arrangements in place, the existence of warning notices about the security arrangements and the potential risks from accessing the buildings, few of the buildings on the site have escaped extensive vandalism. All of the buildings are reasonably accessible, as doors and windows have been smashed, in addition to which, there is extensive damage to

a number of the roofs. Clear access routes such as doors have to be regularly re-secured because of vandalism. Internally, most of the buildings are in a dilapidated state, due to fixtures and fittings having been torn from the walls. The destruction of the buildings has left them open to the elements. The ingress of water over the years has brought down a number of the ceilings, either fully or partially, and in many cases has left ceiling tiles, pipework and wires hanging down. There are potential health and safety issues associated with unauthorised personnel accessing the buildings.

4. THE IMMEDIATE RESPONSE TO THE REPORT OF PATIENT IDENTIFIABLE DATA ON THE FORMER LAW HOSPITAL SITE

- 4.1** Louis Howson, Head of Maintenance and Robin Wright, General Manager for Information Management and Technology, visited the Law Hospital site at 9.45 am on Friday 11 July 2008 and began a search of the Hospital, focussing on the areas identified by the BBC and the buildings most likely to contain Patient Identifiable Data.
- 4.2** Tim Davison, Chief Executive, Alison Graham, Medical Director, Colin Sloey, Director of North Lanarkshire Community Health Partnership (Executive Director On-Call), Karon Hamilton, Head of Communications and Neil Agnew, Board Secretary and Corporate Affairs Manager, joined Louis Howson and Robin Wright on site at 12.00 noon on 11 July 2008.
- 4.3** On inspection of areas on the site identified by the BBC, and other buildings most likely to contain Person Identifiable Data, no complete medical records were found. However, a number of miscellaneous pieces of Person Identifiable Data were found amongst piles of rubbish and detritus in buildings that had deteriorated badly due to extensive vandalism, theft and obvious lack of maintenance.
- 4.4** A team of specialist contractor staff, working under the supervision of Louis Howson, was employed over 4 days from Saturday 12 July 2008 to conduct a thorough physical check of all buildings on the former Law Hospital site and to remove and bag any paper, Person Identifiable or otherwise, from the buildings. This exercise identified some further miscellaneous pieces of Person and staff Identifiable Data amongst rubbish and detritus, but no complete medical records.
- 4.5** All of the Person Identifiable Data (listed at Annex A), has been retained in secure storage. All other paper material removed

from buildings throughout the Law Hospital site was securely shredded.

- 4.6** On Friday 11 July 2008, Ken MacDonald from the Office of the Information Commissioner contacted the Chief Executive, initially. The Chief Executive gave Ken MacDonald a description of the circumstances surrounding the discovery of miscellaneous items of Person Identifiable data on the Law Hospital site. Later that day, the Medical Director briefed Ken MacDonald on the actions taken following the visit to the site earlier in the day.
- 4.7** Senior Civil Servants in the Scottish Government Health Department were contacted early on Friday 11 July 2008 and were alerted to the incident, in order that relevant Ministers could be appropriately briefed.
- 4.8** Given the impending NHS Quality Improvement Scotland Improvement Review into the presence of Person Identifiable Data at Strathmartine Hospital, initial contact was made with Jan Warner, Director of Patient Safety and Performance Assessment at NHS QIS. The Chief Executive subsequently wrote on 15 July 2008 to Jan Warner describing the circumstances of the incident at Law Hospital, outlining the investigation process and offering some immediate interim thoughts about what might be done to prevent an incident of this nature happening again. It was considered that this might help to inform the Strathmartine Improvement Review. This correspondence was copied to the Director of Healthcare Policy and Strategy at the Scottish Government Health Department.
- 4.9** Other initial actions taken on Friday 11 July 2008, were:
- Enhanced 24 hour security on the Law Hospital site
 - Press Statement issued by NHS Lanarkshire at 11.30 am
 - Chief executive gave radio interview to BBC Scotland subsequently broadcast on radio that evening
 - Public Statement posted on the NHS Lanarkshire Web site at 5.00 pm
 - The public statement was provided to Hospital Switchboards and to the Referral Management Centre in the eventuality of enquiries from concerned members of the public.
 - Briefings (Annex C) were issued to:

- Board Members
- Information Commissioner
- Scottish Government
- Members of the Scottish Parliament

4.10 Over the last few years a number of sites have been vacated across NHS Lanarkshire partially or fully. These were:

- Hairmyres Hospital (partial)
- Strathclyde Hospital (partial)
- Roadmeetings Hospital (partial)
- Hartwood Hospital (Full)
- Harwood Hill Hospital (partial)
- Alexander Hospital(Full)
- Kirklands Hospital(partial)
- Cleland Hospital(partial)
- Kirkwood Clinic (full)
- Birkwood Hospital (full)
- Bellshill Maternity (full)
- Stonehouse Hospital (Full)

4.11 A physical check of vacated buildings on all bar one of these sites was carried out over the weekend immediately following the Law incident to ensure that there was no breach of confidentiality in relation to patient or staff data. This revealed that the Law incident was an isolated breach of security.

4.12 On Tuesday 15 July 2008, vacant buildings on the vacant Birkwood Hospital site, formerly owned by NHS Lanarkshire but subsequently sold to a developer, was also the subject of a physical inspection. No patient records or other Person Identifiable Data was found.

4.13 The number and scale of hospital building retractions, with no recorded breaches of security, suggest clear evidence of the significant track record of NHS Lanarkshire successfully managing data security.

4.14 On Wednesday 16 July 2008, a Staff Briefing on *Information Security and Records Management*, was issued electronically to all NHS Lanarkshire staff and to General Medical Practitioners. This was to remind staff of their responsibilities to safeguard data and to heighten awareness of the policies and procedures relating to the security and protection of Person Identifiable Data. It also reminded staff that NHS Lanarkshire's Information Governance Policies on Data Protection, Information Security and Records Management could be accessed on Firstport, the NHS

Lanarkshire Intranet site.

5. CURRENT NHS LANARKSHIRE POLICY WITH REGARD TO THE BOARD'S OBLIGATIONS TO MANAGE, RETAIN AND DISPOSE OF MEDICAL RECORDS

5.1 NHS Lanarkshire does not, and never has, stored records on sites that have been vacated and no longer are in operational use. It is, however, necessary to utilise space in vacated wards and buildings on otherwise operational sites to store archived records. These buildings are secured and are subject to routine levels of security and maintenance review.

5.2 A process is established to ensure that where buildings are vacated the contents are appropriately managed, and in instances where this includes records, these are either securely disposed of, or safely transferred to another location. In circumstances where records require to be confidentially destroyed, this is done through an approved contractor. All vacated premises are subject to a visual inspection immediately prior to final decommissioning.

5.3 NHS Lanarkshire has recently reconstituted its Information Governance Committee, with a clear reporting line to the Board's Health and Clinical Governance Committee. It will have a specific remit to bring forward a robust Action Plan with the aim of raising the profile of Information Governance at all levels across the organisation. This will include early progress in implementation of the Information Governance Toolkit. It will also identify and oversee the implementation of any improvements in the management of patient information. This will include any further actions which are identified to ensure that information is safely and appropriately stored.

6. INVESTIGATION

6.1 In addition to the investigative actions taken over the period from 11 July 2008 to 13 July 2008, Ian Ross, Director for Strategic Implementation, Planning and Performance, was charged with reviewing the circumstances surrounding the discovery of Person and Staff Identifiable Data on the former Law Hospital site, and bringing forward a report, including recommendations for the future approach to partial or full retraction from NHS buildings and sites in Lanarkshire. The Review used as a guide, the Terms of Reference for the NHS QIS Improvement Review into the presence of Person Identifiable Data at Strathmartine Hospital.

These terms, appropriately amended, are outlined below:

- *Determine the measures put in place by NHS Lanarkshire and its predecessors for the storage, retention and destruction of records from the decision to vacate (and ultimately sell), the Law Hospital site, to the point where all records were finally removed from the site and appropriate steps taken to address any implications for patients.*
- *Consider what Board level and national guidance was applicable at the different stages, and their adequacy in helping NHS Boards fulfil their obligations in respect of patient data. In particular, whether changes in guidance at a Board or national level, which have occurred since the decision to dispose of Law Hospital, now ensure that the initial issue about leaving records on a site marked for disposal will not happen in the future.*
- *Make any recommendations about changes in Board level or national guidance which the investigation shows to be desirable, to ensure that there is no repetition of the problem.*

6.2 The Director for Strategic Implementation, Planning and Performance established a Core Investigation Team, comprising:-

- Ian Ross, Director for Strategic Implementation, Planning and Performance (Chair)
- David Browning, General Manager, Property and Support Services Division
- Robin Wright, General Manager, Information Management and Technology
- Louis Howson, Head of Maintenance
- Administrative Support to the investigation was provided by Neil Agnew, Board Secretary/Corporate Affairs Manager

6.3 The Team formally met on 14 July and set out the approach to the investigation. The approach included informal meetings and discussions with a number of key current and former staff who worked at Law Hospital at the time of the transfer, to test their recollection of events and procedures. These individuals are listed at Annex B.

- 6.4** The recollection of Senior Managerial staff of the former Law Hospital is that there was established a Hospital Retraction Group to oversee the arrangements to transfer to the new Wishaw General Hospital. The Group was led by the General Manager for the site, with input from the Records Manager and other key Heads of Department who had responsibility for their Departmental Records. The transfer of the Records Library from Law Hospital to Wishaw General Hospital was undertaken incrementally during the period from February 2001 until the date the new Wishaw Hospital opened in May 2001. The migration plan was based on the early transfer of records of patients least likely to present at Law Hospital during that period, but with a structured process in place to ensure the prompt return of records to Law Hospital should individuals present. This allowed gradual transfer of all records without impact on patient care.
- 6.5** Some members of the interviewed staff clearly recollected that the procedures for records management and transfer were based on extant national guidance for records management (Management Executive Letter (1993) 152). These were documented and issued widely to Ward Sisters, Heads of Departments and Heads of Function, emphasising individual responsibility to ensure the application of the procedures to their own area of responsibility. However, evidence of these documented procedures was not available. This is not surprising. It would be unusual for general administrative records of this nature from 2001 to be retained.
- 6.6** The recollection of senior members of the management team is also that, at the point of final retraction from Law Hospital, a "secondary sweep", as a minimum, of the buildings and the site was conducted, specifically to ensure that no patient or staff records remained. No such records were found during this exercise.
- 6.7** The recollection of Eric Carlyle, Clinical Director for Laboratories and Top Grade Biochemist is particularly significant. He recalls that the process of transferring to the new Wishaw General Hospital was rigorous, involving staff specifically designated to arrange packaging, relocation and commissioning at the new facility. He recounts a detailed process of decommissioning for each room, followed by cleaning. After this, each room was inspected by the Head of Department and a senior member of the Laboratory Directorate. On satisfactory completion the area was signed off, locked and a notice identifying the status posted on the door. He expressed disappointment that, despite this rigour, 30 request forms for blood matching were located behind

a walled cabinet. The cabinet had to be destroyed to extract all of these cards.

6.8 VIEWS OF SENIOR PERSONNEL FOLLOWING SCRUTINY OF INFORMATION FOUND ON THE FORMER LAW HOSPITAL SITE

The investigation included scrutiny of the information found on the former Law Hospital site by the following senior personnel.

Eric Carlyle, formerly Head of Laboratories, Law Hospital, now Clinical Director for Laboratories, NHS Lanarkshire

Hector Campbell, formerly Clinical Director (Surgical), Law Hospital, now Associate Medical Director, Wishaw General Hospital

Ross Milligan, Superintendent Medical Illustrator, NHS Lanarkshire

John McNeil, Head of Employee Relations, NHS Lanarkshire

John Duncan, Head of Medical Records, NHS Lanarkshire

6.9 LABORATORY RECORDS

Eric Carlyle scrutinised the 30 request forms for blood matching that were located behind a wall cabinet in the Haematology Laboratory. He was advised that these forms were Blood Transfusion records dated between 1992 and 1998. He stressed that the lack of these records would not have materially affected patient specimens taken since 2001. In accordance with the policy on Retention and Storage of Pathological Records and archives, they should form part of the Laboratory Record Storage and will therefore be integrated.

6.10 X-RAY FILMS, RADIOGRAPH AND CLINICAL PHOTOGRAPHS, DIARIES AND BONES

Hector Campbell scrutinised the x-ray films, radiograph and clinical photographs, diaries and a box containing a number of bones.

He commented that many of the x-rays dated back to the 1980s and, in accordance with the NHS Lanarkshire Policy on the Destruction of X-rays, it would be appropriate to destroy them, particularly as there was no clinical significance in their retention. Neither was there any clinical significance in the retention of the

radiographic and clinical photographs, and these, also, should be destroyed. It was considered that in light of the age of the material these items were probably retained at Law Hospital for teaching purposes. He further advised that the several diaries of patient's names and other details were daily work diaries relating to activity, probably within B Block X-ray Department, and dated back a number of years. He did not consider the diaries to be of any clinical significance, now, and advised that they, also, should be destroyed. He assessed that the parts of a skeleton found in a box had been used for teaching purposes, and that they should be retained as they might be of some value in the teaching of medical students or Junior Doctors.

6.11 MEDICAL ILLUSTRATION

Ross Milligan advised that the material found in the vicinity of the Medical Illustration Department at Law Hospital fell into 3 categories:

- 35 millimetre transparencies
- 16 millimetre cine film
- Correspondence carbon copies

The 35 millimetre transparencies were found in a sealed bin marked as "Dispose of by Incineration" and had obviously been selected for disposal rather than for transfer to the new Wishaw General Hospital. Inspection of the material showed that it was a mixture of non-clinical photography recording hospital events, text slides, copies from books and clinical photography including some pathological specimens. The clinical photography appeared to date from the late 1960s and 1970s and it was likely that they were teaching materials, rather than for patient treatment purposes. Some, but not all, of the transparencies had patient name and date of birth written on the slide mount.

The majority of the 16 millimetre cine film was undeveloped, with no images present. One reel, displaying an operative sequence, was found, but this did not appear to have patient identifiers, and was similar to others in storage at Wishaw General Hospital that date from the late 1950s and late 1960s. Discussion with the former Head of Medical Illustration at Law Hospital (now retired) suggested that the early material predates 1970.

Carbon copies of correspondence dated from a period from early to late 1970s. They comprised mainly requests to management for equipment, for maintenance works to be undertaken, for additional staff and regrading of staff. There were also a few enquiries from students wishing employment and some requests

for outpatient appointments. These letters contained names and addresses of the intended recipients although they are nearly 30 years out of date.

6.12 STAFF RECORDS

The advice from John McNeil was that the box of personnel records, (mainly Domestic Assistants) dated 1960 and older should be destroyed in accordance with Health Department Letter 28 of 2006 *The Management, Retention and Disposal of Administrative Records*. This HDL states that personnel files only require to be retained for a period of 6 years.

6.13 GENERAL COMMENT ON RECORDS

John Duncan, Head of Health Records for NHS Lanarkshire, reviewed the papers that were found in Law Hospital. He confirmed that the documents were not complete medical records but were miscellaneous items that would comprise a medical record. His advice, also, was that the presence on the Law Hospital site of any items that were Person Identifiable Data would not compromise patient medical confidentiality. He confirms that the documents are old enough to be eligible for destruction, in accordance with the extant guidance on the retention and disposal of records, once the investigation has been completed.

6.14 DISPOSAL OF SURPLUS MOVEABLE FURNITURE AND EQUIPMENT

Following the final retraction in 2001 from the Law Hospital site and the Bellshill and Hairmyres Hospital sites, a substantial exercise was undertaken to clear the remaining movable furniture and equipment which had remained. The new Hospitals at Wishaw General and Hairmyres included a generous provision of new furniture and equipment throughout. The surplus equipment was assembled at Law Hospital, and was sold by auction over a 3 day period in October 2001. Almost 800 lots of equipment were available for sale (a copy of the Auction Catalogue is available), and the auction, plus the sale of other items to specialist companies, raised approximately £480,000. Terry Dunthorne, General Manager for Procurement, oversaw the exercise, and has recalled that items of furniture and equipment that was fixed were left insitu. Any items of furniture and equipment surplus to requirement and not sold at auction were disposed of through the use of skips and landfill sites, to ensure that no movable furniture or equipment remained on the site.

7. TEST AGAINST THE PRINCIPLES OF THE DATA PROTECTION ACT

7.1 The Data Protection Act gives individuals the right to know what information is held about them. It provides a framework to ensure that personal information is handled properly. The Act states that anyone who processes personal information must comply with 8 principles, which make sure that personal information is:

- Fairly and lawfully processed
- Processed for limited purposes
- Adequate, relevant and not excessive
- Accurate and up-to-date
- Not kept for longer than is necessary
- Processed in line with individuals' rights
- Secure
- Not transferred to other Countries without adequate protection

7.2 There is no evidence to suggest that whilst Law Hospital functioned as an operational unit, the retention, processing and security of the Person Identifiable Data listed at Annex A contravened any of the above principles of the Data Protection Act.

7.3 Undeniably, the Patient Identifiable Data listed at Annex A should not have remained on the Law Hospital site beyond retraction and the transfer of services to Wishaw General Hospital in 2001. The circumstances which gave rise to this situation (Section 6) and the Findings and Conclusions (Section 8), lead us confidently to conclude that this was unintentional. It is, however, acknowledged that, at a fundamentally level, the retention of items of PID on the Law site for a period of 7 years following retraction, breached, in one way or another, all but one of the 8 Data Protection Act Principles, viz. that relating to transfer to other countries without adequate protection.

8. FINDINGS AND CONCLUSIONS

8.1 Although documentary evidence of the procedures for Records Management followed at the time of the move from Law Hospital, is not available, the evidence from discussion with key former staff at Law Hospital is that clear procedures and processes for the transfer of records were set out, with Charge Nurses, Heads of Departments and Heads of Function designated with the

responsibility for ensuring that the procedures were applied in their area.

- 8.2** The procedures for Records Management took account of the extant national Guidance on the retention, disposal and destruction of records, and commenced with a cull of records to identify those which had reached their destruction date. These were securely disposed of.
- 8.3** The transfer of services, patients and staff from Law Hospital during the period from February 2001 to May 2001 was, logistically, a major exercise. This included the transfer of approximately 300,000 medical records, 3 million x-rays and 825,000 laboratory reports. This was in addition to the significant transfer of records and x-rays which had occurred at Hairmyres Hospital two months earlier.
- 8.4** No medical records were left on the Law Hospital site at the point of retraction. This has been confirmed by the fact that no medical records were found during the detailed check of the buildings on the site during the period from 11 July – 15 July 2008.
- 8.5** Despite the rigorous procedures followed at the time of the transfer to Wishaw General, a small number of miscellaneous items of Person Identifiable Data (Annex A) was, exceptionally, left on the site,
- 8.6** A number of miscellaneous pieces of Person Identifiable Data, were found on the Law Hospital site, mostly amongst piles of rubbish and detritus in buildings that had deteriorated badly due to extensive vandalism, theft and obvious lack of maintenance. It is possible that this material had, over the years when the hospital was functioning, fallen behind radiators and fitted furniture, shelving, fitted cupboards, benches and work stations. It would not have been apparent at the time of retraction, but was subsequently revealed after extensive vandalism had resulted in these fixtures being physically ripped from walls. During the search of the site on the weekend of the incident the removal of some fixed benches from walls revealed some items of Person Identifiable Data which could not have been seen by staff.
- 8.7** The miscellaneous items of Person Identifiable Data should not have remained on the Law Hospital site beyond the point of final retraction, but were left there through a combination of human error and structural issues. It is recalled that staff had a strong desire to vacate the old facilities at Law Hospital and begin to function from the new modern facilities at Wishaw General

Hospital. In addition, the movement of patients occurred over a 3 day period with clinical services continuing across both hospital sites. In these circumstances, some staff may have given more priority to arrangements for moving to the new facility and for caring for their patients in the new environment than to rigorously ensuring every last scrap of PID had been removed from the old site.

- 8.8** There may also have been a lack of appreciation of the potential significance of some of the, apparently innocuous, items of patient information, such as diaries, that were left on the site. It would also appear that some fixed items of furniture were not thoroughly checked, as information were discovered in drawers and cupboards.
- 8.9** The sharps bin containing transparencies and the cine film were obviously left for disposal by incineration, on the understanding that they would be collected and incinerated which was normal practice at that time. It is probable that a breakdown in communication between Medical Illustration staff and portering staff resulted in these items being overlooked for collection on retraction from the Law Hospital site. The disposal of 35 millimetre slides in sharps' bins destined for incineration was the accepted practice at the time. Technological advances, where Medical Illustration images are now stored electronically, secured by encryption, has made this practice redundant. When found, the sharps bin was still sealed, and it would appear that it had lain undisturbed since 2001.
- 8.10** The extant national guidance at the time of the transfer on the retention, disposal and destruction of records makes clear the time period for which various categories of records need to be kept. It does not, however, spell out in detail the operational procedures to be followed at the time of partial or full retraction from hospitals, or other NHS locations.
- 8.11** It would not appear that the circumstances surrounding the presence of miscellaneous items of Person Identifiable Data on the Law Hospital site were caused by any obvious deficiency in the extant national Guidance on Records Management. However, perhaps further national guidance placing emphasis on the need for the rigorous application of operational policies in these circumstances would help to reduce the likelihood of such breaches in the future.
- 8.12** Professional scrutiny of the miscellaneous items of information suggests that these, most likely, were retained within

departments for training purposes, and did not form part of a live set of clinical records for a patient. In addition, many of the items were many years beyond their destruction date, as defined in national Guidance on Records Management. Consequently, it is not considered that there has been any material compromise to the ongoing clinical care of any individual, as a consequence of the patient information left on the Law Hospital site.

- 8.13** The circumstances of this incident breach a number of the principles of the Data Protection Act, as described in Section 7 of this report. Whilst this was unintentional, the breaches are acknowledged as material, and should be addressed in the production of revised Operational Procedures on Records Management.

9. RECOMMENDATIONS

- 9.1** Whilst there may have been no impact on patient care through personal data being left on the Law Hospital site it is clearly recognised that it is essential that such clinical data is managed effectively. Whilst the great majority of patient data was transferred successfully it is considered that lessons can be learnt. The recommendations set out below are intended to inform good practice for future site (full or partial) retractions in Lanarkshire but may also assist other NHS colleagues. It is intended that these recommendations will be developed into interim operational procedures. They will be finalised when the recommendations of the investigation into the incident at Strathmartine Hospital are published. The recommendations are:
- 9.2** When a whole site is to be vacated, one designated senior manager should be given explicit responsibility for ensuring the secure removal, transfer or disposal of all Person Identifiable Data, and for subsequently physical checking, by touring every building and every room on the site once it is vacated. Written documentation, signed by 2 people, should confirm that a physical check of every building and every room has been completed and all material securely removed.
- 9.3** Under the overall site manager, one clearly designated senior person should be responsible for each individual building or ward or department, to ensure that all material is removed securely, and that physical checks have subsequently confirmed compliance. Again, this process should be concluded with written documentation signed by 2 people. This building/ward/department - specific requirement would also be applicable to partial site retractions which result in vacant buildings on

otherwise operational sites.

- 9.4** All documentation associated with these physical checks, along with the operational procedures and instructions to staff at the time, should be retained centrally until the site is disposed of or buildings demolished.
- 9.5** When a building is vacated, all movable equipment and furniture should be removed. This would make it easier to check that things have not been missed, and would remove the risk of material being left in locked desk drawers, old filing cabinets, cupboards, etc.
- 9.6** When a building is vacated, serious consideration should be given to removing fixed furniture and fittings such as shelving units, cupboards, work benches etc. This is known as a 'soft strip'. This would avoid the risk of material being missed, particularly where material may have fallen behind shelves and drawers which is not apparent until the fittings are physically ripped from walls during subsequent vandalism. There could be a substantial cost to this work and therefore an economic assessment may be required to be undertaken. Such an assessment should be clearly documented and records retained.
- 9.7** Where a ward or another clinical area is closed for an extended period, eg. for redecoration or refurbishment, consideration should be given to the removal and storage of any patient information which has not been transferred with the patients. In addition, all desks and other work surfaces should be cleared of Person Identifiable Data and other confidential material.
- 9.8** Further national guidance on the need for clearly documented operational procedures for the management of records on partial or full retraction from NHS premises should be issued to the Service. This should strongly emphasise the need for absolute rigour around the application of these procedures, taking into account the processes described in paragraphs/recommendations 9.1 to 9.6 and should also take account of the recommendations arising from the NHS QIS Improvement Review into the presence of Person Identifiable Data at Strathmartine Hospital.
- 9.9** The further national guidance on Records Management should recognise that, fundamentally, the Service does not have authority to hold personal records on patients or staff beyond the timescales prescribed in the extant guidance on retention, disposal and destruction. It should emphasise the need for an ongoing local policy of culling records. There will be NHS systems which store a range of records in a number of locations.

Whilst these may be secure it is recommended that the NHS Board designates a senior manager to develop and maintain a register of such arrangements. The security of such a register should be the responsibility of the Board's Information Governance Committee.

- 9.10** Revised operational procedures on Records Management, reflecting recommendations 9.1 to 9.6, should be drawn up for NHS Lanarkshire. The revised procedures should take full account of the extant National Guidance on Records Management, all relevant legislation which bears on the issue, including the 8 principles in the Data Protection Act, having regard to the fundamental issues raised in Section 7 of this report – Test Against the Principles of the Data Protection Act. These will be further revised and finalised, specifically to take account of any recommendations arising from the NHS QIS Improvement Review into the presence of Person Identifiable Data at Strathmartine Hospital. When finalised, the revised operational procedures will be approved by the Information Governance Committee.
- 9.11** Consideration should be given, both locally and/or nationally, to a demolition policy. This, inevitably, would carry a significant cost, but clearly is the most effective way of mitigating the risk of material being missed when buildings are vacated. As with the 'soft strip' option (see 9.5), this may incur considerable cost and perhaps risk. An economic appraisal should be undertaken and appropriate records retained.
- 9.12** Consideration should be given to the level of security on sites which have been the subject of partial or full retraction. Decisions on the extent of security will, therefore, need to weigh up a number of factors, including: the need to protect NHS property from extensive vandalism; the theft of materials of scrap value; the risk to unauthorised personnel from accessing a decaying site and the anticipated timescale for the disposal of a site.

KEY FORMER STAFF WHO WORKED AT LAW HOSPITAL AT THE TIME OF THE TRANSFER WHO WERE INTERVIEWED AS PART OF THE INVESTIGATION

Grant Archibald, formerly General Manager, Law Hospital, now Director of Medicine and Emergency Services in NHS Greater Glasgow and Clyde

Irene Barkby, formerly Director of Nursing, Law Hospital, now seconded to the Scottish Government Health Directorates

Willie Nicol, formerly Business and Operations Manager, Law Hospital, now employee of H.C.P. Ltd.

Eric Carlyle, formerly Head of Laboratories, Law Hospital, now Clinical Director for Laboratories, NHS Lanarkshire

John Hunter, formerly Head of Medical Illustration, Law Hospital, now retired

Hector Campbell, formerly Medical Director, Law Hospital, now Medical Director, Wishaw General Hospital

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