

# DATA PROTECTION ACT 1998

## UNDERTAKING

Data Controller: NHS Education for Scotland

NHS Education for Scotland  
Thistle House  
91 Haymarket Terrace  
Edinburgh, EH12 5HE

I, Mr Malcolm Wright, Chief Executive of the NHS Education for Scotland (NES), Thistle House, 91 Haymarket Terrace, Edinburgh, EH12 5HE, for and on behalf of NES hereby acknowledge the details set out below and undertake to comply with the terms of the following undertaking:

1. NES is the data controller as defined in section 1(1) of the Data Protection Act 1998 (the "Act"), in respect of the processing of personal data carried out by the Trust and is referred to in this Undertaking as the "data controller". Section 4(4) of the Act provides that, subject to section 27(1) of the Act, it is the duty of a data controller to comply with the data protection principles in relation to all personal data in respect of which it is a data controller.
2. The Information Commissioner (the "Commissioner") received a report from NHS Education for Scotland, regarding an incident that occurred at Ninewells Hospital in Dundee. This incident involved the theft of a laptop, belonging to NES, from an office within NES premises at Ninewells Hospital at some time between the evening of Friday 28 November 2008 and the morning of 1 December 2008. NES staff are confident that this office was locked at the close of business on 28 November 2008. A police investigation into the incident has proved inconclusive; Tayside Police do not expect any further progress.
3. The laptop computer in question contained the personal data of 6377 individuals contained within an SQL database file. This personal data consisted of summary descriptions of applications for medical training positions, and included information such as the names, addresses, phone numbers and General Medical Council reference numbers of the data subjects. The personal data also included equality and diversity monitoring information. This information was a superseded data set that was being used to test a development version of a medical recruitment website. The data was not encrypted as the laptop was not intended to be taken off NES premises and was therefore not considered to be a "mobile device" under NES internal policy at the time.
4. The Commissioner has considered the data controller's compliance with the provisions of the Act in the light of this matter. The relevant provision of the Act is the Seventh Data Protection Principle. This Principle is set out in Schedule 1 Part 1 of the Act. The Commissioner has also considered that equality and diversity information would be likely to include information defined as "sensitive

personal data” under section 2 of the Act.

5. Following consideration of the remedial action that the data controller has taken following this incident, it is agreed that in consideration of the Commissioner not exercising his powers to serve an Enforcement Notice under section 40 of the Act, the data controller undertakes as follows:-

**The data controller shall, as from the date of this undertaking and for so long as similar standards are required by the Act or other successor legislation or from other data controllers in similar circumstances, ensure that personal data are processed in accordance with the Seventh Data Protection Principle in Schedule 1 Part 1 of the Act, and in particular that:**

- (1) Portable and mobile devices including laptops and other portable media used to store and transmit personal data, the loss of which could cause damage or distress to individuals, are encrypted using encryption software which meets the current standard or equivalent;**
- (2) Staff are aware of the data controller’s policy for the storage and use of personal data and are appropriately trained on how to follow that policy;**
- (3) The data controller shall implement such other security measures it deems appropriate to ensure that personal data is protected against unauthorised and unlawful process, accidental loss, destruction, and/or damage.**

Dated.....

Signed.....

Malcolm Wright  
Chief Executive  
NHS Education for Scotland

Signed.....

Ken Macdonald  
Assistant Commissioner (Scotland)  
For and on behalf of the Information Commissioner