

DATA PROTECTION ACT 1998

UNDERTAKING

Data Controller: Forth Valley NHS Board
Carsview House, Castle Business Park,
Stirling, FK9 4SW.

I, Fiona Mackenzie, Chief Executive Officer, of Forth Valley NHS Board, for and on behalf of Forth Valley NHS Board hereby acknowledge the details set out below and undertake to comply with the terms of the following Undertaking:

1. Forth Valley NHS Board 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 Forth Valley NHS Board 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") was informed that on 4 May 2010 NHS Forth Valley staff were advised that a non password protected and unencrypted memory stick containing personal data, including certain sensitive personal data, relating to Firth Valley NHS Board staff and patients had been handed to a Scottish newspaper.
3. The newspaper subsequently published a brief synopsis of certain of the data contained within the memory stick. Enquiries have subsequently established that the data had been uploaded onto a personally owned memory stick by a member of staff and that the stick had then been lost or stolen.
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 I to the Act.

5. The Commissioner has also considered the fact that some of the data stolen in this incident consisted of information as to the physical or mental health condition of the data subjects. Personal data containing such information is defined as "sensitive personal data" under section 2(e) of the Act.
6. Following consideration of the remedial action that has been taken by the data controller, 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, ensure that personal data are processed in accordance with the Seventh Data Protection Principle in Part I of Schedule 1 to the Act, and in particular that:

1. As from 31st December 2010, any new Board issued portable and mobile devices including memory sticks and other portable media used to store and transmit personal data, the loss of which could cause damage or distress to individuals, will be encrypted using encryption software which meets the current standard or equivalent;
2. Physical security measures are adequate to prevent unauthorised access to personal data, and in particular the uploading of Board data onto any unauthorised mobile device;
3. Encryption software will be rolled out to assist in securing physical access from desktops to mobile media to the majority of the core sites. Essentially this will cover core Hospital and NHS FV COIN connected sites. Remote community and GP sites will be investigated and covered in the medium to longer term;
4. Staff are aware of the data controller's policy for the retention, storage, transfer and use of personal data and are appropriately trained how to follow that policy;

5. The data controller shall implement such other security measures as it deems appropriate to ensure that personal data is protected against unauthorised and unlawful processing, accidental loss, destruction, and/or damage.

Dated.....

Signed.....

Ms Fiona Mackenzie
Chief Executive Officer
Forth valley NHS Board.

Signed.....

Mick Gorrill
Assistant Commissioner, Regulatory Action Division
For and on behalf of the Information Commissioner