



NHS Management Executive
St. Andrew's House
Edinburgh EH1 3DG
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Dear Colleague

TRANSFER OF HERITABLE PROPERTY TO NHS TRUSTS

Summary

1. This letter advises colleagues of actions taken by the Management Executive to ensure that the transfer of heritable property to NHS Trusts is completed during 1996/97 and identifies further actions required to ensure that this is achieved (Annex A). It also provides information and updates colleagues on some related issues (Annex B).

Action

2. Chief Executives are asked to ensure that all necessary actions are taken (ref paragraphs 9 and 10 of Annex A and paragraphs 12-14 of Annex B).

Further Information

3. This letter was agreed with the Joint Working Group on Operations on 21 November 1995.

Yours sincerely

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Director of Trusts

November 1995

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TRANSFER OF HERITABLE PROPERTY TO NHS TRUSTS NEW CLIENT INSTRUCTION AND TRANSFER TIMETABLE

Background

1. Following discussions within the Joint Working Group on Operations, it was confirmed that the programme for transfer of heritable property, currently in the ownership of the Secretary of State, to NHS Trusts must be completed by 31 March 1997.
2. In parallel with those discussions, the Management Executive commissioned a review of the way in which the transfer work was currently being executed. As a result, it has been agreed that clear and universally applicable instructions must be given by each Trust to CLO's Asset Transfer Unit (ATU). The instructions are designed to limit the necessary work to the minimum for each property.

New Client Instruction

3. A draft Instruction to that effect is attached at Appendix 1. The work defined in that Instruction will now be the basis upon which the ATU will be funded by the Management Executive. The Instruction has been agreed by the Management Executive and the Joint Working Group on Operations. CLO and ATU have indicated that they will be able to provide services as required by the Instruction. Although the Management Executive are responsible for funding this work and, consequently, for overseeing its discharge, the Instruction must be issued by each Trust as ATU's client. Consequently, Chief Executives of each Trust are asked to issue specifically such an Instruction to the ATU of CLO marked for the attention of Mr Douglas (ATU). Neither CLO nor ATU can professionally undertake work on the reduced level of service without specific instructions to that effect from their clients. It is consequently essential that Chief Executives of Trusts issue the Instruction as requested.
4. ATU have provided a note outlining the effect of the new Instruction on the ATU's current practice. It is attached at Appendix 2. Its purpose is to assist Trusts in understanding the implications of the change and thus enable them to issue separate instructions to CLO if and where that is necessary.

Transfer Timetable

5. In the light of this new Instruction and of various other matters, the Management Executive and ATU have agreed a provisional timetable for the execution of the remainder of the transfer work. A copy is attached at Appendix 3. ATU will enter into a Service Level Agreement with the Management Executive governing the funding of the work at the instruction of Trusts on the basis of this timetable. Colleagues will note that the timetable introduces a requirement that ATU be provided with all relevant information by specified dates. The completion date is that at which the ATU passes an executed Disposition to the Scottish Office Solicitors Office for recording. The timetable is not intended to imply that all transfers of title to a particular Trust will be dealt with at one time or immediately prior to the deadline. The timetable sets specified dates beyond which the ATU will not be expected to

carry out further transfer work for a particular Trust under the terms of their agreement with the Management Executive.

6. In drawing up the timetable regard has been had for the known position on transfers to date. Chief Executives are asked to raise any concerns that they may have with this provisional timetable with the Management Executive within 10 working days of the date of this letter. The timetable will then be fixed within 5 working days.

7. If, once the timetable has been fixed, a Trust does not meet its obligation to provide the necessary information by any due date then work on that transfer will be set aside and deleted from the ATU Programme of Work. In those circumstances, the transfer of title must still be completed by 31 March 1997 but the client Trust must assume responsibility for issuing a separate and direct Instruction to CLO and will be responsible for payment for the execution of the work.

8. In order to minimise the prospect of Trusts being unable to meet their obligations, it is seen as important that the Trust to whom the asset is being transferred takes the lead in ensuring that the necessary inputs from others, in particular from minor users, is co-ordinated and provided timeously.

Summary of Actions Required

9. All Trust Chief Executives are asked to issue a new Instruction to CLO's ATU as attached at Appendix 1 within 5 working days.

10. All Trust Chief Executives to whom assets are being transferred are asked to contact the Management Executive (Roderick McCallum - Estates Division) within 10 working days if they are concerned with the provisional timetable for the transfer of assets attached at Appendix 3.

DRAFT INSTRUCTION TO BE ISSUED BY NHS TRUSTS TO THE ASSET TRANSFER UNIT

1. The Central Legal Office of the Scottish Health Service ("the CLO") will act on behalf of the Trust in connection with the transfer to the Trust from the Secretary of State of the ownership of heritable property currently held by the Secretary of State but falling within the undertakings in respect of which the Trust has been established.

2. The CLO will, in connection with any heritable property to be so transferred, and unless otherwise instructed by the Trust, arrange for necessary services to be provided by the Asset Transfer Unit of the CLO ("the ATU").

3. The ATU will in connection with any such property undertake necessary conveyancing work on behalf of the Trust subject to the following detailed provisions-

(a) In respect of any such heritable property except as stated hereunder, the ATU shall undertake the work specified in Part A of the Annex to this instruction.

(b) The ATU except as stated below shall not carry out any other work and in particular any work specified in Part B of the Annex except on the specific instruction of the Trust.

(c) Where the Trust instructs any additional work as referred to in para (b) above then;

(i) such work may be undertaken by ATU only to the extent that it does not compromise their ability to complete the transfer programme by 31 March 1997.

(ii) where such work is not to be undertaken by ATU it shall be undertaken by the CLO and the Trust shall be liable for the expense of that additional work.

4. In undertaking necessary conveyancing work specified in Annex A to this Instruction the ATU will have regard to the following conditions:

(a) In respect of any property which is occupied solely by the Trust but in respect of which the ATU is aware of a problem in relation to the title to that site on the part of the Secretary of State then-

(i) where that problem relates to a boundary discrepancy or to a definable area of ground over which the Secretary of State does not appear to have title then the ATU shall inform the Trust and the Secretary of State accordingly and shall undertake the work specified in paragraph 3(a) above, except where it is inappropriate to proceed without a plan, unless instructed to the contrary within fourteen days. It should be noted that any such problem may only become apparent if the Trust have produced a plan of the property to the ATU;

(ii) where the problem relates to a defect in the title to the property on the part of the Secretary of State the ATU shall inform the Trust and the Secretary of State for Scotland accordingly of such defect and shall unless instructed to the contrary within 14 days undertake the work specified in para 3(a) above ignoring such defect.

(b) In respect of any property which is shared so far as occupancy is concerned between two or more NHS Trusts or other NHS bodies and where that occupancy is to be the subject of a lease but the terms have not been agreed by the parties the ATU shall notify the Trust, other NHS bodies involved and the Secretary of State accordingly and shall unless instructed to the contrary within 14 days, undertake the work specified in para 3(a) above as if no such lease was to be entered into.

(c) In respect of any property which comprises also a health centre or college of nursing, where that health centre or college of nursing is an integral part of the property and where the ATU has received no instructions as to the inclusion or otherwise of the health centre or college in the property to be transferred the ATU shall notify the Trust and the Secretary of State accordingly and unless instructed to the contrary within 14 days shall undertake the work specified in para 3(a) above to comprise that health centre or college in the property to be transferred.

5. In respect of any property referred to in para 3(a) above, whether or not actually shared in terms of occupancy by more than one Trust or other NHS bodies, and where the title is to be divided, then the ATU will carry out the work as specified in paragraph 3(a) above and where necessary work at BII of the Annex hereunder, on behalf of each of the NHS bodies involved in the matter.

6. In respect of any property referred to in para 3(a) above in which the title is currently shared between the Secretary of State and a third party, then the CLO will carry out all work required to be carried out by a solicitor acting in the ordinary course of business, and will apportion such work as is appropriate to be dealt with by the ATU.

Annex

A. Simple Conveyance

I. Prepare a conveyancing description of the property involved. Provision of a suitable plan by the Trust may be necessary in this respect.

II. Be satisfied that the Secretary of State has a *prima facie* title and carry out a search in respect of that title from the date of recording to the present, to ensure that there have been no disposals, copies or records of which are not available.

III. Prepare a draft disposition.

IV. Agree the terms of the disposition with the Secretary of State.

V. Send the disposition to the Solicitor to the Secretary of State for Scotland for onward transmission to the record.

B. Investigation of the Secretary of State's Title

I. Investigation of the title held by the Secretary of State.

II. Report on title, and on burdens.

ATU Note: Present Method of Transfer of Assets

The Asset Transfer Unit (ATU) have acted for Trusts in the transfer of assets in the same manner as Solicitor acting for the purchaser of property, subject to certain provisos which were laid down by the Management Executive. The most important of these are:- (a) the Trusts required to take the titles as they stood; (b) no indemnities or guarantees in respect of the title were granted by the Secretary of State; and (c) Property Enquiry Certificates from Local Authorities were not obtained, nor was there any investigation into establishing the existence of any necessary Planning Permissions and Building Warrants or Completion Certificates. (A view was taken at the commencement of the transfer of assets that to investigate the same would involve a considerable amount of time and expense and was not essential information required by the Trusts at this stage.)

ATU therefore examined each title, not only to establish the area to which the Secretary of State had title but also to identify burdens affecting the titles with a view to reporting to each Trust, where appropriate, conditions which might affect their use of the property in the future. This would enable the Trusts to make a decision if they wished to take action to rectify adverse conditions in the title once it has passed into their name.

The report could also contain information regarding other matters affecting title, such as the existence of wayleaves, servitudes etc in favour of other parties.

In order to establish the extent of the title and the burdens, the ATU Solicitor instructed updated Searches and ordered any necessary "quick" copies of missing deeds.

The ATU Solicitor also reported to each Trust if it appeared from the information provided (ie if the Trust had provided a current site plan) that an area of ground was occupied by the Secretary of State but no title could be established. While the Trust had to accept the title as it stood, it alerted the Trust to the fact that action might be required to rectify the title situation.

Changes Introduced by Proposed Instructions

In terms of the proposed instructions, in most cases the transfer will be accomplished with the minimum amount of preparatory or investigative work. The ATU Solicitor will only require to obtain a Search from the last title to ensure that no part has been sold off before preparing a Disposition.

No copy writs will be ordered in respect of burdens or the progress of title and no reports will be received by the Trusts in respect of conditions in the title, servitudes, wayleaves etc which affect the property.

CLO have a professional duty to their clients and are concerned that the Trusts fully appreciate the effect of the proposed reduction in the service to be provided.

The Trusts will no longer be aware of any adverse conditions, servitudes etc affecting the title in many cases and, in extreme cases, may not be made aware of the fact they do not have title to the entire area that they are occupying.

Where the title later requires to be examined for any reason, the Trusts will be responsible for payment of Searches together with the cost of copy writs required.

If the Trusts require a full report on title, they can of course instruct the CLO to prepare the same and the work will be carried out under the usual fee rates in terms of the Service Level Agreement.

TIMETABLE ARRANGEMENTS

1. The transfer to NHS Trusts of heritable property to be comprised within the undertakings of NHS Trusts and currently in the ownership of the Secretary of State is to be completed by 31 March 1997.

2. This document sets out the timetable arrangements to allow for that exercise to be completed by that date.

3. TWO TIMETABLES

3.1 The primary timetable would deal with "ordinary" cases.

3.2 The secondary timetable will deal with "special" cases.

4. CASE CLASSIFICATION

4.1 Ordinary cases will comprise all cases except those which:-

- (a) relate to sites in which the title is split;
- (b) relate to sites in which occupancy is shared with a non-NHS third party;
- (c) in which titles are missing; or
- (d) relate to a property where there is an ongoing transaction involving the title and where the ATU cannot complete the transfer until the ongoing transaction is complete.

4.2 Special cases will be those listed at (a), (b), (c), (d) and those which arise as special cases otherwise in the course of transactions, as allowed for in paras 4 to 6 of the Instruction to NHS Trusts (Appendix 1) where ATU are instructed to take further action or action under Annex B to the Instruction.

5. PRIMARY TIMETABLE

5.1. Information Gathering

(i) Where a Trust has been requested to supply information to the ATU, and that request was issued from ATU prior to 30 September 1995 then that Trust should supply that information by not later than 31 December 1995.

(ii) Where information has been requested by ATU from a Trust between 30 September and 31 December 1995 it should be supplied by that Trust so as to be received by ATU by not later than 1 February 1996.

(iii) Thereafter any information requested by ATU from a Trust should be supplied within 4 weeks of any such request being made.

(iv) Any failure on the part of a Trust to comply with such a deadline will result in the transfer being dealt with in the same manner as additional work (see Instruction para 3(c)(i) and (ii)).

5.2 Classification

(i) On receipt of information requested by ATU as indicated above which should be sufficient to enable ATU to progress a transaction ATU will classify that transaction either as an ordinary case or a special case. If no information has been received from the Trust, and where ATU do not hold any information to the contrary, that property transfer will initially be classed as an ordinary transaction for the purpose of the timetable, subject to the necessary reclassification under para 6.4 below.

5.3 Order of processing cases

(i) ATU will upon classifying the cases as ordinary cases determine an order in which those cases will be dealt with. They will prioritise the work by reference to the work of individual Trusts. ATU will indicate to individual Trusts by not later than 1 February 1996 that work outstanding as at that date for that Trust will be commenced by not later than a given date.

5.4 Completion Dates

(i) ATU state that on information available as at 15 November 1995, that provided such information as is referred to above is received by 31 December 1995 then at least 40% of the ordinary cases in respect of which such information has been requested is likely to be completed by 1 May 1996. This does not mean that 40% of the outstanding work for each Trust will be completed by that date.

(ii) ATU will prioritise the outstanding work in such a way as to indicate to Trusts the likely period before completion in respect of all the work on ordinary cases of that Trust provided that ATU have all the information requested.

(iii) ATU intend that the primary timetable should be complete by 30 September 1996 with the effect that all cases classified as ordinary cases will be completed by that date.

6. SECONDARY TIMETABLE

6.1 The secondary timetable will exist for those cases which have been identified as special cases by reference to the criteria set out above.

6.2 Special cases in which the problem derives from a shared site, split title, or title to be split and where that problem has been identified by ATU or by the Trust prior to 31 December 1995 should be dealt with by that Trust in such a fashion that the problem is resolved by the Trust by not later than 1 June 1996, the Trust then providing full

evidence of any Agreement to ATU sufficient to instruct ATU for the further conduct of the transfer by not later than 1 June 1996. Ordinarily it will be for Trusts to identify problems deriving from shared sites. ATU will indicate the type of problems which will arise in split-title cases and on which they will require separate instructions.

6.3 ATU will seek to identify prior to 31 December 1995 the majority of cases in which there are missing titles. ATU will, by 31 January 1996, take action to identify the titles by instructing Searchers.

6.4 The secondary timetable will apply in those circumstances where a problem is identified in relation to an ordinary case being dealt with under the primary timetable after 31 December 1995.

6.5 Where after 31 December 1995 a problem is identified in relation to a shared site then the Trust will take steps to resolve that problem and instruct ATU accordingly by not later than 30 September 1996.

6.6 In order for special cases to be dealt with prior to 31 March 1997 ATU will require to have been instructed and to have received all necessary information by not later than 30 November 1996.

TRANSFER OF HERITABLE PROPERTY TO NHS TRUSTS RELATED INFORMATION

Background

1. This Annex provides colleagues with information on issues related to the programme for the transfer of heritable property.

Cost Neutral Leases (CNL)

2. A model CNL was provided under cover of MEL(1995)47.

3. The majority of responses have indicated that existing agreements were in place which were satisfactory to both the major user Trust and the other minor user NHS body. Where major user Trusts have identified the need for a CNL and have provided the necessary information, the preparation of CNLs by the Scottish Office Solicitors Office have been taken into account in the preparation of the provisional timetable at Appendix 3 to Annex A.

Valuation of Properties

4. Colleagues have expressed concern that the ATU were seeking market valuations of property and that these were not readily available. The purpose of such requests was to assist the calculation of fees for the registration of Dispositions with the Keeper of the Registers of Scotland. Alternative arrangements have now been agreed with the Keeper by the Scottish Office Solicitors Office and Trusts can therefore disregard any such requests.

Health Centres

5. As the policy review is still ongoing, it has been agreed that the transfer of title in respect of health centres must be deleted from ATUs schedule of work for the time being. Once a policy decision is reached, then an appropriate and specific Instruction will be drawn up and a timetable and cost agreed.

6. The only exception to the above decision will be if a health centre is located on the same site as another property which is being transferred and the ATU determine that that transfer cannot be completed without a specific decision about the future ownership of the health centre. In such instances, the case should be referred to the Management Executive by the Trust for decision.

7. Colleagues will wish to note that the ATU have been asked to provide the Management Executive with a list of all health centres notified under the terms of paragraph 9 of Annex C in MEL(1995)47.

Colleges of Nursing and Midwifery

8. The decision on the successful bidders from the tertiary education sector for the 7 contracts for pre-registration nursing and midwifery education was announced on 24 October 1995.

9. The implications for the transfer of teaching accommodation property can now be assessed and discussed with the Chief Nursing Officer, the ATU and those Trusts and education establishments immediately involved. This aspect will have to be dealt with in a similar manner to health centres. The transfer of title to Trusts of property to be made available to an education body requires the Secretary of State to grant an Occupation Licence to the education institution and enter into a CNL with the Trust. This work will require the provision of specified information by Trusts and will be carried out by the Scottish Office Solicitors Office.

Universities and the Medical Research Council

10. Discussions with colleagues suggest that there are no significant issues of policy to be resolved but rather that there is a pressing need for Trusts to complete ongoing discussions with Universities and conclude agreements satisfactory to both parties. If such agreements cannot be established, then the Management Executive should be informed as soon as possible.

Private Finance Initiative Projects

11 The ATU are aware of the undernoted private finance initiative projects. Most of these are likely to fall within the secondary timetable.

- Edinburgh Healthcare (Northern General Hospital)
- Greater Glasgow Community and Mental Health Services (Mental Health Inpatient Facility, Stobhill)
- Hairmyres and Stonehouse Hospitals (New Hairmyres)
- Law Hospital (New Law)
- Royal Infirmary of Edinburgh (New RIE)
- Western General Hospitals (Redevelopment).

Summary of Actions Required

12. Trust Chief Executives are asked to satisfy themselves that all necessary actions at their hand in respect of Cost Neutral Leases have been taken.

13. Trust Chief Executives are asked to satisfy themselves that all necessary actions at their hand in respect of health centres have been taken.

14. Trust Chief Executives are asked to satisfy themselves that all necessary actions in respect of concluding agreements, between themselves and Universities/Medical Research Council, are being taken forward with appropriate advice and support and against a timetable which will enable the transfer of assets to the Trust to be completed by the agreed date.