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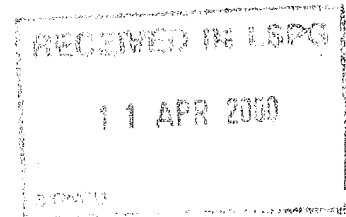
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Hepatitis C Litigation



INTERNAL AUDIT REVIEW

HEPATITIS C LITIGATION

FINAL REPORT

# RESTRICTED – MANAGEMENT FINAL REPORT



## Hepatitis C Litigation

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## 1. INTRODUCTION

1.1 This report follows an investigation by Internal Audit into the loss of documents relating to the Hepatitis C litigation. There are two types of claim being pursued. In short these are:

- from haemophiliacs who received blood products and were infected with HIV. Nine outstanding claims are presently stayed. Here, the Department has a duty to the Court not to destroy relevant documents; and,
- from haemophiliacs who were infected by HIV and Hepatitis C after receiving blood transfusions, for which there are 113 claimants. Here, the Department is not a party to the litigation, but through a process known as *non-party discovery*, it consented to hand over the papers it had.

1.2 Although some documents were extracted from branch files and disclosed to Deas Mallen Souter (solicitors acting for the 113 claimants in the second claim), it became apparent that the documentation was incomplete. On further investigation it was discovered that other relevant documentation had been destroyed, including copy papers and registered files.

## 2. AUDIT SCOPE AND COVERAGE

2.1 Broadly, Internal Audit were asked to,

- establish what happened;
- identify the extent to which procedures have not been followed; and,
- make recommendations to prevent such incidents from occurring again.

2.4 Internal Audit has not sought to apportion any blame. The purpose of the review is to help prevent such things from happening again.

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#### 3 OVERALL CONCLUSION

- 3.1 We concluded that an arbitrary and unjustified decision, most likely taken by an inexperienced member of staff, was responsible for the destruction of a series of files containing the minutes and background papers of the Advisory Committee on the Virological Safety of Blood (ACSVB).
- 3.2 We believe the destruction of these files would have been prevented had the person marking files for destruction, been aware of their importance. We have made a number of recommendations to help ensure this type of mistake is not repeated:
- Improved induction and training procedures to enable the Departmental Records Office (DRO) to instruct all new recruits and existing staff of the importance of good record-keeping,
  - *For the Record*, the Department's record management guidance, should be updated to include indicative timescales for the retention of different types of documents. This would reflect HSC 1999/053 *For the Record* the Department's comprehensive document management guidelines to the NHS, which includes indicative time periods for retaining different types of document,
  - The authorising officer conducting file review should be at IP3 standard level or higher. Currently the level is IP2,
  - the Management of Electronic Documents Strategy (MEDS) team incorporates any improvements they identify as a result of this investigation, into the rollout of MEDS.
- 3.2 These recommendations have been discussed and agreed with DRO, and the Staff Development Unit.
- 3.3 We also acknowledged in this case, that the major organisational changes as a result of the Functions and Manpower Review (FMR), may have contributed directly to the poor decisions taken, through section reorganisation and the muddled allocation of responsibilities. Our understanding of exactly what happened is outlined in the following section.

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**4. DETAILED FINDINGS**

**Establishing What Happened**

- 4.1 There is little documentary evidence to establish exactly why volumes 4 – 17 of GEB 1, which contained the minutes and background papers to the ACVSB between May 1989 – Feb 1992, were destroyed. However, the original file dockets still exist, and the annotations on these provide a reasonable audit trail, so that we can, with some certainty, piece the story together. DRO also have their own record of when the files were destroyed. We interviewed staff members from the relevant section, but their memories of events up to 8 years ago were hazy at best, and added little to the evidence we had elsewhere.
- 4.2 From the dockets it seems clear that a two-stage process led to the destruction of the files:
- in February and March 1993 the files were closed, retained in the section, and marked for review 5 years from the date of the last document on each file. This part of the process followed normally accepted procedures;
  - before any of the volumes reached their specified review date however, in July 1993 the files were marked for destruction and sent to DRO. Volume 4 for example, had been marked for review in July 1995.
- 4.3 This second decision effectively overrode the previous closure and review process. Marking the files for destruction was plainly wrong, and a bad decision was made worse by the short destruction dates assigned, which varied between 1 – 4 ½ years. It was not possible to determine why different destruction periods were assigned.
- 4.4 The files were destroyed, according to instruction, at various stages between July 1994 and March 1998.
- 4.5 The decision to mark the files for destruction was taken at a time of major organisational change in the Department, i.e. the implementation of the FMR, which resulted in two experienced members of staff leaving the relevant section. We believe that the upheavals of the FMR process probably resulted in either:
- a delegation of responsibilities without proper instruction; or,
  - an assumption of responsibility without proper authorisation.

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- 4.6 Either occurrence, likely given the organisational context, is the most probable explanation for the decision to mark the files for destruction and the short destruction dates assigned
- 4.7 Two questions remain unanswered from our review:
- once the Department was aware it would need to collect relevant documentation together, Dr Rejman, who provided the secretarial role for the ACVSB, and who had previous experience of *non-party discovery*, began the process of collecting information. This was in 1994. However, Dr Rejman did not recall the ACVSB files from DRO, extracting information instead from other policy files. Some of the ACVSB files were still available, unrecalled, as late as 1997 and 1998 therefore. Dr Rejman retired in 1994 as part of the FMR, and we do not know why the ACVSB files, available at DRO, were not recalled;
  - although volumes 14 – 17 were destroyed, volumes 1 – 3 survive, having been assigned lengthy review periods, for example volumes 2 and 3 are due for 2<sup>nd</sup> review, in 2013 and 2014 respectively. These are the sort of review periods all volumes should have had and it has not been possible to determine why volumes 1 – 3 were treated differently

## 5. RECOMMENDATIONS

### Induction and Training

- 5.1 Currently, central procedures to induct new recruits, and train existing staff in the importance of record-keeping, can be summarised as follows
- Personnel Services (PS) informs DRO of all new recruits, including casuals, and the Departmental Records Officer writes to them, enclosing summary guidance;
  - DRO organises seminars twice a year, to meet the needs of those who respond to advertisements in Update
- 5.2 DRO indicated that the PS new recruits list, although the best available, is not always complete, and that a cross-reference to Update should be introduced to pick up additional names.

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We recommend that DRO supplements current PS information on new starters by also using the Update list, to target its induction programme.

- 5.3 The current levels of litigation and the acknowledged potential for more in the future makes it especially important to train new recruits in effective record-keeping. Disseminating this good practice should be a core part of the Department's induction programme.

We recommend that DRO and the Staff Development Unit incorporate effective messages on proper record-keeping into the induction programme for new recruits.

- 5.4 The DRO's view is that staff do not always give record-keeping the attention it requires. For many staff it can seem an onerous and boring duty, detached from more pressing business objectives. A case study example, suitably publicised, would provide a practical and effective way of getting the message across that proper record-keeping is a vital foundation for departmental business.

We recommend that DRO includes a case study in their induction and ongoing training programme.

We also recommend that the case study is developed into an article to be included in Link or Update.

- 5.5 In this particular case it was a deficient review process, that led to the volumes being destroyed. Ongoing training therefore needs to focus on this aspect of record-keeping. DRO have already considered this, and following the conclusions of this investigation, plan to introduce some form of review training, marketing it to staff through the current Records Management audit programme and to quote also:

We recommend that DRO introduce review training for staff.

- 5.6 We acknowledge that the level and type of training DRO introduces, will depend on the resources available to deliver it effectively.



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#### File Retention Periods

- 5.7 While *For the Record* highlights the importance of retaining different types of documents, including those that may be required for legal purposes, there are no timescales to indicate how long such papers should be kept.

We recommend that DRO updates *For the Record* to include indicative timescales for certain types of file records.

- 5.8 The comprehensive guidance the Department recently issued to the NHS (HSC 1999/053 *For the Record*), provides clear guidelines on the time periods for retaining different types of document, and we believe the Department should adopt a similar approach to its own record-keeping.

#### Authorisation

- 5.9 In this case, 14 volumes of one file were sent marked for destruction to DRO in July 1993. We believe, although no documentary evidence remains, that they were authorised appropriately i.e. at the level (FO then, IP2 now) the Department considers to be appropriate. The fact that a wrong decision was made suggests that the authorisation level may not be set appropriately.

We recommend that *For the Record* is updated so that branch reviews are conducted at IP3 standard level or above.

- 5.10 Such a fundamental change would require a clear direction from senior management, in order for it to take hold at section level.

#### Staff Competencies

- 5.11 Currently 'Maintaining official records' is given the lowest possible profile in the core competence framework, and is seen as a competence mainly relevant to lower grades of staff. There should be a core competence to reflect a manager's responsibility for ensuring their team maintains adequate records. This would underpin the previous recommendation to revise the authorisation level at which review is conducted.

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We recommend that DRO initiates the process to raise the profile of the record-keeping competence within the Department's Competency Framework.

**Management of Electronic Documents Strategy (MEDS)**

- 5.12 We recognise that the implementation of MEDS, as part of the Modernising Government agenda, should provide a safer and more consistent approach to record-keeping in general. As part of this investigation we have discussed with the MEDS team the issues this case has highlighted, and they are considering how best to tackle them.

We recommend that the MEDS team incorporates improvements they identify as a result of this investigation into the MEDS rollout programme.

- 5.13 For example, the MEDS team plans to introduce automatic checks to ensure that file volumes have consistent markings, so that if one volume in a file series for example, is marked for destruction, and others are marked only for review, there would be an automatic flag and the volume marked for destruction would be passed back to the section to be reassessed.

**6. ACKNOWLEDGEMENT**

- 5.14 Internal Audit would like to thank HSD, SOLB, DRO, the Staff Development Unit, and the MEDS team for their co-operation, and helping us to complete this investigation swiftly.

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