



Memorandum by the Auditor General for Wales

Further examination of matters arising from the disposal of the Mid Wales Hospital

*Prepared for presentation to the National Assembly under the
Government of Wales Act 1998 and presented to the National Assembly
on 8 January 2004*

Introduction

1. On 24 October 2002, the Audit Committee of the National Assembly for Wales held an evidence session on the basis of my report '*The Disposal of the Mid Wales Hospital*', which I had presented to the Assembly on 16 October 2002. That report set out the results of my examination of the regularity, propriety and value for money of the sale of the Mid Wales Hospital by the Dyfed Powys Health Authority to Chancefields Estates Ltd, nominee company of Mrs Sheila Bailey, and Dr N M Bailey in October 1999. The Executive Summary to my report is appended to this Memorandum.
2. The witnesses who appeared before the Committee were Ann Lloyd (the Director of NHS Wales), Neil Jones (the Assembly's Principal Estates Surveyor) and Nigel Towns (then the Acting Chief Executive of Dyfed Powys Health Authority). In giving oral evidence to the Committee, the witnesses made a number of statements that the Committee wished to pursue further but could not due to time constraints. Also, in the two days before the session, two members of the public put to the Committee a range of detailed allegations pertaining to events surrounding the disposal process, some of which had not been directly addressed within my report. Furthermore, immediately following the evidence session, two members of the public wrote to the Committee setting out an extensive combination of reiterated points and new allegations.
3. In light of the above, I suggested to the Chair that I should extend my review to address certain specific issues that were of concern to the Committee, in order that Members might have a fuller understanding of the disposal process before drawing up their own report and recommendations to the Welsh Assembly Government. The Committee welcomed my proposal and my staff have therefore:
 - contacted a retired former official of Dyfed Powys Health Authority (the Health Authority), who was mentioned in oral evidence from Mr Nigel Towns as having an important role in the recording of the disposal process, in order to establish whether he could provide the Committee with any further relevant information (paragraphs 5 to 15 refer);
 - set out to clarify the impact of changes in planning status on the potential sale value of the site and the extent to which these had been taken into account by the Health Authority, particularly in relation to the potential use of a clawback option (paragraphs 16 to 20);

- provided further detailed information for the Committee on the nature and purpose of the eventual purchaser's fax of 17 May 1999 to the Office of the Secretary of State for Wales, and that Office's subsequent handling of the fax (paragraphs 21 to 24); and
 - investigated new allegations made in correspondence from members of the public, following the Audit Committee's consideration of evidence and throughout 2003, that the purchaser had received improper rental payments from Powys Health Care NHS Trust, in respect of the period immediately following the sale when some patients and staff had remained in the hospital (paragraphs 25 to 50).
4. This memorandum sets out the results of the further work that the National Audit Office Wales has undertaken on my behalf in respect of the above issues. It concludes with a review of my original report's main conclusions, in the light of this further work.

Documentation of the disposal process

5. In my original report, I noted at paragraph 2.40 that the Dyfed Powys Health Authority had not kept records of four key aspects of the disposal:
- its consideration and rejection of the advice it had received from the Welsh Office Estates Department in November 1995 to obtain an updated valuation independent of its agent;
 - its further consideration of the use of clawback arrangements, after these had been rejected by a bidder during the original attempt to dispose of the site in June 1998;
 - its actions to ensure that all potential purchasers were informed of the proposed changes in planning criteria on part of the site from October 1998; and
 - its decision to proceed with a split conveyance in September 1999.
6. I had concluded that these failures to document decisions had been unsatisfactory, had represented an obstacle to any subsequent examination of how business had been conducted and had exposed both the Health Authority and its staff to allegations of impropriety.
7. During the Committee's questioning on the recording of decisions and actions by the Health Authority, the witness for Dyfed Powys Health Authority, Nigel Towns, made

several references¹ to the diligence of a since retired Health Authority official. This was Mr Roger Bolitho, the Corporate Support Manager, who had retired in August 1999 just before the exchange of contracts on this disposal. National Audit Office Wales staff have since traced this retired official and met with him. During this meeting, Mr Bolitho was provided with copies of my report and the transcript of the Audit Committee's oral evidence session. He co-operated fully with the National Audit Office Wales, but was unable to shed any further light on the inadequate documentation of the sale process by the Health Authority, other than by indicating his overall views and approach to the disposal (see paragraph 9). In a subsequent letter to the National Audit Office Wales, he confirmed that he had no further comments to offer on the matter.

8. In addition to meeting with the retired Corporate Support Manager, the National Audit Office Wales has also conducted a re-examination of the available records and spoken again to officials of the Assembly's Estates Division, formerly the Welsh Office Estates Division. As a result of these further enquiries, I can set out the following additional explanations for each of the four aspects of the disposal for which documentation was not held by the Health Authority.

The failure to record reasons for not obtaining an updated valuation, as recommended by the Welsh Office Estates Division

9. Estates Division officials originally told the National Audit Office Wales that they considered that the Health Authority's failure to note its reasons for not obtaining an updated valuation had arisen because the project team would have regarded such a valuation as unnecessary given the wide exposure of the site to the market. An official of the Estates Division has reiterated his earlier explanation and also noted that any consideration of this issue by the project team in its meetings might well only have been brief and could therefore simply have escaped recording in the minutes of those meetings. The retired Corporate Support Manager has since told the National Audit Office Wales that he had also taken the view that, given sufficient market exposure, the value of the site was simply that which potential purchasers were prepared to offer. As I made clear in my original report, there is no record of the consideration and rejection by the Health Authority of advice that it should obtain an independent, updated valuation.

The failure to record considerations of clawback terms after June 1998

10. As well as noting in paragraph 2.40 of my report the failure by the Health Authority to record any consideration of clawback terms after June 1998, I concluded in paragraph

¹ Evidence taken by the Assembly Audit Committee, Thursday 24 October 2002, Qs 21, 26, 81-82, 85 and 132-134.

3.28 that such terms were unlikely to have been a practical or cost effective proposition in this case. This was because the use of a clawback arrangement would probably have depressed the sale price, made the property less marketable and led the vendor to incur further costs on monitoring the purchaser's development activity during the clawback period. Further work on this issue by the National Audit Office Wales in recent months has not revealed any additional information that would lead me to amend this conclusion.

The failure to record actions to ensure that all potential purchasers were informed of the proposed changes in planning restrictions

11. In paragraph 2.30 of my report I described how the Health Authority's agent, Knight Frank, undertook to inform potential purchasers of the proposed change to the Local Plan. The agent wrote to the Authority on 29 October 1998 saying that it would "make the position known to prospective purchasers". Paragraph 2.30 also noted that neither the District Auditor nor the National Audit Office Wales had seen documentary evidence that this had been done. Some readers of my original report have expressed concerns that this represented a complete failure to record efforts to make the planning situation known to potential purchasers.
12. The Health Authority's agent confirmed to the National Audit Office Wales that it had not explicitly informed prospective purchasers of the changes in planning restrictions. This was because it had judged it sufficient simply to require bidders to confirm that they had discussed planning arrangements with the planning authority. Copies of the agent's letters indicate that, at least in some cases, this requirement was communicated in writing. The agent has also told the National Audit Office Wales that in its marketing campaign it had recommended that all parties should discuss their proposals with the local planning authority and had provided a named contact at the authority. Nonetheless, it is unsatisfactory that not all actions in relation to communicating planning matters were recorded.

The failure to record the decision to proceed with a split conveyance

13. In paragraphs 2.38 and 2.39 of my report, I noted that, for completion of the sale, the site was split so that the main part passed to the purchaser's nominee company, Chancefield Estates Ltd, and the remainder passed to the purchaser's husband, Dr N M Bailey. I reported that this split conveyance had not affected the £355,000 consideration received by the Health Authority and that its solicitors had confirmed that there was nothing unusual in this practice. I also disclosed that an independent professional adviser commissioned by the National Audit Office Wales had confirmed that the vendor had not acted improperly by splitting the site for conveyancing. However, I did express concern

in my report that the Health Authority had not documented its decision to proceed with a split conveyance.

14. The use of a split conveyance arrangement for this transaction was requested on 17 September 1999 by solicitors acting for Mrs Bailey. The Health Authority's solicitors, Morgan Cole, responded on 20 September 1999 that "we do not anticipate any difficulty with our clients agreeing to this proposal". However, there is no record in the files examined by the National Audit Office Wales of the Health Authority's explicit agreement to this request, other than a letter from the Health Authority to Morgan Cole on 21 October 1999 stating that the two transfer deeds had been sealed and signed. In response to an Assembly Question² on the disposal of the Mid Wales Hospital, tabled by Rod Richards AM in November 2001, the Minister for Health and Social Services outlined the chronology of the sale, including the use of the split conveyance. In an explanatory note sent on 22 November 2001 to Assembly officials who were preparing the Minister's answer, Morgan Cole stated, "So far as we were aware, there was nothing sinister in this request and the transfer deeds were drawn up accordingly and duly executed by the Health Authority on behalf of the Assembly".
15. As I noted in my report, whilst I am satisfied that the use of the split conveyance arrangement was proper and that, in agreeing to the purchaser's request the Health Authority's solicitors were acting in good faith, it is unsatisfactory that there is no record of the Health Authority agreeing to the use of the split conveyance.

Changes to planning status and the account taken of such changes in the handling of the disposal

16. In paragraph 10 of the Executive Summary to my report (appended to this memorandum), I noted that "...the proposed change made the site somewhat more marketable by allowing mainstream residential use on a small part of it". This statement has since been questioned in correspondence to the Audit Committee from a member of the public. The correspondent commented that the changes in planning criteria affected the majority of the building floor space on the site. A factor here might be that my report summarised the overall effect of the changes in planning criteria, rather than setting out all the details of the planning situation.

² Welsh Assembly Question number 14425, answered on 26 November 2001

17. The planning arrangements affecting the site are complex. As noted by the correspondent, the site was divided into two planning policy zones, each of which was subject to different planning criteria. One was the EM3 employment zone and the other was a general rural zone³. Planning criteria are used in the consideration of planning applications, but they do not themselves represent the granting of planning permission.
18. As a result of the recommendations of a Planning Inspector's Local Plan Inquiry, the Brecon Beacons National Park Authority proposed certain changes to the Local Plan in October 1998. These changes meant that, for the EM3 Employment zone, planning proposals with a realistic chance of approval no longer had to be confined to proposals for employment or ancillary institutional residential (C2) use⁴ but could take account of all policies in the plan and could involve partial mainstream residential (C3) use⁵. The Inspector's report also recommended that the Local Plan should not be amended to bring the outlying buildings of the site (which lay in the general rural zone), into the EM3 employment zone. This retained the possibility of a change of use for the outlying buildings from ancillary (C2) use, for example, on-site employer accommodation, such as that for medical staff or caretakers, to mainstream residential (C3) use—ordinary private dwellings. As I noted in paragraph 1.14 of my report, the actions of the planning authority (the Brecon Beacons National Park Authority) lie outside my statutory remit.
19. I remain satisfied that it would have been wholly unrealistic to interpret these changes as in any way representing permission for large-scale mainstream residential use of the majority of the site. Taking all of the relevant planning material and the facts of the local geographic situation together, these changes indicated that applications for change of use for only small parts of the site to mainstream residential use stood a realistic chance of approval.
20. As the changes in planning criteria thus represented in reality only a modest increase in the overall potential value of the hospital site, I remain satisfied that the Health Authority's decision not to pursue clawback was valid. The change in criteria probably made the site a little easier to sell, by indicating that an application for some change in

³ Total area of the site was 17.4 hectares. Of this some 25 per cent was EM3 employment zone, and the remainder was general rural zone. The total building floor area was 17,910 m², of which some 95 per cent lay in the EM3 employment zone, largely because this included the main hospital building.

⁴ C2 class covers institutional residential uses providing accommodation and care, such as hospitals, nursing homes and residential colleges. It does not, however, cover all institutional residential uses, and excludes, for example, prisons, which are classed as *sui generis* (of its own kind).

⁵ C3 use covers mainstream residential use, i.e., private dwellings.

use for parts of the site might be granted by the planning authority, but it most certainly did not lead to a quantum leap in the value of the site. Any prospective purchaser of the Mid Wales Hospital site would still have been taking ownership of a large late-Victorian building entailing significant maintenance expenses, in a remote area. As I explained in paragraph 3.32 of my original report, while the houses on the site were readily marketable on their own, the main hospital represented a substantial liability.⁶ Furthermore, as noted in paragraph 3.27 of my report, the drawbacks of any clawback terms (principally the enforcement costs and the deterrent effect on potential buyers) still applied.

The purchaser's fax of 17 May 1999 to the Secretary of State

21. In paragraph 2.36 of my report, I noted that Mrs Bailey had sent a fax to the Secretary of State for Wales, asking for an extension to the deadline for the submission of information in support of her bid. The Health Authority's agent had previously written to all parties that had expressed an interest in the site, requesting that bids, or the confirmation of bids, should be submitted by 17 May 1999, together with information concerning the availability of funds and confirmation of acceptance of the Authority's conditions of sale. My report also noted that the Secretary of State had responded to say that as long as the required information was furnished by noon on 18 May, Mrs Bailey's bid would be considered. Finally, I also noted in the same paragraph that, in the event, Mrs Bailey had not needed to make use of the 12-hour extension granted to her by the Secretary of State, since she had in fact been able to provide the Health Authority's agents with the required information by the 17 May deadline.
22. During its evidence session, the Audit Committee raised particular concerns regarding the handling of this exchange of correspondence between Mrs Bailey and the Secretary of State. I am therefore setting out in this memorandum further details on this matter, drawn from the original examination of Welsh Office files by the National Audit Office Wales. That examination had included a review of Mrs Bailey's fax of 17 May 1999, the Secretary of State's reply dated 18 May 1999, and the records of the Welsh Office

⁶ Some correspondents have suggested that, as the aggregate proceeds of subsequent sales of the houses on the site have exceeded the combined payment made by Chancefield Estates Ltd and Dr Bailey for the whole site, the Health Authority did not achieve the best price reasonably obtainable. However, this suggestion is not realistic, as it does not take account of how the significant liability presented by the main building reduced the overall value of the site.

officials who handled this correspondence, including the draft response prepared by those officials for the Secretary of State.

23. I should reiterate, for the avoidance of doubt, that Mrs Bailey did not submit a late bid by fax on 17 May, but made a request for an extension to the Health Authority's deadline in order to provide the additional information that was required to accompany her bid. In Appendix 1 (second paragraph of page 28) to my report, I had noted that Mrs Bailey's company had submitted her bid on 12 May. I also reported that the Health Authority's agent had written to Mrs Bailey requesting the same additional information sought from other bidders by 17 May and that her solicitor had provided it by that date.
24. In accordance with normal practice, Welsh Office officials handled Mrs Bailey's incoming fax of 17 May to the Secretary of State. They drafted a response that stated:

"...The information requested should have been submitted to Knight Frank [the Health Authority's agents] by Monday 17 May but, as offers are being made by informal tender, your bid will be considered provided all the required information is with the Agents by midday on Tuesday 18 May. The offers received will be considered at a meeting on the afternoon of 18 May after which a formal decision will be made.

Mid Wales Hospital has been on the market for some time and it is important that a decision on its future is made very soon..."

This draft was used by the Secretary of State without substantive alteration in his response to Mrs Bailey on 18 May. As I noted in paragraph 2.36 of my report, although this represented a relaxation of the deadline for Mrs Bailey, in the event, Mrs Bailey did not take advantage of it.

The alleged improper payment of rent for continued occupation of the site after completion of the sale

25. As noted in paragraphs 1.5 and 1.6 of my report, the Mid Wales Hospital became surplus to requirements within the NHS as part of the implementation of a mental health care strategy by the then Powys District Health Authority. Dyfed Powys Health Authority issued a further consultation document in January 1999 on the proposals for the development of mental health services in Powys as a result of the closure of Mid Wales Hospital. The consultation ended on 1 May 1999. An important element of this strategy involved the managed transfer of patients and staff from the Talgarth site to other

locations within mid Wales, with a view to enabling Powys Health Care NHS Trust (the Trust) to pass to the Health Authority savings of some £1 million a year.

26. The sale of the Mid Wales Hospital site by the Dyfed Powys Health Authority to Mrs Bailey's nominee company, Chancefield Estates Limited, and Dr N M Bailey was completed in October 1999. However, the main body of the hospital continued to be occupied by the Trust whilst alternative healthcare provision was arranged for some 70 remaining patients. The Health Authority had allowed for such a situation by imposing a condition of sale on all bidders that required them to lease the main hospital building to the Trust, for a peppercorn rent, for a five year period to allow the transfer of patients to take place in a structured manner. The main elements of this condition, including the peppercorn rent, were publicised in the sales literature for the site and specific details were provided in a more detailed 'Heads of Terms' guide to the proposed sale contract.
27. In its original examination, the National Audit Office Wales considered that the imposition of this lease condition by the Health Authority was a sensible and reasonable way to ensure that bids were made on the same basis, aiding comparability, and that it took due account of the operational needs of the Trust. As the lease was a requirement on all potential purchasers, and involved only a peppercorn rental, I had no reason to consider that it merited further audit investigation. All of the various allegations that had been put to me by members of the public by this time had centred on the actions of the Health Authority, and no concerns had been expressed regarding any potential irregularity, impropriety or poor value for money in the actions of the Trust.
28. In accordance with my usual procedures, a draft of my report was shown to all of the third parties mentioned in it, in order to confirm its factual accuracy and to help ensure that all material information was included within it. Amongst those to whom the National Audit Office Wales sent a copy of the draft report was the Chief Executive of Powys Health Care NHS Trust. A letter was subsequently received by the National Audit Office Wales from the Trust, signed on its behalf by the Acting Chief Executive, confirming both the accuracy and material completeness of my draft report.
29. Shortly after the Audit Committee's evidence session, a member of the public, citing rumour, alleged in correspondence with the Committee Chair that the purchaser of the site had received a sum of £80,000 from the Trust rather than a peppercorn rent. If this were indeed the case, then the payment of such a rent would raise the possibility that the actions of the Health Authority and Trust, taken together, had led to NHS Wales not achieving such good value for money in the decommissioning and disposal of the site.

30. In the light of this allegation, the National Audit Office Wales has since examined the nature of the lease arrangements between the Trust and Chancefield Estates Limited. This work has confirmed that the lease arrangement was indeed for a peppercorn sum and that no significant rental was paid by the Trust. However, the National Audit Office Wales has found that the Trust had negotiated a Deed of Surrender with Mrs Bailey in March 2000, to release it from its obligations under the lease to maintain the site until November 2000. Under this Deed, the Trust agreed to pay Chancefield Estates Ltd £120,000, to supply up to 30 man days labour to carry out a programme of remedial works at the site, and to leave certain furniture and fittings on vacation of the site as further payment in kind.
31. The National Audit Office Wales asked the Trust why it had not brought these issues to its attention when contacted as part of my original audit investigation. Trust officials explained that, at the time, they had not considered that the details of its November 1999 lease arrangement with Mrs Bailey had fallen within the scope of my enquiry, which they believed was only concerned with the actions of the Health Authority up to the date of the sale in October 1999. I consider that it would have been helpful if the Trust had made my staff aware of the lease surrender terms, especially as the disposal of the site was a matter of public concern and had been discussed in the *Wales on Sunday* newspaper. However, I am aware that the Trust had to make a judgement about the extent of the contextual information that it provided, and staff of the Trust have assured my staff that they did not seek to frustrate enquiries.

Negotiation of the lease terms

32. Dyfed Powys Health Authority drew up two separate leases between Powys Health Care NHS Trust and Chancefield Estates Limited in October 1999. The proposed lease arrangements had been included in the Particulars of Sale available to all purchasers. One was a straightforward short-term arrangement in respect of wards East 7 and East 8 on the Talgarth site, which expired on 30 November 1999 when the patients residing there were relocated as planned. However, the second lease agreement was for a term of five years commencing on 22 October 1999, in respect of the main building. Staff of the National Audit Office Wales have examined this second lease agreement to establish whether it was regular and proper and represented good value for money for the Trust. This review included consideration of the operational needs of the Trust and whether the terms of the lease provided adequate safeguards to protect the Trust's position.
33. The need for a lease of the main hospital building had been established prior to the abortive attempt to sell the site in 1998. The lease term was specified as five years, with a

twelve month notice period that could be invoked at a 'break point' after the first two years. This reflected the Trust's understanding, at that time, of the period that the hospital would be required for patient care before new services and facilities would become available. It also reflected the Trust's judgement that, if the provision of new services and facilities were substantially delayed, it would be in a weak negotiating position in seeking extension to a short lease.

34. The original lease terms were repeated in the 'Heads of Terms' referred to in paragraph 26, and remained unchanged during the early part of the sale negotiations between the Health Authority and the eventual purchasers in the summer of 1999. By then substantial progress had been made with the implementation of the Powys mental health care strategy, and staff at the Trust had realised that these proposed lease terms would no longer be suitable for the Trust's needs. The Trust therefore approached the Health Authority and prospective purchaser to seek to obtain a three month notice period instead, which would make the lease terms more flexible from the Trust's perspective. After negotiations, the Trust settled for the original five year lease term, but now with a twelve month notice period that could be invoked at any time. Mrs Bailey has informed my staff that the changes to the lease terms, being made at the last minute, were seriously disadvantageous to her because she could become liable for the maintenance of the entire site two years earlier than her business plans had allowed for. However, she had accepted the 12 month notice period as she was eager to pursue the purchase for her business project, which was intended to bring economic regeneration and employment to the area, and did not want to jeopardise this.
35. The lease agreement was signed by the Trust's Chair, Antony Lewis, and its Chief Executive, Martin Woodford, and was entered onto the Trust's Register of Sealings on 23 September 1999. The lease terms were not discussed by the Trust's Board, and had been left to Trust officials to negotiate and implement. Both the Chair and Chief Executive told the National Audit Office Wales that this was usual practice within the Trust for transacting business of this nature, since the strategic decision to embark on the entire hospital closure had been previously agreed by the Board. The lease itself was dated to commence on 22 October 1999, but Trust officials asked their solicitors on 23 September 1999 to invoke the 'break' clause that would trigger the 12-month notice period. The solicitors informed the Trust on 30 September 1999 that, as the lease had yet to come into effect, it was not possible to invoke the 'break' clause immediately. Notice under the 'break' clause was served on Chancefield Estates Ltd on 4 November 1999.

36. Under the terms of the lease agreement, the Trust was obliged to “keep the demised premises in good repair meaning in no worse condition than is evident at the date hereof [22 October 1999]”. The Health Authority considered, in consultation with Trust officials and its agent⁷, whether to include a schedule of condition or photographic record of condition as an attachment to the lease, detailing the condition of the property at that date. Furthermore, Welsh Office Estates Division records show that some form of photographic record had been prepared by July 1999 by Mrs Bailey’s architect, though it is not clear whether that record was appropriate for this purpose. The Trust also retained a photographic record but this was not sufficient to detail fully the condition of the property. In the event, the Health Authority, in consultation with Trust officials, decided not to include such an attachment to the lease. Trust officials told the National Audit Office Wales that they had considered that it would have been both difficult and expensive (perhaps in excess of £50,000) to produce a schedule of condition that covered the entire site, and that it would not necessarily have guaranteed the Trust against the cost of repairs at the end of the lease term.
37. My staff sought independent professional advice from Butters John Bee (a firm of chartered surveyors) on this matter and were told that whilst a full Schedule of Condition would have been expensive, the compilation of a photographic or video record would have limited the Trust’s exposure to risk without incurring disproportionate costs. I therefore conclude that some sufficient and reliable form of visual record should have been compiled, and, if possible, agreed upon by both parties when the leases were signed, so that any liability to the Trust from the terms of the repairing lease would have been minimised. The absence of such an agreement did not, in the event, contribute greatly to the consideration paid under the Deed of Surrender, as 30 days labour and a modest amount of materials covered the dilapidations element. The greater part of the consideration related to the transfer of maintenance liabilities and risk (see paragraphs 40 and 46).

The surrender of the lease

38. Once patients had left wards East 7 and East 8 at the end of November 1999, it soon became apparent to Trust staff that the hospital was not viable for the 34 patients remaining in the main building. At the Mid Wales Hospital decommissioning plan meeting held on 20 December 1999, the Trust put in place plans to manage the relocation of all the remaining patients by the end of March 2000. This meant that, although the

⁷ The Health Authority’s agents, Knight Frank, had no involvement with the site following the completion of the sale in October 1999.

Trust had served notice on the lease at the earliest opportunity, the 12 month notice period (due to end in November 2000) would leave a further seven months to run on the lease after all of the patients and staff had vacated the site.

39. The Trust decided that it would be better to end the lease early, rather than to retain responsibility for the empty main building for a further seven months, with all the consequent risks of fire and vandalism. My staff found that the Trust did not retain a record of a formal risk assessment to establish the cost of this early surrender, though it did record some estimates of the cost of retaining the lease (see paragraph 46). Under the lease terms, the costs of repairing any damage to the premises during the remainder of the lease period would have fallen to the Trust, creating a potentially open-ended liability.
40. The Trust wrote to Mrs Bailey on 10 February 2000 suggesting that the Trust be released from the lease in return for the building contents, which had been valued by independent auctioneers at some £5,000. In an e-mail dated 14 March 2000, Mrs Bailey stated that she estimated that it would cost her company £310,000 to take over the lease early, most of which consisted of the running costs of the site that she would be incurring seven months earlier than planned. However, in her email she said that she would accept a contribution from the Trust amounting to half of these costs (that is, £155,000) in recognition of the early full access that the company would be obtaining. This figure was to comprise a payment of £120,000, plus remedial works valued by Mrs Bailey at £30,000, and the items of furniture valued at £5,000.
41. National Audit Office Wales staff were informed that this position had been reached after a series of meetings between Mrs Bailey and her Chancefield Estates staff, and Trust officials. These meetings were recorded until 7 January 2000. Later meetings were attended by the Chief Executive and Finance Director, but no notes of these meetings were retained by the Trust. The last of these meetings, on 10 March 2000, had been attended on the Trust's side by the Finance Director and the Chair. The Chair has told National Audit Office Wales staff that the actual negotiations were conducted on the Trust's side by its Finance Director.
42. During the course of the meetings, relations between Trust officials and Mrs Bailey's staff became strained. According to Mrs Bailey, her chief executive saw no reason to accede to the Trust's request to end the lease early and walked out of negotiations when the Trust offered a low amount. Meanwhile, the Trust officials initially involved in the negotiations regarded the mothballing of the site as an alternative to ending the lease early. In order to break the deadlock with minimum offence to her chief executive, Mrs Bailey made contact with the Chair of the Trust in her capacity as Chair of Chancefield

Estates Ltd in order to suggest a further meeting at which she might make a compromise offer.

43. It is not the usual practice within NHS Wales for the Chair of a trust to attend negotiations of this nature, and the National Audit Office Wales asked the Chair why this had occurred. The Chair of the Trust told us that his principal reason for attending was to ensure that the suggested mothballing of the hospital did not happen. He did not regard mothballing as compatible with enabling the new owner of the site to get her business up and running, which he regarded as the best means of serving the socio-economic interests of the people of Talgarth. He had made a long-standing commitment to the then local Member of Parliament, Richard Livsey (now Lord Livsey of Talgarth), to do his best to ensure that local economic and employment prospects for the Talgarth area were not damaged unduly by the closure of the Mid Wales Hospital, which had been the single largest employer in Talgarth for a century. The Chair considered that mothballing the building would have forced Mrs Bailey to suspend her business activity leading to further weakening of the already fragile economic infrastructure of Talgarth and possible adverse publicity for the Trust. He had considered that his presence at the final meeting to agree financial terms would be helpful because he believed that he had a good relationship with Mrs Bailey, who had previously invited him to consider becoming the Chair of the Trustees of her charitable body, the Prya Trust. He had hoped that he could help to achieve a 'win-win' outcome for both parties. The Chair has told National Audit Office Wales staff that his attendance was an exceptional response to an exceptional situation. He has stated that, in safeguarding the socio-economic interests of the people of Talgarth, he is confident that it was a proper role for a Trust Chair to fulfil.
44. As with the original lease, the draft terms of the Deed of Surrender were not discussed by the Trust's Board. The Deed of Surrender was signed by the Chief Executive and the Chair on 28 March 2000, entered on the Trust's Register of Sealings on 5 April 2000 and took effect on 7 April 2000.
45. The National Audit Office Wales has calculated the total value of the Trust's final settlement with Mrs Bailey to be approximately £128,000. This estimate consists of the cash payment of £120,000, together with the payments in kind of £5,000 in respect of the furniture left on site and £3,250 in respect of 30 man days of labour and materials.
46. The National Audit Office Wales has considered whether early surrender of the lease at a cost to the Trust of some £128,000 represented good value for money for the taxpayer. In order to do this, it sought to identify the relevant costs that the Trust would have incurred had it continued with the lease for a further seven months to November 2000. As noted at

paragraph 39, the Trust did not retain full records to establish with certainty the cost of retaining the lease. However, the Trust's then Finance Director, Allan Coffey, has told the National Audit Office Wales that Trust officials had estimated that it would have cost the Trust some £90,000 in terms of maintenance costs and security to retain the lease, and that the transfer of risk—principally that arising from fire and vandalism—was worth in excess of £30,000 to NHS Wales. This was because, by reaching a settlement with Chancefield Estates Ltd to end the lease immediately, the NHS would no longer be bearing the risks of fire and vandalism on what is a remote and highly vulnerable site. The former Finance Director has indicated that he considered that these risks could have had financial consequences exceeding £1 million.

47. The National Audit Office Wales has established that, before agreeing to the surrender terms, Trust officials contacted District Audit and discussed the merits of the Trust buying itself out of the lease as a means of avoiding maintenance costs, as well as its regularity. District Audit's note of that telephone discussion, supported by the relevant member of staff's recollection, indicates that the situation was viewed as a straightforward comparison between the costs of continuing the lease and the cost of 'buy-out'. It also corroborates the former Finance Director's recollection of the Trust's estimate of the cost of continuing the lease.
48. Taking account of all the available evidence, the National Audit Office Wales has concluded that the Trust's financial settlement with Chancefield Estates Ltd was made at an appropriate level. Andy Williams, the Chief Executive of the Trust's successor organisation, Powys Local Health Board (LHB), who took up post in April 2003, has told the National Audit Office Wales that he has reviewed the evidence available to him, and discussed these matters with relevant staff of the former Trust. He has also told the National Audit Office Wales that he concurs with its overall conclusion.
49. However, the National Audit Office Wales has also found that the Trust had not referred the draft terms of the Deed of Surrender to the NHS Department of the Welsh Assembly Government. Given the extant requirement⁸ for transactions of a 'novel or contentious' nature to be referred by all NHS bodies in Wales to the Assembly for approval, I consider that this should have been done in this instance by the Trust. Trust officials told my staff that, following the 'internal market' of the 1990s, the prevailing culture of the NHS was one of allowing trusts an extensive degree of autonomy, and that there was no precedent within the Trust for making such a referral. The former Finance Director of the Trust has noted that District Audit, when asked to give a view on the regularity of the surrender

⁸ Welsh Health Circular 99(33) and Manual of Guidance on Losses and Special Payments

transaction, did not advise the Trust to notify the Assembly of its intention to do this. Whilst the referral of this type of transaction may have been unprecedented and might not have sat easily with a culture of autonomy, I nevertheless consider that it would have been appropriate for the Trust to make such a referral.

50. I also consider that the attendance of the Chair of the Trust at negotiations with Mrs Bailey regarding the terms of surrender of the lease was also undesirable, regardless of good intentions. This is because it could lead to perceptions of an undermining of the principle that the Chief Executive, as Accountable Officer for the Trust, is personally responsible to the Director of NHS Wales for the regularity, propriety and value for money of the actions of the Trust.

Overall conclusions and review of the findings of my original report on the disposal

51. My original report found that Dyfed Powys Health Authority's handling of the disposal was entirely regular, was proper in so far as evidence was available to me, and that it was conducive to achieving good value for money. However, I also found that the handling of the sale had fallen short of good practice in several areas, such as the failure to require sealed unmarked bids for the confirmation of best and final offers. I remain satisfied that these overall conclusions stand.
52. In its further work on the disposal, the National Audit Office Wales has found that the allegations that members of the public have made in correspondence that fall within my statutory remit are not borne out by the body of evidence available to me. This includes the suggestion by one member of the public that Powys Health Care NHS Trust paid rent of £80,000, far in excess of the peppercorn provided under the terms of the lease it had with Chancefield Estates Ltd. Whilst the Trust did pay £120,000, this represented financial consideration for the early surrender of the lease that took account of the maintenance liabilities of the site. It was not an improper payment of rent, as alleged by the correspondent, as the terms of the lease to charge a peppercorn rent were adhered to.
53. It is clear to me that there was a genuine operational need for a lease agreement to be negotiated between the Trust and whoever eventually purchased the Mid Wales Hospital. It would have been entirely unacceptable for the well-being of patients to have been jeopardised by the Trust moving them in haste to other locations just to meet the sale deadline. The Trust rightly recognised that the lease terms originally proposed were

unsuitable, and sought to amend these in the three months prior to the sale by the Health Authority in October 1999. It succeeded in amending the fixed two-year 'break point' to a 12-month notice period, which could be served at any point, providing a much greater degree of flexibility to the Trust, but it was unable to shorten the five year term of the proposed lease. In this respect, I consider that the final signed terms of the lease agreement remained not entirely suited to the operational needs of the Trust, as evidenced by its abortive attempt on the day it signed the lease in September 1999 to serve notice before the lease actually came into effect. However, whilst the Trust did realise shortly before the sale was completed that it would be in a position to vacate the site within 12 months, I recognise that there remained a substantial risk that any attempt by the Trust to amend the lease terms further at that point would have jeopardised the sale of the site by the Health Authority. Such an outcome would almost certainly have resulted in NHS Wales incurring substantial additional costs through a continuing liability for the maintenance of the site.

54. I consider that the Health Authority and Trust did not take adequate precautions to protect the Trust from the risk of a substantial claim for dilapidations. The main hospital building was nearly a century old and in a poor state of repair. It was therefore possible that, in the absence of agreement at the outset between lessor and lessee on the condition of the building at the date of the lease agreement, the lessor could seek a substantial claim for dilapidations at the end of the lease. Whilst the agreement of a schedule of condition within the lease agreement may not have been a cost effective option, I have been advised that the use of a photographic or video record should have limited the Trust's exposure to risk of a substantial claim in respect of dilapidations without incurring disproportionate costs. However, I note that, in the event, the amount paid in respect of dilapidations was a minor part of the overall consideration.

55. I consider that the Trust's departure from normal practice in its handling of the negotiations to surrender the lease was unhelpful in terms of demonstrating propriety. Yet again, as the meetings between the Trust and Mrs Bailey and her staff after 7 January 2000 were not minuted, there is a lack of a full record of the NHS's actions. The Chair's decision to take the unusual step of becoming involved in the negotiations, rather than leaving this to Trust officials, though well-intentioned, may also be unhelpful in terms of public perception of the Trust's actions. And finally, the Trust did not follow guidance to notify the Assembly NHS Department of the transaction. Overall, the Trust's handling of the surrender of its lease fell short of good practice in much the same manner as I found that the Health Authority's handling of the disposal had fallen short of good practice. However, I am satisfied that throughout the disposal process officials pursued the best

interests of both the Health Authority and the Trust, and secured value for money without jeopardising the well-being of patients.

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December 2003

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Appendix: Executive Summary of report by the Auditor General for Wales, *The Disposal of the Mid Wales Hospital*, 16 October 2002

1. National Audit Office Wales has, on behalf of the Auditor General for Wales, examined the regularity, propriety and value for money aspects of the disposal of the Mid Wales Hospital. This follows correspondence from local residents and businesses concerning the proper handling of the disposal of the Mid Wales Hospital, and interest in the subject on the part of the Welsh national press and the Audit Committee of the National Assembly for Wales. The main concerns expressed by correspondents were that the eventual purchaser was unduly favoured by:
 - conflicts of interest on the part of those responsible for the handling of the sale;
 - inadequacies in the marketing of the site;
 - being given inside knowledge about a proposed change of a planning constraint, which was not shared with other bidders;
 - inadequacies in the handling of the bidding process, such as being told of the value of another bid just before the deadline for bids;
 - being allowed to complete the sale with a splitting of site for conveyancing purposes.

In addition to specific concerns in relation to propriety, it was also alleged that, as a consequence, the Authority did not achieve good value for money from the disposal. Furthermore, two correspondents raised concerns at the Authority seeking to sell the site for the best price obtainable rather than taking wider considerations, such as sustainable development, into account.

2. Although the disposal of the Mid Wales Hospital lies within the general subject matter of *The Renewal and Disposal of Property Held by the National Health Service in Wales* published in July 2002, in view of the particular concerns expressed, the National Audit Office Wales has reported on it separately. In examining the disposal, the National Audit Office Wales has drawn on the work of the District Auditor in interviewing staff and examining the records of the Dyfed Powys Health Authority, as well as its own work.
3. The Mid Wales Hospital was a substantial mental hospital, built at the turn of the nineteenth and twentieth centuries, that became surplus to NHS requirements in the 1990s. Its disposal was not an easy task. Its location in open countryside outside of

development limits in the Brecon Beacons National Park meant that options for its re-use were limited. The hospital's lack of transport access ruled out redevelopment for large-scale residential use, which together with its distance from major settlements made the site relatively unattractive to most potential buyers. Thirty months elapsed between the Authority's agents putting the hospital on the market in June 1997 and the completion of the sale in October 1999. It took nine months for anyone to make a bid for the property, and then the Authority spent nearly twelve months in negotiations with that bidder. Until May 1999, the few parties that were interested in the site were of limited means and dependent on obtaining grants to finance a purchase.

Summary of findings and recommendations

On regularity and propriety

4. We have found that the Authority's handling of the disposal was regular. This means that it complied with the intentions of Parliament and the National Assembly for Wales, and with governing authorities, such as the Secretary of State's directions.
5. We have found that, in so far as evidence is available, the Authority's handling of the disposal was proper, meaning that it complied with the expectations of Parliament and the Assembly in relation to the proper conduct of public business. Neither we, nor the District Auditor, have found any evidence of impropriety in the handling of the disposal of the Mid Wales Hospital. Overall, we found that the Authority followed professional advice and available guidance. However, in our opinion, two aspects of the handling of the sale fell short of good practice in terms of ensuring propriety:
 - the Authority did not keep a record of all its decisions in relation to the sale. For example, although it considered "clawback" terms (a means by which a vendor may ensure a share of any development profits that arise after a sale), after June 1998, when Bidder A rejected such terms, it did not record its further consideration of their potential. However, given all the circumstances, especially the limited interest in the site, the negligible likelihood of substantial changes in planning restrictions and its low market value, such a clawback clause was most unlikely to have been a realistic proposition. Nevertheless, such a decision and the reasons for it should be properly documented;
 - in relation to the handling of the confirmation of bids in May 1999, the precautions of requiring this to be done using sealed, unmarked envelopes and opening in the presence of a witness were not observed. We acknowledge that this would have

precluded faxed confirmations. However, we consider that, in combination with a slightly longer deadline, such precautions would not have affected the outcome of the sale and would have helped reduce the scope for allegations to be made about the propriety of the bidding process.

6. In addition to these two failures to adhere to good practice, we found three areas where the Authority's records did not make clear that such practice had been followed:
 - we were unable to ascertain whether the Authority made its agent fully aware of the requirements of public accountability at the outset of the disposal process. The agent's own correspondence indicates that it was aware of public accountability requirements, but we would expect these requirements to be made explicit by the Authority in its invitation to tender;
 - in the absence of a formal valuation from the District Valuer, it appears that the Authority used a valuation not intended for disposal purposes;
 - the Authority either did not follow professional advice from the Welsh Office Estates Division that it should obtain an updated valuation independent of the selling agent, or it did not record its reasons, such as further professional advice, for not obtaining such a valuation.
7. In considering how the Authority followed available guidance from the Welsh Office, Department of Health and Treasury, we found that the technically applicable guidance, the *Land Transactions Handbook*, was substantially out of date. We found that the Authority made sensible use of all available guidance, including the *Estatecode*, though strictly speaking this does not apply to health authorities in Wales.

On value for money

8. We consider that, by largely following good practice, the Authority's overall handling of the sale was conducive to achieving good value for the taxpayer. We consider that the processes applied were consistent with obtaining a fair market price for the site as a whole, and with concluding the sale as quickly as market conditions and the operational needs of Powys Health Care Trust allowed, so avoiding excessive security and maintenance costs on an empty site.
9. In three respects, however, the Authority's handling of the sale could have jeopardised the achievement of value for money, though we consider that, in the event, these are unlikely to have had any significant effect on the outcome:

- as noted in paragraph 6, the Authority did not obtain a valuation independent of the selling agent that was unequivocally on an appropriate basis. However, we note that any independent valuation would not be a substitute for the value indicated by full exposure to the market. Therefore any deficiency in the valuation would not have adversely affected the outcome of the disposal, but such lack of rigour should not be repeated in other disposals;
- as already noted, contrary to advice it received from the Welsh Office Estates Division, the Authority did not obtain an updated valuation independent of its selling agent. However, we note that such a valuation would probably have had limited practical value, as it would have been subject to substantial caveats because of a lack of comparable market information. We therefore consider that the absence of such a valuation was unlikely to have affected the outcome of the disposal, but again such an omission should not be repeated in other disposals;
- the Authority did not prepare a full business case for the disposal itself, while the business case for the reprovision of the services formerly provided through the hospital did not cover this, except at a very high level. But, given the actual course of events and the underlying policy reasons for the sale, we do not consider that the lack of such a document undermined the business reasons for the sale or significantly affected its outcome.

10. In addition to these two shortcomings, one further area of uncertainty that we identified was whether the marketing of the site from October 1998 was as positive as it could have been. This is because neither we nor the District Auditor have found conclusive documentary evidence to show that the Authority, or its agent, advised all potential purchasers of the Brecon Beacons National Park Authority's proposed change of planning restrictions related to residential use on part of the site. The Authority's agent did request that purchasers confirm that they had contacted the Park Authority about planning uses, so this was not a matter of favouring any one party. However, the proposed change made the site somewhat more marketable by allowing mainstream residential use on a small part of it, and the Authority should have ensured that it, and its agent, made full use of this information. Although we found documentary evidence to show that the agent undertook to advise all potential purchasers, we have not found evidence to show that this took place. Nevertheless, given that the proposed change of restrictions was in the public domain and serious purchasers were likely to have been aware of it in any case, we consider that any weakness in marketing in this respect is unlikely to have had any effect on the final outcome of the sale.

Overall conclusions and recommendations

11. From our review of the extensive evidence available to us, and the results of the District Auditor's enquiries, we are satisfied that the Authority conducted the disposal properly, though certain aspects of the handling of the sale fell short of good practice. In particular, it is unfortunate that the Authority did not fully record all its decisions and actions in relation to the disposal. By not doing so, it failed to ensure the existence of a comprehensive audit trail to demonstrate unequivocally that it acted properly and thereby protect the Authority's reputation and that of its staff. The ability to demonstrate the reasons for decisions is a fundamental prerequisite for two of the seven Principles of Public Life—accountability and openness—set out in the first report of the Nolan Committee on Standards in Public Life (1995).
12. We recommend that:
 - the Assembly's NHS Department endorses the application of the *Estatecode* to the residual estate and so replaces the *Handbook of NHS Land Transactions*, which is substantially out of date;
 - all NHS bodies in Wales should make compliance with the *Estatecode* guidance a mandatory requirement for their estates staff in their management of the residual estate, taking due account of the differences between NHS Wales and the NHS in England;
 - NHS bodies should ensure that they fully acquaint their prospective advisers of public accountability requirements as part of their appointment procedures. This should be done by setting out the requirements in invitations to tender. Contracts with appointed advisers should also refer to these requirements;
 - NHS bodies should ensure that when they obtain valuations they do so formally, ensuring that the purpose of the valuation is clear. This will ensure that the basis of valuation is appropriate, and will help achieve full documentation of the process;
 - NHS bodies should take account of all professional advice that they obtain, including that obtained from other public sector bodies. Where there are good reasons for not following advice, such as a change in circumstances or a second professional opinion, the consideration of the advice and the reasons for not following it should nevertheless be recorded;

- the Assembly's NHS Department should remind all staff in the NHS responsible for the disposal of property that good practice requires a valuation of property independent of the selling agent, where the property is unusual, the uses upon which potential purchasers might base their bids are unclear, or the value is likely to be in excess of £5 million. This should safeguard against sales being made at substantially below realistic market values;
- where any tender procedures are used, NHS bodies should follow good practice in respect of tender opening, including requiring bids to be submitted sealed, without identifying marks, and opening them simultaneously in the presence of a witness. NHS bodies should also require their agents to follow such good practice;
- NHS bodies should fully record all their decisions when undertaking disposals. This is necessary to ensure that there is a full audit trail, which can be used to demonstrate that NHS bodies act properly and so protect the reputation of those bodies and their staff;
- NHS bodies should ensure that the business reasons for disposal, and the costs and benefits of alternative approaches, are coherently set out and analysed in a business case, where these are not addressed in a business case for the re-provision of services. This should be done even where there is a lack of realistic alternatives or uncertainty regarding costs and benefits. Preparing such documents not only helps bodies to make appropriate decisions, so helping them to achieve good value for money, it also demonstrates that they gave those decisions proper consideration;
- NHS bodies should obtain up to date valuations when professional advice indicates that disposal processes have covered an extended period. This is particularly important where there is no indication of value from market exposure;
- NHS bodies that are disposing of any surplus estate should ensure that all potential purchasers are made fully aware, through written communication, of any proposed and expected changes affecting value, including proposed changes in planning policy and criteria;
- NHS bodies should give full consideration to clawback arrangements, taking advice from their professional advisers, and record those considerations. Clawback arrangements may help ensure that NHS shares in any development profits that arise after a sale.