

NHS Lothian Internal Audit Report 2022/23 Property Transaction Monitoring

Assurance Rating: Moderate Assurance

Date: 23 September 2022

Contents

The contacts in connection with this report are:

Peter Clark
Director
T: 0141 223 0785
E: peter.c.clark@uk.gt.com

Jamie Fraser
Internal Audit Assistant Manager
T: 0141 223 0886
E: jamie.a.fraser@uk.gt.com

Russell Richmond-McIntosh
Principal Auditor
T: 0131 465 7757
E: Russell.mcintosh@nhslothian.scot.nhs.uk

1 Executive Summary

2 Management Action Plan

3 Appendices

Timetable

- Date closing meeting held: Client responded directly to draft report
- Date draft report issued: 08 September 2022
- Date management comments received: 23 September 2022
- Date Final report issued: 23 September 2022
- Date presented to Audit and Risk Committee: 22 November 2022

This report has been prepared solely for internal use as part of NHS Lothian's internal audit service. No part of this report should be made available, quoted or copied to any external party without Internal Audit's prior consent.

Executive Summary

Introduction

NHS bodies are required to conduct property transactions in accordance with guidance in the NHS Scotland Property Transactions Handbook (the Handbook) maintained by the Scottish Government Health and Social Care Directorate (SGHSCD).

The Handbook states that an annual internal audit review of property transactions should be carried out at each NHS body and the results reported to the SGHSCD. The review should include all acquisitions and disposals during the previous financial year, whether by purchase, lease or exchange.

In accordance with section 6.9 of the Handbook, the Board's Internal Auditors are required to categorise the conduct of transactions as follows:

A - The transaction has been properly conducted;

B - There are reservations on how the transaction was conducted;

C - A serious error of judgement has occurred in the handling of the transaction.

Scope

This audit considered whether NHS Lothian has fully complied with the relevant provisions set out within the NHS Scotland Property Transactions Handbook.

Approach

This audit covered the following property transactions which were concluded during 2021/22:

Disposals

Clermiston Clinic

10 Chalmers Crescent

Royal Hospital for Sick Children

Acquisitions

St Katharine's Centre

Leases

Acquisition by lease of SPACE (Unit 6) at 11 Harewood Road, Edinburgh

Acquisition by lease of Units A & B, 102 St Leonard's Street, Edinburgh

Acquisition by lease of Units 1.01 & 1.02 at Edinburgh Bioquarter

Through our planning work we identified the following risks which formed the basis of the audit work undertaken.

- The relevant mandatory requirements in Section B of the handbook have not been met.
- Appropriate and independent legal and property advisers have been appointed.
- Legally binding property arrangements have not been signed off by the NHS Lothian Chief Executive
- Transactions are not summarised on monitoring documentation to support the selection of cases for detailed examination during the annual monitoring exercise.
- Certification is not completed timely to confirm that the transaction has been carried out appropriately.

A complete list of staff involved in the audit and documents reviewed can be seen at Appendix 2.

Acknowledgments

We would like to thank all staff consulted during this review for their assistance and cooperation

Limitations in Scope

Please note that our conclusion is limited by scope. It is limited to the risks outlined above. Other risks that exist in this process are out with the scope of this review and therefore our conclusion has not considered these risks. Where sample testing has been undertaken, our findings and conclusions are limited to the items selected for testing.

This report does not constitute an assurance engagement as set out under ISAE 3000.

Summary of Findings

We have concluded that the controls in place in respect of the reporting, decision making and collaboration in relation to the Board's Property Transactions provides a **MODERATE** level of assurance. The table below provides a summary of the findings. The ratings assigned are based on the agreed internal audit rating scale (**Appendix 3**).

Detailed findings, recommendations and agreed management actions are found in Section 2 of this report.

MODERATE Assurance					
HIGH		MEDIUM		LOW	
-		1		-	
ADVISORY					
-					
Ref	Issue	H	M	L	A
2.1	Property transactions are not signed off or documented in a timely manner.	-	1	-	-
TOTAL		-	1	-	-

Conclusion

NHS Lothian has concluded seven property transactions during the financial year 2021/22. While we identified some delays with documentation (see Management Action Plan for finding and recommendation) we are satisfied for six out of the seven transactions that the Board has complied with the procedures as set out in the Handbook and these transactions can be rated as "A – The transaction has been properly conducted".

However we have rated the SPACE transaction as B – "There are reservations on how the transaction was conducted" due to a lack of seeking appropriate legal and property advice prior to settlement.

Property	Transaction Type	Internal Audit Opinion
Clermiston Clinic	Disposal	A
10 Chalmers Crescent	Disposal	A
Royal Hospital for Sick Children	Disposal	A
St Katharine's Centre	Acquisition	A
SPACE (Unit 6)	Acquisition by Lease	B
Units A & B, 102 St Leonard's Street	Acquisition by Lease	A
Units 1.01 & 1.02 at Edinburgh Bioquarter	Acquisition by Lease	A

Main Findings

While there was sufficient evidence to demonstrate that all transactions had acquired appropriate professional advice and had achieved the best terms possible for the Board, they were not signed off or documented in a timely manner.

These findings are discussed in full within our Management Action Plan below.

Follow Up

The follow-up process is aligned with the meetings of the Board's Audit & Risk Committee. Audit Sponsors will be contacted on a quarterly basis with a request to provide the necessary evidence for those management actions that are likely to fall due before the next meeting of the Audit and Risk Committee.

Management Action Plan

Finding 2.1 – Property transactions are not signed off or documented in a timely manner.

Medium

Control

The NHSScotland Property Transactions Handbook advises that Holding Bodies should not enter into leases unless the option appraisal clearly indicates that leasing is the most cost-effective option. Also, the views of the Legal Adviser and the Property Adviser must be sought on the terms of a proposed lease in every case.

The purpose of the certification arrangements is to ensure that the responsibility for property transactions given to Holding Bodies is properly recognised and acted upon by Bodies' Chief Executives who are responsible for the overall management of all property transactions as described in the Property Transactions Handbook.

Chief Executives of Holding Bodies are therefore responsible for ensuring that the property transactions procedures are followed and must be able to demonstrate, publicly if necessary, that the best obtainable outcome for the public interest has been achieved in each case. It has been agreed with the Scottish Government Property Division that the Director of Finance has delegated authority to sign certification.

Observation

While there was sufficient evidence to demonstrate that all transactions had been carried out with appropriate professional advice and had achieved best value and terms for the Board, they were not signed off or documented in a timely manner.

- Six transactions were signed late by the Director of Finance
- One lease (Acquisition by lease of SPACE (Unit 6) at 11 Harewood Road, Edinburgh) was entered into without seeking appropriate legal and property advice prior to settlement. It should be noted that the Board did perform a retrospective review of the Head of Terms and agreed lease with the Central Legal Office and District Valuer acting as professional advisors.
- One lease was signed by the Director of Finance before the Legal Adviser had provided sign off.
- Two transactions signed off by the Property Adviser did not have the date of sign off.
- One disposal did not have sign off from the independent adviser (District Valuer).

Detailed information on the findings above have been presented in a table at **Appendix 1**.

Risk

Although we can evidence the completeness of the transactions in line with the Handbook, there is a risk that key certification documentation to review and sign off is not completed and obtained as soon as possible and the Board is unable to demonstrate that the best obtainable outcome for the public interest has been achieved

Recommendation

It is recommended that a regular (e.g. annual) communication is sent out to staff informing them of the processes to be followed and where to find further information when entering into leases or conducting property transactions.

Management Response

The issue of dating of Certification by the Property Adviser are noted. Guidance and checks to be in place for future signing.

The Lease signed by Director of Finance prior to Legal Adviser issue is noted. By way of explanation, the Legal Adviser had stated prior to Director of Finance signing that Certification would be given; however, as the regular signatory had recently left post, the solicitor was awaiting guidance on new signing procedure. The Director of Finance was advised of this on signing.

On the sale of 10 Chalmers Crescent, the District Valuer was appointed as Property Adviser rather than Independent Adviser.

Management Action

1. Use of the Post-transaction Monitoring Form to be implemented during the transaction rather than post to provide a reminder to follow up on Certification responses and carry out checks.
2. Key stage and certification checklist to be visibly displayed on team board.
3. The issue with entering into Lease without adherence to the NHS Scotland Property Transactions Handbook is noted. The Land & Property team carried out retrospective action; however, as per the recommendation it would be beneficial to have guidance circulated widely on the requirement of NHS Lothian to carry out property transactions through the Land & Property team or Capital Planning. Land and Property team to consult with Communications to discuss most appropriate method.
4. A Lothian Capital Investment Group action is the formation of a Leases Sub-Group which will consider and report on Leases rather than each Lease being considered at the Lothian Capital Investment Group. Although still in early stages it is envisaged that this will assist with the tracking of Lease stages/certification stages.

Responsibility:
Land and Property Manager

Target Date:
1. 31 October 2022
2. 31 October 2022
3. 31 December 2022
4. 31 March 2023

Appendices

Appendix 1 – Timeline of signed certification

Property	Date of Settlement	Property Adviser	Legal Adviser	Independent Adviser	Director of Finance
Acquisition of St. Katherine's Centre	20/05/2021	07/06/2021	08/06/2021	n/a	09/06/2021
Acquisition by lease of SPACE (Unit 6) at 11 Harewood Road, Edinburgh	19/03/2021	Signed Only	07/10/2021	n/a	08/06/2022
Acquisition by lease of Units A & B, 102 St Leonard's Street	19/10/2021	12/07/2022	30/06/2022	n/a	09/08/2022
Acquisition by lease of two offices within building nine, Edinburgh Bioquarter	13/09/2022	01/06/2021	24/08/2022	n/a	28/06/2022
Clermiston Clinic	20/04/2021	17/08/2021	07/05/2021	n/a	21/04/2022
10 Chalmers Crescent	29/04/2021	Signed Only	15/12/2021	Not Signed	21/04/2022
Royal Hospital for Sick Children	11/06/2021	25/11/2021	28/09/2021	13/10/2021	31/01/2022

Appendix 2 – Staff Involved and Documents Reviewed

Staff Involved

- Leases Manager
- Land & Property Manager
- Director of Capital Planning and Projects
- Programme Director

Documents Reviewed

- NHS Lothian Property and Asset Management Strategy 2019-2024
- Finance and Resources Committee papers and minutes
- Lothian Capital Investment Group papers and minutes
- Documentation recording communication between the Board and its professional advisers
- Property valuation and marketing information
- Documented recommendations from the Board's Professional Advisers
- Transaction Certification
- Offer acceptance and supporting legal documentation

Appendix 3 – Our IA Report assurance levels

The table below shows the levels of assurance we provide and guidelines for how these are arrived at. We always exercise professional judgement in determining assignment assurance levels, reflective of the circumstances of each individual assignment.

Rating	Definition	When Internal Audit will award this level
Significant assurance	<p>The Board can take reasonable assurance that the system(s) of control achieves or will achieve the control objective.</p> <p>There may be an insignificant amount of residual risk or none at all.</p>	<p>There is little evidence of system failure and the system appears to be robust and sustainable. The controls adequately mitigate the risk, or weaknesses are only minor (for instance a low number of findings which are all rated as 'low' or no findings)</p>
Moderate Assurance	<p>The Board can take reasonable assurance that controls upon which the organisation relies to achieve the control objective are in the main suitably designed and effectively applied.</p> <p>There remains a moderate amount of residual risk.</p>	<p>In most respects the "purpose" is being achieved. There are some areas where further action is required, and the residual risk is greater than "insignificant".</p> <p>The controls are largely effective and in most respects achieve their purpose with a limited number of findings which require management action (for instance a mix of 'medium' findings and 'low' findings)</p>
Limited Assurance	<p>The Board can take some assurance from the systems of control in place to achieve the control objective, but there remains a significant amount of residual risk which requires action to be taken.</p>	<p>This may be used when:</p> <ul style="list-style-type: none"> There are known material weaknesses in key control areas. It is known that there will have to be changes that are relevant to the control objective (e.g. due to a change in the law) and the impact has not been assessed and planned for. <p>The controls are deficient in some aspects and require management action (for instance one 'high' finding and a number of other lower rated findings)</p>
No assurance	<p>The Board cannot take any assurance from the audit findings. There remains a significant amount of residual risk.</p>	<p>The controls are not adequately designed and / or operating effectively and immediate management action is required as there remains a significant amount of residual risk (for instance one Critical finding or a number of High findings)</p>

Appendix 2 - Continued

The table below describes how we grade our audit recommendations based on risks

Rating	Description	Possible features
High	Findings that are fundamental to the management of risk in the business area, representing a weakness in the design or application of activities or control that requires the immediate attention of management	<ul style="list-style-type: none"> ▪ Key activity or control not designed or operating effectively ▪ Potential for fraud identified ▪ Non-compliance with key procedures / standards ▪ Non-compliance with regulation
Medium	Findings that are important to the management of risk in the business area, representing a moderate weakness in the design or application of activities or control that requires the immediate attention of management	<ul style="list-style-type: none"> ▪ Important activity or control not designed or operating effectively ▪ Impact is contained within the department and compensating controls would detect errors ▪ Possibility for fraud exists ▪ Control failures identified but not in key controls ▪ Non-compliance with procedures / standards (but not resulting in key control failure)
Low	Findings that identify non-compliance with established procedures, or which identify changes that could improve the efficiency and/or effectiveness of the activity or control but which are not vital to the management of risk in the business area.	<ul style="list-style-type: none"> ▪ Minor control design or operational weakness ▪ Minor non-compliance with procedures / standards
Advisory	Items requiring no action but which may be of interest to management or which represent best practice advice	<ul style="list-style-type: none"> ▪ Information for management ▪ Control operating but not necessarily in accordance with best practice



grantthornton.co.uk



www.nhslothian.scot