

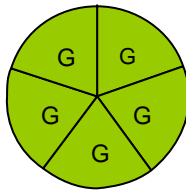
# Internal Audit



## Property Transactions

August 2015

### Report Assessment



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## 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 Directorates (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 concluded 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 complied with the relevant provisions set out within the Handbook. The audit covered the following property transactions that had concluded during 2014/15:

### Disposals

- 5 Mill Lane
- Former West Calder Clinic
- 13 Craiglea Place
- Flat 2F1, 16 Cambridge Street

### Acquisitions by lease

- Argyle House

## Acknowledgements

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

## Executive Summary

### Conclusion

NHS Lothian has concluded five property transactions during the financial year 2014/15. We are satisfied that the Board has complied with the procedures as set out in the Handbook and each transaction can be rated as “A – The transaction has been properly concluded.”

### Summary of Findings

The table below summarises our assessment of the adequacy and effectiveness of the controls in place to meet each of the objectives agreed for this audit. Definitions of the ratings applied to each action are set out in Appendix 1.

No.	Control Objective	Control objective assessment	Number of actions by action rating			
			Critical	Significant	Important	Minor
1	The relevant mandatory requirements in Section B of the Handbook have been met.	Green	-	-	1	-
2	Appropriate and independent legal and property advisers have been appointed.	Green	-	-	-	-
3	Legally binding property arrangements have been signed off by the Chief Executive.	Green	-	-	-	-
4	Monitoring pro formas have been completed as transactions progress.	Green	-	-	-	1
5	All relevant certification has been completed by the Chief Executive at the appropriate stage for each transaction.	Green	-	-	1	-

### Control Objective Ratings

Action Ratings	Definition
Red	Fundamental absence or failure of controls requiring immediate attention (60 points and above).
Amber	Control objective not achieved - controls in place are inadequate or ineffective (21 – 59 points).
Green	Control objective achieved – no major weaknesses in controls but may be scope for improvement (20 points or less).

## Main Findings

NHS Lothian concluded the following transactions during 2014/15:

Property	Transaction type	Internal Audit Opinion
5 Mill Lane	Disposal	A
Former West Calder Clinic	Disposal	A
13 Craiglea Place	Disposal	A
Flat 2F1, 16 Cambridge Street	Disposal	A
Argyle House	Acquisition by lease	A

Overall, the property transactions have been concluded using appropriate professional advice and at prices and terms that are in the best interests of the Board. The Handbook's guidance on delegated authority has been followed during the signing of all legal documentation.

However, we identified two important areas for improvement during the review:

- Veterans First Point entered into a lease for space within Argyle House. The service had taken the decision to carry out initial enquiries and enter into discussions around the terms of the lease with the landlord of Argyle House. Whilst there is evidence that the Legal Adviser was subsequently involved in negotiations, and agreed the conclusion of terms, this did not comply with the mandatory requirement that a Legal Adviser is appointed before contact is made with the landlord, or negotiations commence (Part B, section 2.8 of the Handbook).
- On two occasions, there was a delay in presenting the transaction certification to the Chief Executive for sign-off. However, in spite of this, we are satisfied that both transactions have been carried out with appropriate professional advice throughout and have achieved the best price possible for the Board.

Further details of each of these points, as well as one minor issue, are set out in the Management Action Plan, at page four of this report.

## Management Action Plan

Control objective 1: The relevant mandatory requirements in Section B of the Handbook have been met.	
1.1: Handbook procedures for the acquisition of lease property have not been properly followed.	Important
<p><u>Observation and risk</u></p> <p>It is a mandatory requirement of the Handbook that holding bodies must ensure that there is no premature or ill-considered contact with the landlord before negotiations are conducted by the Legal Adviser (Part B, section 2.8).</p> <p>Land &amp; Property was advised in February 2014 that representatives of Veterans First Point had, due to the urgency in securing more appropriate accommodation, carried out initial enquiries and entered into terms of lease discussions with the landlord of Argyle House. However, this did not comply with the aforementioned mandatory requirement that a Legal Adviser is appointed before contact is made with the landlord, or negotiations commence.</p> <p>At a later date, the appropriate option appraisal information was presented to the REAS Clinical Management Team and the Lothian Capital Investment Group (LCIG), with the option to lease Argyle House receiving support from both groups and the Director of Finance.</p> <p>Around this time, the Legal Adviser became involved in lease negotiations and there is appropriate evidence that they agreed the conclusion of terms. However, the Land &amp; Property Manager reported to the July 2014 meeting of the LCIG that the negotiation process had been made more difficult because the service had taken the lead and made initial decisions without their input.</p> <p>Without appropriate professional advice from the outset for any property transaction, there is a risk that complications and delays to negotiations could occur, or that the terms obtained are not in the best interests of the Board.</p>	
<p><u>Recommendation</u></p> <p>All services should be reminded of the requirement to involve Land &amp; Property at the outset of all property disposals and acquisitions. It may be useful to publish relevant guidance on the intranet to ensure services comply with proper procedures. Compliance should be monitored by the LCIG. These controls will help ensure that:</p> <ul style="list-style-type: none"> <li>• All negotiations are conducted from the outset by the Board's Legal Adviser; and</li> <li>• Transactions have timetables agreed to allow proper negotiation of terms.</li> </ul>	
<p><u>Management Response</u></p> <p>The issue has been raised at the LCIG and to the Director of Finance (who has the executive role for asset management for the Board). The issue has been communicated to CHPs</p>	

through a workshop held in September 2014 and also through regular dialogue with CHPs and other services.

Management Action

Communication will be issued to remind services of the need to engage with the Land & Property Department prior to discussions on property transactions with landlords, marketing agents, etc.

Responsibility: Head of Business Support &  
Asset Management – Facilities

Target date: September 2015

**Control Objective 2: Appropriate and independent legal and property advisers have been appointed.**

We identified no significant issues in relation to this control objective.

Despite MAP 1.1 showing that Legal Advisers were not appointed at the right time for all transactions, we are satisfied that appropriate professional advice and recommendations have been given for each transaction. Additional independent valuation advice was obtained for the disposal of the former West Calder Clinic.

**Control Objective 3: Legally binding property arrangements have been signed off by the Chief Executive.**

We identified no significant issues in relation to this control objective.

All legal documentation was signed by NHS Lothian's Director of Finance on behalf on the Chief Executive. This is permitted by the Handbook, which states that any legal documents which require to be signed at the conclusion of any property transaction may be signed by the Chief Executive or the Director of Finance.



<b>Control Objective 4: Monitoring pro formas have been completed as transactions progress.</b>	
<b>4.1 Monitoring pro forma have not been completed.</b>	<b>Minor</b>
<p><u>Observation and Risk</u></p> <p>The Handbook recommends that a monitoring pro forma is completed for each transaction. The pro formas serve as a useful checklist as transactions progress.</p> <p>Whilst pro formas were in place for all transactions, some sections had not been fully completed for two transactions.</p> <p>If the pro formas are not fully completed, there is a risk that necessary steps in the property transaction process are not completed or are not progressed at the appropriate times.</p>	
<p><u>Recommendation</u></p> <p>A property transaction monitoring pro forma should be completed in full for all future transactions. Progress with the pro-forma should be checked by a relevant manager on an ongoing basis.</p>	
<p><u>Management Response</u></p> <p>It is noted that the pro forma is not a mandatory requirement. However, the pro formas for this year's audit will be reviewed to ensure all information has been completed.</p> <p><u>Management Action</u></p> <p>Our processes will be reviewed and action taken during each transaction to ensure that all future pro formas are accurate and fully completed. Pro formas for all completed transactions will be reviewed prior to the annual review by Internal Audit.</p>	
<p><u>Responsibility:</u> Head of Business Support &amp; Asset Management – Facilities</p>	<p><u>Target date:</u> March 2016</p>

**Control Objective 5: All relevant certification has been completed by the Chief Executive at the appropriate stage for each transaction.**

<b>5.1 Property transaction certification has not been completed as required.</b>	<b>Important</b>
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Observation and Risk

For each transaction, the Handbook requires certification to be completed by professional advisers and the Chief Executive. Both in-house and external professionals who have given property, legal or valuation advice are required to certify that the transaction has complied with any professional advice given. In addition, the Chief Executive is required to certify the appropriateness of each transaction. Certification should take place at two stages: firstly when an offer is accepted, and secondly when the transaction proceeds have been received or paid.

Whilst there was sufficient evidence to demonstrate that all five transactions had been carried out with appropriate professional advice throughout and had achieved the best price possible for the Board, in two instances supporting documentation was not completed on time:

- For two transactions, the transaction certificates were handed late to the Chief Executive for signing; and
- On one occasion, the Legal Adviser did not sign stage one of the certification.

There is a risk that NHS Lothian completes a property transaction without adhering to all of the conditions of the Handbook. Also, without complying with the proper process, the risk is increased that professional advice is not followed or prices and conditions are not the best obtainable.

Recommendation

The Property Transactions Team should ensure certification requirements are met on a timely basis for all future transactions. We are aware that previously, the Land & Property Manager had produced a spreadsheet for the purpose of monitoring the certification process. It is recommended that this is reintroduced for future transactions.

Management Response

The Land & Property Department acknowledges the late submission of the certification to the Chief Executive for signature.

Management Action

The Land & Property Department will re-introduce the electronic monitoring form. This will be made available for inspection as part of the annual Internal Audit review.

<p><u>Responsibility:</u> Head of Business Support &amp; Asset Management – Facilities</p>	<p><u>Target date:</u> March 2016</p>
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## Appendix 1 - Definition of Ratings

### Management Action Ratings

Action Ratings	Definition
<b>Critical</b>	The issue has a material effect upon the wider organisation – 60 points
<b>Significant</b>	The issue is material for the subject under review – 20 points
<b>Important</b>	The issue is relevant for the subject under review – 10 points
<b>Minor</b>	This issue is a housekeeping point for the subject under review – 5 points

### Control Objective Ratings

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<b>Red</b>	Fundamental absence or failure of controls requiring immediate attention (60 points and above)
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