

# NHS Lothian

Internal Audit 2023/24

Property Transaction Monitoring

August 2023

## Final Report

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This report is confidential and is intended for use by the management and directors of NHS Lothian. It forms part of our continuing dialogue with you. It should not be made available, in whole or in part, to any third party without our prior written consent. We do not accept responsibility for any reliance that third parties may place upon this report. Any third party relying on this report does so entirely at its own risk. We accept no liability to any third party for any loss or damage suffered or costs incurred, arising out of or in connection with the use of this report, however such loss or damage is caused.

It is the responsibility solely of NHS Lothian's management and directors to ensure there are adequate arrangements in place in relation to risk management, governance, control and value for money.



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## Report Distribution

### Executive Lead:

- Director of Finance
- Director of Estates and Facilities

### For action:

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

### For Information:

- Corporate Management Team
- Audit and Risk Committee

# Executive summary



## Background

NHS Bodies are required to conduct property transactions in accordance with guidance in the NHS Scotland Property Transaction 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 (excambion).

In accordance with Section A, subsection 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

## Objectives



The objective of this review was to consider whether NHS Lothian has fully complied with the relevant provisions set out within the NHS Scotland Property Transactions Handbook. The audit has covered the following property transactions which were concluded during 2022/23:

- Liberton Hospital – Disposal
- Land at East Calder – Acquisition by excambion
- Bioquarter Lab 1 – Acquisition by lease

Our review focussed on the following potential risk areas:

- The relevant mandatory requirements in Section B of the Handbook that should be followed by NHS Lothian have not been met
- Appropriate and independent legal and property advisers have not been appointed
- Legally binding property arrangements have not been signed off by the Chief Executive
- Monitoring proforma have not been completed as transactions progress
- All relevant certification has not been completed by the Chief Executive at the appropriate stage of each transaction

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# Executive summary

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## Limitations in scope

Please note that our conclusion is limited by scope. It is limited to the risks outlined above. Other risks exist in this process which our review and therefore our conclusion has not considered. 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.



## Acknowledgement

We would like to take this opportunity to thank your staff for their co-operation during this internal audit.

# Headline messages



## Conclusion

### Moderate Assurance

We have reviewed the processes and controls around property transactions and have concluded that the processes have provided a **MODERATE LEVEL OF ASSURANCE**. This was confirmed through testing in specific areas of the organisation and through discussions with management.

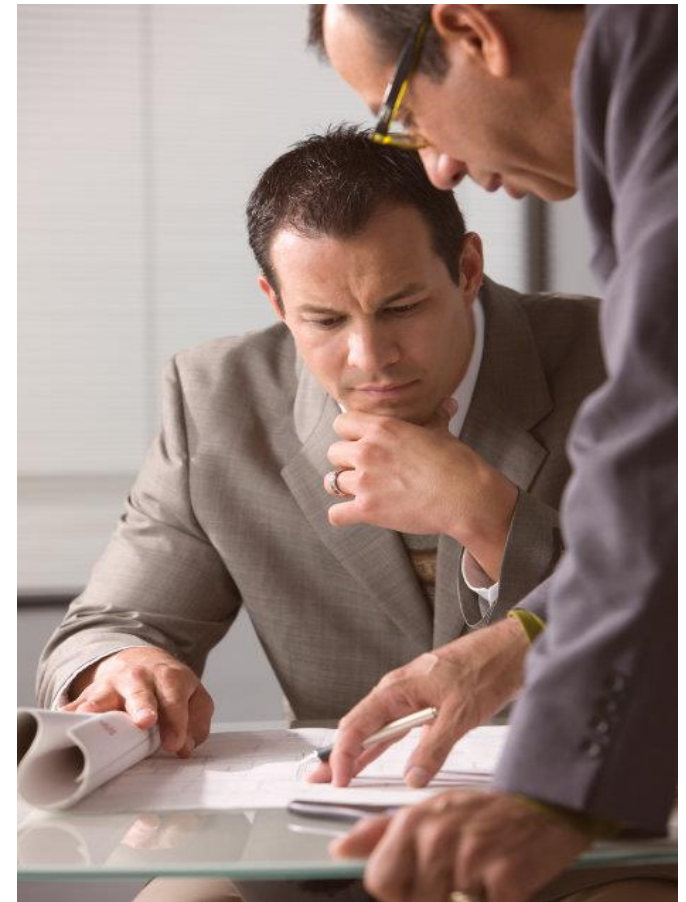
The risks reviewed are set out on the following page with the assurance rating we have assessed for each one and the number of recommendations raised. We have reported by exception against the areas where we consider that Management and the Audit and Risk Committee should focus their attention.

NHS Lothian has concluded three property transactions during the financial year 2022/23. We are satisfied that the Board has complied with the procedures as set out in the Handbook and the three transactions can be rated as “A – The transaction has been properly conducted”.

Property	Transaction Type	Internal Audit Opinion
Bioquarter Lab 1	Disposal	A
Land at East Calder	Disposal	A
Liberton Hospital	Disposal	A

However, whilst there was sufficient evidence to demonstrate that all transactions had acquired appropriate professional advice and had achieved the best terms possible for the Board, certification for one transaction had not been completed until several months after the conclusion of the transaction. Also, the monitoring proforma for the Liberton transaction was incomplete. Our role is to provide assurances over the processes and controls, and on this occasion, we identified areas where these could be strengthened. We have therefore raised recommendations around documentation and timeliness of transactions and as such have provided recommendations with a Moderate Assurance opinion overall.

We will review progress made as part of our recommendation tracking during the 2023/24.



# Headline messages



## Conclusion

We have raised three recommendations. The grading of these recommendations is based on risk, and is summarised in the table below.

Risks	Assurance rating	Number of recommendations			
		High	Medium	Low	Imp
The relevant mandatory requirements in Section B of the Handbook that should be followed by NHS Lothian have not been met	Significant Assurance	-	-	-	-
Appropriate and independent legal and property advisers have not been appointed	Significant Assurance	-	-	-	-
Legally binding property arrangements have not been signed off by the Chief Executive	Significant Assurance	-	-	-	-
Monitoring proforma have not been completed as transactions progress	Significant Assurance	-	-	1	-
All relevant certification has not been completed by the Chief Executive at the appropriate stage of each transaction	Moderate Assurance	-	1	1	-

# Summary of findings



## Examples of where recommended practices are being applied

- Property transactions concluded during the financial year 2022/23 are consistent with the Board's Property and Asset Management Strategy, or are justified by a particular need.
- Appropriate Professional Advisers had been appointed and consulted throughout each transaction. All negotiations have been conducted by, or with involvement of, the Central Legal Office.
- Independent Valuers had been appointed where the transaction had been particularly difficult or complex.
- Trawl procedures for the disposal of Liberton Hospital had been completed prior to sale.
- The off-market sale of Liberton Hospital had been approved by the Board's professional advisers, and the NHSL Board.
- Space utilisation continues to be reviewed with the Board's focus being on reducing the corporate office allocation.
- Certification had been completed to confirm that the transactions had been carried out appropriately.
- All transactions had been notified to and approved by the NHS Lothian Capital Investment Group, and Finance & Resources Committee.



# Detailed findings & action plan

4.1

Significant Assurance

Monitoring proforma have not been completed as transactions progress

Finding and implication	Audit recommendation	Management response, including actions
<p><b><u>Monitoring Proforma's not adequately completed</u></b></p> <p>The Property Transactions Handbook states in Part A at sections 6.7 – 6.11 that holding bodies should complete a monitoring proforma for every transaction. The pro forma is designed to be used as an aide-memoire for staff to confirm that key steps within the property transaction process have been completed.</p> <p>However, for one transaction, the monitoring proforma had not been completed. Specifically, the proforma for the disposal of Liberton Hospital had no dates added for when the legal adviser's advice had first been sought, or when the property adviser had been appointed. The date off acceptance of the offer nor the professional valuation were recorded.</p> <p>Where proformas are incomplete there is a risk that key steps within the property transaction process are not completed.</p>	<p><b>Recommendation 1</b></p> <p>Monitoring pro forma should be fully complete prior to the annual internal audit review.</p>	<p><b>Actions:</b> Although it is intended that proformas will be updated throughout the transaction, a review meeting will be held at the end of March each year to ensure that the proforma for each in-year transaction is complete.</p> <p><b>Responsible Officers:</b></p> <p>Land and Property Manager, Facilities Programme Director, Capital Planning and Projects</p> <p><b>Executive Lead:</b> Director of Estates and Facilities</p> <p><b>Due Date:</b> 31 March 2024</p>



# Detailed findings & action plan

5.1	Moderate Assurance	All relevant certification has not been completed by the Chief Executive at the appropriate stage of each transaction	
Finding and implication		Audit recommendation	Management response, including actions
<p><b>Late Signing of Certification by Director of Finance</b></p> <p>While there was sufficient evidence to demonstrate that all transactions had been carried out with appropriate professional advice and had achieved the best price and terms possible for the Board, the late signing of certification by the Director of Finance had been noted for the East Calder Transaction.</p> <p>Our findings have been presented in a table and provided in this report at Appendix 1.</p> <p>Although we can evidence the completeness of the transactions in line with the Handbook, there is a risk that if key certification documentation to review and sign off is not obtained and completed as soon as practicable, the Board is unable to assure itself prior to the transaction completion, and potentially risk not demonstrating that the best obtainable outcome for the public interest has been achieved.</p> <p>Best practice is for a Certification Action Checklist to be used to monitor the status of transaction certification. While a Certification Action Checklist had been completed for the Bioquarter transaction, it was not utilised for the East Calder and Liberton transactions. Similar findings have been made in previous audit reports. As such we have raised this as a low-risk recommendation rather than an improvement point to ensure that we follow this up in future reviews.</p>		<p><b>Recommendation 2</b></p> <p>It is advised that property certification is completed and obtained as soon as possible following conclusion of the transaction to provide appropriate transparency and oversight.</p>	<p><b>Actions:</b> The Certification Action Checklist will be used for transactions as noted below. On settlement of the transaction, Certification will be obtained from Advisers and Executives as soon as can be achieved.</p> <p><b>Responsible Officers:</b></p> <p>Land and Property Manager, Facilities Programme Director, Capital Planning and Projects</p> <p><b>Executive Lead:</b> Director of Estates and Facilities</p> <p><b>Due Date:</b> 31 March 2024</p>
		<p><b>Recommendation 3</b></p> <p>The Certification Action Checklist should be adhered to for all future transactions.</p>	<p><b>Actions:</b> A shared digital area for documentation is to be created and work items such as the Certification Action Checklist will be stored, updated and reviewed periodically. Completed forms to be submitted for each transaction.</p> <p><b>Responsible Officers:</b></p> <p>Land and Property Manager, Facilities Programme Director, Capital Planning and Projects</p> <p><b>Executive Lead:</b> Director of Estates and Facilities</p> <p><b>Due Date:</b> Shared area created and populated by 31 August 2023. Otherwise ongoing to 31 March 2024</p>

# Appendices

# Appendix 1: Timeline of Signed Certification

Transaction	Date of Settlement	Property Adviser	Legal Adviser	Independent Adviser	Director of Finance
Liberton Hospital	31/03/2023	06/05/2023	16/05/2023	13/12/2022	30/05/2023
Bioquarter Lab 1	22/03/2023	04/04/2023	31/03/2023	n/a	11/04/2023
Land at East Calder	04/07/2022	02/06/2022	07/06/2022	n/a	13/06/2023

# Appendix 2: Staff involved and documents reviewed



## Staff involved

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



## Documents reviewed

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



# Appendix 2:

## Our 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*	Description
<b>Significant Assurance</b>	<p>The Board can take reasonable assurance that the system(s) of control achieves or will achieve the control objective. 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>
<b>Moderate Assurance</b>	<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. 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>
<b>Limited Assurance</b>	<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"> <li>• There are known material weaknesses in key control areas.</li> <li>• 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.</li> </ul> <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>
<b>No assurance</b>	<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 a number of HIGH rated recommendations)</p>

# Appendix 4:

## Our recommendation ratings

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

Rating	Description	Possible features
<b>High</b>	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"> <li>• Key activity or control not designed or operating effectively</li> <li>• Potential for fraud identified</li> <li>• Non-compliance with key procedures/standards</li> <li>• Non-compliance with regulation</li> </ul>
<b>Medium</b>	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"> <li>• Important activity or control not designed or operating effectively</li> <li>• Impact is contained within the department and compensating controls would detect errors</li> <li>• Possibility for fraud exists</li> <li>• Control failures identified but not in key controls</li> <li>• Non-compliance with procedures/standards (but not resulting in key control failure)</li> </ul>
<b>Low</b>	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"> <li>• Minor control design or operational weakness</li> <li>• Minor non-compliance with procedures/standards</li> </ul>
<b>Improvement</b>	Items requiring no action but which may be of interest to management or which represent best practice advice	<ul style="list-style-type: none"> <li>• Information for management</li> <li>• Control operating but not necessarily in accordance with best practice</li> </ul>

