

NHS Lothian

Internal Audit 2024/25

Property Transaction Monitoring

June 2024

FINAL REPORT

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Contents



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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.



Section	Page
Executive summary	03
Headline messages	05
Summary of findings	07
Detailed findings & action plan	09

Appendices

Appendix 1: Timeline of signed certification	11
Appendix 2: Staff involved and documents reviewed	12
Appendix 3: Our assurance levels	13
Appendix 4: Our recommendation ratings	14

Report Distribution

Executive Lead:

- Craig Marriot, Director of Finance
- Morag Campbell, Director of Estates and Facilities

For action:

- Anne Marsden, Leases Manager - Facilities
- Christopher VanRietvelde, Land & Property Manager – Facilities

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 2023/24:

- Erskine, Veteran's First Point – Acquisition by Lease
- WH Smith Retail Unit, St John's Hospital – Disposal 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

Executive summary



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

Significant Assurance

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

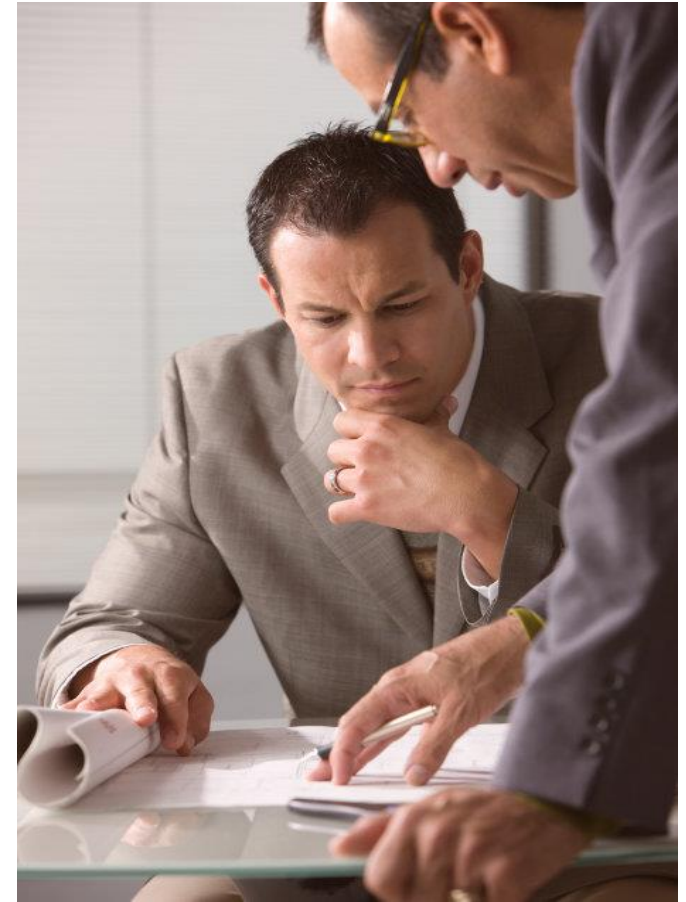
The risks reviewed are set out on the following page with the assurance rating we have assessed for each one and the number of recommendations raised. We have reported by exception against the areas where we consider that Management and the Audit and Risk Committee should focus their attention.

NHS Lothian has concluded two property transactions during the 2023/24 financial year. We are satisfied that the Board has complied with the procedures as set out in the Handbook and the two transactions can be rated as “A – The transaction has been properly conducted”.

Property	Transaction Type	Internal Audit Opinion
Erskine House – Veteran's First Point	Acquisition	A
WH Smith Retail Unit - SJH	Disposal	A

There was sufficient evidence to demonstrate that both transactions had acquired appropriate professional advice and had achieved the best terms possible for the Board. Noteworthy, certification for one transaction had not been completed until several months after the conclusion of the transaction due to bereavement leave. Also, the Certification Action Checklist for this transaction was incomplete. We have therefore raised two recommendations around documentation and timeliness of transactions with a Significant Assurance opinion overall.

We will review progress made as part of our recommendation tracking during 2024/25.



Headline messages



Conclusion

We have raised one recommendation. The grading of this 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	-	-	-	-
All relevant certification has not been completed by the Chief Executive at the appropriate stage of each transaction	Significant Assurance	-	-	2	-

Summary of findings



Examples of where recommended practices are being applied

- Property transactions concluded during the financial year 2023/24 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.
- 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.
- Monitoring Proformas and Certification Action Checklists have been completed for both transactions to provide a useful aid memoir for each, alongside the monitoring of the completion of certification after settlement.



Detailed findings & action plan

5.1	Significant 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>Late Signing of Certification</p> <p>Whilst there was sufficient evidence to demonstrate that both transactions had been carried out with appropriate professional, the late signing of certification by the Property Adviser, Legal Adviser and Director of Finance had been noted for the Erskine House.</p> <p>Our findings have been presented in a table and provided in this report at Appendix 1.</p> <p>From discussions, we note that the delay was due to bereavement leave of the Lease Manager.</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 used for both transactions, there was no information recorded in the Erskine House Checklist to demonstrate that the return of the certification was under routine review and there was no escalation route in place for staff absence, which creates a risk that delays in the process occur resulting in non-compliance with the Handbook.</p>		<p>Recommendation 1</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>Actions: As soon as a new transaction is obtained, add the Certification Checklist to the shared stored area and review periodically to ensure correct completion is carried out on time.</p> <p>Responsible Officer: Anne Marsden</p> <p>Executive Lead: Morag Campbell</p> <p>Due Date: on going to 31 March 2025</p>
		<p>Recommendation 2</p> <p>The Certification Action Checklist should be adhered to for all future transactions with a clearly identified escalation route for delays identified during the process.</p>	<p>Actions: Review Checklist periodically to ensure it is escalated and noted if any reason for delays.</p> <p>Responsible Officer: Anne Marsden</p> <p>Executive Lead: Morag Campbell</p> <p>Due Date: ongoing to 31 March 2025</p>

Appendices

Appendix 1: Timeline of Signed Certification

Transaction	Date of Settlement	Property Adviser	Legal Adviser	Independent Adviser	Director of Finance
Erskine House – Veteran’s First Point	18/03/2023	14/08/2023	11/09/2023	N/A	10/10/2023
WH Smith Retail Unit - SJH	16/06/2023	31/07/2023	26/07/2023	N/A	08/08/2023

Appendix 2: Staff involved and documents reviewed



Staff involved

- Leases Manager - Facilities
- Land & Property Manager – Facilities



Documents reviewed

- NHS Lothian Property and Asset Management Strategy
- Lothian Capital Investment Group papers and minutes
- Documentation recording communication between the Board and its professional advisers
- Marketing documentation and assessment of submitted offers
- Documented recommendations from the Board's Professional Advisers
- Transaction Certification
- Offer acceptance and supporting legal documentation



Appendix 3:

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
Significant Assurance	<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>
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. 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 respects 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 several 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
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
Improvement	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

