



NHSScotland Property Transactions Handbook

A: Management

Objectives and Framework

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OBJECTIVES AND FRAMEWORK

Objectives

This part of the Handbook deals with the management of NHSScotland property transactions, which is the responsibility of Holding Bodies. Without proper management, property transactions are likely to take longer and cost more than necessary to complete. The efficient and effective management of transactions will assist the Holding Body to achieve the best outcome for the public interest. Failure to discharge this responsibility effectively can leave the Chief Executive of the Holding Body open to serious criticism from the Scottish Parliament and audit.

Framework

The key general management issues on property transactions are dealt with in this Section of the Handbook, as are some of the practical issues such as option appraisal and post-transaction monitoring which form the cornerstones of the arrangements for NHSScotland property transactions.

RESPONSIBILITIES

Introduction

1.1 A key requirement for the efficient handling of property transactions is a clear understanding of who does what. Without that there is likely to be inefficient sharing of responsibility, duplication of effort, misunderstanding and insufficient accountability for decisions. It is necessary therefore to allocate responsibilities and ensure that all those involved are aware of their role. These roles are as follows:

Scottish Government Health and Social Care Directorates (SGHSCD)

1.2 In relation to *individual transactions*, SGHSC's role is to consider any cases notified to the Accountable Officer by Holding Bodies as required by the Handbook. It is for Holding Bodies to provide the necessary supporting information when transactions are so notified; if such supporting information is not provided, the papers received will be returned to the Body for completion of

the necessary action. Holding Bodies are responsible for undertaking the preparation of supporting material, instructing the Legal Adviser or commissioning the necessary advice from other advisers.

1.3 The SGHSC's responsibilities on property transactions reflect the Accountable Officer's continuing overall responsibility for financial accountability, securing value for money, supporting the delivery of national and local healthcare strategies, supporting the need to identify essential and non-essential property and to translate the latter to surplus and to disposal. Broadly, the SGHSC's role in support of these responsibilities is reflected within the requirements for Property and Asset Management Strategies, the maintenance and review of transaction procedures, and overall post-transaction monitoring. Detailed responsibilities are:

- The maintenance and review of property transactions procedures to ensure compliance with general Scottish Government policy and to reflect experience;
- The maintenance of mandatory requirements;
- Consideration of transactions notified to the Accountable Officer as required by the Handbook;
- Arrangements for post-transaction monitoring;
- Action arising from unacceptable monitoring exception reports submitted by Audit Committees of Holding Bodies;
- Integration of efforts to dispose of surplus property and acquire property with general property management action to improve its utilisation and rationalisation.

The SGHSC has no operational role in the day-to-day management of transactions.

See <http://www.pcpd.scot.nhs.uk/> Asset Management section

Holding Bodies

1.4 Holding Bodies are responsible for the management of all property transactions. This includes identifying property for disposal or acquisition, initiating the necessary preparatory investigations (including planning), arranging sales marketing, supervising progress, certification and overseeing completion of transactions. They are also responsible for notifying transactions to the Accountable Officer where required by the Handbook. In particular Bodies are responsible for:

1.4.1 Considering priority interests, i.e.

- Other NHSScotland interests (prior to formal declaration as surplus);
- Other Scottish Government related body interest (trawl procedures);
- Other priority interests – former owners, health related interests, special purchaser.
- Seeking appropriate professional advice where positive interest received from priority interest.
- Ensuring that the mandatory requirements are followed.
- Commissioning professional advice.
- Issuing the necessary instructions to the Legal Adviser and other professional advisers;
- In the case of disposals, ensuring that the planning potential of the property is completely clarified, agreeing the marketing arrangements, arranging for offers to be opened, and taking account of professional advice on the acceptance of offers.
- In the case of acquisitions, ensuring that the need for additional property has been clearly established, that best value is obtained and where leasing of property is proposed that it is the most cost effective option.
- Resolving any differences with professional advisers.
- Deciding when transactions should be notified to the Accountable Officer.
- Acceptance of offer following submission to and approval of Accountable Officer where required.
- Supervising the completion of the transaction, and co-ordinating the necessary input from the Legal Adviser and other advisers.
- Completion of all appropriate certification, including the commissioning of supporting certification from appropriate professional advisers.

- Completion of monitoring pro-formas and provision of further supporting information to assist and support post-transaction monitoring.

1.5 Holding Bodies have a particular responsibility for co-ordinating receipt of advice from those involved in transactions, ensuring that the necessary action is taken and ultimately making the required decisions following any necessary notification to the Accountable Officer.

Property Advisers

1.6 The arrangements for handling NHSScotland property transactions provide for the appointment of a Property Adviser to supply key professional advice to the Holding Body. (Guidance on the appointment of Property Advisers is given in paragraphs 1.7 to 1.9 of Procedures).

Independent Valuer

1.7 An Independent Valuer must be appointed in major or potentially difficult disposal cases to provide additional professional advice. The Independent Valuer must be independent of the marketing agent appointed to handle the sale. The Valuer appointed should be a corporate member of the Royal Institution of Chartered Surveyors with relevant experience of the type of property and locality in which it is situated. Normally in-house surveyors are not used to provide valuations on disposal and should not therefore be appointed as the Independent Valuer.

The circumstances in which an Independent Valuer must be appointed are:

- Where the property itself is of an unusual or exceptional nature; or
- Where the transaction is of an unusual or exceptional nature; or
- Where it is likely to be difficult to establish what planning uses might be permitted, or the uses upon which prospective purchasers might base their bids; or
- Where the selling price is likely to be in excess of £5M; or
- Where sale receipts are to be phased over time [e.g. possible deferred receipt post-date of entry]
- Where direct off market sale to a commercial organisation is involved (see Procedures paragraph 2.17.6)

1.8 The functions of the Independent Valuer should include:

- to advise on establishment of the guide price;
- to advise, in consultation with the marketing agent, on the final price in sales on the open market;
- to advise on the range of offers which may be expected and acceptability of bids received within the sale deadline;
- to advise on any authentic late or revised bids received after a closing date but before the sale has become legally binding;
- where the final price is at a price below the guide price to certify, jointly with the marketing agent, that it is the best offer reasonably obtainable;
- to advise on any other queries and liaise with the Property Adviser, the Legal Adviser, planning adviser and the in house property adviser as the Board instructs/wishes.

Scottish Government Property Division

Under the terms of Scottish Public Finance Manual

1.9 Holding Bodies within the Scottish Administration must seek advice at the earliest opportunity from the Scottish Government's Property Division when a disposal of property or the disposal of an interest in a property is being considered. The Holding Body must ensure that the Scottish Government's Property Division is notified of relevant proposed disposals of property at the earliest opportunity and at least 3 months prior to them being advertised on the open market.

If the disposal is part of a Public Private Partnership project the Holding Body must refer to the relevant guidance within the SCIM and any Outline or Full Business case must contain confirmation that advice has been sought from SG Property Division.

External Professional Advice/Property Planning/Marketing Agents

1.10 It is important that Holding Bodies choose appropriate professional advice for each transaction. It may be appropriate to appoint more than one professional adviser for the same transaction, for example, a planning consultant may be appointed in the early stages of a disposal to advise on appropriate alternative uses with a different consultant being appointed to advise on marketing. Many firms now provide multi-disciplinary advice

combining for example specialist planning valuation and marketing skills within the same organisation.

Agents should be appointed following competitive tender.
<http://www.gov.scot/Topics/Government/Procurement>

Planning Adviser

1.11 Holding Bodies may appoint a Planning adviser by tender to advise on all transactions requiring appropriate advice to Boards interests in the general planning process including representation in Planning Appeals.

1.12 The advice of marketing agents must be sought in every disposal case, except for modest individual disposals i.e. where SG Property Division estimates the value of the property to be under £10,000. If a Body has a number of small sales, it is open to them to negotiate a contract with an agent covering all the properties. Qualified private sector valuers or the District Valuer of the Valuation Office Agency Scotland (VOA) may be used with selection being guided by value for money considerations, weighing the expertise and service offered against the cost.

Legal Adviser

1.13 All legal aspects of NHSScotland property transactions must be handled by Central Legal Office (CLO). Holding Bodies are responsible for issuing all the necessary instructions to their solicitor covering their requirements and it is for the solicitor to advise Bodies on how these requirements can best be met in legal terms.

Specialist Legal Advisers

1.14 With the prior agreement of the CLO Holding Bodies may appoint Specialist Legal Advisers to deal with specialist areas of the law.

In-House Property Adviser

1.15 NHS Boards will appoint an officer to act as In-house Property Adviser for each transaction to ensure the proper appointment of all necessary Professional Advisers and to instruct, manage and ensure the proper conduct of the Transaction in accordance with the terms of the NHSS Property Transactions Handbook.

The NHS Board Chief Executive

1.16 The NHS Board Chief Executives will have overall responsibility for the proper conduct of each Transaction in accordance with the terms of the NHSS Property Transactions Handbook.

STATUTORY BACKGROUND AND DELEGATION

2.1 NHSScotland was created by statute and must operate within the terms of the relevant statutory basis for its existence and operation. In addition to the statutes, there are a large number of forms of subordinate legislation and SGHSC instruction letters. Amongst the many matters controlled in this way is the legal basis for the conduct of property transactions and Holding Bodies must be aware of and operate within the limits of their powers. This system provides the basis for the delegation of powers from the Scottish Ministers through the Accountable Officer to individual Holding Bodies. Updates to legislation should be reviewed regularly through CLO. The most recent and important legislative changes include the [Public Bodies \(Joint Working\) \(Scotland\) Act 2014](#).

2.2 The detail of the relationship and the powers delegated to Holding Bodies requires to be considered in each instance. The terms of the relevant provisions should be considered with the Legal Adviser as CLO have full access to the relevant provisions for each type of transaction. The provisions are too lengthy to detail in this Handbook. Main themes are as follows:

2.2.1 Ownership of NHSScotland property rests with the Scottish Ministers not with Holding Bodies;

2.2.2 Holding Bodies buy, manage and sell property on behalf of the Scottish Ministers in terms of delegated authority;

2.2.3 Not all of the Scottish Ministers' powers re. NHSScotland property matters have been delegated to Holding Bodies, e.g. compulsory purchase powers are retained by the Scottish Ministers alone as are powers in relation to any proposed disposal of property that would continue to be used for the purposes of NHSScotland by another party following disposal.

2.2.4 Holding Bodies acting as Trustees for endowment property must manage the property in accordance with the terms of each endowment. Legal advice should be sought where required in this regard. (Endowment property is deemed private property of the Holding Body, subject to the endowment terms and is not NHSScotland property and therefore not subject to this Handbook). Nevertheless, subject to the terms of each specific endowment such transactions should be managed in accordance with terms of the Property Transactions Handbook as far as this is possible.

Execution of Documents

2.3 Any legal documents or instruments which require to be signed at the conclusion of any property transaction may, in the case of property owned by Scottish Ministers, be signed on behalf of the Scottish Ministers by the Chief Executive of the Holding Body or by the Director of Finance. These provisions exclude:

- signing of documentation to raise and complete an acquisition by Compulsory Purchase Order which must be carried out by SGHSC (see paragraph 2.2.3 above);
- any other instrument should not be signed until the arrangements for notification to the Accountable Officer in terms of Annex I have been completed.

Legal Adviser

2.4 Holding Bodies should seek advice from Central Legal Office on any matters relating to statutory powers or the signing of documents. <http://www.clo.scot.nhs.uk/>

CONTEXT AND THE SCOTTISH CAPITAL INVESTMENT MANUAL

Introduction

3.1 All NHSScotland bodies are covered by the terms of the Scottish Capital Investment Manual (SCIM), which sets out the requirements for capital investment decisions. This was fully revised in April 2009 and issued as CEL 19 (2009). The current version of the SCIM is available at: <http://www.scim.scot.nhs.uk/>

3.2 Property transactions do not sit in isolation but are part of a process concerned with implementing service improvement or change. Such transactions therefore sit within the context of a programme or project requiring investment/disposal and are therefore within the context of the SCIM.

3.3 This Handbook therefore provides the supporting guidance to be followed by NHSScotland bodies in ensuring that, following the approval of Standard or Full Business Cases, the property transactions that support the implementation of a preferred solution can be undertaken and implemented efficiently and effectively.

3.4 Holding Bodies will be aware of the requirements contained within the Scottish Capital Investment Manual to apply option appraisal techniques in arriving at a preferred option where alternative courses of action exist to resolve a defined problem. Property transactions should therefore, support the implementation of preferred option and result from the application of such appraisal techniques.

Post-transaction Monitoring Procedures

3.5 In their monitoring of property transactions (see Section 6), the inspectors take account of the use made of option appraisal and links to approved business cases prepared and approved in accordance with SCIM requirements.

PPP (Public Private Partnerships)

General

4.1 PPP projects may involve property transactions. Holding Bodies must have regard to the guidance provided in Part 3 of the SCIM PPP Guide, which covers such matters. This can be accessed at:

http://www.scim.scot.nhs.uk/PDFs/Manuals/PPP/Part3/PPP_Guide3_Full.pdf

4.2 Although property transactions within PPP projects are not subject to separate notification in terms of Annex I, the property element needs to be taken into account in the financial assessment of whether such schemes offer value for money. Surplus land resulting from a PPP deal should only be included in such deals where it is clearly better value for money to do so. Part 3 of the SCIM PPP Guide provides detailed guidance.

4.3 The execution of the Disposition (i.e. title deed) for all disposals related to PPP projects must be completed by SGHSC where the property concerned would continue to be used for the purposes of NHSScotland by another party (see Management: Section 2) – even if the transaction does not otherwise require to be referred to the Accountable Officer.

INCOME GENERATION

5.1 Income generation is intended to benefit NHSScotland by generating additional funds to enhance and improve patient care. Circular SHHD/DGM (1989)66, along with NHS Circular GEN (1993)15, [MEL \(2000\)13](#) and [HDL\(2005\)59](#), embody the current SGHSC guidance on income generation schemes.

Private Finance

5.2 Any income generation scheme, which involves an element of PPP within a proposed property transaction, should be considered in the light of the guidance at Management: Section 4.

Consultations with SGHSCD

5.3 SG Directorate for Finance, eHealth and Analytics has the policy remit for income generation matters. This arrangement should not be confused with the need for Holding Bodies to notify the Accountable Officer of certain property transactions in terms of Annex I. Where notification to the Accountable Officer is necessary for a property transaction within an income generation scheme, Holding Bodies should have regard to the guidance set out in Management: Sections 4 and 5, and in Procedures, including that relating to the need to undertake option appraisals.

Holding Bodies' Powers

5.4 Section 7 (1) of the Health and Medicines Act 1988 (the 1988 Act) as amended by the 1990 Act, allows the Scottish Ministers, and by direction Health Boards, to (i) use NHS Scotland property to develop commercial opportunities not directly related to health care, and (ii) acquire land by agreement and manage and deal with land. Reference SHHD/DGM(1989)66. Section 7 (1) provides greater flexibility for property transactions. It also makes possible (subject to necessary controls) the more profitable forms of property transaction which are available to private sector landowners but all such property transactions must be fully appraised and give definable and well-judged benefits compared to alternative means of property disposal. Highly speculative activities (e.g. direct commercial developments or speculating in property investment and land dealing markets) will not be permitted – nor, normally, will the commercial development of land for private sector housing.

POST – TRANSACTION MONITORING

Introduction

6.1 In return for the operational independence Holding Bodies have in property transactions, they are monitored on their implementation of the procedures in this Handbook. The results of this post-transaction monitoring are considered carefully by SGHSC.

6.2 The arrangements described in this Section apply to all Holding Bodies.

Monitoring Arrangements

6.3 Post-transaction monitoring must be an integral part of the internal audit programme. The Audit Committees of the Boards of Holding Bodies are responsible for the oversight of the programme. The Internal Auditor reports his/her findings to the Audit Committee. The Audit Committee's oversight of the work of the Internal Auditor includes reporting to the Board.

6.4 The Board is responsible for submitting monitoring reports (including nil returns) to SGHSC no later than **30th October annually**. Such monitoring reports should be submitted with appropriate supporting information and explanations for all transactions not classed as Category A (see 6.9 below). It is open to SGHSC to request further information following such reports, including case papers, and to stipulate action requirements. SGHSC may also establish its own (external) monitoring arrangements if required in particular circumstances. Holding Bodies are required to conduct post-transaction monitoring in accordance with the arrangements set out in this section.

6.5 The Internal Auditor, through the Audit Committee, should commission appropriate external support in undertaking post-transaction monitoring. The main task of such support will be to provide professional input into the inspection of transactions and assistance in the preparation of monitoring reports. Those undertaking the inspection

should therefore have access to appropriate expertise in the property field. It is open to the Internal Auditor to appoint from the private sector, to use Property Division of the Scottish Government, or the Valuation Office Agency. In appointing from the private sector, Holding Bodies should not engage firms who have acted as consultants or agents to the Holding Body during the period being monitored.

6.6 In the detailed arrangements for monitoring, the Boards of Holding Bodies and Audit Committees should provide for appropriate functional separation between officers responsible for carrying out the monitoring/audit tasks, and those handling property transactions.

Monitoring Proformas

6.7 The basis for monitoring is a monitoring proforma, which should be completed by Holding Bodies for every transaction. A copy of the form, which should be copied locally, is at:

http://www.pcpd.scot.nhs.uk/PropTrans/PTHBDocs/PTHB_Mng_PTM_Prfrm.doc

These forms should be used to assist in the selection of cases for detailed examination during the annual monitoring exercise. The size of the sample of cases selected for detailed examination should be based on the number of cases, their materiality, risk profile, the advice of a professional adviser and the internal auditor's professional judgement. Based on these factors, the internal auditor should ensure that a reasonable number of cases are reviewed to enable them to obtain sufficient, reliable and relevant evidence and to provide appropriate assurance on property transactions. The details should include completed monitoring proformas for every transaction together with any appropriate certification required. (See Annex III).

6.8 For the purposes of monitoring, transactions are broken down into the following categories:

6.8.1 sale involving proceeds:

- of under £100,000 or,
- of £100,000 or more,

6.8.2 sale of NHS houses/residential accommodation:

- to sitting tenants;
- on the open market;

6.8.3 grant of lease with a rental value:

- under £10,000 per annum or;
- of £10,000 per annum or more;

6.8.4 acquisition of property;

- by purchase;
- by lease;

6.8.5 transactions involving an excambion

6.9 In preparing inspection reports on individual transactions, Internal Auditors and professional advisers are required to use the following categorisation:

A - 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

6.10 The monitoring proforma can also be a useful aide-mémoire. It is recommended that a copy is attached to the front of each transaction file and is updated as the transaction progresses. Such action will facilitate provision of such documentation to the Holding Body's Audit Committee with other papers at the start of each monitoring cycle.

Monitoring Reports

6.11 The report should be sent to: Deputy
Director
Capital and Facilities Division
Health Finance and Infrastructure Team
SGHSC | Directorate for Health Finance, eHealth and Analytics
Room BR.07 St
Andrew's House
Edinburgh EH1 3DG