



PROPERTY TRANSACTIONS POLICY

Approved by Shetland NHS Board: October 2006

Review Date: October 2009

**Responsible Officer: Director of
Finance**

NHS Shetland Property Transactions Policy

NHS Circular HDL (2001) 15, NHSScotland Property Transactions advises NHS Boards that a revised version of the NHS Scotland Property Transactions Handbook has been issued. The Handbook contains guidance and procedures on the operational aspects of all property transactions and includes the following sections:

PART A MANAGEMENT

1. Management and Organisation
2. Responsibilities
3. Statutory Background and Delegation
4. Option Appraisal
5. PPP/PFI
6. Income Generation
7. Post-transaction Monitoring

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2. Mandatory Requirements: Disposal
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2. Sale of Property
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4. Leasing of NHS Scotland Property
5. Sale of Health Centres/Surgeries
- 6 Acquisition of Property

A - MANAGEMENT

Objectives

- 1.1 This Part of the Handbook deals with the management of NHS Scotland property transactions - a day-to-day responsibility of the Board. Without proper management and organisation property transactions are likely to take longer than necessary to complete, and, equally important, efficient and effective management of transactions will assist the Board to achieve the outcome which is the best obtainable for the public interest - the key objective for all property dealings in the public sector. Failure in either respect can leave the Chief Executive of the Board open to serious criticism from the Scottish Parliament.

Framework

- 1.2 The key general management issues on property transactions are dealt with in Part A. However proper management of transactions also depends on the Board relating these general issues to the detailed aspects of organisation dealt with elsewhere in the Handbook. This part of the Handbook therefore deals with the basic organisational framework, which runs through the rest of the Handbook. It also places in context and highlights some of the practical issues such as option appraisal and post-transaction monitoring which form the cornerstones of the arrangements for NHS Scotland property transactions - and which are mentioned frequently throughout the Handbook.

Responsibilities

- 2.1 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, and misunderstanding and insufficient accountability for decisions. It is necessary therefore to allocate responsibilities and ensure that all those involved are aware of their roles.

B MANDATORY REQUIREMENTS

The mandatory procedures that the Board is obliged to adopt are as follows:

1.0 GENERAL

Introduction

- 1.1 The Board is responsible for all matters pertaining to the management of NHS Scotland property transactions including the co-ordination of all necessary inputs and taking appropriate decisions.
- 1.2 This Part of the Handbook deals with mandatory requirements for property transactions with which the Board must comply.

Application

- 1.3 The mandatory requirements apply uniformly to all Boards. This is because they embody the minimum safeguards required to protect the interests of the taxpayer, the Accountable Officer and Chief Executives of Boards who are responsible for the overall management of all property transactions as described elsewhere in the Handbook.

General Mandatory Requirements

- 1.4 It is the responsibility of the Board to ensure that it sells, purchases, or leases property at a price and on other conditions which are the best obtainable at that time having regard for the mandatory requirements.
- 1.5 Where specific procedures are not laid down the Board must act in accordance with best professional advice.
- 1.6 All legal aspects of the Board's property transactions must be handled by a qualified Legal Adviser.

- 1.7 The advice of the appointed Legal Adviser must be fully taken into account in all property disposals whether by sale, purchase or lease.
- 1.8 A Property Adviser must be appointed for every transaction unless alternative arrangements have been agreed with the Scottish Executive Health Department (SEHD).
- 1.9 An Independent Valuer must be appointed in major or potentially difficulty cases, unless alternative arrangements have been agreed with the SEHD.
- 1.10 The advice of the Property Adviser must be obtained on every transaction whether by sale, purchase or lease except where modest individual staff houses are involved.
- 1.11 The SEHD must be alerted immediately to any matters concerning property transactions which are likely to inspire a Ministerial interest, give rise to related judicial proceedings, raise questions of a conflict with Scottish Ministers' other responsibilities or are otherwise novel or contentious.

Particular Mandatory Requirements

- 1.12 The Sections which follow deal with the particular mandatory requirements for disposal by sale or lease (Section 2) and acquisition by purchase or lease (Section 3).

2 DISPOSAL BY SALE OR LEASE

General

2.1 The following paragraphs deal with the key stages in the disposal process.

Identification of Surplus Property

2.2 The Board must regularly review their property holdings in order to identify that which may be disposed of - either by outright sale, or in certain circumstances, by lease.

2.3 The Board must support the delivery of national and local health care strategies and priorities by identifying its essential, non-essential and surplus property.

2.4 The Board must ensure that the procedures relating to closure of NHS Scotland property are followed. [See NHS Circular 1975(GEN)46]

2.5 The Board's Property Strategy must include targets for the translation of property identified as non-essential to surplus and its subsequent disposal.

2.6 Where property is identified as non-essential, and prior to formally declaring surplus, the Board must ensure that neither it nor any other NHS Scotland interest have a foreseeable use for it. In doing so, it must consider the current and planned future use of all Board buildings on the site, or property in its vicinity, in order to maximise potential receipts without prejudicing future disposals.

2.7 The Board must provide the SEHD with advance notification of a planned disposal when the property in question is valued in excess of £500,000.

2.8 The Board must declare a property surplus if it is non-essential and non-operational, or, if it is non-essential but still operational, if plans that will enable it to become non-

operational are agreed, are being implemented, are expected to result in non-operational status within 18 months and where there is no wider NHS Scotland interest in the property.

Preliminaries to Disposal

- 2.9 The planning potential of the property must be thoroughly investigated before a property is marketed or a sale concluded under Trawl procedures or where a priority interest other than another NHS Scotland interest has been established. The Board, with the benefit of professional advice, must ensure that it (and not the eventual purchaser) receives the benefit of enhanced development value, which accrues from the grant of planning permission for a change of use. In seeking professional advice on the sale of property, the Board must always ask its professional advisers for explicit advice on whether there is likely to be potential for development or change of use and on the nature of such development or change of use.
- 2.10 The Board must carry out trawl procedures, in accordance with the SEHD guidance, to identify any relevant interest in a property and deal direct with any prospective purchasers who express an interest. If there is a confirmed interest The Board should instruct the District Valuer (Valuation Office Agency), or a suitably qualified external valuer, to determine the price at which the property should transfer. If the Crichel Down rules apply, specific Ministerial authority must be obtained for the transfer.
- 2.11 The Board must ensure that disposals recognise the rights of former owners as contained in the Crichel Down rules and, in the case of staff houses, reflect the Government's Right to Buy policy.
- 2.12 Off market sales (which should occur only in exceptional cases) should take place only if there is explicit agreement from the Property Adviser/Marketing Agent and Independent Valuer that an off market sale will deliver a clear advantage over an open market sale. An off market sale should only be concluded if the

professional advisers are prepared to confirm in writing that the price and other terms finally agreed are at least equal to those achievable on the open market. In such circumstances there may well be a good case for requesting the purchaser to pay all of the Board's fees.

- 2.13 Normally surplus property should be sold. It should only be leased if this is the only option for property management reasons (e.g. temporary let of accommodation) or if professional advice indicates that the net present value of the future income stream from leasing would be greater than the proceeds from outright sale.
- 2.14 The Board must obtain advice from the Legal Adviser on the title of the property before it is marketed.

Marketing

- 2.15 Open market sales or the granting of leases should be handled by a qualified marketing agent (normally the appointed Property Adviser) chosen following competitive tender. If the Board has a number of small sales, it may be appropriate to tender these as a single instruction with one agent covering all properties.
- 2.16 Before a property is offered for sale or lease it must be professionally valued by the Independent Valuer, where appointed, or the Property Adviser.
- 2.17 When commissioning a valuation for disposal prior to sale on the open market, the valuation usually required is the Estimated Realisation Price, subject to the special assumption that account is taken of any bid by a prospective purchaser with a special interest. This should normally produce the best price likely to be obtainable.
- 2.18 When commissioning a valuation for disposal by lease on the open market the valuation required is the Estimated Future Rental Value.

- 2.19 The progress of the marketing agent must be monitored by the Board to ensure no unnecessary delay occurs or that any important aspect of marketing is overlooked.

Consideration of Offers

- 2.20 A formal recommendation in writing must be obtained from the Property Adviser/marketing agent and, where appointed, the Independent Valuer before conclusion of every transaction.
- 2.21 Transactions where the appropriate circumstances apply must be notified to the Accountable Officer before acceptance of an offer.
- 2.22 In the light of professional advice, the Board should consider in every case whether clawback/right of pre-emption/title restriction or other provision covering future change of use or other circumstances is required. Clawback or a right of pre-emption or both should be included in the terms of sale for all off-market disposals (unless a general waiver has been agreed). The Board should always consider clawback provisions where property is disposed of before uncertainties about the planning position have been satisfactorily resolved.

Conclusion of Disposal

- 2.23 The Board must ensure, with the advice of the appointed Legal Adviser, that the legal arrangements governing property disposal provide the maximum possible protection of the Scottish Ministers or the Board's interests.
- 2.24 The Board is required to complete the appropriate certification for all property transactions with a value of £30,000 or above and to make such certification available for audit purposes, and to the SEHD, if requested. For transactions below £30,000 the Board's Chief Executive may decide on what certification procedures are required bearing in mind her responsibility for regularity and propriety for the public finances under her control and the need to provide sufficient documentation for audit

purposes. All other requirements apply to such non-certificated transactions.

- 2.25 The Board must complete post-transaction monitoring proformas for every transaction and co-operate in the other arrangements for monitoring transactions.

Retention of Capital Receipts

- 2.26 Policy on retention of capital receipts arising from the sale of property is set out in NHS Circular MEL(1997)39.

3.0 MANDATORY REQUIREMENTS: ACQUISITION BY PURCHASE OR LEASE

General

3.1 The following paragraphs deal with the key stages in the acquisition process.

Statement of Need

3.2 The need for additional property must be established as a result of a systematic review of the Board's service/operational needs and property holdings as detailed in its Property Strategy and its approval through the in-force procedures for capital investment.

Space Audit

3.3 When acquiring property the Board must acquire the minimum necessary to meet clearly defined future needs. If a site of the minimum size cannot be obtained and it is necessary to buy a larger site, the Board must identify and dispose of surplus land as soon as possible.

3.4 Where the property to be acquired is of a type found generally on the market and is to be acquired by way of a lease a full space audit of the existing service must be undertaken. This will identify the appropriate amount of space required and the Board should ensure that the minimum amount of space is acquired subject to meeting existing and future needs.

Financial and Option Appraisal

3.5 An initial option appraisal must be undertaken to identify a wide range of alternative options including different locations, different types of property and different forms of tenure.

3.6 A financial appraisal must also be undertaken to demonstrate that the new accommodation is affordable by whichever route is ultimately selected.

Property Search

- 3.7 The Board must initially consider whether or not property is available from other public sector bodies, from within the Scottish Executive Estate or the Government's Civil Estate.
- 3.8 If no suitable property is available from within the public sector estate the Board's Property Adviser must undertake a thorough search of the property market to establish a long list of suitable land and/or buildings.

Identification of Shortleat

- 3.9 It will be possible to identify from the long list of options a shortleat for consideration in greater detail. It should be possible at the long list stage to select the appropriate options on the basis of affordability without carrying out a full and detailed appraisal.
- 3.10 When the shortlist has been identified a detailed appraisal in line with HM Treasury publication "Appraisal and Evaluation in Central Government" must be undertaken. Advice on this is available from DAS Land and Property Division, or the SEHD Economics and Information Division.

Agreement of Purchase Price/Heads of Terms under Lease

- 3.11 The Board must ensure that it has written recommendations from the Property Adviser that the terms provisionally agreed for purchase or lease are the best that can be obtained.
- 3.12 The Board must ensure that there is no premature or ill-considered contact with the seller or landlord before negotiations are conducted by the Legal Adviser.
- 3.13 The Board must ensure that the chosen property is technically suitable for its intended use before any legal commitment is entered into to complete the purchase or lease agreement.
- 3.14 The Board must ensure that it has taken advice from the Legal Adviser concerning the title.
- 3.15 The Board may not enter into leases unless it can demonstrate (having taken professional advice) that leasing is the most cost effective option following a detailed financial appraisal.

Completion of Legal Arrangements

- 3.16 On receipt of advice from the Property Adviser and Legal Adviser the final decision must be taken by the Board.
- 3.17 Where the Board proposes to short-circuit the normal procedures the Legal and Property Advisers must be briefed and where notification to the Accountable Officer is in prospect the SEHD must be informed in advance about the requirements. This will enable a speedy final decision when suitable property is identified.
- 3.18 The Board is ultimately responsible for protecting the Scottish Ministers' interests and certification must be completed at this stage.

Fit out Requirements

- 3.19 Where a building requires to be fitted out the Board must ensure that it obtains appropriate professional advice on all aspects of the work to be undertaken.
- 3.20 The Board must ensure that all work is appropriately tendered and that all appropriate consents are obtained.

Notification to Accountable Officer

- 3.21 Transactions must be notified to the Accountable Officer in appropriate circumstances.
- 3.22 The Board must complete post-transaction monitoring proformas for any acquisition by purchase or lease and co-operate in other arrangements for monitoring transactions.

C PROCEDURES

This section of the Handbook contains a wide range of detailed procedures on all aspects of property transactions.

The Board is asked to approve the Property Transactions Policy and to formally adopt the procedures set out in the NHS Scotland Property Transactions Handbook.

Organisation Shetland NHS Board	
Person Responsible Nick Kenton	Department Finance
Name Of Policy Or Function PROPERTY TRANSACTIONS POLICY	
Has the policy or function been assessed for relevance to the General Duty under the Race Relations (Amendment) Act 2000? <input checked="" type="checkbox"/>	
Timescale For Impact Assessment	
Due Date October 2006	
Policy <input checked="" type="checkbox"/>	New <input type="checkbox"/>
Function <input type="checkbox"/>	Existing <input checked="" type="checkbox"/>
Associated Policies Or Functions: Shetland NHS Board Standing Financial Instructions	
Partner Organisations SEHD (authors of the Property Transactions Handbook)	
Date Due For Review October 2009	
Person Responsible For Arranging Review Nick Kenton	
Person Responsible For Publishing Results Of Impact Assessment Nick Kenton	
Results Due To Be Published Nick Kenton	
Person Responsible For Arranging Monitoring Nick Kenton	
Signed Nick Kenton	DATE 28/9/06

Rapid Impact Checklist: Summary Sheet	
Positive Impacts (Note the groups affected)	Negative Impacts (Note the groups affected)
<p>Protects staff involved in purchase, lease or disposal of property by ensuring they follow national guidance to the letter</p>	<p>None identified</p>
<p>Additional Information and Evidence Required</p> <p>None</p> <p>Consultation conducted <input type="checkbox"/></p>	
<p>Recommendations</p> <p>No change to policy required</p> <p>Policy/Function amended to stop or reduce adverse effects <input type="checkbox"/></p>	
<p>From the outcome of the RIC, has a full EQIA process been recommended? If not, why not?</p> <p>No – no evidence that this is required</p>	

SEHD/NHSScotland PFPI/Fair for All Equality and Diversity Impact Assessment - Rapid Impact Checklist

<p>Which groups of the population do you think will be affected by this proposal?</p> <ul style="list-style-type: none"> • minority ethnic people (incl. gypsy/travellers, refugees & asylum seekers) • women and men • people in religious/faith groups • disabled people • older people, children and young people 	<p>Other groups:</p> <ul style="list-style-type: none"> • lesbian, gay, bisexual and transgender people • people of low income • people with mental health problems • homeless people • people involved in criminal justice system • staff - yes
<p>N.B. The word proposal is used below as shorthand for any policy, procedure, strategy or proposal that might be assessed.</p>	<p>What positive and negative impacts do you think there may be?</p>
<p>What impact will the proposal have on lifestyles? For example, will the changes affect:</p> <ul style="list-style-type: none"> • Diet and nutrition? • Exercise and physical activity? • Substance use: tobacco, alcohol or drugs? • Risk taking behaviour? • Education and learning, or skills? 	<p>Which groups will be affected by these impacts?</p> <p>Positive impact on staff – gives clear guidelines to follow in handling property transactions</p>
<p>Will the proposal have any impact on the social environment? Things that might be affected include</p> <ul style="list-style-type: none"> • Social status • Employment (paid or unpaid) • Social/family support • Stress • Income 	<p>None identified</p>
<p>Will the proposal have any impact on</p> <ul style="list-style-type: none"> • Discrimination? • Equality of opportunity? • Relations between groups? 	<p>None identified</p>
<p>Will the proposal have an impact on the physical environment? For example, will there be impacts on:</p> <ul style="list-style-type: none"> • Living conditions? • Working conditions? • Pollution or climate change? • Accidental injuries or public safety? • Transmission of infectious disease? 	<p>None identified</p>
<p>Will the proposal affect access to and experience of services? For example,</p> <ul style="list-style-type: none"> • Health care • Transport • Social services • Housing services • Education 	<p>None identified</p>