

# Property Purchase Guide





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# The Basics

This guide should be read by all clients and professional advisers considering property purchase through our SIPP, Group SIPP or SSAS.

## Acceptable property

We consider all UK commercial property with freehold and long leasehold title. Where a long leasehold is being purchased the remaining term must be in excess of 75 years. The property must not have any liabilities or covenants that are not acceptable to us. Commercial property is land or buildings which are used for the performance of business activities and typical examples include the following:

- Industrial units
- Offices
- Shops
- Warehouses
- Factories
- Agricultural land
- Land for development

Whilst it is technically possible for many other types of property to be held in a Registered Pension Scheme, the holding of these may result in a number of penal tax charges, which make doing so extremely unattractive. We do not permit investment in property which we consider may give rise to tax charges. Residential property is not acceptable to us in any circumstances.

Examples of property that would result in a tax charge (Taxable Property) include the following:

- Beach huts
- Timeshare and fractional owning schemes
- Ground rents relating to residential property
- Non-permanent structures
- Chattels

You can read more about the tax charges associated with holding Taxable Property later in this guide.

## Agricultural land

We allow investment in agricultural land, forestry and land with sporting rights attached to it, although these are considered on an individual basis.





## Developments

Whilst we allow commercial developments, they are subject to our prior approval. Typically the pension fund as the landowner should bear the costs of the works.

We will require full details of the development, including, scope of works, costings, contracts, timescales etc. The building contractor should be a third party, wherever possible. Where a connected party is to complete the works, we must ensure that the terms and rates payable are commercial. Usually this can be supported by a range of quotes for the work from unconnected parties. Alternatively, we can seek confirmation from a Quantity Surveyor that the transaction is at 'arm's length'.

All quotes, invoices and contracts should be addressed to the pension fund.

## Adjacent land or buildings

If a member, or connected person, owns property adjacent to land or buildings the pension fund is looking to purchase, we must ensure that each property has its own access rights.

We do not purchase land adjacent to connected party owned land to 'protect views' or for any purpose other than to be let to a tenant.

## Change of use

Where a property is to have a change of usage (from residential to commercial), the change must be implemented before we will consider the purchase. Note that simply obtaining planning permission to change the use is not sufficient.

## Auction

In certain circumstances we can accommodate purchase at auction. However, these investments are not a 'natural fit' for SIPP's and we consider it a niche requirement for investors. Therefore, our agreement

for the SIPP to bid will be subject to satisfactory legal due diligence, valuation and funds being in place. There are other aspects to consider such as the VAT status of the property and whether a loan is required to complete the transaction. An auction purchase is unlikely to be feasible if external borrowing is required.

## Overseas property

We do not allow investment in overseas property.

## Scottish property

Property purchase in Scotland differs fundamentally from that in England and Wales.

In Scotland the contract becomes legally binding at an earlier stage, the contract takes form of a series of letters known as missives, and once the offer has been accepted the contract is legally binding. Although Scottish property is acceptable to us, we consider these properties on a case by case basis.



# The Process

## Our role

We will work with your appointed advisers to assist with the various stages of the purchase from the start through to completion. An experienced Account Manager will be assigned to the purchase who will be on hand to discuss and address any issues as they arise.

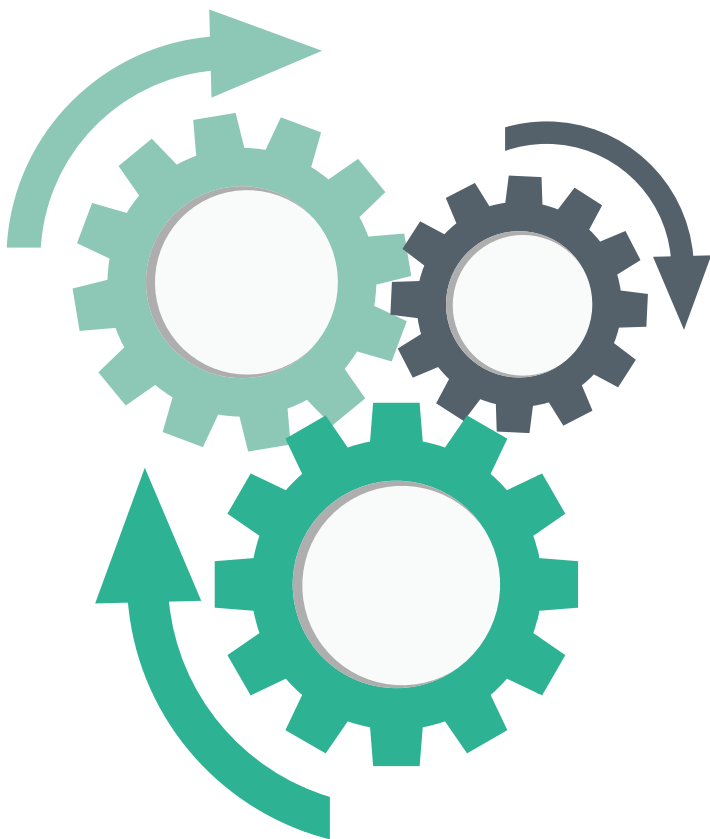
## Initial procedure

Our initial concern is to gather sufficient information to establish whether the property can be held in the pension fund without giving rise to penal tax charges. Organon will not proceed with the investment if it is likely that tax charges will apply.

Accordingly, at outset we require our Property Questionnaire to be fully completed and returned so we can assess the property. We will highlight any potential issues and, once we are satisfied that no tax charges are likely and that the funding looks feasible we will be in a position to proceed and will contact your nominated solicitor and surveyor.

Although affordability and funding forms part of our initial assessment the responsibility rests with the client/adviser. We are happy to assist you with this if necessary.

The key steps once you have identified a property are as follows:







1

Member completes the Property Purchase Questionnaire.

2

Organon carries out the initial assessment and accepts or declines the Property.

3

Trustees formally appoint the Solicitor and Surveyor.

4

Organon reviews Solicitor and Surveyor findings (including environmental report).

5

Member arranges funding, including agreeing terms with any Lender.

6

VAT registration and election made if applicable.

7

Organon approves legal documentation, including leases.

8

All Trustees enter into Contracts and transfer funds to Solicitor for completion.

9

Post completion, Organon liaise with Property Manager regarding ongoing management.

# Key Considerations



## Timescales

You should expect a minimum of at least eight weeks for a straightforward purchase with no borrowing to complete. However, due to the unpredictable nature of these transactions, completion can take considerably longer.

Where borrowing is required, the timescales can extend further depending on the requirements of the lender.

## Costs

The Pension Fund must bear all the costs of the purchase. In addition to the purchase price and our fees, other costs to consider are:

- Solicitor's Fee
- Disbursements
- Surveyor's Fee
- Stamp Duty (SDLT)
- VAT
- Lender's Fee
- Environmental reports
- Insurance

## Connected parties

Transactions with connected parties must be at full market value. Purchases, disposals and lease terms must be at 'arms length' and, we are required to obtain evidence to support this. In practice this means that the terms relating to any purchase or sale involving a connected party must be supported by an independent surveyor's valuation.



Connected party includes the following:

- You as the member, your spouse or civil partner
- A brother, sister, ancestor or lineal descendant of either you or your spouse or civil partner
- The spouse or civil partner of a brother, sister, ancestor or lineal descendant of either you or your spouse or civil partner
- A person who is in a business partnership with you or your spouse or civil partner or relative as detailed above
- A company which is controlled by you and/or persons connected with you
- A close company of which you or a person connected with you is a director

### Value Added Tax (VAT)

VAT may be payable on a property purchase and the funding of this should therefore be considered. The client may instruct Organon to elect to waive exemption of VAT (or Opt to Tax), which will mean that VAT can be reclaimed on the purchase price (if elected prior to the property being purchased) and associated costs.

VAT will be charged on the rent and when the property is sold VAT will be charged on the sale price. Should the client choose not to elect to waive exemption of VAT, VAT cannot be reclaimed on the purchase price of the property or reclaimed on any associated and refurbishment costs. VAT will not be applied to the rental payments.

It may be possible for the purchase to be treated as a Transfer of a Going Concern (TOGC) if, for example, the purchase is subject to an existing business lease. In this case, the Trustees must register for VAT and elect to tax though VAT will not need to be paid on the purchase price.

Organon will act on your instructions to register the pension fund for VAT and elect to tax but you should take specialist advice relating to any possible VAT issues prior to purchase.

### Reclaiming VAT

To reclaim VAT on the purchase and any subsequent costs Organon will need to be provided with an invoice containing the invoicing party's VAT registration number, the tax point date and a breakdown of the net and VAT amounts.

VAT returns are made by Organon on a quarterly basis, however, for more complex arrangements, these duties can be delegated to a VAT expert.

### Aborted transactions

Should a purchase not proceed to completion we will apply a fee for time spent at the prevailing rate.

# Professional Advisers

In order to achieve maximum flexibility and control over costs we do not insist on in house or affiliated professionals being used for property transactions. We are therefore happy to delegate decisions relating to the appointment of suitably qualified professional advisers entirely to the client. We will liaise with the appointed advisers throughout the course of the transaction.

## **The Solicitor**

Your chosen solicitor should be an independent third party and admitted on the Roll of Solicitors as held by the Law Society of England & Wales, Law Society Northern Ireland or Law Society Scotland. We would also expect the solicitor to have prior experience of dealing with pension fund property transactions.

They will be formally appointed by us to act on behalf of the scheme trustees and we expect full diligence including environmental searches to be undertaken.

The solicitor's role is key, ensuring that the property is suitable and that the interests of the pension trust are protected. We keep in contact with them throughout the purchase process. They will also be responsible for reporting on the existing lease, or preparing a new lease where necessary.





## The Surveyor

Forming part of our initial assessment, we will appoint your chosen chartered surveyor to provide the trustees with a report on the property to include the following:

- Description of the property and location
- Report on condition and advice on whether a further structural survey is required
- Report on tenure, title restrictions, rent reviews and other relevant matters affecting the property
- Information on town planning, highway and utility issues, rateable values etc.
- Commentary on current tenancies
- Market value with vacant possession and/or subject to existing tenancies
- Estimated rental values
- Valuation for insurance purposes

Where borrowing is involved, the lender may accept the SIPP's report and valuation. However, it is more likely that the bank insist on their own surveyor being appointed. Should this be the case we will accept the bank's valuation with a side letter from the surveyor confirming the value addressed to the trustees. Please note that the scope of a bank valuation may not provide us with sufficient information and the trustees may have to seek further advice regarding the property.

# Financing the Purchase



## Funding

We accept tax relievable contributions and transfers from other registered pension schemes. In addition pension schemes can borrow to assist with funding the property purchase.

## Borrowing

An Individual SIPP, Group SIPP or SSAS may borrow up to a maximum of 50% of the net scheme assets.

The lender will usually require a first legal charge over the property and possibly other assets of the member's scheme.

All trustees will be party to the loan agreement and we will liaise with the lender to ensure that the documentation meets both our own and HMRC requirements. The liability of Organon will be limited to the extent of the assets of the member's pension scheme in all documentation.

Generally the lender will require a sufficient rental amount to cover the mortgage repayments plus an additional margin. These repayments will continue regardless of any voids.

There can be no cross guarantees, or personal guarantees given. The rent cannot be assigned to the lender.

The pension fund may receive a loan from a "connected party" such as the member personally or a relative provide that the loan is commercial and on arms-length terms.



# Different Pension Vehicles for Property Purchase

## Individual SIPP purchase

Usually the most straightforward investment, featuring the benefits of utilising pension funds to invest where personal funds are not available. The legal owner of the property will be the Member Trustees and Organon Pension Trustees Limited as professional trustee.

## Group SIPP purchase

Our Group SIPP allows individual SIPP members to buy a property collectively/jointly. The structure is arranged whereby a Supplemental Group SIPP Deed is entered into by Organon and the individual SIPP members, creating a single trust through which the property is purchased.

A group SIPP bank account is opened to receive funds from each member's individual SIPP and these funds are 'pooled' to facilitate the purchase. Where borrowing is required the Group SIPP will be the borrower, however, if this arrangement is not suitable we can discuss other options available to individual members.

Legal ownership vests in all trustees. However, as there can only be four owners registered at Land Registry, when there are more than four trustees, Organon must be noted together with three other trustees. A resolution can be signed by all trustees to ensure consent is given by all before any subsequent disposal.

Each member's percentage interest in the property is based on the funds transferred into the Group SIPP. To formally record this, we ask the appointed solicitor to draft a document (commonly referred to as a Deed of Trust). This will not only note each SIPP's shareholding but also set out the protocol for events such as disposal and death.

Once the property is purchased, all rents are paid into the Group SIPP bank account from where any expenses or borrowing repayments are met. Usually the trustees agree a policy for sending surplus cash

back to their individual SIPPs in accordance with their respective shares as monies in the group SIPP bank account accumulate over time.

## Small Self-Administered Scheme ("SSAS") purchase

For SSAS purchases, as the investments are pooled, the property is owned jointly between all trustees. Any borrowing is shared between the trustees and a Deed of Trust is not required.

## Joint purchase

Our pension schemes can jointly acquire property with other parties such as other pension schemes, connected or unconnected individuals, or companies. However due to the complex nature of these transactions, we consider these on an individual basis.



# Practical Matters

## The Property Manager

A Property Manager is appointed by the trustees at outset by way of the Property Manager Resolution incorporated into our Property Questionnaire. The Property Manager can be a third party, connected party, property management company or the member.

The Property Manager is responsible for ancillary matters relating to the property, such as collection of rent, safekeeping of documents, ensuring adequate insurance is in place. The full duties are set out in the Property Manager Resolution.

### Insurance

The property must have adequate cover by an appropriate insurer. Although a duty delegated to the Property Manager, Organon require a copy of the Insurance schedule, with the SIPP's interest noted, before we can proceed to exchange. Under the terms of a full repairing and insuring lease the insurance premiums would usually be paid by the Trustees as Landlord and recharged to the tenant as Insurance Rent.

## Leasing

A commercial lease must be drawn up between the trustees as landlord and the tenant of the property. This should be a Full Repairing and Insuring lease drafted by a suitably qualified solicitor. Where the tenant is a connected party, the rent payable will need to be independently assessed by a professional valuer.

Organon will need to be party to the lease and in all cases our liability should be limited to the assets of the member's pension scheme. We will require sight of all draft documentation prior to being asked to sign the final version.

### Rental

The Property Manager must ensure that all rents are paid into the scheme bank account inclusive of VAT where applicable.

## Refurbishments & improvements

Any improvements to the property that do not fall within the normal repairing and maintenance terms of the lease, require our prior consent. We would not expect the pension fund to undertake improvements that would not result in an increased rental. However we do accept that necessary works will fall to the pension fund as landlord from time to time.

A surveyor must determine Market Rent on completion of the works and the lease will be varied to reflect the updated rent. In certain circumstances, we will require a surveyor's comment before the works commence to ensure the proposed works are commercially worthwhile.

Note that the pension fund is only allowed fund improvements that form part of the permanent fabric of the building, which excludes items such as furniture, electrical items and other removable fixtures and fittings. Such items are classed as "tangible movable property" and will be subject to tax penalties if purchased by a pension fund.

## Rent arrears and connected parties

Under pension tax rules, we are obliged to treat rent arrears from connected party tenants in the same way as we would a third party tenant. Failure to do so may trigger an Unauthorised Payment and result in a tax charge on the member personally, the employer and on the scheme. Please contact Organon as soon as possible if you are experiencing any issues with rental payments.

# Situations to avoid

## Trading

Care needs to be taken if land or property is purchased to be resold quickly to make a quick profit. Acquisition of property in pension funds is viewed as a long term investment and high turnover of purchases and sales activity may be viewed by HMRC as trading. This is also the case for developments which are subsequently resold quickly.

Although there are no restrictions to prevent a Registered Pension Scheme from entering into trading activities, the income derived from trading does not benefit from the tax exemptions (including those relating to capital gains) that apply to deposits and investment income. The pension scheme is liable to pay tax on any income derived from trading. We therefore do not allow any of our products to enter into trading activities.

## Taxable Property

Taxable property falls into two categories

1. Residential Property
2. Tangible moveable assets, such as chattels.

Whilst taxable property can be held within a Registered Pension Scheme it will result in tax being applied to the member personally, the Sponsoring Employer and the Scheme.

## Unauthorised Payments

Current pension legislation defines certain transactions as Authorised Payments, any payment made in respect of a member or sponsoring employer that does not fall within this definition is an Unauthorised Payment.

Unauthorised Payments that may occur in relation to investments include connected party transactions that are not carried out at 'arm's length', excess lending or borrowing and investment in taxable property.

The tax charges associated with Unauthorised Payments are as follows:

- **Unauthorised Payment Charge**  
This charge is 40% of the Unauthorised Payment. It is payable by whoever directly benefits from the unauthorised payment, for SIPP this is always the member, for SSAS this could be either the member or the employer.
- **Scheme Sanction Charge**  
Payable at an initial rate of 15% of the Unauthorised Payment but can rise to 40%. This payment is payable by the Scheme Administrator and is recharged to the pension fund.
- **Unauthorised Payment Surcharge Payable when the Unauthorised Payment is in excess of 25% of the value of the fund.** Again payable by whoever directly benefits from the unauthorised payment and is levied at 15%.

We are obliged to 'self-declare' Unauthorised Payments in our returns to HMRC.

# Environmental Concerns

## **“Contaminated Land” under Part IIA of the Environmental Protection Act 1990**

This legislation has implemented a new regime to address the legacy of contaminated land in the UK, which has been polluted by past commercial and industrial activities. Part IIA delivers a legal obligation on local authorities to inspect the land in their areas, identify any sites which fall within the definition of “contaminated land” and ensure the land is cleaned up by the polluter to make it safe for its current use. Where the polluter cannot be identified or no longer exists the liability falls to the current owner.

Liability is strict, meaning that it does not matter that the current landowner, including Trustees, was not at fault or that the landowner did not discharge or dispose of the contaminants itself. The responsibility for remediation remains.

Solicitors are required to advise their clients regarding the consequences of purchasing contaminated land. The advice should include making enquiries of the vendor and statutory and regulatory bodies, obtaining a site report and advising that a full site investigation be undertaken if necessary.

Organon will require a copy of any environmental survey and/or site report and written confirmation from the client’s solicitor that the issue of contaminated land has been addressed.

## **Control of Asbestos at Work Regulations 2002**

Under prevailing legislation a duty applies to every person who has maintenance or repair responsibilities over non-domestic premises by means of a contract or tenancy. If there is no contract or tenancy agreement, the duty applies to the person in control of non-domestic premises, the owner. Under this legislation the duties are to:

1. **Locate asbestos in non-domestic premises by carrying out an asbestos survey;**
2. **Produce a written Management Plan to identify the location and condition of asbestos and set out measures to be taken to manage the risks in those areas.**

A suitable assessment as to the presence of asbestos on the premises should be carried out, the results recorded and, if asbestos is present or is likely to be present, a management plan must be prepared.

## **Energy Performance Certificates (EPC)**

EPC’s provide a rating of the energy efficiency and carbon emissions, along with recommendations of how to improve the energy rating.

The Certificates have been required for most properties since 1st October 2008 and are usually now included in most surveyor’s reports.

Certificates must be provided for all property sales at the expense of the seller, and all leases at the expense of the landlord. A new certificate must be produced every 10 years with fines of up to £5,000 for non-compliance.

The solicitor should ensure that Organon are provided with a copy of the EPC prior to completion.







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