

# 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. Organon hold a number of Scottish properties and we consider each investment, and appoint a Solicitor, 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 solicitor chosen from the panel and instructs the 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 Organon arranges Insurance Cover from their block policy.
- 9 Property Management is appointed and agreement signed.
- 10 All Trustees enter into Contracts and transfer funds to Solicitor for completion.
- 11 Post completion, Organon liaise with the Property Manager in line with terms set out in the Property Management Agreement.

# 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

We know that our customers want a property purchased in the shortest possible time with a minimum of fuss and the work carried out by people they can trust.

With property purchases it has long been our experience that choosing advisors who have a real understanding of the nuances of a SIPP property transaction is essential in ensuring a successful outcome.

Organon have a proven track record and procedures in place to provide a seamless service working with credible advisors to see the process through with only a light touch involvement at your end.

## The Solicitor

Organon have a panel of solicitors that have been selected to provide an expedient and cost-effective solution when carrying out the property transaction.

Their details are on the Panel Solicitor page which also includes the favourable rates we have negotiated with each company.

The reason for having a panel is all about guaranteeing a first-rate service. Having reputable and capable solicitors ensures that you can be confident your property is in good hands and that we can control and push matters forward using an agreed process and established lines of communication.

Once you select your solicitor from the panel (this can be done on the property questionnaire), we will formally instruct them and then keep in regular contact with them throughout each stage of the transaction.



### The Surveyor

Organon, as Trustees, will formally instruct the surveyor. It is normally beneficial to appoint one who has a good appreciation of the local area. If you know, or have already engaged a local company, we will happily work with them, if not, we will source a suitable company.

Once appointed, we will ask them to provide a valuation report to include the following:

- An open market value following the RICS 'Red Book' Guidelines
- A reinstatement value for insurance purposes. This is of the utmost importance as there can quite easily be a difference between the market value and the costs involved with reconstructing a building that has been irreparably damaged.
- A rental value for new tenants.
- Details of any restrictions or requirements required by the title to the property.
- If there is the need to apply for a change of use for the property to meet the requirements of the proposed purchase
- Finally, if the result of the survey shows the need for further investigation or if they recommend doing a structural survey.

Where borrowing is involved, the lender may accept the surveyors report and valuation. However, it is more likely that the bank insists on their own surveyor being appointed. Should this be the case, we will accept the bank's valuation with a side letter from their surveyor confirming the value addressed to the trustees. If this doesn't provide us with the information that we would expect from a surveyor, the trustees may have to seek further advice regarding the property.

# Panel Solicitors

These are the Solicitors that we have chosen to entrust with your property purchase. After reading their details, please make your choice in the section provided on the Property Purchase Questionnaire.

Buying a property through a pension differs greatly from an ordinary conveyance. We have our Panel of Solicitors who we know will do the job to a very high standard and at competitive rates. We will interact with them on a daily basis but there may be times when they will need to speak to you directly.

## Butcher & Barlow

### Who we are

Butcher & Barlow was established in Bury and has a long rich history of supporting clients across the North West of England.

Approachable, open and client-focused, we pride ourselves on building long-term relationships with our clients. Aiming to be seen as an extension of your business, or a life-long friend, our team of experts are here whenever you need us and at whatever stage of life you are at.

With eleven offices across the North West and 160 dedicated and experienced staff, Butcher & Barlow are here to listen, reassure, and collaboratively work with you to achieve your objectives and aims. We are a full-service law firm with a lengthy history of delivering the finest legal support across the North West.

### Why Choose Butcher & Barlow

Butcher & Barlow has a niche specialism in dealing with property transactions involving SIPP's and SSAS's. We have a long-standing history of representing professional trustees in such transactions working as panel solicitors for a number of national pension trustees.

We deal with everything from retail premises, office units, licenced properties to industrial unit, farms or development sites. Our experienced Pension Property

Their contact details are provided below.

### Fee Schedule

You can see the fees our solicitors charge on pages 14-15. These are the competitive rates that we have negotiated with our panel solicitors.

These fees do not apply to properties in Scotland and Northern Ireland which will be carried out on a case by case basis.



Investment Team, led by James Hodgson, provides a high level of service and has in-depth knowledge of niches associated with pension related transactions to ensure that HM Revenue & Customs are adhered to and issues identified at an early stage.

Our Team has experience of mixed ownership structures and lending and borrowing within pension schemes and can act for a number of high street lenders on a dual basis.

We aim to become an integral part of your professional support team liaising with your IFA, Pension Scheme Administrator and Accountant to ensure your aims and objectives are achieved.

Our Partner-led service ensures that you receive the quality of advice you would expect from a city firm without the city price tag. The Commercial Property Team is recommended within the Legal 500 and has been ranked in consecutive years in the Top Tier within the Northwest.

In addition, with specialist Agricultural, Corporate and Property Dispute Teams at the Pension Property Investment Teams side we are able to ensure that the weight of our experience and knowledge over various sectors is available where required.

If you would like to know more or discuss a potential matter, please contact James Hodgson on 0161 764 4062 or by email at [jhodsgson@butcher-barlow.co.uk](mailto:jhodsgson@butcher-barlow.co.uk).

# Panel Solicitors

## Farleys



### Our Approach

From our seven sites across the North West (Manchester, Preston, Blackburn, Burnley, Accrington & Rawtenstall) our specialist team act for a large range of business clients, from sole traders, partnerships, and LLPs to large corporations, both in the North West and across the UK.

Our reputation as a firm is firmly built on the quality of the work we do and the clients we work with. We therefore invest significant time and resources to ensure that our work is of the highest possible standard, and that the quality and delivery of the service we provide is second to none. We work hard to understand your organisation and your requirements so that we deliver a service to match your needs, rather than impose a “one size fits all” approach.

We give straightforward clear advice and believe every client should walk away at the end of a matter feeling that they were supported, heard and respected, that they had value for money, and would be keen to work with their solicitor again. This means every client is treated in a way which is appropriate for them.

### Our Property Expertise

The world of commercial property is constantly evolving and so too is the legislation dictating this area of law. It is therefore important to choose a legal team with the necessary experience and technical expertise to protect your business interests.

Recommended in the Legal 500, our solicitors deal with wide range of commercial property transactions and are highly regarded for their delivery of expert services, both locally and across the UK. Our solicitors have extensive experience of dealing with SIPP and SSAS transactions, so they are able to identify and address issues early to avoid unhelpful delays.

### How we work

Everything we do is shaped by the needs of our clients. Our services are Partner lead with Managing Partner Ian Liddle leading the team. Our team are friendly and responsive, with high quality case management systems operating in the background.

We will go out of our way to make sure our services work for you. We will discuss ideas, strategies and solutions that fit your objectives, and we do not proceed until you are 100% happy with the way forward.

If this sounds of interest please contact Ian Liddle on 0161 835 9513 or email [ian.liddle@farleys.com](mailto:ian.liddle@farleys.com)

# Panel Solicitors

## Forbes Solicitors LLP



### Who are we and why choose Forbes?

Forbes Solicitors operate nationally with offices in Lancashire, Manchester, Leeds and London. We offer the full range of legal services to commercial clients, individuals and a number of specialist sectors where we excel nationally.

What makes Forbes different is our personal and supportive approach. We don't just bring our experience, focused knowledge and expertise, we bring something more; an enthusiasm and a passion for making a real difference.

Redefine how you feel about law; that's what we set out to do every day. It's our purpose, but it's more than that. It's our promise. That's the difference we offer at Forbes; an exceptional level of service and support that's not just about the law.

Our unique approach is why you can expect a more positive and empowering experience with us. You'll notice it with every interaction you have with us. It's an approach that builds trust and strengthens relationships.

Of course, you'll always have our wealth of experience, knowledge and legal expertise, but that's only half the story. The real difference is the feeling that you're in safe hands, informed and supported, confident and certain. That's the 'more' you'll get from Forbes.

### Our Commercial Property Team

The world of commercial property is constantly whatever the size of your business, our Commercial Property advisors offer practical legal advice on a wide range of commercial property issues and are ranked in both Legal500 and Chambers & Partners.

The SIPP and SSAS property team at Forbes have many years' experience in this specialist area, and act for numerous Pension Scheme administrators operating throughout the country as a trusted source of advice and support.

Our specialist team can give you clear and straightforward legal advice on property transactions involving a SIPP or a SSAS, including but not exclusively:

- Property purchases
- Property sales
- Leases (whether as Landlord or Tenant)
- Lease management (such as assignments or surrenders of leases)
- Taking security over property as part of third-party funding for an acquisition
- Transferring property between Pension Schemes
- Documenting co-ownership arrangements where a property is to be held by multiple parties, some or all of which are Pension Scheme

We have a practical working relationship between member trustees and their financial advisers and chosen scheme administrator. This ensures that a cost effective and efficient service is always provided, allowing each transaction to proceed as quickly and as smoothly as possible.

### Get in touch

Forbes are dedicated to delivering a quality service and we are certified to ISO 9001:2015. We aim to become an extension of your team and ensure:

- Supervisory oversight of matters and regular reviews.
- Partner-led triage of new instructions.
- Regular team briefings to ensure workload and knowledge management.

Forbes always go the extra mile for our clients, and we offer a range of free value-added activities including, training, webinars, thought leadership and support, to create a dedicated path of mutual and continual improvement.

Jonathan Chung, Partner, would be the first point of contact for all enquiries and if you would like to know more or require support please get in touch:  
T. 07976 271271  
E. Jonathan.Chung@forbessolicitors.co.uk

# Panel Solicitors

Transaction	Fee (£) (Excluding VAT and Disbursements)
<b>Purchases</b>	
Property purchase (maximum value of £250,000) with no borrowing involved	£1,500
Property purchase (between £250,001.00 and £500,00.00) with no borrowing	£2,100
Property purchase (between £500,001.00 and £750,00.00) with no borrowing	£2,650
Property purchase (maximum value of £750,000) with no borrowing	£2,650
Property purchase (value over £750,000) with no borrowing involved	£2,850 plus 0.5% of purchase price in excess of £750,000
As above but with borrowing (additional fee assuming we act for the bank)	£500
As above but with borrowing (additional fee if independent solicitors act for the bank)	£750
<b>Leases to Connected Parties</b>	
Grant of Lease (rent up to £25,000 per annum)	£900
Grant of Lease (rent over £25,000 per annum)	£900 plus 3% of rent in excess of £25,000 per annum
<b>Leases to Unconnected Parties</b>	
Grant of Lease (rent up to £25,000 per annum)	£1,250
Grant of Lease (rent over £25,000 per annum)	£1,250 plus 3% of rent in excess of £25,000 per annum
<b>Ancillary Lease Documents</b>	
Side letter in conjunction with grant of lease	£275 - £375 <i>(depending upon complexity and/or level of negotiation)</i>
Obtaining Lender's consent to the grant of lease (if applicable)	£250
Licence to underlet in conjunction with an underlease to a connected or unconnected party	£500
<b>Sales</b>	
Property Sale (no borrowing) (value up to £200,000)	£1,350
Property Sale (no borrowing) (value between £200,000 to £300,000)	£1,500
Property Sale (no borrowing) (value between £300,001 and £400,000)	£2,000
Property Sale (no borrowing) (value between £300,001 and £500,000)	£2,500
Property Sale (no borrowing) (value between £500,000 and £750,000)	£3,250
Property Sale (no borrowing) (value over £750,000)	By Agreement
Additional fee for discharge of mortgage on property sale- Institutional Lender	£200
Additional fee for discharge of mortgage on property sale- Private Lender	£300

# Panel Solicitors

Transaction	Fee (£) (Excluding VAT and Disbursements)
<b>Ancillary Transactions</b>	
Co-Ownership Agreement	£500
Syndicate Agreement (less than 10 parties)	£750
Syndicate Agreement (10 – 20 parties)	£1,200
In-specie transfer (no borrowing involved)	£1,150
In-specie transfer (with borrowing)	£1,450
Agreement for Surrender	£750
Deed of Surrender	£750
Deed of Covenant required with a third party	£400
Rent Deposit Deed	£500
Licence for alterations	£925
Licence to assign	£1,250
Licence for underletting	£1,500
Deed of Variation to Lease	£750 (minimum, depending upon complexity and/or level of negotiation)

**Notes:**

1. The fee scale assumes a single let freehold building. If the property is existing leasehold there will be an additional charge of £350 on a purchase. A separate estimate will be provided if the property is to be acquired by way of the grant of a new long lease.
2. The fee for the grant of Lease assumes it is to be granted simultaneously on completion of the purchase of the property to a connected party. A separate estimate will be provided for the grant of a lease to a third party or a separate lease transaction.
3. The fee for a property purchase assumes either cash or in-specie contribution.
4. The fee for an in-specie transfer assumes that no certificate of title will be provided and limited due diligence will be undertaken.
5. Panel Solicitors reserve the right to review the fixed fees after 12 months and the hourly rates on 1st July each year but they will not necessarily be increased on such review.
6. VAT and disbursements will be charged in addition to these amounts.
7. Abortive transactions will be charged on the basis of recorded time subject to 75% of the maximum fee.
8. These fees do not include specialist planning, tax, environmental, or construction, agricultural advice.
9. The fees assume that the matters proceed without delay or unforeseen complication or negotiation.

## Hourly Rates

Fee Earner	Hourly Rate (£)
Partner	£350
Associate	£260
Assistant Solicitor	£225
Trainees Paralegal	£190

# Insurance

Organon have a block insurance policy with Marsh Commercial that is tailored to the specific cover required by a SIPP property purchase.

Building on our reputation as a property specialist, we have been able to negotiate favourable terms and guarantee high levels of service and provide additional benefits which can prove to be a real asset in the management of your property.

We will obtain a quote from Marsh and place the property on cover from completion of the property purchase and it will then be renewed each year.

Whilst having the one policy reduces the administrative burden on our property team, it also gives our clients access to stable premiums, a wider range of cover and the cost savings that naturally flow from taking advantage of economies of scale.

Obtaining the right Insurance cover is pivotal to securing the long-term value of your pension fund.

We need to make sure that it is insured for its reinstatement value and that we get regular valuations of the property to ensure that it is adequately covered.

Should the property ever become unoccupied you will need to inform the Insurers as there are separated conditions that need to be adhered to protect your investment.

# Property Responsibilities during and after the property purchase

As a brief resume, here are the practical steps for a successful completion of a property purchase.

We have broken down who does what so that it is clear what we both need do to get to completion and set out what the ongoing responsibilities will be whilst the property is held in your pension.

## **Organon will do this.**

- Appoint Solicitor from our panel.
- Appoint Surveyor.
- Liaise with your chosen bank.
- Inspect any existing lease / headlease.
- Check environmental reports.
- Arrange EPC (if necessary).
- Put property onto block insurance policy.
- Register the property for VAT (if necessary).
- Sign lease / Option Agreement / Contract.
- Sign Property Management Agreement (PMA).
- Release monies to solicitor for completion.

## **SIPP member(s) will do this.**

- Arrange any lending required.
- If you have a surveyor pass us their details.
- Appoint a property manager.
- Set up standing order for rental payments and loan repayments.
- Sign lease / Option Agreement / Contract.
- Sign PMA.

## Ongoing

### **Organon will do this.**

- Reappoint surveyor for rent review / valuations.
- Reappoint Solicitor for lease renewals / changes.
- Renew insurance annually.
- Renew EPC (if necessary).
- Inform us of any changes to tenant.

### **SIPP member(s) will do this.**

- Manage the property in line with PMA.
- Ensure rent is invoiced and received.
- Inform us of any rent arrears.
- Inform us of any insurance event.
- Inform us if the property is unoccupied.

# 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

The property manager will be appointed by signing the property management agreement which sets out the respective responsibilities of the Trustees and the Property Manager. 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.

## 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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