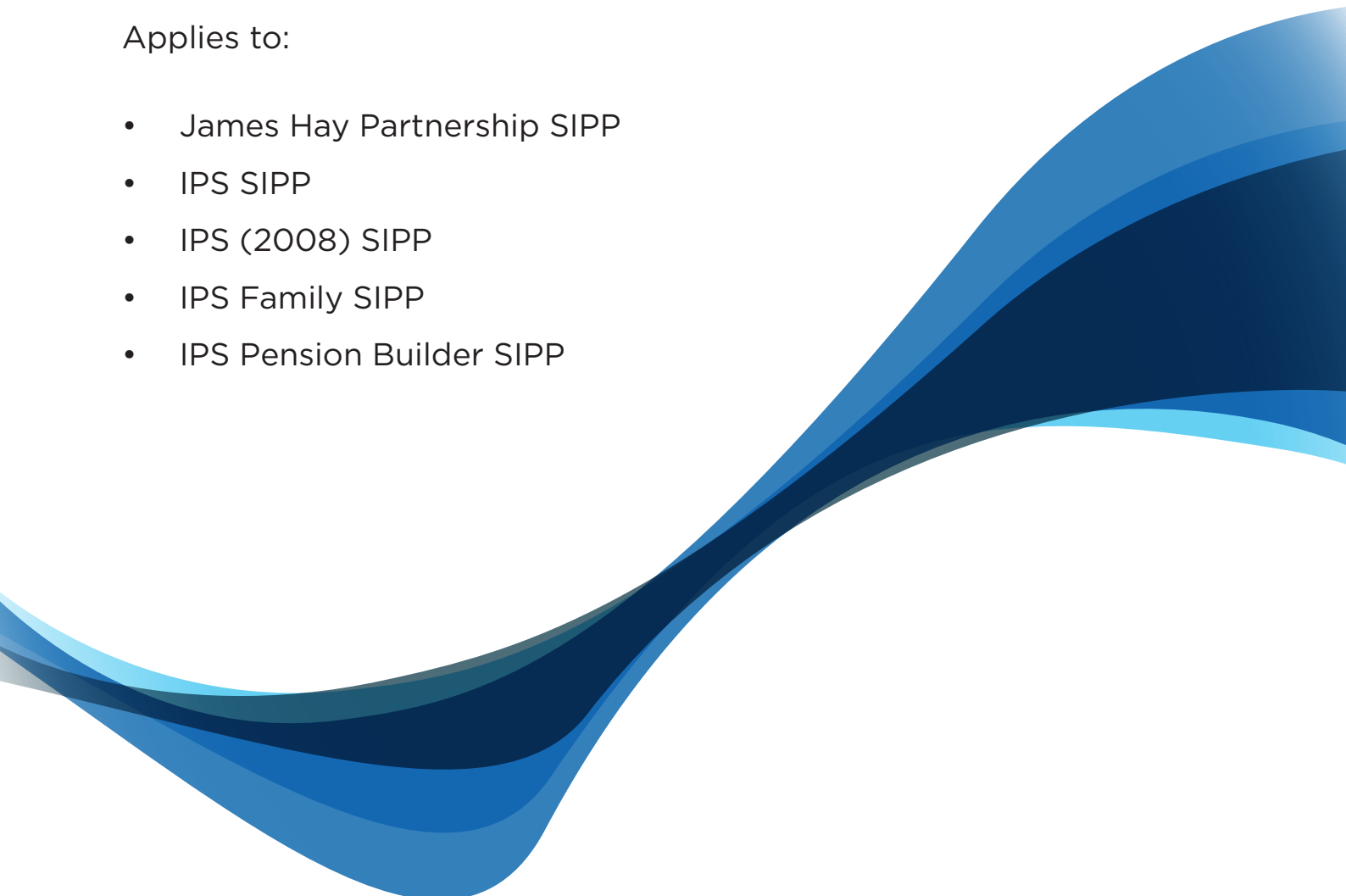


# Commercial Property Purchase and Maintenance Guide

Applies to:

- James Hay Partnership SIPP
  - IPS SIPP
  - IPS (2008) SIPP
  - IPS Family SIPP
  - IPS Pension Builder SIPP
- 

## IMPORTANT INFORMATION

Before reading this guide, please refer to the Property Purchase and Management Options table below to ascertain which options are available for your SIPP product.

### Property Purchase and Management Options

Scenario	IPS SIPP IPS (2008) SIPP IPS Family SIPP IPS Pension Builder SIPP	Partnership SIPP
I do not currently own a property in my SIPP. Can I buy a new property and self-manage it?	NO	NO
I currently own and self-manage a property in my SIPP. Can I buy a new property and self-manage it?	YES	YES (if VAT opted) NO (if not VAT opted)
Can I buy out another SIPP member's share of their self-managed property and continue to self-manage it?	YES	YES
I am a beneficiary of a pension sharing order or death benefit. Can I continue to own and self-manage the property that is currently held and self-managed in the SIPP of which I am a beneficiary?	YES	YES
Can I buy a new property in my SIPP and appoint CBRE to manage it?	NO	YES (if not VAT opted) NO (if VAT opted)
Can I buy out another SIPP member's share of their CBRE managed property and continue to have it managed by CBRE?	N/A	YES
I am a beneficiary of a pension sharing order or death benefit. Can I continue to own a property that is currently held in the SIPP and managed by CBRE if I am a beneficiary, and can I continue to have it managed by CBRE?	N/A	YES

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**This is an important document.**

**You should keep it safe for future reference.**

# Section 1

## Commercial property key points

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### Introduction

Property purchasing and leasing through a Self Invested Personal Pension (SIPP) is a complex transaction. This guide has been written to help you understand the processes involved. It is, however, only a guide. All property purchase proposals must satisfy HM Revenue & Customs (HMRC) and other regulatory requirements, as well as James Hay Partnership's requirements. These may vary from time to time.

Please read this guide carefully. Answers to frequently asked questions can be found at the end of this guide.

If you have any further questions please call your Service Executive Team if you are a financial adviser, or our general enquiry number 03455 212 414 if you do not have a financial adviser.

### Glossary

When the following words are used in this guide, this is what they mean:

**We/Us/Our:** any of the Trustee Companies associated with James Hay Partnership

**You:** the SIPP member(s)

**Valuer:** a person who is a qualified member of the Royal Institution of Chartered Surveyors (RICS) who must be independent of the SIPP member

**SIPP:** any of the relevant SIPP products offered by James Hay Partnership, as detailed on the front page of this guide

**Connected Party:** As defined under s 161(8) Finance Act 2004, ss 993 to 995 Income Tax Act 2007 and ss 450, 1122, 1123 and 1124 Corporation Tax Act 2010, connected parties are members, close relatives, partners or any company associated with a member or their family.

### An outline

This section briefly outlines some of the main points that are explained in greater detail within this guide.

#### Key points

- The Commercial Property Questionnaire must be fully completed in order to provide us with the information we need to consider the proposal.
- A SIPP may be used to purchase a freehold or leasehold commercial property, including tenanted land. For more information on leasehold properties, please refer to the Property tenure section.
- Residential property may not be acquired through a James Hay SIPP.
- Only a solicitor from our approved panel of solicitors can act for the SIPP trustees on all commercial property transactions within England, Wales, Scotland and Northern Ireland, including (but not limited to):
  - all commercial property purchases by your SIPP (regardless of whether the seller is a Connected Party);
  - any associated SIPP commercial property transaction relating to the property acquisition or ongoing retention of the Property in your SIPP.

A list of our approved panel solicitors can be found on the Commercial Property page of our website.

- The purchase price must be within a margin plus or minus 10% of the market value of the property as confirmed by a Valuer. The valuation must be addressed to us and the fee will be paid from your SIPP fund.

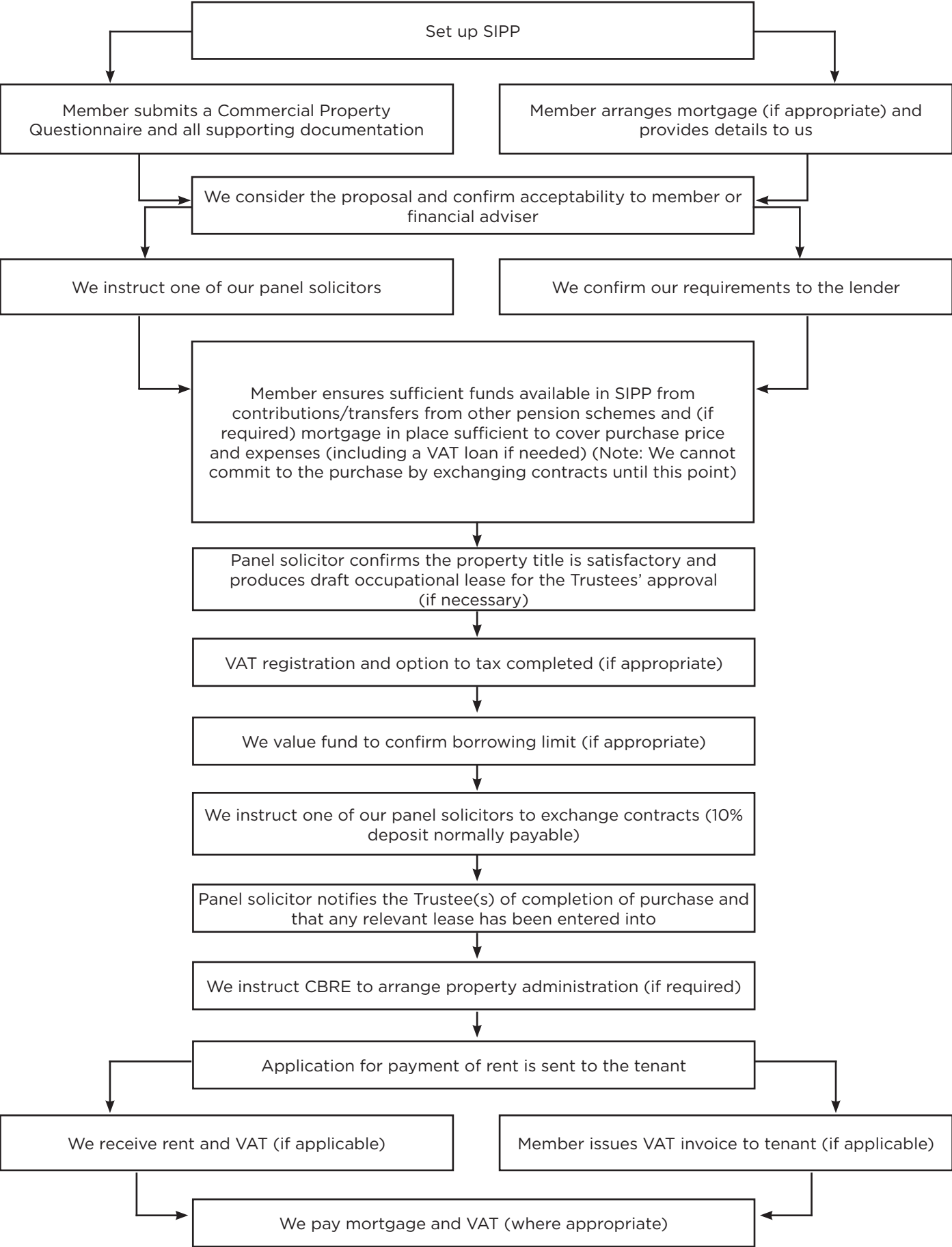
(Note: If the property is being purchased from a Connected Party the purchase price must be the market value of the property as confirmed by a Valuer).

- The property must not have any covenants or liabilities attached to it, of a kind which are unacceptable to us.
- You and/or your advisers must ensure that the purchase price of the property and all associated costs are available from permitted pension contributions, transfers or secured lending. Funding must be in place before we can exchange contracts. **If contributions exceed certain limits, there may be tax consequences.**

**You should speak to your financial adviser about the implications of this.**

- If a mortgage is needed we must be satisfied that the rental income from the property is sufficient to meet the repayments and other costs of dealing with the property. The legislation requires that an amount no greater than 50% of the net value of your SIPP fund can be borrowed.
- The lender must agree that our liability under any mortgage will be limited to the assets of the particular pension fund and to all our other procedural requirements.
- A property can be bought for the benefit of more than one SIPP. In that case, each SIPP will benefit in proportion to its financial contribution to the purchase.
- Ground rents may not be purchased through any of our products.
- We require all properties to be tenanted on or before completion with a minimum annual rental of £2,000.00 per annum.
- A property may be bought subject to existing leases if they are on terms that are acceptable to us. A vacant property should be let from completion under a formal lease. All lettings must be on commercial terms approved by a Valuer. HMRC expects us to manage all properties on a commercial basis, including where the tenant is you, or connected to you. This may include the use of legal action or bailiffs to pursue rent. Failure to collect rent on a commercial basis from connected tenants could lead to an unauthorised benefit arising, resulting in scheme sanction charges and tax charges on you personally.
- You can choose to manage the property yourself or instruct a professional property manager to manage it on your SIPP's behalf. For Partnership SIPPs only, it may be possible for you to instruct us to put in place a full management service via our managing agent, CBRE.
- If VAT is payable on the purchase price and a loan is required due to insufficient funds, you must make arrangements for a VAT loan until the VAT is recovered from HMRC. A VAT loan will be included within the 50% borrowing limit. Even if VAT is not payable at completion, there may be circumstances where the property can be made subject to VAT after completion. VAT is then payable on the rent. You will be responsible for making a separate registration of your SIPP for VAT purposes and for managing all aspects of VAT including complying with HMRC requirements in relation to VAT returns.
- Environmental matters including the possible presence of asbestos are of considerable concern to us, as they may result in a reduction in the value of your investment property. Your pension fund and/or tenant could also incur environmental liabilities in the event that the property is found to be contaminated or the cause of other environmental damage.
- The Valuer is required to report on environmental matters when they prepare their valuation. We will require a "desk-top" environmental report on the property, which will be at your pension fund's expense, and we may be unable to proceed if the result is unsatisfactory.
- The SIPP pack contains questionnaires relating to environmental matters and certain building materials which may have been used during construction of the property and the Valuer will be required to complete these at the time of his/her report. If the Valuer is not able to complete these questionnaires, an appropriate Building Surveyor will need to be instructed. The information provided by the questionnaires may affect the insurability of the property.
- With effect from 1st April 2018 new legislation came into operation in respect of Energy Performance Certificates (EPC) **covering property in England and Wales**. The new regulations mean that landlords (or owners) must ensure their property meets the Minimum Energy Efficiency Standards (MEES) before a new lease or tenancy is granted. As a commercial landlord this requirement would apply to all property held with a SIPP. **James Hay therefore require an EPC to be obtained for all new property purchases, with the Certificate carrying a minimum E rating to allow any proposed purchase to proceed.**

### Progressing the purchase - a summary



# Section 2

## Commercial property purchase and general information

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### Introduction

Purchase of a property within a SIPP is the most complex transaction for a SIPP to undertake. It is essential that the proposal fits within HMRC and other rules and regulations as well as our own requirements. The first step is to complete and return as soon as possible a Commercial Property Questionnaire, with a Valuation Report prepared in accordance with this guide, to allow us to assess the viability and acceptability of the purchase. Please ensure that if finance is needed from a lender to assist with the purchase you make them aware of the section later in this guide entitled 'Arranging Finance'.

It is important that all the relevant sections of the Commercial Property Questionnaire are fully completed. If any additional information comes to light, please provide this to us as quickly as possible.

### Timescale

We cannot in any circumstances guarantee any timescale for completion as many aspects of a property purchase are beyond our control. In our experience, it typically takes between 8 and 12 weeks from instruction of our panel solicitor. It is essential that the SIPP is set up before the purchase commences. We will need your help to ensure that everything is in place in good time for the transaction to be successfully completed. Failure to provide the information we require may delay the purchase process and we cannot be held responsible for the consequences of such delay nor if the vendor decides to sell to another buyer.

### Ownership

You will be a co-trustee on your SIPP and together with the professional trustee you will be the legal owner of the property. This form of investment imposes onerous responsibilities upon us. We therefore have to make sure certain legal and regulatory requirements are met.

### The legalities

You must not commit us to a date for exchange of contracts or completion of the purchase because that date may be unattainable for reasons beyond your or our control. Contracts for the purchase of the property will not be exchanged until we have received all pre-exchange documentation from the instructed panel solicitor, and our requirements have been fully satisfied.

### Auctions

The purchase of a property at auction may cause particular problems. Please refer to us before the auction. We should not be named as the buyer in any contract without our agreement.

### Fees

Please refer to the Charges Schedule for your SIPP for details of our property charges.

### Communication

Where more than one member is investing, you will be asked to nominate one member as the main point of contact. This member will be responsible for ensuring all correspondence is passed to all members.

### What may be acquired in a SIPP?

#### Property must be commercial

HMRC imposes no restrictions on what type of property can be bought. However certain types of property (e.g. residential property) may lead to tax charges being applied to you personally and the SIPP. We will not purchase such taxable property through the SIPP fund.

#### No moveable property or goodwill

We will not buy furniture, fittings or business goodwill, only the land and fabric of the building.

#### Agricultural land

Agricultural land is normally acceptable but please contact us for more information as to any special requirements in such cases.

#### Development land

We will not hold land intended for development simply as a land bank, due to the risk that this would be deemed trading by HMRC.

#### Properties/land adjacent to properties/land that you or a Connected Party already owns

Please inform us if you or a Connected Party owns any land or property adjacent to that which you wish us to buy through the SIPP. If this is the case, we will require the Valuer to confirm that they are physically and practically separate and that there is no marriage value i.e. no enhanced value for the fact the property is adjacent.

#### Properties with special problems

Some properties may cause special problems both in terms of management and legal liability. For this reason, petrol filling stations and vehicle maintenance premises are not acceptable to us.

#### Right to refuse

We reserve the right to refuse to purchase any property at our sole discretion, particularly where we foresee significant management or resale difficulties, significant environmental exposure or where there are particularly onerous covenants.

#### Overseas property

The purchase of overseas property is not permitted within your SIPP.

#### Property tenure

The property should normally be freehold. Leasehold property may be purchased where the lease is a long lease (has at least 50 years remaining) at a nominal ground rent with no onerous covenants. Please supply

a copy of the head lease for our review with the Commercial Property Questionnaire.

The same will apply to a service charge or onerous maintenance obligations for which we could be personally liable. These can apply to freehold or long leasehold properties. We will need full information about past and estimated charges and cash to be held against such liability, if it is substantial.

If the ground rent and any service charges exceed £500 per annum we will not be able to proceed with the transaction unless the head lease incorporates our standard wording Limitation of Liability clause.

### Property development

#### Protecting ourselves

Development of commercial property within a SIPP can be undertaken but we must ensure our interests are fully protected. We therefore reserve the right to refuse to agree to a development if this cannot be achieved. Other than for minor improvements a project manager (a qualified surveyor or architect) must be appointed. When works are proposed either as part of an acquisition transaction or to a property which is already held in your SIPP in order to improve it, please contact us before any contractors are engaged or works started. Improvements must be of a capital nature rather than for the benefit of an individual tenant's business. The latter may be carried out by the tenant as improvements under the terms of the lease.

#### Building and works contracts

Any development or works to be carried out to a property held within your SIPP must be financed by your SIPP fund. Where works or development are proposed please contact us with full details and we will supply our requirements. A contract must be entered into before work can commence. Our liability must be limited to the value of your SIPP fund under that contract.

#### Financing a development

You must ensure that sufficient money is available in your SIPP fund to cover the cost of a development. We cannot enter into any contract for development until such time that sufficient money is available. It is possible to borrow for this purpose. For further information, please refer to the section later in this guide entitled 'Rules on borrowing'.

It is possible to borrow additional funds from a commercial lender to finance works that add capital value. However please note, if considering borrowing for the purchase, the total borrowings must not exceed 50% of the net value of your SIPP fund.



### Fees

If development of a property takes place within the SIPP, an additional fee is charged to cover the cost of our administration of the development.

### Limiting our liability

We will only enter into a contract for works if our liability to the developer is limited to the assets of your SIPP fund.

### Residential development prohibited

Residential development cannot be carried out by a SIPP and the property must be sold before such development commences. The SIPP can, however, pay for the cost of obtaining planning permission.

### Increased rent

The development must add appropriate capital and rental value to the property and must not only be for the convenience of the tenant. The increased rent will be as advised by a Valuer and applied as soon as the development has been completed.

## Who may a property be bought from/let to?

### Letting the property

Commercial property can be leased to an independent third party. It may also be leased to you, your business partnership or a company connected with you provided it is an arms length transaction on normal commercial terms at the full market rent under a formal lease. The lease will usually be on a full repairing and insuring basis. The rent is paid into the SIPP. Please bear in mind that we require a lease in place for all commercial property. Rent must be collected in accordance with the lease which may include the use of bailiffs or result in legal action being taken against the tenant. There will be no concession for any connected tenants.

### Unauthorised payment

If the property is used by you or someone connected to you and rent is not paid on commercial terms an unauthorised benefit tax charge may be levied against you personally and against the SIPP. These charges may also apply if rent is paid to you personally and not passed on to the SIPP.

### Buying the property

Property can be purchased from an independent third party. Property can also be purchased from you or a close relative, partner or any company associated with you or anyone else connected with you. In this case it must be purchased at the market value as certified by a Valuer.

## Environmental risk

### Contamination, asbestos, legislation, etc.

Environmental risk involves the potential to incur financial liabilities in the event that the property is found to be contaminated or the cause of other environmental damage. If there were a serious pollution problem, the cost of which could not be covered by the tenant or your SIPP fund, then we as trustee could be held legally responsible for the cost. We therefore need to be sure there are no potential problems at the time of purchase and we will therefore require an environmental report. You should bear in mind that as a co-trustee of your SIPP, you could also be held legally responsible for such costs.

Landfill sites and sites which may have been subject to contamination in the past, e.g. gasworks, are not acceptable. Examples of properties which could be higher risk are paint shops, chemical works, dry cleaners, printers and certain manufacturing units.

We will not purchase or change use to operational garages/petrol filling stations or any property contaminated with Japanese Knotweed. If the property is newly or recently built then we will require copies of all the environmental reports carried out by the developer and confirmation that we may rely on them. We will also need sight of the Professional Indemnity Insurance of the environmental consultants concerned. We will not enter into a contract that requires us to give any environmental indemnity to anybody or any environmental acknowledgments.

Under changes in the law set out in the Control of Asbestos at Work Regulations 2012, it is a legal requirement for every commercial property to be the subject of an Asbestos Register and Management Plan. Practical compliance with the Regulations will, in most cases, require an Asbestos Survey to be prepared by a suitably qualified person. We will not purchase a property without such a report and a Plan, if necessary.

Responsibility for complying with the Regulations will generally fall on the person controlling the property. In a case where there is a single tenant, who is fully responsible for the property, the tenant will be primarily responsible for compliance. Where there is more than one tenant, the landlord may retain responsibility for common areas such as a communal hall or staircase.

Failure to comply with the Regulations is a criminal offence. In cases where the responsibility for compliance rests on the owner, your SIPP fund will become liable to discharge the requirements of the Regulations and meet any associated costs and penalties.

Non-compliance with the Regulations may have a bearing on the acquisition price and/or on the saleability of the property.

### Energy Performance Certificates (EPC)

From 1st April 2018 it became a legal requirement in England and Wales that, before any new lease (including lease renewals) can be granted to a new or existing tenant an EPC assessment must be undertaken and an EPC certificate produced confirming an energy performance rating of band A - E.

Looking further ahead the legislation states that from 1st April 2023 the continued letting of any commercial property (situated in England & Wales) with a EPC rating of either F or G would not be permitted. This change could have a significant impact on the overall value and marketability of each property investment as well as seeing non compliant landlords penalised financially.

As a result James Hay require that an EPC is obtained in respect of all new property purchases and that this certificate must demonstrate a rating of A - E to allow the purchase to proceed.

Should the property not meet these minimum requirements we can only proceed if it can be evidenced that the property is exempt from the EPC regulations and the exception can be quantified by a qualified EPC assessor.

James Hay would recommended that all financial advisers or investors review the published government guidance available at [www.gov.uk](http://www.gov.uk) ([The Private Rented Property minimum standard](#)) and take appropriate advice on how this legislation change and the proposed 2023 changes could potentially impact your property investment.

### Surveys/Valuations

#### Who will inspect and value the property?

The property must be inspected by a Valuer who is a member of the Royal Institution of Chartered Surveyors (RICS) or equivalent body and is not connected to you. The report should be produced in accordance with the relevant sections of the current RICS Professional Standards (the 'Red Book').

#### Ongoing valuations

Please note that the property will need to be revalued on a regular basis every five years to ensure that the annual valuation of your SIPP fund is accurate.

Additionally, a valuation will be required if you wish to take benefits from your SIPP. If you are taking capped drawdown benefits from your SIPP, regular valuations ensure that the calculation of your benefits is accurate. Valuations are then required every three years, and every

year when a capped drawdown income is being paid after the age of 75. If several SIPPs in different stages of drawdown own the property, valuations will be at the most frequent level. Valuers fees for revaluations will be payable by your SIPP fund.

Valuations may be required at other times in order to comply with legislation. Where you manage the property, you will need to instigate valuations in a timely fashion to meet these requirements. Please note that if a valuation cannot be carried out for any reason and you take capped drawdown benefits, the property value will have to be set to nil value for the recalculation of your SIPP income limits.

#### What we require from the valuer's report

- A basic description and assessment of the condition of the property, including the construction of the roof/flooring as per the Valuers 'Red Book' instructions
- A recommendation as to whether a full structural survey, environmental risk, contamination or asbestos survey is required. The report should specifically state whether such surveys are recommended or not and the Property Observation Checklist and Composite Panels Questionnaire (available on our website at [www.jameshay.co.uk](http://www.jameshay.co.uk)) must be completed
- Colour photographs and an Ordnance Survey (OS) plan showing the extent of the property valued, in addition to street and location maps
- The market value (there must not normally be more than a 10% difference between this and the proposed purchase price and no difference between these figures if the property is being purchased from a Connected Party)
- A reinstatement figure for insurance purposes
- A recommended current market rent (based on our standard lease terms). For these purposes the Valuer will need to know how long you want the lease to run (it must normally be at least as long as the repayment period of any loan taken to assist with the purchase) and whether there will be any break clauses (allowing the lease to be terminated before the end of the term but not before the end of the loan period)
- The report must be less than twelve months old
- Environmental screening report.

### Report addressed to us

The Valuer's Report must be addressed to the SIPP Trustee(s). We may accept a report that has been prepared for a prospective lender, but it must be re-addressed to all Trustees as client and contain or be accompanied by an identification plan and all other information referred to above. You will need to arrange this.

### No liability

We accept no liability in any circumstance for the condition or suitability of the property, or the financial strength of any tenant. These are matters for you to satisfy yourself upon before deciding to proceed with any purchase.

### Further investigations

We will only ask for a structural survey if the valuation indicates it is necessary or if there are unusual repairing obligations contained within the legal documentation. If one is not requested this in no way implies any acceptance of liability in relation to the structural condition of the property. You will be responsible for the costs of all reports, which will be paid by your SIPP fund, even if as a result of these we are unable to proceed with the purchase. We may also, where a potential issue is identified or arises subsequent to the purchase, require a more extensive environmental report and for any recommended remedial action to be taken, at your SIPP fund's expense.

### Instructing Panel Solicitors

Only a solicitor from our approved panel of solicitors can be instructed to act for the SIPP. We will not be in a position to instruct a panel solicitor or progress any borrowing until we have received a fully completed and original signed Commercial Property Questionnaire, a satisfactory Valuation Report including the Property Observation Checklist and Composite Panels Questionnaire, and satisfactory responses to any environmental surveys deemed necessary by ourselves. If there is an existing long lease, we must see this before determining whether the property is acceptable. We would also like to see any existing occupational lease at this stage.

## Arranging finance

### Finance must be in place

Before the purchase can proceed you must ensure that you have arranged the necessary finance to enable the purchase to be completed (including any short term overdraft required to cover any recoverable VAT payable on the purchase price if applicable).

### Obtaining a mortgage

The mortgage must be provided by a commercial lender acceptable to us and the offer must be addressed to the Trustee(s). We will contact the lender to provide details of our requirements.

### Rules on borrowing

Legislation restricts the amount your pension fund can borrow to purchase a property to a maximum of 50% of the net value of your SIPP fund at the time the mortgage is actually drawn down. This limit applies at all times, borrowing is only permitted for purchase, development or refurbishment.

We will check the value of your fund prior to exchange to confirm whether the borrowing proposed is within the 50% limit. We will take no responsibility for a change in fund value after that point. If the fund value subsequently changes there may be tax implications if it transpires you have borrowed more than 50% of the net value of your SIPP fund.

No mortgages can be taken at any other time in respect of the property for any purpose even if your SIPP fund has not borrowed the maximum permitted. Where a share in the property is being bought out, however, a mortgage may be taken out for that purpose as long as this does not exceed overall 50% of the net value of your SIPP fund.

All borrowings for whatever purpose (including VAT) must not exceed 50% of the value of your SIPP fund. Before purchase, we will need to receive all pension money so that we can confirm the value of your SIPP fund, and therefore the amount which may be borrowed. Please note that we cannot take into account any other money held with any other providers. We will not permit you to lend money to the SIPP or you or any other person to act as guarantor of any borrowing personally.

### Rent must cover mortgage payments

Problems may arise if the rent is not sufficient to cover the mortgage payments. The rental income must be at least 110% of the mortgage repayment with a fixed rate loan. In the case of a variable rate loan the rental income must be at least 130% of the mortgage repayment. We cannot rely on you making further contributions each year to cover any shortfall although you can make early capital repayments from your SIPP fund if the lender allows and you are willing for any penalties to be paid by your SIPP fund.

### Exchanging contracts

Contracts cannot be exchanged until we have accepted the mortgage offer and/or have sufficient money in your SIPP fund to cover the purchase price and we are

## Section 2: Commercial Property Purchase and General Information

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satisfied all of our requirements have been met.

### Unacceptable conditions

We insist on the mortgage offer limiting our liability to the value of your SIPP fund. A few lenders will not accept this condition and in such cases the borrowing cannot proceed. Some insist on onerous conditions which are unacceptable to us e.g. a floating charge over our assets or an assignment of the rent. In such cases, you will need to arrange borrowing from a different lender.

### Financial arrangements – your responsibility

We do not arrange finance for the purchase of your property, and cannot provide bridging loans. It is essential that you have enough money from contributions, transfers from other pension funds and/or loans to complete the purchase including all expenses such as legal and Valuer's fees, stamp duty land tax, land registry fees, lender's mortgage arrangement fees, local search fees and our fees, etc. We will also need to receive all pension money before we can confirm the value of your SIPP fund, and therefore the amount that may be borrowed. Please be aware that if contributions are made net, then it may take between six and eleven weeks to reclaim the basic rate tax on the contribution and this cannot be bridged by us or by outside finance.

### Paying the mortgage

All mortgage payments, both capital and interest, must come from your SIPP fund and must not be paid by you direct to the lender. We require a copy of the mortgage statement at least annually to confirm the payments have been made to the lender.

### Starting the mortgage payment

We need the equivalent of four months' mortgage payments to be available in your SIPP fund following the purchase, to ensure liquidity, in case there is a delay in receiving the first rental payment and to avoid the risk of unnecessary bank charges.

### Existing properties used as security

In some cases an existing property held in your SIPP fund, which is not already subject to mortgage, may be used as additional security to finance a new property acquisition. This is subject always to the overall limit on borrowing of 50% of the value of the whole fund.

## Instructing Panel Solicitors

### Which solicitors can be used?

We will only instruct a solicitor from our approved panel of solicitors. Our panel solicitors are situated across the UK. You are welcome to contact any of them and discuss

the services they offer and their legal fees for your transaction.

### Legal fees

All legal fees will be paid from your SIPP fund.

### Keeping you informed

We will ask the instructed panel solicitor to keep you and your financial adviser, if requested, informed of the progress of the transaction.

### Legal advice on the lease

If the lease is being granted to you or your company, you should independently consult your own (non-panel) solicitor to act for you or your tenant company. You can remain unrepresented, but you cannot use the same panel solicitor to act for both your SIPP (as landlord) and you/your company (as tenant).

### Lender instructing own solicitor

If a mortgage is being obtained and the lender instructs their own solicitor, your SIPP fund will be responsible for all and any additional fees incurred as a result.

## Ownership of property

### We will be the co-trustee

We and the member(s) are co-trustees and so we will purchase the property with the member(s) in joint names. In order to facilitate this, you will be obliged to sign a Property Management Resolution. We need to be completely satisfied as to the legal title to the property. We reserve the right to appoint alternative trustees and/or remove you as trustee if necessary. We will not share ownership with a party outside the SIPP.

## Ongoing expenses

At all times, it is your responsibility to ensure sufficient liquid funds are held in the SIPP fund to meet ongoing liabilities. These can include, but are not limited to, the mortgage, SIPP fees, and if the property becomes vacant, rates, insurance, maintenance, security, marketing costs, etc. If there are costs due from the SIPP that cannot be met, the property is at risk and we may be forced to sell the property against your wishes. You will be the main point of contact for any creditors.

Should the property be sold in negative equity and with any liabilities that cannot be met from SIPP funds, we reserve the right to pursue you personally for all outstanding charges, costs and expenses.

### Leases

#### Lease required immediately

A formal lease must normally be entered into at the time of completion of the purchase unless there is an existing occupational lease. Please let us see a copy of any existing lease at the earliest opportunity. If development of the property is proposed, we will need a lease or agreement for lease that reflects the situation. Please refer to us for guidance. The panel solicitors will prepare a lease (if needed), which will be supplied to the prospective tenant or their Legal Adviser as appropriate and will reflect the terms negotiated.

#### Lease terms

The lease must be drafted by a solicitor on a commercial basis and will usually be on fully repairing and insuring terms, and must be at the market rent with upward only rent reviews. We will not normally accept a property where the market rent is less than £2,000 per annum.

#### Member as a tenant

If you or your company will be the tenant, you cannot decide to pay a rent below the full market level, for example just to cover the mortgage payment, or to pay an increased rent or to defer paying the rent. We are required by HMRC to ensure that all rent is collected and any covenants in the lease are enforced. In other words, we must treat you as we would any other tenant. We will therefore take legal action, which may include the use of bailiffs, to recover any rents owed under the terms of the lease.

#### Length of lease

The lease must be a minimum of three years, although it will need to be longer in cases where there is borrowing to assist the purchase. Your lender may also have other specific requirements.

#### Paying the rent

Rent must be paid on the due dates shown in the lease, usually by standing order. It is also essential that any mortgage payments are due a few days after the rent is paid. We cannot be responsible for any late payment or interest charges if rent is not received in good time or for charges made for matters outside our control.

#### Name on lease

Rents can only be accepted from the tenant named on the lease. For example, if your company occupies the property then your company, not you as an individual, must be named as the tenant. If the name on the lease is incorrect, the lease will need to be assigned and this will incur additional legal and Valuer's fees which will be due from the tenant.

### Property management

#### Your responsibilities

Once the purchase of a property has been completed, the property must be properly managed. You can choose to manage the property yourself or instruct a professional property manager to manage it on your SIPP's behalf.

#### Option 1:

##### Self-Management by members

Since you will become responsible for the management of the property once the purchase completes, you will need to ensure all lease covenants are observed, and carry out the following:

- Rent collection and payment to the SIPP, including other sums due under the terms of the lease, such as insurance
- Completion and submission of VAT returns to HMRC
- Property inspections
- Provision of a helpdesk number for general tenant queries
- Collation of insurance information to ensure insurance cover is maintained
- Maintain a record of valuation due dates
- Maintain a record of forthcoming lease events, such as rent reviews, lease expiry, appointment of independent surveyors to undertake rent reviews, new leases and lease renewals
- Maintain a separate account for service charge management in line with the RICS Service Charges in Commercial Property code of practice.

In addition, you will need to submit to us an annual property return to provide information on the following:

- Rent received
- Lease information and changes
- Condition of property and tenant house keeping
- Insurance information.

If the property manager is not RICS qualified, only mileage and reasonable accountancy fee payments can be considered for payment from the SIPP.

Should the management of the property and provision of the required information to us be insufficient or incomplete, then we reserve the right to remove you as the property manager and, where the SIPP allows, as co-trustee. In that event, the property will either be sold or we will appoint CBRE to manage the property on our behalf, if applicable. Failure by you to remit all

## Section 2: Commercial Property Purchase and General Information

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rents to the SIPP, failure to instigate rent reviews or lease renewals in a timely fashion or the occupation of the property without a lease, or any other failure to manage the property in accordance with normal commercial property management, may all result in your removal as the property manager. In the event this occurs you will be charged the full CBRE management fee and it will not be possible to revert to self-management in the future. Please note that failure to manage the property on an arms length commercial basis could trigger an unauthorised benefit, which is reportable to HMRC and creates tax charges on the SIPP and you personally. To avoid the risk of triggering an unauthorised benefit, no fees in respect of the management of the property can be paid to you.

### Option 2:

#### Partnership SIPPs only - CBRE Property Management Service

For Partnership SIPP's only, you can instruct us to put in place a full management service via our managing agent CBRE if the property is not VAT opted. If the property is VAT opted, you must carry out the property management and deal with all aspects of VAT yourself.

Where instructed, CBRE are responsible for ensuring the effective management of properties including rent collection, property inspections and general tenant enquiries. We will refer all matters relating to works on the property to CBRE.

#### Valuations

CBRE will notify you when routine valuations of the property are due, normally every five years. The valuations do not necessarily indicate what the property would be worth if sold. The basis of valuation is as defined by the RICS. This valuation will also provide an up to date valuation for insurance purposes.

#### Alterations, refurbishments and developments

Any proposed alterations, refurbishments and developments on commercial property should be notified to CBRE for approval. They will advise us on the rental and other implications associated with the proposals. However, if there are proposals under consideration at the time of an intended purchase, please supply full details to us rather than CBRE in the first instance.

#### Annual fees

We charge an annual property administration fee (payable from your SIPP fund) from which we cover the cost of CBRE's ongoing administration if you choose this option. Please see the Charges Schedule for your SIPP for details of the annual property administration fee.

#### Additional charges

Other services provided by CBRE such as valuations, rent reviews and consideration of proposals for works at the property are charged separately by them and the details of their charges are obtainable from them. If you prefer to instruct another firm of Chartered Surveyors in connection with valuations or rent reviews, we will normally agree to this.

#### Insurance

One of the key duties undertaken by James Hay as part of our ongoing scheme administration responsibilities is to ensure that all property investments, including land, held on a co-trustee basis have appropriate levels of insurance cover in place.

For self-managed properties, we allow the member(s) to arrange the insurance cover as long as they provide a copy of the insurance certificate annually, so that we can ensure that the investment, and ultimately the investor, is protected against any potential loss.

In order to ensure that appropriate levels of cover are in place for each investment held, we have engaged with insurance professionals to obtain advice on the appropriate minimum level of cover expected to protect the investment while it is held in the pension scheme.

The minimum levels of cover subsequently advised are:

- That any building is covered against events of fire, flood, subsidence, landslip, terrorism, lightning strike, explosion or earthquake up to the stated reinstatement value as advised by a qualified surveyor.
- Three years' loss of rent in the event that the property or land is damaged through one of the above incidents to the point that it cannot be occupied.
- Property Owner liability cover to a minimum level of £10 million.

There will be circumstances where the legal obligation to insure does not sit with the Pension Scheme, such as where a Superior Landlord has the legal obligation to insure the property, or where the existing lease will set out that the tenant is responsible to insure the property.

In these circumstances we will request suitable evidence of cover from the appropriate responsible party. If the cover provided does not include all of the specified requirements, the investor can arrange separate cover to ensure that the minimum levels are reached.

Should we not receive appropriate evidence that the investment is appropriately covered after two requests, we will immediately organise for cover to be arranged via the block insurance policy held by us with Gallaghers,

## Section 2: Commercial Property Purchase and General Information

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with the costs deducted from the relevant SIPP property bank account. If we subsequently receive evidence later that insurance is in place, the property can be taken off the block policy and a refund arranged.

Overall, the key responsibility for us is to insure that the investment, and most importantly the investor(s), is fully protected for the duration of time the asset is held in the pension scheme.

In the event that insurers repudiate a claim for any reason, we cannot accept any liability for the resultant loss to your pension scheme.

It is a requirement that the property is valued every five years to ensure adequate insurance cover is maintained.

### Partnership SIPPs only - Our block policy

We will arrange insurance (from the time that contracts are exchanged) under a block policy we have with a leading insurance company.

The premium will be taken initially from your SIPP fund, but, subject to the lease, this will be recharged to the tenant.

We may receive a commission payment, based on a percentage of all premiums paid and due in relation to the block policy. The amount received will (in whole or in part) be retained by us, and used to offset the costs incurred by us in administering the various properties.

Our insurers will require information on the construction materials used in the property. Please therefore ensure the surveyor who is inspecting and valuing the property completes the Composite Panels Questionnaire.

### Renewal

The policy will be renewed on 1st May each year and therefore, at purchase, the proportion to that date will be due.

## Property purchase by more than one SIPP

### How it works

It is quite common for one property to be purchased on behalf of several SIPPs. We need to establish a separate SIPP for each member to which our normal charges apply. It is not necessary to have an existing business partnership for this to be effected. Charges for each additional member apply.

All members whose SIPP has an interest will be co-trustees and therefore legal owners of the property, unless there are more than three, in which case the professional trustee will be the first legal owner and the

members will nominate three of them to become the other named owners at the Land Registry.

We will not allow a property to be purchased jointly by a SIPP for which we are a trustee and a third party, including another SIPP trustee company.

### Partnership SIPPs only - central property account

We maintain a bank account for SIPP properties. This account receives the rent, pays the mortgage, and holds surplus funds until we are instructed by the members to distribute them to each SIPP which will be in proportion to their percentage shares in the property. Sufficient funds must be maintained by you to cover all liabilities due in respect of the property before the next rental receipt.

### How the shares are calculated

It is essential for us to know at the start what each member's share in the property is intended to be. This must reflect the sum each member's SIPP fund puts towards the purchase of the property. It is not possible to make a gift of part of one SIPP fund's entitlement to another, nor for one SIPP fund to accept a disproportionate share of the mortgage liability in order to increase its share of the property. In the event that one SIPP fund has insufficient cash to meet a liability the relevant member will normally need to make a further contribution. If at the time of purchase cash has to be used from one member's fund to cover a shortfall in another's, then that will be reflected in an equivalent increase in that member's share of the property. After the purchase has completed and the share in the property has been established, it is not possible for one member to cover another member's shortfall in funds for liabilities that may arise. This would constitute a loan and borrowing is only permitted from a commercial lender.

### Buying extra shares

It is possible for one SIPP fund to buy a part or the whole of another's share of the property later. A valuation will be required, which must be no more than six months old. You will need to contact us for details when required and there will be a fee charged for the administration and calculation involved.

### Joint agreement

We strongly recommend that you enter into a legal agreement to cover events such as death, retirement, disputes and new members acquiring an interest in the property. At such times the property would normally be revalued. We do not give advice on this type of agreement. You will need to take your own legal advice.

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We will not sign such agreements. They should be worded in such a way to determine how instructions can be given to us in respect of the property, for example whether a simple majority of members in terms of share of ownership is sufficient or whether all members must agree unanimously. In the absence of any joint agreement, we will normally require the unanimous agreement of all members before accepting any instructions in respect of the sale or transfer of the property.

### Transfer of property from another pension scheme

The transfer of a property from another pension scheme can be quite complex. Typically, a property will be held by the professional trustee of a SIPP provider who want to transfer it to a SIPP with James Hay Partnership. In these cases, the normal charges apply, as do all our usual requirements as set out in this guide. If there is an existing mortgage we will require a new mortgage to be granted in our name. Where instructed, our property managers, CBRE, will not be able to start collecting rent until the legal transfer has been completed.

### Transfer of a property as a contribution

We cannot accept the transfer of a property as a contribution of an asset.

### Mortgage liability warning

We can only borrow up to 50% of the value of each SIPP fund. This means that individual SIPPs may have different shares of the mortgage. Most lenders will require that all members' SIPPs are held jointly and severally liable for the whole mortgage irrespective of the percentages owned by each SIPP. If one member fails to hold sufficient funds for their proportion of any liabilities, the property could be at risk, even if you have funds.

### Death or withdrawal of member

In the event of death or withdrawal of a member, the share owned by that member's SIPP must be transferred to an existing member's SIPP or a new member's SIPP. If this is not possible the property must be sold. Further borrowing is permitted for any buy-out. Please remember that the normal borrowing limits apply and total borrowings for each SIPP fund must not exceed 50% of the net value of that fund.

## Value Added Tax (VAT)

### Opting to tax

It is possible to arrange to opt to tax (bring the property into the tax environment) for example, on the purchase of a freehold new commercial property where the purchase price is subject to VAT or where major works

are proposed, in order that VAT that has been paid out may be reclaimed (please note, it takes several weeks to reclaim VAT). If you manage the property yourself, you will be the point of contact for VAT registration, opting and VAT inspections by HMRC.

Where the SIPP is to acquire, lease or dispose of property used/to be used for storage, external VAT advice may be required by JHP prior to completion of the transaction. The cost of this VAT advice will be borne by your SIPP.

### Taking advice on VAT

If appropriate, you will need to arrange to opt the property. You should consult your adviser as to whether it is appropriate to opt.

### Tenants exempt from VAT

Occasionally it may not be possible to opt, in which case VAT will be irrecoverable. One example is where the purchase price of a property, including any landlord works, is £250,000 or more and the member as tenant is wholly or partially exempt from paying VAT. You should seek professional advice if this situation is anticipated.

### Transfer of going concern

If the property is currently subject to VAT, and you are able to opt, and there is already an ongoing tenancy in place then it may be possible to dispense with the payment of VAT on the purchase price, as the purchase can be treated as a 'transfer of going concern' (TOGC). In some circumstances, it is possible that HMRC will overrule this concession after completion. If this happens VAT becomes payable to the Seller on production of a valid VAT invoice and can be recovered on the next VAT return. As there will be a time delay in recovering the VAT it may be necessary for there to be sufficient money in the SIPP fund to pay the VAT to the Seller.

### Short term borrowing to cover VAT

Any VAT loan comes within the 50% borrowing limits, so the total of all borrowings must be no more than 50% of the value of your SIPP fund.

## Fees

### Who pays them?

The legal, Valuer's, and all other relevant fees, together with all disbursements must be paid from your SIPP fund. If there are insufficient funds in your SIPP at the start of the transaction to cover expected fees, we will request a payment to cover these.



### What are the charges?

Please refer to the Charges Schedule for your SIPP. The charges contained in the Charges Schedule are in addition to the legal and other charges and disbursements incurred in the purchase of the property. If the particular circumstances of the transaction are likely to require a significantly greater than normal amount of time from us we reserve the right to charge an increased fee.

### Additional charges

A new lease at a later date, or a sale or transfer out of the property from the SIPP, is normally treated as a further property transaction and we will make a charge for this. Please see the Charges Schedule for your SIPP for further details.

For any work we are required to carry out outside our normal responsibilities (e.g. involvement in litigation in connection with the property) we will charge an additional fee. Any professional advice or assistance we may need in connection with managing your property will be charged to your SIPP fund.

### Aborted transactions

We examine each proposed purchase during every stage of the process to ensure it complies with HMRC and our requirements, as set out in this guide. There may therefore be cases where a proposed purchase will be declined at a late stage. Please refer to the relevant Charges Schedule for your SIPP for details of our cancellation fee, which will be charged irrespective of the reason the purchase has been cancelled or aborted.

### Panel Solicitor's charges

Please contact your chosen James Hay panel solicitor to discuss their legal fees in advance of the transaction commencing. Their fees will depend on the nature and complexity of the transaction in question.

Unfortunately, it may not be possible to reach a final view on the acceptability of a property until the solicitors have undertaken some of their work and costs have been incurred, which will be met from your SIPP fund. This applies even if the transaction is aborted because our legal requirements cannot be met.

### Consequences

If the property purchase falls through, the SIPP will remain in force and can only be cancelled if the start date is within the cancellation period. Contributions cannot be refunded.

### Disclaimers

This guide may not be exhaustive, as we have found from experience that individual properties may sometimes have particular problems or involve additional costs that only become apparent after the legal work has commenced. The information provided in this guide may also be affected by changes in the relevant legislation. If you have any queries or would like any further information, please do not hesitate to contact us.

This guide is based on our interpretation of current legislation and should not be relied upon for detailed advice or as a statement of law. Whilst every effort has been made to ensure that the information is correct, we cannot accept any responsibility or liability for any omission or inaccuracy in the material provided in this document.

Please remember that the tax treatment depends on the individual circumstances and current tax benefits may change in the future. You should seek advice from a financial adviser regarding the matters raised in this guide as to how they may affect you.

Remember that the value of your investments can fall as well as rise.

### Further information

**If you have any further questions, please call your Service Executive Team if you are a financial adviser, or our general helpline 03455 212 414 if you do not have a financial adviser.**

# Frequently asked questions

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## **What is the difference between freehold and leasehold property?**

Put simply, a freehold property is absolute ownership of the property. Leasehold is where the interest is a tenancy under a long lease, typically for 99 years or above. At the eventual end of the tenancy, ownership goes back to the landlord.

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## **What do you mean by 'opt to tax'?**

Commercial property is generally exempt from VAT. There are occasions where it is appropriate for a property to be standard rated and in order to achieve this, the property is opted to tax. Once the property is opted, VAT is charged on the rent.

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## **Do I have to have an environmental report on the property?**

Yes. A screening report is undertaken initially on all properties which identifies, for example, previous uses of the property, areas of flood plain, areas of coal mining, etc. More detailed reports may be required as a result of this initial screening. Costs are paid from your SIPP fund.

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## **How do I calculate that the mortgage payments meet your requirements?**

The annual market rent or existing rent divided by 1.1 will give the maximum annual repayment amount for a fixed rate loan, OR divided by 1.3 for a variable rate loan.

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## **Who completes the Composite Panels Questionnaire and Property Observation Checklist?**

The Valuer, who must be a RICS qualified surveyor, and be independent of you.

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## **Can the tenant or vendor use the same solicitor as James Hay Partnership?**

No. There must be separate solicitors to avoid a conflict of interest. A solicitor from our approval panel must be instructed to act for your SIPP.

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## **Who organises the lending and valuation?**

You do, with your preferred lender and Valuer. We do not have a panel of lenders or Valuers.

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## **What works can the SIPP pay for?**

Items that are typically payable by a landlord and are not the responsibility of a tenant. Please read the Commercial Property Works Guide for further information, which is available on our website [www.jameshay.co.uk](http://www.jameshay.co.uk). All proposed works must be referred to us prior to commencement.

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## **What are the SSAS to SIPP in-specie transfer requirements?**

Exactly the same as a normal SIPP property purchase. The process involves a full legal conveyance, and change in legal ownership from the co-trustees of the SSAS to the trustee(s) of the SIPP.

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## **Can the SIPP buy a property at auction?**

Technically yes, but in practice there are difficulties due to timescales set by the auction houses and the legal obligations imposed on us by acceptance of the bid before our requirements can be met.

# How to contact us

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Call your Service Executive Team, or our general enquiry number on **03455 212 414**.

Lines are open 9am to 5pm Monday to Friday. To help us improve our service we may record or monitor calls.

Visit our website:  
**[www.jameshay.co.uk](http://www.jameshay.co.uk)**

Write to us at:  
**James Hay Partnership  
Dunn's House  
St Paul's Road  
Salisbury  
SP2 7BF**

We are able to provide literature in alternative formats. For a Braille, large print, audio or E-text version of this document call us on 03455 212 414 (or via the Typetalk service on 18001 03455 212 414).

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