

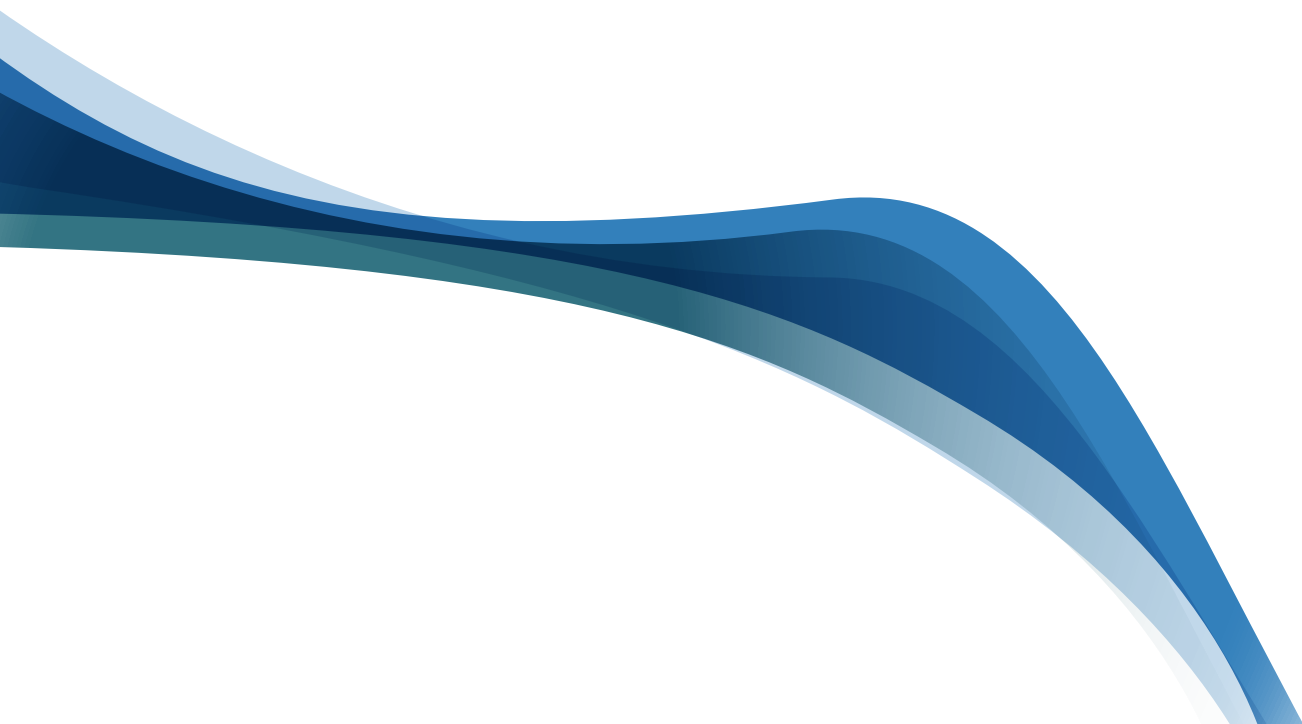
## Commercial Property Litigation Guide

Applies to:

- Modular iSIPP
- Wrap SIPP
- Private Client SIPP
- Partnership SIPP
- IPS SIPP
- IPS (2008) SIPP
- IPS Family SIPP
- IPS Pension Builder SIPP

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## Introduction

### What is this guide about?

This guide has been written to help you understand how a property held within a SIPP may be affected by a dispute, which in turn may lead to litigation. With any form of dispute, it is important correct procedures are followed to minimise the risk of loss to your SIPP or to James Hay Partnership as the trustee of your SIPP.

Due to the risks involved with litigation, this guide has been written to help you understand the steps we will need to take.

Should you be considering a claim on behalf of the SIPP, or have received documentation which suggests a claim may be brought against the SIPP, please contact our Property team as soon as possible to discuss. We can also help you to understand some of the terminology used in this guide, so that you fully understand the process and options available to you.

This guide is for use in connection with products provided by James Hay. We can't accept any liability if the information provided in this document is used for any other purpose. This fact sheet is based on our understanding of current UK legislation and HMRC practice at the date this document was produced.



If you have any further questions, please call your Customer Support Team or our general enquiry number 03455 212 414.

## Glossary

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

**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

**SIPP:** means any of the relevant James Hay SIPP products offered by James Hay Partnership

**Counsel:** refers to a barrister involved in litigation in conjunction with the SIPP's solicitor to provide detailed advice on an area of law, often called "an Opinion", to attend court hearings or to draft court documents.

**Dilapidations:** means a claim for building maintenance damages against a tenant at the end of a lease.

**Litigation:** refers to any dispute or potential dispute affecting the SIPP property which is legal in nature and could result in a claim being heard in the Courts or a Tribunal.

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

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



Please complete the **Commercial Property Litigation Form** at the end of this guide to provide us with the information we need to process your application.

## Key points

Commercial property carries a higher likelihood of disputes and litigation arising due to the physical nature of the investment.

Litigation should only be pursued as a last resort once other methods of resolving a dispute have been exhausted, because success cannot be guaranteed even in an apparently simple case.

Even pursuing a claim with good prospects of success may not be commercially justifiable when the legal costs likely to be incurred will be greater than the sum claimed, or if the party being pursued is insolvent or has insufficient assets against which to enforce judgment.

The decision to pursue litigation should always be carefully considered and only taken once legal advice has been received, the matter has been discussed with your Property Service Executive and the decision approved by us. It is one of our requirements that any advice received regarding a contemplated claim is reviewed by us before any decision is taken about proceeding.

Where your SIPP property is owned jointly with other SIPP members, you must all agree to the proposed course of action. You will be unable to pursue any formal action without their consent, and it's your responsibility as SIPP members to agree instructions with one another.

We will attempt to assist SIPP members with disputes in any way we can.

In addition to instances where you wish to initiate a claim by your SIPP against a third party, there will be times where the SIPP has to defend a claim from someone else.

Examples of claims in this class could be:

- where a local authority is bringing an action for failure to pay non-domestic rates (also known as business rates),
- by a tenant against the SIPP for breach of landlord covenants,
- by freeholders for unpaid service charges, or
- actions brought by neighbouring property owners.

The same basic principles will apply as to whether a hostile claim is defended or settled.

In cases where legal action is brought against your SIPP in relation to a property, and you fail to provide us with clear instructions to respond to the same, we reserve the right to instruct our own solicitors to act on behalf of the SIPP. The cost of this will be a liability of your SIPP.

There are certain circumstances where the SIPP may become involved in litigation with a connected party. In these circumstances, we are required to act as any commercial landlord would, to comply with HM Revenue & Customs (HMRC) regulations and/or to act in the best interests of the SIPP in accordance with our fiduciary duty as trustee. Failure to act commercially against a connected party tenant may give rise to an unauthorised benefit occurring, where the connected party can be shown to have benefited at the expense of the SIPP.

In these circumstances we may elect to pursue legal remedies without your instruction to ensure your SIPP is managed in accordance with HMRC regulations and our duties as trustee.

At all times, the final decision to begin or continue with litigation remains ours as corporate trustee.

## Types of claim

Commercial property litigation encompasses a wide range of potential disputes. A qualified commercial property litigation solicitor should always be consulted when bringing or defending a claim in order to identify how best to proceed.

The most likely types of claim to affect SIPP property relate to:

1. Recovering rent arrears from an occupational tenant;
2. Claims for taking back possession of the property;
3. Terminal dilapidations claims and other tenancy disputes;
4. Claims against professionals such as valuers, contractors, solicitors, etc;
5. Claims made against the SIPP by third parties for recovery of unpaid liabilities or non-domestic rates;
6. Claims involving visitors, neighbours and trespassers.

Solicitors instructed on behalf of the SIPP will be asked to advise us in writing generally on the claim and associated risks before litigation can be pursued.

## Risks and costs

The costs of defending or pursuing a claim must be paid from funds within the SIPP. These can be either funds already within the SIPP or introduced by contributions or transfers to the SIPP for this purpose. Any contribution or transfer to the SIPP for this purpose will be subject to the normal HMRC rules and restrictions. You should speak to your financial adviser about the implications of contributing or transferring cash to your SIPP before doing so.

Some property insurance policies offer 'legal insurance' within the cover or as an additional option. You should read through any policy documentation to establish if this cover is available for the SIPP. In instances where legal insurance cover is available, there are likely to be conditions of cover which restrict availability radically and so it should be fully understood and discussed with us before action is taken. We have the final decision in our absolute discretion whether to initiate, continue or settle any litigation in relation to the SIPP property.

Before considering any form of litigation you should be aware of the potential costs the SIPP will incur. We will ask the solicitor appointed on behalf of the SIPP to give guidance as to the potential fees and costs that may be incurred in pursuing a claim. We will ask for sufficient funds to be contributed to the SIPP before any proceedings are initiated. Solicitors will be able to advise on the likely costs of litigation and these must be agreed by us before any claim can be initiated.

Most solicitors will require their costs to be paid periodically, often monthly, throughout the entire claim from initial advice to post-judgment recovery. This means the SIPP must have sufficient funds available at all times to pay these invoices when they fall due. Should counsel be instructed in the claim, solicitors will require these fees to be paid up-front in addition to their own costs.

You should be aware even in instances where a claim is successful, including judgment for the SIPP's legal costs, the SIPP will probably only be able to recover approximately 70% of costs actually incurred. This means for a claim where the SIPP's legal costs were, for example £10,000, the SIPP would only recover £7,000 and so incur a £3,000 loss. Solicitors appointed for the SIPP will be able to confirm their advice on costs recovery. The above is for illustration purposes only as there are many factors which can affect recoverability of costs.

The losing party in litigation will, in most cases, have to pay the winning party's costs plus their own legal fees. So, using the above figure for both side's costs for illustration purposes, should your SIPP lose, it will pay its own costs of £10,000 and the winning party's costs (70% of £10,000 = £7,000) too. The SIPP would have a total costs liability of £17,000. This is in addition to the actual remedy, such as damages with interest, awarded by the court.

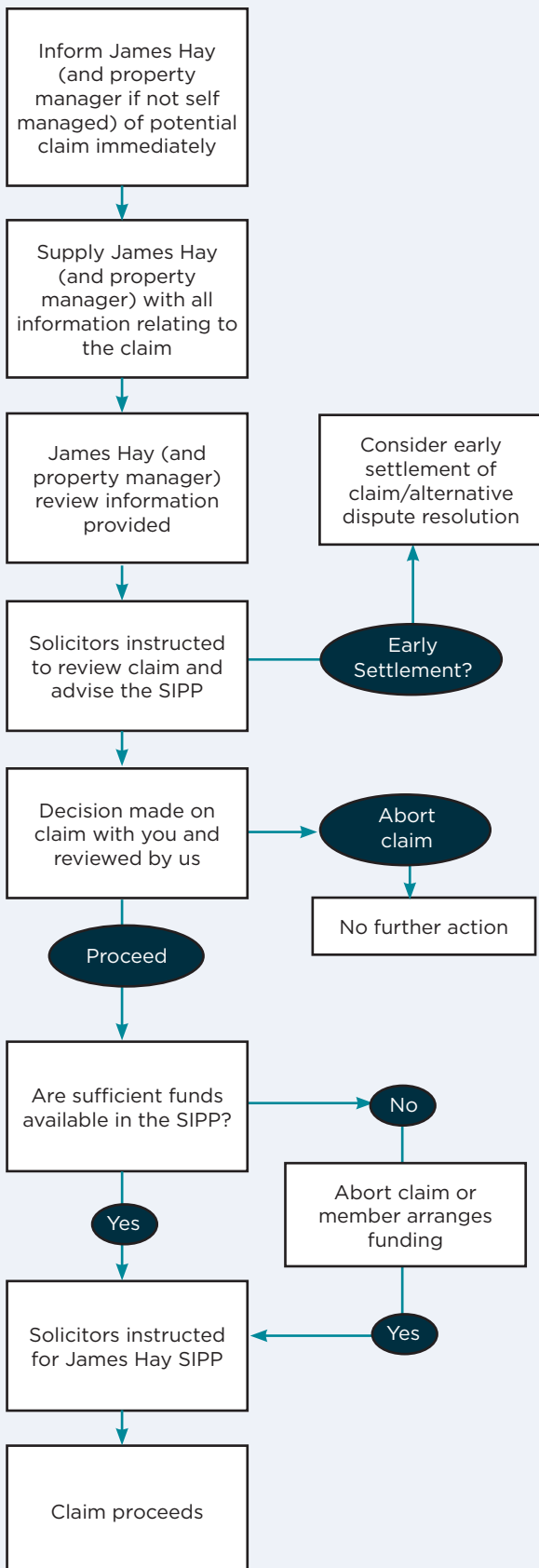
It is vital the SIPP has sufficient funds available when embarking on any form of litigation whether as claimant or defendant. Failure to have sufficient funds available in the SIPP will prejudice the ability to bring a claim. If there are insufficient funds in the SIPP to pay the anticipated or accumulated costs at any point, the action cannot continue and we may be forced to sell the SIPP property or other SIPP assets, against your wishes if necessary, to meet any outstanding debts.

## Is it necessary to appoint a solicitor?

Yes, as we will not permit any form of litigation to be initiated or defended without solicitors being instructed on behalf of the SIPP. Exceptionally, we will permit a RICS surveyor (approved by us) to prepare a 'Schedule of Dilapidations' and to negotiate a settlement of the Dilapidations claim. Should this not result in settlement, solicitors will be instructed to work in conjunction with the appointed surveyor.

The solicitors acting in litigation must be experienced in the relevant field and able to understand the special complexities of a SIPP. We will require them to co-operate with our procedures and understand the client/solicitor relationship is with James Hay Partnership, alongside their liaising with you for detailed instructions. Due to the complexity and risks involved in SIPP litigation, we insist on using solicitors who can demonstrate suitable experience and knowledge.

## Key steps – bringing a claim



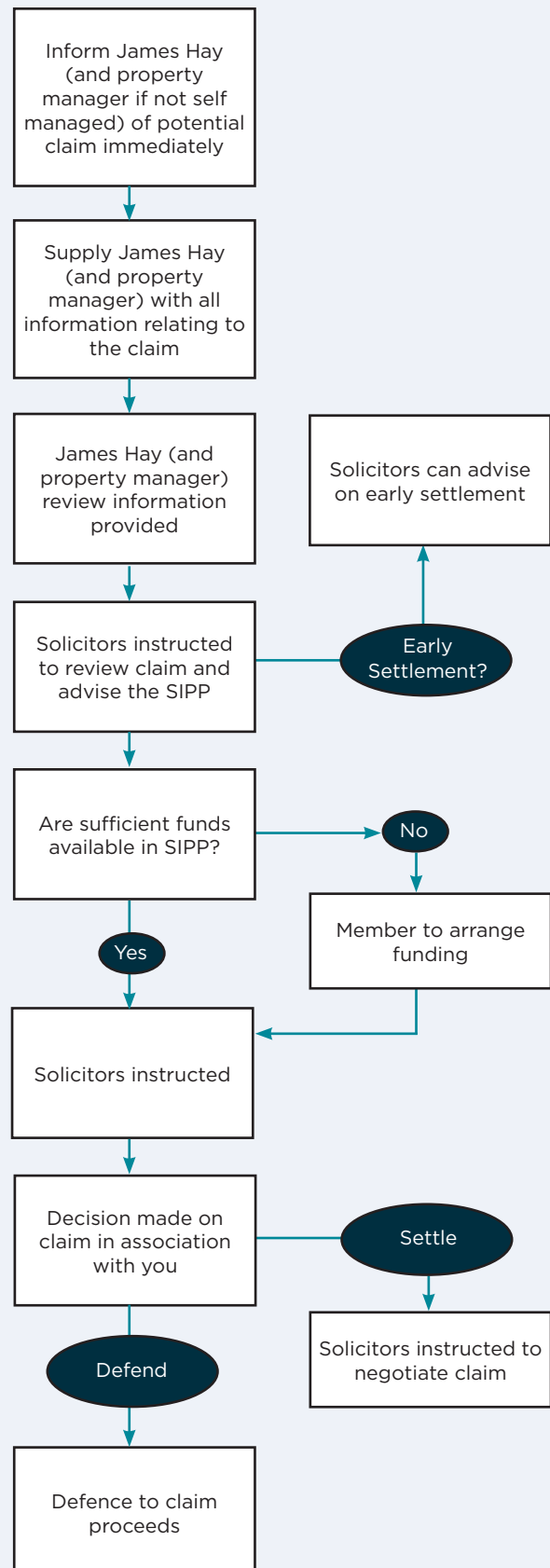
The following is a brief summary of the key steps in bringing a claim for your SIPP:

- Discuss potential claim with our Property Service Executives.
- Provide sufficient information to us for potential claim to be considered.
- We'll review potential claim and, if approved by us, and subject to sufficient funds being available in the SIPP, authorise solicitors to be instructed to provide initial advice.
- Solicitors will be instructed to review the claim and advise. It will be your responsibility to cooperate with them and provide all the information they reasonably require.
- Solicitors will provide written advice to us and you on the merits of the claim. We'll also require advice on potential risk and costs liabilities at this stage.
- You may decide that the claim is not commercial to pursue. Alternatively, we may not permit a claim to proceed if the solicitor has advised the case is unlikely to be successful or there are insufficient funds available in the SIPP.
- If the case is viable, solicitors will be instructed to proceed with the claim. They may liaise with you directly for specific instructions throughout, however we must be kept informed at all times and any documents and formal instructions in the claim must be made through us. Under no circumstances can material instructions be given or documents approved without our approval as trustee. It is important to remember whilst the claim is brought on behalf of your SIPP, James Hay is the solicitor's client.
- The claim will proceed and solicitors will keep us and you fully informed of the progress made.
- If the claim is successful, solicitors will advise how to obtain enforcement of judgment and recovery of damages and costs.
- Any sums recovered from the claim will be paid to your SIPP bank account.
- If the claim fails, solicitors' costs awarded against the SIPP will be paid from SIPP funds. If there are insufficient funds available in the SIPP, you will have to introduce cash to the SIPP to meet the liability. If you cannot raise sufficient cash to meet the liability, SIPP investments, possibly including the property itself, will need to be sold.

The following is a brief summary of the key steps in defending a claim against your SIPP:

- You must contact us as soon as you become aware a claim may be brought against the SIPP.
- If we receive documents indicating a claim is being pursued against the SIPP, we'll send you copies as soon as possible.
- We will review documents relating to a claim in conjunction with you and authorise instruction of solicitors if appropriate.
- Solicitors will be instructed to review the claim and advise on the merits, defence and risks involved. It will be your responsibility to cooperate with the solicitors, and provide all the information they reasonably require.
- The solicitors will be asked to provide written advice to us and you on the merits of the claim, potential defences, costs and risks involved and next-steps to be taken including any potential settlement of the claim (if appropriate).
- We will require sufficient funds to be in the SIPP to cover any liabilities, including costs and legal fees, arising from the litigation.
- A decision to be made about the merits of the claim i.e. whether to defend or settle.
- If it is decided to defend the claim, solicitors will be instructed and they will liaise with us and you. Solicitors may liaise and take instructions directly from you, however all documents must be approved and any formal instructions made through us. Under no circumstances can material instructions be given or documents approved without our approval as trustee. It is important to remember whilst the claim is brought against your SIPP, James Hay is the solicitor's client.
- Should the claim be successfully defended, solicitors will be asked to advise us and you what options are available to recover costs from the losing party.
- Should the SIPP lose, solicitors will advise on the next steps. Damages and costs that the SIPP is liable to pay to the claimant will be paid from SIPP funds. If there are insufficient funds available in the SIPP we will require you to introduce cash to the SIPP to meet the liability. If you cannot raise sufficient cash to meet the liability, SIPP investments, possibly including the property itself, will need to be sold.

## Key steps – defending a claim



## Commercial Property Litigation Form

### Application guide

Please complete this form in BLOCK CAPITALS and return it to the address below:



James Hay Partnership, Suite 202 Warner House, 123 Castle Street, Salisbury, SP1 3TB.



If you need any help with completing this form, please call your Customer Support Team or our general enquiry number 03455 212 414.

### 1 Name of pension product in which property is held

Applicant to complete

- |  |   |
|--|---|
| <input type="checkbox"/> Modular iSIPP       | <input type="checkbox"/> IPS SIPP                 |
| <input type="checkbox"/> Private Client SIPP | <input type="checkbox"/> IPS (2008) SIPP          |
| <input type="checkbox"/> Partnership SIPP    | <input type="checkbox"/> IPS Family SIPP          |
| <input type="checkbox"/> Wrap SIPP           | <input type="checkbox"/> IPS Pension Builder SIPP |

### 2 Property address

Applicant to complete

Property  
address

Postcode	

### 3 Details of SIPP member(s)

Applicant to complete

#### SIPP member one

Member name	<input style="width: 90%;" type="text"/>
Reference number	<input style="width: 90%;" type="text"/>
Email address	<input style="width: 90%;" type="text"/>
Telephone	<input style="width: 90%;" type="text"/>

#### SIPP member two

Member name	<input style="width: 90%;" type="text"/>
Reference number	<input style="width: 90%;" type="text"/>
Email address	<input style="width: 90%;" type="text"/>
Telephone	<input style="width: 90%;" type="text"/>



**4** Details of panel solicitor

Applicant to complete

Please confirm which panel solicitor you wish the Trustee to instruct:

**5** Brief summary of the dispute/potential legal action

Applicant to complete

Please provide a brief summary of the dispute/potential legal action:

What is the estimated value of the claim?

Are you aware of any key dates we must be aware of?

**6** Balance of funds

Applicant to complete

I understand that my SIPP must contain sufficient funds to cover the costs of the case throughout the matter. The balance of funds will be provided from the following sources: e.g. bank accounts held by the SIPP, transfers from other pension schemes, member contributions:

Source

Amount

**Member 1**

Print name

Signature

Date

**Member 2**

Print name

Signature

Date

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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NGSL, IPS, JHAC, JHPT, JHWM, JHWNC, PAL, SarumTL, IPSP, UPT have their registered office at Suite B & C, First Floor, Milford House, 43-55 Milford Street, Salisbury, SP1 2BP. JHS has its registered office at Aztec Group House, IFC6, The Esplanade, St Helier, Jersey, JE4 0QH. JHAC, JHWM, IPS, IPSP, are authorised and regulated by the Financial Conduct Authority. NGSL, IPS, IPSP, PAL, UPT, JHWM, JHPT, JHAC, SarumTL and JHS are members of a VAT group with VAT registration number 514 0358 80. All companies are wholly owned subsidiaries of Nucleus Financial Platforms Limited (registered in England, number 06033126) whose registered office is at Suite B & C, First Floor, Milford House, 43-55 Milford Street, Salisbury, SP1 2BP, and are members of the Nucleus Group. Further details of the Nucleus Group can be found at [nucleusfinancial.com](http://nucleusfinancial.com). (12/24)