

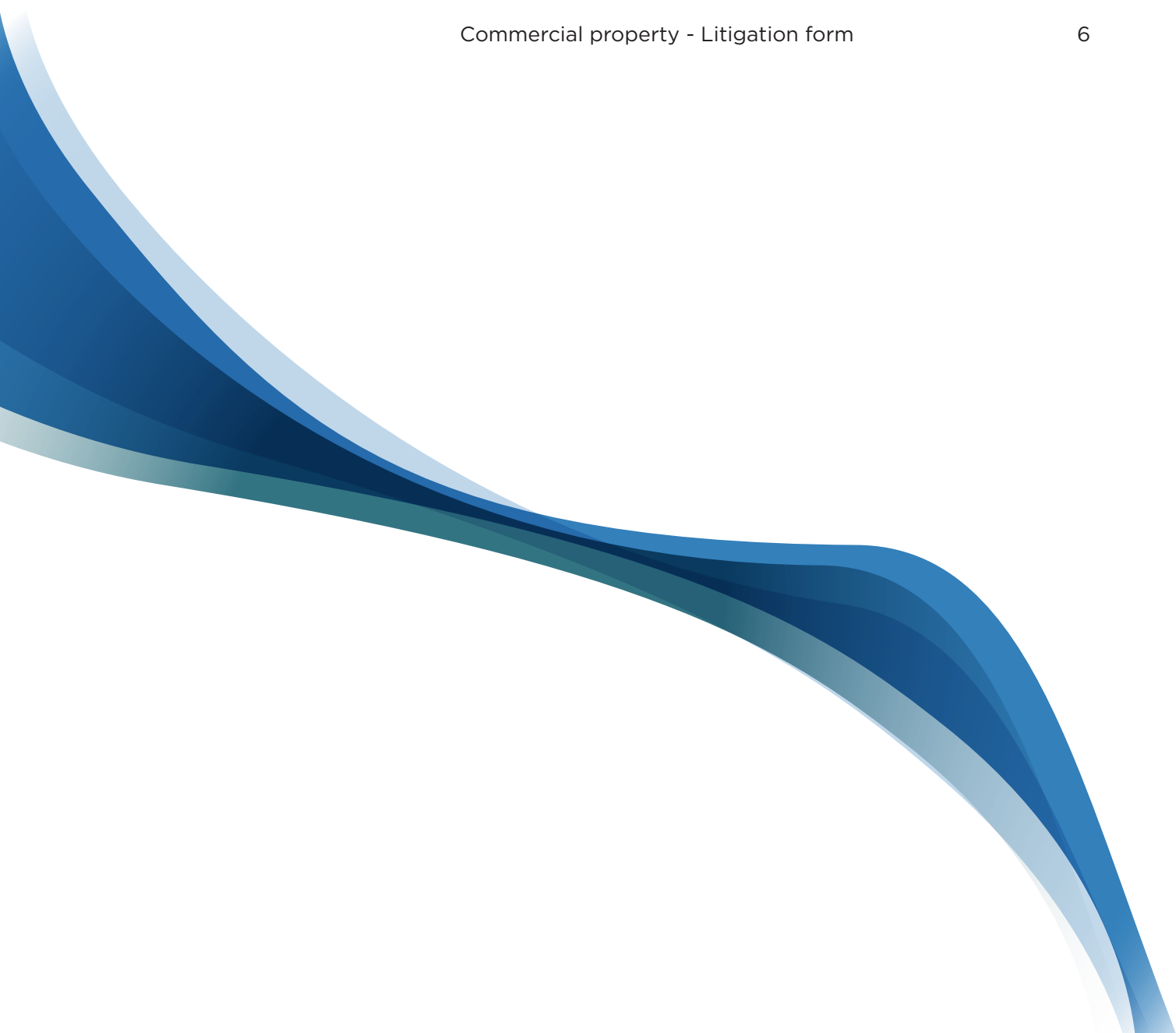
Commercial Property Litigation Guide

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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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 James Hay Partnership will require to be undertaken. It is, however, only a guide and therefore cannot cover every circumstance that might arise.

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 your Property Service Executive as soon as possible to discuss this.

Please read this guide carefully. If you have any further questions please call your Property Service Executive, or our general enquiry number 03455 212 414.

Glossary

Please note the following terms throughout this document:

'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.

'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.

'SIPP' will mean any of the relevant SIPP products offered by James Hay Partnership, as detailed on the front page of this document.

'We/us/our' refers to any of the Trustee Companies associated with James Hay Partnership.

'You' refers to the SIPP member(s).

Introduction – 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

unilaterally. It is your responsibility as SIPP members to agree instructions with one another. We will attempt to assist SIPP members should a member dispute arise, however, it is the SIPP members' ultimate responsibility to agree amongst yourselves.

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 contribution to the SIPP for this purpose. Any contribution to the SIPP for this purpose will be subject to the normal HMRC rules and restrictions regarding pension contributions.

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.

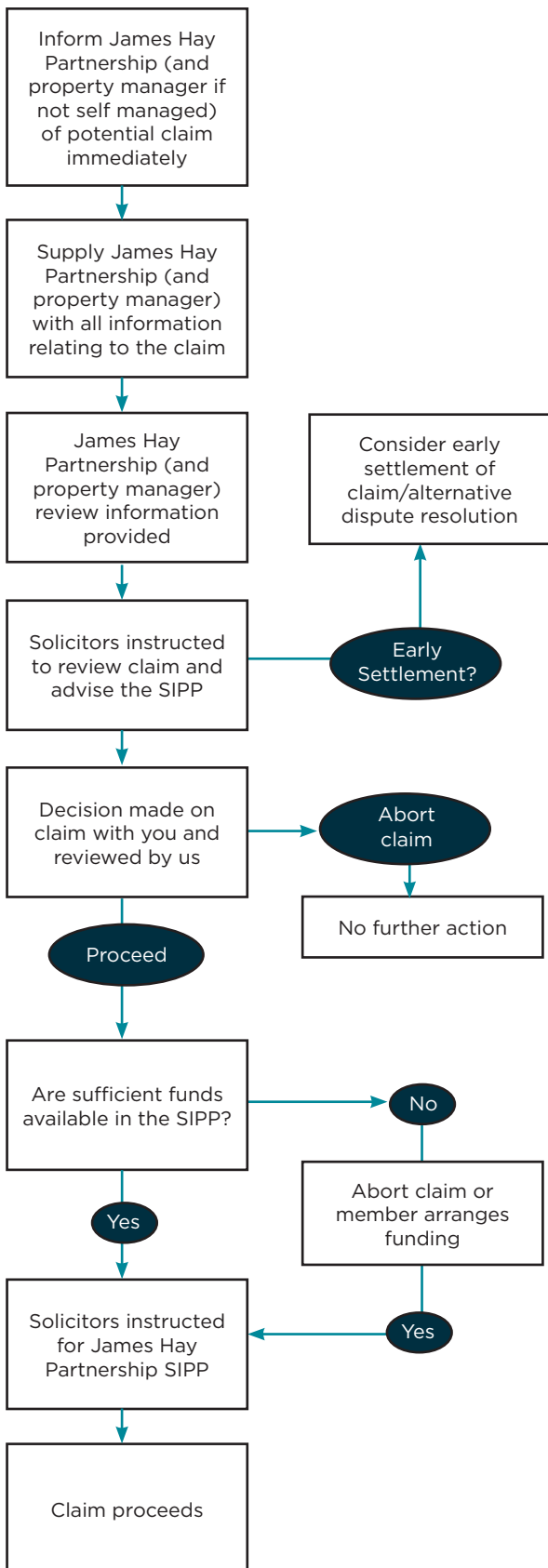
Is it necessary to appoint a solicitor?

Yes, 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



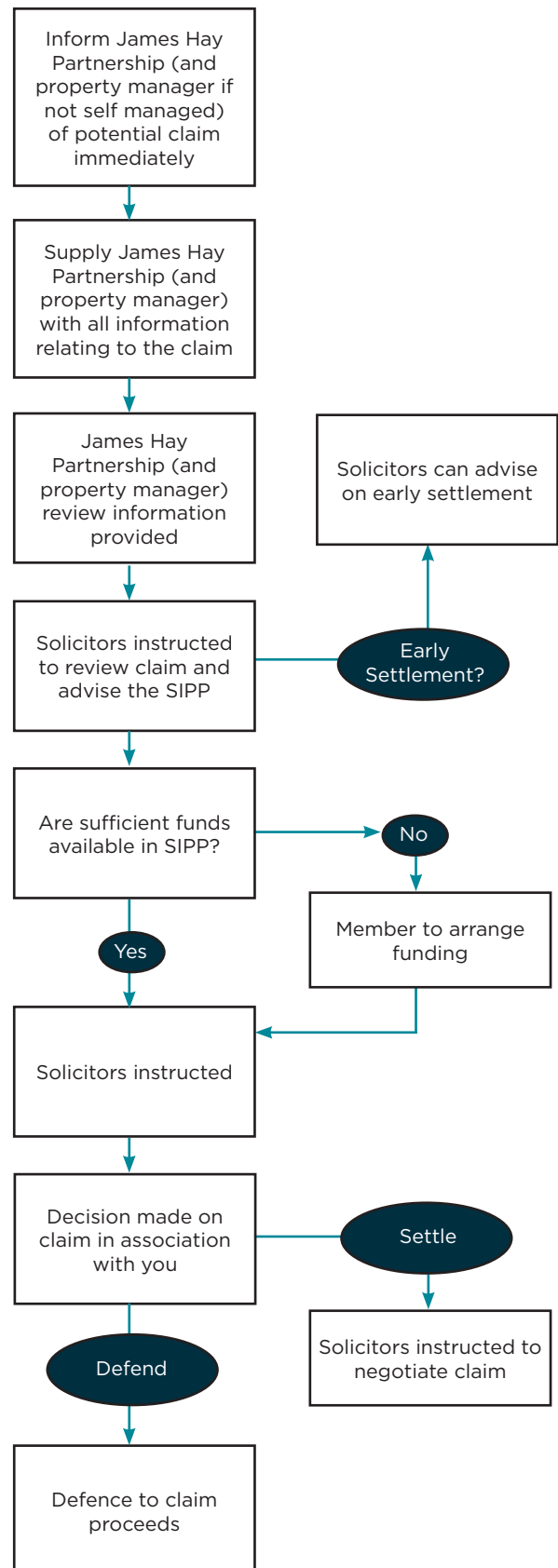
The following is a brief summary of the key steps in bringing a claim for your SIPP:

- Discuss potential claim with Property Service Executive at James Hay Partnership.
- Provide sufficient information to us for potential claim to be considered.
- We will review potential claim and, if approved by us, (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 James Hay Partnership and you on the merits of the claim. We will 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 Partnership, 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 make sufficient contributions 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:

- Contact must be made with James Hay Partnership 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 will 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 James Hay Partnership 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 James Hay Partnership 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 Partnership is the solicitor's client.
- Should the claim be successfully defended, solicitors will be asked to advise James Hay Partnership 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 make sufficient contributions to meet the liability, SIPP investments, possibly including the property itself, will need to be sold.

Key steps – defending a claim



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:

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Signed by member(s)

Date

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Important Information

This guide is issued by us for use in connection with products provided by James Hay Partnership. James Hay Partnership does not accept any liability if the information provided in this document is used for any other purpose. This guide is based on our understanding of current UK legislation and HMRC practice at the date this document was produced. We cannot be held responsible for any action you may take as a result of reading these notes. We recommend that you seek financial advice. The tax treatment depends on the individual circumstances of each client and may be subject to change in the future.

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).

James Hay Partnership is the trading name of Nucleus Group Services Limited (NGSL) (registered in England number 02538532); James Hay Services Limited (JHS) (registered in Jersey number 77318); IPS Pensions Limited (IPS) (registered in England number 2601833); James Hay Administration Company Limited (JHAC) (registered in England number 4068398); James Hay Pension Trustees Limited (JHPT) (registered in England number 1435887); James Hay Wrap Managers Limited (JHWM) (registered in England number 4773695); James Hay Wrap Nominee Company Limited (JHWNC) (registered in England number 7259308); PAL Trustees Limited (PAL) (registered in England number 1666419); Sarum Trustees Limited (SarumTL) (registered in England number 1003681); The IPS Partnership Plc (IPS Plc) (registered in England number 1458445); Union Pension Trustees Limited (UPT) (registered in England number 2634371). JHS has its registered office at Aztec Group House, 11-15 Seaton Place, St Helier, Jersey, JE4 0QH. NGSL, IPS, JHAC, JHPT, JHWM, JHWNC, PAL, SarumTL, IPS Plc, and UPT have their registered office at Dunn's House, St Paul's Road, Salisbury, SP2 7BF. JHAC, JHWM, IPS and IPS Plc are authorised and regulated by the Financial Conduct Authority. (2/23)