



Commercial Property Guide



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Introduction

The Rowanmoor SIPP is designed to offer full flexibility when choosing assets for investment, including commercial property. Many people choose commercial property to satisfy the potential for capital growth and regular income.

Investing in commercial property through your self-invested personal pension (SIPP) offers many advantages that include:

- tax relief on contributions paid into your SIPP;
- exemption from capital gains tax when the property is sold;
- exemption from income tax on any rental payments;
- increased cash flow if property is purchased from you or your company.

Our SIPP processes enable you to participate in the purchase and take control of the ongoing management of your property investment. We will be on hand to offer guidance on any issues you may confront during the process.

Purchasing property through a pension arrangement can be complex and requires a detailed knowledge of HM Revenue & Customs' (HMRC's) intricate rules and other regulatory requirements. We have many years of experience dealing with these. This guide provides information on the purchase of property through your SIPP to help your understanding, which in turn should reduce some of the problems you might otherwise encounter.

Property transactions often take several months to complete. In some cases delays may occur for reasons beyond our control, particularly when a number of parties are involved.

Whilst we do all we can to minimise the delays we can control, we have procedures in place to identify and mitigate any risks associated with a property's ownership, before your SIPP can enter into any legally binding contract. We reserve the right to defer, or decline any investment if our requirements are not met. We cannot therefore give any guarantees for the date of completion of sale or purchase, or be held liable for any adverse consequences arising from late completion.

You will understand more about the risks and our requirements once you have read this guide.

This guide is based upon our understanding of English Law and therefore there may be some differences in legal and other requirements if property is purchased elsewhere. Investment in overseas commercial properties may be possible but you must discuss the implications with us to ensure that any proposals are acceptable before proceeding.

We have dedicated Scheme Property and Technical Teams, who specialise in dealing with all administrative aspects of the life cycle of a property investment and are able to assist you with your enquiries. No two property transactions are the same and this guide cannot possibly cover all eventualities. We recommend that you always take appropriate professional advice when choosing to invest in a property.

Owning your SIPP property

Any property purchased by your SIPP will normally be held in an individual sub-trust established under the principal pension trust deed. You will be appointed as the trustee of the sub-trust, which will purchase the property. This means that the property is legally owned by you as trustee of the sub-trust and registered with the Land Registry in your name.

By using this method of purchase, the sub-trust empowers you to take control of the management of the property. Unlike some other SIPP operators we do not insist on you appointing a specific property management company.

In certain circumstances it may not be possible to use the sub-trust, for example when purchasing overseas property. If this is the case we will advise you.

In England and Wales, a restriction in favour of Rowanmoor Trustees Limited will be registered and in Scotland a standard security put in place requiring our consent to any future dealings with the property.

Factors to consider

When considering the type of property you wish to invest in, there are many things that you must take into account. Pensions legislation restricts you from investing in most types of residential property, or any other property where you would be able to gain some form of personal benefit. Most types of commercial property and land are acceptable but care must be taken to ensure that any risks associated with the purchase are carefully managed.

You can consider the purchase of commercial property or land from any party, including connected parties. All property purchases and any lease arrangements must be on a fully commercial arm's length basis.

A connected party is:

- you;
- your spouse, civil partner or relative;
- a relative of your spouse or civil partner;
- a business partner, their spouse or civil partner;
- a company connected with you, your spouse or civil partner;
- the trustee(s) of a settlement for which you are a settlor, or for which a person who is still alive and connected to you is a settlor.

Acceptable property

Commercial property or land of any kind, leased back to a connected or third party.

Hotels, prisons, care homes and public houses, provided they meet appropriate pensions legislation requirements.

Forestry, woodland and agricultural land, provided there is no residential element included. In addition, HMRC may investigate any fishing or hunting rights, or any other leisure or recreational activities on the land, to ensure you, or anyone connected to you, could not directly benefit from these activities following the acquisition of the land by your SIPP, without paying the appropriate market rate for the activity.

Overseas commercial property, provided it meets the criteria applicable to the purchase of any property in the UK, including ensuring title can be identified and any risk issues can be resolved. Any foreign documents associated with the property must be accompanied by English translations. You will need to appoint a lawyer qualified in the appropriate jurisdiction to act on behalf of your SIPP.

Factors to consider

(continued)

Acceptable property

(continued)

Land for development, which could be commercial or residential. The following points need to be considered before investing in land for development:

- If it is intended that the land is to be developed by a connected party, you will need to obtain independent quotations from three different contractors, including the connected party. This is to ensure the work is carried out on a fully commercial basis at arm's length. Architect's certificates for partially completed and fully completed development work may also be required.
- How your SIPP will fund the cost of the work including how any borrowing will be repaid prior to completion of the works.
- The work must be carried out for the benefit of the SIPP. In general, it should enhance the value of the property, increase the rental income and subsequently enhance the potential benefits from your SIPP.
- Frequent purchases and sales may be considered as trading by HMRC and consequently assessable to tax.
- In some circumstances, it may be possible to partly develop residential property. This is a complex area and you should discuss any proposals with us before incurring any expenses to ensure you adhere to pension regulations.

Prohibited property

All residential property is prohibited, even if planning consent has been granted for a change of use to commercial. Only when the change of use has been completed is your SIPP able to purchase the property. A freehold commercial property, which contains a residential element, such as a flat on a long residential lease, with a nominal ground rent, is still considered by HMRC to be a residential property. In these circumstances it is only possible to proceed with a purchase if the vendor is prepared to sell only the commercial part to your SIPP. For example, by granting a long leasehold interest in the commercial premises.

There are exceptions to this regulation, which are:

- residential property, which is occupied by an employee, as a condition of employment, who is not connected with his or her employer or connected to you, for example a caretaker;
- residential property, which is occupied by a person, other than you (or a person connected with you), in connection with that person's occupation of the business premises, for example a shop with an integral flat above.

Unacceptable property

We endeavour to permit the purchase of any property or land that is permitted under current legislation, however, we reserve the right to refuse to proceed with the purchase of any property, or to proceed subject to individually negotiated terms, at our discretion.

The circumstances when this might apply could be (but are not limited to):

- where we consider there to be a real risk of existing or future contamination, or environmental damage, for example the presence, now or in the past, of Japanese knotweed or petrol stations;
- acquisition of a leasehold interest, which is subject to a high rent or service charge, for example ground rent greater than a peppercorn rent or an annual service charge over £1,000;
- possible breaches of pensions legislation requirements, the SIPP's trust deed and rules, or the sub-trust;
- the trustees are unable to obtain good and marketable title to the property;
- where a property is difficult to insure, due to its past or current use, for example waste management and recycling, or there is flood risk or subsidence, composite panels, Japanese knotweed or solar panels;
- where a property will be unoccupied on completion;
- where a property or land is directly adjacent, or near to other land, owned by a connected party.

Factors to consider

(continued)

Lease

We normally expect the property to be let from the date a purchase completes unless there are exceptional circumstances, for example, where a property is to be developed. It will not be possible to proceed where a property is to be unlet at completion, if we consider the SIPP is unable to meet any financial outgoings, for example, rates, mortgage repayments and insurance. You should contact us to discuss whether it is possible to proceed if you are not intending to let the property immediately on completion.

All leases should be granted on a full repairing and insuring basis at the rent recommended in the valuation. The tenant will be responsible for compliance with all relevant legislation, including the Environmental Protection Act 1990 and Control of Asbestos at Work Regulations 2012. The tenant will be required to give the trustees an up-to-date copy of the Asbestos Management Plan for the property on an annual basis, if applicable.

Funding the purchase

Contributions

Once you have identified a suitable property investment, the next stage is to consider how the purchase will be funded, as contracts for purchase cannot be exchanged until the funding is in place. This should include funding to cover legal expenses and any administration fees payable.

Contributions, which can be made into your SIPP, are unlimited. There is, however, a limit on the level of contributions eligible for tax relief in any one tax year, known as the annual allowance. There is also a limit on the funds you may have in your SIPP when you take your benefits, known as the lifetime allowance. Funds in excess of the lifetime allowance will be subject to additional tax charges unless you have obtained the necessary pension protection.

You may obtain tax relief in excess of the annual allowance in a single tax year by using unused annual allowance from the previous three qualifying tax years, provided you were a member of a UK registered pension scheme. This facility is called carry-forward (see the Rowanmoor SIPP Key Features for more details).

Your employer can contribute to your SIPP and will receive tax relief, provided the contributions are made wholly and exclusively for the purpose of the employer's trade. If the total of your employer's contribution and your personal contributions exceeds your maximum permitted annual contribution limit you will have to pay tax on the excess contributions.

We strongly recommend that you seek advice on the financial and other consequences of making contributions to your SIPP, as in some circumstances making contributions may lead to tax charges. It is recommended that you seek advice on such matters from your accountant or financial adviser.

Existing investments

If any assets, already held in your SIPP, need to be sold to assist in the purchase, sufficient time needs to be allowed for the realisation to take place and the cleared monies to be available in your SIPP bank account prior to exchange of contracts.

Transfer from other pension arrangements (either in cash or in specie)

If you are considering transferring benefits from existing pension arrangements into your SIPP you should seek advice from your financial adviser. Applications for the transfer of benefits cannot start until your SIPP has been formally established. Sufficient time needs to be allowed for the transfer to be completed and for any money to clear in the SIPP bank account before exchange of contracts. This can take several weeks or sometimes longer.

Funding the purchase

Borrowing

Your SIPP can borrow money to help fund the purchase. The borrowing can be from any source, usually a bank, but you may also borrow from a connected party, provided it is on a fully commercial basis, subject to a commercial rate of interest and is formally documented with all parties signing the agreement. We would expect borrowing repayments to be met from the rental income.

Pensions legislation limits your SIPP's total borrowing to 50% of its net fund value at the time the loan is drawn down.

The net fund value excludes any existing borrowing which will be deducted to calculate the net value of your SIPP. The 50% borrowing limit will take into account any existing outstanding borrowing already in place.

We can help with any borrowing calculations once we receive the completed SIPP Property Information Schedule and SIPP Borrowing Information Schedule (see 'the next step' on page eleven).

The terms on which any borrowing is taken must be agreed by you and us. The following should be considered before agreeing to a repayment schedule:

- the amount of rental income to be received and whether this is sufficient to cover the mortgage repayments;
- the age at which you wish to take benefits from your SIPP, particularly if the property is to form a substantial proportion of the assets of your SIPP;
- the ability of your SIPP to pay any current and future commitments if the borrowing proceeds, such as a pension in payment;
- the term of the lease compared to the term of any borrowing.

All documentation needs to be individually agreed by us before the borrowing may proceed. This includes the Offer/Facility Letter, Mortgage Agreement and Legal Charge. The solicitor acting on behalf of your SIPP (see 'appointment of solicitor' on page eight) will need to see the Offer/Facility Letter and agree to the terms of the loan before any documentation can be executed on behalf of the SIPP.

The lender will usually want to secure their lending against the property by way of a Legal Charge.

The liability of both Rowanmoor Trustees Limited and the SIPP member must be limited to the assets of the SIPP in all legal documentation including the Offer/Facility Letter, Mortgage Agreement and Legal Charge and the solicitor will be instructed to ensure this is included within the documentation.

Grants

It may be possible for your SIPP to apply for a grant to help purchase and develop a property, for example, when the area the property is in is part of a redevelopment programme. A grant may be an attractive proposition, but there are certain considerations to take into account before proceeding.

- The grant is treated as a donation to the SIPP.
- The body making the grant available must be happy to make it available to the SIPP.
- The terms and conditions attached to the grant must not impose any onerous covenants, such as a requirement to provide employment or impose any selling restrictions. The terms of any clawback of the grant should also be carefully considered in the event of the disposal of the property.
- We must always be advised of any proposed grant and will need sight of any agreement for approval before it is executed.

Joint ownership

Joint ownership can be a good solution for you if your SIPP is unable to raise the funds to buy a property outright. However, you also need to consider what would happen should you, or the other party, wish to sell a share in the future or unfortunately die. It may be off-putting to a potential buyer to be able to buy only part of the property and this could be reflected in the value of the seller's share, which may be reduced disproportionately against the total value of the property. You could also find yourself in a situation where your SIPP jointly owns the property with a totally unconnected third party.

We may permit the joint ownership of a property with other parties or another Rowanmoor SIPP. Should you wish to consider this type of investment the Rowanmoor Family Pension Trust may be a suitable alternative and it is recommended that you seek advice from your financial adviser.

We have no objection to joint ownership provided:

- the trustees of the sub-trust have the freedom to realise their investment whenever they wish;
- an independent valuation of the property is carried out and each party's share agreed, (the value of each share is then recorded in a separate Deed).

We will not accept a joint purchase of property that requires the SIPP to become part of certain special purpose vehicles, for example a limited liability partnership or limited partnership. Please contact us if you are considering such a joint purchase.

Owing to a restriction in the Companies Act 2006, a joint property purchase with a company that is a connected party, where there is borrowing by the SIPP, must be carefully documented. If borrowing is involved it should be noted that some lenders' documentation may not be accepted. We recommend that advice is taken from a suitably qualified professional.

To help safeguard the value of your SIPP's investment, a joint ownership agreement must be drawn up between the parties at the time of the purchase. Such an agreement normally gives either owner first refusal to buy the other party's share of the property if it comes up for sale, at an open market value and sets out the parties respective rights and liabilities in respect of the properties. Please note an additional charge will be made by our solicitors for a cross party agreement.

Insurance

To ensure your SIPP property investment is protected, we will insure the property from exchange of contracts through our block policy. Cover has been designed to provide comprehensive protection for the trustees from losses arising from a wide range of potential risks. Full details of the cover are outlined in the Rowanmoor Property Insurance Policy Key Features document. You have the opportunity to take extra optional cover by completing the appropriate section of the SIPP Property Information Schedule. Our requirements may differ in certain circumstances, for example, when an overseas property is to be purchased. In such circumstances you should contact us.

Appointment of solicitor

We will appoint our retained solicitors to oversee all legal work on property assets in your SIPP. Our solicitors are accomplished in the purchase of property by a pension arrangement and the requirements of HMRC. Their costs are competitive and they are familiar with all aspects of the legal documentation involved in property purchase. Their charges for carrying out the legal work are set out in the 'guide to retained solicitors' fees'.

Once preliminary checks have been completed and we are happy that the transaction can proceed we will instruct our solicitors to act on behalf of your SIPP.

The solicitor will be instructed to prepare the sub-trust documentation to enable you to be registered as a title holder of the property, as trustee.

Where appropriate, the solicitor will handle any borrowing requirements for the purchase. They will deal with all property purchase and letting documentation and request copies of any Asbestos Management Plan, Energy Performance Certificate or Display Energy Certificate required. They will obtain reports relating to environmental issues and all other appropriate searches to ensure your SIPP obtains a good and marketable title to the property. Concerns they may have about any part of the purchase will be raised with us for immediate attention.

Exchange of contracts will not take place until all necessary checks are complete, documentation has been approved and any borrowing has been agreed, together with appropriate funds being available in the SIPP bank account.

We reserve the right to request any report or specific advice to ensure the property meets pensions legislation requirements and is acceptable to us, including a desktop environmental report or further environmental reports.

Fees and disbursements

You should consider how the cost of the purchase is to be funded. Costs could include (but are not necessarily limited to):

- solicitor and other legal fees;
- stamp duty land tax (or land and building transaction tax in Scotland);
- borrowing arrangement and other fees;
- surveyor's fees;
- specialist risk reports, environmental, contamination and hazardous materials for example;
- Value Added Tax (VAT);
- insurance.

You should also consider the ongoing costs associated with the property after it has been purchased.

Our fees will be directly deducted from your SIPP. You should ensure there is sufficient cash available in your SIPP to pay fees when due. We require you to hold a minimum of £2,000 in cash, or other easily realisable assets at all times in order to meet any liabilities that may arise. SIPP fees and services details for purchasing and ongoing administration of property as an asset of your SIPP and a guide to our retained solicitors' fees are available via the Rowanmoor website www.rowanmoor.co.uk in the literature library.

Value Added Tax

If VAT is payable on the purchase of a property, you may wish the SIPP to reclaim this. Advice should be taken from a VAT expert on any VAT related matters, as we do not offer a VAT service as this is an extremely complex area requiring specialist advice.

If you are advised to reclaim the VAT expenditure on the purchase price, you must ensure that the sub-trust is registered for VAT with HMRC using the VAT1 and VAT2 forms. The VAT expert will usually arrange this. Should the sub-trust register for VAT, then VAT will also be chargeable on the rent. It will be your responsibility to deal with all VAT related matters.

You will also be responsible for:

- maintaining VAT records and accounting to HMRC for all VAT issues of your SIPP;
- submitting and supplying us with a copy of all VAT returns, assessments or other relevant information;
- claiming and refunding VAT in a prompt manner;
- paying VAT income received into the SIPP bank account;
- requesting payments to HMRC from the SIPP bank account;
- issuing any VAT rental invoices to tenants;
- dealing with any VAT implications on sale.

Rowanmoor Trustees Limited requires an indemnity from you against any claims, costs or penalties arising from the VAT registration.

There is an indemnity form included in the SIPP Property Information Schedule, which should be fully completed and signed by you.

Forward thinking

Liquidity

You will need to consider when and how you may wish to take benefits from your SIPP. Funds will need to be available in cash to make benefit payments. If a property investment represents a significant proportion of your SIPP's funds, you could be forced to sell it to pay your benefits. This could lead to having to reduce the asking price of the property for a quick sale.

Security against borrowing

Property owned by your SIPP cannot be used by you or any other party as security against any personal borrowing.

Property management

You will be responsible for the management of any property held within your SIPP, which must be performed in accordance with the principles of good estate management.

You need to consider how you will manage the property to ensure the terms and conditions of any leases are met. If you prefer, you can appoint an independent professional property manager to perform the task. If you decide to use another party we will need to approve and authorise the appointment.

The role of a property manager is to oversee the ongoing running of a property on behalf of the owner, known as the landlord. A property manager will ensure that any tenant fully meets their responsibilities as detailed in the lease agreement. This will include, but is not limited to:

- advertising tenant vacancies for the landlord;
- performing due diligence checks on tenants;
- invoicing and collection of rent and other income;
- payment of expenses on behalf of the landlord;
- addressing ongoing maintenance issues;
- managing construction, development and repair issues;
- meeting legislative and regulatory requirements, for example, arranging for adequate signage to protect individuals from potentially dangerous situations;
- providing an interface between the landlord and the tenant;
- providing the landlord with information on any issues that might affect them;
- dealing with rent reviews and expiry of leases.
- dealing with VAT issues including at sale.

We will not act as property manager as this does not form part of the services we provide. We need to be kept up to date at all times on any matters affecting the property including approval of new leases, rent reviews etc. to ensure compliance with current pensions legislation.

Solar panels

You will not be able to use SIPP funds to purchase solar panels.

It may be possible for a tenant to install solar panels in certain circumstances. Any request to do so must be referred to us for prior approval.

The next step

SIPP Property Information Schedule and SIPP Borrowing Information Schedule

You should complete the SIPP Property Information Schedule and the SIPP Borrowing Information Schedule (if applicable). Schedules should be completed in full (where applicable), signed by you and returned to us. We will not appoint our solicitor until we have received the completed schedules as these constitute your instruction to us to invest and borrow.

Appointment of a surveyor

You should appoint an independent Royal Institution of Chartered Surveyors (RICS) qualified surveyor.

A survey report and valuation, addressed to the trustees, is required to support the purchase price and to ensure that the property is an acceptable investment. All fees should be paid from your SIPP. The report must be less than six months old at the date of completion. If the purchase takes longer than six months an updated valuation will be required. To avoid running up unnecessary costs we generally do not instruct solicitors until we have received and approved the property information schedule and valuation report.

Surveyor's report

The report must be addressed to you and Rowanmoor Trustees Limited as trustees and will need to include (but is not necessarily limited to):

- location and address of the property;
- description of the property covering the approximate date of construction, materials used (including the presence, or otherwise, of asbestos within the property), accommodation and existing condition;
- confirmation of approved planning permission for current and proposed (if different) use;
- reference to any environmental and contamination issues affecting, or likely to affect, the property or surrounding areas;
- market value and reinstatement value of the property taking into account whether the property is being purchased with vacant possession or with a lease in place;
- market rental value of the property;
- the answer to insurance related questions as detailed in the SIPP Property Information Schedule;
- if development works are proposed pre and post work market rental and reinstatement values.

A surveyor's report and a valuation will also be required, other than at purchase, if the tenant intends to make improvements as opposed to repairs to the property, and the trustees, as landlord, wish to consider granting a concession on the rent payable to reflect the work. Any concession will only be acceptable if it is supported by an independent valuation carried out by a RICS qualified surveyor. The trustees also need to take into account whether such a concession may affect their ability to service any liabilities of your SIPP fund, such as mortgage payments or pension payments.

Desktop environmental report

We will require a satisfactory desktop environmental report to be carried out. This will be obtained by our solicitors on our instruction.

Further environmental reports may be required before we can agree to proceed with the purchase. This may arise if there is any suggestion of a possible risk of contamination or environmental damage, due to the type of materials used in the construction of property, or the previous use of the land or buildings, for example.

Checklist

The following checklist summarises the minimum information that is needed to proceed with a SIPP property purchase.

- SIPP Property Information Schedule** detailing the property type, address, description, lease, development proposals, how the purchase is to be funded and contact details of the vendor, tenants and solicitor, insurance requirements and a VAT indemnity form.
- SIPP Borrowing Information Schedule** (if applicable) detailing the lender, documentation and the borrowing and repayment terms.
- Lease Agreement(s)** – copies of any existing agreements as requested in the SIPP Property Information Schedule.
- Surveyor's Report** – see page eleven.
- Asbestos Management Plan** – copies of any existing plans as requested in the SIPP Property Information Schedule.
- Borrowing Agreement** (if applicable) this includes any Offer/Facility Letter/ Mortgage Agreement or Legal Charge – see page six.
- Desktop Environmental Report** – see page eleven.
- Energy Performance of Buildings Regulations Compliance** – see page eight.
- VAT registration details and indemnity requirements** (if applicable) – see page nine.