



Guide to Property and Land Purchase

**HORNBUCKLE
MITCHELL**

Introduction

Purchasing a property through a Self-Invested Personal Pension Scheme (SIPP) or Small Self Administered Scheme (SSAS) can be a very attractive investment and the following points are designed to assist both the professional advisor and member in understanding how this transaction works.

Rules for the Purchase of Property

Only freehold or leasehold commercial property and land are permitted investments under our pension schemes. There are certain circumstances where part of the property may be commercial and another part residential, which is only occupied due to the business being run, however, please check with Hornbuckle Mitchell for guidance in this area. Pension schemes are not permitted to receive residential ground rents.

If a property is currently residential, planning permission will need to have been granted to change the use to a commercial basis (e.g. Offices) and the status of the property will also need to have been amended to commercial use on the records held by the local council, prior to the pension scheme purchasing the property.

The SIPP cannot purchase fixtures, fittings or business goodwill.

Valuation

Once a suitable property has been found, a commercial valuation should be arranged by the member through a local RICS (Royal Institution of Chartered Surveyors) approved surveyor. This is required to ensure the property purchase price is a commercially correct value, and also to confirm the commercial rental value of the property for the Lease. The member should arrange the valuation and a surveyor approved by RICS, who knows the local area should be used. The pension scheme will pay for the surveyor's fees.

For transactions involving connected parties, the valuation should confirm the property value to be the same as the actual purchase price. We can accept a valuation that has already been carried out, however this should not be more than six months old.

Property Application

Our property application needs to be completed to gather basic details of the property purchase, bank lending and solicitor's details. Once in receipt of this, we will request the environmental report and issue a letter to the appointed solicitors and also the bank, if applicable, to provide them with details of the scheme in order that they may draw up the necessary documentation.

Appointing Solicitors

A decision will need to be made regarding solicitors as to whether the pension scheme appoints our solicitors or a member's own solicitors. The solicitors appointed will be acting for the pension scheme in the transaction and there is no need for a further set of solicitors to be appointed by Hornbuckle Mitchell or the member. Please note: if a solicitor is appointed prior to the environmental report being carried out, if the property purchase does not go ahead solicitor fees may still be incurred.

Documentation

The property and any lending will need to be in the names of Hornbuckle Mitchell Trustees Ltd and the member(s). All documents drawn up must be signed by both parties acting as Trustees of the pension scheme. As a Trustee, the member will be a co-owner of the property with Hornbuckle Mitchell.

Borrowing

If borrowing is to be taken to assist in the purchase of the property, this must fall within HM Revenue & Customs limits. These limits are 50% of the net assets of the scheme minus any existing borrowing (please refer to Hornbuckle Mitchell with regards to the precise calculation). The liabilities of Hornbuckle Mitchell will need to be limited to the assets of the pension scheme and a clause to this effect will need to be on all loan documentation. We make the bank and solicitors aware of this point when we write to them.

VAT

If the property is subject to VAT, the pension scheme will need to become registered for VAT. If the property is being purchased with a view to structural renovation/refurbishment, it may be a good idea for the pension scheme to become VAT registered, so that all VAT payable on the building costs can be reclaimed by the pension scheme. Any invoices should be addressed to the name of the pension scheme. Registration for VAT can take a couple of months, depending on the VAT Office's workload at the time of submission. All rental payable will be plus VAT, which will be paid over to HM Customs & Excise every quarter. Please note that the VAT is part of the 50% borrowing limit.



More than one Pension Scheme or using Group SIPP's

Property can be purchased by more than one member under a Group SSAS or SIPP or by more than one pension scheme. Please refer to Hornbuckle Mitchell if you wish to discuss this option in more detail.

Joint ownership of property

Property can be jointly owned with either another pension scheme, or a connected or unconnected person or company. Please refer to Hornbuckle Mitchell if you wish to discuss this option in more detail.

Environmental Risk & Insurance – Contaminated Land

Under Part IIA of The Environmental Protection Act 1990 ('the Act'), Local Authorities have the power to force the clean up of land in the following circumstances:

- a. significant harm is being caused or there is a significant possibility of such harm being caused or;
- b. pollution of controlled waters is being, or is likely to be, caused.

Local councils have been given the task of identifying sites which fall into the above categories, with the most seriously contaminated sites ('special sites') being regulated by the Environment Agency.

Regulators can order 'appropriate persons' to pay for remedial action, and have done so in hundreds of cases under the Act. The Act defines appropriate person/s as:

- Class A – the person or any of the persons who caused or knowingly permitted substances to be in, on or under the land; or
- Class B – if no such person has been found after reasonable enquiry, the owner, or occupier for the time being of the contaminated land.

The clean-up costs in this situation can be considerable. The regulations are highly complex, and remediating land is very expensive. For this reason, trustees of pension schemes purchasing property are now exercising due diligence before authorising the purchase of a property.

There are a number of aspects which need to be considered and then addressed when considering property purchase:

1. The client needs to understand why it would be imprudent to purchase a property that could have historical contamination. If such a property is purchased and a remediation notice is served under the Act and the polluter cannot be found, the scheme assets could be at risk. It is very important for all parties involved that clients understand the risk to save potential problems in the future.

2. Part of the problem is that many historically contaminated sites (e.g. landfills) now have offices or industrial estates built on top of them. Therefore, it can be difficult for the layman to know whether there is a problem.

The key is to be able to identify whether there is contamination on the site that could result in a remediation notice being served under the Act. It is accepted there are sites which will have some form of contamination that does not cause a danger, as defined above, and can be described as 'fit for purpose'.

Hornbuckle Mitchell therefore insists on the following approach:

- a. The client completes and signs a property questionnaire; and
- b. If a lender is involved they may well have their own requirements on environmental matters as they have the same problems being 'mortgagee in possession' which would trigger Class B liability (see above).

The environmental reports are carried out by a company called Envidata which has commissioned many thousands of these reports over the past 10 years. The report is a Desktop Report which focuses on the needs of the Trustees rather than the banks and provides a 'plain English' conclusion. It is designed to protect the property acquisition.

The report may be obtained prior to the Valuation in which case, the report can then be passed to the valuer when they do their report for information.

This service is arranged by Hornbuckle Mitchell Group Plc and fees need to be paid up front, so if there are no monies in the pension scheme a cheque will be required from the client. Fees are £260 plus VAT and cheques are payable to 'The Hornbuckle Mitchell Group Plc'. **Please note: If the area of land is over one hectare a higher charge may be applied.**

The report takes about 3-5 days to come through.

For properties in Northern Ireland we use AES Marconi. Further details can be given on request.

If the report indicates a problem, we need to do something to get it resolved. In the first instance, a copy should be sent to the client and the solicitor to take up with the Vendor's solicitors –



to get them to sort the environmental problems out before we buy the property. If insurance cover is required, there will be a section in the report that provides an indication of cost.

Finally, if clients want to use a different company to provide the report, please refer to Hornbuckle Mitchell as the report may not be sufficient for the buildings or environmental insurance which is mandatory (see below).

Unfortunately, environmental reports do not offer protection against changes in legislation or third party (adjacent site) contamination risk. So the only real solution to address such liabilities is to seek to insure against the risk.

Hornbuckle Mitchell believe that there may be potential liability beyond the usual commercial risks associated with a scheme owning commercial property, which is based on our understanding of the prevailing legislation.

To address this, we have organised block policy arrangements with Risk Transfer Solutions, who are an experienced company dealing with environmental matters. The block policy will cover any new properties where Hornbuckle Mitchell Trustees Limited are co-owner. As a result of creating a block policy, we have secured significant economies of scale and the cover is as follows:

1. Cover for historically contaminated sites (i.e. Sites polluted in the past, rather than as a result of current or future site activities)
 - a. This effectively transfers the cost of addressing PartIIA liability away from the scheme and its trustees, subject to the terms and conditions of the policy;
 - b. For an annual cost per property of £154.38 including underwriting and IPT.
2. Property owners' cover with a matched premium and benefits guarantee.

This insurance solution successfully deals with the risks as Hornbuckle Mitchell understands them to be. There is an excess on the policy, though this can largely be offset by a legal expenses policy which RTS organise.

The default cover (the sum insured) for sites will be based on the purchase price of the property multiplied by an inflationary figure of 6% pa since the date of acquisition. The property owners cover will be paid across monthly or annually as and when property is put on risk.

Please note: the environmental insurance must be paid annually in advance.

Sale of Property by Pension Scheme

Should you wish to sell your existing property held under your pension scheme, please contact Hornbuckle Mitchell to confirm the details of the sale.

Death and Retirement

Where the property is owned jointly, there should be a written agreement in place which details exactly what happens in the event of the death or retirement of a part owner. For instance:

- Death – Who will purchase the deceased's share of property (it has to be sold to pay return of fund benefits)?
- Retirement – At what age must a member sell their share of the property?

Timescales

It is very difficult to give a timescale for a property transaction as each case is different. However, as a guideline, provided that sufficient funds are available for the purchase, completion could take place within 6 weeks.

Hornbuckle Mitchell try to ensure that all pension scheme property purchases proceed as smoothly as possible and have a wealth of experience in this area.

Should you have any questions regarding a property purchase, or wish to go through the procedure in more detail, please do not hesitate to contact us on **0845 345 2555** and ask for the **technical team**.

Important Note

Please note all fees quoted in this guide may be subject to change.

Land and Construction of Building

Where land is being purchased and a commercial building constructed, with borrowing to assist in the construction, we will need to ensure that the borrowing drawn down at any time during construction does not exceed the 50% of the net scheme assets minus any existing borrowing. This can be achieved using Architects' certificates to verify the value at a point when a tranche of money from the Loan account is being taken.

Purchase

The actual purchase of the property is carried out between the Vendor's solicitors and the pension scheme's solicitors, who will draw up the necessary documentation for all parties to sign. We need to ensure that there are sufficient funds from contributions, transfers in and borrowing to meet the purchase price, plus any fees which will be incurred such as legal fees, stamp duty, administration fees, advisory fees, etc. The funds are usually telegraphically transferred to the solicitors a couple of days prior to exchange and completion in order that the solicitor may complete the transaction on the agreed date.

Leases

A Lease will need to be drawn up between the Trustees of the pension scheme and the tenant usually for a term of at least five years. The Lease cannot be granted directly to the member and therefore must be to either the member's company or the trading name. We normally expect a fully insuring and repairing lease, the tenant being responsible for all the utility bills and council rates. The lease will stipulate the amount of annual rent, when rent reviews are to be carried out and who is responsible for repairs etc.

Rental Payments

Rental payments need to be made to one of the pension scheme's bank accounts, which can be monthly, quarterly, etc. If borrowing has been taken it is more likely that rental payments will be monthly to tie in with the loan repayments. If a loan account has been opened with a Bank they will usually have set up a current account, from which they will debit the loan repayments. This is also where the rental payments should be made.

Regular rent reviews will be as detailed in the Lease. Any loan repayments will need to be adequately covered by the rental payments being made. Rental payments should not be paid directly to the loan account.

If no borrowing was taken to purchase the property, the rental payments should be paid to the pension scheme bank account that was set up when the pension scheme was established.

Property Owners Insurance

Property Owners Insurance (also known as Buildings Insurance) cover must be in place for the completion date and Hornbuckle Mitchell will arrange this through our block policy, full details of which are available on request. A brief overview of the cover provided is as follows:

- Buildings and Landlords contents including all risks for material damage (including subsidence)
- Loss of Rent
- Property Owners liability of £5,000,000
- Full cover when building is vacant

Premiums for Property Owners Insurance are recoverable from the Tenant.

It is prudent to obtain a valuation of the property prior to obtaining the environmental report as, together, these will assist with insurance underwriting.

Under the policy, there is an option to cover rental income as well. The amount will be calculated as detailed in the valuation, for example:

Property Value = £100,000

Rental Income = £12,000

Under the policy you can insure the property for £100,000 or you can insure the rental as well which is added to the property value eg £112,000. This allows for the property and any rental loss to be covered under one value.

If a client has existing Property Owners Insurance cover, they should cancel this insurance and take out a new policy with Envidata. All environmental insurance must be in place with Envidata from the completion date.

Property Management

Hornbuckle Mitchell needs to be able to show that as Trustees we are effectively monitoring the activities of our tenants. In the main, this means that we should be able to allow clients to be their own property manager, particularly where the members' company is the tenant, though a formal agreement is required. There are, however, some clients for whom, due to the nature of their business, it may be prudent to appoint outside property managers. Fees for this service, if any, can be paid by the pension scheme. As a Trustee, the member will be a co-owner of the property with Hornbuckle Mitchell.

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