

# Your tenancy

## FREQUENTLY ASKED QUESTIONS

### **I occupy the property myself, why must I pay rent?**

HM Revenue & Customs (HMRC) will only allow pension scheme fund members to use the property for the purpose of their business if there is a commercial lease in place between Countrywide Assured plc ("Countrywide Assured") (the landlord) and the fund member(s) or business (the connected tenant).

A surveyor confirms the market rent for the property and you or your business as tenant will be contractually obliged to pay this rent when due.

If you do not pay the rent HMRC takes the view that you are gaining an unauthorised benefit from the SIPP fund value and ultimately an unauthorised payment tax charge may be incurred. Details of the tax charges payable are shown in the last section of this document.

### **What happens if rent is not paid by the tenant?**

A property may be occupied by a third party or connected party tenant. The tenant is required to pay rent by standing order and the account details to which payments should be sent are shown on all rental invoices. Payment is due on or before the rent due date. If we have agreed to the rent being paid on a monthly basis then the rent is due on the first day of each calendar month.

If rent is paid quarterly then it is due on 25 March, 24 June, 29 September, and 25 December. We take the following actions when requesting rent:

- Issue an invoice up to 14 days prior to the due date to remind the tenant that the rent is due.
- If payment is not received within 14 days of the rental due date then we issue an initial reminder letter.
- If payment is not received within 21 days of the rental due date then we issue a second reminder. Interest may be charged to the tenant, in accordance with the terms of the lease.
- If payment is not received within 28 days of the rental due date then we issue a third and final reminder.
- If payment is not received within seven days of the date of the final reminder, we consider taking legal action against the tenant to recover the debt.

Please note that any legal fees incurred in pursuing the outstanding rent will initially be debited from your SIPP fund, pending recovery from the tenant, whether this is your own business or an unconnected tenant, in accordance with the terms of the lease. We also reserve the right to charge a fee for the work involved in pursuing the tenant for the rent arrears, which will be debited from the SIPP fund.

If an agreement cannot be reached for prompt payment of the rent arrears we reserve the right to forfeit the lease and secure the property accordingly.

Where there is a loan associated with the property, if at any stage there are not sufficient monies within your SIPP fund to meet the loan repayments when they fall due, we may cease the loan repayments to the lender. This could result in the lender forcing a sale of the property. We may debit an administration charge from your SIPP fund for the additional administrative work involved in arranging the cessation of the loan repayment.

Where an agent is appointed to manage the property, they will be responsible for collecting rent on behalf of Countrywide Assured as Landlord.

### **Can works be carried out to the property and how can they be paid for?**

If you, as tenant, wish to carry out any works to the property, you must contact us first. We can then check whether the works can be paid for via your SIPP fund or whether the tenant must pay for them. For example, we cannot usually pay for repairs to the property out of the SIPP fund, as these are normally the responsibility of the tenant.

In order to consider the proposal, you will need to provide us with the following:

- full details of the proposed work, including any plans;
- fixed price quotations for the work;
- timescales involved in completing the work; and
- details of your solicitors.

In considering the proposed works we will:

- look at whether there is sufficient cash in your SIPP Fund to meet the estimated cost of the proposed works; and
- seek the opinion of a suitably qualified chartered surveyor.

If the works are not deemed to be repairs and do result in an uplift to the value of the property, then some or all of the works may be paid from the SIPP fund.

If the surveyor confirms that the works will also lead to an increase in the rent, then a deed of variation to the lease must first be completed to reflect the revised rent payable. No invoices in relation to the works will be paid until the deed of variation is completed. The cost of the deed can be paid from the SIPP fund.

If the works do not add any value and rental uplift to the property, then they cannot be paid for via the SIPP fund. If you still wish to carry out these works then the tenant must pay for them and we will grant formal consent by way of a licence to alter. We will arrange for our solicitors to draft the required deed of variation or the licence to alter. The cost of the Licence will be payable by the tenant.

### Who pays for repairs and decorating?

Under the terms of the lease, the Tenant is normally responsible for the cost of repairs and decoration. Should a property become vacant then the cost of maintenance may be met from the SIPP fund for the period the property is unoccupied.

Please note that if the property is not kept in a state of good repair then the poor condition of the property may impact on the resaleable value of the property and ultimately the benefits available.

### Can the property be sublet to another tenant?

If the lease allows the tenant to sublet part or all of the property our consent is required via a licence to sublet before the subtenant may take occupancy. The consent of any lender is usually also required. We will instruct our solicitor to arrange this. Normally our solicitors' costs are payable by the tenant.

In order to consider the proposal, we will require the following:

- full details of the proposed subtenant, including the activities to be carried out by the subtenant on the premises;
- the terms agreed with the subtenant and the intended start date of the subtenancy; and
- details of the tenant's solicitor, who will be drafting the sublease for the subtenant.

### Can the lease be assigned to another tenant?

If the lease allows assignment we must grant our consent with a licence to assign before the new tenant may take occupancy. We will instruct our solicitor to arrange this. Normally our solicitors' costs are payable by the tenant under the terms of the lease.

When considering an assignment of the lease, we require the following:

- details of the prospective tenant, including company name and company registration number;
- details of the business to be carried out by the prospective tenant on the premises; and
- tenants' solicitor details who will be drafting the deed of assignment.

Where a lease is to a limited company, we will obtain a credit check to ascertain their financial strength/standing. Depending on the result we may ask for additional security such as a rent deposit or directors guarantee. We will instruct our solicitors to prepare a licence to assign once we receive the above information.

### Can the lease be surrendered?

At some point, the tenant may request to surrender the lease. Where you or your business is the tenant, we have to be able to demonstrate to HMRC that any surrender is agreed on an 'arm's-length basis', ensuring that a market value surrender premium is paid by the tenant, where appropriate.

The surrender premium will essentially compensate your SIPP fund for the following:

- potential loss in rent whilst the property is likely to remain vacant;

- ongoing liabilities associated with the property that will now need to be met from the SIPP fund (such as business rates and utilities); and
- the reduction in rent and lease term that market conditions dictate (if it is unlikely we could subsequently agree a lease on the same terms).

We would seek the advice of a suitably qualified chartered surveyor to establish what the market value surrender premium would be. Should the surveyor charge for such advice then the respective cost will be met from the SIPP fund.

### Why must the property be revalued every three years?

We will arrange an independent valuation of the property every three years to ensure you have a more accurate idea of the benefits you are likely to receive upon retirement, and that the annual management charge we levy is based on a more accurate property value.

We may also require a valuation in other circumstances, for example, when you wish to take benefits, but we shall inform you if this is the case.

### I occupy the property, why must the rent be reviewed?

As the pension scheme administrator and landlord, we have to be able to demonstrate to HMRC that the lease between Countrywide Assured and you or your business is being operated on an 'arm's-length basis'.

A standard commercial lease normally contains a provision for the rent to be reviewed, and when you entered into the lease for the property, you would have agreed the frequency of such reviews.

The lease will provide for the rent to be increased at the rent review or remain the same (nil increase), but it will not normally allow for the rent to be reduced.

### What happens at the lease end date?

Before a lease expires, we contact the tenant to establish whether they wish to renew the lease at the end of the lease term.

If you are the tenant and you wish to renew the lease, then the rent payable under the new lease will have to be the market rent payable as determined by a chartered surveyor.

It is important that you let us know whether you wish to renew the lease or not. If you do not wish to renew the lease or if we do not hear from you, our solicitors will issue you with a notice informing you that your tenancy will come to an end upon expiry. If a new lease is subsequently not agreed, you will have to vacate the property.

Where the tenancy is not renewed we may arrange for a schedule of dilapidations to be produced by a chartered surveyor. If the property is in a state of disrepair, this survey will highlight the works that need to be undertaken or paid for by the tenant.

Where you are the tenant, if you do not meet the cost of the dilapidations, HMRC will take the view that you are gaining an unauthorised benefit from the SIPP fund and ultimately an unauthorised payment tax charge may be incurred.

### What happens if the property becomes vacant?

In the event the property becomes vacant, the SIPP fund will need to meet the costs of business rates, utilities and other property related costs. This can quickly reduce the cash in the SIPP fund. We will appoint a managing agent to monitor the property until such time as it is re-let or sold.

It is advisable to maintain a cash surplus in the SIPP fund and monitor this on a regular basis.

### What happens if the SIPP fund has insufficient cash?

If at any stage the level of cash in the SIPP fund falls to a level where we are unable to meet ongoing costs (including loan repayments), the property may have to be sold. This may happen at a disadvantageous time or may result in a tax charge for which we shall not be liable.

We recommend you maintain a cash surplus of £5,000 in the SIPP fund and monitor this on a regular basis.

### There is a loan secured against the property, can I make additional loan payments?

Subject to there being sufficient cash available you may be able to make additional repayments of the outstanding loan balance. If you wish to do this, please confirm the amount you wish to repay in writing so that we may action your request.

We recommend that you retain a minimum cash surplus of £5,000 in the SIPP fund and monitor this on a regular basis.

### What if I want the property to be sold?

If you would like the property to be sold, please let us know immediately.

If you have a preferred selling agent you would like us to appoint to market the property, please provide their contact details. Subject to your approval, we will need to sign the agent's terms and conditions.

We will instruct our panel solicitors in respect of the sale. Once the sale is completed, the net proceeds of the sale after deducting all costs, will be transferred to your SIPP fund.

Please note that if you or your business are the tenant within the property, you will need to keep paying rent until the property is sold, and if you are to remain as tenant after the property is sold, then you will need to continue to pay rent to the new owner/landlord.

### Can I use the property for residential purposes?

HMRC is very clear that if a property is used for residential purposes whilst it is held in the SIPP fund, the property and any income received in respect of the property will become subject to significant tax charges, payable by the individual fund members and the SIPP fund. There are some very specific exemptions to this rule but please contact us in the first instance to discuss.

To prevent the property from being used for residential use, your lease will normally prohibit anyone from sleeping within the property or using any part of the property as

residential accommodation. If this clause is breached, then not only will the property become subject to punitive tax charges, we will also begin proceedings to bring your tenancy to an end and sell the property.

If you wish to convert the property to residential then please contact us, and we can assist you with disposal of the property from the SIPP fund before conversion works take place.

### What tax charges may be payable if the property or property-related income becomes taxable?

HMRC impose tax charges in circumstances where value has been taken out of the SIPP fund for the benefit of the member or a party connected to the member (eg, your business), or the property becomes taxable, for example, through unpermitted residential use.

Such circumstances may include (but are not limited to):

- non-payment of rent by a connected tenant would represent a benefit to the member from the fund;
- in the event our solicitors' costs are not paid for by a connected tenant in respect of a licence to alter, licence to sublet, or licence to assign;
- if the cost of repairs associated with a schedule of dilapidations are not paid for by a connected tenant;
- if a recommended surrender premium is not paid by a connected tenant upon surrender of the lease;
- if the rent is not increased for a connected tenant, as recommended by a surveyor, in accordance with a rent review;
- if tenant repairs or fit-out costs are inadvertently paid for by the SIPP fund, where there is a connected tenant;
- residential use of the property;
- a disposal of the property to a connected party at less than market value.

We must report any unauthorised payments made to, or in respect of, scheme members to HMRC and any unauthorised payment would attract the following tax charges:

- a 40% unauthorised payment tax charge payable by the member/s
- in some circumstances, a 15% surcharge payable by the member/s
- a scheme sanction charge of between 15% and 40% payable from the SIPP fund

The above charges are calculated as a percentage of the unauthorised payment.

Please contact us should you have any questions or require assistance with any of the above matters. Please note, Countrywide Assured may make an administration charge for dealing with any activities in line with our guide to charges.