

Guide to commercial property



Commercial property has long been a part of our pension plan offerings. We have over 30 years' experience in this field, with our dedicated property team offering a knowledgeable and efficient service for the acquisition and administration of commercial property as an asset to be held within a pension fund. You can use your pension fund to purchase a commercial property if you have an existing OneSIPP or Transfer Pension Portfolio. Please contact our property services team on 03330 155 600 or email property@countrywide-assured.co.uk to help guide you through the process.

All pension arrangements are subject to the pensions tax legislation relating to investments of a registered pension scheme.

Disclaimer

The information we provide is based on our current understanding of legislation, rules, guidance or the practice of regulatory bodies such as HM Revenue & Customs (HMRC), all of which may change. Any information we provide to you or to your financial adviser does not constitute and should not be treated as a recommendation, legal or tax advice or any other form of advice nor is it an authoritative statement of law, regulation or regulatory practice. No representation or warranty, express or implied, is given in respect of any information provided. Independent legal, tax or other appropriate advice should be sought before acting on or refraining from acting on the information.

Neither Countrywide Assured plc ("Countrywide Assured") nor any company within the Chesnara Group can accept responsibility for any loss, whether this is in relation to your business or you as an individual, that may occur as a result of reliance on the information we may provide, or as a consequence of any investment decisions you make.

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Introducing commercial property

We have purchased a variety of properties as pension fund investments, including restaurants, car showrooms, daycare nurseries, hotels, shops, offices and industrial units.

Whether this investment is being made using existing funds in your OneSIPP or Transfer Pension Portfolio, it will be held in an insured policy. Advantages include:

- Where VAT is payable on the purchase of a property, this can normally be paid and recovered by us, rather than your pension fund – therefore maximising your purchasing power.
- Funds can be combined from the OneSIPP and Transfer Pension Portfolio to make a commercial property purchase possible.
- Ownership of commercial property may be shared with the member personally, which makes a phased purchase of property possible.
- Two or more individuals can pool their pension funds to invest in the same property.

Purchasing commercial property

Commercial property will be bought and held by Countrywide Assured in an insured fund.

Tax benefits

Investing in commercial property within a self-invested pension arrangement may have several tax benefits depending on your personal circumstances:

- Rental income accumulates free from tax and the eventual disposal of the property is also free from capital gains tax.
- Rent paid by the business is an allowable expense for relief from corporation tax.
- The rent may be used to service a loan, for both capital payments and interest.
- The funds used to purchase the property will have attracted tax relief, when first paid into a pension.
- The commercial property is not part of your estate for inheritance tax purposes.

Important considerations

There are certain important factors that should be considered before deciding whether commercial property is the right investment for your pension. You should discuss these with your financial adviser before you make any decisions:

- Tax rules and legislation may change. The rate of tax relief may change and will depend on your financial circumstances. The information which we have given is based on our understanding of tax law and HMRC practice, when we published this document.

- There are considerable costs involved in purchasing and maintaining commercial property, and you should be aware that costs will still be incurred by your pension fund if a purchase does not complete, for any reason.
- The value of commercial property can fall as well as rise. As a result, the value of your pension fund, holding the commercial property as an asset, can fall as well as rise.
- Property held by a pension fund is not part of your business and cannot be used as security for a business loan.
- You will have no legal interest in the property held within the pension fund, but you will have a contractual right to the payment of benefits in accordance with the terms and conditions of the OneSIPP or Transfer Pension Portfolio.
- Property purchase is a long-term investment. As property is an illiquid asset, you should think about an appropriate strategy for retirement or death.
- If the property is leased to your business, your business will have to pay the market rent in accordance with the lease terms.
- If the property becomes vacant, your self-invested fund will have to meet the expenditure and liabilities associated with the property (including rates and utilities).

Types of property

We will normally consider most types of commercial property in England, Scotland and Wales as an investment in your pension fund, including land. We will not accept land if it is purchased with the intention of developing it, nor a property which would be classed as taxable property by HMRC, such as residential property.

We will only buy the land and fabric of the building, but not fixtures or fittings related to a business or business goodwill.

We can purchase freehold, leasehold or feuhold property. Property should be purchased through a private sale and not by auction.

Residential property converted for commercial use

If planning permission has been granted to convert residential property for an acceptable commercial use, we need the conversion to have been finalised and occupied on that basis before we can complete the purchase.

Conversion of commercial property to residential use

If you wish to convert commercial property held as an asset of your pension fund to residential, you should discuss this with us at the formative stage of the proposition. It would be necessary for the property to be sold before any conversion works take place.

Transfer of a current property

You can transfer a property held under a pension arrangement with another provider to us.

A property that you (or someone connected with you) already own(s) can be purchased by your pension fund provided that the purchase or transfer is carried out on commercial terms.

Please note that the purchase of the property into your SIPP or Transfer Pension Portfolio will incur costs for solicitors and other property fees, and sufficient funds should be available to meet these.

Structuring the transaction

Countrywide Assured offers many different ways of structuring a transaction to suit your needs. Our property team can assist you with this and guide you through the process.

Please note we cannot offer you advice of any nature, in particular tax or legal advice, nor can we make any recommendations. Any information we provide should not be regarded as an authoritative statement of law, regulation or regulatory practice. If you have any doubt please contact your financial adviser or other professional adviser.

Transfer of existing pension funds

You may use funds in other pension arrangements by transferring them to your existing OneSIPP or Transfer Pension Portfolio. If you have a protected higher amount of tax-free cash lump sum or a protected pension age, it may still be possible to include these funds without losing the protection by transferring to a self-invested Transfer Pension Portfolio. Your Transfer Pension Portfolio fund may be combined with your OneSIPP fund to purchase a property.

Multi-member

Individuals can pool their pension funds to facilitate the purchase, subject to our criteria for multiple member funds. For example, business partners may wish to combine their pension pots to purchase their business premises.

Please contact us for more information on this.

Shared ownership

A commercial property may be held jointly between the OneSIPP or Transfer Pension Portfolio and another party (subject to our criteria).

Please contact us for more information if you are interested in this option.

Connected parties

Any transaction with a connected party must take place on an 'arm's-length' basis at the market value as determined by an independent qualified surveyor from the Royal Institution of Chartered Surveyors (RICS). A connected party is a person as defined by section 993 of the Income Tax Act 2007, together with ss1122 and 1123 Corporation Tax Act 2010, and includes the member or the member's business. Depending on the member's objectives, purchasing a property from the member or their business may be a useful way of releasing cash from the SIPP.

When structuring a transaction, you should take into consideration the costs of acquiring commercial property, including solicitor and surveyor fees, Stamp Duty Land Tax (SDLT) and all other third-party costs, as well as our charges. If the property is already owned by the member or their business, allowance must also be made for capital gains tax as an expense of the seller.

Borrowing guidance

Your SIPP fund may borrow up to 50% of the value of the net scheme assets before the loan. For example, if your pension fund has net assets of £200,000, borrowing is restricted to £100,000. This would give you total available funds of £300,000 with which to purchase a property and meet all related costs.

Value-added tax (VAT)

VAT can be a complicated area and subject to change in the future. Any decisions should be taken with professional advice.

VAT payment option

Where the purchase price is subject to VAT,

you would normally need to ensure there are sufficient funds in the SIPP to meet the cost until it is reclaimed.

One of the advantages of Countrywide Assured buying commercial property is that the VAT can normally be levied against and recovered by us as the purchaser, and not through the pension fund. VAT can add substantial costs to purchasing a property. This option can be helpful when available funds (including borrowing) are tight as the VAT is not included in the funding required. We currently charge for this facility. Please see our *Guide to charges* for more details.

VAT may not be payable if the purchase is treated by HMRC as a Transfer of Going Concern (TOGC), where the property is purchased subject to an existing occupancy or lease.

Where the property is to be held in shared ownership, HMRC will treat Countrywide Assured and the co-owner as a partnership for VAT purposes. In this instance, VAT accounting needs to be carried out by a person appointed by us and whose fees will be charged to the SIPP.

VAT will be payable on the rent and will be invoiced to the tenant. Fees for any external advice required to establish the VAT status of any transaction will be charged to your pension fund.

Commercial property – the steps

There are five steps to follow when purchasing commercial property as an asset of your pension fund through the OneSIPP or Transfer Pension Portfolio:

Step one: initial assessment

Step two: pre-purchase phase

Step three: buying the property

Step four: completion

Step five: ongoing administration

Please see Appendix 1 for a flow diagram of the purchase process.

Step one: initial assessment – financial feasibility report

The aim of the financial feasibility report is to provide an indication of how a property purchase can be funded and to outline the anticipated ongoing costs involved, based on the information provided. We do not claim this report is exhaustive and we cannot be held liable for any loss you may suffer by reliance upon it. You should ensure that you receive independent professional advice.

Our financial feasibility report is a free service. Neither you nor Countrywide Assured are under any obligation to proceed.

The financial feasibility report can be requested by your financial adviser by completing a *Commercial property enquiry form*. This can be obtained from the property services team at property@countrywide-assured.co.uk or at www.countrywide-assured.co.uk

Having considered the financial feasibility report and the other issues regarding the structure of the transaction, you may wish to make an offer on the property, subject to contract. You may not, however, make any commitment on behalf of Countrywide Assured.

You should ensure that you obtain independent tax advice as appropriate. Countrywide Assured will take no responsibility for any tax liability that arises as a result of the purchase of a property.

Step two: pre-purchase phase

Application forms

The relevant commercial property application form will have been sent to you with the financial feasibility report. You should complete the form with your financial adviser and return it together with the other necessary information requested in the financial feasibility report.

If transfers from other providers are to be paid to your OneSIPP or Transfer Pension Portfolio we will arrange for these to be processed.

Please note we are unable to undertake any work which will incur costs until your funds have been received and are available.

Energy performance certificate (EPC)

An EPC should be provided prior to instruction of solicitors. We will not purchase properties that have a rating of F or G and cannot purchase a property without an EPC unless it is exempt.

Arranging borrowing

Where borrowing is required, you will need to inform us of your proposed lender. We are happy to deal with a lender of your choice but can provide you with a list of lenders with whom we have prearranged documentation on request. In some instances, there may be delays as a result of changes to prearranged documentation or additional documentation.

Survey (valuation)

Where borrowing is required, the lender will require a valuation from their panel of valuers. Generally, the valuer can prepare one report for the lender and one for us. If there is no borrowing involved and you wish to use a specific valuer, please let us know and we can arrange for the valuation to be carried out.

Please see Appendix 2 for details of our requirements for a valuation report.

Appointing solicitors

We will instruct a firm of solicitors to act for us, as soon as our initial requirements have been met.

Only Countrywide Assured approved solicitors can be used. It is not possible for you to instruct your own solicitors to carry out the conveyancing as the solicitors will be representing us in this respect. However, you should seek your own independent legal advice should you have any concerns about the transaction or require further assurance.

Appointing a solicitor for the tenant

We strongly recommend that the tenant (whether this is your business or a third party) appoints his/her own solicitor to review the lease (between Countrywide Assured and the tenant) and deal with the payment of any SDLT and registration of the lease. Note that the tenant's legal costs cannot be paid from your pension fund.

Step three: buying the property

We manage the process of buying the property right through to completion and will keep you regularly informed, either through your financial adviser or directly.

The key stages of this process are outlined below.

The lease

The property must be let from the date of completion of the purchase. The tenant can be a third party or your business as long as the lease is fully repairing and insuring and on full commercial terms. The rent payable under a lease to your business must be on 'arm's-length' terms, as advised to us by the valuer. Where a lease is to a limited company, we will require 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.

Subletting

The property may be sublet, provided that the terms of the subleases reflect the terms of the head lease and any other requirements which we may have.

Multi-letting

Where the property is suitable to be divided into several individual units, it can be let under separate leases to multiple tenants. Multi-let properties have increased obligations for the landlord and we would require the appointment of a managing agent. The additional costs incurred will be charged to your pension fund and reclaimed from the tenant when permitted.

Service charges and ground rents for multi-let or leasehold properties will be paid from the pension fund, unless the lease provides for this to be met by the tenant.

Environmental checks

We will carry out a basic environmental check and if the report is satisfactory we will usually proceed with the purchase, subject to legal checks.

Where there is an indication of environmental risk, and that risk cannot be suitably mitigated, further investigations will be required before we consider proceeding with the purchase.

In certain circumstances where the property may be contaminated or the source of other environmental damage we would be unable to proceed with the purchase.

Asbestos

Under the Control of Asbestos Regulations 2012, a property must have an asbestos management plan in place. The tenant must arrange for an asbestos survey to be carried out, if one has not been done, immediately following completion.

Borrowing

We will contact your chosen lender and confirm the terms of the loan. The lender must agree that Countrywide Assured's liability is limited to the assets of the SIPP fund. Please bear in mind that it is ultimately your responsibility to ensure the SIPP fund contains sufficient monies to meet all loan repayments. Our appointed solicitors will deal with the lender's legal charge over the property. We sign all paperwork for the loan as the borrower and purchaser of the property.

Step four: completion

We cannot make any promises on completion dates and prefer to exchange and complete simultaneously. We cannot complete on a property unless all funding is in place and all of our – and if applicable, the lender's – requirements have been met. All leases must be agreed before completion takes place.

Buildings insurance

We will arrange our own insurance cover to take effect from completion through an independent third party and the cost of this will be paid by the tenant. Alternatively, if you or your business are/is the tenant, you can arrange the necessary insurance cover yourself subject to certain requirements.

Appointing a managing agent

Where there is a third-party tenant, multiple letting, or vacant part of the property, a managing agent is required. We will usually require a managing agent for all land purchases. We will enter into an agreement directly with the agent, which must set out terms acceptable to us. We do not accept liability for the responsibility of the managing agent. We do not usually require the appointment of a managing agent, where your business is the tenant.

There may be other instances where we require a managing agent and we will notify you if this is the case.

The managing agent can be a suitably qualified firm of your choice (which is acceptable to us) or our preferred managing agent. The managing agent's fees will be met from your pension fund and reclaimed from the tenant where permitted.

Cancelled purchase

If the purchase falls through for any reason, your pension fund will remain invested in cash until you decide how you want to proceed and you should speak to your adviser regarding your future investment options. However, you will be liable for any costs that have been incurred to the date of the cancelled purchase, including our property transaction fees.

Step five: ongoing administration

Once the property has been purchased, our involvement does not stop. We provide regular fund valuations and continuing administration support on the daily running of your pension fund.

Property management

As landlord, we need to ensure the tenant is complying with the obligations of the lease. To do this, we will ensure that various property-related tasks are undertaken. Please see Appendix 3 for a full list of property-related tasks that we will undertake for your pension fund.

All ongoing costs in relation to the maintenance and administration of the property, where they fall to be met by the landlord, will be deducted from your pension fund. You should always hold sufficient cash in your pension fund to cover loan repayments, ongoing charges and any unexpected costs that may arise from time to time. We reserve the right to set a minimum value below which your cash holding should not fall.

Where we have appointed a managing agent they will undertake the tasks listed in Appendix 4.

For properties where we share ownership, we may appoint our agent to collect rent and deal with all VAT payments in and out for which a fee will be payable.

Overdue rent

Either Countrywide Assured or the managing agent will take all steps necessary to collect rent when due. If the tenant defaults on rent, whether this is your business or a third party, HMRC requires us to pursue overdue rent. Normal commercial procedures will be followed to obtain all outstanding rent. This may involve the use of solicitors and/or debt collection agencies or, in extreme circumstances, repossession of the property. Costs of dealing with such situations will be recoverable from the tenant. If they are not recovered, the costs will be met from your pension fund.

Change of use

We must be advised immediately if the tenant wishes to apply for a 'change of use' to any property held by your pension fund.

General improvements and alterations

You need to be aware that any repairs are normally the responsibility of the tenant and any costs associated with these repairs cannot be paid from your pension fund. We will consider general improvements to existing property, and you should contact us immediately if you intend to undertake any such works.

If you want to discuss this further, please speak to the property services team on 03330 155 600.

Making loan repayments

You should always hold surplus cash in your pension fund to cover loan repayments, ongoing charges and any unexpected costs. If insufficient cash is held at any time and no additional loan monies or pension contributions are forthcoming, the property may have to be sold and such a sale may be through an auction. We will cease loan repayments in circumstances where, in our opinion, there is insufficient cash in your pension fund to continue making such payments.

Selling the property

You can request the sale of the property at any time and you will need to find a purchaser. Once a purchaser has been found and a price agreed, you must notify the property services team, who will appoint a solicitor to act for us. If the sale is to a connected party the sale price must represent the market value as stated by an independent RICS qualified surveyor.

When the property is held for a Multiple Member SIPP, the decision of the members to sell is normally determined in accordance with the MMS Risk Deed. It may take longer than originally anticipated to sell the property and any intended start date for pension benefits may be delayed as a consequence.

Please note, Countrywide Assured reserves the right to sell the property at our discretion, including (but not limited to) if:

- the property becomes taxable;
- the property represents a commercial, reputational, legal or environmental risk to us or your fund;
- the property does not comply with regulation or legislation;
- there is insufficient cash in the fund to continue to meet loan repayments or other costs or charges;
- we need to process a transfer request, death claim, pension share on divorce or if a member wishes to take their retirement benefits;
- the relationship between the members in a Multiple Member SIPP breaks down to such an extent that, in our opinion, we are unable to continue to administer the SIPP fund.
- a member wishes to realise their investment in the property.

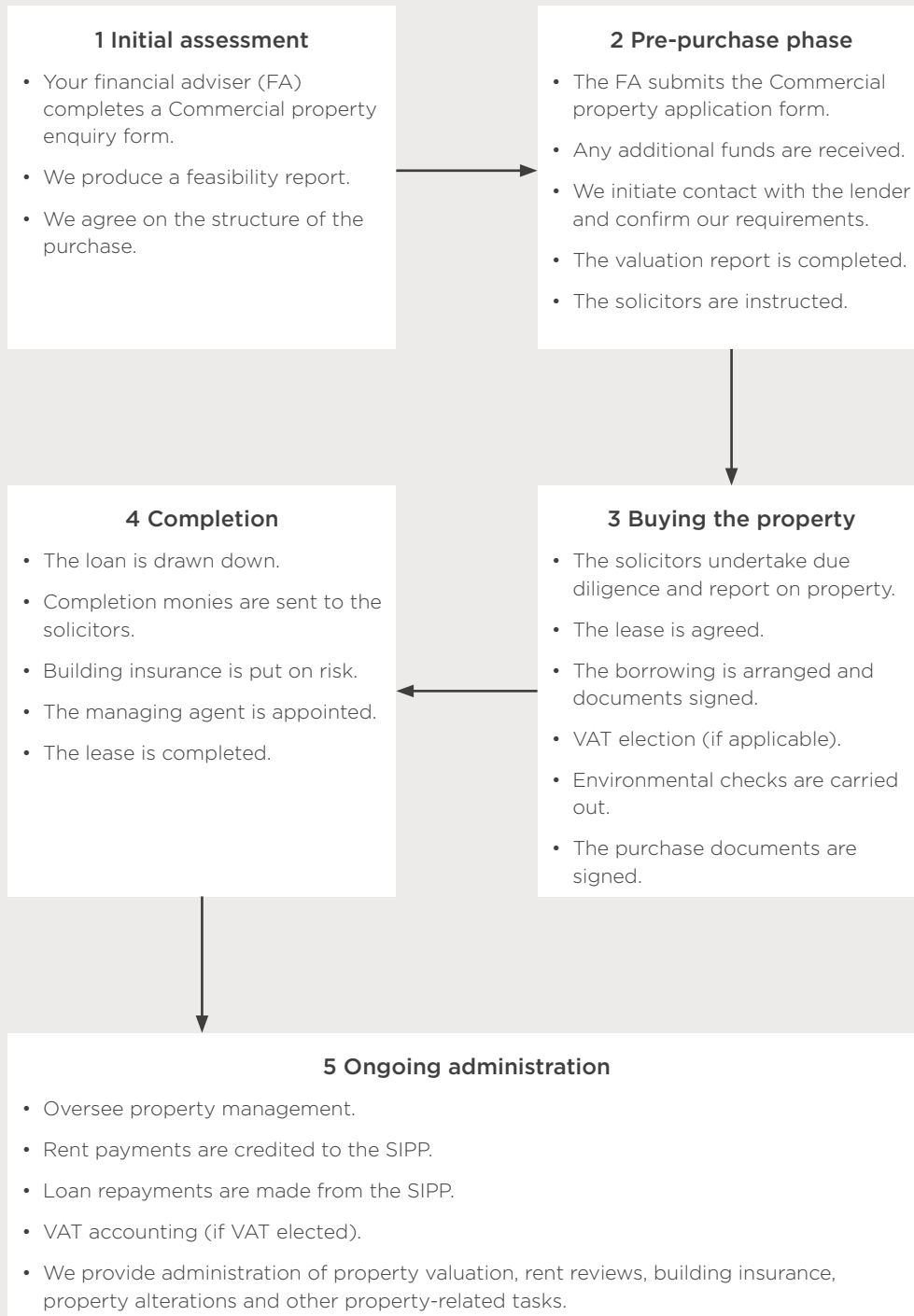
If the property is held for a Multiple Member SIPP and there is insufficient liquidity when a member request is received, the fund members will be given a period of eight weeks to raise the required funding. If after eight weeks the members are unable to raise sufficient liquidity to meet a member's request, we will place the property on the open market to be sold. We reserve the right to sell at auction if a buyer is not found within a reasonable time period to allow us to comply with prevailing legislation.

Sufficient liquidity will need to be raised to pay the exiting member/s benefits and to repay their share of any loans.

When on the open market, we would accept a reasonable offer as advised by a professional person instructed on our behalf. Should it be necessary to sell the property via auction, we would seek the advice from a professional agent to set a suitable reserve price. Where there is an outstanding mortgage, we will liaise with the lender to establish the price they are willing to accept where this is less than the outstanding loan.

Appendix 1

The purchase process



Appendix 2

Our requirements for the valuation/survey are:

1. The valuation/survey must be addressed to Countrywide Assured.
2. It is a 'bricks and mortar' valuation. It may not include, for example, goodwill of a business, or fixtures and fittings in respect of a business that is being sold with the property.
3. A description of the property, including a plan showing the legal boundaries and where the property lies, in relation to the surrounding area.
4. Confirmation that the property is commercial or land used only for commercial agricultural purposes.
5. Details of the property's construction (materials used to build the property).
6. Details of any composite panelling (insulation used).
7. Approximate age of property.
8. Confirmation of the planning use/class.
9. Condition of the property and any repairs required.
10. Any issues (such as right of way) which would require a legal confirmation/opinion.
11. Details of any environmental or contamination issues relating to the property or the immediate surrounding area.
12. Details of whether the property has a sprinkler or other fire protection system throughout.
13. Details of any plant/equipment on the property.
14. Open-market value - if the property is subject to an existing lease which will remain in place after the purchase, we may require an open-market value, subject to the existing lease.
15. Open-market rental value.
16. Insurance reinstatement value.
17. Current and historical use of the property.
18. Comment on whether there are any local conditions which may make the property, if vacant, more or less marketable to prospective tenants.

Appendix 3

Where there is no managing agent appointed, Countrywide Assured will carry out the following property-related tasks:

1. Issue invoices for rents and all other payments, such as ground rents and service charges, due from the tenant under the terms of the lease.
2. Receive all rents due from the tenant under the terms of the lease and allocate to your pension fund.
3. Take appropriate action at the expense of your pension fund to recover rent, where this continues to be in arrears.
4. Settle outgoings to third parties where required, subject to sufficient monies in pension fund.
5. Maintain accounts and provide regular fund valuations.
6. Maintain records of all leases and other relevant property-related documentation (we reserve the right to charge for copies of documentation held by us).
7. Maintain record of insurance cover.
8. Provide information on various matters after completion, as requested by you.
9. Liaise with tenants and solicitors about any sublettings or lease assignments.
10. Liaise with tenants and other relevant parties about any alterations required to the property.
11. Arrange for a surveyor to prepare a schedule of dilapidations, where required.
12. Liaise with HMRC on matters of principle or on any other matters as they arise.
13. Calculate funding, where required, on members leaving the self-invested pension fund.
14. Liaise with surveyors to arrange property valuations at intervals of no less than three years and more frequently as required by either us or to meet any HMRC requirements.
15. Take appropriate action where any breach of the terms of the lease has occurred.
16. Liaise with surveyors and tenants to arrange rent reviews and agree on revised rent.
17. Liaise with surveyors, tenants and solicitors for lease renewals.
18. Arrange an inspection of premises, where considered necessary.

We will make charges to your fund in accordance with the scale of charges for your pension arrangement.

We reserve the right to levy additional charges, based on the complexity of the work and the time involved. We will inform you in advance of our intent to levy any such additional charges.

Appendix 4

Where a managing agent is appointed, it will be appointed to perform the following tasks:

1. Carry out regular property inspections to ensure the property is kept in a good state of repair.
2. Ensure that the tenant and landlord comply with the terms of the lease.
3. Negotiate contracts for the maintenance and repair of the property, obtaining approval from us for any part of the property where this is not the responsibility of the tenant(s).
4. Advise of any essential repairs, obtain estimates (if requested) and instruct/supervise contractors.
5. Collect rent and service charges from the tenant, if required, and chase any related debts.*
6. Ensure that the property complies, and continues to comply, with current health and safety legislation.
7. Receive any licence fees due from the tenant, including those for car parking, insurance premiums, general and water rates, service charges, VAT, maintenance charges and maintenance fees, in accordance with the terms of the lease and any licences.
8. Settle outgoing, such as invoices charged to the fund.
9. Settle additional outgoing required for leasehold properties, such as ground rent.**
10. Maintain full records of all receipts and payments relating to the property.
11. Deal with communications about the property, including enquiries and anything which may need our instruction or consent in our capacity as property owner.
12. Respond to any enquiries/complaints from the landlord or tenant.**
13. Act as liaison between you, our solicitor and any other party which may be involved in managing property matters.**
14. Obtain all necessary information and references in connection with assignments, alterations and sublettings, instructing solicitors accordingly.**
15. Prepare VAT accounts for a jointly owned property.*
16. Carry out or arrange property valuations as required by us.

* We may appoint a managing agent to carry out these tasks for a jointly owned property where you or your business is the tenant.

** These items may incur an additional charge, based on the complexity of the work, the time involved and on the individual managing agent.

How to contact us

It's always best if you contact your financial adviser with any queries. However, if you have any questions, you can phone, email or write to us at any time.

Property services team: 03330 155 600
Monday–Friday, 9am–5pm

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