

# Momentum Property SIPP

## Property Notes

### 01. INTRODUCTION

These notes set out the issues involved should you purchase a commercial property via your SIPP. It is important that you read these notes carefully. HM Revenue & Customs (HMRC) impose certain requirements on us as Scheme Administrators and these along with our terms and conditions relating to the investment in commercial property, as set out in these Notes, must be adhered to.

If you wish to proceed with a property purchase then you must complete and return our Property Questionnaire (available upon request)

For the purpose of these Notes the term 'Property' also includes land.

### 02. THE PROPERTY

The Trustees of a SIPP can purchase commercial property in the UK but not normally property with any residential element. Special rules apply for mixed commercial and residential properties.

Hotels, guest houses, public houses with a residential element and nursing homes will all require special consideration, as will nurseries and other buildings where trade is clearly identified with the property. Such properties are likely to be unacceptable.

If you intend purchasing a residential property for conversion to offices or some other commercial purpose then the change of use must be confirmed before the property is purchased.

Land with attached sporting rights will also require special consideration.

Development land and agricultural land are both acceptable investments although residential developments are not allowed. There are a number of circumstances when HMRC may treat property transactions for taxation purposes as if the SIPP were trading. We recommend you take tax advice if you believe this may be of relevance.

Whilst freehold property and property held on a long lease (with a minimum unexpired term of 50 years) are acceptable, short term leasehold property will not be acceptable.

Properties with any history of, or potential for, contamination are unlikely to be acceptable. Your property advisers will be able to provide further information on the implications of Part II A of the Environmental Protection Act 1990 and subsequent relevant legislation.

It is not our normal practice to buy property at auction.

Property should be viewed as a long term investment and careful consideration must be given to any such investment if you are likely to take some, or all, of your benefits in the short to medium term or have commenced taking benefits already.

We reserve the right to refuse to purchase any particular property if, in our opinion, it is not a suitable investment for a pension scheme, for example, if the property is of a very specialised nature, or if we anticipate re-sale difficulties.

### 03. THE VENDOR

If you are connected to the vendor, we can only allow the transaction to take place on an arms length basis, with the value determined by a chartered surveyor. 'Connected' for this purpose is defined in section 839 of the Income and Corporation Taxes Act 1988. The definition is complex although it does include any connection to yourself, close members of your family and any business with which you are associated.

### 04. THE LEGAL OWNERS

The legal owners of the property will be Momentum Pensions Trustees Limited as Trustee of your SIPP. Special requirements may apply if a number of SIPPs are collectively purchasing a property.

We will require a copy of the Land Registry transfer document, completion statement and a copy of all current leases in relation to the property. We will normally obtain these directly from the Trustees' solicitor who you must appoint. It is your responsibility to arrange for original documents and Title Deeds to be kept in a secure place, although we must have access to these at all times and reserve the right to lodge any such documents with our solicitors.

### 05. VALUATIONS

Before the property is purchased we will require an independent market valuation report (including a market rental valuation) by a person holding a recognised professional surveying qualification, e.g. RICS, having recent experience in the location and category of the property concerned and prepared in accordance with the latest Practice Statements and Guidance Notes set out in the Royal Institute of Chartered Surveyors Valuation Standards. The report must be addressed to the Trustees of your SIPP.

The report must specify:

- market value
- rental value if there is a new tenant (having regard to the proposed terms of the lease)
- rebuilding cost for insurance purposes
- whether a structural survey is recommended

The property may need to be valued regularly in accordance with the rent review clause within the lease. We reserve the right to appoint a chartered surveyor at the expense of your SIPP, to carry out any work as required. Once you have appointed a surveyor to act on behalf of the Trustees then you must make it clear to them that they are advising the Trustees.

### 06. THE PURCHASE

You will need to appoint a solicitor to carry out the conveyance / transfer of the property on behalf of the Trustee. You must make it clear to them that they are advising the Trustees of the SIPP.

For most purchases, the vendor must provide the purchaser with an Energy Performance Certificate (EPC). When you receive an EPC please ensure we are provided with a copy. It is important that, where this is required, you obtain the EPC, as failure to do so may result in delays when seeking to let or sell the property.

### 07. TENANTS

The Trustees can lease the property to an unconnected third party or alternatively can lease the property to your business or another connected party, subject to the rent payable and the terms of the lease being on a fully commercial, arms length basis as assessed by a chartered surveyor.

A lease must be entered into and we will normally insist on a full repairing and insuring lease.

The property manager chosen by you will be responsible on behalf of the Trustees for the management of the property and in particular for the collection of rent and ensuring that the terms of the lease are being adhered to. We strongly recommend that unless you have specialist property knowledge that you appoint a third party property management company to carry out these duties.

## 07. TENANTS (continued)

We reserve the right to appoint a third party property manager of our choice if we experience difficulty administering the property with you or your nominated property manager. Such a course of action will be unavoidable if rent is not paid on time by you, or a connected party, as tenant. The cost of this will be borne by your SIPP.

We have an obligation to HMRC to monitor that all rent is received when due and the Trustees must enforce the terms of the lease at all times, particularly if the tenant is connected. If rent is in arrears, then we will be obliged to seek recovery on behalf of the Trustees by whatever methods are deemed appropriate.

Unless we specifically appoint an agent to collect the rent on the Trustees' behalf then the rent must be paid directly into the Trustees' bank account.

Where the landlord and the tenant are connected and rent is not being paid in accordance with the terms of the lease, this will be an unauthorised payment as defined in the Finance Act 2004. If an unauthorised payment is made by your SIPP, HMRC will impose a tax charge on you personally of up to 55% of the unauthorised payment amount. In addition, a scheme sanction charge of up to 40% of the payment will be imposed on your SIPP by HMRC. As Administrator of your SIPP we are required to report to HMRC any unauthorised payments made.

To avoid any possibility of challenge by HMRC, we strongly recommend that if you or a connected person is the tenant, you pay rent by standing order, strictly in accordance with the lease.

With effect from 24 May 2004, the Control of Asbestos at Work Regulations 2006 requires that the duty holder, that is the person responsible for maintaining and repairing any commercial property, is responsible for the identification and management of asbestos within the property. Under a full repairing and insuring lease, this responsibility will normally fall to the tenant. For further information, please contact your property advisers.

## 08. LEASE

If there are leases in existence when the property is purchased then the Trustees will take over these leases.

If a new lease is required then the Trustees will need to appoint a solicitor to provide advice in conjunction with the preparation of the new lease. The new lease must be a full repairing and insuring lease and have no onerous covenant on the Trustees.

It would be normal for the solicitor dealing with the purchase to deal with the lease as well.

If there are any ground rents or service charges payable by the Trustees, for example if the Trustees own a leasehold property or a multi-tenanted property, then the Trustees must pay the costs out of the SIPP fund.

The Trustees must make an Energy Performance Certificate (EPC) available at the point the property is marketed for letting. The EPC must be given to the tenant when the lease is executed. Failure to comply with this requirement may result in significant fines.

## 09. REFURBISHMENT OR EXTENSION

The cost of any refurbishment or extensions can be met by the SIPP as long as this is in accordance with the terms of the lease. We will at all times require invoices (addressed to the SIPP) for work carried out. Work can be undertaken by yourself or a connected person, but only on an arm's length basis as verified by a suitably qualified professional.

If improvements are carried out at the request of the tenant, which are not within the normal repairing and maintenance terms of the lease, then the rent must be reviewed and increased, if appropriate. This will involve a variation to the existing lease and a revised independent rental valuation.

Our written agreement must be obtained before any such work is carried out. Full details of your proposals along with written quotations should be provided to enable us to consider your request.

## 10. TRUSTEE BORROWING

Your SIPP can borrow money from a commercial lender to assist with the purchase of a property.

HMRC rules do not allow the Trustees to borrow more than 50% of the net asset value of the SIPP immediately before the borrowing takes place. This borrowing limit includes existing borrowing and any amount borrowed to finance VAT on property purchases.

Example:

The Trustees of Mr Smith's SIPP are considering the purchase of a further commercial property at a purchase price of £400,000 plus VAT, bringing it up to £480,000.

For the purpose of the example additional legal and other costs are ignored.

The current assets held by the SIPP are:

Cash bankat	£250,000
Property	£750,000
LESS existing borrowing	(£200,000)
Total NET asset value	£800,000

The maximum borrowing (50% of the net asset value)	£400,000
LESS existing borrowing	(£200,000)
Leaves a maximum available borrowing limit of	<u>£200,000</u>

The funding for the new property is therefore as follows:

Existing available cash at bank	£250,000
Available borrowing	£200,000
Available for property purchase	<b>£450,000</b>

In this example there is a shortfall of £30,000, therefore if the SIPP is to purchase this property an additional contribution of £30,000 will be required.

The property can be used as security for the loan but you cannot provide personal guarantees in relation to the loan. We must be provided with a copy of the borrowing offer letter as soon as it is available. We will insist on the Trustees' liability in relation to the loan being limited to the value of the SIPP. If any of these requirements are not acceptable to the lender then an alternative source of finance will have to be found. It is your responsibility to ensure that there are sufficient funds at all times to meet mortgage payments. The Trustees would not ordinarily arrange finance and you should liaise directly with the lending institution at all times.

## 11. SALE OF THE PROPERTY

When the Trustees decide to sell the property, they will normally appoint suitably qualified agents to advise them on the best way to market the property and the selling price. If the property is to be sold to a connected party a valuation must be obtained from a suitably qualified valuer to confirm that the sale price represents the true market value of the property.

When you are marketing the property for sale an Energy Performance Certificate (EPC) must be made available to interested parties. When the property is sold the EPC must be given to the purchaser. You and/or the agent are responsible for meeting this requirement. Failure to comply can result in significant fines.

## 12. JOINT PROPERTY PURCHASE

If a number of members with Momentum Property SIPPs wish to use their pension funds to collectively purchase a property then this can be achieved by the individual SIPPs joining together to purchase the property. We will not agree to a joint property purchase including any third party.

Each SIPP will have its own property administration bank account.

## 12. JOINT PROPERTY PURCHASE (continued)

The property will be jointly owned (as tenants in common) by the Trustees of each SIPP and the percentage interest each member has in the property will be specified when the property is purchased. This will be determined by the contribution each member's SIPP makes to the property purchase. Subject to certain HMRC restrictions the percentage allocation of the property can be altered in the future, subject to the property being valued by a chartered surveyor, all members agreeing in writing to the reallocation and there being a transfer of cash or assets between the SIPP funds to the appropriate value. This may be useful if a member involved in the property purchase wishes to retire, or if a new member wishes to participate in the property.

The Trustees will nominate a property manager to carry out the day to day administration of the property, normally one of the members, although we do recommend that the Trustees consider appointing a professional firm of property managers.

The surplus proceeds (rental income less borrowing costs and expenses) held in the property administration bank account will be distributed to the individual SIPP trustee bank accounts on a regular basis in accordance with the percentage holding each member has in the property. In extreme circumstances, funds may have to be transferred from the individual bank accounts to the property administration bank account if additional finance is required in relation to the property. Again, such payments into the property administration account must be in accordance with the percentage holding against each member has in the property.

If borrowing is required, each SIPP must enter into a separate loan agreement with the lender and each SIPP is responsible for servicing its loan. In all cases the liability of the Trustees will be limited to the value of the SIPP and personal guarantees are not allowed to secure any loans made to a SIPP.

If any member is likely to commence benefits within the next ten years, or has commenced benefits already then special considerations may apply.

## 13. INSURANCE

It is your responsibility to ensure that buildings insurance cover is in place at all times commencing from exchange of contracts.

We will also require you to ensure that public liability insurance is also in place and this is particularly important if the Trustees are purchasing land (with no buildings) when one may not normally consider insurance appropriate.

We will require a copy of the certificate of insurance each year and reserve the right to take out an insurance policy, at the expense of your fund, if there is any doubt that the property is adequately insured.

## 14. VAT

It is normally possible for the Trustees to elect for VAT on a particular property. We will then arrange the submission of the VAT registration form and will complete the quarterly VAT returns.

Complications may occur if the tenant is connected but 'Exempt' for VAT purposes and specialist advice may be required. Please note that Momentum Pensions Limited cannot provide tax advice.

If the purchase price is subject to VAT then please ensure that the finance to cover the VAT element is in place, as it may take some weeks to complete the property VAT registration and reclaim the VAT on the purchase price.

We will normally rely on the property management company, or the nominated property manager, to raise the rental invoices (including VAT if applicable) in accordance with the lease. A copy of each rental invoice should be sent to us immediately to enable us to complete the quarterly VAT return.

## 15. FEES

All fees in relation to the purchase of the property and ongoing administration must be paid out of the SIPP. Any invoice in relation to work undertaken must be made out to the Trustees of your SIPP.

In relation to the purchase of a property, this will include legal costs, stamp duty, surveyor's fees, lender's fees, our fees and any disbursements.

## 15. FEES (continued)

An estimate of our fees in relation to a property purchase and ongoing administration is set out in the fee schedule, which is available on request.

You must ensure that there is always sufficient cash in the Trustee bank account to meet the initial and ongoing costs of the property.

## 16. REGULATORY INFORMATION

Momentum Pensions Limited detailed below is authorised and regulated by the Financial Conduct Authority. The company is registered in England and Wales at Stafford Court, 145 Washway Road, Sale M33 7PE.

**T:** 0161 972 2840

**F:** 0161 972 2841

**E:** [uk@momentumpensions.com](mailto:uk@momentumpensions.com)

**W:** [www.momentumpensions.com](http://www.momentumpensions.com)

Company	Company Number
Momentum Pensions Limited	3683070