

self-invested personal pension

commercial property guide



Rowanmoor Pensions



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introduction

The Rowanmoor Pensions Self-Invested Personal Pension (SIPP) is designed to offer full flexibility when choosing assets for investment. Our aim is to provide excellent administration services, innovative ideas and specialist technical teams to support you and your adviser:

If you have a Rowanmoor Pensions SIPP you have the choice to invest in a range of assets, including commercial property. Many people choose this type of investment to satisfy the potential for capital growth and regular income.

Investing in commercial property through your 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;
- the property will form an asset of your SIPP and therefore your creditors will not have access to it.

Your SIPP enables you to participate in the purchase and take control of the ongoing management of your property investment and we will be on hand to offer advice and 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 Her Majesty's Revenue and Customs (HMRC) intricate rules and other regulatory requirements. We have many years of experience dealing with these. Step-by-step, this guide will take you through the purchase process to help your understanding, which in turn should reduce some of the problems you might otherwise encounter.

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 Property and Technical Teams, who specialise in dealing with all 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 and Rowanmoor Trustees Limited will be appointed as the trustees of the sub-trust, which will purchase the property. This means that the property is legally owned by the trustees of the sub-trust and registered with the Land Registry in the names of the trustees, which includes you.

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 on overseas property. If this is the case we will advise you.

factors to consider

When considering the type of property you wish to invest in, there are many things that you must take into account. Pension 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 basis at arm's length.

A connected party is:

- you;
- your spouse, civil partner or relative;
- your spouse or civil partner's relative;
- 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, usually leased back to a connected or third party.

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

Forestry, woodland and agricultural land, provided there is no residential element included. In addition, Her Majesty's Revenue and Customs (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.

Overseas hotel rooms may be acceptable provided they meet appropriate HMRC requirements and Rowanmoor Pensions' criteria.

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.
- The work must be carried out for the benefit of the SIPP. In general, it should enhance the value of the property and subsequently enhance the potential benefits from your SIPP.
- If residential property is being developed, it must be sold prior to practical completion.
- Frequent purchases and sales may be considered as trading by HMRC and consequently assessable to tax.

factors to consider (continued)

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 subject to 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, in connection with that person's occupation of the business premises, for example a shop with an integral flat above.

unacceptable property

Rowanmoor Pensions endeavours 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.

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

- where we consider there to be a real risk of existing or future contamination, or environmental damage;
- acquisition of a leasehold interest, which is subject to a high rent or service charge;
- possible breaches of pension legislation requirements, the SIPP's trust deed and rules, or the sub-trust;
- the trustees are unable to obtain proper legal title to the property.

lease

Rowanmoor Pensions normally expects 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. You should contact Rowanmoor Pensions to discuss whether it is possible to proceed if you are not intending to let the property after purchase.

All leases will 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 2006. 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

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.

contributions

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.

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 Rowanmoor Pensions 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. Any contributions, especially those in excess of 100% of your total relevant income, may be questioned by Her Majesty's Revenue and Customs Inspector of Taxes. For large contributions, tax relief may need to be spread over a number of years. 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.

Rowanmoor Pensions strongly recommends 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.

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.

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.

Pension legislation requirements limit 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. Any existing SIPP borrowing 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 fourteen).

funding the purchase (continued)

borrowing (continued)

The terms on which any borrowing is taken must be agreed by you and Rowanmoor Pensions. 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.

Both you and Rowanmoor Trustees Limited, as trustees of the sub-trust, must agree any borrowing agreement. 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 eleven) 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 sub-trust.

The lender will usually want to secure their lending. This is done by both parties entering into a Legal Charge. We must be party to any Legal Charge. Any Legal Charge that the sub-trust enters into must be fixed and NOT floating.

Rowanmoor Pensions' liability must be limited to the assets of the SIPP in all legal documentation including the Offer/Facility Letter, Mortgage Agreement and Legal Charge. We will instruct the solicitor, acting on behalf of your SIPP, to ensure that our liability is limited in all legal 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 and must not result in the SIPP exceeding the total lifetime allowance.
- 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 claw-back of the grant should also be carefully considered in the event of the disposal of the property.
- Rowanmoor Pensions 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. 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 will permit the joint ownership of a property with another Rowanmoor Pensions SIPP. Should you wish to consider this type of investment the Rowanmoor Pensions Family Pension Trust may be a suitable alternative and it is recommended that you seek advice from your financial adviser.

Her Majesty's Revenue and Customs has 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 the Transfer/Conveyance document or in a separate Deed).

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. Some lenders' documentation may not be accepted. We can advise on individual cases.

To help safeguard the value of your SIPP's investment, a Cross Party Agreement must be drawn up between the parties at the time of the purchase. Such 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.

contribution by transfer of property

Any party can transfer commercial property it already owns by way of a contribution into your SIPP, provided it meets with the criteria applicable to the purchase of any property by your SIPP (see page six for details). An independent valuation carried out by a qualified surveyor will be required to support the value of the property. To avoid possible tax charges, the value of the property should not exceed the contribution limits. In order to achieve this method of making a contribution, there are strict guidelines that will need to be followed to adhere to HMRC requirements. If you are considering making a contribution by this method you should contact Rowanmoor Pensions.

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 Pensions Property Insurance Plan 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.

appointment of solicitor

Rowanmoor Pensions 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. We have built up good working relationships with individuals at our retained solicitors over the years.

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, together with Rowanmoor Trustees Limited. The land will then be purchased in the names of both trustees under the sub-trust.

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, to purchase land, 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.

You can appoint your own solicitor too, but our solicitor will still need to oversee and approve all legal aspects of any transaction.

Rowanmoor Pensions reserves the right to request any report or specific advice to ensure the property meets pension legislation requirements and is acceptable to us, including a desktop environment 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;
- borrowing arrangement and other fees;
- surveyor's fees;
- specialist risk reports, environmental, contamination and hazardous materials for example;
- VAT;
- insurance.

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

Rowanmoor Pensions' fees will be directly deducted from your SIPP. You should ensure there is sufficient cash available in your SIPP to pay fees when due. SIPP fees and services details for purchasing and ongoing administration of property as an asset of your SIPP are available via the Rowanmoor Pensions website www.rowanmoor.co.uk in the literature library. A guide to Rowanmoor Pensions' retained solicitor's fees is available upon request from our sales helpline on 08445 440 550.

value added tax

If Value Added Tax (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 Rowanmoor Pensions does not offer a VAT service.

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 Her Majesty's Revenue and Customs (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 matters of VAT.

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.

Rowanmoor Trustees Limited, as trustee of the sub-trust, will require an indemnity from you against any claims, costs or penalties arising from the VAT registration.

There is a blank indemnity form at the back of this guide, which should be detached and 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.

life cover – before retirement

You may need to consider the ability of your SIPP to pay benefits in the event of your death. It may be possible to pay dependants' benefits without the need to sell the property by taking out pension life assurance. Rowanmoor Pensions recommends that you seek financial advice, on the level of any life cover required, to ensure that any payment of premiums or resulting death benefit payment for the life cover will not give rise to tax charges.

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 would 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. Rowanmoor Pensions will not act as property manager.

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;
- collection and payment of rental and other income;
- payment of expenses on behalf of the landlord;
- addressing ongoing maintenance issues;
- managing construction, development and repair issues;
- 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.

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). Both 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.

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.

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;
- market rental value of the property;
- the answer to insurance related questions as detailed in the SIPP Property Information Schedule.

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

Rowanmoor Pensions 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 Rowanmoor Pensions 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 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 and insurance requirements.
- 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 fourteen.
- Borrowing Agreement** (if applicable) this includes any Offer/Facility Letter/Mortgage Agreement or Legal Charge – see page eight.
- Desktop Environmental Report** – see page fourteen.
- VAT** registration details and indemnity letter (if applicable) – see page twelve.

notes



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Rowanmoor Personal Pensions Limited is authorised and regulated by the Financial Services Authority.

If you require this document in audio tape, large print, Braille or PC disc format, please telephone 08445 440 550 or fax 08445 440 500.