

small self-administered schemes and family pension trusts

commercial property guide



Rowanmoor Pensions

contents

introduction	4
ownership of assets and investment decisions	5
factors to consider	6
acceptable property	6
prohibited property	7
unacceptable property	7
lease	7
funding the purchase	8
contributions	8
existing investments	8
transfer from other pension arrangements	8
borrowing	8
grants	10
joint ownership	11
contribution by transfer of property	11
insurance	12
appointment of solicitor	13
fees and disbursements	16
value added tax	17
forward thinking	18
liquidity	18
life cover – before retirement	18
security against borrowing	18
property management	18
the next step	19
SSAS and Family Pension Trust property information schedule and borrowing information schedule	19
appointment of a surveyor	19
surveyor's report	19
desktop environmental report	19
checklist	20
indemnity letter	21

introduction

The Rowanmoor Pensions Small Self-Administered Scheme (SSAS) and Family Pension Trust are designed to offer full flexibility when choosing assets for investment and scheme members can group together to purchase assets, including commercial property.

Many people choose commercial property to satisfy the potential for capital growth and regular income. Our aim is to provide excellent administration services, innovative ideas and specialist technical teams to support scheme members and their advisers.

Investing in commercial property through a SSAS or Family Pension Trust offers many advantages that include:

- tax relief on contributions paid into the scheme;
- 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 a member or their company;
- the property will form an asset of the scheme and therefore creditors will not have access to it.

A SSAS or Family Pension Trust enables you to participate in the purchase and take control of the ongoing management of the scheme's property investment. 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 the trustees always take appropriate professional advice when choosing to invest in a property.

ownership of assets and investment decisions

Although similar in their structure, in that they are both individually registered pension schemes, established under trust and some or all of the members are trustees, there are important differences between a SSAS and Family Pension Trust which affect assets chosen for investment.

A SSAS is an occupational pension scheme established by an employer, known as the principal employer. Scheme assets are held under trust in the pension fund for the benefit of all scheme members. All members of the SSAS are scheme trustees and all investment decisions made by the trustees must be unanimous.

A Family Pension Trust has no principal employer. As with a SSAS, assets within a Family Pension Trust are held under trust in the name of the trustees of the scheme but not necessarily for the benefit of all members. Each member has a separate arrangement within the scheme and has full control of their own investments. Eligible members may also invest some or all of their funds in one or more common investment funds established within the scheme. Common investment funds can then be used to invest in assets that are shared. Assets are held for the benefit of an individual member or the participants of a particular common investment fund. Not all members have to be trustees.

Under both a SSAS and a Family Pension Trust, the trustees, together with Rowanmoor Trustees Limited as independent trustee, are legal owners of all scheme assets.

factors to consider

When considering the type of property to invest in, there are many things to take into account. Pensions legislation restricts trustees from investing in most types of residential property, or any other property where they 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.

The trustees 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:

- a member;
- a member's spouse, civil partner or relative;
- a relative of a member's spouse or civil partner;
- a business partner, their spouse or civil partner;
- a company connected with a member, a member's spouse or civil partner;
- the trustee(s) of a settlement for which a member is a settlor, or for which a person who is still alive and connected to a member 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 pensions 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 the members, or anyone connected to them, could not directly benefit from these activities following the acquisition of the land by the trustees, 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, the trustees 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 the scheme will fund the cost of the work.
- The work must be carried out for the benefit of the scheme. In general, it should enhance the value of the property and subsequently enhance the member's potential benefits from the scheme.
- If residential property is being developed, it must be sold prior to becoming suitable for use as a dwelling.
- 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 are the trustees 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 the scheme. 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 a member, for example a caretaker;
- residential property, which is occupied by a person, other than a scheme member (or a person connected with a scheme member), 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 pensions legislation requirements, the scheme's trust deed and rules;
- 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. The trustees should contact Rowanmoor Pensions to discuss whether it is possible to proceed if they are not intending to let the property after purchase.

All leases should 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 a suitable property has been identified as an 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 to the scheme, by an employer or individual 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 members may have in the scheme when they take benefits, known as the lifetime allowance. Funds in excess of the lifetime allowance will be subject to additional tax charges unless the member has obtained the necessary pension protection.

Scheme members 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 they were a member of a UK registered pension scheme. This facility is called carry-forward (see Rowanmoor Pensions SSAS Brochure or the Rowanmoor Pensions Family Pension Trust Key Features for more details).

Employer contributions 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 a member's earnings, 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 the employer's contribution for a member plus the member's personal contributions exceeds the maximum permitted annual contribution the member will have to pay tax on the excess contributions.

Rowanmoor Pensions strongly recommends that members seek advice on the financial and other consequences of making contributions into the scheme, as in some circumstances making contributions may lead to tax charges. It is recommended that members seek advice on such matters from their accountant or financial adviser.

existing investments

If any assets, already held in the scheme, 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 the scheme bank account.

transfer from other pension arrangements (either in cash or in specie)

If the member(s) are considering transferring benefits from existing pension arrangements into the scheme they should seek advice from a financial adviser. Where the scheme has just been established, the application for transfer of benefits cannot take place until it has been formally registered with HMRC and the definitive trust deed and rules have been executed. This may take some time to achieve. Sufficient time needs to be allowed for the transfer to be completed and for any money to clear in a scheme bank account, before exchange of contracts. This can take several weeks or sometimes longer.

borrowing

The trustees can borrow money to help fund the purchase. The borrowing can be from any source, usually a bank, but the trustees 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.

Pensions legislation requirements limit the scheme'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 scheme borrowing will be deducted to calculate the net value of the scheme. The 50% borrowing limit will take into account any existing outstanding borrowing already in place.

funding the purchase (continued)

borrowing (continued)

We can help with any borrowing calculations once we receive the completed SSAS/Family Pension Trust Property Information Schedule and Borrowing Information Schedule (see 'the next step' on page nineteen).

The terms on which any borrowing is taken must be agreed by all of the trustees, including 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 members wish to take benefits from the scheme, if the property is to form a substantial proportion of the assets of the scheme;
- the ability of the scheme 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.

The trustees, including Rowanmoor Trustees Limited as independent trustee, must agree any borrowing agreement. This includes the Offer/Facility Letter, Mortgage Agreement and Legal Charge. Rowanmoor Pensions will need to see the Offer/Facility Letter and agree to the terms of the loan before any documentation can be executed.

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 trustees enter into must be fixed and NOT floating.

Rowanmoor Pensions' liability must be limited to the assets of the scheme in all legal documentation including the Offer/Facility Letter, Mortgage Agreement and Legal Charge. We will instruct the solicitor, acting on behalf of the scheme, to ensure that our liability is limited in all legal documentation.

To be inserted in any Offer/Facility Letter:

The liability of ROWANMOOR TRUSTEES LIMITED is in all respects and for all purposes limited to the assets of The PENSION SCHEME

To be inserted in the Mortgage Agreement and Legal Charge:

All covenants made by ROWANMOOR TRUSTEES LIMITED in this Legal Mortgage are made by ROWANMOOR TRUSTEES LIMITED as trustee so as to bind it as such trustee only and so far as it is in the office of a trustee of The but not so as to incur any personal liability and any covenant to pay or discharge any monies or liabilities due to the Bank or to perform any obligations shall only extend to an obligation to pay out of the funds and assets of the said trust and the income thereof so far as the same may be in their hands or under their control (but not further or otherwise) and provided always it is hereby agreed that the said ROWANMOOR TRUSTEES LIMITED shall not be liable in damages for or in respect of any breach or non-observance of the covenants by ROWANMOOR TRUSTEES LIMITED hereinbefore contained which shall happen after it shall have ceased to be a trustee of the said trust and no covenant shall be implied in this legal Mortgage so as to render ROWANMOOR TRUSTEES LIMITED personally liable for repayment of the principal sum and interest hereby secured nor shall the same constitute a debt recoverable against them personally.

funding the purchase (continued)

grants

It may be possible for the trustees to apply for a grant to help purchase and/or 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 scheme and must not result in the scheme exceeding the total lifetime allowance for all members.
- The body making the grant available must be happy to make it available to the scheme.
- 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 the trustees if they are unable to raise the funds to buy a property outright. However, the trustees also need to consider what would happen should they, 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. The trustees could also find themselves in a situation where they jointly own the property with a totally unconnected third party.

We may permit the joint ownership of a property with another party. Her Majesty's Revenue and Customs has no objection to joint ownership provided:

- the trustees 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 participating employer must be carefully documented. If some borrowing is involved it should be noted that some lenders' documentation may not be accepted. We can advise on individual cases.

To help safeguard the value of the scheme'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 the scheme, provided it meets with the criteria applicable to the purchase of any property by the trustees (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, payable by members, the value of the property should not exceed the maximum 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 the trustees are considering making a contribution by this method they should contact Rowanmoor Pensions.

insurance

The trustees must arrange insurance from exchange of contracts to ensure the scheme's property investment is protected. This should include public liability cover of at least £5 million. Rowanmoor Pensions has negotiated a block insurance policy for this purpose and a quotation can be supplied, without obligation, upon completion and return of the Property Insurance Policy Quotation Request Form that is part of this guide. 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 Policy Key Features document. The trustees have the opportunity to take extra optional cover by completing the appropriate section of the Property Insurance Policy Quotation Request Form.

If the trustees do not use the Rowanmoor Pensions Property Insurance Policy they must provide the following information to Rowanmoor Pensions.

- A copy of the insurance certificate to evidence cover from exchange of contracts and annually thereafter.
- Confirmation of minimum levels and type of cover, which must be agreed by Rowanmoor Pensions. Our requirements may differ depending on the type of property purchased, for example, when an overseas property is to be purchased. The trustees should contact Rowanmoor Pensions in such circumstances.

appointment of solicitor

The trustees should appoint a solicitor to oversee all legal work on the property assets of the scheme. If the trustees do not already have a solicitor, Rowanmoor Pensions can provide the names of two firms of solicitors, to oversee all legal work on property assets in the scheme. 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 these practices over the years.

If the scheme is administered at our **Salisbury** administration centre the contact is:

Mr G Treagust
Trethowans Solicitors
Office Park
London Road
SALISBURY SP1 3HP
Telephone: 01722 412512

If the scheme is administered at our **Bolton** administration centre the contact is:

Mr N J Horsfall
Garstangs Solicitors
Bradshawgate Chambers
57-61 Bradshawgate
BOLTON BL1 1DU
Telephone: 01204 531118

Professional advisers need to be appointed to act on behalf of the trustees and for occupational pension schemes including a SSAS this needs to be formally documented. The draft letter on page fifteen is suitable for this purpose. This acts as a formal appointment of the professional adviser but is not necessarily sufficient as an instruction to act. Alternatively the trustees' solicitors may wish to use their own Client Care Agreement. Once preliminary checks have been completed and we are happy that the transaction can proceed we will instruct the solicitors to act on behalf of the trustees.

For occupational pension schemes including a SSAS, the solicitor is required to confirm acceptance of the appointment within 30 days from the date of the trustees' letter. If they decide not to accept the appointment, the trustees will need to appoint another solicitor and notify Rowanmoor Pensions accordingly.

Once the appointment has been accepted, the trustees should instruct their solicitor to advise them on the legal aspects of the transaction (the solicitor will act on behalf of all the trustees, including Rowanmoor Trustees Limited). Rowanmoor Pensions reserves the right to request any report or specific advice from the solicitor to ensure the property is within HMRC guidelines and acceptable to Rowanmoor Pensions. All fees should be paid from the scheme.

appointment of solicitor (continued)

We will write to the solicitor with the following instructions.

- Property and land should be purchased in the names of all the trustees, including Rowanmoor Trustees Limited, (for England and Wales the named registered holders are restricted to a maximum of four; one of which must be Rowanmoor Trustees Limited, for Scotland there is no limit).
- Any contamination issues discovered in the normal course of the solicitor's enquiries must be brought to the attention of Rowanmoor Pensions immediately.
- Property insurance (see 'insurance' on page twelve) must be set up to commence on the day of exchange of contracts, this must be in the names of all the trustees, including Rowanmoor Trustees Limited, as named on any Transfer/Conveyance document.
- The lease should be in the names of all the trustees, as named on the Transfer/Conveyance document. It must be a commercial lease on a full repairing and insuring basis, the tenant must take responsibility for compliance with environmental legislation, including The Environmental Protection Act 1990 and The Control of Asbestos at Work Regulations 2006 and must give the trustees an up-to-date copy of the Asbestos Management Plan for the property on an annual basis. Finally, the rent set in the lease must reflect the rental valuation (if required).
- We will need a copy of the Asbestos Management Plan before contracts are exchanged.
- We will require sight of all documents for approval before they can be executed.
- Our liability must be limited to the assets of the pension scheme in all documentation, including leases with no floating charges being created.
- We will require a copy of an Energy Performance Certificate or Display Energy Certificate, complying with the Energy Performance of Buildings Regulations, where appropriate. The purpose of both the Energy Performance Certificate and Display Energy Certificate is to provide a rating of energy efficiency and carbon emissions for a property and is the responsibility of the vendor.

Where appropriate, the solicitor should handle any borrowing requirements for the purchase. They should deal with the property purchase and lease. They should obtain reports relating to environmental issues and all other appropriate searches to ensure the scheme obtains a good and marketable title to the property. Concerns they may have about any part of the purchase should 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 scheme bank account.

Rowanmoor Pensions reserves the right to request any report or specific advice to ensure the property meets pensions legislation requirements and is acceptable to us, including a desktop environmental report or further environmental reports.

appointment of solicitor
(continued)

Dear

Name of Pension Scheme
Address of Property

We, the Trustees of the *(insert name of the pension scheme)* wish to appoint you *(insert name of solicitor)* as our Legal Adviser, in accordance with the requirements of the Pensions Act 1995. Your appointment will initially be to deal with the purchase and lease of the property at *(insert address of property)*.

If you accept the appointment, you will take instructions from and report to *(insert name of Chairperson to the Trustees)* and Rowanmoor Trustees Limited.

All correspondence should be sent to Rowanmoor Pensions at the following address*:

Rowanmoor Pensions	OR	Rowanmoor Pensions
Rowanmoor House		2 Belmont House
46-50 Castle Street		Deakins Business Park
Salisbury SP1 3TS		Egerton BL7 9RP

(*dependent on which administration centre the Trustees normally correspond with)

Either party may terminate the appointment by serving notice in writing. The date of the termination should be clearly stated.

The liability of Rowanmoor Trustees Limited is at all times limited to the assets of the scheme.

To confirm your acceptance of the appointment as Legal Adviser, please sign the attached copy letter and return it to Rowanmoor Pensions within one month from the date of this letter.

Yours

..... print name signature
..... print name signature
..... print name signature
..... print name signature

(all Trustees to sign)

We, *(insert name of solicitor)*, accept the appointment as Legal Adviser in accordance with this copy letter. We confirm that we will notify the Trustees of any conflict of interest that may arise in relation to the scheme.

Signed: Dated:

fees and disbursements

The trustees 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 land tax;
- borrowing arrangement and other fees;
- surveyor's fees;
- specialist risk reports, environmental, contamination and hazardous materials for example;
- VAT;
- insurance.

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

value added tax

If Value Added Tax (VAT) is payable on the purchase of a property, the trustees may wish 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 the trustees are advised to reclaim the VAT expenditure on the purchase price, they must ensure that the scheme 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 scheme register for VAT, then VAT will also be chargeable on the rent. It is the member trustees' responsibility to deal with all matters of VAT.

All the trustees who are party to the property purchase, including Rowanmoor Trustees Limited, should also be party to the registration (see 'the next step' on page nineteen for details of who should be party to the purchase). Rowanmoor Trustees Limited will require an indemnity from both the trustees and any participating employer, if applicable, against any claims, costs or penalties arising from the VAT registration.

There is a blank indemnity form at the back of this guide which may be detached (see 'the next step' on page nineteen for further details). A copy of the indemnity form is shown below and includes notes to help you complete it.

VAT due on the completion of the property purchase is settled from the scheme and then reclaimed. This will need to be taken into account when considering the funding of the purchase. If borrowing is required in order to settle the VAT, then this will need to be taken into account when calculating the maximum borrowing allowable. Any borrowing to pay VAT must be documented.

INDEMNITY	
... (insert name of pension scheme)	PENSION SCHEME
We/I ... (insert name(s) of trustees)	and
... (insert name of employer, if applicable)	
(and any successor thereto) hereby jointly and severally agree to indemnify ROWANMOOR TRUSTEES LIMITED (and any successor thereto) against any liability whatsoever in respect of Value Added Tax payable by the above named Pension Scheme (or any successor thereto) to Her Majesty's Revenue and Customs.	
This Indemnity shall continue after ROWANMOOR TRUSTEES LIMITED ceases to be a Trustee for whatever reason for as long as the Scheme shall be liable for such tax.	
For the avoidance of doubt, the said Scheme shall be deemed to be liable for Value Added Tax if so determined by Her Majesty's Revenue and Customs whether or not such liability or the amount thereof is disputed and this Indemnity shall be fully operative in such circumstances.	
(signed by the individual Trustees)	
..... print name signature
..... print name signature
..... print name signature
..... print name signature
For and on behalf of (signed on behalf of the employer, if applicable)	
.....	
Dated Day of 20	

forward thinking

liquidity

The trustees need to consider all members when determining the investment strategy of the scheme and its ability to honour any benefit commitments that may arise. If a property investment represents a significant proportion of the scheme's funds, the trustees could be forced to sell it to pay benefits, or make a transfer out of the scheme, or in the event of the death of a member. This could lead to the trustees having to reduce the asking price of the property for a quick sale.

life cover - before retirement

The trustees need to consider the ability of the scheme to pay benefits in the event of the death of a member:

If the trustees do not have the funds readily available to cover such an eventuality, they may be forced into an untimely sale of the property. This may be resolved by taking out pension life assurance to cover the potential liability for each individual member. Rowanmoor Pensions recommends that you seek financial advice on the level of 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 corporate borrowing

Property owned by the scheme cannot be used by any other party as security against corporate, or any other borrowing.

property management

The trustees will be responsible for the management of any property held within the scheme, which must be performed in accordance with the principles of good estate management.

The trustees need to consider how they will manage the property to ensure the terms and conditions of any leases are met. If they would prefer, the trustees can appoint an independent professional property manager to perform the task. If the trustees 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

SSAS and Family Pension Trust property information schedule and borrowing information schedule

The trustees should complete the SSAS and Family Pension Trust Property Information Schedule and the SSAS and Family Pension Trust Borrowing Information Schedule (if applicable), held at the back of this guide. Both schedules should be completed in full (where applicable), signed by all of the trustees and returned to Rowanmoor Pensions. Contracts must not be exchanged until Rowanmoor Pensions has received the schedules, completed all necessary checks and confirmed to the trustees and the solicitor that the property purchase and any related borrowing may proceed. The trustees should also detach and complete the VAT indemnity form in this guide (where applicable – see 'value added tax' on page seventeen for more information). The indemnity form should be fully completed and signed by all of the trustees and on behalf of any participating employer, before being returned to Rowanmoor Pensions.

appointment of a surveyor

The trustees 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. 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. All fees should be paid from the scheme.

surveyor's report

The report must be addressed to the trustees, including Rowanmoor Trustees Limited, 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 and/or surrounding areas;
- market value and reinstatement value of the property;
- market rental value of the property.

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 the scheme, 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 the solicitors on the trustees' 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 details the information that is needed in order for Rowanmoor Pensions to start the process of purchasing property for the trustees of a SSAS or Family Pension Trust.

- SSAS and Family Pension Trust 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.
- SSAS and Family Pension Trust Borrowing Information Schedule** (if applicable) detailing the lender; documentation and the borrowing and repayment terms.
- Surveyor's Report** – see page 19.
- Borrowing Agreement** (if applicable) this includes any Offer/Facility Letter/Mortgage Agreement or Legal Charge – see page 8.
- Transfer/Conveyance Documentation** – see page 14.
- Professional Adviser Appointment Letters** – see page 15.
- Lease Agreement(s)** – see pages 7 and 14.
- Insurance** – see page 12.
- Desktop Environmental Report** – see page 19.
- Energy Performance of Buildings Regulations Compliance** – see page 14.
- Control of Asbestos at Work Regulations 2006 Compliance** – see pages 7 and 14.
- VAT** (if applicable) registration details and indemnity letter – see pages 17 and 21.
- Specialist Reports** to eliminate any potential risks identified in the above items in the checklist.

INDEMNITY

..... Pension Scheme

We/I and

.....

(and any successor thereto) hereby jointly and severally agree to indemnify ROWANMOOR TRUSTEES LIMITED (and any successor thereto) against any liability whatsoever in respect of Value Added Tax payable by the above named Pension Scheme (or any successor thereto) to Her Majesty's Revenue and Customs.

This Indemnity shall continue after **ROWANMOOR TRUSTEES LIMITED** ceases to be a Trustee for whatever reason for as long as the Scheme shall be liable for such tax.

For the avoidance of doubt, the said Scheme shall be deemed to be liable for Value Added Tax if so determined by Her Majesty's Revenue and Customs whether or not such liability or the amount thereof is disputed and this Indemnity shall be fully operative in such circumstances.

(signed by the individual Trustees)

.....
print name signature

.....
print name signature

.....
print name signature

.....
print name signature

For and on behalf of

.....

Dated Day of 20



TELEPHONE: 08445 440 440 • FAX: 08445 440 500
enquiries@rowanmoor.co.uk • www.rowanmoor.co.uk

ADMINISTRATION CENTRES

ROWANMOOR HOUSE • 46-50 CASTLE STREET • SALISBURY SP1 3TS
2 BELMONT HOUSE • DEAKINS BUSINESS PARK • EGERTON • BOLTON BL7 9RP

CONSULTANCY OFFICES

LONDON | BOLTON | BURGESS HILL | SALISBURY

Rowanmoor Pensions is a trading name of the Rowanmoor Group plc companies.
Rowanmoor Group plc is registered in England (No. 5792242) at Rowanmoor House, 46-50 Castle Street, Salisbury SP1 3TS.

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.