

EMBARK PENSIONS

COMMERCIAL PROPERTY GUIDE

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embark pensions

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This document provides information about the property services we provide through Embark Pensions. Please note it is primarily for use by Advisers and customers in conjunction with their Adviser. The information and opinions provided are for guidance only and are not intended investment or tax advice. We recommend that you seek advice from a recognised investment or tax professional before making any decision to invest in property or one of our products.

Advised property purchase transactions only.

INTRODUCTION

Many people choose to invest in commercial property through their pension to satisfy the potential for capital growth and regular income.

Advantages of investing in commercial property through your pension scheme

- Tax relief on contributions paid into your pension.
- 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.

Please note: the tax information provided within this document is based on our understanding of current tax law and HMRC practice – which may change.

Our processes enable you to participate in the purchase and take control of your property investment. We will be on hand to offer guidance on any issues you may confront throughout the process.

Purchasing property through a pension arrangement can be complex and requires a detailed knowledge of HM Revenue & Customs' (HMRC) intricate rules and other regulatory requirements. We have many years of experience dealing with these. This guide provides information on the purchase of property through your pension to help your understanding, which in turn should reduce some of the problems you might otherwise encounter.

It is vital that we have an indication of the proposed completion date at the outset. Our property team will aim to meet the deadline, however, if documentation is outstanding, funds will not be released to complete the acquisition until the paperwork has been received, including a valid insurance certificate and a property management agreement. If the outstanding information is in relation to a new lease, the solicitors will be instructed not to hand over the keys to the building until all required documentation is in place.

Property transactions often take several months to complete. In some cases, delays may occur for reasons beyond our control, particularly when a number of parties are involved. Whilst we do all we can to minimise the delays, we have procedures in place to identify and mitigate any risks associated with a property's ownership, which must be satisfied before your pension can enter into any legally binding contract.

We reserve the right to defer or decline any investment if our requirements are not met. We cannot therefore give any guarantees for the date of completion of sale or purchase or be held liable for any adverse consequences arising from late completion.

You will understand more about the risks and our requirements once you have read this guide.

This guide is based upon our understanding of English and Scottish law and therefore there may be some differences in legal and other requirements if property is purchased elsewhere.

Our property team specialises in dealing with all administrative 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 PROPERTY WITHIN YOUR PENSION

Any new property purchased by your pension will be registered with the Land Registry jointly in your name along with your pension as Trustees of your Pension Scheme **.

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. Please refer to permitted, non-permitted and unacceptable property lists below.

Permitted property

All property purchases must have a minimum gross yield of 5%.

- Retail shop (Single tenant)
- Retail shop (Multi-tenant)
- Retail financial services
- Restaurant*
- Café*
- Drinking establishment*
- Hot food takeaway*
- Office (Single tenant)
- Office (Multi-tenant)
- Storage or distribution
- Hotel
- Non-residential institution
- Leisure
- Special industrial
- General industrial
- Land for commercial purposes (subject to a minimum rental income of £5,000 per annum)
- Agricultural land (subject to a minimum rental income of £5,000 per annum)

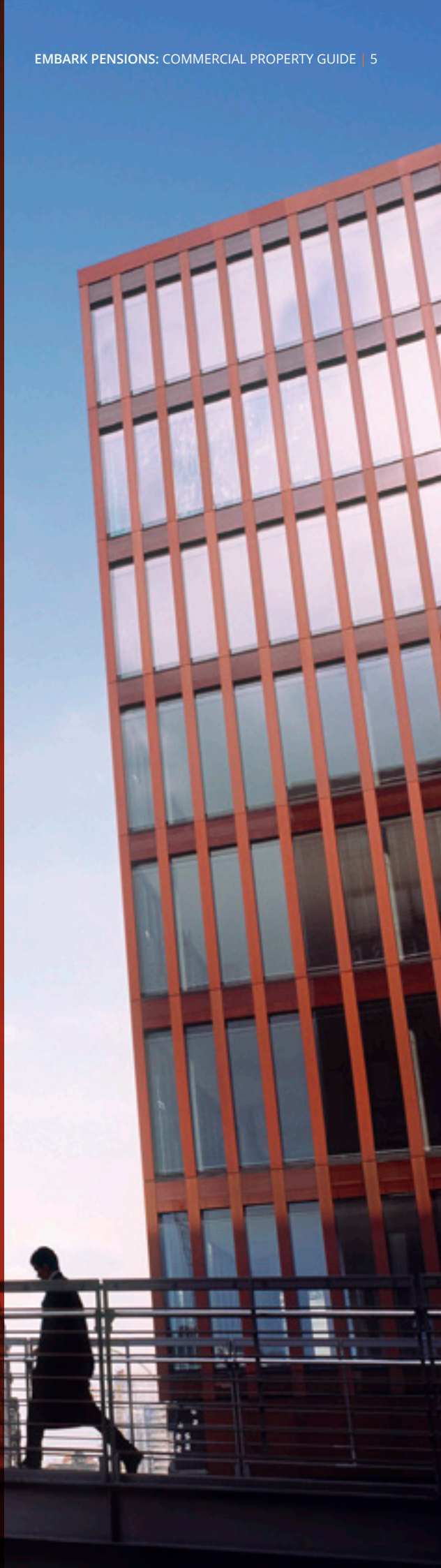
A professional independent property manager must be appointed for all new property acquisitions to deal with the collection and distribution of rent as well as other management responsibilities. See P21-22 for details.

* Any proposed hospitality & leisure acquisitions will require to be approved by the Embark Property Investment Committee for suitability, with additional due diligence for connected tenants.

** Properties held in some of our older products may just be held in the name of the pension trustee only.

Non-permitted property list

- Taxable property including residential (dwelling houses), holiday apartments, beach huts and caravans.
- Residential institutions.
- Secure residential institutions.
- Property that benefits from an aggregated income such as hotel rooms and storage pods.
- Types of property where we are advised that there is no re-sale market, or we foresee real management difficulties.
- Any property where insurance is unavailable or inadequate in the insurance market for any reason e.g. combustible composite panels, waste transfer and recycling sites, historic flooding, subsidence.
- Land purchased from a third party that adjoins a member's personal residence where the member or connected party may gain a non-relevant benefit e.g. being purchased to preserve a view from their house or to stop someone else building or to increase the value of their personal residence.
- Properties at auction.
- Properties with known unremediated environmental issues.
- Properties with existing tenants with known historic rent arrears or other material breaches.
- Freehold properties where part of the building comprises long leasehold residential properties even if let to third parties with nominal ground rent.
- Land for residential development, garden land, etc.
- Certain other residential institutions e.g. student accommodation and care homes etc.
- Jointly owned properties with a third party.
- Overseas Properties - property must be located in England, Wales, Scotland or Northern Ireland
- Vacant Properties. Part vacant properties are discouraged and may only be permitted with the approval of the Embark Property Investment Committee.
- Bare land, Farmland, Grazing Land, Undeveloped Land (unless leased and income producing with a minimum annual rental of £5,000).
- Properties that do not have a lease (an Agreement For Lease is not sufficient) or have a yield of less than 5%.
- Properties with an EPC rating of less than an E Grade (or above if required by law).
- Properties which include renewable energy equipment e.g. solar panels, wind turbines, heat pumps, hydro-electric power. These may be approved in some circumstances where the equipment is fixed and a permanent structure integral to the property as confirmed by a surveyor and the acquisition approved by the Embark Property Investment Committee
- Properties attracting grants, e.g. Single Payment Scheme.
- Properties over 18 metres in height or have 7 or more storeys.
- Agricultural properties and land subject to an agricultural tenancy agreement.



OWNING PROPERTY WITHIN YOUR PENSION (CONTINUED)

Unacceptable Property

We endeavour to permit the purchase of any property or land that is permitted under current legislation and included within our permitted property list, however, we reserve the right to refuse to proceed with the purchase of any property, or to proceed subject to individually negotiated terms, at our discretion.

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

- where we consider there to be a risk of existing or future contamination or environmental damage, e.g. current or previous presence of Japanese Knotweed, chemical contamination or fuel tanks (petrol stations);
- acquisition of a leasehold interest with a term of 75 years or less and/or which is subject to a high rent or service charge, for example ground rent greater than £250 or an annual service change over £1,000 or 1% of the Market value (whichever is the greater);
- possible breaches of pension legislation requirements, the SIPP's and/or the scheme's trust deed and rules;
- the Trustees are unable to obtain good and marketable title to the property;
- where a property will be unoccupied on completion.

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 arm's length basis.

A connected party is:

- you;
- your spouse, civil partner or relative;
- a relative of your spouse or civil partner;
- 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.

Lease

We normally expect 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. It will not be possible to proceed where a property is to be unoccupied at completion, if we consider the pension is unable to meet any financial outgoings, for example, rates, mortgage repayments and insurance. You should contact us to discuss whether it is possible to proceed if you are not intending to let the property immediately on completion.

All leases should be granted on a full repairing and insuring basis at the rent recommended in the valuation, are prepared by a panel solicitor and have a minimum term of three years for all new leases.

The tenant will be responsible for compliance with all relevant legislation including the Environmental Protection Act 1990 and Control of Asbestos at Work Regulations 2012. For properties built before 2000 or if recommended by a surveyor, an asbestos survey will be required for all proposed property acquisitions and 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.

For a property to be developed, we require an Agreement for Lease to be entered into.



Please note: Where bank borrowing is required, the lender will usually require the term of the lease to match the term of the loan.



'In specie' transfer of property

It is possible to transfer a property currently held as an asset of another pension. As with any other transfer we would need a form completed to authorise us to contact the other scheme and they may have paperwork of their own. The process of transferring would be similar to a purchase. We will not accept any in specie transfer where there are ongoing issues e.g. rent arrears. Please note full due diligence will be carried on all property transactions including in specie transfers and purchases.

Purchase price

In accordance with pension legislation, anyone connected to the Scheme cannot receive benefits other than to provide retirement benefits. Therefore, where the vendor is connected to the Scheme Member(s), the purchase price must be in line with the open market valuation. This will need to be evidenced by an independent surveyor's valuation report addressed to the Trustees.

For unconnected transactions, the independent surveyor's valuation report will be used to ensure that the Scheme is paying a fair and reasonable price.

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 all funding is in place. This should include any funding to cover legal expenses and any administration fees payable. If any borrowing is required to fund the transaction, this must be agreed, documented and ready to be drawn prior to exchange of contracts.

Contributions

Contributions can be made to your pension in order to increase the funds available to purchase a property. There is, however, a limit on the level of contributions eligible for tax relief in any one tax year, known as the annual allowance.

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.

Your employer can contribute to your pension and will receive tax relief, provided the contributions are made wholly and exclusively for the purpose of the employer's trade. 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.

If you are making a personal contribution, please be aware that the tax reclaim can take six to 11 weeks to be received from HMRC. This timescale is out of our control.

We strongly recommend that you seek advice on the financial and other consequences of making contributions to your pension, 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 pension, 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 pension bank account prior to exchange of contracts.

If you are considering transferring benefits from existing arrangements into your pension, you should seek advice from your financial adviser.

Transfer from other pension arrangements

Applications for the transfer of benefits cannot start until your pension has been formally established. Enough time needs to be allowed for the transfer to be completed and for any money to clear in the pension scheme bank account before exchange of contracts. This can take several weeks or, sometimes, longer.

Property contacts

In accordance with the Data Protection Act 2018, before we are able to correspond with third parties about your membership to the scheme, you must give us authorisation. Please provide full details of all parties who are involved with this investment transaction.

FUNDING THE PURCHASE (CONTINUED)

Borrowing

Your pension can borrow money to help fund a property transaction. Borrowing should be from an established high street lender. We would expect borrowing repayments to be met from the rental income.

Pension legislation limits the amount your pension can borrow to 50% of its net fund value at the time the loan is drawn down. The net fund value excludes any existing borrowing which will be deducted to calculate the net value of your pension. 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 full details of the transaction and we will therefore need up to date values (within six months) of any scheme assets at the date of drawing down any borrowing. The value of the property being acquired will not be included in any calculation but any existing borrowing will be included in the calculation.



Example

A scheme has assets worth £200,000 but has a liability in the form of borrowing of £50,000. Therefore the net fund value is £150,000

The maximum amount which can be borrowed is £200,000 less £50,000 (existing borrowing) x 50% = £75,000, i.e. further borrowing allowed of £25,000.

Connected party borrowing

Borrowing should be from an established high street lender. In some circumstances, Embark may allow borrowing from a connected party but this should only be for short term liquidity cover and not for long term investment. Any connected borrowing must be done on an arms length commercial basis for a term of less than 1 year, formally documented with all parties signing the loan documentation, such loan being subject to a commercial rate of interest with no security and no ability for the lender to request early repayment but permitting the borrower to repay early.

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

  Please note that we will require 125% coverage on a fixed rate loan and 130% coverage on a variable rate loan, in terms of rental income against the mortgage repayments (capital and interest). We will also need to be satisfied that the scheme has sufficient liquidity to support itself in the absence of rental payments for a period of six months;
- the age at which you wish to take pension benefits, particularly if the property is to form a substantial proportion of the assets of your pension;
- the ability of your pension to pay any current and future commitments in addition to the borrowing, such as a pension 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. This includes the Offer/Facility Letter, Mortgage Agreement and Legal Charge. The solicitor acting on behalf of your pension 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 pension. The lender will usually want to secure their lending against the property by way of a Legal Charge. We will not be able to proceed with any lending agreements that require a floating charge to be registered against the trustee company's assets, mandate any rental or insurance proceeds be paid direct to the lender or where the lender will not agree to limit the Trustees' liability to the assets held in the pension scheme.

The liability of both your pension Trustees and the pension member must be limited to the assets of the pension in all legal documentation including the Offer/Facility Letter, Mortgage Agreement and Legal Charge and the solicitor will be instructed to ensure this is included within the documentation.

PURCHASE BY MULTIPLE PENSION MEMBERS

You will be asked to detail all the Members who are purchasing this property. Where there is more than one scheme investor, a joint account will be set up, which will receive all property income. Periodically we will distribute funds to members' individual accounts, proportionately to their share in the property. All owners of the property MUST be via an Embark Pension SIPP - no external ownership is allowed.



INSURANCE

To ensure your property investment is protected, the property must be insured from exchange of contracts for buildings reinstatement, loss of rent, terrorism and property owner's liability.

We have negotiated a block policy, through our broker, Assured Partners (formerly Hettle Andrews & Associates Limited). They are able to offer cover with one of the world's largest insurers. The block insurance policy offers:

- **competitive rates;**
- **comprehensive cover, including unforeseen and environmental risks; and**
- **24 hour, seven days a week access to the loss adjuster.**

Please contact us at **edinburghpurchases@embarkpensions.co.uk** if you would like a quote for block insurance.

From 31 August 2022, insuring under the Embark block policy will be mandatory for all properties that we are instructed to purchase.

For all other properties we would normally expect these to be insured under our block policy. However, in exceptional circumstances you may wish to arrange the insurance with an alternative provider. In these cases we must have sight of and approve any proposed policy prior to exchange and completion. The insured parties will need to be the registered owners, and the policy must include:

- **full buildings reinstatement cover as per the reinstatement figure provided by the surveyor;**
- **loss of rent cover for 36 months;**
- **terrorism cover; and**
- **property owner's liability cover of at least £10,000,000.**

An additional annual fee will apply where insurance is not through the Embark block policy because of the additional administration we have to carry out.

Administration services in relation to the block insurance policy are provided by Embark Services Limited part of the Embark Group. A 15% commission on premiums is paid to Embark Pensions by Assured Partners for the work completed in relation to the block policy.



Please note: Unless we have approved an alternate insurer we will insure the property under our block policy for buildings reinstatement, loss of rent, terrorism and property owner's liability. Any existing insurance will have to be cancelled from the completion date. In order to avoid under insurance, we reserve the right to instruct an independent insurance reinstatement cost assessment at the expense of the pension scheme.

ENERGY PERFORMANCE CERTIFICATE (EPC)

An EPC provides a rating of the environmental efficiency of a commercial building, with 'A+' being the most efficient and 'G' being the least efficient. It is based on the energy efficiency of the building fabric, heating, ventilation, lighting and any cooling systems and must be accompanied by a report containing recommendations for improving the energy performance of the building.

The owner of a commercial building who sells or lets it, (or markets it for either purpose) must by law obtain an EPC and make it available to prospective purchasers or tenants.

When a property is being purchased, leased or transferred (including in-specie) we will require an EPC to be produced before the transaction can complete.

Our policy is that properties must have a minimum EPC rating of an E (or higher if required by law). Any new purchase, or lease, will require a valid EPC with such rating.

Since April 2018, in England and Wales, it has been illegal to sell, or rent, a commercial property with a rating of a F or G. A property already held in a SIPP rated F or G must have a fully costed & funded remediation plan in place to increase the rating to the minimum of E within a reasonable timescale or it may require to be removed from the SIPP.

While the minimum rating is an E, properties with a rating of D or E will be required to demonstrate that the investors are aware of the proposed government changes in regulation to require a minimum of a C rating. Quotations may be required for upgrading works and requisite funding in place with agreement to improve the rating within a reasonable timescale or if legislation dictates. Such an acquisition may require to be approved by the Embark Property Investment Committee.

It is our understanding that an EPC is not required for listed buildings, places of worship, workshops or industrial or agricultural buildings with low energy usage, however as this is a legal issue, we will follow the guidance of the appointed solicitor. In England and Wales, any exemption must be applied for, and registered on the PRS Exemptions Register. Any such exemption(s) must be reapplied for, and obtained, every five years.



England and Wales - The National Private Rented Sector (PRS) Exemptions Register

If a landlord believes that a property they let qualifies for an exemption from the minimum energy efficiency standard, that exemption must be registered on the PRS Exemptions Register – a self-certification database.

Detailed information on exemptions criteria is set out in the published guidance. A summary of exemption types and the evidence requirements are available via **gov.uk**.

Landlords (or a landlord's agent) can register an exemption and will be responsible for updating the register every five years.

Source: **https://www.gov.uk/government/publications/private-rented-sector-minimum-energy-efficiency-standard-exemptions/guidance-on-prs-exemptions-and-exemptions-register-evidence-requirements**
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ENVIRONMENT

Environmental issues, such as the presence of asbestos or contamination, can significantly affect the value of your investment property. Your pension fund and/or tenant could also face environmental liabilities if the property is found to be contaminated or causes other environmental damage.

One of the first documents requested is an environmental desktop report. If this environmental report highlights a potential issue, further reports such as a Phase One report, may be required. If we consider a property to have an unacceptable environmental risks, we will not be able to proceed with the purchase.

Environmental Liability

Under the Environmental Liability Directive, it is the owner who inherits the liability of any environmental contamination claim irrespective of whether the current owner was responsible for the contamination. Your pension fund could incur significant fines or other environmental liabilities if the property is found to be contaminated or causes other environmental damage.

Environmental Reports

At the start of the purchase process, you will require to obtain an environmental desktop report for the property addressed to your pension Trustees. The cost of this report will typically be in the region of £300-£500. If the environmental report highlights a potential issue, further reports such as a Phase One report, will be required at an additional cost. Any environmental issues will need to be resolved prior completion, or suitable insurance obtained. Where insurance is obtained to mitigate the environmental risk/concern, evidence of such insurance will need to be provided. Please note that this insurance is usually separate to buildings insurance and will be specialised to deal with the environmental issue present. If we consider a property to have an unacceptable environmental risk, we will not be able to proceed with the purchase.

Environmental Questionnaire

We require a Property Observation and Composite Panel/Cladding Questionnaire (the form of which is available to download from our **website**) to be completed by a RICS surveyor for the property. This document contains some environmental questions. The RICS surveyor providing the Survey Report and Valuation for the property is usually requested to complete this questionnaire and return it with the Survey Report and Valuation.



ASBESTOS

Asbestos may be an issue with properties built before 2000. If you are unable to provide clear evidence that the property is free from asbestos, then Embark will require an asbestos survey and if any asbestos is identified or suspected then an Annual Asbestos Management Plan will be required in accordance with the law.

If there is no clear evidence that the property is free from asbestos, then Embark require, as a minimum, a management type survey (previously referred to as a type 2 asbestos survey) for all property built prior to the year 2000. The survey must include the sampling and testing of any suspected Asbestos Containing Materials (ACMs), which will provide definitive results on samples of suspected ACMs.

Embark will not permit the purchase or ownership of a property which contains Blue or Brown Asbestos.

Embark will not permit the purchase or ownership of a property which contains damaged or deteriorating White Asbestos, unless remediated as part of the recommendations

Embark will permit the purchase or ownership of a property which contains White Asbestos, provided an Asbestos Survey confirms that the asbestos poses no risk.

Additionally, where a property contains White Asbestos a Full Repairing and Insuring Lease (FRI Lease) must be granted to a tenant who is then responsible for the management of any Asbestos and any costs. The tenant is also required to provide a copy of an Asbestos Management Plan annually.

In the event that an FRI Lease is not in place, the property is vacant or there are common parts that fall outside of the tenants responsibility, the Trustees as landlord will be responsible for the management of any Asbestos and any costs. The Member Trustee(s) is/are required to provide a copy of an Asbestos Management Plan annually.

Where the Trustees are responsible for putting in place an Asbestos Management Plan and the Member Trustees do not fulfil this responsibility, Embark will arrange an Asbestos Management Plan to be put in place at the cost of the scheme and if necessary appoint the appropriate professionals to undertake any inspections or action points.

Where development/refurbishment works are planned to take place at a property containing Asbestos, it is a legal requirement not to commence works until an Asbestos Management Plan has been provided to the relevant contractor(s). We will be unable to sanction any works until this has been carried out.

In the event that a property is to be demolished, a demolition type asbestos survey (formerly a type 3 asbestos survey), will be required before any demolition can take place.



PROPERTY DEVELOPMENT

Any development works that are to be carried out at the property must be agreed by our property team prior to any works commencing. We will need full plans, anticipated costs for any development work and cashflow forecast. We will require an RICS Surveyor's advice on the impact of the works with regard to values and marketability.

The development must be of genuine benefit to the SIPP which will usually be by way of an uplift in both Market Value and Market Rental Value. Payment by the pension fund for the cost of the works will be capped at this increase in value unless otherwise approved by the Property Investment Committee.

We require at least two contractors to quote for any development works. A connected party cannot be contracted to undertake the works unless it can be evidenced that the costs are comparable to those of an unconnected contractor. The appointment of a connected party is required to be approved by the Property Investment Committee.

In addition to a full schedule of works, and appropriate quotes, we will require suitable professional advice from an independent RICS Chartered Surveyor as part of the approval of any development, renovation or refurbishment. This will include a final sign off on the completed works, with confirmation that previously estimated values are correct or any amended values, where necessary.

The scheme cannot pay for works which would generally be tenant specific such as shelving, phone systems, fixtures or fittings.

Invoices must be submitted and approved by the project manager and addressed to the scheme quoting the supplier's VAT registration number and the VAT amount.

Further information may be found in our Commercial Property Works and Development Guide. A Property Works Information Form is required to be completed in respect of any proposed works. These documents are available to download from our **website**.

SOLICITORS

We will appoint solicitors to oversee all legal work on property assets in your pension. Whether the pension is purchasing the property from you, your business, a third party or it is a transfer from another pension provider, we require the solicitor acting on behalf of the pension fund to carry out detailed property investigations. This is important as the Trustees need to know of any problems before we reach a binding agreement to buy the property.

Once preliminary checks have been completed and we are happy that the transaction can proceed we will instruct the solicitor you have selected in the Property Questionnaire to act on behalf of your pension. The appointed solicitor must be selected from the list of solicitors detailed on our panel. Where the Property Questionnaire does not confirm a solicitor from our panel we reserve the right to select one and the costs charged by the solicitor will be charged to the SIPP. Any Tenant must also be legally represented, although the requirement for this to be a solicitor from our panel is not mandatory.

The solicitor will be instructed to prepare or review and approve documentation to enable you to be registered as a title holder of the property, along with ourselves. The instructions will also require a review of and a report on the property title.

Where appropriate, the solicitor will handle any requirements of the lender 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 pension obtains a good and marketable title to the property. Any concerns they may have about any part of the purchase will be raised with us and you for immediate attention.

Exchange of contracts 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 pension bank account to cover the total costs of the purchase, including our administration fees.

Working with many different professionals has taught us the value that experience can add. For this reason our property team prefers to appoint a solicitor from our panel who is familiar both with pension property purchases and our way of working. Over the years we have used 'non-panel' solicitors and have come up against delays, incorrect documentation and excessive charges. For this reason the appointment of a panel solicitor is mandatory for all new property purchases.

SOLICITORS (CONTINUED)

Details of the solicitors on our panel, including their fees, can be found online in our Panel Solicitors List and Fees document available to download from our **website**.

If you do not select a solicitor to act on behalf of the pension from our panel, we will select one for you.

Limitation of liability

We can only proceed if the Trustees' liability under any contract, loan, mortgage or lease documentation (including headleases, superior leases and occupational leases) is limited to the assets of your pension.

We suggest where there are existing leases in place that the requirement for our limited liability clause is discussed with relevant parties prior to completing the property questionnaire in order that the parties are aware of this prior to commencing this transaction.

Appointment of solicitor – 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's and other legal fees;
- Stamp duty land tax (or land and building transaction tax in Scotland);
- Borrowing arrangement and other fees;
- Surveyor's fees;
- Specialist Risk reports (e.g. environmental such as contamination and hazardous materials, flood or asbestos report, roof, drainage or damp specialist survey);
- Value Added Tax (VAT);
- Insurance; and
- Our administration fees.

LIQUIDITY

It is your responsibility to ensure that there are sufficient funds within your pension to meet the liabilities associated with the property, such as mortgage payments, third party bills (including service charges, business rates, utility bills and insurance) and our fees.

This is particularly important to consider if the property is vacant as no rent will be being received by your pension. If funds are not available you will need to sell other assets held within your pension, make a contribution, if allowed, or transfer funds from another pension plan to meet your obligations. Where possible sufficient funds should be held in the scheme to cover six months' worth of void costs in the event the property becomes vacant.

You will need to consider when and how you may wish to take benefits from your pension. Funds will need to be available in cash to make benefit payments. If a property investment represents a significant proportion of your pension 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.

The property will need to be professionally valued when you take pension benefits (as well as regular income reviews for capped drawdown plans), loan requests and when rent reviews or lease renewals are required. On these occasions your pension will incur the associated professional costs and fees.

Our fees will be directly deducted from your pension. You should ensure there is sufficient cash available in your SIPP to pay fees when due.

Our Fee and service details for purchasing and ongoing administration of property as an asset of your pension, along with a guide to our panel solicitors' fees, are available via our **website**.



VAT

VAT may be payable on the purchase price if the vendor has 'Opted to Tax' or if the property is a new build. For the Scheme to reclaim this back from HMRC, the Scheme must register for VAT and an Option to Tax would need to be sent to HMRC prior to the purchase completing. The scheme would submit a return to reclaim VAT paid, less any VAT received on rent. From when the return is submitted, it can take up to six weeks for the VAT to be received back from HMRC.

Where the property is being sold as a going concern (i.e. where the existing tenant will continue to be the tenant), VAT does not need to be paid to the vendor, as long as an option is in place.

The solicitor will check whether the property is already opted for VAT. If not, it may be advantageous to opt to tax if development work is proposed. However, once the property is opted, VAT will be charged on rent and on the selling price if and when the property is sold.

When considering the funding for your property investment, please note Stamp Duty Land Tax is calculated on the purchase price including VAT.

You can always choose not to opt. VAT would not be charged on the rent and the property can be sold without VAT. However, you would not be able to reclaim any VAT paid on the purchase price, or on any development work.

You are reminded of the following points:

- **We do not provide advice in relation to whether or not a property should register for VAT purposes.**
- **If you are in any doubt as to whether the scheme ought to be, or must be, registered for VAT purposes then you must seek VAT advice from an appropriate adviser.**
- **If an Option to Tax has been taken in respect of a given property, the option cannot be reversed for a period of 20 years.**

There will be occasions when we will require specialist VAT Advice, this will include: Transfer of Going Concern, where one of the property owners is not part of your pension, or if the tenant is a Connected Party but 'Exempt' for VAT purposes.

Embark Pensions has an experienced VAT team and, where a request to opt a property to tax is made, they will submit the necessary paperwork to deal with any application to opt the property. The team will also deal with any ongoing VAT administration including the filing of VAT returns for your pension.

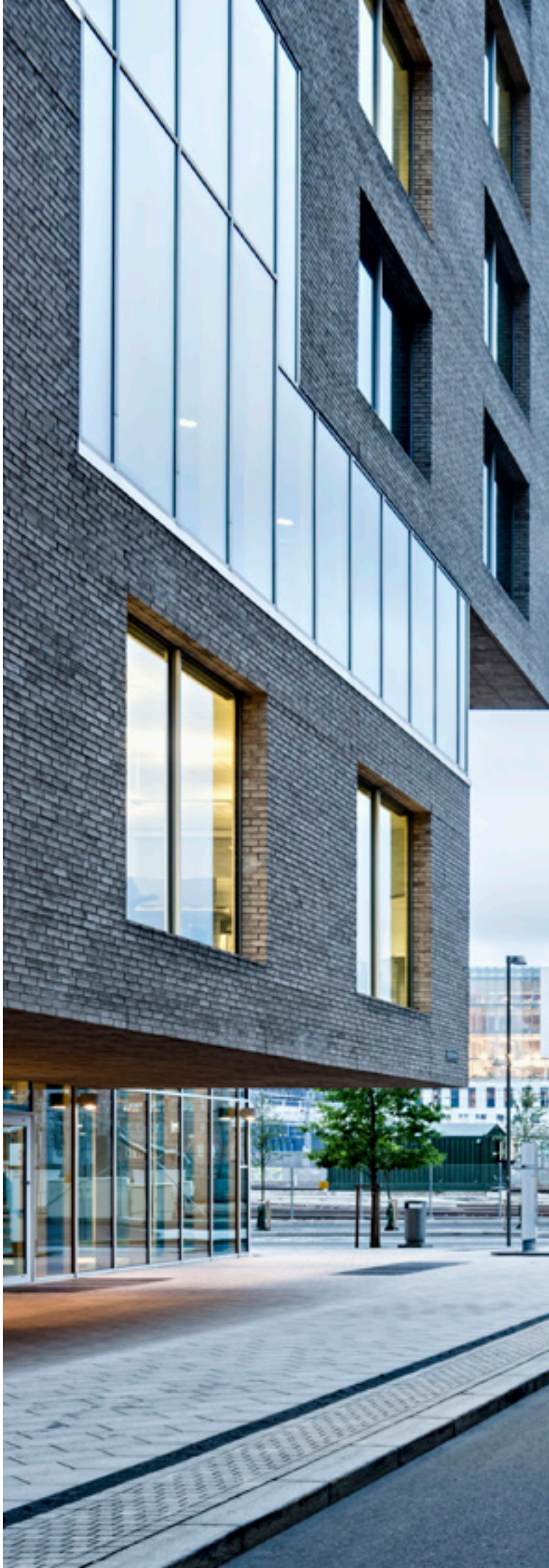
Additional fees will be payable should we need to use the services of our VAT team.

SECURITY AGAINST BORROWING

Property owned by your pension cannot be used by you or any other party as security against any personal borrowing.

SOLAR PANELS/WIND TURBINES

You will not be able to use pension funds to purchase solar panels or wind turbines. It may be possible for a tenant to install solar panels in certain circumstances. Any request to do so must be referred to us for prior approval.



PROPERTY MANAGEMENT

All new property purchases must have a professional, independent property manager appointed before completion. All Property Managers appointed will need to be approved and authorised by Embark Pensions. Members can no longer act as their own property manager in respect of new property acquisitions.

The day-to-day management of the property will be the responsibility of the property manager in accordance with the principles of good estate management. They will need need to consider how to manage the property to ensure the terms and conditions of any leases are met.

A property manager will ensure that any tenant fully meets their responsibilities as detailed in the lease agreement. The property manager's responsibilities will include, but are not limited to:

- Advertising tenant vacancies for the landlord
- Performing due diligence checks on tenants
- Invoicing and collection of rent and other income
- Payment of expenses on behalf of the landlord
- Addressing ongoing maintenance issues
- Instructing a Red Book RICS valuation every 3 years for the purposes of Market Value, Market Rental Value and Insurance Reinstatement Value
- Implementing a Vacant Property Regime should the property become vacant (see details on next page).
- Providing an interface between the landlord and the tenant
- Providing the landlord with information on any issues that might affect them
- Dealing with renewal and expiry of leases as well as rent reviews
- Dealing with VAT issues including at sale
- Managing construction, development and repair issues
- Meeting legislative and regulatory requirements

  e.g. Arranging for adequate signage to protect individuals from potentially dangerous situations
- Notifying the insurer of any change in tenancy

We do not act as property manager as this does not form part of the services we provide. However, we need to be kept up to date at all times on any matters affecting the property including approval of new leases, rent reviews etc. to ensure compliance with current pensions legislation. HMRC expects robust management of connected tenancies to take place and any 'unauthorised benefits' such as non-payment of rent or failure to keep properties in repair in accordance with lease terms would need to be reported and will attract tax penalties.

PROPERTY MANAGEMENT (CONTINUED)

Leases with Connected Tenant

When a pension leases property to a "connected" tenant and the tenant reduces or ceases paying rent, significant tax charges could result if HMRC rules aren't followed and arrears are not addressed on a commercial basis. If at any time, a tenant has difficulties in meeting the rental obligations, the property manager must contact us immediately so that we can discuss a suitable way forward.

A 'connected tenant' is, briefly:

- scheme members, their spouses or relatives; or
- a company, where one of the directors or shareholders is a member or a relative of a scheme member.

HMRC requires that:

- a fully repairing and insuring commercial lease must be in place;
- rent must be at a market rate;
- the landlord must enforce the lease as a third party would. This includes pursuing outstanding rent and any 'late payment interest' as the lease dictates.

Valuations

A Red Book RICS valuation requires to be carried out every three years for the purposes of Market Value, Market Rental Value and Insurance Reinstatement Value. There will also be times when a valuation (or desktop update to an existing valuation) is required either as a result of pension regulations or in terms of the lease.

Events include:

- taking retirement benefits or, if you are already in capped drawdown, reviewing your income limits. Income limit reviews will be required every three years prior to age 75 and annually thereafter;
- when you reach 75;
- to comply with insurance requirements;
- lease renewals or new leases; and
- rent reviews in accordance with the terms of the lease.

You can nominate a RICS registered valuer of your choice to carry out the valuation. Once a valuation has been conducted, provided it is addressed to the Trustees, we can rely on the values within the report for pension and legislative requirements for a period of up to 12 months. The cost of any valuations will need to be met by your pension.

Vacant Property

If the property becomes vacant, a professional property manager will require to implement a vacant property regime which should include the following:

- ensuring the building is secure
- notifying insurers and complying with their vacant property requirements including any required inspection regime.
- attending to any property maintenance to limit deterioration
- obtaining meter readings and ensuring payment of any utilities while the property is vacant
- attending to or appointing suitably qualified agents to ensure Health & Safety compliance to include with respect to asbestos, Fire risk assessments, Health & Safety risk assessments, legionella, electrical and gas safety.



NEXT STEPS

To begin your property purchase process, you will need to complete our Property Questionnaire. The Property Questionnaire should be completed in full, signed by you and returned to us. We will not appoint a solicitor until we have received the completed questionnaire, a valuation and a desktop environmental report for the property in which you wish to invest.

Your completed questionnaire constitutes your instruction to us to invest.

You should appoint an independent Royal Institution of Chartered Surveyors (RICS) qualified surveyor to provide a survey report and valuation including the Property Observation and Composite Panel/Cladding Questionnaire (the form of this Questionnaire being available on our **website**). This is required to support the purchase price and to ensure that the property is an acceptable investment. All fees should be paid from your pension. 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.

To avoid running up unnecessary costs we generally do not instruct solicitors until we have received and approved the Property Questionnaire and valuation report.

The report must be addressed to you and your pension Trustees and will need to include (but is not necessarily limited to):

- An open Market Value (MV) of the property in its current condition, based on the tenure of the property and whether it is being purchased with vacant possession or subject to an existing lease.
- An open Market Rental Value (MRV) of the property in its current condition subject to any existing or proposed lease terms. These terms should be clearly outlined in the report, so we can establish on what basis the MRV has been reached. This applies to all properties whether they have or intend to have a single tenant or multiple tenants.
- An Insurance Reinstatement Value (IRV) for insurance purposes to ensure that the correct level of insurance cover is in place should the property need to be rebuilt. This should be on a 'new for old' basis and include professional fees and removal of debris etc. This will not apply to land only assets.
- 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.
- Details of any obvious areas of concern they notice at the property/land, for example any clear environmental risks (e.g. oil tanks) or the presence of invasive plant life such as Japanese Knotweed.
- Whether an Energy Performance Certificate is required.
- Details of any residential element to the property.
- Where the property is adjacent to any land or property owned by a member or a connected party whether, among other things, there is an enhanced valuation of the other property.
- The Property Observation and Composite Panel/ Cladding Questionnaire, the form of which is available on our **website**.
- Anything that has to be provided for in the title to the property such as access, services, common parts (and its maintenance). Any changes of use, erections, alterations or demolitions that demand statutory or title consents.
- Details of the presence of solar panels, wind turbines or any equipment used for the collection of renewable energy.
- Whether they recommend a structural survey or any additional specialist reports to be carried out.



- Photographs of the property/land should be annexed to the report, including photographs of anything specifically mentioned in the report they feel we should be aware of.
- If works to the property are proposed or ongoing, we require confirmation of the pre and post works values for MV, MRV and IRV. Ideally, we would like the surveyor to re-inspect the property when the works have been completed to ensure they have been carried out to the agreed standard.
- If the property is or is intended to be occupied by more than one tenant:
  - that the property is capable of being physically split; and
  - advice on how the building's value (for insurance purposes) should be split between the tenants.

It is important to note that if there is borrowing, the lender will usually wish to appoint a surveyor from their panel. To try and reduce costs, you should liaise with the lender to ensure that the same surveyor is also able to produce the report required for the Trustees.

Further environmental reports may be required before we can agree to proceed with the purchase. This may arise if there is any suggestion of a possible risk of contamination or environmental damage, for example, due to the type of materials used in the construction of the property or the previous use of the land.

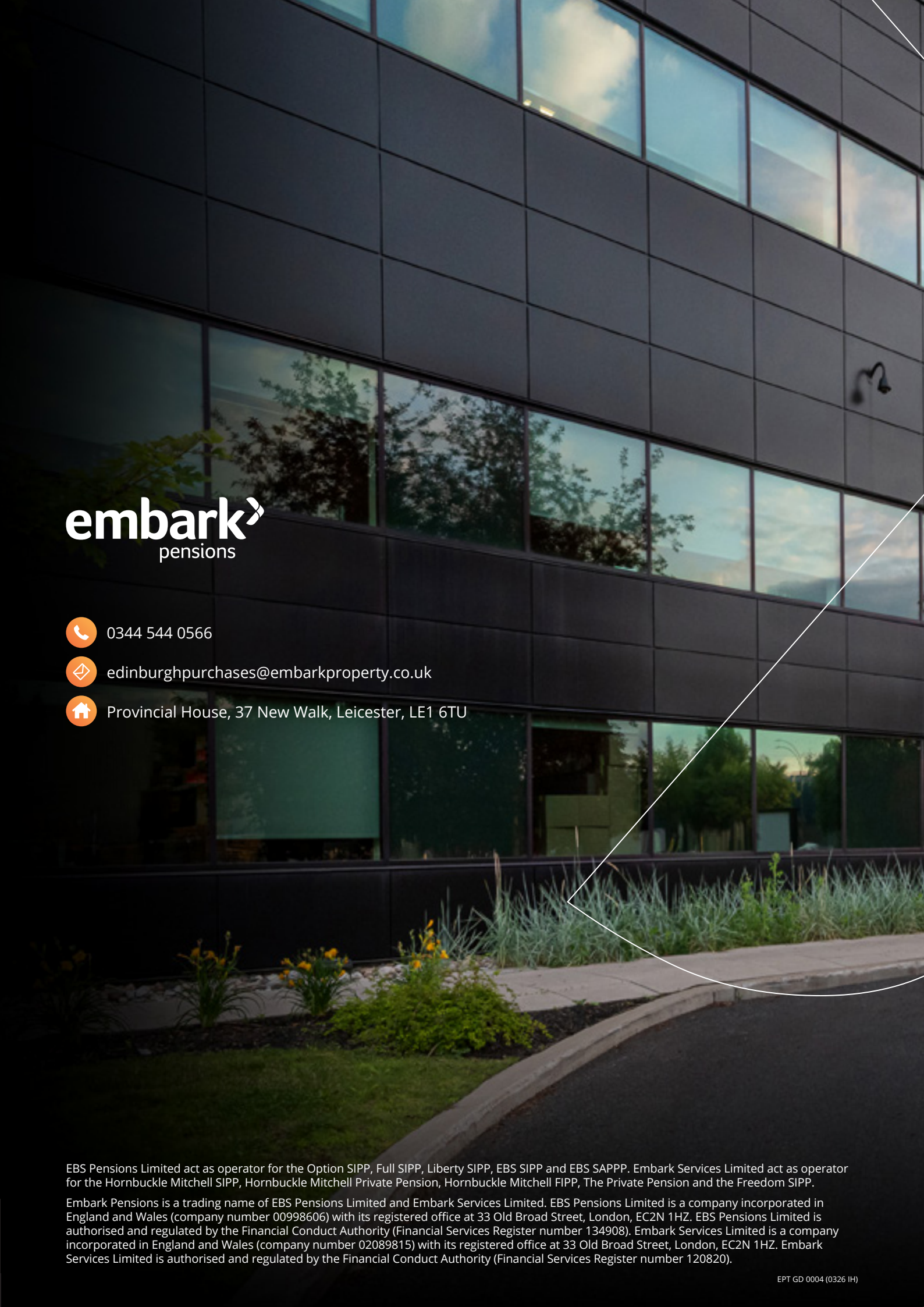
If you are ready to go ahead with your property purchase, please refer to the checklist on the following page which lists the documentation you will need to begin the process.

CHECKLIST

The following checklist summarises the minimum information that is needed to proceed with a property purchase within your pension.

- Property Questionnaire – fully completed and signed by the pension member(s).
- Lease(s) – copies of any existing agreements as requested in the Property Questionnaire.
- Copy of Head lease if property being purchased is leasehold.
- Surveyor's Report and Valuation including the Property Observation and Composite Panel/Cladding Questionnaire.
- Asbestos Management Survey and/or Asbestos Management Plan.
- Borrowing Agreement (if applicable) this includes any Offer/Facility Letter/ Mortgage Agreement or Legal Charge.
- Environmental Report(s) - desktop and Phase One/additional if required (and including any which may be available from previous development on the property site).
- Up to date Energy Performance Certificate (EPC) with a rating of E or above (and higher if required by law).
- The Vendor's VAT registration details and a copy of Vendor's Option to Tax.
- Property Manager Details





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EBS Pensions Limited act as operator for the Option SIPP, Full SIPP, Liberty SIPP, EBS SIPP and EBS SAPPP. Embark Services Limited act as operator for the Hornbuckle Mitchell SIPP, Hornbuckle Mitchell Private Pension, Hornbuckle Mitchell FIPP, The Private Pension and the Freedom SIPP.

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