



Commercial Property Transactions

SIPP

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Introduction

This document sets out details of both HM Revenue & Customs (HMRC) rules and the requirements of EBS Pensions Limited (EBS) relating to investment in property by a Member's SIPP within the EBS SIPP. The document should be referred to by the SIPP Member(s) involved in the investment, their financial advisers and the solicitors appointed to act for the Member(s) SIPP(s).

Investment in property is restricted to land and commercial buildings except for a very few exemptions where a residential element, which is integral to the commercial building, may be included provided it satisfies specific criteria. See part 2 below.

This document should be read in conjunction with EBS's booklet 'Information for Solicitors'.

1. Commercial Property

Commercial property is basically land and buildings anywhere in the world* that is not residential property. For example, development land, farmland, forestland, factories, warehouses, shops and offices.

*EBS will not consider investment in overseas property.

Other than in relation to the amount of authorised borrowing a SIPP can use to assist in the purchase, the pension tax rules, which came into force on 6 April 2006 (A Day), impose no restrictions on investment in commercial property.

'**Taxable property**' is an HMRC term which includes residential property and tangible moveable property. The HMRC taxable property rules impose severe tax penalties on both the Member and the Member's SIPP if the Member's SIPP invests directly or indirectly in residential property. Details of what constitutes residential property for the purposes of the taxable property rules can be found in part 2 of this document.

Fixtures and fittings that are not considered to be part of the fabric of a commercial property could also be considered to be 'taxable property' and give rise to tax charges under the taxable property rules, e.g. equipment, plant and machinery, furniture etc. – see page SDLTM0410 of the HMRC online Stamp Duty Land Tax Manual via the following internet link: <http://www.hmrc.gov.uk/manuals/sdlmanual/SDLTM04010.htm>, which gives some insight into what HMRC regard as tangible moveable property/chattels, rather than being part of the fabric of the property.

2. Residential Property

Although investment in residential property is not prohibited under the pension tax rules, there are severe tax penalties on both the SIPP Member and the SIPP for any direct or indirect investment in such property, so unless exempt it must be avoided.

Broadly, residential property is a building or structure (or part of a building or structure) **that is used or suitable for use as a dwelling**, any related land that is wholly or partly the garden for the building or structure, any related land that is wholly or partly grounds [*] for the residential property and which is used or intended for use for a purpose connected with the enjoyment of the building, and any building or structure on any such related land.

[*HMRC will consider whether land adjacent to or close to any residence constitutes part of the grounds or garden of the residence, in a similar way to its published guidance in relation to Capital Gains Tax Private Residence Relief, the relevant part of which can be found on the HMRC website via the following link: <http://www.hmrc.gov.uk/manuals/cgmanual/CG64360.htm>

NB: EBS will not allow land held by a SIPP to be developed for residential use. See part 4 below.

Residential property also includes: ground rents in relation to residential property; beach huts; hotels and inns but only where the hotel or inn provides accommodation rights such as timeshares, and any building specified in Regulations as residential property. If the SIPP owns the whole of a hotel or inn, or is a part-owner of the whole of the hotel, then it will normally not be classed as residential. Bed and Breakfast properties will be looked at on a case by case basis.

If a building is not currently in use, it is necessary to look back at what it was last used as, unless the building is redundant and unoccupied (i.e. not currently suitable for use as a dwelling).

However, the following should **not** constitute residential property:

- A dedicated children's home or institution.
- A students' hall of residence.
- A nursing home.
- A hospital or hospice.
- A prison or similar establishment.

- A shop leased to or to be leased to a person unconnected with the SIPP Member with an integral flat above, which is, or is to be, occupied by the person running the shop.
- A residential property, which is an integral part of a commercial property, and which is, or is to be, occupied by an employee who is not the SIPP Member or connected with the SIPP Member or with his employer and is required as a condition of employment to occupy the property.
- Any building that is specified in Regulations not to be treated as residential property.

The rules relating to indirect investment in residential property (i.e. investment via vehicles such as collective investment schemes, unit trusts, unauthorised unit trusts, exempt unauthorised unit trusts, open ended investment companies, closed ended companies, investment trusts, insurance policies and contracts, trusts, depositary interests and exchange traded funds) are very complicated and EBS will need to assess each case with regard to the relevant legislative conditions.

However, there is some transitional protection for both direct and indirect investment in residential property that was legitimately acquired and held by a Member's SIPP under the rules in force prior to A Day, i.e. ground rents, subject to certain requirements, details of which are available from EBS on request.

A SIPP Technical Note on taxable property is available on request.

NB: EBS reserves the right for the Scheme Trustee and Scheme Administrator, EBS, which will be acting in all property transactions via its duly appointed 'bare trustee' EBS Self-Administered Personal Pension Plan Trustees Limited (EBS SAPP Trustee Limited) - to refuse to purchase any property if, in its opinion, it would give rise to tax penalties or it would involve unacceptable risk to EBS.

3. Transactions with connected persons/purchase at auction

Under current pension tax rules a Member's SIPP may buy commercial property from, sell commercial property to or lease commercial property from or to the Member or a person connected with the Member. Connected persons include the following:

- The Member, the Member's spouse or civil partner, a relative of the Member or the Member's spouse or civil partner and the spouse or civil partner of a relative of the Member or the Member's spouse or civil partner.
- A trustee of a settlement where the settlor of the settlement is the Member or someone connected with the Member.
- A person (or that person's spouse or civil partner or relative) who is in partnership with the Member or the Member's spouse or civil partner or relative.
- A company, which is controlled by the Member and/or persons connected with the Member.
- A close company whose participators include a trustee of the Member's SIPP.

'Relative' means, brother, sister, ancestor or lineal descendant.

However, all transactions between the Member's SIPP and the Member or a person connected with the Member must be carried out on an arm's length basis at market value otherwise there will be tax consequences for the Member and the SIPP.

3.1 In Specie Transfer

This is where all or part of the assets (which may include commercial property) held under another pension scheme of the Member is transferred to the Member's SIPP rather than liquidating the assets and transferring the cash proceeds. Please note the following:

- The transfer of a commercial property from one registered pension scheme to another as part of the transfer of a Member's accrued benefits is not normally subject to SDLT. See relevant page of the HMRC online Stamp Duty manual via the following link:
<http://www.hmrc.gov.uk/manuals/sdlmanual/sdlm31800.htm>

- If the property has been elected for VAT, the Trustees of the Member's SIPP receiving the transfer will first need to register for VAT and opt to tax the property (see part 10 of this booklet). Unless the transfer qualifies as a Transfer of Going Concern (TOGC), the Member's SIPP receiving the transfer will have to pay VAT on the value of the property and reclaim it later on.
- As far as EBS is aware HM Land Registry treats such a transfer as a transfer for value and there will normally be a registration charge of between £40 and £910 depending on the value of the property.
- As far as EBS is aware the assignment/transfer of any mortgage attaching to the property will be subject to both SDLT and HM Land Registry charges.

3.2 Joint Property Investments

It is possible for two or more Members' SIPPs to join together (and/or with other pension schemes, individuals or companies whether connected with the Member or not) to purchase commercial property.

NB: in certain circumstances, e.g. where individuals are directors of the same company, it might be possible to deal with a joint property investment more efficiently and cost effectively via a small self-administered pension scheme (SSAS) rather than via SIPPs and where relevant the Member should discuss this with their financial adviser.

Subsequent purchases/sales between a Member's SIPP that is a participant in the joint investment and anyone connected with the Member must be on an arm's length commercial basis otherwise there will be tax consequences for the Member and the SIPP.

A separate bank account must be opened for receipt of rents and any mortgage repayments and EBS SAPP Trustee Limited must be a mandatory signatory on such an account.

Each Member's SIPP participating in a joint property investment will be required to be party to a formal agreement which we would expect to be in the form of a Declaration of Trust and Joint-Ownership Deed whereby the legal ownership is with one or more persons/companies as the duly appointed nominee who will hold the property on trust for the participants as beneficial owners in the relevant proportions. Such nominee may be a company formed specifically for this purpose and EBS SAPP Trustee Limited or may be EBS SAPP Trustee Limited and one, two or three of the other participants.

The Declaration of Trust and Joint-Ownership Deed will normally confirm the following:

- Each Member's SIPP's interest in the property.
- How and to whom the property may be sold including sales between the participating Member's SIPPs (in the case of the latter this will be at open market value as confirmed in writing by an independent professional surveyor).
- In relation to any borrowing, the Lender only has recourse against each participant to the extent of their interest in the property (this may require a separate loan for each participant but with the Lender retaining its power of sale over the whole of the property) – see also NB (i) in part 7, Borrowing by the SIPP Trustees, below.
NB: it is unlikely that EBS will agree to use a Lender who refuses to limit its recourse in this way.
- The consent of any Lender to the arrangements.
- The SIPP Trustees' ability to sell their interest(s) in the property at any time is not fettered in any way.

NB:

- (i) Examples of draft Declaration of Trust and Joint-Ownership Deeds will be provided by EBS to assist the appointed solicitor.
- (ii) Where borrowing is involved it will be the duly appointed solicitor's responsibility to ensure that the Declaration of Trust and Joint Ownership Deed is acceptable to the proposed lender. If it is not, the Member and their solicitor will need to find a lender who will accept it.

- (iii) The relevant transfer deed (e.g. part 11 of Land Registry form TR1) should show that the legal owner is to hold the property in respect of the Trustee(s) and subject to the Declaration of Trust and Joint-Ownership Deed.
- (iv) SIPP Members considering participating in a joint purchase must bear in mind that there may be circumstances where it becomes necessary to force a sale of the whole property. For example, where a Member dies and funds are required to pay out death benefits and where a Member is divorced and part or all of his/her SIPP fund has to be transferred to a pension arrangement for the ex-spouse as part of a Pension Sharing Order.

3.3 Purchase at auction

EBS understands that if the Trustees of a Member's SIPP were to purchase a property at auction any attaching covenants/liabilities would automatically transfer to the Trustees. In addition, EBS is not in a position to attend any auction and so ensure that no bid is made on behalf of the SIPP Trustees that could not be met from the Member's SIPP. Therefore, purchase at auction is not usually permitted.

4. Development / Refurbishment / Improvement

Although the SIPP Trustees can obtain residential planning permission for land that they own, EBS will not allow the SIPP Trustees to use the SIPP funds to carry out such development. However, they could, for example, sell the property with the benefit of planning permission to a developer.

Where the Trustees of a Member's SIPP have acquired a commercial property they may develop, refurbish or improve it provided the proposed works are deemed (by an independent professional surveyor) as normal Landlord works under the terms of the Lease or that they will enhance the value of the property. The cost of all such works must be met from the Member's SIPP.

The Trustees' solicitor should provide all necessary documents (e.g. the Joint Contractors Tribunal (JCT) Contract between the builder, the architect and the SIPP Trustees and any Warranties), which must limit the liability of the SIPP Trustees to the extent of the property or, if necessary to the assets from time to time of the Member's SIPP.

Where the builder is connected with the SIPP Member all work must be carried out on an arm's length commercial basis, which will normally involve the SIPP Member obtaining a range of quotations from other unconnected builders to establish a market price for the work. If this is not the case there are likely to be tax penalties.

Where the tenant wants to refurbish the property, it must be carried out in accordance with the terms of the Lease and paid for by the tenant. The tenant must complete any reinstatement before the Lease expires. NB: HMRC can sometimes deem property development to constitute trading, which would give rise to tax charges. See part 13 below.

5. Survey & Valuation / Environmental Risk Assessment / Asbestos Regulations / Disability Discrimination Requirements / Fire Safety Requirements / Energy Performance Certificate

The Member as a Trustee of his/her SIPP must appoint an appropriately qualified independent professional surveyor to carry out a survey (preferably a full structural survey) and valuation of the property on behalf of the SIPP Trustees.

Please note: where the purchase or sale of a property is from or to a 'connected person' (see part 3 of this booklet) and completion has not taken place within three months of the date of the surveyor's valuation, the

Member Trustee must obtain an updated valuation from the surveyor, which may be in the form a written statement confirming whether his opinion of the property value has changed and, if it has, what the new value is. If the surveyor confirms a new value then that new value will become the purchase or sale price. Similar statements should be requested if there are further similar delays to completion.

This is because the office of the District Valuer (an executive agency of HMRC) can become involved in such transactions where that office feels that too little or too much has been paid for a property between connected parties.

If the Trustees need to borrow to buy a property the Member Trustee may need to negotiate with the proposed lender whether or not it would be prepared to accept the Trustees' surveyor's report and valuation for its purposes or insist on one from a surveyor on the lender's approved panel of surveyors.

The surveyor's report should be addressed to the SIPP Trustees and should include:

- An opinion of the open 'market value' ¹
- An opinion of the open market rental value
- An environmental risk assessment ²
- Confirmation whether an asbestos survey is required ³
- Site plans clearly indicating site boundaries
- Confirmation that the property complies with disability discrimination requirements ⁴
- Confirmation that the property, where necessary, meets the fire safety requirements ⁵
- A copy of a valid Energy Performance Certificate (where relevant) ⁶

¹ **Market value** means the price which the interest in the property might reasonably be expected to fetch on a sale in the open market (in accordance with Section 272 of Taxation of Chargeable Gains Act 1992).

² Environmental risk assessment

If the surveyor's report does not include an environmental risk assessment the Trustees should obtain an environmental risk assessment of the property from a suitably qualified independent professional or at the very least obtain an online risk assessment, which incorporates the opinion of an independent consultant regarding the risk of potential liability under Part IIA of the Environmental Protection Act 1990, via one of the following websites:

- <http://www.groundsure.com/commercial-searches/environmental>
- <http://www.sitecheck.co.uk/Assess.do?articleId=45633>
- <http://www.sitecheck.co.uk/Review.do?articleId=45634>
- <http://www.landmark.co.uk>
- <http://www.argyllenvironmental.co.uk>

The reason for this is that for the purposes of the Environmental Protection Act 1990, where land is designated as contaminated, and the polluter cannot be found, the "owner or occupier" will be deemed the appropriate person to bear the cost of cleaning up the site or adjacent sites if third party damage is created. The definition of an owner is as follows:

"in relation to any land in England and Wales, means a person (other than a mortgagee not in possession) who, whether in his own right or as trustee for any other person is entitled to receive the rack rent of the land, or, whether the land is not let as a rack rent, would be entitled if it were so let"

[Part IIA of the Environmental Protection Act 1990 section 78A (9)]

NB Further assessment must be undertaken if the online risk assessment recommends it.

³ Asbestos regulations

Regulation 4 of the Control of Asbestos at Work Regulations 2012 ('the Asbestos Regulations') requires the 'dutyholder' to put in place a management plan for all non-domestic properties at risk from asbestos products. All buildings constructed before 1999 are regarded as being at risk.

EBS will normally require a copy of an appropriate asbestos survey carried out by an accredited or suitably qualified and experienced asbestos surveyor and addressed to the SIPP Trustees. A list of accredited firms can be found at:

<http://www.ukas.com/About-Accreditation/Accredited-Bodies/inspection-bodyschedules.asp#abestos>

Failure to comply with the Asbestos Regulations may result in the Health and Safety Executive taking action against the 'dutyholder'. The 'dutyholder' is the person responsible for the maintenance and repair of the premises under the terms of the lease. So, in the vast majority of cases the 'dutyholder' will be the tenant. If not, the Trustees, as owners, will be the 'dutyholder'.

The Health and Safety Executive (HSE) has published useful leaflets on the requirements of the Regulations – including Managing Asbestos in buildings – a brief guide. These can be found on the HSE web site at: www.hse.gov.uk/pubns/indg223.pdf

Unless the tenant has already commissioned an asbestos survey and produced an asbestos management plan, EBS suggests the Trustees send the tenant a letter along the lines of the draft letter at the back of this booklet (Appendix 3).

4 Disability discrimination requirements

Although the requirements are usually the responsibility of the occupying tenant, the SIPP Trustees should ensure that the property satisfies these requirements before purchasing the property. Further details can be found on the Directgov website via the following link:

http://www.direct.gov.uk/prod_consum_dg/groups/dg_digitalassets/@dg/@en/documents/digitalasset/dg_070741.pdf

5 Fire safety requirements

Although the requirements of the Regulatory Reform (Fire Safety) Order 2005 are normally the responsibility of the occupying tenant, the SIPP Trustees should ensure that the property satisfies these requirements before purchasing the property. Further details can be found on the Communities and Local Government website via the following link:

<http://www.communities.gov.uk/publications/fire/regulatoryreformfire>

6 Energy performance certificate

The SIPP Trustees are responsible for providing an Energy Performance Certificate when they construct, rent out or sell a building. Details of the statutory requirements and how to obtain a Certificate are available via the following link: <http://www.gov.uk/energy-performance-certificate-commercial-property/>

Certificates can only be produced by accredited energy assessors.

6. Lease of Commercial Property

A Member's SIPP may lease a commercial property to anyone, including the Member's business, company or a partnership in which the Member is a partner and a person who is connected with the Member, provided it is for business purposes.

Where the lease is to the Member or a person connected with the Member it must be on arm's length commercial terms (e.g. a full repairing and insuring lease with regular rent reviews). In addition, the SIPP Trustees must commission an independent professional surveyor to determine the open market rent payable based on the proposed lease terms. If the market rent is not paid there will be tax consequences for both the Member and the SIPP.

Where a debt – such as the non payment of rent - is created between a registered pension scheme and a SIPP Member, which is not repaid on arm's length terms, the Member will be liable to tax of 40% (or possibly even 55%) of the amount of the debt, because the debt will then be a loan and will constitute an "unauthorised payment" under pension tax rules. In addition, the SIPP will be subject to a "scheme sanction charge" of between 15% and 40% of the amount of the debt.

Although there is no HMRC requirement for an independent professional valuation of the rent payable where the lease is to an unconnected party, the SIPP Trustees, as a matter of prudence should consider obtaining such a valuation in any case.

Empty property rates

With effect from 1 April 2008 empty property in England and Wales will be liable for 100% of the basic occupied business rate, after initial void periods have elapsed. For most property, excluding industrial, the void period is three months. For industrial properties, the void period is six months. During these initial void periods the rate will be zero.

7. Borrowing by the SIPP Trustees

A commercial mortgage may be taken up by the SIPP Trustees to assist with the purchase of commercial property.

The SIPP Trustees should ensure that the terms of any borrowing are commercial and prudent with regard to their fiduciary duty in acting in the best interests of the Member. For example, the rent to the SIPP should be sufficient to service the borrowing, insurance premiums, etc.

They should also ensure that their liability under any loan documentation is limited to the value of the property secured from time to time (or, if absolutely necessary, limited to the extent of the assets of the Member's SIPP). **It is highly unlikely that EBS and EBS SAPP Trustee Limited will be parties to any loan arrangements where liability is not limited in this way. See also Part 3.2 above regarding 'Joint Property Investments'.**

If a proposed lender refuses to accept the incorporation of a suitable limit of liability clause the Member Trustee(s) must negotiate the required level of borrowing with a lender who will incorporate such a clause into its loan documentation.

Under pension tax rules, borrowing (including any needed to cover any VAT liability or any other costs or liabilities associated with the property investment) will be "authorised borrowing" provided it, when aggregated with any existing borrowing, does not exceed 50% of the net market value of the assets of the Member's SIPP just prior to the new borrowing taking place.

This limit applies to all registered pension schemes, not just SIPPs.

Example – In June 2007 Mark's SIPP consists of cash deposits valued at £200,000. He wants his SIPP to purchase a property valued at £300,000 including costs). This will be possible as his SIPP may borrow £100,000 (50% of £200,000), which together with the cash deposits provides the purchase price of £300,000. However, if Mark's SIPP had had assets worth £250,000 and existing borrowing of £50,000, then although the net asset value of the SIPP would still have been £200,000, the maximum level of new authorised borrowing would have been 50% of £200,000 = £100,000 less the existing borrowing of £50,000 = £50,000.

NB: it is not possible to borrow any VAT liability associated with the purchase on top of this 50% limit.

Borrowing in excess of the 50% limit will constitute "unauthorised borrowing" and the Member's SIPP will be subject to a "scheme sanction charge" of 40% on the excess.

This will not apply to pre A Day borrowing that was within the pre A Day limits but in excess of the new limit and which remains outstanding after A Day provided the terms of such borrowing remain unaltered.

However, if the property and the associated pre A Day borrowing were transferred to another pension scheme, the borrowing would constitute new borrowing and be subject to the new 50% limit unless it were possible to transfer the borrowing without changing any of the original terms and conditions of the borrowing.

A Member's SIPP may borrow from anyone. But if the borrowing is from the Member or a connected person and is not on commercial terms it will constitute "unauthorised borrowing", which will give rise to a "scheme sanction charge".

EBS will only allow a Member's SIPP to borrow from a connected person if EBS has been provided with written evidence from a bank of the terms and conditions it would be willing to offer to the Member's SIPP for such borrowing, and those terms and conditions are adopted and documented in relation to the borrowing from the connected person.

- NB:** (i) Any attempt by the SIPP to exceed the limit on "authorised borrowing" by circuitous means (such as joining with connected persons who take out much higher levels of borrowing with little or no initial capital input) could give rise to tax penalties.
- (ii) The Member must always bear in mind that any borrowing should not compromise the liquidity needs of the SIPP to pay retirement or death benefits.

8. Insurance

The Member must ensure that all appropriate insurances in respect of the property are in place at exchange of contracts and provide EBS with copies of relevant certificates etc.

9. Documentation

Where a Member wishes (or in the case of a joint property investment, two or more Members wish) to arrange for the purchase of commercial property by the SIPP Trustees, the Member(s) must complete and return the attached questionnaire (Appendix 2) in respect of the property to EBS.

You may choose your own solicitor to act for the SIPP Trustees, although EBS would suggest you appoint a solicitor who is experienced in dealing with property transactions involving SIPPs. The appointed solicitor will be responsible for producing a full 'Report on Title' in respect of the property to be acquired and all other relevant legal documents relating to the acquisition and leasing (where appropriate) of the property. Further details of EBS's requirements for solicitors are set out in guidance notes entitled 'Information for Solicitors', a copy of which is available from EBS on request.

10. Value Added Tax (VAT)

Since 1 April 1989 all new commercial properties have been subject to VAT at the standard rate.

Therefore, if the SIPP Trustees buy such commercial property and develop it they will incur 'input tax' on both the purchase price and the development costs which will only be recoverable provided they receive "output tax" against which it can be offset (e.g. VAT on the rental income).

In order to reclaim the 'input tax' the Trustees must apply for VAT registration and 'opt to tax' the supplies of the property under the lease (i.e. the rental will be subject to VAT). HMRC has advised us that where land and property are involved (in particular, joint owners of land and property) pension fund trustees should register as a partnership under Section 45 of the VAT Act 1994.

As far as EBS is aware the Trustees should be able to register as an intending trader under the usual rules, but either at the time that they apply for registration for VAT purposes or on completion of the building they should ensure that they put into place an 'option to tax' the ultimate supply.

Anti-avoidance restrictions on the exercise of the 'option to tax' were included in Section 37 of the Finance Act 1997, which were effective from 26 November 1996. These apply only when the supply in question is subject to the Capital Goods Scheme (either as a developer or acquirer of property subject to the Scheme), when either party to the transaction is connected in some way. It applies where the owner of the capital item

makes grants in relation to the property and either he, or a person funding the owner's acquisition of the property, with a view to either of them occupying it, or a person connected to either, intends or expects to occupy the property other than mainly for taxable business purposes.

At present the Capital Goods Scheme only covers commercial property that has a purchase price of £250,000 or more. Therefore, there is currently no restriction on any 'option to tax' exercised by the Trustees where the purchase price is less than £250,000.

Where the acquisition is both in excess of £250,000 and subject to the Capital Goods Scheme it will be necessary for an application to be made to Customs & Excise on behalf of the Trustees setting out details of the intended acquisition and leasing arrangements and the reasons why they wish to be able to 'opt to tax' and detailing that the reason for the arrangements is not for the purpose of the avoidance of VAT.

EBS recommends that the Member consult his own accountant or tax adviser regarding the VAT registration of the SIPP Trustees and the option to tax where VAT is involved in a property transaction.

11. Stamp Duty Land Tax

Stamp Duty Land Tax on commercial property purchases in the UK is based on a progressive slice system, i.e. the tax will be chargeable on the portion of the purchase price which falls within each tax.

Details can be found at <https://www.gov.uk/stamp-duty-land-tax/overview>.

Please note:

- Higher amounts of Stamp Duty Land Tax may be payable where two or more property transactions are between the same buyer and seller or between persons connected with either of them and HMRC treats them as a single arrangement or part of a series of linked transactions.
- In specie transfers of property between registered pension schemes as part of the transfer of a member's pension rights, do not normally constitute chargeable consideration and are not subject to Stamp Duty Land Tax.
- Where VAT is due on the purchase price, Stamp Duty Land Tax will apply to the purchase price plus the VAT unless the purchase qualifies as a transfer of a going concern (TOGC), in which case VAT should not need to be charged.

12. Costs

To avoid the possibility of HMRC treating the payment of costs by anyone other than the SIPP Trustees as contributions on behalf of the Member (and any associated tax consequences) all costs incurred in connection with property transactions should be met from the Member's SIPP.

In addition to EBS's fees (which are chargeable on a time spent basis in accordance with the terms detailed in our Fee Schedule), a property purchase by a Member's SIPP is likely to give rise to the following costs:

- Survey/valuation fee.
- Environmental risk assessment fee.
- Asbestos survey fee (if relevant).
- Solicitor's fees/legal fees.
- Stamp Duty Land Tax.
- Insurance premiums.
- Mortgage arrangement fee.

Warning. *if, for any reason, the purchase should not be completed by the Member's SIPP, whether this is due to the Member calling a halt or because something comes to light that makes the investment unacceptable, the Member's SIPP or the Member will still be liable for all costs incurred up to the point the purchase is halted.*

After completion of the purchase, further costs will be incurred in respect of the management of the property whether this is carried out by the Member Trustee or by a professional property manager.

Management of the property includes the following:

- Collection of rents and any other monies in accordance with the terms of the lease and any associated agreement and ensuring these are paid to the SIPP Trustees' bank account, or where applicable a bank account operated by the professional manager on behalf of the SIPP Trustees.
- Ensuring that the tenant observes the covenants in the lease (e.g. payment of rates, taxes and insurance premiums).
- Monitoring the condition of the property and ensuring that the tenant arranges for any necessary repairs or maintenance to be carried out to an acceptable standard.
- Monitoring the use of the property to ensure compliance with current planning consents and any relevant regulations.
- Ensuring that all outgoing that the SIPP Trustees (as landlord) are responsible for are paid.
- Maintaining proper records and books of account, which should be available for inspection by EBS and auditors as necessary.
- Collection of and payment of VAT including submission of returns to HM Revenue and Customs (unless this is handled by the Member's accountant).

13. Trading

It is always possible that HMRC could deem transactions in property by a registered pension scheme such as a SIPP to be trading, particularly where the SIPP becomes involved in the frequent purchase (and development) and sale of properties.

Where HMRC deems transactions to constitute trading, any associated income and capital gains will be taxed accordingly.

As Scheme Administrator, EBS must report details of any trading income and gains on a self-assessment tax return.

HMRC guidance regarding the approach to be taken in determining whether a transaction is to be regarded as trading or investment can be found in HMRC's Business Income Manual on their website at the following link: <http://www.hmrc.gov.uk/manuals/bimmanual/BIM20051.htm>

14. Pros and Cons of the purchase of property by the Member's plan and lease back to the Member's business / company

Pros

- The rent paid by the Member's business, company or partnership is a legitimate business expense for tax purposes.
- The rent is not taxable in the hands of the SIPP Trustees.
- The Member's business, company or partnership is not paying rent to a third party, therefore, the Member is benefiting in his own pension arrangement.
- When the property is eventually sold by the SIPP Trustees there should be no Capital Gains Tax liability.
- The property is alienated from the Member's business, company or partnership and should be secure from creditors if the business, company or partnership suffers financial difficulties or the company goes into liquidation.

- Where the property is leased to a company controlled by the Member, any increase in the value of the property will not increase the value of the Member's shares in the company for Capital Gains Tax and Inheritance Tax purposes.

Cons

- Liquidity needs for continuing payments of retirement benefits (i.e. income withdrawals) could be seriously compromised if there was no tenant and no rental income, no prospect of selling the property and insufficient income from other assets.
- The Member's business will be responsible to the SIPP Trustees for complying with all legislation affecting the property and will specifically assume the responsibility for being the "dutyholder" for the purposes of the Control of Asbestos at Work Regulations 2012.
- The Member's business, company or partnership could not use the property as collateral for loans required by the business, company or partnership.
- The Member's business, company or partnership must pay a commercial rent to the SIPP Trustees.
- Professional valuations of the property and of rent reviews may be required from time to time. (Once the Member has started making income withdrawals from his/her SIPP, valuations will be required every time new funds are put into payment and if in capped drawdown, every 3 years as part of the 3 yearly review of such withdrawals.)
- As the SIPP Trustees do not pay tax, interest payable on any borrowing taken out by them will not qualify for tax relief.
- The SIPP Trustees' needs for liquidity (to provide retirement or death benefits) could give rise to the sale of the property at an inopportune time. Furthermore, specialist property (e.g. where it is only suitable for a particular type of business use) may prove difficult to sell.

Although the acquisition of property by the Member's SIPP and lease back to the Member's business, company or partnership can be tax-efficient the Member should consider carefully his/her own position and aim to purchase/hold the property on the most commercial and cost-effective terms taking advice as he/she thinks fit.

15. Sale of Property

When a Member wishes a property or part interest in a jointly held property to be sold by the SIPP Trustees, the Member must complete and return the attached questionnaire (Appendix 4).

Correspondence address

EBS Pensions Limited
5th Floor
100 Cannon Street
London
EC4N 6EU

This document is based on EBS Pensions Limited's interpretation of pension tax law, existing law, HMRC's published guidance as at the date of this document and proposed changes to pension tax legislation, all of which may be subject to change. While we believe this interpretation to be correct, EBS Pensions Limited can give no guarantee in this respect.

The tax treatment of pensions depends on individual circumstances and may be subject to change in future.

This document is solely for information purposes and should not be construed as investment or financial advice. Individuals should seek such advice from their own professional advisers.

EBS Pensions Limited is authorised and regulated by the Financial Conduct Authority (FCA). Commercial property transactions are not regulated by the FCA.

Appendix 1

Worked example of a commercial property purchase by a Member's SIPP

Costs

Purchase price	£225,000
VAT	£ 45,000
Stamp Duty Land Tax (see note 1)	£ 3,000
Surveyor's fees	£ 900
Solicitor's fees (see note 2)	£ 1,440
Land Registry fees	£ 300
Environmental risk assessment	£ 175
Asbestos survey	£ 480
Mortgage arrangement fee (see note 3)	£ 1,000
Insurance premium	£ 745
EBS's estimated fees for first year of SIPP (see note 4)	£ 2,040
	£280,080 (inc VAT)

Notes

1. Stamp Duty Land Tax is payable on both the purchase price and any associated VAT liability. The rate of VAT is currently 20%.
2. This estimate includes charges for searches and the preparation of a lease.
3. This is usually 1% of the amount borrowed and in this particular example a de minimis of £1,000 has been assumed.
4. These fees include EBS's annual administration charge of £600 + VAT, £125 + VAT for each of two transfer payments from other pension arrangements and an estimated time cost charge of £850 + VAT in relation to time spent on work in connection with the property transactions.

Financing the investment

The Member has an insured personal pension with a transfer value of £70,216 and an executive pension plan of a previous employer with a transfer value of £81,717. This is a combined transfer value of £151,933. Therefore, in order to utilise the maximum permitted borrowing, a gross contribution of £40,000 would be required to fund the property purchase.

The maximum authorised borrowing is 50% of (£151,933 + £40,000[†]) = £95,967.

The Member is aged 46 and has net relevant UK earnings in excess of £50,000, so the whole of the contribution should attract tax relief at the Member's marginal rate.

Summary of monies actually available for the property purchase:

Bank loan	£ 95,967
Transfers	£151,933
Actual net contribution	£ 32,180
	£280,080

Possible timing of transactions

Establishment of Member's SIPP and payment of net contribution: 1-2 weeks

Survey report, environmental risk assessment, asbestos report and agreeing mortgage terms: 2-3 weeks

VAT registration and "option to tax": 4-6 weeks¹

Organising payment of transfer values to the SIPP: 4-6 weeks²

Solicitor's legal work (e.g. searches, negotiations with seller's solicitors, preparation of documents etc.): 3-6 weeks³

If it is possible to wait for the basic rate tax on the net contribution to be reclaimed (8-12 weeks) then the net contribution required in the above example reduces from £40000 to £34667.

NB: this example of a property purchase by a Member's SIPP is for illustration purposes only. Actual charges and timings will depend on the circumstances of each individual case.

[†] The contribution must be paid net of basic rate tax (currently 20%). Therefore, in order to finance the property purchase the Member will need to pay a net amount of £32,000. The SIPP Administrator will reclaim the 20% basic rate tax of £8,000 from HMRC but this normally takes at least 8-12 weeks (hence the reason for ignoring it for the purposes of financing the property purchase other than in relation to calculating the maximum amount of authorised borrowing).

Notes

¹ Unless the Member's accountant or professional VAT adviser confirms otherwise EBS recommends that confirmation that the registration and the option to tax are acceptable should be obtained from HM Revenue and Customs (HMRC) before exchange of contracts. Such acceptance may sometimes take longer than 6 weeks, particularly where it proves difficult to convince HMRC that the Trustees are an "intending trader".

² This very much depends on the transferring scheme. In some cases (particularly large occupational pension schemes) it can take far longer than 6 weeks as the statutory timescale for paying such transfers is 6 months.

³ This depends on the complexity of the case, the solicitor's attention to satisfying our written requirements, the co-operation of the seller and the seller's solicitor and the co-operation of any other parties (e.g. local authorities).

Appendix 2 Property purchase questionnaire

Questionnaire in respect of a Property Purchase by the SIPP Trustees

Completion and return of this form by the SIPP Member(s) should enable EBS to advise whether or not the proposed investment is likely to be acceptable under the Rules governing the SIPP and whether there are likely to be any tax charges under the new pension tax legislation and to give guidance regarding the requirements relating to the acquisition and leasing of the property by the relevant SIPP Trustees.

1. Member SIPP: The.....SIPP
 - a. Member SIPP: The.....SIPP
 Member SIPP: The.....SIPP
 Member SIPP: The.....SIPP
 - b. If a joint purchase which includes non-SIPP Member(s) please provide name(s) and whether connected with the SIPP Member(s):

.....

2. Address of property

.....

3. Is the property a commercial property (**See Note 1**)? YES/NO* (If 'NO', see NB below)

Please provide copies of the independent professional surveyor's report (which should be addressed to the SIPP Trustees and must be no more than 3 months old at the time of completion of the purchase, otherwise a new report will be required) and current environmental and asbestos risk assessments carried out in respect of the property.

NB: EBS will not agree to the purchase of residential property including ground rents in relation to residential property and land which is part of the grounds and/or garden of a residence (See the NB in part 2 ('Residential Property') of this booklet).

4. Freehold/leasehold* If leasehold, term of lease:

5. Purchase price: £.....

6. If VAT is chargeable please confirm the amount separately: £

Where the purchase price is subject to VAT the Trustees will only be able to reclaim the VAT provided they are registered for VAT and they have 'opted to tax' the rent payable.

If the Trustees are to be VAT registered in respect of the property we suggest that you consult your accountant/auditor to arrange this for the Trustees.

7. Proposed completion date:

*delete as necessary

8. Vendor's name and address:

.....

Is the vendor the SIPP Member or a person connected with the SIPP Member?

YES/NO* (**See Note 2**)

(Connected persons include: the SIPP Member's spouse or civil partner or a relative of the SIPP Member or the SIPP Member's spouse or civil partner – such as brothers, sisters, grandparents and in-laws – a partner in a partnership business where the SIPP Member or connected person is also a partner in that partnership, a connected company and certain trusts.)

9. Do the Trustees intend to borrow monies to assist with the purchase? YES/NO* (**See Note 3**)

If yes, how much? £

Name, address and telephone no. of Lender:.....

.....

10. Name, address and telephone no. of the Trustees' solicitor:.....

.....

11. Name and address of existing/proposed tenant:.....

.....

Is the tenant connected with the SIPP Member YES/NO* (See Note 2). If yes, please provide a copy of an independent professional surveyor's confirmation (addressed to the Trustees) that, in his/her opinion, the rent to be charged represents the open market rental value of the property.

12. Rent payable: £p.a. Term: Rent review periods:

If the property is subject to an existing lease or leases, please provide a copy of each relevant lease.

Is VAT charged on the rent? YES/NO*

13. Is the property to be improved or refurbished? YES/NO*

If yes, (a) how will this be financed? :

(b) who will carry out the improvements/refurbishment? :

(See Note 2)

(NB: any VAT paid by the Trustees in respect of improvements/refurbishment can only be reclaimed if the Trustees are registered for VAT.)

*delete as necessary

14. Who will be responsible for the management of the property? The Member Trustee/a duly appointed professional property manager*

If the latter please provide name, address and telephone no. :

15. The Member Trustee will be responsible for ensuring that the property is appropriately insured whether it is let to the Member's own business or to an unconnected third party. Therefore by signing this questionnaire you undertake to provide EBS with full details of such insurances and copies of relevant certificates.

16. Title documents relating to the property must be retained by the solicitor acting for the Trustees unless they need to be lodged with a lender in respect of a mortgage.

17. Is there or is there intended to be any related agreement concerning the property or otherwise involving the Member or any person connected with the Member? YES/NO*

If yes, please provide details.

Member Trustee's/Member Trustees' Declaration and Resolution

I/We as Member Trustee/Trustees of my/our SIPP(s) mentioned in part 1 and 1a of this questionnaire, hereby request the appointed solicitors (see part 10) to act for me/us and both EBS Pensions Limited (EBS) as Trustees of my/our SIPP(s) and for EBS Self-Administered Personal Pension Plan Trustees Limited ("EBS SAPPP Trustees") as bare trustee for EBS in respect of my/our SIPP(s), in relation to the purchase and leasing (and development, refurbishment or improvement, where applicable) of the property named in part 2 of this questionnaire, by my/our SIPP(s). I/We request the appointed solicitors to confirm their acceptance of this appointment in accordance with the booklet provided by EBS entitled **Information for Solicitors**.

I/We, in my/our capacity as both Member/Members and Trustee/Trustees hereby resolve the following:

- a. to purchase (and develop, refurbish or improve, where applicable) the property named in part 2 of this questionnaire and lease it to the tenant/tenants named in part 11 of this questionnaire in accordance with the rules governing my /our SIPP(s);
- b. where appropriate and necessary, to arrange for the registration of the SIPP Trustees for VAT purposes and to 'opt to tax' the supplies in relation to the lease;
- c. where appropriate and necessary, to borrow sufficient funds (but within the limits for "authorised borrowing" under the new pension tax rules, which came into force on 6 April 2006) from the Lender named in part 9 of this questionnaire;
- d. to indemnify and keep indemnified EBS SPPPP Trustees from and against any costs, liabilities or actions that might be incurred by EBS SPPPP Trustees Limited pursuant to any obligations to be undertaken and covenants to be entered into by or on behalf of the Trustees of the Member SIPP(s) in respect of the property, including any incurred in relation to: the Environmental Protection Act 1990, the Environmental Protection Act 1995 and any other relevant or subsequent United Kingdom Environmental Law; Regulation 4 of the Control of Asbestos at Work Regulations 2012; Disability Discrimination Law; and / or Fire Safety Law.

* delete as necessary

e. to indemnify and keep indemnified both EBS and EBS SAPP Trustees from any tax charges that might be incurred by the SIPP(s) if the property is deemed by HMRC, at any time, to constitute, in its entirety or in part only, residential property for the purposes of the taxable property rules in Schedule 29A of Finance Act 2004 and any amendments thereto;

f. to authorise (name).....(address).....
.....(telephone).....

to deal on my/our behalf with EBS, EBS SAPP Trustees and all other relevant parties in relation to all aspects of the proposed property transactions.

I/We authorise both EBS and EBS SAPP Trustees to arrange for all costs associated with the proposed property transactions to be met from my/our SIPPs (in appropriate proportions), as those costs arise and without any further instruction from me/us, whether or not the purchase is eventually completed.

I/We confirm that I/we shall not hold EBS or EBS SAPP Trustees or any associated company, liable for any reduction in my/our benefits under my/our SIPP(s) that may result from my/our decision to invest in the property.

I/We confirm that EBS, EBS SAPP Trustees or any associated company has not given me/us any investment advice or exercised its judgment on the merits, suitability or otherwise of the investment in the property, other than in connection with the current pension tax rules.

I/We confirm that to the best of my/our knowledge and belief the information provided above is true and complete.

**Please return to:
EBS Pensions Limited, 5th Floor, 100 Cannon Street, London, EC4N 6EU**

[NB: all Member Trustees must sign]

Signed Date.....
(Print name.....)

Signed Date.....
(Print name.....)

Signed Date.....
(Print name.....)

Signed Date.....
(Print name.....)

Notes

1. What constitutes commercial property and what constitutes residential property can be found in parts 1 and 2 of this booklet.
2. For details of transactions with the SIPP Member or any person connected with the Member see part 3 of this booklet.

If the Member or a connected person carries out any development, refurbishment or improvement of the property for anything other than an arm's length commercial price, there could be tax consequences for the Member and the SIPP.

3. The limit on 'authorised borrowing' and EBS's borrowing conditions are covered in parts 3 and 7 of this booklet.

Appendix 2 A In specie transfer questionnaire

Questionnaire in respect of the acquisition of property by the SIPP Trustees as part of an In Specie transfer of a SIPP Member's Benefits from another Registered Pension Scheme.

Completion and return of this form by the SIPP Member(s) should enable EBS to advise whether or not the proposed transfer is likely to be acceptable under the Rules governing the SIPP and whether there are likely to be any tax charges under the new pension tax legislation and to give guidance regarding the requirements relating to the acquisition and leasing of the property by the relevant SIPP Trustees.

1. Member SIPP: The..... SIPP
- 1A. Member SIPP: The..... SIPP
 Member SIPP: The..... SIPP
 Member SIPP: The..... SIPP
- 1B. If a joint acquisition which includes non-SIPP Member(s) please provide name(s) and whether connected with the SIPP Member(s):

.....

2. Address of property

.....

3. Is the property a commercial property (**See Note 1**)? YES/NO* (If no see NB below)

Please provide copies of the independent professional surveyor's report (which should be addressed to the SIPP Trustees and must be no more than 3 months old at the time of completion of the purchase, otherwise a new report will be required) and current environmental and asbestos risk assessments carried out in respect of the property.

NB: EBS will not agree to the acquisition of residential property including ground rents in relation to residential property and land which is part of the grounds and/or garden of a residence (See the NB in part 2 ('Residential Property') of this booklet).

4. Freehold/leasehold* If leasehold, term of lease:

5. Market value of the property: £.....

6. Name and address of transferring pension scheme:

.....

7. Is the property subject to VAT? YES/NO*

Where the property is subject to VAT the SIPP Trustees will need to register for VAT and 'opt to tax' the rent payable before the transfer can proceed.

If the Trustees are to be VAT registered in respect of the property we suggest that you consult your accountant/auditor to arrange this for the Trustees and, where relevant, arrange a 'Transfer of a Going Concern' (TOGC).

*delete as necessary

8. Is the property subject to an existing mortgage? YES/NO*

If yes, how much is outstanding? £

9. Name, address and telephone no. of Lender:

.....

10. Name, address and telephone no. of the Trustees' solicitor:

.....

11. Name and address of existing/proposed tenant.....

.....

Is the tenant connected with the SIPP Member YES/NO* (See Note 2). If yes, please provide a copy of an independent professional surveyor's confirmation (addressed to the Trustees) that, in his/her opinion, the rent to be charged represents the open market rental value of the property.

12. Rent payable: £p.a. Term: Rent review dates:

If the property is subject to an existing lease or leases, please provide a copy of each relevant lease and latest rent review memoranda.

Is VAT charged on the rent? YES/NO*

13. Is the property to be improved or refurbished? YES/NO*

If yes, (a) how will this be financed? :

(b) who will carry out the improvements/refurbishment? :

(See Note 2)

(NB: any VAT paid by the Trustees in respect of improvements/refurbishment can only be reclaimed if the Trustees are registered for VAT.)

14. Who will be responsible for the management of the property? The Member Trustee/a duly appointed professional property manager*

If the latter please provide name, address and telephone no. :

.....

15. The Member Trustee will be responsible for ensuring that the property is appropriately insured whether it is let to the Member's own business or to an unconnected third party. Therefore by signing this questionnaire you undertake to provide EBS with full details of such insurances and copies of relevant certificates.

16. Title documents relating to the property must be retained by the solicitor acting for the Trustees unless they need to be lodged with a lender in respect of a mortgage.

*delete as necessary

17. Is there or is there intended to be any related agreement concerning the property or otherwise involving the Member or any person connected with the Member? YES/NO*

If yes, please provide details.

.....
.....

Member Trustee’s/Member Trustees’ Declaration and Resolution

I/We as Member Trustee/Trustees of my/our SIPP(s) mentioned in part 1 and 1A of this questionnaire, hereby request the appointed solicitors (see part 10) to act for me/us and both EBS Pensions Limited (EBS) as Trustees of my/our SIPP(s) and for EBS Self-Administered Personal Pension Plan Trustees Limited (“EBS SAPPP Trustees”) as bare trustee for EBS in respect of my/our SIPP(s), in relation to the acquisition and leasing (and development, refurbishment or improvement, where applicable) of the property named in part 2 of this questionnaire, by my/our SIPP(s).

I/We request the appointed solicitors to confirm their acceptance of this appointment in accordance with the booklet provided by EBS entitled Information for Solicitors.

I/We, in my/our capacity as both Member/Members and Trustee/Trustees hereby resolve the following:

- (a) to acquire (and develop, refurbish or improve, where applicable) the property named in part 2 of this questionnaire and lease it to the tenant/tenants named in part 11 of this questionnaire in accordance with the rules governing my /our SIPP(s);
- (b) where appropriate and necessary, to arrange for the registration of the SIPP Trustees for VAT purposes and to ‘opt to tax’ the supplies in relation to the lease;
- (c) where appropriate and necessary, to borrow sufficient funds (but within the limits for “authorised borrowing” under the new pension tax rules, which came into force on 6 April 2006) from the Lender named in part 9 of this questionnaire;
- (d) to indemnify and keep indemnified EBS SAPPP Trustees from and against any costs, liabilities or actions that might be incurred by EBS SAPPP Trustees Limited pursuant to any obligations to be undertaken and covenants to be entered into by or on behalf of the Trustees of the Member SIPP(s) in respect of the property, including any incurred in relation to: the Environmental Protection Act 1990, the Environmental Protection Act 1995 and any other relevant or subsequent United Kingdom Environmental Law; Regulation 4 of the Control of Asbestos at Work Regulations 2012; Disability Discrimination Law; and / or Fire Safety Law.
- (e) to indemnify and keep indemnified both EBS and EBS SAPPP Trustees from any tax charges that might be incurred by the SIPP(s) if the property is deemed by HMRC, at any time, to constitute, in its entirety or in part only, residential property for the purposes of the taxable property rules in Schedule 29A of Finance Act 2004 and any amendments thereto;
- (f) to authorise (name).....(address).....
.....(telephone).....

to deal on my/our behalf with EBS, EBS SAPPP Trustees and all other relevant parties in relation to all aspects of the proposed property transactions.

* delete as necessary

I/We authorise both EBS and EBS SAPP Trusteees to arrange for all costs associated with the proposed property transactions to be met from my/our SIPP(s) (in appropriate proportions), as those costs arise and without any further instruction from me/us, whether or not the purchase is eventually completed.

I/We confirm that I/we shall not hold EBS or EBS SAPP Trusteees or any associated company, liable for any reduction in my/our benefits under my/our SIPP(s) that may result from my/our decision to invest in the property.

I/We confirm that EBS, EBS SAPP Trusteees or any associated company has not given me/us any investment advice or exercised its judgment on the merits, suitability or otherwise of the investment in the property, other than in connection with the current pension tax rules.

I/We confirm that to the best of my/our knowledge and belief the information provided above is true and complete.

Please return to:

EBS Pensions Limited, 5th Floor, 100 Cannon Street, London, EC4N 6EU

[NB: all Member Trustees must sign]

Signed Date.....
(Print name.....)

Signed Date.....
(Print name.....)

Signed Date.....
(Print name.....)

Signed Date.....
(Print name.....)

Notes:

1. What constitutes commercial property and what constitutes residential property can be found in parts 1 and 2 of this booklet.
2. For details of transactions with the SIPP Member or any person connected with the Member see part 3 of this booklet.
3. If the Member or a connected person carries out any development, refurbishment or improvement of the property for anything other than an arm's length commercial price, there could be tax consequences for the Member and the SIPP.

Appendix 3

Draft letter to tenant in respect of asbestos

Tenant's name
Address

Dear

Date:

[Name of Member's SIPP] ("the SIPP")

Property: [property address]

Regulation 4 of the Control of Asbestos at Work Regulations 2012

On behalf of the SIPP Trustees (your Landlord) we are writing in respect of your duties under Regulation 4 of the Control of Asbestos at Work Regulations 2012.

Regulation 4 imposes an explicit duty to manage asbestos in non-domestic premises. Under the terms and conditions of your lease you are the "dutyholder" and, therefore, responsible for complying with Regulation 4.

In order to satisfy Regulation 4 you are required to obtain a written assessment as to whether asbestos is or is liable to be present within the premises let to you. You must also draw up and keep up to date a plan to manage any risk. We enclose copies of the Health and Safety Executive's booklet *Managing Asbestos in buildings – a brief guide*.

In accordance with Regulation 4, we will require copies of the written assessment and/or asbestos survey and the plan to manage risk and any future updates to the plan.

You can obtain further details and assistance on the Health and Safety Executive's website www.hse.gov.uk/asbestos, which contains links to licensed asbestos contractors. There are also further relevant publications on www.hse.gov.uk/pubns.

We look forward to hearing from you.

Yours sincerely

Appendix 4

Property sale questionnaire

Questionnaire in respect of a property sale by the SIPP Trustees

Completion and return of this form by the SIPP Member(s) should enable EBS to advise whether or not the proposed sale is likely to be acceptable under the Rules governing the SIPP and whether there are likely to be any tax charges under the new pension tax legislation and to give guidance regarding the requirements relating to the sale of the property by the relevant SIPP Trustees.

- | | | | |
|-----|--------------|----------|------|
| 1. | Member SIPP: | The..... | SIPP |
| 1A. | Member SIPP: | The..... | SIPP |
| | Member SIPP: | The..... | SIPP |
| | Member SIPP: | The..... | SIPP |

2. Address of property.....

3. Is the property a commercial property (See Note 1)? YES/NO*

4. Freehold/leasehold*? If leasehold, term of lease:

5. Sale price: £.....

If VAT is chargeable please confirm the amount separately: £

6. Proposed completion date:

7. Purchaser's name and address:

Is the purchaser the SIPP Member or a person connected with the SIPP Member?

YES/NO* (See Note 2)

(Connected person includes: the SIPP Member's spouse or civil partner, a relative of the SIPP Member or the SIPP Member's spouse or civil partner – such as brothers, sisters, grandparents and in-laws – a partner in a partnership business where the SIPP Member or connected person is also a partner in that partnership, a connected company and certain trusts.)

If yes, you must provide a copy of a current valuation report addressed to the SIPP Trustees from an independent professional surveyor confirming his/her opinion of the "market value" of the property – which must then be the sale price.

8. Is the sale price subject to VAT? YES/NO*

9. If there is an outstanding mortgage in respect of the property please confirm the amount outstanding:

£

10. Name, address and telephone no. of the Trustees' solicitor:

.....

*delete as necessary

11. The Member Trustee will be responsible for cancelling any insurance cover taken out on the property once the sale has been completed.
12. Is there or is there intended to be any related agreement concerning the property or otherwise involving the Member or any person connected with the Member? YES/NO (delete as necessary)

If yes, please provide details.

.....

Member Trustee’s/Member Trustees’ Declaration and Resolution

I/We as Member Trustee/Trustees of my/our SIPP(s) mentioned in part 1 and 1A of this questionnaire, hereby request the appointed solicitors (see part 10) to act for me/us and EBS Pensions Limited as Trustees of my/our SIPP(s) and for EBS Self-Administered Personal Pension Plan Trustees Limited (“EBS SAPPP Trustees”) as a bare trustee for EBS in respect of my/our SIPP(s) in relation to the sale of the property named in part 2 of this questionnaire, by my/our SIPP(s).

I/We request the appointed solicitors to confirm their acceptance of this appointment in accordance with the booklet provided by EBS entitled Information for Solicitors.

I/We, in my/our capacity as both Member/Members and Trustee/Trustees hereby resolve the following:

- a to sell the property named in part 2 of this questionnaire in accordance with the rules governing my /our SIPP(s);
- b to repay any outstanding borrowing in respect of the property in relation to my/our SIPP(s);
- c to indemnify and keep indemnified both EBS and EBS SAPPP Trustees from and against any costs, liabilities or actions that might be incurred by EBS or EBS SAPPP Trustees pursuant to any obligations to be undertaken and covenants to be entered into by or on behalf of the Trustees of the Member SIPP(s) in respect of the sale of the property, including any incurred in relation to: the Environmental Protection Act 1990, the Environmental Protection Act 1995 and any other relevant or subsequent United Kingdom Environmental Law; Regulation 4 of the Control of Asbestos at Work Regulations 2012; Disability Discrimination Law; and / or Fire Safety Law.

- d to authorise (name).....(address).....
 (telephone).....

to deal on my/our behalf with EBS, EBS SAPPP Trustees and all other relevant parties in relation to all aspects of the proposed property transactions.

I/We authorise both EBS and EBS SAPPP Trustees to arrange for all costs associated with the proposed property transactions to be met from my/our SIPPs (in appropriate proportions), as those costs arise and without any further instruction from me/us, whether or not the purchase is eventually completed.

I/We confirm that we shall not hold EBS, EBS SAPPP Trustees or any associated company, liable for any reduction in my/our benefits under my/our SIPP(s) that may result from my/our decision to sell the property.

I/We confirm that EBS, EBS SAPP Trusteees or any associated company has not given me/us any investment advice or exercised its judgment on the merits, suitability or otherwise of the sale of the property, other than in connection with the new pension tax rules.

I/We confirm that to the best of my/our knowledge and belief the information provided above is true and complete.

Please return to:

EBS Pensions Limited, 5th Floor, 100 Cannon Street, London, EC4N 6EU

[NB: all Member Trustees must sign]

Signed Date.....
(Print name.....)

Signed Date.....
(Print name.....)

Signed Date.....
(Print name.....)

Signed Date.....
(Print name.....)

Notes:

1. What constitutes commercial property and what constitutes residential property can be found in parts 1 and 2 of this booklet.
2. For details of transactions with the SIPP Member or any person connected with the Member and relatives, the Member's business, partnership or company see part 3 of this booklet.

EBS SIPP CPT 04/20