

# Your tenancy

## FREQUENTLY ASKED QUESTIONS

### **Why must rent be paid when the property is held as an asset of my SIPP fund?**

Her Majesty's Revenue & Customs (HMRC) will only allow pension scheme fund members to use the property for the purpose of their business if there is a commercial lease in place between the pension scheme administrator or pension scheme trustees (the landlord) and the fund member(s) or business (the tenant).

Before the terms of a proposed lease are agreed, we ask a suitably qualified chartered surveyor to confirm the market rent for the property and you or your business in your capacity as the tenant under the lease will be contractually obliged to pay this rent when due.

If you do not pay the rent in accordance with the terms of the lease, HMRC will take the view that you are using the SIPP fund to reduce your personal, or your company's, liability in respect of the rent and gaining an unauthorised benefit from the SIPP fund. Essentially, non-payment of rent is deemed by HMRC as not being an 'arm's-length' arrangement (not on standard commercial terms), and it would subsequently represent a shift in value and ultimately an unauthorised payment. Details of the subsequent tax charges payable are shown under 'What tax charges may be payable if I do not adhere to the terms of the lease?'

We do not currently collect rent via Direct Debit so please ensure a standing order arrangement is set up with your bank. Details of the bank account to which rental payments should be made will be shown on your rent invoice.

Payment is due on or before the rent due date. If we have agreed to the rent being paid on a monthly basis then the rent is due on the first day of each calendar month. If you pay quarterly then the rent is due on 25 March, 24 June, 29 September, and 25 December.

### **What happens if rent is not paid?**

HMRC rules do not allow us to ignore non-payment of rent or waive unpaid rent. In the event of non-payment of rent, and in order to avoid punitive tax charges being levied against you and your SIPP fund, we will do the following:

- Issue an invoice to remind you that the rent is due. This will be sent up to 14 days before the rental due date and will show the total amount due and bank account to which the payment should be made.
- If payment is not received within 14 days of the rental due date then we will issue an initial reminder letter.
- If payment is not received within 21 days of the rental due date then we will issue a second reminder. Interest will be charged to you as the tenant, in accordance with the terms of the lease, and we will debit an administration charge from the SIPP fund.

- If payment is not received within 28 days of the rental due date then we will issue a third and final reminder. We will debit a further administration charge from the SIPP fund. We also reserve the right to charge an additional fee for the work involved in pursuing you for the rent arrears, which will be debited from the SIPP fund.
- If payment is not received within seven days of the date of the final reminder, we will consider taking legal action against the tenant and reserve the right to instruct a debt recovery agency to recover this debt without further notice.
- Please note that any legal fees incurred in pursuing the outstanding rent and any debt collection agency's costs will initially be debited from your SIPP fund, pending recovery from you as the tenant, in accordance with the terms of the lease.
- If an agreement cannot be reached for prompt payment of the rent arrears then we reserve the right to forfeit the lease and secure the property accordingly.
- Where there is a loan associated with the property, if at any stage there are not sufficient monies within your SIPP fund to meet the loan repayments when they fall due, we will cease the loan repayments to the lender. This could result in the lender forcing a sale of the property. We will debit an administration charge from your SIPP fund for the additional administrative work involved in arranging the cessation of the loan repayment.

### **Can works be carried out to the property and how must they be funded?**

If you are looking to carry out any works to the property, you must contact us first. We can then check whether the works can be paid for via your SIPP fund or whether the tenant must pay for them. For example, we cannot usually pay for repairs out of the SIPP fund, as these are normally the responsibility of the tenant, in accordance with the terms of the lease.

In order to consider the proposal, you will need to provide us with the following:

- full details of the proposed work, including any plans;
- fixed price quotations for the work;
- timescales involved in completing the work; and
- details of your solicitors.

In considering the proposed works we will:

- look at whether there is sufficient liquidity in your SIPP Fund to meet the estimated the cost of the proposed works; and

- contact a suitably qualified chartered surveyor to request confirmation of the following:
  1. The market value of the property once the works have been completed.
  2. Any increase in the market rent once the works have been completed.
  3. Confirmation that the proposed work does not constitute repairs in accordance with the terms of the lease.

If the works are not deemed to be repairs and do result in an uplift to the capital value of the property, then some or all of the works may be paid from the SIPP fund.

If the surveyor confirms that the works will also lead to an increase in the rent, then a deed of variation must first be completed in respect of the lease in order to reflect the revised rent payable. No invoices in relation to the works will be paid until the deed of variation is entered into by the tenant.

If the works do not add any capital value and rental uplift to the property, then they cannot be paid for via the SIPP fund. If you still wish to carry out these works then the tenant must pay for them and we will have to grant our formal consent by way of a licence to alter. We will arrange for our solicitors to draft the required deed of variation or the licence to alter.

Normally the costs associated with drafting a licence to alter are payable by the tenant (in accordance with the terms of the lease) and so they will either require an undertaking for their costs from your solicitor(s) or a cheque, before the licence is agreed.

### Who pays for repairs and decorating?

We normally cannot pay for the cost of repairs and decorating out of the SIPP fund as these are the responsibility of the tenant, in accordance with the terms of the lease.

Please note that if the property is not kept in a state of good repair then the poor condition of the property will be brought to our attention in the triennial valuation or within the schedule of dilapidations, which will be produced for us at the end of the lease term. Please see 'What happens at the lease end date?' for further information about schedule of dilapidations.

### Can the property be sublet to another tenant?

The lease may not always allow you to sublet all or part the property. If the lease does allow you to sublet then you will first need to obtain our formal consent by execution of a licence to sublet before the subtenant may take occupancy. The consent of any lender may also be required.

If the property is sublet without first obtaining our formal consent then we reserve the right to forfeit the lease and/or the lender may have the right to foreclose on the loan. If the sublease arrangement is not reviewed by our solicitors and formal consent is not obtained, then should we have to sell the property to pay out benefits, we may not be able to so.

In order to consider the proposal, you will need to provide us with the following:

- full details of the proposed subtenant, including the activities to be carried out by the subtenant on the premises;
- the terms you have agreed with the subtenant and the intended start date of the subtenancy; and
- details of your solicitor, who will be drafting the sublease for the subtenant.

Once we receive this information, provided we are happy with the proposed subtenant, we will instruct our solicitors to prepare a licence to sublet.

Our solicitors may also need to seek the consent of any lender, depending on the terms of the loan agreement.

Normally our solicitors' costs are payable by the tenant (in accordance with the terms of the lease) and they will either require an undertaking for their costs from your solicitor(s) or a cheque before a licence is agreed.

### Can the lease be assigned to another tenant?

The lease may not always allow you to assign the lease to another tenant. If the lease does allow you to assign the lease then you will first need to obtain our formal consent by execution of a licence to assign before the new tenant may take occupancy.

When you have found a tenant who is willing to take over your lease, you will need to provide us with the following:

- details of the prospective tenant, including company name and company registration number;
- details of the business to be carried out by the prospective tenant on the premises; and
- your solicitor's details who will be drafting the deed of assignment.

Once we receive this information, and provided we are happy with the strength of the prospective tenant's covenant, we will instruct our solicitors to prepare a licence to assign.

Our solicitors will liaise with your solicitor on the draft licence to assign, and once agreed, this will be executed.

Normally the costs associated with drafting a licence to assign are payable by the tenant (in accordance with the terms of the lease), and so they will either require an undertaking for their costs from your solicitor(s) or a cheque, before a licence is agreed.

### Can the lease be surrendered?

If the property no longer suits the needs of your business and you wish to bring the tenancy to an end, then we may consider a surrender of the lease.

However, as the pension scheme administrator and landlord, we have to be able to demonstrate to HMRC that any surrender is agreed on an 'arm's-length basis', ensuring that a market value surrender premium is paid by the tenant, where appropriate.

The surrender premium will essentially compensate your SIPP fund for the following:

- potential loss in rent whilst the property is likely to remain vacant;

- ongoing liabilities associated with the property that will now need to be met from the SIPP fund (such as business rates and utilities); and
- the reduction in rent and lease term that market conditions dictate (if it is unlikely we could subsequently agree a lease on the same terms).

We would seek the advice of a suitably qualified local chartered surveyor to establish what the market value surrender premium would be. Should the surveyor charge for such advice then the respective cost will be met from your SIPP fund.

### **Why must the property be revalued every three years?**

To ensure the assets held within your SIPP fund are valued correctly, we will arrange an independent valuation of the property every three years.

An up-to-date valuation will ensure you have a more accurate idea of the benefits you are likely to receive upon retirement, and the valuation will also ensure the annual management charge we levy is based on a more accurate valuation.

If the SIPP fund has more than one fund member and you elect to make a sizeable contribution to the SIPP fund, then we may insist on a valuation at that time. We may also insist on a valuation if you wish to take your pension benefits.

### **Why must the rent be reviewed?**

As the pension scheme administrator and landlord, we have to be able to demonstrate to HMRC that the lease between Sanlam Life & Pensions UK Ltd and you or your business is being operated on an 'arm's-length basis'.

A standard commercial lease will normally contain a provision for the rent to be reviewed, and when you entered into the lease for the property, you would have agreed the frequency of such reviews.

Your lease will provide for the rent to be increased at the rent review or remain the same (nil increase), but it will not normally allow for the rent to be reduced.

### **What happens at the lease end date?**

Before your lease expires, we will write to you to establish whether you or your business wishes to renew the lease at the end of the lease term.

If you do wish to renew the lease, then the rent payable under the new lease will again have to be the market rent payable. We will therefore instruct a chartered surveyor to determine what the market rent will be at that time.

When we have received confirmation of the market rent payable, we will ask our solicitors to issue you with a notice setting out the terms of the new lease, including the new rent that will be payable.

If you wish to accept the terms of the new lease then our solicitors will issue a copy of the new lease for signature, and subject to the lease being agreed and completed, your tenancy may continue accordingly.

It is important that you let us know whether you wish to renew the lease or not. If you do not wish to renew the lease or if we do not hear from you, then our solicitors will issue you with a notice informing you that your tenancy will

come to an end upon expiry. If a new lease is subsequently not agreed, then you will have to vacate the property.

If the tenancy is not renewed then we will arrange for a schedule of dilapidations to be produced by a chartered surveyor. If the property is in a state of disrepair, then this survey will highlight the works that need to be undertaken or paid for by the tenant.

Please note that the tenant must pay for the cost of such works. If not, HMRC will take the view you are using the SIPP fund to reduce your personal or your company's liability in respect of the required works and gaining an unauthorised benefit from the SIPP fund. Essentially, if the works are not carried out or paid for then the arrangement will be deemed by HMRC as not being an 'arm's-length' arrangement (not on standard commercial terms), and it would subsequently represent a shift in value and ultimately an unauthorised payment. Details of the subsequent tax charges payable are shown under 'What tax charges may be payable if I do not adhere to the terms of the lease?'

### **What if I now want the property to be sold?**

If, for whatever reason, you would like the property to be sold, then please let us know immediately.

If you have a preferred commercial property sales agent you would like us to appoint to market the property, then please provide their contact details. Subject to your approval, we will need to sign the agent's terms and conditions.

When a buyer is found, we will ask you to confirm you agree to the price being offered, and we will then accept the offer subject to contract and instruct our solicitors in respect of the sale. Once the sale is completed, the net proceeds of the sale will be transferred to your SIPP fund.

Please note that if you or your business are the tenant within the property, then you will need to keep paying rent until the property is sold, and if you are to remain as tenant after the property is sold, then you will need to continue to pay rent to the new owner/landlord.

### **Why can I not use the property for residential purposes?**

HMRC will only allow commercial property to benefit from the tax advantages associated with a pension arrangement.

If residential property is inadvertently held within a SIPP fund, then the property and any income received in respect of the property will become subject to punitive tax charges, payable by the individual fund members and the SIPP fund. This may also apply to the part of the property that was initially used for residential purposes by an employee, as a condition of their contract, but has since been vacated or is used by someone who is not an employee, in this case:

- The individual fund members will become liable to a 40% unauthorised payment tax charge, equal to the value of the property, as at the date that the property started to be used for residential purposes.
- If the total of all unauthorised payment charges in a twelve-month period exceeds 25% of the fund value attributable to the member, a further 15% surcharge will apply.

- The pension scheme will become liable to a 40% scheme sanction charge in respect of the unauthorised payment tax charge, but this will be reduced to 15% if the fund members pay the unauthorised payment charge.
- The pension scheme will also become liable to a 40% scheme sanction charge in respect of the rent we receive in respect of the property, whilst the property is deemed to be residential.
- If any subsequent sale of the property gives rise to a chargeable gain, then a further 40% scheme sanction charge will be levied on the chargeable gain, against the pension scheme. The scheme sanction charge may also apply to the net proceeds.

To prevent the property from being used for residential use, your lease will normally prohibit anyone from sleeping within the property or using any part of the property as residential accommodation. If this clause is breached, then not only will the property become subject to punitive tax charges, we will also begin proceedings to bring your tenancy to an end.

### **What tax charges may be payable if I do not adhere to the terms of the lease?**

If you or your business does not adhere to the terms of the lease, HMRC will take the view you are using the SIPP fund to reduce your personal or your company's liability and are gaining an unauthorised benefit from the SIPP fund.

For example, HMRC deem non-payment of rent as not being an 'arm's-length' arrangement (not standard commercial terms), and it would subsequently represent a shift in value and ultimately an unauthorised payment.

We are obliged to report any unauthorised payments made to, or in respect of, scheme members to HMRC and any unauthorised payment would attract a 40% tax

charge payable by fund members as an individual. There may also be an unauthorised payment tax surcharge of up to 15% of the unauthorised payment, which will be a further tax charge against fund members.

In addition, there will be a separate charge on the SIPP fund known as the scheme sanction charge. This charge can be offset by the unauthorised member payment, but, in any event, will be at least 15% of the unauthorised payment and will be debited from the SIPP fund.

The following are examples of what could be regarded as unauthorised payments, with the tax charge being based on the value of the liability that has not been met:

- in the event our solicitors' costs are not paid for by a connected tenant in respect of a licence to alter, licence to sublet, or licence to assign;
- if the cost of repairs associated with a schedule of dilapidations are not paid for by a connected tenant;
- if a recommended surrender premium is not paid by a connected tenant upon surrender of the lease;
- if the rent is not increased for a connected tenant, as recommended by a surveyor, in accordance with a rent review; or
- if tenant repairs or fit-out costs are inadvertently paid for by the SIPP fund, where there is a connected tenant.

In each of the above circumstances, the respective costs will initially be paid for via the SIPP fund, and subsequently recharged to the tenant. We reserve the right to debit an administration charge from your SIPP fund for undertaking any of the tasks above. Please refer to our guide to charges for further information.

