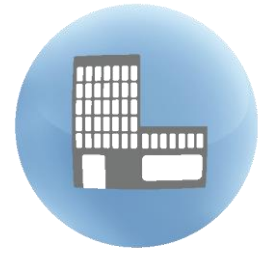


TAYLOR PATTERSON

PART OF MATTIOLI WOODS PLC



## COMMERCIAL PROPERTY

### OUR GUIDE TO INVESTING IN COMMERCIAL PROPERTY

#### Overview

A principal feature of Taylor Patterson Master SIPP, Group SIPP and Full Service SSAS arrangements (“the pension scheme”) is that they can invest in a wide range of property in the UK, apart from most types of residential property. Each property investment is considered on its own merits.

#### Acceptable Property Investment

- ✓ Offices
- ✓ Industrial units
- ✓ Shops and retail units
- ✓ Agricultural land and forestry
- ✓ Hotels and Inns
- ✓ Hospitals, nursing and care homes
- ✓ Certain types of student halls of residence
- ✓ Some leisure property e.g. golf courses, fishing rights, marinas, moorings and sports grounds
- ✓ Development land

This is not an exclusive list and should you be interested in acquiring a property not listed above, please consult Taylor Patterson.

Throughout this guide references to “member” also include “members, member trustee and member trustees” where appropriate. The guide is just a guide and does not cover all scenarios or aspects of property purchase through the pension scheme.

#### Unacceptable Property Investment

##### ✗ Leisure Property

Leisure property cannot be used by the member or any “connected person”, unless that person pays the market rent, fee or levy that would be paid by any other person.

##### ✗ Residential Property

To avoid the punitive tax charges imposed by HMRC’s Taxable Property Rules, the pension fund cannot invest in any property that is “suitable for use as a dwelling”. This generally means all residential property and includes holiday lets, “time shares” and similar arrangements. However in certain specific circumstances, residential property can be bought and held.

##### ✗ Fixtures and Fittings

Any items that are not considered to be part of the fabric of a commercial property could be considered by HMRC to be taxable property and hence give rise to tax charges. Such items would include equipment, furniture, plant and machinery.

## Exempt Residential Property

### **Job or Occupation Related Property (Residential Property)**

The property is (or is due to be) occupied by a person as a condition of their employment, e.g. a matron of a care-home or a caretaker.

The property is (or is due to be) occupied by the proprietor of a business run from the same premises, e.g. a shopkeeper occupying a flat that is part of the premises and leased under the same lease as the business premises.

In no circumstances can the residential property be occupied by a member of the pension scheme or any person connected to a member.

### **Property not suitable for use as a dwelling**

Unfortunately, even if a change of use to a non-residential purpose has been granted, that is not sufficient to avoid the application of the HMRC Taxable Property Rules. All the conditions of the planning permission for change of use, e.g. building works, have to have been carried out.

However, if the property despite being “residential” is no longer “suitable for use as a dwelling” it can be acquired. For example this would include a derelict dwelling without the essential services such as a kitchen or bathroom.

In all cases Taylor Patterson will require an opinion from a chartered surveyor that the property is not suitable for use as a dwelling. That opinion should set why it is considered that the property is not suitable for use as a dwelling and if possible be supported by photographic evidence. This is to help overcome the problems that would arise should at a later date, after the property has been converted to commercial use, HMRC challenge the view that it was not suitable for use as a dwelling at the time it was bought and the physical evidence is no longer available because the property has been repaired and/or structurally altered.

### **Parts of Buildings**

Different parts of the same building can of course have planning permission for different uses, “mixed use”. If part of a building has planning permission for “residential use” that might result in the whole of the building being deemed residential for the purposes of the HMRC Taxable Property Rules, despite the remaining part having planning permission and being used for commercial purposes.

The Rules state that if the residential element is totally separate and has its own entrance (which can be via a communal hallway) and is not interconnected to the non-residential areas, the residential element can be treated as a separate property.

However, if the residential element is an integral part of the remainder and it is possible to pass from one to the other without having to go through common parts, the whole of the property will be deemed residential.

With mixed use properties, it may be possible to split the property so that the pension scheme purchases the commercial part only.

## Financing your Property Transaction



### Borrowing

Subject to a willing lender, the pension scheme trustees can borrow up to 50% of the net asset value of the scheme to assist in the financing of property purchase or development. Borrowing can take place after the member has commenced drawing benefits.

Borrowing is not restricted to banks and other lending institutions. With the agreement of Taylor Patterson, sums can be borrowed from connected or third parties but it does have to be on a commercial basis under a formal agreement. ***Please refer to Taylor Patterson's guide to borrowing.***

### Jointly Owned Property

Property can be owned jointly with the member, connected parties, third parties or other Taylor Patterson pension schemes. Further guidance will be supplied by Taylor Patterson on request. Please note, where a lender is involved, joint ownership may present further complications.

### Costs

There are a range of costs that need to be considered when purchasing commercial property. In addition to the purchase price other costs include:

- Legal fees
- Valuation fees
- Survey fees e.g. environmental, asbestos
- Land registry fees
- Tax – Stamp duty land tax and VAT (if applicable)

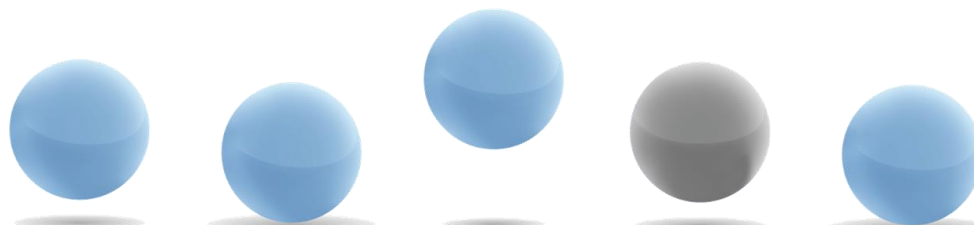
All the costs of a purchase or development must be borne by a SIPP and should not be paid by the member or any other party.

The legal and other costs incurred by a SSAS, but not VAT or stamp duty, may be paid by the principal employer of the scheme in which case they can be left out of the calculations.

Please note, where the property purchase price is subject to VAT, the stamp duty land tax payable is based on the price inclusive of VAT.

### Additional Potential Costs

When dealing with connected party transactions and transfers, transactions will be subject to stamp duty and VAT where applicable. Purchases from connected parties are disposals for capital gains tax purposes. The selling party should refer to their tax adviser for further guidance. Such transactions will be subject to the normal due diligence applicable to any property acquisition.



## The Process

Purchasing commercial property can be a complex process with many areas to consider. Taylor Patterson can guide you through this process but here are some of the main considerations:

### Valuation

The member will need an open market valuation of the property, where the seller is deemed to be connected to the member. In all circumstances Taylor Patterson Trustees Ltd would advocate that the member obtains a survey to assess the quality of the property.

Where the tenant is deemed connected to the member, an open market valuation for the rent will also be needed. Please refer to the appointment of a surveyor later in this guide.

### Connected Person

Where a member transacts with a connected party, there are additional HMRC requirements to consider. Such transactions must be carried out on an arms length market value basis otherwise there could be detrimental tax consequences for the scheme. Examples of a connected party are:

- A member, spouse or relative of a scheme member.
- A partnership where one of the partners is a member or a relative of a member.
- A company controlled by any of the parties detailed above.

### VAT Administration

Where a property is subject to VAT the member will need to appoint a person to handle the necessary VAT administration. Ideally this should be considered in the early stages of the property purchase process.

Please refer to Our Guide to Property & VAT for further information.

### Environmental and Legal Issues

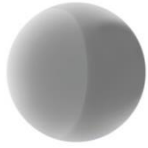
Taylor Patterson Trustees Ltd will need evidence that the commercial property complies with key property legislation, for example, asbestos at work and environmental legislation.

Taylor Patterson Trustees Ltd will rely on the acting solicitor, surveyor, property manager and member to demonstrate compliance with the relevant legislation and may request further action is taken as necessary to ensure compliance. As an example Taylor Patterson will request an environmental search as part of the normal due diligence undertaken by the solicitor.

As a guide here are the typical steps taken during a property purchase:



Member identifies property investment and a proposed plan for funding the purchase.  
Member or their adviser seeks consent to proceed from Taylor Patterson Trustees Ltd.



Member completes Property Questionnaire and returns to Taylor Patterson Trustees Ltd.



Taylor Patterson Trustees Ltd will again consider the financial proposals to ensure that the member will have sufficient funds to complete the purchase.



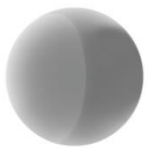
Taylor Patterson Trustees Ltd formally instructs the Solicitor and the Member instructs Surveyor / Lender / Insurance Broker / VAT Administrator (where appropriate).



Taylor Patterson Trustees Ltd approves the facility letter and other relevant documentation supplied by the Lender.



The solicitor confirms that the property title is good and marketable and produces draft documentation for review and approval. A property manager is appointed prior to completion of the purchase. Taylor Patterson Trustees Ltd instructs the solicitor to complete the purchase.



The solicitor notifies Taylor Patterson Trustees Ltd of the completion of the purchase including any lease and borrowing that may have been entered into.



Taylor Patterson Trustees Ltd sends the member a Post Property Completion Letter and this will include relevant information relating to the management of the property.

## Your Property Advisers



### **Appointment of Solicitors**

Taylor Patterson has a panel of approved solicitors who have considerable experience in all aspects of holding property in pension schemes and normally a firm from this panel will be instructed to act on behalf of the trustees. However, with the agreement of Taylor Patterson, a legal firm of the member's own choice can be used.

Formal instructions to the chosen solicitor will be given in writing on behalf of the trustees by Taylor Patterson and any solicitor of the member's own choice should be informed at outset that the trustees' instructions will come from Taylor Patterson.

**The property will be registered in the individual names of the pension fund trustees and Taylor Patterson Trustees Ltd should be the first named trustee on the title.**

We insist that the solicitor includes in all documentation a standard limit of liability clause to protect Taylor Patterson Trustees Ltd. The purpose of this clause is to limit any liability of the professional trustee to the assets of the pension scheme concerned.

### **Appointment of Surveyors**

Where a surveyor needs to be appointed, they must be MRICS or FRICS qualified.

For valuation purposes, the completion of the purchase must be within 6 months of the valuation, otherwise a further valuation will be required.

If borrowing is being used to purchase the property the lender may insist that you use a valuer from their approved panel, rather than a surveyor you may wish to appoint. Any valuation must be correctly addressed to the trustees of the scheme.

## Management of your property



### Property Management

One of the advantages of a Taylor Patterson SIPP or SSAS is that the member can act as the property manager thus avoiding the fees levied by property management firms that some other pension providers and professional trustees insist on.

Members who are valuers, surveyors or property managers may, of course appoint their own firm as the property manager, although valuations for HMRC purposes must be independent.

Please note, Taylor Patterson do not act as the SIPP or SSAS Property Manager and will therefore not have direct dealings with any tenants. Please refer to Taylor Patterson's guide to property management.

### Leases

Property can be let to the member or any connected party provided it is on an arms length commercial basis under a formal lease and the rent payable is supported by an open market rental valuation undertaken by a surveyor who is MRICS or FRICS qualified.

### Property Insurance

The property must be fully insured at all times. The policy will be taken out in the names of the trustees but arrangements can be made for the tenant to pay the premiums direct to the insurer. As scheme administrators we will require a copy of the insurance schedule at each renewal.

### Property Investment Advice

Taylor Patterson in its capacity as professional trustee and Mattioli Woods plc in its capacity as Administrator, cannot advise on the suitability, investment and taxation merits of direct property investment through pension funds and will not be responsible for any loss arising. Members should consult their financial adviser or property agents for further guidance and advice.

***The guidance notes are aimed at financial advisers and do not constitute advice. If you are a private investor, you should always seek independent financial advice.***

Taylor Patterson Trustees Ltd is the Principal Trustee of the Taylor Patterson SIPP and is the Professional Trustee and Scheme Administrator of the SSAS. Mattioli Woods plc is the Provider, Operator and Administrator of the Taylor Patterson SIPP.

Taylor Patterson is a trading name of Mattioli Woods plc which is authorised and regulated by the Financial Conduct Authority. A SSAS is not a FCA regulated product and does not come within the remit of the FCA.

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