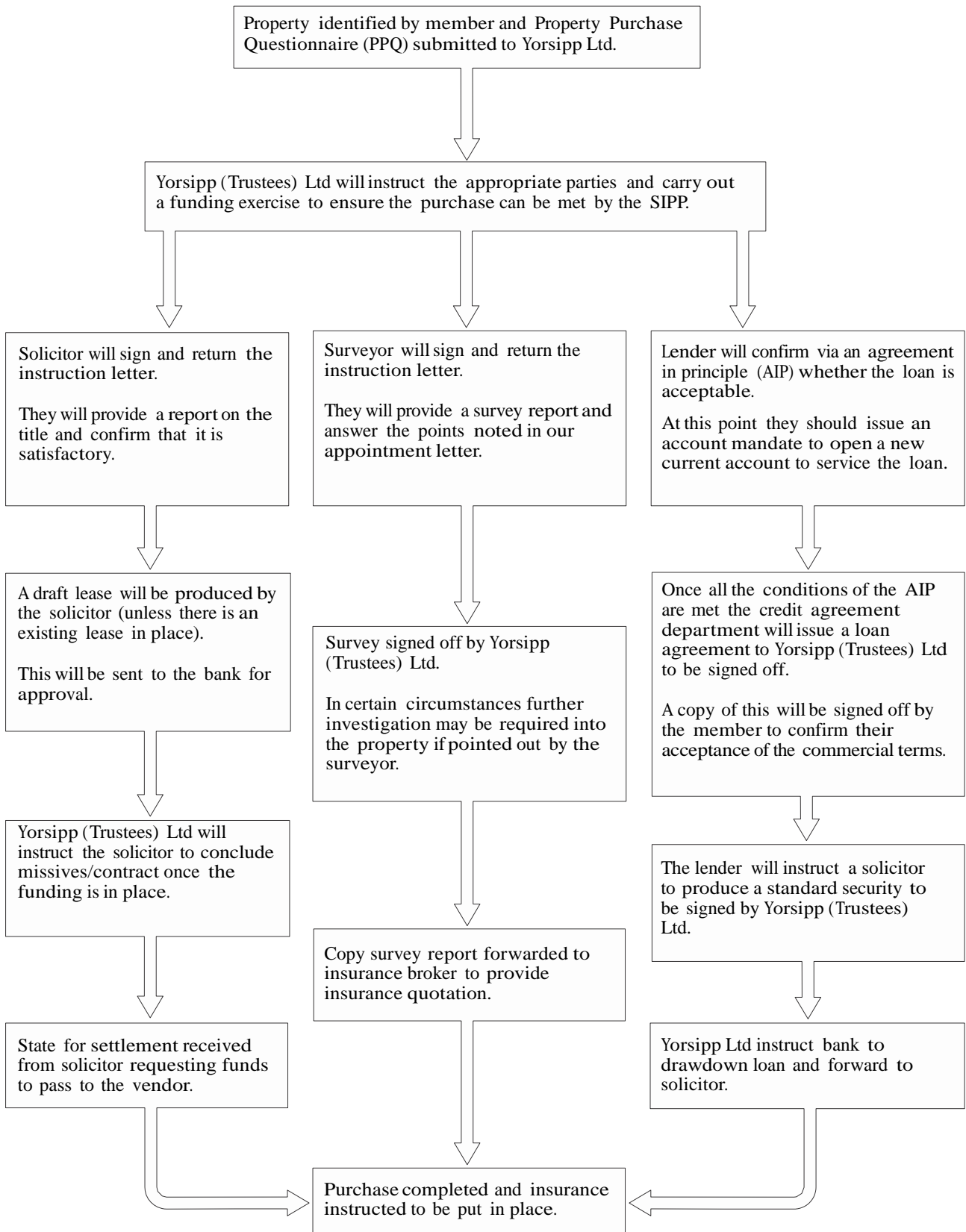




# SIPP Property Purchase Guide

# Property Purchase Flow Chart



## **Introduction**

One of the main attractions of a Self Invested Personal Pension is the ability to purchase Commercial Property. This in turn allows the property to be leased to the member, their business or any other party (including connected persons).

Among those Commercial Properties permitted are: Offices  
Industrial Units  
Shops  
Hotels  
Nursing Homes  
Commercial Development Land

Of the above, these can be either Freehold (in Scotland known as ownership) or Leasehold. However, if Leasehold there must be a minimum term remaining of 50 years and no onerous conditions.

For any unusual property we will always be happy to provide guidance as to the feasibility of the purchase.

As with any investment, consideration should be given to its suitability and liquidity especially if retirement benefits are required in the near future.

## **Member's Role**

The member may do the background preparation such as arranging finance and discussing legal matters with their chosen solicitor.

During the course of the purchase, issues may arise which the member may be required to discuss with various parties and approval given to the trustees.

The member cannot enter into any legal agreements with any party.

## **Residential Property**

The holding of residential property other than through a genuine collective investment vehicle will result in a tax charge. Exceptions include a caretaker's flat within a larger commercial building.

In certain circumstances grounds associated with a member's private residence, which are owned by the SIPP, may be treated as residential.

## **Joint Ownership - Syndicate Ownership**

It is possible for a syndicate of Yorsipp members to purchase a property. The ownership of the property held against the members records will be in direct proportion to the amount provided for the purchase.

A separate property bank account will be used in respect of the property transactions and from which payments will be made. Member's non property assets will be kept separate.

All members should consider liquidity of the property especially in the event of the death of a member, fund sharing on divorce or simply a member wishing to leave the syndicate.

Consideration should be given to a formal syndicate agreement. The agreement will indicate the wishes of the syndicate members in certain circumstances. Yorsipp will provide a standard syndicate agreement should the members wish to use it.

## **Connected/Unconnected Party**

It is possible to jointly own commercial property with either a connected or unconnected party. Where the party is connected the transaction must be at "arm's length" or a tax charge may apply.

Yorsipp will require certain conditions to be met when considering joint ownership; in cases where there is bank borrowing the lender may also require additional agreements. Where one or both parties are borrowing, care needs to be taken that either party's bank security is restricted to their share of the building.

Yorsipp must have the ability to sell its share of the property held on behalf of the scheme member(s).

## **In specie Contributions**

It is possible, with Yorsipp's agreement, that in lieu of a monetary contribution, an asset can be paid over to the pension scheme which can include Commercial Property. The tax relief will be the same as if a monetary contribution had been made.

To obtain tax relief a strict procedure must be followed and Yorsipp will provide a suggested wording. Members should seek their own tax advice as to the suitability of the wording.

Stamp Duty Land Tax (in Scotland now Land and Buildings Transaction Tax) and VAT (where applicable) is payable and must be funded by either a transfer or cash contribution.

Cash assets will also be needed for associated costs.

## Solicitor

Yorsipp allows the member to select the solicitor to act on the scheme's behalf. Consideration should be given to the solicitor's experience in dealing with property purchase through a pension scheme. The use of a solicitor without sufficient understanding of the process can cause delays and may lead to an additional cost with the solicitor and also the pension scheme. In certain circumstances Yorsipp may decline to use a solicitor nominated by the member.

For property in Northern Ireland, Yorsipp would recommend Wilson Nesbitt Solicitors as leading specialist solicitors in the SIPP and SSAS field carrying out transactions in Northern Ireland. Details of the firm are contained in the Schedule attached.

For property in the rest of the United Kingdom, Yorsipp would recommend Morton Fraser LLP as leading specialist solicitors in the SIPP and SSAS field carrying out transactions across the United Kingdom and details of the firm are contained in the Schedule attached.

Although the member may discuss issues with the solicitor they do not have the authority to give any instructions on Yorsipp's behalf.

Yorsipp shall instruct the chosen solicitor with a formal instruction letter detailing the requirements of the Trustees. The solicitor shall confirm the acceptance of appointment by returning one copy of the letter duly executed.

Where the member wishes the same solicitor firm to act for both the Vendor and the Purchaser, this may require the solicitor firm to seek Law Society approval. The member should clarify this prior to submitting the Property Purchase Questionnaire.

The solicitor will check the property Title and carry out the necessary conveyancing requirements. If a new Lease is required, Yorsipp shall provide a draft standard Lease. If an existing Lease is in place, the solicitor shall exhibit a Lease report for approval.

On completion, the solicitor shall forward the Transfer Deed (in Scotland known as the Disposition) and Lease for registration. The property will be held in the name of Yorsipp (Trustees) Ltd as trustee for the time being of the pension scheme on behalf of *member name(s) and member reference(s)*.

## Surveyor

The member may select the surveyor to carry out the appropriate valuation report on the property. The surveyor must either be ARICS or FRICS qualified. The valuation report must be addressed to Yorsipp (Trustees) Ltd and should include the following:

- open market value of the property
- open market rental value of the property
- insurance reinstatement value
- comment on whether further environmental investigations are required including asbestos
- the presence of composite paneling or any deleterious materials
- any property alterations that have taken place for which there should be statutory or title consent

A valuation report that has previously been carried out within the last 6 months, and includes the above requirements, may be accepted providing it can be addressed for use by Yorsipp (Trustees) Ltd.

If borrowing is necessary, the lender may require an additional valuation report to be carried out by a particular firm of their choosing.

## **Environmental Issues**

Yorsipp maintains an account with a specialist provider of desktop surveys. Should Yorsipp feel that an additional survey is required, this will be instructed without any further agreement. Where the cost exceeds £100 the member will be notified in advance.

If the information from the surveyor or the desktop survey requires further investigation, the member will be notified and written consent sought before further investigation will be carried out. If necessary, Yorsipp will instruct an Environmental report.

## **Borrowing**

A SIPP may borrow to assist with the purchase of a property. The amount that can be borrowed is 50% of the net scheme assets.

It is the member's own responsibility to find a lender and agree the terms of the loan.

A final copy of the facility letter will be sent to the member. It is possible to purchase a property entirely from borrowing subject to any conditions set by the lender who will require a first security over the property. The lender will require a sufficient rental amount to cover the mortgage repayments plus an additional margin. These repayments will continue regardless of any voids.

The scheme may borrow from any source including the member as long as it is on a commercial basis.

In all cases the liability of Yorsipp (Trustees) Ltd will be limited to the assets of the member's pension scheme. This may mean that if the debt exceeds the value of the property, the non-property assets within the SIPP may be used to settle the debt.

Borrowing for VAT is included within the 50% borrowing limit.

Yorsipp (Trustees) Ltd will not exchange contracts (in Scotland known as concluding missives), or in Northern Ireland authorise the release of an offer to purchase property to be duly accepted by the Vendor, until the loan agreement and legal charge (in Scotland known as the standard security) has been signed off by all relevant parties.

Yorsipp shall issue a copy of the facility letter to the member via email.

Any comments/queries should be notified to Yorsipp within 3 working days.

## **Value Added Tax (VAT)**

VAT may be payable on a property purchase and the funding of this should be considered.

The member may instruct Yorsipp (Trustees) Ltd to elect to waive exemption of VAT (or Opt to Tax). This will mean that VAT can be reclaimed on the purchase price (if elected prior to the property being purchased) and associated costs (upon receipt of the appropriate VAT invoices).

VAT can be reclaimed on refurbishment costs (upon receipt of the appropriate VAT invoice). VAT will be charged on the rent and any invoices issued by Yorsipp (Trustees) Ltd.

When the property is sold, VAT will be charged on the sale price.

The member must inform Yorsipp (Trustees) Ltd to elect to waive exemption of VAT (or Opt to Tax) before the completion of the purchase. This must be done at the time of completing the property questionnaire or by a separate written instruction.

Independent tax advice should be sought to ensure the correct decision is made.

Once a property has been elected to waive exemption of VAT the property will remain elected for 20 years (while still held by Yorsipp (Trustees) Ltd).

## **Reclaiming VAT**

To reclaim VAT on the purchase and any subsequent costs the following will be required:

VAT invoice addressed to Yorsipp (Trustees) Ltd, Eadie House, 74 Kirkintilloch Road, Bishopbriggs, Glasgow, G64 2AH. The invoice must include the invoicing company's VAT registration number, the tax point date and a breakdown of the net and VAT amounts.

VAT returns are made by Yorsipp (Trustees) Ltd on a quarterly basis.

## **Transfer of a Going Concern (TOGC)**

If a property has been elected to waive exemption for VAT and the current lease is continuing then the property may be classed as a Transfer of a Going Concern (or TOGC). The member should note that a property could only be considered to be a TOGC if Yorsipp (Trustees) Ltd elects to waive exemption before the purchase of the property has completed.

Independent tax advice should be sought to ensure the transaction can be treated as a TOGC. We will ask the solicitor acting on Yorsipp's behalf to exhibit evidence that the conditions of a TOGC have been met.

## Stamp Duty Land Tax / Land and Buildings Transaction Tax (SDLT/LBTT)

All commercial property transactions in England, Wales and Northern Ireland where the total paid (the purchase price plus any VAT) is in excess of £150,000 will be subject to SDLT.

The SDLT rates\* are as follows:

<b>Total Amount Payable</b>	<b>SDLT Rate</b>
£0 > £150,000	0%†
£150,001 > £250,000	1%
£250,001 > £500,000	3%
Over £500,000	4%

All commercial property transactions in Scotland where the total paid (the purchase price plus any VAT) is in excess of £150,000 will be subject to LBTT.

The LBTT rates\* are as follows:

<b>Total Amount Payable</b>	<b>LBTT Rate</b>
£0 > £150,000	0%
£150,001 > £350,000	3%
Above £350,000	4.5%

\*these rates are correct at the time of printing and subject to change by HM Revenue & Customs (HMRC) / Revenue Scotland.

†please refer to HMRC's website for further conditions of this level.

## Property Management

Yorsipp (Trustees) Ltd will require a property management agreement with a professional agent or in some cases the member may be able to take on this role. Yorsipp reserves the right to refuse the appointment of a property agent.

The member's appointed agent should satisfy themselves with the terms of the property management agreement before the property is purchased.

Yorsipp (Trustees) Ltd will retain the responsibility for invoicing and collection of rent.



## **Property Insurance**

All property must be insured by Yorsipp (Trustees) Ltd. All properties must be insured from the date of completion. We will provide quotes from our insurance brokers.

The cost of the insurance will be paid by the SIPP however under the terms of the lease this will then be recovered from the tenant. The exception to this will be where there is a property management contract in which the responsibility falls on the property manager to arrange the buildings insurance.

The insurance must include buildings insurance, property owners' liability cover of at least £5 million and provide for a minimum of 3 years loss of rent. The insurance should be in the name of Yorsipp (Trustees) Ltd. Where there is a property management contract in place and the responsibility falls on the property manager to arrange the buildings insurance, the requirements above should be met as far as possible, with the agreement of the property manager and their insurer.

If at completion, no quote has been accepted by the member and we have received no evidence that equivalent insurance has been arranged, we will revert to our most competitive quote and have it put in place. We will then seek reimbursement of the cost from the tenant. If reimbursement is not received within a reasonable timeframe we will take necessary steps to make funds available which may include the auctioning of the property.

Where the member(s) has chosen the insurer and we receive evidence of the insurance cover, a declaration will be required that the insurance meets our minimum requirements. If a declaration is not completed a fee for analysis of the insurance documents will apply.

Yorsipp must be advised immediately of any changes to occupancy of buildings and particularly if any part of a building becomes unoccupied. Similarly, you should notify us if there are any changes to your circumstances or those of the building which may increase the risk insured. If use/occupancy changes are discovered in the aftermath of a claim, it could invalidate the policy and mean cover is inoperative.

If a property is unoccupied, it will need to remain insured and the cost of this will be taken from the SIPP fund. If there are insufficient funds to meet the cost of the insurance premium, Yorsipp will take necessary steps to make funds available which may include the auctioning of the property.

## **Lease**

There are in certain cases times when Yorsipp can take over an existing lease in place at the time of the purchase. If there is no existing lease, the solicitor appointed by Yorsipp will set this up using our standard lease. This lease is a fully repairing and insuring lease which requires the tenants to maintain the property and pay the insurance premiums. For certain types of property a non-standard lease may be required.

Where an existing lease is in place at the time of the purchase, and there are rent arrears or any other outstanding charges, Yorsipp reserve the right to refuse the property.

The tenants will also be responsible for paying, where applicable, Stamp Duty Land Tax / Land and Buildings Transaction Tax (SDLT/LBTT) on the lease and any property management fees.

Where there is no borrowing, the minimum term is normally 5 years.

Where there is borrowing the term of the lease has to be, at minimum, the same as the term of the loan.

Certain types of tenancy may require specific lease conditions and this may involve specialist solicitors.

If a tenant does not comply with the terms of the lease they risk the lease being terminated and having to vacate the property. Where the tenant is a connected party, there is also a risk of significant tax charges if the certain terms of the lease are not adhered to.

### **Non Domestic Rates (NDR)**

These are rates payable to the local authority (in Northern Ireland the Land and Property Service) and are effectively a tax on the occupation of a non domestic property. The rates on a property are the tenant's responsibility and therefore all correspondence that relates to this matter should be dealt with by the tenant and the local authority.

Where there is no tenant, the SIPP funds must be used to cover this financial responsibility. Therefore we would expect 1 year's worth of NDR to be held within the bank account. Empty property relief can be applied for but is not guaranteed.

### **Utilities**

All utility bills should be settled by the tenant. Invoices from the utility providers must be addressed to the tenant and sent direct to them. Yorsipp (Trustees) Ltd will not settle outstanding invoices while a tenant is in situ.

### **Rent**

Yorsipp require the rent to be paid by standing order to ensure the regular payments are in the Trustee Bank Account on or before the due date set out in the lease.

Yorsipp will issue rental invoices directly to the tenants. Where VAT is applicable this will be included in the invoice.

Rent reviews are carried out on 3 or 5 yearly intervals. This will be detailed in the lease. Market conditions may lead to a request from a tenant for a rent concession, if we receive such a request we will advise the member. If the tenant is connected to the member, HMRC have strict guidelines on concessions.

In the event of a void and insufficient funds to meet mortgage repayments, the member may need to make additional contributions or sell non property assets. Where property is unoccupied, rates may still be charged and insurance cover will need to continue.

Where there are any arrears of rent or any outstanding property related charges, Yorsipp reserve the right to refuse to accept the property into the SIPP. Where rent arrears arise after a purchase, the tenant risks the lease being terminated and having to vacate the property. If the tenant is a connected party then there is also a risk of significant tax charges.

## **Refurbishment**

It is possible for a SIPP to refurbish a property. For an empty building this will be reflected in the rent of the new tenant. If there is a sitting tenant, care must be taken over improvements. The lease will normally require the tenant to maintain, repair and renew as necessary. Should the work be carried out by the SIPP, it must be reflected in the rental income.

If the tenant is connected and wishes to undertake substantial improvements, care must be taken that the improvements do not add significant value to the property, beyond what the SIPP could have afforded. As a general principal, if the improvements are of a fixed and permanent nature such as building extensions, electrical wiring and air conditioning, these should be paid by the SIPP and the rent amended to reflect these improvements.

If any work is being carried out by a connected party, this must be on a fully commercial basis. To evidence this at least one further quote for the work must be obtained from an unconnected party.

All improvements must receive prior approval from Yorsipp. Where we are required to enter into contracts, they must contain a clause limiting the liability of the trustees to the assets of the member's SIPP. For major works, we will require the appointment of a suitably qualified firm to oversee the project. Depending on the scale of the refurbishment, a Project Manager may be required. All invoices related to works carried out must be addressed to Yorsipp (Trustees) Limited and paid for from the Trustee or Property account. It is not possible to reimburse members where they have paid contractors directly.

## **Development**

It is possible for a SIPP to develop land; Yorsipp will need to see the proposals in advance. We will require the appointment of a solicitor to ensure all permissions are sought prior to building and to review all contracts for services.

It is possible for a SIPP to purchase land for residential development, however the property must be sold before it is habitable. There are a number of other difficulties with residential development. However we would be happy to discuss your proposals.

A suitably qualified project manager/architect will be appointed to oversee the development and approve any payments.

## **Sale**

When the time comes for the property to be sold, this should be confirmed in writing to Yorsipp by the member and any additional joint owners of the property.

A sale to a connected party must be at arm's length and will require an up to date valuation.

We would normally instruct the firm of solicitors who acted in the purchase unless otherwise instructed.

Yorsipp may opt to sell the property where there are insufficient funds in the SIPP to cover any fees or charges, whether property related or not. For example if the property is unoccupied and there are insufficient funds to cover the cost of insurance, or if Yorsipp's administration fees are outstanding.

### **Financial Adviser Fees**

Where any fees are due to a Financial Adviser in relation to a property transaction, these will be paid after completion of the transaction.

### **Disclaimer**

This document is for guidance and information purposes only and reflects Yorsipp Ltd and associated companies' understanding of the regulations at the time of writing.

You should not rely solely on this document when making any decisions.

Yorsipp Ltd and associated companies will not be liable for any losses resulting from the information provided in this document.

Yorsipp Ltd strongly recommends that you consult a suitable approved Financial Adviser.

Please note that Yorsipp Ltd does not give Financial or Investment advice.

## Property Purchase - Cost Analysis

### Pre Existing assets / Liabilities (exc cash)

Current Fund	£	-	
	£	-	
<b>Additional Funds Available</b>			
Transfers	£	-	
Contributions (net)	£	-	
Tax Relief	£	-	£ -
<b>Proposed New Borrowing</b>			
Bank			£ -
<b>Total Cash Available</b>			
			£ -
Property	£	-	
VAT	£	-	
<b>Expenses</b>			
SDLT/LBTT			
Registration Fees			
Legal Fees			
Lender Legal Fees			
Surveyor Fees			
Miscellaneous			
Yorsipp Fees			
<b>Refurbishment</b>			
Costs	£	-	
VAT	£	-	£ -
<b>Total Outlay</b>			
			£ -
<b>Surplus/ Deficit</b>			
			£ -

The above figures are Estimates only and should be used for guidance purposes only.

## SCHEDULE

Morton Fraser has its own dedicated Property in Pensions team, one of the largest of its kind in the country which acts for a large number of SIPP, SSAS and other pension providers, structures and arrangements throughout the United Kingdom and has extensive experience in this field built up over many years.

The Property in Pensions team acts in all types of pension real estate transactions, from all aspects of property acquisition, management, leasing and disposal to funding/security models and also in relation to syndication and multi member arrangements.

Morton Fraser completes hundreds of SIPP/SSAS transactions every year delivering clear technical advice and keeping to agreed fee levels and timescales to meet the requirements of each client.

Morton Fraser is a thriving, top ten Scottish law firm delivering clear advice to businesses, the public sector, individuals and families. With over 260 people working with us, we provide highly rated legal services across the UK. Our people work from our three offices in Edinburgh, Glasgow and London advising clients throughout the UK as well as internationally.

The firm has one of the country's top rated Commercial Real Estate Divisions covering all aspects of commercial real estate work and servicing all client requirements in this sector from its bases.

Wilson Nesbitt Solicitors are a Northern Ireland based law firm with offices in Belfast and Bangor. Established in 1948 the firm currently employs over 70 members of staff. Wilson Nesbitt offer a full range of legal services to their clients and are widely regarded the market leader in property law matters consistently year on year lodging more land registry applications than any other Northern Ireland law firm.

The SIPP/SSAS team forms an integral part of the Wilson Nesbitt Commercial Property department and the firm have been acting on a wide range of SIPP/SSAS sales and purchases for over 10 years. Headed by the commercial property partner the team has recently expanded in response to a rise in SIPP/SSAS work being instructed by a range of UK pension providers and SIPP/SSAS members directly.

The firm's litigation department provides valuable assistance to the SIPP/SSAS team in areas of rent recovery, evictions and other contentious work that may arise from time to time.

The firm continues to make significant annual investment to enhance their IT systems & in-house team capacity with the aim of ensuring that their case management systems help the firm deliver an ever improving client & client customer experience.