

## SIPP property investment: keeping up with the rent

Business owners may be able to use their own Self-Invested Personal Pension (SIPP) to buy commercial property and rent it to their own businesses – what are known as ‘connected parties’. Such cases can have particular benefits. However, they also have risks and responsibilities. If you are considering such an arrangement, this briefing note, looking at how rent arrears are dealt with, helps ensure you understand the implications.

Our [property guide](#) tells you all you need to know about investing in commercial property via a SIPP.

### The conflicting roles of landlord and tenant

It is absolutely essential that you are fully aware of the full implications of connected party ownership: it is not a meal ticket to be abused. The big mental adjustment to make is that you don’t own the property any longer, your pension does: you have two separate – and potentially conflicting – roles as landlord and tenant. If you find yourself protesting “but it’s mine!” that should be a red flag, warning you have not accepted a fundamental principle. Where there are problems with SIPP property investments, one of the most common and problematic can be under- or unpaid rent in connected party cases.

**i Connected party ownership: you have two separate – and potentially conflicting – roles as landlord and tenant.**

### Potential consequences

When arrears arise, the key thing is to try to prevent them being deemed irrecoverable. If the provider ultimately becomes obliged by its trustee duties to inform HMRC of irrecoverable arrears, onerous tax penalties could apply. HMRC are notified via what is called an ‘event report’ and, at this point, the unpaid rent becomes an ‘unauthorised payment’. The likely result will be HMRC imposing a tax charge of 40% of the unpaid amount against the tenant and a further 15% tax charge against the pension scheme administrator, which they are likely to collect from the SIPP fund.

Aside from the potential for tax penalties, members also need to be aware that their SIPP provider will be unable to process any benefit payment requests, property transactions (such as sales or new leases), or transfers out until the arrears have been cleared.

### Addressing arrears

There are various steps a SIPP provider will go through to try to prevent the above from happening. The first one is simply to contact the member and, if applicable, their adviser to find out why there are arrears and what has been, is being, or can be done to correct this.

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It is important to ensure that the actual rent due continues to be paid in addition to any amounts agreed in the repayment plan.

## Lease terms

The next step the SIPP provider is likely to take is to examine the terms of the original lease to find out if a deposit was paid or a guarantor provided. This is unlikely where the tenant is a connected party as these steps are usually only taken when the tenant is not known to the landlord or has a poor credit history. If a deposit or guarantor is provided, they can usually be used to clear the arrears, even if this is only in part. (The lease terms will confirm the situations in which the guarantor or deposit can be used.)

## Repayment plan

The third step would then be to put a repayment plan in place, wherever possible. This should clear the outstanding amount, including any interest imposed by the terms of the lease, within the current lease period.



If the lease only has a short term to run then the tenant will have to clear the amount due in full before they can enter into a further lease. If this is not possible, any remaining debt should be included in the terms of the new lease and the provider should take the advice of a surveyor to ensure they consider the repayment arrangement sufficiently commercial. They should also be able to confirm whether, in the circumstances, a personal guarantor for the rent should be sought or a rent deposit paid.

***i* It is important to ensure that the actual rent due continues to be paid in addition to any amounts agreed in the repayment plan.**

## Renegotiation

Sometimes things have reached a state where this is not possible. If a tenant – including a connected one – is experiencing genuine financial difficulties, it may be possible to renegotiate the terms of the existing lease. HMRC are willing to take a pragmatic approach to this as long as the re-negotiation takes place on a commercial basis. The costs of having a property lying empty plus the cost of securing a new tenant and putting a lease in place can sometimes exceed any losses that the pension scheme might make from a reduced rental income, and HMRC will usually take account of this.

The tenant would need to produce satisfactory evidence of the financial hardship and, before any rent reduction could be offered, the support of professional third parties such as a chartered accountant and a Royal Institution of Chartered Surveyors (RICS) surveyor would also be needed. Their advice can take into account relevant current factors such as the financial prospects for the tenant, the costs of the property becoming vacant and the prospect of getting a new tenant.

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The member has to treat a connected tenant just like any other tenant and pursue them with the same vigour.

A solicitor would then be needed to document any changes to the terms of the lease, often in the form of a side letter.

**i It is important to note that while this would help alleviate the difficulties the tenant has paying the ongoing rent, it would not automatically clear the arrears and these will still need to be dealt with on a commercial basis.**

## Legal action

If none of the above steps result in the arrears being cleared, the SIPP trustee's inevitable next step will be to commence legal action to terminate the lease and pursue the tenant for the outstanding rent. At this stage the trustee and their scheme administrator would also be expected to begin an 'unauthorised payment event report' with HMRC.

Beginning an event report is not the same as submitting it. It does not need to be submitted online to HMRC until January 31st following the end of the tax year in which the unauthorised payment occurred. HMRC cannot see the report until it has been submitted but the provider should be able to share the online report with the member and adviser to let them update it or add their own comments. There is no obligation to submit the event report to HMRC once it has been started. If the arrears are cleared, it can simply be deleted.

## Pursuing debts

Smaller debts (below £10,000 in England & Wales or £3,000 in Scotland) can be pursued through the Small Claims Court, although the provider would only be expected to do this where the tenant is not responding to correspondence or all attempts at mediation have failed. If the above process is supported by documentary evidence, you should usually expect a quick decision in favour of the pension scheme. If the debt is too big for the Small Claims Court, the provider may attempt legal action against the tenant involving a solicitor. However, they will weigh up the merits and potential costs of the individual case before taking such a big decision.

Put simply, the SIPP member has to treat a connected tenant just like any other tenant and pursue them with the same vigour. The SIPP provider - as trustee - is obliged to make that happen.

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Please contact your financial adviser or your Barnett Waddingham consultant if you would like to discuss any of the above topics in more detail. Alternatively contact Andy Leggett via the following:

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