

Property guide

This document is applicable to both BW SIPP and Flexible SIPP products

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Introduction

About this guide

Barnett Waddingham is one of the most popular pension providers for property transactions, with around 4,000 properties in our portfolio. This guide explains how you can use your **SIPP** with Barnett Waddingham to invest in commercial property.

Purchasing property through a **SIPP** involves several stages and can be complex. We have many years of experience of property transactions, and can offer significant expertise in all aspects. If you have any questions regarding any aspects of a proposed purchase after reading this guide, please do not hesitate to contact us.

Your Barnett Waddingham **SIPP** is issued under the **scheme**, and this guide should be read in conjunction with the following **scheme** documents:

- Trust Deed and Rules
- Terms and Conditions
- Key Features
- Glossary
- Allowable Investment Schedule
- Property Purchase Questionnaire
- Schedule of Fees

Our role

Our main role in this process is to ensure that any property purchase complies with **HM Revenue & Customs (HMRC)** rules, and other regulatory requirements. If you decide to invest in commercial property via a Barnett Waddingham **SIPP**, you will have the benefit of an experienced and designated client manager who will discuss and understand your requirements, co-ordinate the various elements of the transaction, and continue to administer the property investment thereafter.

Although we can offer generic guidance on property purchases, we are not authorised to give any specific financial, legal, tax or other advice. We recommend that you take independent specialist advice in connection with any property transaction, including advice on any specific risks relating to the transaction and the suitability of a property as an investment choice for your particular pension scheme. If you have any questions regarding a proposed purchase, please do not hesitate to contact us.

Where we refer to 'us' or 'we' in this guide, we mean BW SIPP LLP as the **operator** and/or BW SIPP Trustees Limited as the **trustee** of the Barnett Waddingham **SIPP**. Words or phrases, which are shown in **bold** throughout this document, are explained in the Glossary at the end.

Factors to consider

Direct investment in commercial property and land can be an attractive option for many **SIPP** investors. However, there are risks you should consider before making any decision.

The information below is not exhaustive but may help you to decide if direct investment in commercial property is right for you. If your **SIPP** was opened on or after 1 December 2023, you will need to appoint a financial adviser if you want to invest in commercial property. Your financial adviser will provide you with a personal recommendation on how you should invest the funds in your **SIPP**.

Benefits associated with commercial property investments in a SIPP

- You can get **tax relief** on contributions to your **SIPP**, which means a lower net cost when purchasing a property, compared to a personal or business purchase. In most cases, personal or third party (but not employer) contributions to a **SIPP** will receive **tax relief** and which is added to your **SIPP's** funds, with additional income **tax relief** available for higher or additional rate taxpayers and corporation **tax relief** for employers making contributions. Higher or additional rate taxpayers may claim additional **tax relief** through their self-assessment tax return, or directly from **HMRC**.
- Any growth in property value, while the property is held as an asset of your **SIPP**, is free from capital gains tax.
- The property can be used by your business, although any lease granted from your **SIPP** must be at a market rent, determined by an independent surveyor. Additional tax advantages may arise where you sell your business premises to your **SIPP** and lease it back – for example, rent paid to your **SIPP** is a deductible business expense and could reduce the income and/or corporation tax liability of your business.
- Rental income paid to your **SIPP** is gross and free from income tax and, as above, is also a deductible business expense and can reduce income and/or corporation tax liability.
- Your **SIPP** can borrow up to 50% of its net value towards the purchase, development or refurbishment of the property. We suggest limiting borrowing to 25% of the property value to help support property investments return a positive yield after costs.
- Any property held by your **SIPP** should fall outside your personal estate for inheritance tax purposes.
- Once any mortgage is paid off, ongoing rent and other contributions can continue to build the retirement fund, and these can be used for investments and/or to pay benefits on retirement.
- It is possible for you to sell all or part of the property to another member's plan, and (where applicable) there would be no Stamp Duty Land Tax, Land Transaction Tax or Land and Buildings Transaction Tax, or Value Added Tax payable for such transfers.

Risks associated with commercial property investments

- If a significant proportion of your **SIPP** is invested in property, it will be more vulnerable to the impact of a downturn in the property market compared to a diversified portfolio of investments. If you need help with making investment decisions, your financial adviser can recommend appropriate investments for you.
- Commercial property can take time to sell. This may result in a delay in paying benefits. You should consider diversification of assets within your **SIPP** and the need for liquidity to cover ongoing fees and any lump sums or income you are looking to draw from your **SIPP**.
- Investment in a commercial property carries its own individual risk as the value of a property is not guaranteed, and the return on sale may be less than initially invested. The value of a property is generally a matter of a surveyor's opinion and not fact, as the true market value is only determined once the property is sold.

- It may be necessary in certain situations to sell a property at an inopportune time such as if you need to raise cash in your **SIPP** to pay a mortgage, to meet ongoing fees, or to pay death or retirement benefits.
- Rental streams are subject to market fluctuations, and you may achieve less than you had hoped for in unhelpful market conditions.
- Direct investment in commercial property usually involves higher costs and additional responsibilities which you should consider before proceeding with any purchase, and if a proposed purchase does not complete, you will still be liable to pay all fees incurred from your **SIPP** funds.
- There are rules limiting the types of property you can hold tax-efficiently in a **SIPP**. You should also think about whether property is suitable for your needs as an investment held by your **SIPP** and whether the income it can generate will exceed the ongoing costs. We suggest you should consider a minimum property value of £200,000 to help ensure a property can generate returns to exceed ongoing costs.
- There will be one-off and ongoing costs for holding a property that will be met from your **SIPP** fund. These can include legal fees for the purchase/sale of the property, lease renewals, changes in tenants, borrowing costs, insurance premiums, business rates, and the costs of ensuring the property remains in a fit state. Property valuations will also be needed before you can take benefits from your **SIPP** which can add costs and may delay benefits being paid.
- Buying, owning and selling a property using your **SIPP** is different to the private purchase of a property. We have a panel of legal firms who understand the additional complexities of dealing with property under a pension scheme. We have negotiated competitive terms with these firms, and they are familiar with our processes and requirements. If you choose a legal firm that doesn't have experience dealing with property transactions under a **SIPP** it can add time and cost to property transactions.
- You can borrow up to 50% of the value of your **SIPP** to support the purchase of a commercial property, but borrowing will add to the ongoing costs. We suggest limiting borrowing to 25% of the property value to help support property investments return a positive yield after costs. Property owned by your **SIPP** cannot be used by you or any other party as security against personal borrowing.
- If you aren't willing or able to commit your own time to overseeing the day-to-day management of a commercial property, you'll need to appoint a professional property manager. We suggest appointing one where there is a residential element, common areas or multiple tenants. The property manager's fees will be payable from your **SIPP** and will increase the ongoing costs.
- Rental income is subject to market fluctuations and is not guaranteed. You should consider what the impact will be if rental income falls in the future, or if a tenant's business were to fail, and how this would impact your ability to cover the costs of holding the property in your **SIPP**.
- If the property or any part of it becomes vacant, mortgage repayments, service charges and business rates will still need to be paid, even though there will be no, or reduced, rental income to cover this. These costs and any others normally recoverable from the tenant will need to be met from your **SIPP**. There will also be additional costs to ensure the vacant property remains secure and in good repair to ensure insurance cover is not invalidated. We strongly suggest any new property purchase should only be considered if the property already has a tenant in place, or an agreement is in place for a tenant to take occupation immediately on completion.
- We have specific requirements, set out in this guide, for property insurance when holding commercial property in your **SIPP**. Not all insurance policies will provide the right levels of cover. If you arrange insurance yourself, it will need to meet our criteria. If it doesn't meet our criteria or you cannot provide evidence of insurance, we will arrange for cover under our block policy. You should consider whether the block insurance policy we make available meets your needs.

Key steps to buying a property

Buying a commercial property can be a complex task, but we make the process as simple as possible. Once you have identified a property to purchase, the steps are:

1. You assess the financial feasibility of the purchase – we can help with this, if necessary.
2. After reading this guide, complete the Property Purchase Questionnaire and submit it to us, along with all supporting documents. This acts as your official instruction to us to begin the purchase process.
3. We will instruct a valuation, if this has not already been provided, and assess the initial details on receipt of the documents. We will highlight and discuss any potential issues with you. We can usually give our confirmation that the property meets our requirements within a week of your submission.
4. The solicitor and bank/lender (if appropriate) are then instructed by us on behalf of your Barnett Waddingham **SIPP**.
5. We liaise with the solicitor to check the title and searches, deal with any environmental issues and resolve any queries arising from the valuation, lending documentation, or from the solicitor directly. We will ensure you are kept up to date throughout the conveyancing, all the way to completion (and beyond).
6. We receive the legal paperwork from the solicitor and request a completion statement.
7. We send the completion monies to the solicitor with all of the signed contractual documentation.
8. The solicitor informs us that the purchase is completed.

Completion will typically take place within one to three months of the initial submission, depending on the complexities of each case.

Contracts will not be entered into until we have approved the purchase, and there are sufficient funds available in your Barnett Waddingham **SIPP** to cover the purchase costs, including **VAT**, **SDLT** (or **LBTT** in Scotland and **LTT** in Wales), professional fees and expenses.

Acceptable commercial property

HMRC impose restrictions on the type of property that you can invest in through your **SIPP**. Acceptable property must generally be commercial and can include:

- shops and offices;
- warehouses and industrial units;
- agricultural land, forestry and woodland. Any associated fishing, hunting or other recreational activities must be provided at market rate to you, or any other **connected party**;
- garages and marine berths;
- public houses;
- land for development: this can be used to develop commercial premises, but not **residential property**; and
- property for development: commercial property can be developed and can be bought 'off plan' before it is built; provided that no residential element is added.

Leasehold, **freehold**, **feehold** and **commonhold** property are acceptable. Vacant properties must usually be let from completion under a formal lease, although we do not require this as a condition of purchase, provided that there is an expectation of letting in the future. Please note that banks may not be willing to lend unless a secure tenant is in place at the date of lending.

Our suitability assessment

We endeavour to allow the purchase of any property or land that is permitted by **HMRC**, and will review your application on receipt to confirm whether the property is an acceptable pension scheme investment. We reserve the right to refuse to proceed if the due diligence proves unsatisfactory, or if our initial assessment subsequently needs amending.

This may happen for, but is not limited to, any of the following reasons:

- environmental concerns – for example, contaminated land, or the presence of Japanese Knotweed or asbestos-containing materials; or
- if your **SIPP** becomes involved in frequent purchases and sales and we are concerned that this may be classed as ‘trading’ by **HMRC**, which could result in tax being charged on any income and capital gains; or
- if we decide that the risk of the property investment attracting unauthorised payment charges is too high; or
- if the **trustee** cannot obtain full legal title to the property, or the title is defective; or
- if the property cannot be insured; for example, because of flood risk; or
- if the purchase is not financially viable.

Residential property

HMRC consider any investments in **residential property** by a pension scheme to be taxable investments, and so we do not permit these to be held in our **SIPP**.

Residential Ground Rents are considered to be **residential property** by **HMRC**, as are flats rented out as a commercial venture to students, or houses that are being used, wholly or partially, as an office – unless they have the correct usage permissions in place, and contain no residential element.

HMRC have clarified, however, that any buildings used for the following purposes are not considered to be **residential property** for tax purposes:

- halls of residence (but not flats) for students;
- nursing homes, hospitals, hospices and prisons;
- childrens’ homes; and
- ‘job-related’ residential accommodation: there are two types that are suitable for **SIPP** investment:
 - a) property which is occupied by an employee who is neither a **member** of the pension scheme, nor **connected** with such a **member**, is not **connected** with the employer, and is required as a condition of their employment to occupy the property – for example, a caretaker’s flat; or
 - b) property which is occupied by someone who is neither a **member** nor **connected** with a **member** and who uses it in conjunction with business premises – for example, a public house with a landlord living above.

Indirect holdings of **residential property** are allowed if this has been set up through a ‘genuinely diverse commercial vehicle’ approved by **HMRC**, such as collective investment schemes, unit trust schemes, open ended investment companies, exchange traded funds, etc.

If you wish to purchase any **residential property** which does not fall into these permitted exceptions, either directly or indirectly, it will be subject to onerous tax charges by **HMRC** and we will not permit the property to be held in your **SIPP** for this reason.

Connected parties

You can purchase commercial property or land from anyone, including **connected parties**. Any purchase from, or disposal to, a **connected party** must be carried out on an **arm's length** commercial basis. Identical requirements apply to lettings to **connected parties**. There may be a liability for Capital Gains Tax (CGT) if you sell a property to your **SIPP**. CGT will not apply, however, for the period that your **SIPP** owns the property.

Connected parties are generally you, your immediate family, and any business that you or your family control. The legal definition is wider than this, and you should therefore confirm with us if you have any form of relationship with another party, with whom you are transacting.

Please note that, if a **connected party** is the sitting tenant in a property at the point of purchase, a new lease must be entered into on completion of the transaction. This is to ensure that the lease is carried out on a fully commercial basis, in accordance with **HMRC** regulations.

Energy Performance Certificate (EPC)

An EPC must be produced for the property, before it can be purchased. This should be supplied by the vendor.

Legislation is now in place which prevents property with an EPC rating below level "E" (that is, with either an "F" or "G" rating) from being let to a new tenant.

The rules applied to new lettings (commercial or residential) in England and Wales from 1st April 2018 and to existing leases in England and Wales from April 2023, unless they fall within one of the exceptions under the legislation. A link to the legislation is here: www.legislation.gov.uk/ukxi/2015/962/regulation/4/made.

The Scottish Government has also introduced the Assessment of Energy Performance of Non-Domestic Buildings (Scotland) Regulations 2016, which came into effect from 1st September 2016. These regulations require owners of qualifying properties to produce an Action Plan, which identifies energy performance and emissions targets and how these will be met.

Barnett Waddingham have an agreement in place with a national EPC provider for producing an EPC and the associated recommendation report. If you would like to take advantage of this service please get in contact with us, and we can help to arrange for a quote to be provided.

If the property you wish to purchase has an EPC rating of "F" or "G", you should consider the findings of the recommendation report to determine the amount of work that will be required to improve the rating to an "E" before proceeding with the purchase. All such property will soon be unlettable and we need to ensure that you are aware of this and have taken any associated costs into consideration. Quotes should be obtained for carrying out the work and you should factor these costs in to your decision on whether to proceed with the purchase or not. Failure to act is also likely to adversely affect both the value and marketability of the property.

Capital Allowances

Capital Allowances enable the owner of a property to offset some of the costs of ownership against the tax charged on the rental income. As **SIPPs** do not pay any tax on the rental income they are unable to take advantage of these; however, the **SIPP** is still able to pass this benefit on to the next owner of the property. This may have an effect on the eventual sale price and marketability of the property. In order to protect any capital allowances for future owners there are a number of steps that will need to be carried out prior to the purchase, and when the purchase completes.

If the property you are purchasing benefits from capital allowances at the moment, you should discuss this matter with your tax advisers to ensure that these rights are protected for future owners.

Joint property purchases

You can use your **Barnett Waddingham SIPP** as one of the parties to a **joint property purchase**.

Your **Barnett Waddingham SIPP** would participate as a tenant in common with the other purchasers and would sign up to a Declaration of Trust, Co-ownership Agreement or similar document that would set out the ownership percentage for each participant and various rules, such as what would happen if one purchaser wanted or needed to sell their share in the future.

This is important as, for example, your **Barnett Waddingham SIPP** may need to realise funds quickly to pay death benefits in a tax-efficient manner.

Almost half of our **SIPP** properties are jointly owned with another **SIPP** or the **member** personally, or other third parties such as individuals and companies.

Listed buildings

BW SIPP Trustees Ltd allow listed buildings to be held in a **SIPP**; however, we are likely to require further checks to be carried out on the property, to ensure that appropriate consents have been obtained for any building work that has been completed by both current and previous owners. We may also have further requirements to ensure sufficient controls are in place to protect the **SIPP** Trustees, in their capacity as the property owner, from any future breaches of listed building controls by the tenants of the property.

Purchases at auction

It is possible to complete purchases at auction. If you want to buy a property at auction through your **SIPP** with Barnett Waddingham, please contact us in advance of the auction date to discuss your requirements. We must approve the purchase before you bid at auction, or there is a significant risk that we will not allow you to proceed, even if your bid is successful. This could result in substantial costs, which you would be liable to meet personally.

We charge a pre-approval fee of £200 + **VAT** for auction purchases, and will need you to forward the auctioneers legal pack and a fully completed Property Purchase Questionnaire ahead of the auction, to allow us to perform due diligence on the property and ensure that this can be accepted into your **SIPP**. Please note that neither your **SIPP** nor the **trustee** should be named as a purchaser of a property in any contract until we have approved the purchase.

Please note that the pre-approval fee of £200 + **VAT** will be treated as a part-payment towards our standard property purchase fee, should the purchase proceed to completion.

Insurance

As the registered owner (or co-owner) of the property, the **trustee** must ensure that adequate insurance is in place. To make this easier we have introduced a 'block insurance policy'. Details of our policy are available on our website www.bwsipp.co.uk. In certain circumstances, the insurers may be unable to insure the property. If this happens, you will only be able to proceed with the purchase if suitable alternative insurance can be obtained elsewhere.

The insurance premium will be deducted initially from your **SIPP** funds, but this would normally be refunded to your **SIPP** by the tenant, in accordance with the terms of the lease.

We will receive a commission payment for the block policy, based on 15% of the insurance premium. Details are available on our website www.bwsipp.co.uk.

You can elect to use our block insurance policy, or you can arrange your own insurance cover. Our minimum cover requirements are:

- 36 months' rental cover
- £3m public liability cover

To ensure that appropriate cover is put into place and maintained, we will require a copy of your certificate of insurance when this is renewed each year. Please note that any work carried out in respect of your own insurance, including arranging payment, checking that the cover is suitable and updating our records, will be charged at our normal hourly rate.

Costs

You need to take account of all costs that will be incurred in making a purchase, and you will need to ensure that you have sufficient funds available, before completion.

Costs include the following:

- solicitor's fees;
- surveyor's fees;
- lender's arrangement fee;
- specialist reports; for example, environmental or asbestos;
- insurance; and
- **SDLT**, **LBTT** or **LTT** and **VAT** (where applicable).

Our panel solicitors' fees are fixed, and are set out in our Solicitor Fee Schedule. Any additional work that you may require will result in additional fees, which you must agree yourself with the solicitor or surveyor.

All costs must be met from your **SIPP** funds.

Our fees

In addition to the above, you will need to take account of Barnett Waddingham's **SIPP** fees for purchasing the property. Any ancillary work; for example, providing information on financial aspects, or issues relating to the ownership of **residential property**, will be charged on a time-cost basis. If a purchase fails to complete, you will still be liable for the costs incurred up to that point. Please refer to our Fee Schedule for full details.

Stamp Duty Land Tax (SDLT), Land Transaction Tax (LTT) and Land and Buildings Transaction Tax (LBTT)

Your **SIPP** will be responsible for paying any **SDLT** (in England and Northern Ireland), **LBTT** (in Scotland) or **LTT** (in Wales) due on the purchase. These taxes are calculated on the full purchase price of the property, including any **VAT** element.

Value Added Tax (VAT)

As **VAT** is a complex area, and may affect the running of your **SIPP**, we strongly recommend that you obtain independent professional advice in this area. The purchase price of a property may be subject to **VAT** if:

- The vendor previously elected to subject the property to **VAT**; and/or
- The property was built within the last three years.

There are other circumstances when **VAT** may be payable, but these are the most common scenarios.

It may be possible for your Barnett Waddingham **SIPP** to reclaim the **VAT**, but even so, the delay between paying the **VAT** and reclaiming it might create cashflow difficulties, and so any **VAT** element will need to be included in your costs when deciding whether or not to proceed with the purchase. Your tax adviser will be able to give you more information on this.

It is important to note there are circumstances where a property purchase may not be subject to **VAT**, including if the purchase is carried out as a 'Transfer of Going Concern' (TOGC).

If the property is subject to **VAT** on the acquisition cost, the rent that the **SIPP** charges will also be subject to **VAT** and your **SIPP** will have to report on, and forward, the **VAT** element to **HMRC** on a quarterly basis. **SDLT** (or **LBTT/LTT**) is charged on the purchase price after **VAT** has been added, even if the **VAT** can be claimed back.

You must let us know how the property is to be treated for **VAT** purposes by completing the relevant section in the Property Purchase Questionnaire. We cannot advise you on **VAT** and will follow the instructions of the solicitor acting for the **SIPP**.

What about VAT on rental income and sale proceeds?

If the property is subject to **VAT**, then **VAT** would need to be charged on the rent and on the consideration for any subsequent sale, which may reduce the attractiveness of renting or purchasing the property by a non-**VAT** registered entity.

What do your VAT fees cover?

Where a property is owned solely by a Barnett Waddingham **SIPP** or a collection of Barnett Waddingham **SIPPs**, we are able to complete the **VAT** registration and quarterly **VAT** returns, in relation to the property. Where there are other co-owners, it is up to you to appoint someone else to deal with the **VAT** registration and returns on behalf of all the owners.

Capital Gains Tax (CGT)

SIPPs are not liable for Capital Gains Tax in respect of the increase in value of any investments, while they are held as an asset of the **SIPP**. Please note, however, that if you are buying a commercial property from yourself or your company, you may be liable for tax on any capital gains made while the property was in your ownership, and you should factor this into any decision about whether to proceed with the transaction or not.

If you are in any doubt over this matter, please discuss this with your financial adviser and/or accountant.

Funding the purchase

You will need to ensure that sufficient funds are available to proceed with your purchase. The responsibility for the affordability of the purchase rests with you, but we will check that sufficient funds are expected to be available to finance the purchase, and any ongoing expenditure you may have.

There are several ways to fund a purchase of commercial property by your **SIPP** with Barnett Waddingham. These include selling existing assets, making contributions, transferring-in funds, or **in specie** assets from other **registered pension schemes** or **recognised overseas pension schemes**, borrowing, entering into a **joint property purchase** or a **syndicated property purchase**.

You can also transfer an existing property into your **SIPP**, subject to complying with certain procedures.

Selling existing assets

If you intend to sell any existing assets in your **SIPP** to fund your purchase, you need to leave sufficient time to sell those assets and transfer the resulting cash to the **client money account**.

Making contributions

If you want to make contributions to your **SIPP** to fund your property purchase, please refer to the Terms and Conditions of your **SIPP** with Barnett Waddingham for details of the amount that you can contribute, which is eligible for **tax relief**.

Borrowing

Your **SIPP** can borrow up to 50% of the net fund value of your **SIPP**, (calculated at the time the loan is drawn), to finance the purchase, by way of a commercial mortgage. The 50% limit must take account of any existing borrowing already in place, and the net fund value cannot include the property to be purchased;

- If there were £200,000 in your **SIPP**, your **SIPP** would be able to raise a mortgage of no more than £100,000, limiting property investment to £300,000.
- Following the property purchase, your **SIPP** will have an asset of £300,000 and a mortgage of £100,000 giving a net value of £200,000. As the mortgage is already at the borrowing limit, no further borrowing would be possible at that time.

Borrowing will increase the ongoing cost of holding a property in your **SIPP**. We suggest you consider limiting any borrowing to 25% of the property value to prevent borrowing costs from having a material impact on the investment returns you can achieve. Borrowing can be undertaken from any source; provided that the lender and the loan terms comply with **HMRC** requirements and are approved by us, prior to the loan's completion. Your **SIPP** can borrow from yourself or a **connected party**, provided that this is on **arm's length** terms at a commercial rate of interest, and is properly documented.

Mortgage repayments will be made from the rental income and also from any future pension contributions to your **SIPP**. If you are relying on the rent to meet the repayments and it does not do so, your **SIPP** will still be liable for the mortgage repayments and you may ultimately need to sell the property (or other assets) to pay off the mortgage.

If you are a co-trustee of your **SIPP**, the borrowing will be in the joint names of your **SIPP** and the **trustee**. If BW SIPP Trustees Limited are the sole trustee of your **SIPP**, as is the case for the BW Flexible **SIPP**, the borrowing will be in the name of BW SIPP Trustees Limited only.

As the **trustee** acts for many **members** of the **scheme**, it is necessary to restrict any liability under the mortgage document to the particular **Barnett Waddingham SIPP** that is involved. We therefore require clauses to be included in the mortgage agreement and we will need to liaise with the solicitor regarding this. This is to ensure that the lender can only obtain money from the assets of your **Barnett Waddingham SIPP** and not the assets of other people's **SIPPs** or the **trustee** or associated companies, if the proceeds from the sale of the property are insufficient to repay the borrowing.

Certain lenders may require your **Barnett Waddingham SIPP** to maintain a suitable cleared balance in a designated bank account to cover on-going capital and interest repayments. These requirements will vary from lender to lender.

In Specie Transfer

This is where all or part of a commercial property held under another registered pension scheme is transferred to your Barnett Waddingham pension scheme, rather than liquidating the property and transferring the proceeds as cash, or selling the property from one pension scheme to the other.

Please note the following points in relation to **in specie** transfers:

- The **in specie** transfer of a commercial property from one registered pension scheme to another is not normally subject to **Stamp Duty Land Tax (SDLT)** in England, Wales or Northern Ireland or **Land Transaction Tax (LTT)** in Wales; however, it may be subject to **Land and Buildings Transaction Tax (LBTT)** in Scotland;
- If the property has been elected for **VAT**, the receiving pension scheme will also need to register for **VAT** and opt to tax the property. Unless the transfer qualifies as a Transfer of Going Concern (TOGC), the receiving pension scheme will have to pay **VAT** on the value of the property. While the **VAT** can be reclaimed, the receiving pension scheme will still have to fund this in the short term;

- HM Land Registry treats **in-specie** transfers as a transfer for value, and there will normally be a registration charge of between £50 and £920 depending on the value of the property. In Scotland, Land Register of Scotland registration charges are between £60 and £8,250 depending on the value of the property; and
- The transfer of any mortgage attached to the property will be subject to both **SDLT/LTT/LBTT** and Land Registry charges.

In Specie Contribution

When you, or your employer, confirm that a contribution will be paid to your **SIPP** instead of making the contribution in cash, it is possible for the party making the contribution to instead transfer an asset of equivalent value. However, **HMRC** have recently withheld **tax relief** in respect of a number of these transactions and, as a result, we no longer generally permit them. It may therefore be preferable to make a cash contribution to your **SIPP**, receive any relevant **tax relief**, and use the increased fund to complete the asset purchase.

If you are considering transferring or contributing an existing property **in specie**, please contact us as soon as possible, as there are specific **HMRC** requirements that need to be followed. Because of the different tax elements that might become payable, we recommend that you consult with a tax specialist before deciding to proceed.

Your SIPP Solicitor

Barnett Waddingham have a panel of solicitors for you to select from, to deal with the property transaction on behalf of your **SIPP**. The advantage of using one of the members of our panel is that they have a huge amount of experience in dealing with property transactions within a pension environment. They are also fully aware of all the underlying legislation, are familiar with our specific trust deeds and rules, have agreed processes and contacts in place with us, and have also agreed to use our standard documentation.

All of this means that the transactions tend to happen more quickly and smoothly when our panel solicitors act for our **SIPPs**. As a result, our panel solicitors have been able to agree to charge our **SIPPs** on a standard flat fee basis. Please see our Panel Solicitor Fee Schedule, which contains a full breakdown of these fees, along with details of our solicitors. If you need additional legal work, which is outside the scope of these agreed terms, additional charges will be incurred, which you will need to agree with your chosen solicitor in advance of the work taking place.

You are also free to appoint your own solicitor should you wish, as long as there is no connection or conflict of interest. This cannot be the same solicitor who is acting for the party selling the property.

If we agree to proceed with your preferred solicitor, you must negotiate fees with them. All of your **SIPP's** legal fees will be paid from the **SIPP** funds.

The solicitor will undertake all the usual searches and check the title to the property to ensure that there are no issues. If a lease is involved, the solicitor will prepare any necessary lease documentation, in addition to handling the conveyancing. Clauses will need to be included in all the purchase documentation, restricting any liability arising from the transaction to the assets of your **SIPP**.

If you are a co-trustee of your **SIPP**, the solicitor will register the purchase at the Land Registry in the joint names of yourself and BW SIPP Trustees Limited, as trustees of your **SIPP**. If BW SIPP Trustees Limited is the sole trustee of your **SIPP**, the purchase will be registered in the sole name of the **trustee**.

If the purchase is a **joint property purchase**, any third party's name will also be registered, and a restriction will usually be placed on the register, such that all owners will need to consent to a sale or other transaction.

Leases

A lease will usually be entered into on completion of the purchase of the property.

Your **SIPP** with Barnett Waddingham can lease a commercial property to anyone, including you, your business, or any other

connected party. If the lease is to you, your business or another **connected party**, it must be on **arm's length** commercial terms.

The lease would usually be a 'fully repairing and insuring' lease and we have our own standard lease, which must be used in all cases. Rent is paid either to your property manager, or directly to your **SIPP**. If your business leases the property and fails to pay rent, tax charges will be levied on both the company and your **SIPP**.

The tax charge is typically 40% of the underpaid rent, which is charged to the business, and 15% charged to your **SIPP**, although it may be higher in certain circumstances. If your business genuinely cannot afford the rent, it may be possible to avoid tax charges if all dealings with the business are on an **arm's length** basis.

As the **trustee** acts for many **members**, it is necessary to restrict any liability arising from leasing the property to the particular **Barnett Waddingham SIPP** that owns the property. We therefore require liability limitation clauses to be included in the purchase documentation, and we will need to liaise with the solicitor regarding this. We cannot agree to a lease without this.

Glossary

Arm's length

The condition or fact that the parties to a transaction are independent and on an equal footing, or act as they would if they were independent buyers and sellers with no shared interest. The concept of an **arm's length** transaction is to ensure that both parties in the deal are acting in their own self-interest and are not subject to any pressure or duress from the other party.

Barnett Waddingham SIPP / BW SIPP

Your **Barnett Waddingham** (or 'BW') **SIPP** is a self-invested personal pension product, which is issued under the **scheme**.

Capital adequacy requirements

The Financial Conduct Authority's (**FCA**) requirements for calculating the amount of realisable capital that the **SIPP operator** must hold in reserve.

Client money account

A common bank account in our name with our chosen bank, which is used collectively for all **scheme members** and in which cash is held as client money in accordance with **FCA** requirements.

Commonhold

Commonhold is a system of property ownership in England and Wales, which was introduced in 2002 as an alternative to **leasehold**. It involves the **freehold** tenure of part of a multi-occupancy building (typically a flat) with shared ownership of, and responsibility for, common areas and services.

Connected party/ies

Connected parties are certain relatives, trustees, partners and companies. Where a transaction takes place between your **Barnett Waddingham SIPP** and a **connected party**, it must be made on **arm's length** terms.

A person is connected to an individual if that person is the individual's spouse or civil partner, a relative of the individual, the spouse or civil partner of a relative of the individual, a relative of the individual's spouse or civil partner, or the spouse or civil partner of a relative of the individual's spouse or civil partner. "Relative" is defined as brother, sister, ancestor or lineal descendant. Relative does not cover all relationships; in particular nephews, nieces, uncles and aunts.

A company is connected with another person if that person has control of the company or that person and persons connected with him/her together have control of the company. In this context, control means a person (and those connected with that person) being able to directly or indirectly control the affairs of a company.

In practice, this is usually likely to mean the individual or persons connected with that individual holding more than 50% of the voting rights of a company, although the definition of control is wide ranging and can extend beyond this.

A person is connected to any person he/she is in partnership with, and the spouse or civil partner of any person he/she is in partnership with, and a relative of any person he/she is in partnership with.

Feuhold

Property in Scotland is generally owned outright by the vendor similarly to **freehold** in England. Before November 2004, property was held as **feuhold** and subject to the rights of the feudal superior. These rights were abolished on 28 November 2004 and the term **feuhold** was discontinued. Property owned outright by a vendor can be subject to the terms of a lease and the same checks should be made as for **freehold** properties.

Financial Conduct Authority (FCA)


The **Financial Conduct Authority** (formerly the Financial Services Authority or FSA), or any replacement regulatory authority or authorities, is an independent, non-governmental funded body given statutory powers by the Financial Services and Markets Act 2000 (as amended by the Financial Services Act 2012) to regulate the financial services business in the UK. The **operator** is authorised and regulated by the **FCA**, and its registration number is 458323.

The **FCA's** contact details are:

Financial Conduct Authority
12 Endeavour Square
London
E20 1JN

 www.fca.org.uk

 consumer.queries@fca.org.uk

 0800 111 6768

Financial Ombudsman Service (FOS)

An independent, levy funded body that considers complaints between consumers and financial firms. The **FOS's** contact details are:

The Financial Ombudsman Service
Exchange Tower
Harbour Exchange Square
London
E14 9SR

 www.financial-ombudsman.org.uk

 complaint.info@financial-ombudsman.org.uk

 0800 023 4567 or 0300 123 9123

Freehold

Freehold property is owned outright by the vendor and is sold with 'title absolute' – that is, the right of ownership of the land (and any buildings) in perpetuity. **Freehold** property may be sold with a lease and an existing tenant, or it may be sold without any occupants.

HM Revenue & Customs (HMRC)

The government department that deals with the taxation of pension contributions and benefits.

In specie

The transfer of the legal ownership of an asset other than cash (for example, property or shares) without undertaking any sell or buy transactions.

Joint property purchase

Your **Barnett Waddingham SIPP** can jointly purchase a property with another individual's **Barnett Waddingham SIPP**, other individuals or companies, you personally or another third party. This is not the same as a **syndicated property**.

Leasehold

Leasehold property is not owned outright. The leaseholder has a lease from the freeholder (or landlord) to use the land and any buildings for a set number of years. The lease can be short-term, but is usually long-term (125 years or even 999 years). Property in Scotland can be held under **leasehold** subject to a maximum term of 175 years, but such holdings are less common.

Legislation and regulation

The rules and regulations of the **FCA**, and any statutes, statutory instruments and other legislation that apply to us and to the **scheme**. Where **legislation and regulation** are amended, references to **legislation and regulation** are to be construed as incorporating any amendments.

Member

Any person who has completed an application for membership of the **scheme**, and has been confirmed as a **member** of it by the **operator**.

Operator

BW SIPP LLP (company number OC322417). The **operator** is the administrator of the **scheme**, and is responsible for carrying out all the duties and functions required by the **FCA**, **HMRC**, **legislation and regulation** relating to the day-to-day running of the **scheme**.

Red Book Valuation

"Red Book" refers to the RICS Valuation Standards – Global and UK, 7th edition, which is the code of practice for members of the Royal Institution of Chartered Surveyors (RICS). A **Red Book Valuation** is a valuation completed by a RICS registered surveyor, which has been carried out to the standards recommended in this code of practice.

Recognised overseas pension scheme

An overseas pension scheme established in a country or territory mentioned in regulation 3(2) of the Pension Schemes (Categories of Country and Requirements for Recognised Overseas Schemes) Regulations 2006, or which satisfies other prescribed requirements.

Registered pension scheme

A pension scheme that has been registered with **HMRC** under Chapter 2 of Part 4 of the Finance Act 2004 in order to qualify for certain **tax reliefs**.

Residential property

HMRC rules provide that **residential property** can be in the UK or elsewhere and is:

- 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;
- any building or structure on any such related land;
- in limited situations a hotel, or similar accommodation, will be counted as taxable property though this will only be where it provides accommodation rights such as timeshare; or
- a beach hut.

Your **SIPP** with Barnett Waddingham cannot hold **residential property** as an investment, unless it is classified by **HMRC** as a type of **residential property** which is not to be treated as such.

Scheme

The Barnett Waddingham Self Invested Personal Pension is a **registered pension scheme** and is established and governed by a **trust deed and rules**.

Self Invested Personal Pension Scheme (SIPP)

A personal pension scheme which allows the individual to have more control over the manner in which the assets are invested. **SIPPs** permit a wide range of investments and offer flexible retirement options.

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

SDLT is payable if you buy property or land over a certain price in England and Northern Ireland. **SDLT** is charged at different tiered rates, dependent on the overall transaction value of the property. The rate of **SDLT** can vary, depending on whether the property is residential or non-residential, and whether it is **freehold** or **leasehold**. **SDLT** relief is available for certain kinds of property or transaction.

SDLT no longer applies in Scotland or Wales: **Land and Buildings Transaction Tax (LBTT)** is payable in Scotland and **Land Transaction Tax (LTT)** is payable in Wales.

Syndicated property

An investment by your **Barnett Waddingham SIPP** in a share of a property which is owned and managed through a syndicate property manager. This is not the same as a **joint property purchase**.

Tax relief

In most cases, personal or third-party (but not employer) contributions to your **Barnett Waddingham SIPP** will receive **tax relief**. We currently reclaim £20 from **HMRC** for each £80 (net) that you contribute to your **Barnett Waddingham SIPP**. This is added to your **Barnett Waddingham SIPP** funds. Additional income **tax relief** may also be available if you are a higher or additional rate tax payer and corporation **tax relief** for employers making contributions. Scottish residents, higher or additional rate tax payers may claim additional **tax relief** through a self-assessment tax return, or directly from **HMRC** themselves.

Trust deed and rules

The legal document which establishes the **scheme** and sets out how it is governed.

Trustee

BW SIPP Trustees Limited (company number 03011174), is a non-trading company set up to act as a bare trustee of the **scheme** and referred to in the **trust deed and rules** as the 'asset trustee'. Its sole purpose is to hold the **scheme** assets for the benefit of the **scheme** members. The **trustee** is not responsible for the day-to-day running of the **scheme** and as such is not regulated under the Financial Services and Markets Act 2000.

Value Added Tax (VAT)

This is a tax that is charged on most goods and services that **VAT**-registered businesses provide in the UK. **VAT** is charged when a **VAT** registered business sells to either another business or to a non-business customer. When **VAT**-registered businesses buy goods or services, they can generally reclaim the **VAT** they have paid.

If you would like to discuss anything relating to the Barnett Waddingham Self Invested Personal Pension please contact your usual Client Manager. If you have not yet been appointed with a Client Manager, please contact us as follows:



0344 443 0100



sipp@barnett-waddingham.co.uk

www.bwsipp.co.uk

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Barnett Waddingham LLP is a body corporate with members to whom we refer as "partners". A list of members can be inspected at the registered office. Barnett Waddingham LLP (OC307678), BW SIPP LLP (OC322417), and Barnett Waddingham Actuaries and Consultants Limited (06498431) are registered in England and Wales with their registered office at 2 London Wall Place, London, EC2Y 5AU.

Barnett Waddingham LLP is authorised and regulated by the Financial Conduct Authority. BW SIPP LLP is authorised and regulated by the Financial Conduct Authority.

