

Open Pension

Take control of your pension



A guide to Open Pension Property Investment





Contents

Subject	Page
1. Introduction	2
2. Who is involved in the property transaction?	2
3. How do I apply to purchase a property?	3
4. What happens next?	3
5. Which properties are acceptable?	4
6. What special points should I bear in mind?	5
6.1. Connected Transactions	5
6.2. Timescales	5
6.3. VAT	5
6.4. Estimated Purchase Costs	6
7. FAQs	7
8. Important points to remember	11

1. Introduction

1.1 Key points about property investments

- The property that you choose must meet certain conditions - for further details see section 5.
- Please note especially that properties cannot be bought at auction except by special prior arrangement.
- If there is not enough money in your Fund to meet the purchase price (plus expenses) then either:
 - (a) you can pay in more contributions, and/or
 - (b) you can transfer money into your Fund from another pension scheme, and/or
 - (c) the scheme may be able to borrow - for further details see section 7.

1.2 Note: L&C Pensions does not normally permit "joint purchases" where ownership would be shared with some external party but two or more Open Pension investors may pool their funds to share in a purchase.

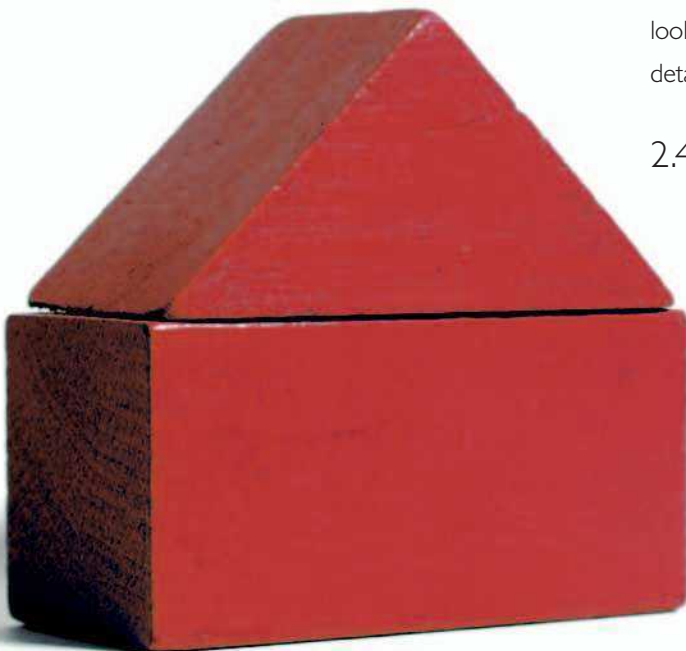
2. Who is involved in the Property transaction?

2.1 The purchase procedure will involve L&C Pensions' Solicitors as well as your own. If scheme borrowing is involved, the Lender's Solicitors will also be involved. Your own Solicitors will normally deal with most of the work prior to exchange of contracts (including investigating title and coordinating with the Seller's Solicitors). L&C Pensions' Solicitors will deal with certain special aspects relating to L&C Pensions' role as Trustee and will produce engrossments of the appropriate documents. For further details see section 4.

2.2 The property investment will include an occupational lease to a tenant. This could be your own business, an existing tenant who is already in occupation or to a new tenant. The rental income under the lease is not regarded as a contribution. If your business is the tenant your Solicitors will be required to advise you on the terms of the lease and agree the form of it with our Solicitors.

2.3 L&C Pensions will appoint "Managing Agents" to look after the property and collect rents - for further details see section 7.3.

2.4 At any time you may instruct us to sell the property.



3. How do I apply to purchase a property?

3.1 When you have chosen a property (see section 5) you must complete a Proposed Property Investment form. It is important that you answer all the questions and give as much information as possible. Delays will arise if we have to ask for more details.

Please send the completed form to L&C Pensions, 38-42 Perrymount Road, Haywards Heath, West Sussex RH16 3DN.

3.2 If the purchase is to involve scheme borrowing then you should approach your Lender as soon as possible and obtain an offer in principle - see section 7 and please note particularly the comments about valuations and the benefit of simultaneous instructions by the Lender and ourselves.

Send the offer letter to us with your Proposed Property Investment form.

3.3 When we have completed our initial checks on your proposed investment we will acknowledge receipt of your completed Proposed Property Investment form and initiate the purchase process. Costs will begin to be incurred at this stage.

3.4 After this point, if you have any queries as to progress these should be addressed to your own Solicitors who will be co-ordinating the transaction.

4. What happens next?

4.1 We will immediately instruct your Valuer/Surveyor to prepare a report on the property - but see section 7. Upon receipt of this report, and assuming that it is satisfactory, we will then instruct our own Solicitors to start the legal process. This is done by fax on the day on which we receive your Surveyor's report (unless the report raises any queries, in which case you will be advised). On receipt of our fax, our Solicitors will send a comprehensive pack of information and instructions to your Solicitors. Your Solicitors must follow all the instructions given in this pack and deal fully with all matters described. Any failure to do this will lead to delays.

4.2 Your Solicitors will carry out an investigation into title and liaise as necessary with the Seller's Solicitors. They will prepare a "report on title" which will be sent to our Solicitors.

4.3 Our Solicitors will liaise as necessary with the Lender and the Lender's Solicitors (if any).

4.4 Our Solicitors will prepare engrossments of the various documents required to be executed. They will then deal with the exchange of contracts and completion. If scheme borrowing is involved, then exchange and completion will be simultaneous unless the Lender guarantees funds for completion. The necessary money for the exchange and completion will be transmitted by our Administrators upon request from our Solicitors.

5. Which properties are acceptable?

5.1 Properties will normally be acceptable if:

- they are commercial
- they are in the UK
- they pose no significant risk to L&C Pensions as Trustee

5.2 Properties will not be acceptable if:

- they are wholly or partly residential (except as provided for by HMRC rules)
- they are outside the UK
- they would be expected to involve L&C Pensions in any expense that would not be covered by other available money in your Fund
- there is, or has been, evidence of contamination which could involve any liability now or in the future to L&C Pensions

5.3 Please note especially:

- L&C Pensions reserves the right to refuse to purchase any property if it would not comply with HMRC requirements or if in our opinion it would involve any unacceptable risk to L&C Pensions.
- L&C Pensions reserves the right to sell a property even without your consent if anything is discovered which in our opinion would involve us in an unacceptable risk or if it is necessary to comply with HMRC requirements.
- L&C Pensions will not purchase properties at auction or in similar competitive bidding situations unless special arrangements are pre-agreed.

5.4 Developments, extensions, improvements

- We will consider these on their merits. If accepted, the works must normally be carried out under the terms of a "building lease" by the tenant and at the tenant's expense. This expense will be compensated for by a rent free (or possibly a reduced rent) period following completion of the work. Work can be undertaken by yourself or a connected person, but only on an open market valuation basis as verified by a suitably qualified professional. The Scheme Property Managers will determine the appropriate length of this period and will supervise the work.
- The terms of the lease will be determined by L&C Pensions' Solicitors. After the end of the rent free or reduced rent period the rent will become the full open market rent as determined by the Property Managers.
- If the tenant requires a loan to assist with the financing of the work, then if required, it will normally be possible for L&C Pensions to agree to a charge against the property as security for the loan. L&C Pensions will not, however, accept any liability beyond this for repayment or servicing of each loan.
- L&C Pensions will not normally permit payments from your fund to finance development or other similar works because of the risk of cost over-runs.

6. What are the key points to consider?

6.1 Connected transactions

There is no objection in principle to a registered pension scheme purchasing or selling a commercial property from or to a member or a person/company connected with a member. For this purpose "connected" is as defined in section 839 of the Income and Corporation Taxes Act 1988. This definition includes yourself, close members of your family and any business with which you are associated. However, various tax charges are imposed where any investment transaction entered into by the scheme with any of the above parties is other than on open market valuation basis.

For example, if a scheme purchased a commercial property worth £600,000 from you but paid you £1,000,000, there will be £400,000 that has been passed to you and which will be taxed as an unauthorised member payment (resulting in a tax charge of 40% and potentially a further 15% charge on you and a scheme sanction charge of up to 40%).

6.2 Timescales

It is possible for a purchase to be completed in a few weeks but more realistically it could take up to 2 months or more, especially if unforeseen complexities arise. If scheme borrowing is involved this often increases the timescales.

Your own Solicitors will be co-ordinating the transaction up to its final stages so if there is a particular urgency you should let him know.

ALL ENQUIRIES AS TO PROGRESS SHOULD BE MADE THROUGH YOUR OWN SOLICITORS.

YOU MUST NOT MAKE ANY COMMITMENTS TO PARTICULAR TIMESCALES WHEN AGREEING HEADS OF TERMS WITH THE SELLER. TARGET EXCHANGE OR COMPLETION DATES MUST BE AGREED WITH OUR OWN SOLICITORS.

6.3 VAT

If the property you have chosen to buy is elected for VAT purposes you will need to take Independent advice on how to proceed. It may be appropriate for the property to be registered for VAT.

L&C Pensions can provide general information but cannot itself advise you on particular cases or deal with VAT accounting and returns.

Your own Accountants may be able to assist you or you may use the services of the Scheme Administrator's own Accountants subject to their normal charges. Some administrative input will also be required by L&C Pensions. The fees will be quoted on request according to the particular circumstances of your property. If an election for VAT is to be made it is important that action is taken before completion of the purchase.

6.4 Estimated Purchase costs

Typical costs for the purchase of a property valued at **£150,000** might be as follows (These are in addition to the normal Open Pension charges) :

Survey/Valuation fees	£750	Estimate ¹
Stamp Duty (1%)	£1,500	See ²
Your own Solicitors fees	£1,700	Estimate ¹
L&C Pensions' Solicitors fees		
Purchase, registration etc	£950	Estimate ³
Lease	£400	Estimate ³
Borrowing (if any)	£400	Estimate ³
Lender's loan arrangement fee	£750	Estimate ⁴
Administration charge for purchase	£ see our current fee basis ⁵	
Administration charge for new mortgage	£ see our current fee basis ⁵	
Total required (approximate)	£6,450 + Admin fees⁶	

1. The Surveyor and your own Solicitor are chosen by you and will confirm their actual charges with you or L&C Pensions' own retained Surveyors may be used.
2. At the time of print 1% for properties between **£150,000** to **£250,000**.
3. Actual charges will vary according to the work involved in a particular case.
4. Assumed to be 1% of loan on borrowing of **£75,000**
5. If a purchase has special features or is particularly complex or protracted we reserve the right to make an additional charge.
6. All charges are subject to the addition of VAT.

Once the property has been bought there will be ongoing "servicing" costs which could be typically as follows:

Property management	£ 575 pa	deducted from your Fund quarterly in arrear*
Administration	£ see our current fee basis**	
Insurance	£(variable)	usually recoverable from the tenant

* This charge currently applies to single tenanted property up to 2,500 sq ft. The fee will be confirmed according to the circumstances of each case and will be subject to annual review.

** We reserve the right to make an additional charge to that in our current fee basis if additional work is caused by changes in regulations or the requirements of any external authorities or if exceptional work should arise in a particular case.

These costs are current at the time of publication but may be changed. Current costs will be confirmed upon receipt of completed Proposed Property Investment forms. Other expenses will arise from time to time in addition to the fees for the fund itself, for example:

- Insurance premiums (if these are not recovered from the tenant)
- Possible additional inspections by Managing Agents needed as a consequence of an application for consent to alter etc
- Other works required in connection with the property
- Costs imposed on the owner by external parties, for instance in connection with provision of services, maintenance of roads, etc.
- Legal and administration costs associated with any subletting

If there should be insufficient money in the fund or cannot be forthcoming for any reason L&C Pensions may have to instruct the property to be sold.

7. FAQs

7.1 Scheme Borrowing

Can I obtain a mortgage?

You may not have enough money in your Fund to pay for your chosen property. One solution to this could be for the scheme to borrow from a Bank or other Lender. Because L&C Pensions holds your Fund as Trustee this means that the loan would be made to L&C Pensions or its nominee.

What about Security?

It is normal that the Lender would take a charge against the property as security for the loan. However, L&C Pensions will not itself guarantee the loan and will not agree to any loan terms which would allow the Lender to sue L&C Pensions or to be able to make claims against any of our assets apart from the property.

Prospective Lenders must therefore be told that any loan must be on the basis of "limited recourse". This is explained fully in our 'Third party funding of investment property purchases' – this note should be given to any possible Lender to explain the details.

Can I choose the Lender?

If scheme borrowing will be needed it is for you to choose a Lender and obtain an offer in principle. This should then be sent to us with your completed Proposed Property Investment form or as soon as possible thereafter.

Please note that Lenders generally require a valuation. L&C Pensions also require a valuation and an inspection report. Assuming that the same Valuers are to be used, we recommend that you ensure that the inspections for

both reports are carried out simultaneously in order to minimise costs. This may mean asking the Lender not to give instructions for their valuation to be carried out until we are able to give instructions for the report which we need or vice versa.

How much can I borrow?

HMRC rules limit the amount of borrowing to 50% of the net value of your fund immediately before the borrowing takes place. The borrowing limit includes existing borrowing and any amount borrowed to finance VAT on the property purchase. For this purpose scheme assets are defined as the market value of members' and dependants' unsecured and alternatively secured pensions and the market value of any uncrystallised benefits. Please see the Scheme Borrowing fact sheet for further explanation of the scheme borrowing limits.

In addition L&C Pensions will require that the borrowing is capable of being serviced in full - with an additional 10% margin – from the net* rental income, unless we are satisfied that the borrowing is otherwise viable, perhaps because the Fund has other assets or income.

We recommend that you consider the possibility of an increase in the payments required by the Lender if interest rates rise. If this should happen and there was then insufficient rental income to cover the outgoing payments then the Lender may force a sale of the property. This risk would be reduced if at the outset you allowed a greater margin between the amount of the rent and the amount of the loan service or if there were other assets in the Fund that could be drawn on to meet any future shortfall.

* net of property management costs

7.2 Valuation and Survey

What type of survey is required?

The type of survey to be carried out (e.g. full structural, building survey etc.) is basically up to you provided that the report includes certain particular items relating to possible risks to ourselves as indicated **below**

Where a survey/valuation has not yet been carried out it is advisable for you to alert the firm or individual to the fact that instructions may be received from more than one party. This should enable the Surveyor/Valuer to include all the various requirements in one inspection in order to keep costs to a minimum.

Which firm prepares the valuation or survey?

You may choose who is to carry out a valuation and a survey provided that the firm or individual chosen is independent and is appropriately qualified (e.g. RICS, RIBA) or you may choose the Surveyors who are retained by L&C Pensions.

However, in the case of a purchase by your Fund the property will be registered in the name of L&C Pensions or its nominee. This means that we shall give the formal instructions for the survey and valuation and it is essential that the survey and valuation reports are addressed to L&C Pensions or its nominee. This is mainly because the Surveyor would otherwise have no liability to L&C Pensions for whatever is said in the report. Your Fund would therefore not be protected from any errors or omissions in the report.

Where scheme borrowing is involved, it may be that the same Surveyor/Valuer could be used for our purposes as that used by the Lender.

What if I have already obtained a valuation?

You may have already had a recent inspection carried out by your chosen Surveyor/Valuer prior to the property becoming associated with the Open Pension. If this is the case it will often be possible for the Surveyor/Valuer to produce a fresh version based upon the work already done at little or no extra cost. Apart from the change of addressee, a previous report may not require very much amendment to the text but this will depend upon the circumstances.

However, in some cases our requirements may differ from those already investigated, in which case an additional charge may be raised by the Valuer. As owners, apart from the usual report on the condition of the property, we shall be concerned with any aspects that may potentially involve us in expenditure or other liabilities.

What about contamination?

Ownership of some properties may carry special risks because of known or possible contamination. Such risks may be suspected because of the past or present use or the location of a property.

If the survey indicates there is a potential risk then the property will be considered for acceptance only after a special environmental report has been carried out.

This will be commissioned by L&C Pensions with the cost to be borne by your Fund (or you may pay for this separately). Costs for a "Stage 1" report may typically be in the region of £1,000 to £1,500 (+VAT) and if a "Stage 2" report is necessary this may cost another £1,000 upwards depending upon the extent of the investigations needed.

L&C Pensions will not purchase a property which in its opinion is subject to any significant risk from contamination.

7.3 Property Management

Why do I need a Professional Manager?

L&C Pensions has duties as a Trustee to look after the assets that we own for the benefit of your Fund. We take these duties seriously as these are to your ultimate benefit.

Property is a valuable investment which needs to be looked after properly and "serviced". The importance of proper care and servicing of expensive cars is generally appreciated but strangely it is often the case that inadequate attention is paid to properties which are usually worth a great deal more. Knowledge is required of local authority regulations, general landlord and tenant law and how to maintain and enforce a lease in the best interests of the owner. We have taken the view that proper professional property management will be put in place for all properties accepted as investments by L&C Pensions.

Who are the Professional Managers?

The Scheme property managers are MKH Clokes Surveyors Limited. They are a commercial property consultancy which focuses on the needs of private clients, companies, Charities and Pension Funds that invest directly in UK property. Their fields of expertise include investment and property management, commercial agency and development, rent reviews, lease renewals and valuations.

In particular they have experience in dealing with this particular type of investment, where the responsibilities of L&C Pensions as Trustee of the pension fund and its



nominee as landlord meet the needs of scheme investors who are often also the tenant.

MKH Clokes will submit reports to us at least once a year following an on-site inspection. Informal inspections may also take place at other times.

What duties will the Professional Manager perform?

- Ensure prompt collection of rent
- Monitor the physical condition of the property and ensure that any repairs or maintenance which may be required from time to time are carried out (the cost of repairs and maintenance will be the responsibility of the tenant)
- Ensure that the various covenants in the lease are observed by both tenant and us as landlord (there are sometimes over 40 covenants for the tenant to observe)
- Monitor the use of the property to ensure compliance with current planning consents and any relevant regulations
- Deal with any notices served on us as landlord by the local authority or other bodies. Any notices served on the tenant will be their responsibility.
- Liaise with the landlord on rent reviews and lease renewals

How much does property management cost?

Periodic revaluations	Scale fee as appropriate
Lease renewals	10% of annual rental agreed (minimum fee £1,000)
Rent reviews	7.5% of annual rental agreed (minimum fee £750)
Tenants notices	£250 plus disbursements (minimum fee)

VAT will be added to all fee accounts

Do I need Insurance?

Yes. We will insure properties under a special "block policy" that covers all appropriate risks. The cost will normally be charged to the tenant under the provision of a standard full repairing and insuring lease.



8. Important points to remember

8.1 At your request we may instruct the Solicitors immediately but you run the risk that the Surveyor's report may reveal something that makes the property unacceptable to you or us. This would mean that you will have incurred some Solicitors' fees unnecessarily. If you are prepared to accept this risk you may tell us on your Proposed Property Investment form.

8.2 No action will normally be taken to implement any of the purchase procedures if there is not enough money in your Fund to complete the purchase and pay all the costs. We shall, if scheme borrowing is involved, take account of any loan facility that has been formally offered.

8.3 Exceptionally, if there is not enough money immediately available but you can confirm to our satisfaction that money will be received in due course then we will agree to proceed provided that we have at least £3,000 from you to hold on deposit to cover initial costs in case the purchase does not proceed to completion. We will not, however, exchange contracts unless availability of the whole sum required has been confirmed.

8.4 Please note that any amounts paid before we receive a completed application form will not be treated as a pension contribution until a completed application form is received and accepted subject to the normal conditions for acceptance of contributions.

8.5 If the investment is to be shared between your Fund and the Funds of one or more of your partners or associates then you must all complete a "Group Investment Agreement" - and a "Group Investment Request". No action will be taken to implement any of the above procedures unless all of these items have been received.

8.6 Subject to the above conditions, once we have received your completed Proposed Property Investment form the purchase procedures will be initiated.

8.7 If for any reason the purchase should not be completed, your Fund will still be liable for all costs incurred up to the time when the purchase procedure is halted. This applies whether you call a halt or whether something comes to light that is unacceptable to ourselves.

8.8 Once you have submitted your Proposed Property Investment form and up to the date of exchange of contracts ALL ENQUIRIES REGARDING PROGRESS MUST BE MADE VIA YOUR OWN SOLICITOR who should have all the relevant information.



**For more information about
L&C Pensions please contact:**

L&C Pensions
38 – 42 Perrymount Road
Haywards Heath
West Sussex
RH16 3DN

Tel: 0870 7566696

Fax: 0870 7566697

Email: info@lcpensions.com

Web: www.lcpensions.com

