

# PROPERTY INVESTMENT NOTES



Powered by the London & Colonial...



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## 1. Introduction

In addition to the potential for an increase in capital value, the property will be let out to a tenant and the rent will be paid into your fund. The rent is treated as investment income and does not count as contributions

- The property that you choose must meet certain conditions which are outlined in section 14
- Please note that properties cannot be bought at auction except by prior arrangement.
- If there is not enough money in your Fund to meet the purchase price (plus expenses) then:
  - (a) you can pay in more contributions, and/or
  - (b) you can transfer money into your Fund from another pension scheme, and/or
  - (c) Scheme borrowing may be possible - for further details see section 6
- The property may be purchased from a third party seller, or from you (subject to an independent valuation). A property owned by you may alternatively be transferred into your SIPP in lieu of a contribution.
- It is also possible for your SIPP to receive a transfer of a property that is held as an asset of an existing pension fund you hold sometimes referred to as a transfer in specie.
- In all cases we will carry out full legal investigations and enquiries into title and the purchase will follow the process as described in these notes.
- London & Colonial 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.
- At any time you may instruct us to sell the property.

## 2 The People

### Solicitors

The purchase procedure will involve solicitors to act on behalf of London & Colonial as Trustee of the Open Pension as well as solicitors to act for you, particularly if you or your business is to be the tenant - for further details please see section 10

### Lender

If scheme borrowing is involved the Lender will also require its own legal advice and will appoint its own solicitors. For further details see section 6

### Tenant

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 a new tenant. 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 - for further details please see section 9

### Managing Agent

On completion of the purchase London & Colonial will appoint a managing agent to look after the property and collect the rent - for further details see section 12

### VAT adviser

A VAT adviser will be required if the property is to be elected for VAT - for further details please see section 17

### Insurer

On completion of the purchase, we will insure the property on our block policy to ensure that cover is maintained against all appropriate risks - for further details please see section 11

### London & Colonial

London & Colonial is the Trustee and Administrator of your fund. As Trustee London & Colonial, or its nominee, will be the owner of the asset and will issue the appropriate instructions to all the professional advisers who are involved and liaise with them as necessary.

### 3 The Process

These are the main steps and further details are available later in these notes

- You choose the property you wish to purchase
- You choose a lender, if scheme borrowing is involved
- You complete a Property Investment Application Form and send it to us
- We carry out some initial checks on the proposal and let you know if the property is, in principle, acceptable to us and whether any further information is needed
- We appoint solicitors and valuer
- We co-ordinate the transaction through to completion, liaising with the appointed professionals and keeping you informed of progress
- We review the report on title and replies to enquiries, informing you of any issues that arise that we think might affect your decision to invest
- We review and sign the documents and ask for your final confirmation that you are happy for us to complete the purchase
- We transmit funds to the solicitors for completion and send you a copy of the financial statement
- On completion (or on exchange of contracts if earlier) we place the property on cover with our insurers
- We appoint the Professional Manager to collect the rent and deal with ongoing management of the property

#### 4. How do I apply to purchase a property?

You must complete a Property Investment Application Form and send it to us at, 38-42 Perrymount Road, Haywards Heath, West Sussex RH16 3DN.

The form provides the information that we need in order to be able to give you an indication in principle whether the property is acceptable. Please answer all the questions and give as much information as possible as this will help to avoid delays from having to ask for more details.

The property application form also enables you to outline your requirements for commencing the purchase process. You may wish to wait for the results of the valuation or until you have a formal offer of loan (or both) before we instruct Solicitors, because of the risk of starting to incur costs when something may subsequently be revealed in the valuation, or by the lender, that makes the property unacceptable to you or to us.

#### 5. What happens if I wish to acquire a property jointly with one or more other Open Pension member/s?

We will need the Property Investment Application Form as usual and in addition we will need you and the other SIPP member(s) to complete and sign a Group Investment Agreement and the Group Investment section in the Property Investment Application Form.

These forms set out the basis for sharing a common investment and the percentage share to be held by each SIPP.

The percentage shares must reflect the amounts invested by each SIPP.

#### 6. Scheme Borrowing

##### 6.1 Can I choose the Lender?

Yes. It is for you to choose a Lender and obtain an offer in principle. This should then be sent to us with your completed Property Investment Application Form or as soon as possible thereafter.

##### 6.2 Who is the borrower?

London & Colonial holds your Fund as Trustee and this means that any loan would be made to us or our nominee. Once we have a copy of the offer of loan, we will liaise with the lender to provide all the information they need to make the loan to your SIPP.

### 6.3 What happens if the lender wants a valuation?

Lenders generally require a valuation and will issue instructions for their report. We have our own requirements for a valuation and an inspection report and we must instruct a report to be addressed to us.

It may be possible that the same Valuers can be used for both reports. You may wish to 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.

### 6.4 How much can be borrowed?

Regulations limit the amount of borrowing to 50% of the net value of your fund immediately before the borrowing takes place. The borrowing limit includes outstanding existing borrowing and any amount borrowed to finance VAT on the property purchase.

In addition we will require that the borrowing is capable of being serviced in full from the net rent.

The net rent is the balance of rent passed to your fund by the property manager after deduction of their costs. The net rent needs to be sufficient to allow for the amount required to service the loan plus an additional 10% margin 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 were then insufficient rental income to cover the outgoing payments then the Lender might 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 and other expenses or if there were other assets in the Fund that could be drawn on to meet any future shortfall.

### 6.5 What about Security for the loan?

It is normal that the Lender would take a charge against the property as security for the loan. London & Colonial will not itself guarantee the loan and will not agree to any loan terms that would allow the Lender to take action against us or make claims against any of our assets other than the property itself.

Scheme borrowing must therefore be on the basis of "limited recourse". Our solicitors will liaise with the lender and their solicitors to ensure the necessary limitations are put in place.

## 7. Inspection and Valuation

### 7.1 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.

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.

### 7.2 Which firm prepares the valuation or survey?

You may choose who is to carry out the valuation and survey provided that the firm or individual you choose is independent and is appropriately qualified (e.g. RICS, RIBA)

### 7.3 Who arranges the valuation?

We will give the formal instructions for the inspection and valuation and it is essential that the survey and valuation reports are addressed to London & Colonial or our nominee. This is mainly because the Surveyor would otherwise have no liability to us for whatever is said in the report. Your Fund would therefore not be protected from any errors or omissions in the report.

### 7.4 How will I know if everything is in order?

We will review the valuation report and send a copy to you, letting you know if there are any matters that we think might be of concern to you or to us. If you change your mind about purchasing the property in your SIPP you can let us know and we will abort the transaction.

### 7.5 What if I have already obtained a valuation?

You may have already had a recent inspection carried out by your chosen Surveyor/Valuer. 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.

However, as a Trustee purchaser we have specific requirements which 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.

We will let you know the charges associated with the valuation we require.

## 8. 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.

The Surveyor and the Solicitors will be asked to consider whether there is any evidence of contamination and we will not purchase a property which is reported to be subject to any significant risk from any suspected contamination.

## 9. Lease of the property

### 9.1 Do you have any requirements for the lease to the tenant?

We normally expect to put in place a new Full Repairing and Insuring (FRI) lease with the tenant of the property. This is for the benefit of your fund and to assist towards obtaining the best price in the event of a sale.

### 9.2 What happens if there is a tenant in the property already?

If we are to acquire the property as a standing investment with a tenancy or lease in place, it will be necessary for the scheme solicitors to report to us on the terms. We will then be able to determine whether the terms are acceptable for an acquisition in the Open Pension.

An existing FRI lease will normally be acceptable but Assured Shorthold Tenancies (ASTs) and licences to occupy are typically less attractive because the terms are more favourable to the tenant than to your fund as landlord.

## 10. Solicitors

### 10.1 Who instructs the Trustee's solicitors?

We will send instructions to your chosen solicitors.

## 10.2 What aspects of the purchase do they cover?

The Solicitors will carry out all the usual investigations into title and liaise as necessary with the Seller's Solicitors.

- They will liaise with the Lender (if any) and the Lender's Solicitors
- They will also liaise with the solicitors acting for the tenant
- They will prepare a report on title which will be sent to us.
- They will prepare engrossments of the various documents required to be executed.
- They will deal with the exchange of contracts and completion.
- If scheme borrowing is involved, then they will arrange for a simultaneous exchange and completion - unless the Lender guarantees funds for completion.
- They will prepare a financial statement and request the necessary money from us for exchange and completion.
- They will deal with registration at the Land Registry

## 11. Insurance

### 11.1 Who is responsible for insuring the property?

It is normally the responsibility of the Freeholder of the property to insure the building. Assuming that the title is Freehold, we will place the property on cover under a special block policy that covers all appropriate risks. The premium will be settled from your fund and the cost will normally be charged to the tenant as insurance rent under the provisions of the lease. The insurance rent will then be reimbursed to your fund.

## 12. Property Management

### 12.1 Why does London & Colonial require a professional property manager or managing agent?

We have 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. This requires knowledge 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 formal professional property management should be put in place for all the properties we accept as investments in the Open Pension.

### 12.2 Who chooses the Professional Managers?

You may nominate a managing agent for us to consider or it may be possible to use our Scheme property managers who 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 SIPP property investments.

### 12.3 What duties will the Professional Manager perform?

The professional manager will:

- Submit reports to us periodically as they consider appropriate following an on-site inspection. Informal inspections may also take place at other times.
- 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 between the landlord and the tenant on rent reviews and lease renewals

## 12.4 How much does property management cost?

This may vary between firms and will depend upon the level of service we require. For comparison, MKHClokes fees for the services we require are as follows:

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

VAT will be added to all fee accounts

## 13. Choosing the professional advisers

### 13.1 What are your requirements for the professional advisers I wish to nominate?

We will need to satisfy ourselves that your nominated advisers have the appropriate qualifications and experience to deal with the type of property in question.

They need to be independent of you and have appropriate professional indemnity insurance.

They need to have resources available to ensure continuity of service throughout the transaction.

In the case of the solicitors you choose, they must have expertise in commercial property transactions and commercial lending, and ideally have experience of Trustee or pension scheme real estate purchases.

## 14. Property criteria

### 14.1 Which properties are acceptable as assets in the Open Pension?

Properties will normally be acceptable if:

- they are commercial
- they are in the UK
- they pose no significant risk to us as Trustee and owner

Properties will not be acceptable if:

- they are wholly or partly residential (except as permitted under regulations)
- they would be expected to involve London & Colonial in any expense that would not be covered by money available in your Fund
- there is, or has been, evidence of contamination which could involve any liability now or in the future to London & Colonial

### 14.2 Who decides if my chosen property is acceptable within the Open Pension?

- We reserve the right to refuse to purchase any property if it would not comply with regulatory requirements or if in our opinion it would involve any unacceptable risk to us
- We reserve 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.
- We will not purchase properties at auction or in similar competitive bidding situations unless special arrangements are pre-agreed.

### 14.3 What happens if the property is not acceptable?

We will let you know as soon as possible if something is discovered that means the property does not meet either our own or regulatory requirements. Unfortunately there is a risk that this could happen at any time up to exchange of contracts and if this is the case, the costs incurred to date will still be deducted from your fund.

You may then choose an alternative property or other type of investment.

#### 14.4 Does London & Colonial accept overseas properties?

Overseas properties are acceptable under the regulations and will be considered by us on a case by case basis. Generally speaking overseas transactions will be complex, time-consuming and costly.

You will need to carry your own detailed enquiries into the legal requirements and risks involved in purchasing property in the jurisdiction concerned including local tax and other financial liabilities.

The legal advice we require as a Trustee purchaser will generate a significant cost to your fund and the risks of a transaction not proceeding to completion are higher than for UK commercial property. For these reasons overseas properties of low value will generally not be viable investments.

#### 14.5 Does London & Colonial allow property developments, extensions and 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. 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 our 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 may be possible for us agree to a charge against the property as security for the loan.

- We will not, however, accept any liability beyond this for repayment or servicing of each loan.
- No building work may commence before all our requirements are met and appropriate contracts in place

#### 15. Connected transactions

##### 15.1 Can my Open Pension acquire a property already owned by me or my business? What if I want to buy the property from my Open Pension later on?

There is no objection in principle to a registered pension scheme purchasing a commercial property from or selling it 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 £800,000 from you but paid you £1,000,000, there would be £200,000 passed to you that would be taxed as an unauthorised member payment. This would result in a tax charge of 40% and potentially a further 15% charge on you and a scheme sanction charge of up to 40%.

Because of the risk of tax charges and the associated administration involved in reporting unauthorised payments and paying scheme sanction charges to HMRC it is our practice not to enter into any transactions with connected parties unless they are on arms length terms.

## 16. Timescales

### 16.1 How long will it take to purchase a property in my Open Pension?

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.

We will update you on progress via your IFA and we will be happy to answer any question you have as the transaction proceeds

## 17. VAT

### 17.1 What happens if the property I have chosen is elected for VAT purposes and how will I know?

You may wish to ask the seller at the start of the process whether the property is subject to VAT and if it is you will need to take independent advice on how to proceed. It may be appropriate for the property to be registered for VAT and if an election for VAT is to be made it is important that action is taken before completion of the purchase.

We can provide general information and we will submit the necessary VAT forms to HMRC but we cannot advise you on particular cases or deal with VAT accounting and returns.

If the property is elected for VAT we will ask you to nominate an appropriate person or firm whom we can appoint to act on our behalf and advise us on the VAT aspects.

Your own Accountants or VAT adviser may be able to assist, or you may need to select someone specifically for the purpose. Some administrative input will also be required by us and our charge for dealing with VAT is included in our fee basis.

## 18. Costs

### 18.1 How much will it cost to acquire a property in my Open Pension?

It is important to be aware of all the likely costs for the purchase of the property you have chosen so that you can judge the potential financial viability of the proposal and also check that you have sufficient funds available.

Typically costs will include those of third parties as well as London & Colonial's administration fees, for example:

Survey/Valuation fees - as you agree with your chosen person or firm but subject to our usual requirements for their report

Stamp Duty Land Tax including on the value of the lease – the solicitors will be able to advise you on this

Your own Solicitors fees- as agreed between you

Our solicitors fees - as indicated to you by your chosen firm but subject to our usual requirements

Lender's loan arrangement fee - as specified in their offer of loan

Lender's legal fees - as specified in their offer of loan

Our scheme charges – these are detailed in our current fee basis and include administration fees for the Open Pension itself, fees for the various aspects of the purchase and ongoing administration fees for continuing to hold the property

If a purchase has special features or is particularly complex or protracted we reserve the right to make an additional charge.

## 18.2 What are the ongoing costs each year?

There will be ongoing servicing costs including those of third parties as well as London & Colonial's fund charges which could be typically as follows:

Property management - as you agree with your chosen firm but subject to our usual requirements for a full management service. Typically this could be in the order of 10% of the rental income

Insurance - this will be arranged by us. The premium will be deducted from your fund and is usually recoverable from the tenant under the terms of the lease so there is usually no cost to your fund.

Our ongoing charges - as set out in our current fee basis. 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.

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 if it cannot be forthcoming by any other means eg from further contributions or borrowing, we may have to instruct that the property to be sold.

## 19. Important points to remember

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.

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.

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

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

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 yourself or whether something comes to light that is unacceptable to us.



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