

PROPERTY PURCHASE AND

PROPERTY TRANSFER IN

GUIDANCE NOTES,

QUESTIONNAIRES AND

DECLARATION

PROPERTY PURCHASE GUIDANCE NOTES, **QUESTIONNAIRES AND DECLARATION**

You have expressed a wish to purchase a commercial property through your Self Administered Pension Scheme/Self Invested Personal Pension (your “scheme”).

This questionnaire and guidance notes are the first step in that process. Could you please read the notes carefully. If you have any queries or concerns please give us a call but, either way, the purchasing process cannot commence until your signed declaration is returned.

There could be several interested parties involved in this purchase. Your scheme (perhaps in partnership with other pension schemes); the vendor; solicitors acting for all parties; a bank if your scheme is taking a mortgage and one or more tenants. The process will go a lot more smoothly if every party understands our requirements and where they fit into the chain of events.

Please read the booklet carefully, complete the questionnaires as fully as possible, sign the declaration at the back, take a copy for your own records and return this original booklet to us.

We strongly recommend you complete as much of the questionnaire as possible at this stage because it would be a shame, if, after spending £240 + VAT on a land contamination report we later determine that the deal cannot proceed due to insufficient funds or a residential element etc..

CONTAMINATED LAND AND ENVIRONMENTAL DUE DILIGENCE

The first thing we must do is commission a land contamination survey to determine whether we can agree to buy the property through your pension scheme. **Please do not instruct solicitors or valuers until we have (hopefully) obtained a clean bill of health.**

We live in the oldest industrialised society in the world, a legacy of which is the potential to pollute land and water for many years after the industrial process that gave rise to the pollution ceased. The scale of the issue is significant and contamination can occur even in locations where it is not suspected. For example, poor records were kept as to the locations of where the diseased cattle were buried after the 1960's outbreak of foot and mouth, the 1980/90's BSE epidemics as well as the most recent occurrence of foot and mouth. Contamination can be in both rural and urban environments.

Part IIa of the Environmental Protection Act 1990 sets out for the first time a statutory definition of *contaminated land*. It is defined as being;

Any land which appears to the Local Authority in whose area it is situated to be in such condition, by reason of substances in, on or under the land, that;

- a. *Significant harm is being caused or there is a significant possibility of such harm being caused, or;*
- b. *Pollution of controlled waters is being, or is likely to be caused.*

Legal and financial responsibility for the remediation of land which, in the opinion of the Local Authority is contaminated, falls either on a "class A" polluter or a "class B" person. Essentially, the "class A" polluter is a person who "caused or knowingly permitted the pollution to be in, on or under the land". Both European Union policy and that of the United Kingdom is that the "polluter will pay". The purpose of defining a "class A" polluter is to ensure that those who are responsible for environmental damage should be held liable for any clean-up of the land.

However, where the polluter after "reasonable enquiry" cannot be found, the "owner" or "occupier" of the land will be the person liable. They are known as a "class B" appropriate person. More specifically, a "class B" appropriate person is defined as being;

- *The owner of land means a person (other than a mortgagee not in possession) who, whether in their own right or as a Trustee for any other person, is entitled to receive that rack rent of the land or where the land is not let at a rack rent, would be so entitled if it was let.*

This puts Trustees of pension schemes right in the firing line as they will be treated as the "owner" for the purpose of the Act.

The action Trustees need to take depends on whether they are intending to purchase commercial property, or already own such property and are looking to transfer their pension scheme Trusteeship and Administration to Greyfriars.

New Property Purchases

We need to be alerted at the earliest possible opportunity to a client's potential interest in purchasing a commercial property so that we can obtain a sitecheck report. If the property achieves a "pass" we will be prepared as a Professional Trustee to agree to the purchase of the property but if it fails we would need to discuss the contents of the report with our clients and/or their advisors. This may result in further investigation, at the end of which we might still not be able to be party to the proposed purchase.

'In-Specie' Transfers

This is the transfer of property without 'consideration'. Examples include our taking over as the Professional Trustee of an existing pension scheme or the transfer of property from one pension scheme to another.

Initially, we will ask for a copy of any previous sitecheck report. If this is not available or hasn't been done we must commission a sitecheck report, the contents of which will determine whether or not we can agree to accept the property.

We should stress that the pension fund or client as appropriate will be responsible for meeting the cost of the sitecheck report even if it subsequently means we could not agree to buy or accept the property.

It should also be noted that the report we will commission is more comprehensive than the 'basic' report that can be obtained at a cost of approximately £90 plus VAT. The problem with the basic report is that it offers no guidance as to the wisdom of accepting the property, which the more comprehensive report does. We obviously need this guidance in order to make an informed decision. We are also happy to provide your solicitor with a copy of the report to avoid duplication of costs.

COSTS

Sitecheck reports normally cost £240 plus VAT for sites of up to 15 hectares. There may be increased costs for larger sites or sites in particular locations and if this is the case we will confirm this with you prior to ordering the report.

THE CONTROL OF ASBESTOS AT WORK REGULATIONS 2002 (CAWR)

We all now know how dangerous asbestos is. At present, approximately 3,000 people die each year from asbestos related diseases, roughly equivalent to road accident deaths. However this figure is expected to rise to 10,000 per annum by 2011.

In response to growing concern and a long period of consultation CAWR was enacted on 21st November 2002 and came fully into force on 21st May 2004.

These regulations impose a “duty to manage” asbestos in all non-domestic properties. By that date all non-domestic properties had to have site specific asbestos management plans in place. Asbestos can be found in all but the newest of buildings. No building built before 1999 is considered safe.

It should be noted that 21st May 2004 was considered to be the “drop dead date” and after that time properties may be subject to on the spot inspections of the management plan document by the Health and Safety Executive. Criminal prosecution could result from failure to comply, without mitigation, particularly if it is considered that the condition of asbestos within a property could represent an immediate and serious risk to building occupants and any others who may come into contact with it.

The management of asbestos in line with the regulations should involve for each property;

- ◆ **Identification** of all asbestos containing materials (ACM's) and an assessment of their condition;
- ◆ **Record**, keep and update written records concerning the location, type, form and condition of ACM's;
- ◆ **Risk Assessment** – where ACM's are present, assess the risk of exposure to building occupants and others who may come into contact with them;
- ◆ **Prepare and Implement a Management Plan** – a written plan including measures for managing the risk such as properly maintaining asbestos and, where necessary, its safe removal;
- ◆ **Provide Information to Others** – regarding the location and condition of ACM's to every person likely to disturb them and also the emergency services;
- ◆ **Review** – periodic review of this information.

In practical terms, the above creates the need for each property to have an asbestos survey undertaken. We recommend this is done by an appropriately trained and qualified person although the legislation does not specifically require this.

If their report indicates the presence of asbestos an “asbestos management plan” must be produced and implemented. In its simplest form this may merely require stickers being placed appropriately warning that asbestos is present in certain areas of the building but could also require more active measures.

More information can be obtained from the Health and Safety Executive (HSE). They have produced “A Short Guide to Managing Asbestos in Premises” which can be viewed at www.hse.gov.uk/campaigns/asbestos

The “Dutyholder”

The party responsible for obtaining an asbestos assessment survey and, if appropriate, the implementation of an asbestos management plan is the “dutyholder”. This is defined as *“every person who by virtue of a contract or tenancy has an obligation for the repair or maintenance of the premises, or, in the absence of such, control of those premises or access thereto or egress therefrom”*.

The dutyholder will be the person responsible for the repairing obligations to the property under the lease. We believe the tenant of each property will be the dutyholder and will therefore be liable under law to comply with these regulations and meet the cost.

If, however, the Trustees are considering purchasing or transferring in a property that is currently empty then they will be the dutyholder for the purposes of obtaining an Asbestos Survey. Under these circumstances it is a condition of our agreeing to accept the property that such a survey is carried out by a suitably qualified person at the pension schemes expense before we can agree to accept the property.

In large part, the Trustees are “off the hook” as far as asbestos is concerned and it is the tenant as dutyholder who will have the ongoing responsibilities but it should be noted that the tenant and the member/s of the pension scheme are often one and the same.

Finally, there is a real concern in the UK about the risk to human health as a result of exposure in the workplace to asbestos containing materials. The new requirements embodied in CAWR over and above previous legislation are an attempt to address these concerns. These regulations place an unprecedented and unavoidable “duty to manage” asbestos on the dutyholder. The legislation will be strictly enforced and criminal prosecutions may result from failure to recognise and act upon information received from property professionals in this matter.

This is our basic understanding of the legislation but we are not experts by any means. Neither Greystones Asset Management LLP nor GAM Trustees Ltd. can accept any liability for actions taken or not taken as a result of these notes and expert advice from appropriately qualified persons should always be sought.

OTHER REQUIREMENTS – PROPERTY PURCHASES

Property Purchase Questionnaire

We will require some details of the property including address, tenure (freehold or leasehold title), tenant details etc. A questionnaire is attached in Appendix I.

Survey and Valuation

The property must be inspected by a surveyor who is a member of the Royal Institute of Chartered Surveyors (or equivalent). The surveyor's report must be addressed to the Trustees of the pension scheme. We may accept a report that has been prepared to a prospective lender but it must be addressed to ourselves. It is the client's responsibility to arrange this and the cost of the report can be met by their pension scheme or anyone else including the sponsoring employer.

The report should include a basic assessment of the condition of the property and a recommendation as to whether a full structural survey is required. In addition we require the insurance reinstatement (re-building) value and if the property is to be leased to the client's own business, a market rental assessment.

If the property is to be acquired from a connected party (including the member, a relative of the member or a business associated with the member or the member's relatives), the purchase price must be determined by an independent market valuation.

Using Client's Solicitor

If the property purchase is on behalf of one pension scheme the client may instruct a solicitor of their choice. Their solicitor is acting on behalf of the Trustees and must be formally appointed in writing by the Trustees. The purchase is in the name of the Trustees of the scheme. The solicitor will probably undertake a basic environmental risk assessment survey in addition to our own requirements. Alternatively, we would be happy to provide the solicitor with a copy of our report in an attempt to avoid duplication and unnecessary costs.

Using our Solicitor

Under all other circumstances we will appoint our own solicitors. They are highly experienced in dealing with acquisitions on behalf of all types of pension schemes and will be familiar with our requirements. Their fees are time costed and will therefore vary depending upon the complexity of the transaction.

For purchases on behalf of two or more pension schemes and/or other parties, our solicitors must be appointed. This is because such a transaction is complex and our solicitors will prepare a document apportioning the ownership of the property and any mortgage liability between the owners as appropriate. This document will also give each owner first refusal to purchase if another owner wishes to sell their share.

Arranging Finance

The Scheme may borrow an amount within limits defined by the Inland Revenue. This is currently 50% of the net asset value of the Scheme (including any existing borrowing) and includes any short-term loan required to bridge VAT payable on purchase. It is the client's responsibility to arrange the loan, which must be in the names of the Trustees of the Scheme.

The lender must always agree and clearly state in the loan documents that the liability of GAM Trustees Ltd will be limited to the assets of the pension scheme.

The client cannot make loan repayments personally or give any personal guarantees.

Contracts cannot be exchanged until we have received an acceptable mortgage offer, have sufficient monies within the Scheme to cover the purchase price and any cancellation period available to the client under FSA Rules has expired or been waived.

VAT

If VAT is payable on the purchase price, the client may need to make arrangements for a short term loan, in the Trustees' names, until the Scheme recovers the VAT from Customs and Excise. If the property is VAT opted, we can arrange for the Scheme to be registered for VAT to enable the VAT payable on purchase to be reclaimed, and this means that we must also opt to tax on the rent. We cannot give any advice on whether or not the Scheme should be registered for VAT or whether an option to tax will be effective and the client should seek advice on this point from their accountant or tax adviser.

However there are some circumstances when the Trustees cannot opt to tax a property and cannot, therefore, reclaim VAT payable on the purchase price. One example is where the purchase price is more than £250,000 and the member or connected party, as tenant, is wholly or partially exempt from paying VAT. You should seek professional advice if this situation is anticipated.

Buildings Insurance

It is vital that the Trustees are always adequately insured because, as legal owners, they are responsible for any claim. Accordingly, we regret that we cannot usually agree to the client or any other party arranging the buildings insurance and it is a condition of the purchase that the building is insured on our block property owner's policy. This is arranged for us with a leading insurance company by a reputable firm of insurance brokers to ensure that the terms remain competitive. Our block policy provides cover based on the rebuilding value plus 30% uplift and includes property owner's liability cover of £5 million and three years' loss of rent. However, see overleaf regarding "in specie" transfers.

The premium will be paid annually from the pension scheme and, subject to the terms of the lease, the Scheme may reclaim the premium from the tenant.

Unless otherwise instructed, we will insure the property from exchange.

Letting the property

The property may be purchased subject to an existing lease or may be leased to an independent third party or to the client's business following completion. If the property is let to the client's own business or another connected party, this must be an arms length transaction on normal commercial terms at the full market rent under a formal lease with regular rent reviews. We must ensure that the full rent is collected and covenants in the lease are enforced – in other words we must treat the client or connected party as we would any other tenant. They cannot decide to pay a reduced rent, for example just to cover the mortgage or defer paying rent. The lease must also clearly state that the tenant will be the “dutyholder” for the purposes of the Control of Asbestos at Work Regulations.

Tenants' Activities

The potential exists for current or future business activities to cause pollution through negligence or accident and this is something the Trustees of pension funds must consider. Therefore, as part of our procedures we have produced a questionnaire that will assess the activities of the tenant. This can be found at Appendix II; please complete one for each tenant.

The implementation of these risk strategies are required by law but would also be the prudent actions of any persons wishing to act as Pension Fund Trustees who may be ultimately responsible for non-compliance. As the Professional Trustee of over 300 pension funds we have to be particularly vigilant.

TRANSFER OF PROPERTY FROM ANOTHER PENSION SCHEME (IN SPECIE TRANSFERS)

Subject to our requirements regarding an Environmental Sitecheck Report and potentially an Asbestos Assessment Survey we do not need a full conveyance and searches to be carried out provided that the client is willing to confirm this to us in writing in the form of an indemnity against matters which may have arisen since the original conveyance.

We would prefer the property to be insured on our block policy as above. However we will not insist on this as long as the client provides proof of insurance with the interests of the Trustees noted on the policy in which case we must have sight of a recent insurance valuation and the property must be insured for the full reinstatement value with public liability insurance of £5 million and three years' loss of rent.

Our liability

Our duties are limited to ensuring that the property is an allowable investment under Inland Revenue rules. It is for the client to satisfy themselves as to all aspects of the proposed purchase including issues such as covenants, rights of way, grazing rights etc.

We also accept no liability for the condition or suitability of the property.

The liability of Greyfriars Asset Management LLP and GAM Trustees Ltd is not personal and is limited to the assets of the Scheme in their control for the time being.

Property Purchase Fees

Single Property Purchase:

There will be a one-off property administration fee of £400 plus VAT covering up to two Schemes purchasing jointly. For each additional Scheme there will be an additional charge of £200 plus VAT so, for example, if there were four Schemes involved the total fee would be £800 plus VAT split equally between each Scheme.

Multi Property Purchase:

The £400 fee applies per property. So, for example, two properties would cost £800 plus VAT which could potentially be split between two Schemes. For each additional Scheme, there would be an additional £400 charge. So, for example, two properties being purchased by four Schemes would total £1,600 plus VAT or £400 per Scheme.

On rare occasions a property purchase can fall through at the eleventh hour after everyone's done a lot of work. Regrettably, we have to reserve the right to charge a fee for work done under these circumstances.

Greysfriars Asset Management LLP is authorised and regulated by the Financial Services Authority

APPENDIX I

Property Questionnaire.

Please provide full details of the property you intend to purchase. A copy of the agent's sale particulars would be much appreciated.

Property Address

	Post Code	

Description of property
(i.e. offices, factory etc.)

--

Does the property contain any living accommodation?

Y	N
<input type="checkbox"/>	<input type="checkbox"/>

Does the property including land adjacent to any living accommodation?

<input type="checkbox"/>	<input type="checkbox"/>
--------------------------	--------------------------

Please state whether the premises are

Freehold **or** Leasehold

Purchase Price

£

VAT (state 'nil' if no VAT)

£

Total Cost

£

Development costs in addition
to purchase price

--

--

VAT on developments costs

Are the Trustees to 'VAT opt' the property?

Yes No

Is this to be treated as a Transfer of a going concern?

Yes No

Proposed date of exchange of contracts or completion

--

If leasehold, state outstanding
Term of lease

Years

Annual ground rent

£

Name and Address
of landlord

	Post Code	

Solicitor's details:

(For a multi-party purchase we will require Harvey Ingram LLP to act on behalf of the scheme).

Firm acting on behalf of the scheme	
Address	
Person dealing	
Telephone	

Vendor's details:

Vendor's full name		
Address		
Post Code	Telephone	

Is the vendor a 'connected party?' (connected includes you, a business you are connected with or a relative) Y N

Vendor's solicitor's name		
Address		
Post Code	Telephone	

Vendor's Agent's Name		
Address		
Post Code	Telephone	

Trustee Borrowing to Assist the Purchase or details of existing loan

Lender	<input type="text"/>		
Address	<input type="text"/>		
	<input type="text"/>		
Post Code	<input type="text"/>	Telephone	<input type="text"/>
Amount of Loan	£ <input type="text"/>		
Term	<input type="text"/>		

Tenant Details

Will there be more than one tenant? Yes No

If yes, will there be one head lease to tenant 'A' who will then sub-let Yes No

If no, please list all tenants with whom separate leases must be effected and complete a usage questionnaire for each.

Tenant 'A'

Name of business	<input type="text"/>
Nature of business	<input type="text"/>
Existing/new lease	<input type="text"/>
Term of lease	<input type="text"/>
Rent review periods	<input type="text"/>
Initial level of rent	<input type="text"/>
Frequency (i.e. quarterly in advance)	<input type="text"/>

Is tenant connected to your pension scheme? Yes No
(Connected means the tenant is you, your business or any of your family's business.)

If yes, an independent assessment of the commercial rent must be obtained from a professional valuer.

Tenant 'B'

Name of business	<input type="text"/>
Nature of business	<input type="text"/>
Existing/new lease	<input type="text"/>
Term of lease	<input type="text"/>
Rent review periods	<input type="text"/>
Initial level of rent	<input type="text"/>
Frequency (i.e. quarterly in advance)	<input type="text"/>

Is tenant connected to your pension scheme? Yes No
(Connected means the tenant is you, your business or any of your family's business.)

If yes, an independent assessment of the commercial rent must be obtained from a professional valuer.

Tenant 'C'

Name of business	<input type="text"/>
Nature of business	<input type="text"/>
Existing/new lease	<input type="text"/>
Term of lease	<input type="text"/>
Rent review periods	<input type="text"/>
Initial level of rent	<input type="text"/>
Frequency (i.e. quarterly in advance)	<input type="text"/>

Is tenant connected to your pension scheme? Yes No
(Connected means the tenant is you, your business or any of your family's business.)

If yes, an independent assessment of the commercial rent must be obtained from a professional valuer.

Buildings insurance details

(If building is not to be insured on our block policy)

Policyholder

Insurer

Policy number

Declared value

Sum insured

Property owner's liability

Loss of rent cover

APPENDIX II

Property Usage Questionnaire

TENANT'S QUESTIONNAIRE – CONTAMINATED LAND REGULATIONS AND ENVIRONMENTAL LIABILITIES

PLEASE COMPLETE A SEPARATE QUESTIONNAIRE FOR EACH TENANT

1. General Details

1a) Company name and property address

Contact Name & Tel No:

1b) Nature of company's business and how long has the company been in business in the activities currently undertaken at the above location?

2. Overall Site Activities

2a) Please provide a description of the property/site, including if possible, a description of local and adjacent land uses and previous activities.

2b) Please describe briefly the operations conducted at the site(s), including raw material, by-product, final product and wastes handling.

2c) Please describe the site(s) arrangements for water supply and sewage disposal/trade effluent disposal:

3. Waste Management

3a) Please outline and describe the types, composition, quantities and sources of waste within the site(s):

3b) Is there any form of effluent treatment plant on the site(s)? YES/NO
If YES, then please describe the plant with particular reference to: method of treatment, flow rates, discharge points (river and sewer discharge)
Are you aware of any adverse environmental effects associated with these discharges?
YES/NO

4. Spill Containment & Contingency Planning

4a) Are any materials stored in drums or kegs? YES/NO
If YES, then please describe the storage arrangements with particular reference to:
Type and quantities of materials stored, description of storage area, inventory control, type(s) of drums used for storage – their age, size and materials of construction:

4b) Are any tanks used to store any materials on the site(s)? YES/NO

If YES, then please provide the following information: description of the tank, location, material of construction, size and age, contents, leakage, testing, Please indicate whether the tank(s) is(are) above or below ground (if underground tanks have been used in the past please identify even if they are no longer used):

4c) Are there any lengths of underground piping in use? YES/NO

If YES, then please identify their location, uses and whether or not they are regularly tested/inspected for any leakage:

4d) Are there any known claims or incidents of an environmental nature in respect of the property or surrounding properties?

5. Other Concerns

5a) Is the site(s) known, or suspected of being, contaminated by any known or suspected toxic or hazardous substance? YES/NO

If YES, then please identify type and location together with details of any investigations that have been undertaken on the area(s) concerned:

5b) Are there, or have there been, any releases from the location(s) to the environment?

YES/NO

If YES, please attach the last set of annual monitoring results for the releases including any information relating to their impact on the environment, and any activities involving remediation of their impact:

6. Further Information

Please use this space to add any additional information.

Declaration

I/We have read and understood the property purchase guidance notes. I/We authorise Greyfriars Asset Management LLP (GAM) to commission a Land Contamination Report at my/our expense and, if appropriate, on asbestos survey.

I/We understand that I/we are liable for any costs incurred should the property purchase/transfer subsequently not proceed for any reason.

I/We have completed the property purchase and property usage questionnaires as far as possible and are returning the entire booklet to GAM having taken a copy for ourselves.

To be signed by all member Trustees of the pension scheme.

Print Name

Print Name

Sign

Signed

Date

Date

Print Name

Print Name

Sign

Signed

Date

Date