

CASE STUDY

GRANTING A SUBLEASE

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A client holds a property in their SIPP, and they let the property as a connected tenant. They no longer require the entirety of the space they are letting from the SIPP, and therefore want to find out their options.

The Challenges

Daphne owns a property in her SIPP with Curtis Banks. The property is an office in a desirable location. The property comes with parking spaces and comprises 9 offices, a break out area, a kitchen and a reception area.

Her company ABC Limited currently occupies the whole premises as tenant. As they are a connected tenant, the lease was granted on market terms, as advised at the time by a RICS qualified valuer. The annual rent payable for the property is £20,000.

However, ABC Limited has recently moved to a fluid working from home policy, and therefore no longer require such extensive office space. With that in mind, Daphne is keen to understand what options are available to ABC Limited, to avoid them paying for space that they no longer require.

She speaks with her financial adviser, Chris, to understand more.

The Actions

Chris and Daphne meet to discuss her proposal. Helpfully, Daphne has brought with her a site plan of the property, and has marked the area which

ABC Limited no longer occupies. This area consists of 4 offices. Chris tells Daphne that there are a few options available to her.

The first option is that the existing lease could be amended to exclude the unoccupied area. There would need to be valuation advice for the partial lease surrender from a RICS qualified valuer, as the tenant is connected. This step is required to satisfy HMRC regulations. Chris warns Daphne that there will be costs incurred in respect of the unoccupied area, including business rates and insurance, which will need to be met by the SIPP until a new tenant is located.

The second option is that the existing lease to ABC Limited could be surrendered, and a new lease granted for the area that ABC Limited is going to occupy. Again, as the tenant is connected, valuation advice will be required as to whether either party, i.e. landlord or tenant, should pay a premium for the lease coming to an end early. The area not included in the new lease could then be let to a third party.

The final option is that ABC Limited grants a sublease to a third party, who would be letting the part of the property that ABC Limited no longer requires, from Daphne. Daphne's lease with the pension would still remain in place and

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unchanged. Chris explains that if a sublease is granted, then in practical terms, ABC Limited would be the landlord to the subtenant. They would collect rent from the subtenant, deal with any queries from the subtenant, and arrange maintenance to the property.

Chris adds that there are some additional considerations if a sublease was to be granted. For example, any sublease must be authorised and checked by Curtis Banks, as legal owner of the property. The sublease must be formally documented and the term of the same must be less than the term remaining on the lease to ABC Limited, to ensure that the SIPP does not inherit the sublease if Daphne's company were not to renew their lease.

Additionally, Chris confirms that there must be provision in the lease from the pension to ABC Limited that the tenant can sublet the property. If this isn't the case, then valuation advice must be obtained to ascertain whether it would be fair and reasonable for the SIPP to allow the subletting of the property. Furthermore, Chris tells Daphne that the sublease must be excluded from giving security of tenure to the subtenant. Daphne asks what this means, and Chris confirms that this is the legal mechanism for a tenant having a right to remain in the property at the end of their lease. Chris suggests that Daphne mentions this to the solicitor that she wishes the SIPP to appoint, to obtain any advice here.

Daphne considers the information from Chris, and is strongly of the opinion that the best option is to try and sublet the part of the property that is no longer required by ABC Limited. Daphne isn't sure what would happen to areas of the property such as the kitchen and reception, as these would need to be utilised by both ABC Limited and the subtenant. Chris explains that the lease would most likely be granted on the basis that the subtenant would have a legal right to use these areas of the property, and that this would be documented in the lease.

Daphne asks how the rent would be determined for the area she is looking to sublet. She wonders whether this is calculated by dividing the annual rent by the square footage of the property and then pro-rated. Chris says it's simpler than this:

as long as the subtenant is unconnected to Daphne, then it is for her to agree terms directly with the subtenant. It will be ABC Limited collecting the rent, but notwithstanding the rent received from the subtenant, the rent payable under the lease between the SIPP and ABC Limited will continue to be payable.

With that in mind, Daphne speaks with a local estate agent to market part of the property for sublet. Once she has agreed terms and costs with the agent, she passes their details to Curtis Banks, so that the SIPP can formally appoint the agent to begin marketing the property. The agent has already confirmed to Daphne that it can sometimes be trickier to locate a subtenant for part of a property as opposed to whole, but that this type of property might appeal to a smaller business who does not want to take a lease of a whole property.

The Results

Within 6 months of marketing, a subtenant is found for the premises and Daphne works with the agent to agree terms. Daphne has already checked the lease that ABC Limited have with the SIPP, and therein it is confirmed that the tenant can sublet part of the property with the prior consent of the landlord.

The agent passes the agreed terms to Curtis Banks, who appoint the solicitor of Daphne's choosing to check the lease (which is drafted by ABC Limited's solicitor). It is clear in the formal instructions to the solicitor that all costs relating to the granting of the sublease should be paid by ABC Limited, as they are the ones requesting the lease change.

The lease is drafted and checked by Curtis Banks. The solicitor acting for the SIPP provides a Report on Sublease, advising the SIPP on the core terms. Additionally, the solicitor drafts a Licence to Sublet, which is the legal document allowing the sublet of the property by the landlord.

The sublease completes and the subtenant takes occupation of the area previously unoccupied by ABC Limited. The company take all management and administrative responsibility for the subtenant moving forward.

Important points to consider

The value of pension funds may fall as well as rise. Your money is tied up until you take your benefits. Benefits can generally be taken any time after age 55, although this is due to increase to 57 in 2028.

This information is based on our understanding of current legislation, including (but not limited to) FCA, PRA and HMRC regulation. It does not constitute any form of advice.

Contact Details

If you'd like to speak to us about anything on this fact sheet, please contact us on:

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