

## **Update on the position of Pensioner trustees in SSASs after 6<sup>th</sup> April 2006**

### **About the author:**

Steven Dunn, Harper Macleod's Partner specialising in Pensions Law provides an update on the position of Pensioner trustees in SSASs after 6<sup>th</sup> April 2006.

Steven is a Partner based in the firm's Corporate & Commercial Practice Group and has specialised in pensions law since 1995. Steven has worked both in-house with life assurance companies and in private practice, and has been a full member of the Association of Pension Lawyers since 1997.

Steven has advised trustees, employers, individuals and trade unions on all aspects of pensions. He has also been involved in the field of pensions litigation including ombudsman complaints and petitions for directions in the Court of Session. He has considerable experience advising on the pension aspects arising from corporate deals and PFI/PPP projects and has a particular interest in small self administered schemes and self invested personal pensions.

### **The Legislation – how will it affect Lenders?**

The 6th April 2006 or A-Day will mark one of the biggest upheavals in pensions legislation in the United Kingdom. Although the vast majority of this new legislation will only concern the employers, members, trustees and administrators of pension schemes there are two matters that will directly affect lenders: the identity of the borrower and the amount of the loan.

Whether by their statutory powers or by specific powers under their trust deeds and rules the trustees of pension schemes have long been able to acquire land as an investment and to do so by means of a loan secured over the land or the trust estate. Although these powers apply to all types of pension scheme in practice two specialised types of schemes have been mainly concerned – small self administered schemes (SSASs) and self invested personal pensions (SIPPs).

A SSAS is a form of occupational pension scheme providing money purchase benefits for the members. The members are also the directors of the sponsoring employer of the scheme and will also act as trustees. These member-director trustees have generally been referred to as "managing trustees" and historically have been joined in that role by a "Pensioner Trustee" - an independent trustee not linked to the employer, the members or the scheme for which they are appointed.

Originally the sole statutory role of the Pensioner Trustee was to ensure that if a SSAS was wound up the trust fund was applied in accordance with pensions and tax law, though some Pensioner Trustees played a more active role in the administration of the SSAS and would be a co-owner of all assets and co-signatory of all documents. In August 2000 the Inland Revenue decided to enhance the role of the Pensioner Trustee and provided that Pensioner Trustees should become a co-owner where they were not already and that from 1 October 2000 they should be a party to any loans to the SSAS. Existing loans were unaffected.

A SIPP is a form of personal pension scheme and as such provides money purchase benefits for a single member. Group SIPPs are, however, possible with a series of individual SIPPs being set up in the same way as a Group Personal Pension Plan. Usually a Group SIPP is used for the partners of a firm or senior executives of a company, but it can be used where a syndicate is being created to purchase a property that a single SIPP could not afford. As a form of personal pension there is usually a single trustee, generally the trustee company of the SIPP provider.

From A-Day it will no longer be a formal requirement for a SSAS to have a Pensioner Trustee. Many Pensioner Trustees have decided to resign as trustee of their SSAS portfolios; others have opted to remain as a “professional or independent trustee” providing the Managing Trustees with their expertise, but in a much-reduced capacity.

Where Scots law governs a loan, if the Pensioner Trustee resigns the standard security will remain in full force and effect against the proprietors regardless of the change in the trustees. It is, however, recommended that a copy of the Deed of Resignation be placed with the title deeds. Where English law governs the loan, the position will remain the same as in Scotland, although it is important to check the trust deed, which might state that the trust property will not automatically vest in the remaining trustees. In that case, it will be necessary to transfer the trust property to the remaining trustees, to ensure that the standard security remains in full force and effect. Overall the effect of a change in title should be of little concern to a lender in terms of its ability to recover, especially since the Pensioner Trustee’s liability was always limited to the assets of the SSAS concerned. The position in respect of SIPPs will not be affected by A-Day.

The other significant change affecting lenders relates to the maximum amount that SSASs and SIPPs may borrow after A-Day. Under the previous Inland Revenue rules, the Trustees of a SSAS were permitted to borrow an amount equal to 45% of the net fund value plus three times the ordinary annual contributions to the scheme. By contrast a SIPP could borrow up to 75% of the purchase price of the property being bought - initially there had been no statutory limit at all and SIPPs had been permitted to borrow as much as the trustee was prepared to allow, with 90% of the purchase price being a common figure.

After A-Day there will be a common set of rules governing borrowing by pension schemes, including SSASs and SIPPs. The new rules provide that schemes will have the ability to borrow up to 50% of the net fund value, i.e. after deduction of any existing outstanding loans and any assets underpinning pensions that have been secured and which are in payment. Accordingly, before lending to a pension scheme a lender should ensure that a pension scheme not only has the ability to borrow, but that there is sufficient “headroom” for the trustees to borrow the proposed amount. Lenders should therefore request sight of a recent valuation of the scheme’s assets and details of any pensions that have been secured and the assets required to underpin these. They should also obtain confirmation of any other loans and the extent to which these are outstanding.

**For further information on the position of Pensioner trustees in SSASs after 6<sup>th</sup> April 2006  
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