



Neutral Citation: [2022] UKFTT 00338 (TC)

Case Number: TC 08595

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

By remote video hearing

Appeal Reference: TC/2020/01055

VAT – whether fees paid to the scheme administrator of SIPP pension consideration for an exempt supply of insurance – no – appeal dismiss

Heard on: 23 – 25 February 2022

Judgment date: 05 May 2022

Before

**TRIBUNAL JUDGE AMANDA BROWN KC
SUSAN STOTT**

Between

INTELLIGENT MONEY LIMITED

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Mr Scott Redpath of Counsel instructed by the Appellant

For the Respondents: Mr Andrew Macnab of Counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs

DECISION

INTRODUCTION

1. With the consent of the parties, the form of the hearing was a video hearing using the Tribunal video platform/etc. A face-to-face hearing was not held because it was expedient that the matter be heard remotely.
2. Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.
3. This appeal concerns the liability to VAT of supplies of services made by Intelligent Money Limited (**Appellant**) in connection with the provision of self invested pension schemes (**SIPP**) and, in particular whether those supplies are exempt from VAT as the provision of “insurance or reinsurance”.
4. Since 2006 the Appellant has been the provider, operator and administrators of a SIPP known as the Intelligent Money SIPP (**IM SIPP**). Until 2014 the Appellant understood that the services it provided to members of the SIPP were subject to VAT. However, following a review of the company’s VAT position the Appellant formed the view that it had incorrectly accounted for VAT on those supplies. On 30 March 2016 the Appellant submitted three claims to HM Revenue & Customs (**HMRC**) to recover the VAT it considered had been overpaid.
5. On 23 October 2019 HMRC rejected that claim. The decision was reviewed and upheld on 11 February 2020. Whilst there was considerable correspondence between the parties as to whether HMRC had taken account of the relevant features of the SIPP when concluding that the supplies were subject to VAT it is not relevant to the issue to be determined by the Tribunal and any narration of it is unnecessary.
6. HMRC accept that if the supplies are exempt the Appellant is entitled to repayment of VAT which has been otherwise declared on the fees. HMRC have not verified the calculations underpinning the claims made. The parties were agreed that the Tribunal need only determine the liability of the supplies. If the supplies are exempt HMRC will verify the quantum of the claims.

THE INTELLIGENT MONEY SIPP

7. The contractual documentation which must be considered to determine the nature and liability of the supplies made by the Appellant consists of:
 - (1) An application form completed by a prospective member of the scheme
 - (2) A fee schedule
 - (3) The terms and conditions of the scheme
 - (4) The key features document (required to be provided under the regulatory provisions governing the provision of pensions)
 - (5) The trust deed and rules of the SIPP
8. A copy of the composite document comprising the first 4 contractual documents is annexed to this judgment.

9. The parties took the Tribunal to the provisions of these documents at considerable length. The Tribunal has carefully considered all the terms referenced by each of the parties. However, for the purposes of this judgment the Tribunal does not propose to quote from the documents at length.
10. At the outset it is to be noted that the defining characteristic of a SIPP, including that offered by the Appellant, is that the contractual holder/their financial advisor (and not the Appellant) is responsible for the management of the funds held in the member's SIPP.
11. It is also significant that the SIPP is established so as to meet the detailed and specific requirements of the Finance Act 2004 (**FA 04**), pursuant to which members may, subject to those requirements, save for their retirement in a tax efficient manner. Further detailed rules are imposed on the operation of the SIPP pursuant to the Pensions Act 2008 (**PA 08**). The rules place particular limits on when and how payments can be made from the SIPP to either the member or other beneficiaries. There are also certain restrictions on the level of contributions which can be made to the SIPP in respect of which tax relief can be claimed. The detail of these requirements is not relevant to the issue to be determined in this appeal. The Appellant's commitment to the investing members that the SIPP will be managed so as to preserve the tax effective status of the regime is, however, highly relevant.

Application form

12. An individual who wants to apply to become a member of the IM SIPP will complete the application form and provide their personal details together with what is referred to as an expression of wish as to "those people that [they] would like to receive any remaining benefits payable under the Intelligent SIPP on [their] death". It is noted that "This agreement does not bind the trustees of the scheme but is a means to help the trustees pay out [the] benefits in line with [the member's] wishes". The applicant warrants that they understand the non-binding nature of the expression of wishes in the declaration section.
13. Much of the detail requested to be provided ensures that the applicant is eligible for tax relief on contributions proposed to be made to the SIPP and ensure that the pension provided meets the requirements of FA 04.
14. The application form includes a number of declarations (again many driven by the requirements of either the PA 08 or FA 04) including a declaration which has the contractual effect of incorporating the terms and conditions, fee schedule and deed and scheme rules such that the applicant (who becomes a member of the IM SIPP) is bound by their terms.
15. The applicant also declares that they are solely responsible for all decisions relating to the purchase, retention and sale of all investments within the SIPP and that the value of the SIPP may only be applied to provide benefits in accordance with the scheme rules.

Fee schedule

16. The fee schedule provides for specific fees to be payable. Every member is required to pay an annual fee of £150. Further fees are payable for instance where the member wishes to make an in-specie contribution/transfer, transfers out, on the commencement of payment of benefits, interim valuations, non-platform investment transactions, banking fees and in respect of property transactions. The majority of these latter fees are charged per hour.

17. Annual fees are stated to be for the “provision, establishment and ongoing operation of [the member’s] pension plan”. Annual fees are payable in advance and may be met from the member’s cash account or from the liquidation of funds within the SIPP.

Terms and conditions

18. The key provisions of the terms and conditions are:
- (1) Clause 1 provides the definitions.
 - (2) Clause 2 sets out that the agreement is between the Appellant and the member and that the SIPP has been established and will be operated so as to comply with the provisions of FA 04 and that it is governed by a declaration of trust and rules pursuant to which the trustee is the legal owner of all investments which are held on behalf of the member and/or other beneficiaries of the member.
 - (3) Clause 3 sets out the provisions regarding contributions.
 - (4) Clause 5 outlines the operation of the member’s cash account. Initially all contributions (and any associated tax relief) are paid into a cash account held on behalf of the member from which the member may then instruct how investments are made.
 - (5) Clause 7 concerns investments. The member is notified that there are a wide range of investments to which funds may be applied. The range of funds is stated to be restricted so as to ensure they remain compliant for the purposes of remaining within the FA 04 tax efficient regime. The member or his financial advisor must select appropriate investments from the list provided.
 - (6) Investment procedures are set out in clause 8 – the member/their financial advisor selects appropriate investments which are then acquired by the trustee. The member is again reminded that the Appellant is not liable for any loss arising from the member’s choice of investment. The Appellant preserves the right to sell investments for the purposes of paying benefits fees and charges under the plan.
 - (7) Pursuant to clause 10 the member has no right to vary the terms of the agreement.
 - (8) The member has a right to cancel under clause 11; they are, however notified that any refund in respect of investments made during the statutory cancellation period of 30 days will be subject to investment fluctuation and the sums refunded will be net of charges incurred.
 - (9) Clause 12 regarding termination provides that fees paid prior to termination are not refundable.
 - (10) Clause 17 concerns charges referencing the fee schedule.
 - (11) Clause 18 provides that the following services are provided:
 - “Establishment of your Plan;
 - Ongoing operation of your plan;
 - Receipt of contributions/transfer payments into/out of the Plan;
 - Recovery of basic rate tax on Member contributions where applicable;
 - Annual statements detailing assets, contributions and transfer payments received and amounts of tax recovered from the Revenue;
 - Creation of banking facilities;
 - Settlement and payment of benefits; and
 - Such other services as may from time to time be necessary to efficiently operate your Plan and to comply with Revenue requirements.”

(12) Under clause 20, Treating Customers Fairly, it is again reiterated that the Appellant does not provide financial advice to the member.

Key features

19. The key features document explains that the SIPP is a personal pension plan established under trust and approved by HMRC.
20. As with all other documents it repeatedly explains that the member is responsible for the suitability of investments requested to be made on their behalf by the trustee.
21. The aims of the SIPP are set out and essentially seek to provide the member with a tax efficient means of saving for a pension over which they have control of the investments made.
22. The member is reminded:

“A pension is a long-term investment for your retirement and benefits cannot normally be taken until you have reached your 55th birthday except in limited circumstances e.g. when you retire due to ill health, ... There are also restrictions on the type and amount of benefits you can take from your Intelligent SIPP.”
23. In connection with risk the member is provided with considerable detail as to the risks that they will bear if selecting to invest under the SIPP and reminded that they bear the risk of investment performance and as to decisions taken regarding the nature and timing of benefits taken.
24. Consistently with the terms and conditions the member is notified that all cash payments and transfers are paid into the cash account held on their behalf by the trustee from which investment instructions will be executed.
25. A full list of the tax compliant choices available to the applicant in respect of when and how to take benefits from the SIPP including by way of lump sum, taking a regular income or purchasing an annuity is set out.
26. Under a heading “what happens when I die?” the member is informed:

“When you join the Intelligent SIPP, you will complete an expression of wish form which allows the trustees ... to pay benefits to your Nominees when you die.

The trustees will use an ‘expression of wish’ form to guide them in their decision as to how to pay this benefit, but this form is not binding upon them. This ‘discretionary trust’ structure means the payment can be made free from inheritance tax (IHT).

...
27. In respect of death before or after 75 the member is informed that death prior to 75 and prior to the taking of any benefits means that “the full value of your fund can be used to provide for your beneficiaries”. Where benefits had been taken those benefits can be transferred to the successor or nominee.

Trust deed and rules

28. There were two sets of deed and rules in the bundle. The parties had prepared their cases by reference to different sets but agreed that there was no relevant difference between them. All references below are to the 2013 deed and rules as they were the relevant ones in the period covered by the claims to sums said to have been overpaid.

29. The SIPP is established under irrevocable master trust with the Appellant as the trustee. It is a registered pension scheme for the purposes of FA 04 into which the individual or their employer may make contributions (see clause 3 of the deed). All contributions and/or transfers are held in identifiable member fund (clause 4). The sums so contributed are held within the trust and individually identifiable qua the member.
30. Clause 12 provides that the trustee may purchase an annuity on behalf of the member or other beneficiary and/or establish a policy of life assurance, they may also purchase units in unit trusts and insurer managed funds, purchase property and undertake any transaction permitted under FA 04.
31. Pursuant to clause 13 the scheme may not make any payment representing an unauthorised payment under FA 04 (in essence a payment in breach of the tax regime).
32. All investment transactions undertaken are required to be exercised “only in accordance with any directions given by the member” subject to ensuring compliance with FA 04.
33. Clause 20 provides that “all costs, fees, expenses ... in connection with the administration, management and investment of the Scheme may, subject to the agreement of the Scheme Administrator and the Scheme Trustee, ... be paid directly to the Scheme Administrator or Scheme Trustee by the Member or may be paid on any other basis which the Scheme Administrator and Scheme Trustee agree. Otherwise, such amounts shall be paid by the Scheme Administrator out of the Member Fund or other asset of the Scheme in respect of which the amounts have been incurred ...”
34. Rule 4 concerns contributions and provides that all contributions and their proceeds must be used to provide benefits in accordance with the rules. There is also provision for contributions to be used to purchase a life assurance contract (as one of the assets held) the proceeds of which may then be distributed as a benefit.
35. The commencement date for the payment of benefits is provided for in rule 5 and, consistently with the limitations provided for in order to be a registered pension scheme for tax purposes, benefits are payable from age 75 subject to an election to take them any time after the age of 55 though from an earlier date in the event of incapacity through ill health prior to attaining the age of 55.
36. The benefits arising under the scheme are particularised in clauses 6 – 8 which provide for member benefits: payment of a lump sum (as provided for/limited by section 164 Finance Act 2004), an annuity (provided by an independent insurance company) and income from the assets; dependent pensions (which again may take the form of an annuity provided by an independent insurer); and death benefits in the form of a series of defined lump sum payments equal to the value of the fund at the time of the member’s death as the trustee thinks fit having taken into consideration the member’s expression of wish.

THE LAW

37. Article 135 Principal VAT Directive (**PVD**) provides for the exemption of “insurance and reinsurance transactions”.
38. That exemption is implemented in the UK via section 31 and Group 2 Schedule 9 Value Added Taxes Act 1994 (**VATA**) which, post 1 January 2005 provide for the exemption of “insurance and reinsurance transactions”.
39. In the context of an understanding of the principal case relied upon by the Appellant (*Winterthur*) it is also relevant to note that the terms of Group 2 (and its predecessor) prior to 1 January 2005 provided for the exemption of “the provisions of insurance or reinsurance in the course of insurance business by” a number of identified categories of business provider. In this

period it was not simply the nature of the services provided but also the identity of the provider which determined whether the supply was exempt from VAT.

40. Directive 2009/138 known as the Solvency II directive provides a definition under Article 1 of life insurance as “assurance on survival to a stipulated age only, assurance on death only, assurance on survival to a stipulated age or on earlier death, life assurance with return of premiums, marriage assurance, birth assurance.”
41. Although not directly relevant, reference was made to The Financial Service and Markets Act 2000 (Regulated Activities) Order 2001 (**Order**) which specifies the activities which are regulated under Financial Services and Markets Act 2000. The Order provides various definitions of insurance including, in particular, contracts of insurance on human life and contracts to pay annuities on human life where the benefits are wholly or partly to be determined by reference to the value of, or the income from, property of any description. It was noted that pension fund management carried on by persons who do not carry on a banking business is also included within the definition of insurance for the purposes of the Order. The Order independently identifies and brings into regulation the activity of operating a pension scheme which is defined to mean a scheme or arrangement which is not an occupational pension scheme or a stakeholder pension scheme and which comprised one or more instruments or agreements, having or capable of having effect so as to provide benefits in respect of people on retirement, reaching a particular age or on termination of employment) as subject to regulation under the Act.
42. The Tribunal was also taken to provisions of the PA 08 concerning the regulation of pensions generally and FA 04 which lay out detailed provisions concerning the regulation of pension provision in order to preserve the favourable tax regime applicable to pension savings. As stated at paragraph [11] above a detailed review of these provisions is not necessary in this appeal as there was no dispute that the IM SIPP was a pension scheme operating within the terms of both PA 08 and FA 04

Case law on insurance generally

Prudential

43. The case of *Prudential Insurance Co v IRC* [1904] 2 KB 658 concerned a dispute as to the nature of a contract for stamp duty purposes as insurance contracts were stamped differently to covenants. The contract headed “old age endowment with life insurance”, provided that a weekly premium be paid on terms that a certain sum be paid on attaining the age of 65 and a different (and lesser sum) be paid in the event of death prior to that date. The critical dispute between the parties was as to whether a contract of insurance required to indemnify loss.
44. Channell J identified the key features of an insurance contract as:
 - (1) a contract whereby, for some consideration, the insured secures some benefit, usually but not necessarily, the payment of money, upon the happening of some event;
 - (2) the event must involve some amount of uncertainty, either that the event will ever happen or at the time at which it will happen;
 - (3) the event must be adverse to the interest of the insured such that the payment meets some loss or other detriment on the happening of the event i.e. there must be an insurable interest in the subject matter (otherwise the contract is one of wager);
 - (4) in the case of life insurance the interest is not the measure of loss.

Intervening modification of the Prudential test

45. Case law subsequent to Prudential provides some further insight into the Prudential test.
46. In *Gould v Curtis* [1913] 13 KB 84 CA clarified that there are two types of insurance: indemnity insurance which provides indemnity against loss where the payment under the policy will be referable (or capped to) the loss; and contingency insurance which provides no indemnity but makes payment against a contingent event. In light of the nature of contingency insurance the Court of Appeal considered, in respect of the fourth element identified in *Prudential* that whilst adversity is commonly present in the context of insurance an insurable interest may be established without the requirement of adversity.
47. *Medical Defence Union v Department of Trade* [1980] Ch 82 considered, in particular, the nature of the benefit which accrued on the happening of the insured event. Megarry VC was required to determine whether a right of a doctor/dentist, in return for their annual subscription, to require the union to “properly consider any request for assistance” in connection with legal proceedings for malpractice and indemnity in respect of damages payable represented insurance. It was clear, factually, that the union would act in good faith when considering a request from a member and that in substantially all cases the union did act. The obligation to consider a request for assistance was not dependant on the number of prior requests or actions (subject to remaining a registered practitioner) nor did the number of requests affect the membership subscription payable.
48. Megarry VC noted that the terms “‘insure’ and ‘assure’, like ‘ensure’ seem to ... confer a sense of making something certain, and not merely of giving hope or expectation no matter how well founded.” He continued:

“When a person insures, ... he is contracting for the certainty of payment in specified events, and not merely for the certainty of proper consideration being given to his claim that a discretion to make a payment in those events should be exercised in his favour.”
49. Whilst the right to have the request considered unquestionably represented a benefit to the medical professional and the assistance almost invariably provided ensured that litigation against them was managed and funded and an indemnity against any damages awarded provided, the lack of enforceable certainty precluded the conclusion that the union were providing insurance.

Fuji

50. The case of *Fuji Finance Inc v Aetna Life Ins Co Ltd* [1997] Ch 173 concerned a capital investment bond the terms of which provided for payment of a sum on the death of a Mr Tait or on the surrender of the bond. The sum payable on the occurrence of one of those events was calculated by reference to the price of units allocated at the time of payment. Fuji paid a single £50,000 premium to the Tyndall/Aetna who invested it at the direction of Fuji. As a consequence of how Tyndall/Aetna reported the performance of the investments and the timing of investment reallocation Fuji (through the auspices of Mr Tait) was able to manage the investment switches such that, in the period from 1987 – 1991 the value of the investments increased from the initial £50,000 to in excess of £1m. This prompted Tyndall/Aetna to change the procedures for reporting performance and acceptance of instruction to switch investments. Fuji claimed that this change in procedures constituted repudiation of the policy which it accepted and surrendered the policy, but they went on to claim damages against Tyndall/Aetna amounting to the loss of an equivalent investment growth compounded annually for the rest of Mr Tait’s life.
51. Two preliminary issues came before the Court of Appeal:

- (1) whether the contract was a contract of insurance under sections 1 and 3 Life Assurance Act 1774, which precluded the writing of an insurance policy on life where the policy holder had no insurable interest in the life insured and/or the value of the insurance exceeded the insurable interest); and
 - (2) on the basis that Fuji accepted that it had no insurable interest beyond the value paid on surrender, whether the contract was void by virtue of section 16(1) Insurance Companies Act 1982 which provided that an insurance company was prohibited from carrying on any business other than an insurance business.
52. The High Court had determined, by reference to the Prudential definition of insurance (see [44] above) that the capital investment bond was not a contract of life assurance. As Fuji had been entitled to the same sum on the surrender of the policy as on Mr Tait's death the judge considered that there was no contingency on Mr Tait's death and the contract was not one of life insurance.
53. By reference to the judgment of the Court of Appeal in New Zealand in *Marac Life Assurance Ltd v Commission of Inland Revenue* [1986] 1 N.Z.L.R. 694 and the judgment of the Federal Court of Australia in *NM Superannuation Pty. Ltd v Young* 113 A.L.R 39 the Court of Appeal noted:
 - (1) A short-term investment contract which depends on the contingencies of life and pursuant to which a sum greater than the premium becomes payable is not excluded from the definition of a life insurance contract because of its short-term nature. However, when assessing whether such a contract is an investment contract or a life insurance contract with an investment element the insurance content must be sufficiently substantial and must "necessarily embrace a risk by the insurer dependent on the length of human life".
 - (2) A contract which accumulated contributions made by an employer with interest accrued on those contributions and which paid prescribed but different benefits on the happening of specified events including: death, retirement on or after a defined retirement date, death in employment or leaving employment, was a contract of life insurance. This was so because the necessary requirement of "uncertainty" was present in the sense that each of the potential circumstances in which a benefit was payable was uncertain as against the other potential outcomes. The uncertainty identified relating to death was its timing.
54. Morritt LJ concluded that the bond written by Tyndall/Aetna was a contract of life insurance on the basis that the two circumstances in which payment would be made (namely death or surrender) were contingent on one another in the sense that surrender depended on the continuation of life to the point of surrender and the timing of death was itself uncertain. He considered that the payment of benefits needed to be "sufficiently life or death related" so as to cross the line from pure investment to life insurance but on the terms of the arrangements before him that criterion was met, particularly as the value of the investments fluctuated over time such that the sum payable at surrender would not be the same as the sum payable at death.
55. Hobhouse LJ considered that under the terms of the contract which Fuji entered its rights "at any moment in time under the contract [were] dependent upon the contingency whether Mr Tait had died".

Case law concerning the insurance exemption

Winterthur

56. *Winterthur Life UK Ltd* [1996] Lexis Citation 959 concerned supplies made in relation to two pension schemes which provided for the scheme member to control the management and investment of the funds accumulated from the individual's contributions (both their own and those made on their behalf by their employer). The critical issue in the appeal was who made the supplies under consideration: Winterthur (an appropriately registered insurance company) or the subsidiary acting as scheme administrator (not a registered insurance company).
57. As noted above, at the time the terms of item 1 to Group 2 provided for exemption of the "provision of insurance" by a company permitted to carry on insurance business within section 2 Insurance Companies Act 1982.
58. Both pension schemes were designed to take advantage of the income tax provisions relating to personal pension scheme under Taxes Act 1988 (subsequently replaced by FA 04 but substantively with a similar purpose to encourage saving for retirement). The scheme documentation provided that it was established on an irrevocable trust for the benefit of members subject to the Taxes Act restrictions as to how the benefits were to be provided. The terms of the scheme provided that the member had the power to make investment decisions and for the scheme and the administrator of the scheme to have no responsibility to the member in respect of the performance of the investments. The rules also authorised for administrative expenses to be paid from the investment fund. The accumulated value of contributions was to be used to provided benefits in accordance with the scheme rules.
59. The schemes were administered by a scheme administrator on behalf of the scheme provider. The scheme administrator was responsible for: the establishment of the scheme so as to be compliant with the tax rules; the collection of contributions; the facilitation and payment of retirement and death benefits; execution of investment instructions etc. Fees were payable by members to the scheme administrator annually and in other identified situations.
60. In light of the issue to be determined the Tribunal declined to determine the nature and effect of the trust on which the scheme was established being content to conclude that the purpose of the trust was to secure the provision of the annuity and lump sum benefits contemplated by the Taxes Act and the scheme documents.
61. The Tribunal considered, by reference *Fuji*, that the scheme under consideration provided for payment of annuities or a lump sum by reference to life or death related events and the fact that the scheme had an investment element which involved no risk to the insurance company (since the benefits were secured on the trust funds) was not inconsistent with a conclusion that they were insurance.
62. Substantively the case for HM Customs & Excise (as HMRC then were) was that the members paid the fees (as distinct from the contributions) to the scheme administrator, for trust administration services which were liable to VAT at the standard rate. They argued that there was no contract of insurance between the insurance company and the member as the only contractual provisions existed between the scheme administrator and the member. In addition they contended that as the pension benefits were secured by reference to the investment performance of the investments made from the individual's contributions and which were held on trust for the individual the arrangements were not by way of insurance and the fees payable did not represent consideration for the provision of the benefits.

63. Winterthur contended that the fees were part and parcel of the provision of the exempt provision of insurance. In the alternative, it was claimed that as the primary purpose of the scheme was the provisions of an annuity (which had to be provided by an insurance company in order to be tax compliant) the services associated with the administration of the scheme were exempt under alternative provisions in the insurance exemption which provided for exemption of “the making arrangements for the provisions of ... insurance”. A supply of making arrangements did not need to be provided by an authorised insurance company.
64. The Tribunal determined that the arrangements provided for the scheme administrator, acting on behalf of the insurance company, to contractually bind the insurance company to ensure that the relevant retirement/death benefits were provided to the members and their dependants. It considered that the nature of arrangements met the description of life insurance as set out in the case law referred to at paragraphs [43– 55] above. That conclusion was unaffected by the feature of the arrangement pursuant to which the members’ contributions were protected for the purposes of providing the benefits. The Tribunal considered that the (low) level of charges reflected that Winterthur (as insurer) bore no risk as to the performance of the investments and therefore the benefits payable on the occurrence of the insured contingent events. The Tribunal therefore concluded that the administration fees were “part and parcel” of the provision of insurance by a permitted insurer and therefore exempt.
65. That conclusion disposed of the appeal; however, the Tribunal expressed the view that had it concluded otherwise it would have rejected the alternative argument based on “making arrangements” as, if the only element of the arrangements amounting to the provision of insurance were the annuity provisions, the administration of the trust and the associated fees could not reasonably be said to represent the making of arrangements for the provision of an annuity.
66. There was a further argument run by Winterthur referred to as “the alternative insurance argument” in respect of which HM Customs & Excise conceded that as pension fund management was classified as insurance business for the purposes of the Insurance Companies Act 1982 if it were it to be established that the supplies under consideration were made by, or on behalf of, the insurance company they would be exempt supplies under item 1.

Card Protection Plan

67. *Card Protection Plan Ltd v Customs & Excise Commissioners* C-349/96 was the first case in which the Court of Justice of the European Union (CJEU) considered the insurance exemption. As noted in paragraph [39] above the provisions of the UK domestic insurance exemption was to limit exemption to the provision of insurance to insurance provided only by insurance companies. The taxpayer in this case was not regulated as an insurance company but provided a service to its customers pursuant to which, in return for payment, customers were indemnified against certain costs and expenses incurred in the event of the loss or theft of their credit cards or other possessions such as keys. They claimed that the provision of these services represented a service of insurance which should be exempt from VAT.
68. In the absence of a definition of insurance under what was then the Sixth VAT Directive, the Advocate General considered it appropriate to interpret the exemption by reference to what was then the relevant EU directives regulating insurance business; however, noting that those directives too did not define the nature of insurance. He considered that the essentials of an insurance transaction were “that one party, the insurer, undertakes to indemnify another, the insured, against the risk of loss ... in consideration for the payment of a sum of

money called a premium: it is the giving of the indemnity which constitutes the insurance and, thus the supply of the service”.

69. When giving judgment the CJEU endorsed the interpretation adopted by the Advocate General though indicating that indemnity insurance was not limited to the payment of a sum of money and that the service of insurance for VAT purposes may also be established by reference to the provision of a benefit in kind.

70. The CJEU reinforced the need, under the VAT regime, to ensure, in accordance with the principle of fiscal neutrality, that similar transactions are taxed in the same way and determined that the fact that the taxpayer was not a regulated insurer did not affect the nature of the supply made and as such, under the terms of the VAT Directive, the services provided were required to be exempted from VAT.

71. Following this case, but not until 2004, the UK amended the provisions of group 2 to remove the requirement that in order to be exempt services of insurance were required to be provided by a regulated insurer.

Mapfre

72. *Directeur general des finsnaces publiques v Mapfre asistencia compania internacional de seguros y reaseguros SA* C-584/13 concerned contracts for repair warranty provided by Mapfre to customers of second-hand motor dealers.

73. Rejecting a claim that the provisions of such warranties fell outside the scope of exempt insurance the CJEU reiterated, at [42], that the essence of an insurance transaction “lies in the fact that the insured person is exempted from the risk of bearing financial loss, which is uncertain, but potentially significant, by the premium, payment of which for that person is certain but limited”.

Aspiro

74. *Minister Finansow v Aspiro SA* C-40/15 concerned the provisions of insurance claim settlement services. The CJEU adopted its previous articulation:

22. ... the essentials of [insurance transactions] are, as generally understood, that the insurer undertakes, in return for prior payment of a premium, to provide the insured party, in the event of materialisation of the risk covered, with the service agreed when the contract was concluded. ...

23. ... the expression ‘insurance transactions’ covers not only transactions carried out by the insurers themselves and, is, in principle, sufficiently broad to include the provision of insurance cover by a taxable person who is not himself an insurer but, in the context of a block policy, procures such cover for his customers by making use of the services provided by an insurer who assumes the risk insured. However, such transactions necessarily imply the existence of a contractual relationship between the provider of the insurance service and the person whose risks are to be covered by the insurance, that is to say, the insured party. ...”

75. The CJEU rejected the contention that claims settlement services qualified for exemption on the basis that such services, whilst an essential element of an insurance arrangement, did not involve the assumption of any risk by the supplier on behalf of the customer. The CJEU considered the language of the insurance exemption to be insufficiently broadly drafted to incorporate services relating to or concerning the provision of insurance more broadly.

United Biscuits

76. The *United Biscuits (Pension Trustees) Ltd v HMRC* C-235/19 concerned whether investment management services provided to pension funds constituted insurance or reinsurance transactions within the meaning of Article 135(1)(a) PVD.
77. United Biscuits contended that the meaning of insurance transactions had a ubiquitous EU meaning such that the inclusion of the management of group pensions including investment management within the scope of initially the First Life Assurance Directive (79/267/EEC as amended by Council Directive 2002/12/EC), subsequently under Directive 2002/83 and finally under the Solvency II Directive (2009/138/EC) necessitated a conclusion that the service of providing management of investments within a group pension represented a insurance transaction. Their case was predicated on an argument that the status of the provider of such services did not determine their nature (this was despite the insurance directives themselves requiring regulation of investment management only where provided by an approved insurer).
78. The CJEU, confirming previous judgments given, articulated that:

“[30] ... the essentials of [insurance] transactions are, ... that the insurer undertakes, in return for prior payment of a premium, to provide the insured, in the event of materialisation of the risk covered, with the service agreed when the contract was concluded”.
79. The CJEU notes, at paragraph [31] that the insurance exemption is justified as an exception to taxability, “by the difficulty of determining the correct amount of VAT for insurance premiums relating to the coverage of risk”. This difficulty is explained by reference to footnote 54 in the Advocate General’s opinion setting out the Commission’s observations. The Commission explains that a premium is made up of two components: 1) the remuneration of the services provided by the insurer and 2) a contribution to the pool of capital which is then invested and used to cover risks as and when they occur. As the capital element of the premium does not represent consideration for any service it cannot be subject to VAT and attribution of the premium between the two components is unlikely to be easily achieved except ex post facto.
80. In connection with United Biscuit’s reliance on the provisions of the insurance directives the CJEU determined that there was no substantive read across to the concept of an insurance transaction under the PVD from the CJEU’s prior consideration of and reference to the insurance directives. The CJEU considered that reference to the insurance directives had not demurred from the VAT test (as set out at paragraph [78] above).
81. The CJEU was also of the view that, in any event, the terms of the insurance directive did not assist the case advanced by United Biscuits on the basis that investment management services are ancillary to insurance rather than insurance per se. In so finding there is at least an implicit recognition of the analysis provided by the Advocate General on the divergent objectives of the respective directives and as to the sense in which the CJEU had previously considered the provisions of the insurance directives relevant when considering referrals concerning the insurance exemption.
82. The CJEU did not expressly address United Biscuits contention that the position in the UK in which supplies of the investment management of pension funds had been exempt when provided by an insurance company but taxable at the standard rate when provided by noninsurers led to a breach of fiscal neutrality. However, and in light of the CJEU’s conclusion that investment management is not an insurance transaction, there is, again,

implicit acceptance of the Advocate General's analysis that the UK had simply been impermissibly allowing exemption where investment management was provided by an insurance company. A position corrected by a change of HMRC policy with effect from 1 April 2019.

Other domestic cases

83. Included within the authorities bundle and referenced by one or other of the parties were cases concerned with item 4 of Group 2 regarding the provision of services by an insurance agent or broker of services related to insurance. Neither party contended, rightly in the Tribunal's view, that the provision of the IM SIPP, if not insurance, was a service related to insurance. In that context the Tribunal did not consider these additional authorities to be of any assistance.

PARTIES SUBMISSIONS

84. The Tribunal had the benefit of three days of detailed oral argument from counsel, in addition to their helpful skeleton arguments. Counsel referred us to a substantial quantity of case law, which was collected into a main bundle of authorities and further authorities provided during the course of the hearing. The Tribunal was also provided with a bundle of documents running to 845 pages, although reference to the content of the bundle of documents was focused on the contractual material. In reaching the decision on this appeal the Tribunal has taken into account everything referenced by the parties, in both the written and oral submissions. It is however inevitable, given the detail of the arguments and given the quantity of material that not everything in the appeal can be given specific mention in this judgment.

Appellant's submissions

85. The Appellant's case was essentially predicated on a submission that the provision of a pension is an activity constituting the provision of long-term insurance when viewed through the lens of the EU insurance directives, the Financial Services and Markets Act 2000 and historic domestic case law on what constitutes insurance. Careful and thorough reference was made to the EU statutory provisions and a long history of domestic case law together with a reference to one of the leading texts, Houseman's Law of Life Assurance, which provides that life insurance activities include assurance on survival to a stipulated age, death and annuities. It was contended that by their nature the benefits payable by a pension scheme (including in particular the death benefits) represent assurance of this type.
86. On behalf of the Appellant the contractual documents were analysed to support that contention.
87. By reference to the case law identified above the Appellant contended that there was a valid contract between themselves and the member which intended to impose a legal obligation on the Appellant to ensure that the relevant benefits were provided to the member and his dependents or successors in consideration of the member contributing to the scheme and the various charges payable under the Fee Schedule.
88. It was argued that the funds held on trust are solely for the application and payment of the benefits to the identified beneficiaries which are all contingent on the happening of an uncertain event (living to a certain age, death, incapacity etc).
89. The Appellant is contractually obliged to the member to ensure that the relevant benefits are provided in accordance with and preserving the tax benefits contemplated under Finance Act 2004, including the provision of benefits after death in exercise of their

discretion, by reference to the expression of wish and in return for the fees payable. Pension benefits are, as contended by the Appellant, the right to future enjoyment of benefits but with a contingency as to the rights so enjoyed.

90. It was contended that once properly analysed there could be no serious contention that the provision of a pension scheme was not insurance in this general sense.
91. It was essentially submitted that once it was established that the pension scheme represented a life assurance contract in respect of which consideration was payable by the member to the Appellant ergo, the case for exemption, was made.
92. When interpreting the accepted CJEU test for what constitutes a supply of insurance (i.e. “in return for prior payment of a premium, to provide the insured, in the event of materialisation of the risk covered, with a service agreed when the contract was concluded”) it was contended that it was relevant to have in mind the difference between indemnity and life insurance. Under an indemnity insurance the insurer will agree to indemnify the insured by reference to loss suffered in consequence of an uncertain event. By contrast under a life insurance contract the insurer agrees to make payment of a sum by reference to only the uncertainty as to timing/order of events, such sum being determined at the time of payment and potentially subject to fluctuation. The Appellant noted that the CJEU case law had concerned predominantly indemnity insurance with the consequence that the test was formulated through that lens.
93. It was contended that under the agreements pursuant to which the IM SIPP is established the Appellant agrees, in return for the payment of at least that part of the contribution which is charged with payment of the fees, to ensure that all contributions will be applied and, on materialisation of the identified risks (reaching a certain age or death) that the benefits will be paid out in accordance with the plan which will be operated in compliance with the tax rules in FA 04.
94. Although not articulated in this way the Tribunal understands the Appellant to contend that the element of contributions not used to meet the fees were akin to the capital element of a premium from which the benefits are then paid.
95. Particular reliance was placed on the analysis of the Tribunal in *Winterthur*. As set out above this case concerned a money purchase/defined contribution pension scheme managed under trust in respect of which (as was reasonable novel at that time) the member was given the ability to make investment decisions in respect of their contributions. The Appellant contended that the IM SIPP was materially similar to the *Winterthur* arrangements in which the Tribunal had concluded that the contributions made represented consideration for a contract of life assurance by virtue of the fact that the contributions were “charged with the payment of the administrative expenses of the scheme”. The Appellant did not consider that the case law of the CJEU nor the provisions of FA 04/A Day changes, which all post dated the tribunal in *Winterthur*, should affect the conclusions reached in that case which remained good law.
96. The Appellant contended that the trust structure under which the scheme was provided did not lead to a conclusion that the funds simply remained the property of the member. There was a restriction on how the funds could be used and the form and time in which the benefits could be taken so as to remain compliant with the FA 04 tax regime. In this regard the Appellant assumed the risk in ensuring that the payment of benefits was compliantly managed, and no unauthorised payments were made.
97. It was submitted that the *United Biscuits* case added no particular insight in respect of this appeal. It was contended that the Court in *United Biscuits* simply restated the

definition of insurance and reinsurance transactions, on which the Appellant relies, but that the context of the reference, albeit concerning the pension industry, was focused on the status of pension fund management and not on the operation and management of a pension scheme. A pension fund manager will, like in *Asprio*, provide its services to the insurer/scheme provider and not to the individuals insured under the scheme. The Appellant contends that all questions of pension fund management are outside the scope of this appeal as the members are, contractually and practically, responsible for all investment decisions taken in respect of their pension fund and that the management of any underlying funds is a matter for the fund manager.

98. The Appellant considered that HMRC were seeking to put an unwarranted gloss on the CJEU test by requiring that the Appellant demonstrate that it had assumed financial risk in respect of the payment of benefits or that assets needed to be pooled in order for the provision of the services to constitute an insurance transaction.
99. Taking each feature of the CJEU's definition of an exempt insurance transaction the Appellant contended:
 - (1) "insurer" – that in accordance with the CJEU's determination in *CPP* status as an "insurer" is determined not by how the taxpayer is regulated but by reference to the nature of the services provided and hence, if it is established that the IM SIPP is insurance, the Appellant is an insurer;
 - (2) "in return for prior payment" – the Appellant's customers are required to pay the annual fee and other fees in advance.
 - (3) "of a premium" – there is no special meaning to be ascribed to the use of the term premium which simply references the prior payment of fees, here there was prior payment of a sum which included sums allocated to capital and to administration; as was the case in *Winterthur* the low administration fee reflected the low level of risk bore by the Appellant vis a vis the provision of the benefits available.
 - (4) "in the event of materialisation of the risk covered" – consistent with domestic case law, and the approach adopted by HMRC in its publicly available guidance, the appropriate reference point for determination of whether a contract covers the materialisation of risk is the Prudential test as articulated in the context of life insurance in *Fiji*. As such it is clear that any contract which provides for life-or-death benefits which carry an inherent uncertainty as to each of the potential circumstances in which a benefit was payable as against the other potential outcomes and/or in the case of death as to its timing represents the materialisation of a risk covered. All that is required is that there is a contingent event and here there demonstrably is a contingency.
 - (5) "the service agreed when the contract was concluded" – the service was substantially ensuring the payment of the tax compliant benefits in accordance with the terms of the SIPP all of which was agreed at the point at which the customer joined the SIPP.
100. Finally, the Appellant contended that fiscal neutrality required that provision of a SIPP by a pension scheme trustee to be exempt on the basis that the provision of a SIPP by an insurance company was exempt. Particular emphasis was placed on the inclusion of insurance companies providing SIPPs under the Order and thereby, on HMRC's case, within the scope of the insurance exemption as a breach of fiscal neutrality.

HMRC's submissions

101. HMRC contended that the Appellant's appeal had been definitively determined against it in *United Biscuits* on the basis that the essential ingredients of an insurance transaction as identified by the CJEU in all the relevant cases referred to and summarised in *United Biscuits* were not evident in respect of the IM SIPP.
102. HMRC were particularly focused on the absence of the any risk borne by the Appellant. As a pension plan was a tax efficient form of saving there was no risk to the individual which required indemnification.
103. It was noted that the Appellant's registration with the Financial Conduct Authority was not as an insurance company but as a provider of establishing and operating a pension scheme and as such the Appellant was not subject to the Solvency II Directive.
104. Particular emphasis was put on the defining characteristic of a SIPP that it was the member or their independently appointed financial advisor who is responsible for the management of the fund and who therefore bore all the investment risk.
105. HMRC also considered it material that the contributions paid by the member or on their behalf were held under trust in an identified or ring-fenced member fund. Whilst the funds may be accumulated with other funds for the purposes of investment, the precise value of each member's fund was identifiable and held in trust for that member in respect of which the benefits under the terms of the scheme would be payable. HMRC contend that the trust structure justifies that the Appellant is not regulated as an insurance provider under the Solvency II regime as the underlying fund does not need the capital protection required in the case of insurance. The trust precludes the necessary assumption of risk for an insurance transaction.
106. It was contended that the services provided by the Appellant were precisely as describe in clause 18 of the member terms and conditions (as set out in paragraph [18(11)] above) inter alia, the establishment and operation of the scheme (in accordance with the requirements of FA 04 so as to remain a registered pension scheme offering tax efficient retirement savings) pursuant to which contributions were received and invested (on instruction) and benefits were paid. The charges (including the annual charge) represented consideration for the provision of those services and not the payment of a premium for the bearing of risk by the Appellant.
107. By reference to how the CJEU had framed and answered the question put to it in *United Biscuits* HMRC contended that the insurance exemption for VAT is limited to supplies in the nature of the provision of an indemnity only, in particular reference was made to paragraphs [28], [32] and [33] in which the CJEU identified that the critical feature of the services under consideration in that case (investment management services) was that there was no indemnity provided.
108. Particular reliance was also placed on the analysis of the Advocate General (paragraphs [46] – [50] and [64] – [70]) (which were the context for the conclusion of the Court as identified above in particular by reference to paragraph [32] of the judgment) who analysed, by reference to the underlying purpose of the insurance exemption (associated with the difficulties arising in identifying the consideration for bearing risk and the potential for double taxation), that it was the assumption of risk by the insurance company in return for payment for bearing that risk which constituted an insurance transaction. Associated or otherwise critical activities inherent in the provision of insurance services were not insurance transactions and were thereby excluded from exemption.
109. HMRC also relied on *United Biscuits* (judgment paragraph [36] referring back to paragraphs [71] – [75] of the Advocate General's opinion) to support the contention that

the treatment of pension administration as an insurance activity, when carried on by an insurance company regulated under the Insurance Directives, was an irrelevance.

110. In response to the Appellant's contention that there would be a breach of fiscal neutrality if insurance companies were permitted to exempt the provision of the operation of a SIPP HMRC contended that two wrongs did not make a right. In reliance on paragraphs [76] – [82] of the Advocate General's opinion and the overall conclusion of the CJEU in *United Biscuits* HMRC contended that fiscal neutrality could not result in exemption inconsistent with the PVD provisions.
111. HMRC too forensically analysed the various contractual terms between the member and the Appellant to illustrate that the service provided by the Appellant in return for the fees was not an insurance transaction because no service was provided on the materialisation of a risk which was the subject of any indemnity. Whilst it was, strictly, unnecessary to identify the nature of the service provided (because there was no alternative contention that the supply was exempt if it was not an insurance transaction) HMRC contended that the Appellant supplies services of administration of the member's own assets (held under trust) with a view to retaining the favourable tax treatment available for such assets including the payment of benefits in compliant form. HMRC asserted that pension benefits were not "benefits" in the sense required by reference to the provision of insurance but were the means by which the assets were returned in a tax compliant way.
112. HMRC's position on *Winterthur* was that it failed to survive the developments in CJEU case law.

DISCUSSION

Is the IM SIPP a contract of life assurance as a question of UK law?

113. A question arises as to where to start the analysis in this matter. The Appellant urged the starting point to be whether, as a question of UK law, the IM SIPP was life insurance. That starting point was also consistent with HMRC's publicly available guidance to officers GIM1040 – Legal Basis of Insurance: Contract of Insurance which provides:

The 'Prudential' definition of insurance remains the starting point for a discussion of the legal basis of insurance. ...Case law relating to insurance has also established a general principal that the substance of the contract prevails over its form. This follows from the decisions in *Fuji* ... In the *Fuji* case the Court also held that the regulatory consequences of treating a contract as insurance are not relevant to the classification of the contract."
114. It is to be noted that this section of the manual concerns insurance generally and is not identified as relevant in the context of determining whether a supply is insurance for VAT purposes. VATINS2110 does not reference GIM1040 directly but, after referencing *Card Protection Plan* and the Collins dictionary definition on the meaning of insurance VATINS2110 states "This clearly accords with our daily understanding of what insurance is, and it is likely that any form of insurance would fall within this definition."
115. On the other hand HMRC contended that it mattered little whether the arrangements constituted insurance applying the *Prudential* and *Fuji* tests because, unless the, now established, CJEU articulation of what constitutes an insurance transaction is met the exemption cannot apply.
116. The Tribunal has determined to apply the domestic analysis first. If by reference to *Prudential*, *Fuji* and related cases the IM SIPP is not a contract of insurance, on the Appellant's case, the analysis would appear to end. However, if the IM SIPP is a contract of insurance this

Tribunal must then consider, in the light of the most recent guidance given by the CJEU in *United Biscuits*, whether there is any basis for it to be excluded from the exemption provisions.

117. By reference to the summary of the domestic insurance cases set out above it is apparent that, certainly for the purposes of the historic domestic regulation of insurance companies, life insurance is a relatively broad concept, and it is clear, following *Fuji*, that an investment contract which provides for the payment of benefit on death is a contract for life insurance. That was so despite the fact that the substantive benefit payable by the insurance company is determined solely by reference to the investment performance of the premium in circumstances where that performance was solely attributable to the investment decisions of the insured. The division between an investment contract and an insurance contract being articulated in *Fuji*, by reference to the fact that the benefits were payable in the event of death or in the event of living and making the choice to surrender.
118. It appears to the Tribunal that a SIPP and thus the IM SIPP does meet the Prudential test of insurance, certainly by reference to the interpretation applied in *Fiji*. There seems to be little that can materially differentiate the IM SIPP from the contract bond in *Fuji*. In each case there is a financial contribution which is then invested, and it is the investment performance of that contribution which determines the benefits due under the contract. As the investments decisions are made exclusively at the direction of the policy holder/member the value of the fund from which benefits are payable are at the risk of the insured. Entitlement to receive benefits under a SIPP is driven by the same type of life and death events. Unlike the *Fuji* contract there are a greater number of contingencies or uncertainties which underpin what form the benefits may take and when they are paid as they may become payable in the event of incapacity prior to 55, at any point between 55 and 75 or on death. That latter point would appear to be more consistent with a conclusion that the contract is a contract of life insurance than was even the case in *Fuji*.
119. As far as they engaged with the question of whether the IM SIPP was insurance under the general law, HMRC contended that the critical and distinguishing feature of the IM SIPP which precluded it from being insurance was that the funds were held under trust and hence were substantively the member's own funds. It is right to say that under a standard insurance contract the premium is paid to the insurer which becomes beneficially and legally entitled to the full value of the payment. Indeed it is for that reason that the insurance directives were established to protect policy holders by setting capital adequacy requirements ensuring that the insurance company has sufficient capital to meet claims as they arise. It is also correct to observe that the Prudential test was set at a time prior to the imposition of capital adequacy but it was by reference to legislation which provided for regulation of precisely who could and could not write insurance business. The Appellant's response was that the terms of the trust under which the funds are held do not give the member (or any other beneficiary) an unfettered right to draw on or use the funds. On the contrary there are very significant fetters imposed which limit both when and how the funds are used so as to comply with the tax regime. The only right of the member is to require that the fund be administered in accordance with the scheme deed and rules and that is not equated to a direct right in respect of the fund itself. Although not put to the Tribunal in this way the submission was to the effect that the capital adequacy requirements of the insurance directives and the master trust arrangements are substantively similar both in objective and effect as to be insufficient to preclude a conclusion that the IM SIPP is an insurance contract. The Tribunal agrees with a submission put in that way. The Prudential test, as applied in *Fuji* is one as to substance and not apparently as to form.

120. There was also some debate between the parties as to the contractual entitlement to benefits arising on death due to the discretion given to the trustees. The member completes a non-binding expression of wish (thereby permissibly excluding the benefit from a charge to inheritance tax) which “help[s] the trustee to pay out your benefits in line with your wishes”. Despite the non-binding nature of the expression of wish there can be no doubt that on death the accumulated value of the member’s individual fund is not to be retained by the trustees and will be paid out. Ultimately, and absent an identified beneficiary, the rules provide that the fund passes to the Crown bona vacantia. As such there can be no question benefits are payable on death (the timing of which is uncertain) such that, as was the case in *Fuji*, the contingency relevant in respect of the in-life benefits is that they happen prior to death.
121. The role of this Tribunal is to determine the VAT liability of the supplies made by the Appellant in connection with the IM SIPP and not to establish under insurance law that the IM SIPP is insurance. It is, therefore, with some caution, given the different purpose for which the Prudential test was developed, that the Tribunal concludes, for the reasons set out above, that the terms of the IM SIPP do, on balance, appear to meet the Prudential test of insurance.

Is the IM SIPP an insurance transaction for VAT purposes?

122. The Appellant contends that by reference to HMRC guidance determining that the IM SIPP is a contract for life assurance by reference to the Prudential test is enough. The Tribunal has some significant sympathy with that position. As noted above, though not explicit, the terms of VATINS2110 and GIM1040 when taken together would certainly imply that the provision of any life insurance contract meeting the *Fuji* test would constitute an insurance transaction for VAT purposes.
123. However, HMRC guidance is not the law and enforcing its application is not within the jurisdiction of this Tribunal (that is a matter for a judicial review challenge in the Administrative Court).
124. This Tribunal must determine whether the IM SIPP is an “insurance transaction” applying an EU wide interpretation of that term as provided by the CJEU. As set out above the CJEU has, since *Card Protection Plan*, been broadly consistent in its articulation of the essential features of an insurance transaction as “that the insurer undertakes, in return for prior payment of a premium, to provide the insured, in the event of materialisation of the risk covered, with a service agreed when the contract was concluded”.
125. The definition of life assurance as articulated in *Houseman* (as derived from the Prudential test) is: “one whereby one party (the insurer) undertakes for a consideration (the premium) to pay money (the sum assured) to or for the benefit of the other party (the assured) upon the happening of a specific event, where the object of the assured is to provide a sum for himself or others at some future date, or for others in the event of his death or survival.”
126. As the Appellant pointed out there is a remarkable similarity between the two. The most significant difference, certainly in terms of language, is between “upon the happening of a specific event” and “in the event of materialisation of the risk covered”. The Appellant contends the two phrases have the same meaning. In particular, the Appellant contends that there is no requirement for the insurer to be at risk, the relevant risk or uncertainty for insurance purposes is the risk faced by the insured in this case the life and death uncertainties which determine when and how the benefits are paid. HMRC contend that

in order to be exempt there must be consideration paid for the assumption of risk by the insurance company.

127. Given the similarity in the Houseman articulation of the Prudential test and the EU case law on the essential characteristics of an insurance transaction the Tribunal considers that it is appropriate to start with the purpose underpinning each articulation.
128. In this regard it is firstly to be recognised that the Prudential test was developed in the context of wholly different legislation with a different purpose and addressing a different mischief. As is apparent from *Fuji* the question of the nature of the contractual relationship needed to be analysed in order to determine whether the contract was void with the attendant consequences in terms of the relationship between and entitlements of the parties. More generally the test was established and developed for a regulatory purpose.
129. The purpose of group 2 schedule 9 VATA is patently fulfilment of the pre-Brexit obligations on the UK under the EC Treaty to implement the provisions of the VAT Directives. This could not be more plainly the case post 1 January 2005 when item 1 was amended to take account of the implementation failure highlighted by the CJEU in *Card Protection Plan*.
130. The justification for the exemption at an EU level (as an exception to the general principle of taxation) has been expressly articulated by the CJEU in *United Biscuits* as addressing the difficulty arising from the fact that an insurance premium composes two parts: the fee for administration/provision of the policy under which the insured risk is borne and the capital element (from which claims are ultimately paid).
131. By reference to that justification and by reference to the articulations provided in *Card Protection Plan*, *Aspiro*, *Mapfre* and *United Biscuits* a supply is exempt for VAT purposes as a supply of insurance where in return for a fixed and known amount the insurer agrees to provide benefits on the materialisation of an identified risk where the scope of the benefits is specified at the outset.
132. Under the IM SIPP the member makes contributions into a fund held under a master trust but in respect of which the member's fund is individually identifiable. The individual directs the investments to be made and bears all the investment risk. Benefits are paid only by reference to value in the fund at the point at which the benefits are taken and subject to compliance with the tax rules. As such the Appellant bears no risk in connection with the payment of benefits. The Appellant contends by reference to the domestic non-VAT case law that the fact that it bears no risk is irrelevant. By reference to that case law the Appellant is correct however, there is no VAT authority which confirms that position.
133. However, as the case law in the CJEU has developed, the assumption of risk by the insurance company does appear to be significant.
134. The Advocate General in *Aspiro* analysed the essential features of an insurance transaction by reference to the assumption of risk by the insurer (at paragraph [22]). At paragraph [26] and by reference to the CJEU judgments in *Försäkringsaktiebolaget Skandia (publ)*, C-240/99 and *Assurandør-Societetet, acting on behalf of Taksatorringen v Skatteministeriet* C-8/01 the Advocate General draws a distinction between insurance transactions in a "strict sense" and component elements of insurance business confirming that it is the assumption of risk by the insurer which is critical for an insurance transaction in a VAT sense.

135. In paragraph [42] of *Mapfre* the CJEU specifically articulates the essential features of an insurance transaction by reference to the insured person being exempted from the risk of bearing financial loss, which is uncertain, but potentially significant.
136. The “insurance in the strict sense” distinction is picked up by the Advocate General in *United Biscuits* at paragraph [68] in which it is noted that the PVD exempts insurance business “in the strict sense of the term, in that such an activity involves solely the assumption of risks in a contractual framework”. The precise distinction is not articulated by the CJEU however, at paragraph [28] it references the requirement for indemnity and, where, at paragraph [40] the CJEU references the “normal meaning” of insurance the CJEU does so explicitly approving paragraph [58] of the Advocate General’s opinion in which substantively the same distinction is drawn between “insurance” in the strict sense and “operations” which are closely related or ancillary to the provision of insurance.
137. It appears to the Tribunal that what is required under the Prudential test is somewhat different to that which is relevant for the purposes of the VAT exemption. In order for a supply to be exempt as an insurance transaction, the insured must pay the insurer to assume a financial risk. Such a conclusion includes within the scope of the exemption both indemnity and contingency insurance as, under a conventional (non-investment) life assurance policy the insured pays a fixed, up-front, annual or monthly premium over the term of the policy and the insurer bears the risk on a fixed sum payment on the happening of the insured event (death/critical illness etc). However, excluded from exemption is any policy/scheme which meets the Prudential life/death uncertainty without the assumption of financial risk.
138. That conclusion is consistent to the justification for the exemption. Each premium in a case where financial risk is assumed by the insurance company will consist of a payment to the insurer for bearing the risk and a contribution to “capital” from which, when taken with the risk across all policies, the benefits are paid.
139. Following the CJEU judgment in *United Biscuits* it is clear that reliance on the scope of the insurance directives to justify exemption is also misplaced. As the Advocate General noted the insurance directives are “intended to coordinate the laws of the Member States relating to life assurance business and to establish a classification by class of business in order to determine those that are subject to compulsory approval and the detailed rules applicable to such approval. In that regard the insurance directives cover insurance business in the strict sense and ancillary business...”. This analysis receiving approval from the CJEU at paragraph [36]).
140. In addition, the insurance directives permit a level of discretion on the margins as to what ancillary insurance business is to be regulated. The scope of the insurance exemption is deliberately narrower than the scope of the insurance directives because they serve a different purpose. The exemption is to be narrowly construed and (unlike some of the social exemptions) does not extend to related or ancillary services.
141. The annual fees payable by a member of the IM SIPP are paid as consideration for the provision of the services listed in clause 18 of the terms and conditions. They do not include any element of risk premium and the Appellant does not need to accumulate capital from which to pay the benefits. The members contributions which are held under trust for the member, their dependents and other beneficiaries, represent the capital from which the benefits are paid. The Appellant does not provide insurance in the “strict sense” of assumption of financial risk rather, it has established and operates a trust scheme pursuant to which contributions made by the members are held and administered so as to comply with the provisions of FA 04.

142. However apparently similar the Prudential-rooted Houseman definition of life assurance and the high-level summary of the essential features of an exempt insurance transaction, there is a critical difference which, in the present case, precludes the Appellant from exemption even on the basis though the Prudential test would appear to be met.
143. This conclusion would appear to run contrary to the conclusion of the VAT & Duties Tribunal in *Winterthur*. Whilst *Winterthur* is a decision of the VAT & Duties Tribunal to which the principle of comity would apply it is a decision which predates even *Card Protection Plan* and hence all the relevant CJEU jurisprudence. It is also significant that, on the critical issues which arise in the present case, the Tribunal made no formal finding. As set out above *Winterthur* concerned the liability of similar fees as in the present case but, in that case, the heart of HM Custom and Excise's objection to exemption was that the charges were not payable to an insurance company. They had accepted that if the payments were made as consideration for a service provided by the trustee (as an insurance company) then they were exempt. The question in *Winterthur* did not, in substance, therefore, concern the nature of the activity but rather who the supplier was. The case evaluates the relationship between trustee, scheme administrator and member so as to conclude that the essential contractual relationship for the provision of the pension was between the trustee and the member through the auspices of the scheme administrator and that the charges made were pursuant to the scheme.
144. In view of the conclusion that the Appellant's supplies are not insurance transactions there is no basis for a fiscal neutrality argument. The Tribunal was not provided with the contractual documentation relevant for a SIPP provided by an insurance company. It cannot therefore be determined whether there is a substantive contractual basis for concluding that an insurance backed SIPP is or is not insurance in a strict sense and therefore properly subject to the exemption. However, if it were so that would represent a relevant difference justifying different treatment for VAT purposes, for fiscal neutrality to apply the supplies must be comparable (see *HMRC v Rank Group Plc* C-259/10 at paragraph [58]). However, even if there were no justifiable difference with the consequence that the supply of insurance backed SIPPs were incorrectly treated as exempt the principle of fiscal neutrality does not assist (see *Rank* at paragraph [68]) it simply confirms that the insurance backed SIPPs have been incorrectly exempted.

DISPOSITION

145. For the reasons stated the fees payable by members of the IM SIPP are not consideration for an exempt insurance transaction; as a consequence, there has been no overpayment of VAT and the sums claimed on the error correction notices are not due to the Appellant.
146. However, and by way of postscript, the Tribunal notes that by reference to HMRC's guidance in this area the Appellants case had clear merit. By reference to the case prosecuted by HMRC their guidance is outdated and misleading and should be amended without delay.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

147. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the Firsttier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

AMANDA BROWN QC TRIBUNAL JUDGE

RELEASE DATE: 20TH SEPTEMBER 2022

ANNEX
Terms and Conditions



THE INTELLIGENT SIPP FEE SCHEDULE / KEY FEATURES / TERMS & CONDITIONS

Intelligent Money is authorised and regulated by the Financial Conduct Authority FCA number 219473 and is registered in England and Wales under Company Registration 04398291. The Registered Office address and address for all correspondence is, The Shire Hall High Pavement Nottingham NG1 1HN. Telephone Number 0115 948 4200. Fax Number 0115 979 9700. Email enquiries@intelligentmoney.com

Fee Schedule



FEE SCHEDULE

Standard Fees

Establishment Fee	nil
Annual Fee	£150

Contributions

Single Contributions	nil
Regular Contributions	nil
In-Specie Contributions (including shares/land/property)	£150 p/h

Transfers in/out

Cash Transfers In	nil
Cash Transfers Out	£150 p/h
In-Specie Transfers In	£150 p/h
In-Specie Transfers Out	£150 p/h

Commencement of Benefits

Calculation of Benefits	£150 p/h
Income Payment Facility	£90 pa
Review of Income Drawdown	£150 p/h
Annuity Purchase	£150 p/h

Investment Fees

Interim Valuations	£30
Platform Investment Transactions	nil
Non-Platform Investment Transactions	£150 p/h

Banking and Borrowing Fees

Chaps Payments	£30
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Property

Property Purchase/Sale	£150 p/h
Annual Fee	£350
Annual Fee Per Additional Letting	£75
Completion of VAT returns	£150 p/h

Other Fees for Technical Work (Death Claims, Pension Sharing, etc.)

£150 p/h

All time-cost fees are charged per hour or part thereof in units of 10 minutes. So an in-specie transfer that takes 20 minutes, would be charged at £50.

Fee Schedule

Other Information

We do not insist on a minimum of cash held on the scheme account however provision for payment of fees may need to be factored into any investment strategy and management. We reserve the right to charge for additional services on a time cost basis. Annual fees are deducted in advance from the scheme account where funds are available or invoiced separately to the member or company when applicable. Where a property purchase has been aborted there may be a charge to the account where work has been completed by both Intelligent Money and/or where such third parties (i.e. Solicitors, valuers etc.) have undertaken work. Any Solicitors Fees and Legal fees charged where applicable are in addition to our administration fees. All fixed fees are taken annually in advance.

What are the Annual Fees for?

Provision, establishment and ongoing operation of your pension plan.

Can the fees increase?

We reserve the right to increase our fees however we only do so after giving the member due notice if any increase is greater than inflation.

Do you pay commission to my Financial Adviser?

No, we do not pay commissions.

What does the term 'in specie' transfer mean?

This is the transfer of assets in any form other than cash.

How are fees deducted?

Fees will either be deducted from the cash account or from the liquidation of funds.

What is a 'crystallisation event'?

There are a number of possible crystallisation events but the most common is when a member commences taking benefits from the plan.

Do you facilitate Adviser Charging?

Yes but for non-Platform investments and IM Optimum Portfolios only. Adviser charging from Platform investments is normally facilitated by the relevant Platform provider.

Is there a limit to how many income payments can I take?

You can take a maximum of one payment per calendar month.

How often can I vary the level/frequency of income payments I take?

You can vary the amount and/or frequency of the pension payments you'd like to take as often as you like, however this will be charged under 'Other Fees for Technical Work' and is in any event limited to a maximum of one payment per calendar month.

TERMS & CONDITIONS OF THE INTELLIGENT SIPP

These terms and conditions set out the contract between you (the Member) and Us (Intelligent Money) and should be read in conjunction with the Key Features of the Intelligent SIPP. All queries and correspondence must be sent in writing to Intelligent Money, The Shire Hall, High Pavement, Nottingham, NG1 1HN

1. DEFINITIONS **Agreement** these terms and conditions as amended from time to time; **Cash Account** the cash account established to process payments into and out of you Plan and to hold money that we have not received instructions to invest. This is not to be confused with any other cash deposit account you may select as an investment; **Cancellation Period** the period of 30 days from the date when you are informed that your application for membership has been accepted;

Charges

as set out in the relevant fee schedule and amended from time to time; **Dependant** a person who is a "dependant" under paragraph 15 of Schedule 28 of Finance Act 2004; **Financial Adviser** the legal entity authorised and regulated by the FCA which is advising you to enter into the Plan; **Force Majeure Event** any cause preventing the Establisher, Operator or Trustee from performing any or all of their material obligations under this Agreement which arise from or are attributable to acts, events, omissions or accidents beyond their reasonable control including without limitation, acts of God, war or national emergency, acts of terrorism, riot, civil or governmental order, fire, explosion, flood, storm or epidemic (including any interruption by such events to electronic or other automated systems used in connection with the services provided under this Agreement);

FCA

Financial Conduct Authority which is the regulator of the financial services industry in the UK; **Fund Value** the value of the Member's fund as defined in the Plan's Rules;

HMRC

Her Majesty's Revenue & Customs; **Intelligent SIPP** the registered pension scheme;

Member

the person named in the application form and in whose name the Plan has been opened;

Nominee

is a person who has been nominated by a Member to receive benefits on the Member's death under paragraph 27A of Schedule 28 of Finance Act 2004;

Operator

Intelligent Money is the current Operator of the Plan;

Personal Pension Plan

the Intelligent SIPP established to receive contributions and/or transfer payments as prescribed by the relevant legislation and Revenue rules;

Plan

the Registered Pension Scheme known as the Intelligent SIPP established by Intelligent Money;

Provider

Intelligent Money is the current Provider of the Plan;

RDR

the FCA's Retail Distribution Review effective from 31 December 2012 which involves changes to Advisers qualifications and Adviser Charging;

Registered Pension Scheme

a Registered Pension Scheme within the meaning of Chapter 2 of Part 4 of the Finance Act 2004;

Revenue

HM Revenue & Customs, being the government agency formerly known as the Inland Revenue;

Successor

a person nominated by a Dependant, Nominee or Successor of a Member to receive benefits on the Member's death under paragraph 27F of

Schedule 28 of the Finance Act 2004;

Trustee the entity which is the current Trustee of the Plan (currently Intelligent Money Limited or Intelligent Money Trustees Limited);

Us

Intelligent Money;

You and Your

the person named in the application form and in whose name the Plan has been opened.

2. TERMS OF THE AGREEMENT

This Agreement is between the Member and Intelligent Money (registered in England and Wales under Companies House registration number: 04398291). This Agreement details the terms of business and the services which will be provided under the Plan for the Member whilst they participate in the Plan.

The Plan is a Registered Pension Scheme approved by the Revenue. The Plan has been established for the purpose of the provision of pension and lump sum benefits for eligible individuals under the Finance Act 2004. The Plan is governed by a Declaration of Trust and Rules (the Rules) and any subsequent deeds amending these.

Intelligent Money hereby undertakes to operate the Plan in accordance with the Rules and this Agreement. A copy of the Rules and amendments to them is available by writing to Intelligent Money, The Shire Hall, High Pavement, Nottingham, NG1 1HN.

The Trustee is the legal owner of all the assets of your Plan (which it holds on trust for you and/or your Beneficiaries). All investments not held in the name of a Nominee must be registered in the name of the Trustee.

3. CONTRIBUTIONS

You may contribute to your Plan at any time provided you remain eligible to do so. The Operator is also able to accept contributions on your behalf from your employer or another third party.

Contributions may be made as a one-off (or series of one off payment(s)) of any amount, or on a regular basis. There is a limit on the amount of contributions that can be made to your Plan by or on your behalf that will attract tax relief. Please refer to the Key Features for details of these limits.

You will have the option of taking all your benefits from the Plan at once, or taking your benefits in stages over a period of time. In achieving this, your Plan will be divided into crystallised funds i.e. funds you have designated for income withdrawal and uncrystallised funds i.e. the part of your Plan from which you have not yet taken any benefits.

Once part of your Plan has crystallised you will be able to continue making contributions, although these may be restricted depending upon the options you choose. Contributions (other than contributions made by your employer and contributions you make on or after age 75) are made net of basic rate tax. The Operator will claim the tax relief at basic rate from the Revenue.

The Operator makes such tax claims monthly, in arrears. Tax relief is not available for investment until it is received from the Revenue, which can take up to 11 weeks depending on the timing of your contribution.

Reclaimed monies will be credited to your Cash Account. You are responsible for reclaiming any higher rate tax relief from the Revenue and this will not be credited to your Plan.

You are not entitled to receive tax relief on contributions made by your employer. All proposed contributions must be supported by the appropriate application form and/or any other documentation required by the Operator. Proposed contributions received without the appropriate documentation will be unavailable for investment and will normally be returned unless such documentation is supplied within 30 days of the proposed contribution being received.

Once a contribution has been accepted into your Plan it cannot normally be refunded. Refunds can only be paid from Registered Pension Schemes in very limited circumstances.

The Intelligent SIPP Terms & Conditions

4. TRANSFERS Transfers-In

You may arrange for a transfer of any other pension arrangement you may have into the Plan, provided it is consistent with the Plan Rules and the transfer rules applicable to Registered Pension Schemes. Transferred in funds will not be available for investment until the Operator and Trustee are satisfied the transfer is acceptable and the funds have been received.

The Operator and Trustee reserve the right to refuse any transfer and may refuse to accept a transfer where a pension transfer specialist would normally be involved and you have not received this advice in respect of the transfer and have not signed a disclaimer indemnifying the Provider, Operator and Trustee. The Provider, Operator and the Trustee do not offer and are not authorised to give advice on transfers.

The Operator does not check transfers for suitability. It is your responsibility to decide that the Intelligent SIPP is suitable and appropriate to your needs. If you have any doubts as to the suitability or appropriateness of the Intelligent SIPP or the investments to which it is linked you should seek independent financial advice from a Financial Adviser before deciding to invest.

Transfers-Out

You may request a transfer payment to be made from your Plan to another Registered Pension Scheme or certain qualifying overseas pension schemes.

The Operator and Trustee reserve the right to refuse to effect any such transfer until it is satisfied it is allowed under the Plan Rules and any overriding legislation.

The Operator and Trustee will not be liable for any lost investment opportunities or any reduction in the amount of the transfer payment arising during that time. The amount of the transfer payment will be the aggregate value of the part of your Plan being transferred as at the date the transfer is made, less any outstanding charges or charges incurred as a result of the transfer payment.

5. CASH ACCOUNTS (not to be confused with cash deposit accounts you may hold as an investment within your SIPP)

All monies in respect of your Plan, not applied for investment purposes, will be held in a Cash Account established by the Trustee at a designated bank (or banks) as the Trustee shall from time to time determine. The Trustee will be the sole authorised signatory to the Cash Account.

The Cash Account is provided as a "current account" facility to enable payments in and out of your Plan and hold Funds not invested. As such it does not pay interest to the Member (as any interest available is retained in full by Intelligent Money to cover the costs of establishing and operating the Cash Account within your Plan at no additional charge). Cash Accounts are not permitted to go overdrawn.

Where monies are transferred to an investment manager permitted to hold Funds in respect of your Plan, the investment manager will be responsible for the establishment of a bank account held in the investment manager's nominee name in a form acceptable to the Trustee and shall account for all transactions and interest periodically. The Operator and the Trustee do not accept liability for default by any authorised institution or any third party (including an investment manager or bank) that holds cash in respect of your Plan.

6. STATEMENTS AND DOCUMENTATION

You will be provided with an annual benefit statement each year. The Operator will keep a record of payments in and out of your Cash Account and transfers between your Cash Account and investment managers.

Details of the transactions undertaken by investment managers or Financial Advisers on your behalf will only be available from the investment managers and the investment manager must provide valuations at least monthly to the Operator.

You are responsible for checking the accuracy of statements as soon as possible and informing Us if there appears to be any inaccuracy. The Operator and the Trustee accept no responsibility for information provided by a third party.

7. INVESTMENTS

There is a wide range of investments into which Funds in your Plan can be applied and a list of permitted investments can be obtained by writing to the Operator. This range is restricted to the regulatory restrictions imposed by HMRC. The Operator and Trustee may from time to time vary this list for any reason which may include to comply with Revenue or legal requirements.

You will be notified by the Operator of any such changes and where practicable given 30 days prior notice. Your investment objectives must have due regard to the fact that the overall objective of your Plan is to provide retirement benefits.

Neither the Provider, Trustee nor the Operator provide financial advice nor accept any liability for the performance or choice of investments.

The Operator and Trustee do not accept any liability for any tax charges should the Member, their Financial Adviser or fund manager invest in assets which are deemed to be prohibited by legislation or the Revenue.

8. INVESTMENT PROCEDURES

You may choose the investments of your Plan. The Trustee will enter into any necessary agreements with the chosen fund manager and all investments not held in nominee names must be registered in the name of the Trustee.

The Trustee will insist on limiting its liability and any liability of the Operator to the value of the part of your Plan invested with the fund manager.

The Operator will not be liable for any loss arising from your investment instructions. The Operator may aggregate your instructions with those of other Intelligent SIPP members and place an aggregated deal with the fund manager. Instructions to purchase units/shares in any investment will only be placed where you have sufficient cleared funds in the Cash Account.

The Operator will use the investment instructions advised by the Member or their adviser as pre agreed to transfer monies from the Member's Cash Account to the Investment Managers. The Member may amend these investment Instructions at any time and the Operator will apply these instructions to monies received after it has processed the new instructions.

Neither the Trustee, nor the Operator accept liability for any loss occasioned by any investment manager or other person or body which is responsible for any fund management or ancillary service connected therewith.

The Trustee will not exercise voting rights or any other rights in respect of any investment unless directed by the Member to do so. The Trustee reserves the right to realise investments to pay benefits or fees and charges under the Plan and this Agreement.

9. COMPLAINTS

Should the Member wish to register a complaint in relation to the services provided under this Agreement then such a complaint can be made in writing to Intelligent Money, The Shire Hall, High Pavement, Nottingham, NG1 1HN. We will then forward to you a copy of our 'Complaints handling procedures' leaflet. Any complaint will be dealt with promptly. We will always endeavour to deal with a complaint in a fair and honest way, however, if you are unhappy or unsatisfied with our conduct of a complaint you can complain directly to the Financial Ombudsman Service.

10. VARIATION

The Operator and the Trustee have the right to make any amendment to these provisions in order to comply with a change of applicable law or regulation, by giving the Member or their appointed Financial Adviser 30 days' notice. If the change is to the Member's advantage then notice can be given within 30 days of the change.

This Agreement as varied, if appropriate, shall continue until your Plan has been terminated by the payment of a transfer value to another Registered Pension Scheme or the provision of annuity/death benefits in the appropriate form, or the Plan is wound up or otherwise there are no assets remaining in your Plan. No Member has the right to amend this Agreement. The Rules of the Plan can be amended without your consent in accordance with the power of amendment set out in the Rules from time to time in force. If such changes would have a material impact on you then the Operator will give you 30 days notice of any such change. Nothing in this Agreement restricts in any way the powers to amend the Plan contained in the Rules.

11. CANCELLATION RIGHTS – YOUR RIGHT TO CANCEL

To comply with legislation, the rules of the Plan will provide that within 7 days of your application for membership being accepted you will be issued with cancellation notice detailing your right to a 30 day cancellation period. Your right of cancellation or withdrawal is dependent on the type of transaction entered into. Please refer to the Operator or your IFA for further information.

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How to cancel

If you decide that you wish to withdraw your initial Application and any concurrent or subsequent transfer of an existing pension you should write to the Operator before the end of the Cancellation Period advising that you wish to exercise your right to cancel. Each time you apply to transfer an existing pension you have the right to cancel the transfer.

Costs incurred during the Cancellation Period

There is no charge for cancelling your Application. The Operator however reserves the right to deduct charges for any services provided during the Cancellation Period. Any contributions received will then be refunded and any transfer values received, returned. Please note that these refunds will be subject to investment fluctuations if assets have been purchased during the Cancellation Period. As a result the value of the amount which you receive may be lower than originally invested. The transferring scheme may not be willing to accept back a transfer. If this occurs you may request a transfer to another pension provider.

12. TERMINATION

No fees or charges at the time of termination paid shall be refunded and those payable shall remain so and will include any charges associated with undertaking any transaction necessary to terminate your Plan.

Termination will be without prejudice to the completion of transactions already initiated and the Operator is authorised to continue to operate the Cash Accounts relating to your Plan after notice has been given for the purpose of settling or receiving monies in respect of transactions already initiated and paying any expenses or fees due to the Provider or other parties.

13. THE FINANCIAL SERVICES COMPENSATION SCHEME

We are a participant in the UK Financial Services Compensation Scheme which provides a measure of protection where an investment firm is unable to meet its obligations to its clients, currently to an amount of 100% of the first £50,000 (or currency equivalent).

More information about this scheme and on your eligibility to benefit from the protection afforded by the scheme is available on request or from the Financial Services Compensation Scheme, whose address is 10th Floor, Beaufort House, 15 St Botolph Street, London, EC3A 7QU.

14. CONFIDENTIALITY

The Operator and the Trustee undertake not to disclose, at any time, information coming into their possession during the continuance of your Plan except to the Member's agents (including their Financial Adviser and investment manager), or any investment provider with whom the Plan has been invested or the organisation through whom the Plan has been introduced, unless expressly authorised to do so or where required to do so by law or any regulatory purpose and such information will be held in accordance with the provisions of Data Protection Act 1998. The Operator may also give essential information about the Plan to others if necessary to run the Plan this may include your Financial Adviser's Network Head Office if commission or fee payments to your Financial Adviser, that you have authorised, are paid in this way.

Our regulator requires that we classify our clients as 'retail' (personal) or 'professional' (business). In all cases we will classify you as a retail client. This will give the highest level of consumer protection and in some circumstances access to the Financial Ombudsman Service.

15. INSTRUCTIONS AND NOTICES

The Member (or any Financial Adviser authorised by the Member) should give all written notices and instructions to the Operator in writing at Intelligent Money, The Shire Hall, High Pavement, Nottingham, NG1 1HN. You agree to receive communications and statements from the Operator via email and to notify the Operator if you wish to change your contact details or if you become aware that the security of any methods of communication that you use to communicate with the Operator has or may have been compromised. The Operator will not be liable for acting upon any communication that it reasonably believes to be from you or from a person authorised by you. The Operator will use all reasonable efforts to ensure that its web site is available at all times, however, the web site may not necessarily contain content for use by the Member, the content from time to time may be solely for the use of the Member's agents, the Operator reserves the right to withdraw the web site to make any necessary improvements or amendments to its features.

The Operator will use appropriate equipment and systems to minimise any errors or viruses occurring on the web site, but it does not represent or

warrant that the web site is and will be error free, free of viruses or other impairing or harmful components.

16. JURISDICTION

This Agreement shall be constructed in accordance with the laws of England and the parties submit to the exclusive jurisdiction of the English courts.

17. CHARGES

The Fees for providing and operating your Intelligent SIPP are as detailed in the Fee Schedule within the Key Features Document.

Where we do not charge VAT on services that we understand to be VAT exempt, we reserve the right to collect VAT retrospectively should HMRC deem that VAT should have been payable on any such services. For the protection of all Scheme Members the Operator can from time to time levy ad hoc fees on all or certain Plans to ensure that all statutory and regulatory requirements and obligations of the Operator and Trustee can be met in full or be fully covered. Should any single deduction be in excess of the Plan annual management charge, or 1% of each Plan value (whichever the greater), we will write to you giving 30 days' notice of such deduction. The Trustee reserves the right to amend the charges or apply additional charges as described in the Key Features subject to providing the member with due notice which will not be less than 30 days.

18. SERVICES

The following services are provided:

- Establishment of your Plan;
- Ongoing operation of your plan;
- Receipt of contributions/transfer payments into/out of the Plan;
- Recovery of basic rate tax on Member contributions where applicable;
- Annual statements detailing assets, contributions and transfer payments received and amounts of tax recovered from the Revenue;
- Creation of banking facilities;
- Settlement and payment of benefits; and
- Such other services as may from time to time be necessary to efficiently operate your Plan and to comply with Revenue requirements.

19. MISCELLANEOUS

If at any time any part of this Agreement is found by a court, tribunal or administrative or regulatory body of competent jurisdiction to be in part illegal, invalid or unenforceable in any respect that will not affect any other provisions of this Agreement which will remain in full force and effect.

No provision of this Agreement will be enforceable by any party (other than you, the Trustee, Operator or Establisher) by virtue of the Contracts (Rights of Third Parties) Act 1999.

Neither the Trustee or Operator or the Establisher will be deemed to be in breach of this Agreement or otherwise liable to you (or to any third party) for any failure or delay in it performing its obligations under this Agreement due to a Force Majeure Event, provided always that the Trustee or Operator or the Establisher (as appropriate) use their reasonable endeavours to (where possible) bring the Force Majeure Event to an end and whilst it is continuing to mitigate the impact of the Force Majeure Event.

Intelligent SIPP is a trading name of Intelligent Money Limited which is authorised and regulated by the Financial Conduct Authority (FCA) under FCA reference number 219473.

Details of Intelligent Money's FCA authorisation can be obtained in the FCA register at www.FCA.gov.uk or by calling the FCA on 0845 606 1234.

20. TREATING CUSTOMERS FAIRLY

Intelligent Money fully endorses the FCA's principals of Treating Customers Fairly (TCF). Should a conflict of interest arise between Intelligent Money and a client or between clients of Intelligent Money we will apply our conflict of interest policy, a full statement on which is available on request.

Neither our 'Key Features', these Terms & Conditions or any other documentation or verbal communications with a member should be construed as providing investment or financial advice as defined by the Financial Services and Markets Act 2012 as amended from time to time or re-enacted. The Operator and trustees do not provide the member

The Intelligent SIPP Terms & Conditions

with any advice as to the suitability of determining for example, but not exclusively, transferring any existing benefits to the Intelligent SIPP, what investments to buy or sell, the level of any contributions, when or whether to retire, or to select an annuity or income withdrawal, you should seek advice from a professional Financial Adviser particularly before making a decision to purchase an annuity.

Technical Information sheets providing more in depth information are available on request by contacting Intelligent Money.

The Financial Conduct Authority regulates the financial services industry in the UK. This document has been produced to help consumers decide if the pension services provided by Intelligent Money are right for them.

The full Trust Deed and Scheme Rules are available by writing to Intelligent Money, The Shire Hall, Nottingham NG1 1HN.

KEY FEATURES OF THE INTELLIGENT

keyfacts®

SIPP

The Intelligent SIPP is a personal pension established under trust and approved as a registered pension scheme by HM Revenue and Customs (HMRC). It is governed by a trust deed and scheme rules. Your application for membership of the Intelligent SIPP will be subject to the trust deed and rules of the Intelligent SIPP and its Terms & Conditions as amended from time to time and should be read in conjunction with these documents which are available by writing to Intelligent Money, The Shire Hall, Nottingham NG1 1HN.

This document is designed to highlight the key features of your Intelligent SIPP. It does not include full terms and conditions

It is the responsibility of you and your Financial Adviser to decide if the Intelligent SIPP, including the investments in the Intelligent SIPP are suitable and appropriate to your needs.

If there is anything you do not understand, or if you would like further advice on any aspect of this document, you should seek independent financial advice from your Financial Adviser.

Aims

The Intelligent SIPP is designed to provide you with the following:

- Access to a tax efficient environment in which to save for your retirement;
- Flexibility and control over the investments held within your Intelligent SIPP;
- The option of taking a tax free pension commencement lump sum in exchange for part of your pension;
- The option over the age of 55 to take a regular income, withdraw lump sum(s), purchase an annuity or remain invested;
- A lump sum, income or pension for your Nominee(s) or Successor(s) on your death;
- The ability to transfer your existing pension benefits, into your Intelligent SIPP (with certain exceptions);
- Flexibility as to types and the amount of benefits you receive from the Plan allowing you to tailor this to suit your own circumstances.

Your Commitment

In investing in an Intelligent SIPP:

- You and your Financial Adviser will review the Intelligent SIPP and the investments held within your Intelligent SIPP regularly to assess if they are suitable and appropriate to your needs;
- You can contribute to your Intelligent SIPP at any time and you can stop and start regular payments at any time without penalty;
- A pension is a long-term investment for your retirement and benefits cannot normally be taken until you have reached your 55th birthday except in limited circumstances e.g. when you retire due to ill health, or if you protected your right (which existed for employees in some occupations before April 2006) to take your entitlement to pre-April 2006 pension early. There are also restrictions on the type and amounts of benefits you can take from your Intelligent SIPP. These are set out below;
- All contributions will be automatically allocated to your Cash Account and invested as set out below;
- You must provide Intelligent Money with the information we need from time to time to operate your Intelligent SIPP and any changes to this, including any changes to your eligibility for tax relief.

Risk Factors

Many things could happen which would have an impact on the level of pension you receive from your Intelligent SIPP. You should review your pension arrangements regularly to check whether they are suitable and to ascertain whether your Intelligent SIPP will continue to meet your future pension needs. In particular you should note the following:

- Exercising your cancellation rights may result in you getting back less than you paid in;
- Past investment performance is not necessarily a guide to the future and some investments may carry greater risk in order to try to provide greater potential returns;
- Taking an income from your Intelligent SIPP at a rate higher than the investment growth rate may result in the value of your Intelligent SIPP being greatly reduced;
- Taking an income from your Intelligent SIPP while leaving holdings invested can be less certain than purchasing a pension via an annuity; • The actual benefits you receive may be lower than your last illustration.

This may be because:

- Investment performance is not guaranteed and might be lower than expected;
- Interest rates and exchange rates might be lower than those illustrated;
- Annuity rates may fall;
- You might decide to withdraw a higher level of income;

- You might reduce your contributions to your Intelligent SIPP;
- Pension tax rules may limit the amount of contributions which you can make without incurring a tax charge;
- You might decide to start to take benefits earlier than shown on your illustration; • Certain tax charges may reduce the value of your Intelligent SIPP;
- You might transfer your Intelligent SIPP to another pension arrangement which may achieve a lower investment return or have higher charges;
- Pension tax rules may change in the future and this could result in changes to the options available to you when taking benefits;
- Intelligent Money may increase its charges after giving you notice of a variety of reasons including:
 - taking account of any changes in our practice;
 - changes in law or a code of practice;
 - taking account of any regulation or recommendations of the FCA or any other regulatory body or decisions or guidance of any relevant ombudsman;
 - to take account of any changes or unexpected change in the service we provide;
 - to take account of any new or improved service or facilities which we may provide;
 - to take account of any ruling by a court or similar body;
 - to correct any errors which might be discovered; and
 - to enable Intelligent Money to maintain our financial strength in the collective interests of all our customers;
- Intelligent Money can also vary any charge for a valid reason where we reasonably believe that such a charge is appropriate;
- If you decide to transfer any existing pension arrangements to your Intelligent SIPP and you have any doubts as to the suitability or appropriateness of the Intelligent SIPP, you should consult your Financial Adviser before deciding to invest in the Intelligent SIPP. The Operator does not offer advice on the suitability or appropriateness of the Intelligent SIPP to your needs.

You should also be aware of the following general risks:

- Your existing arrangement may ultimately provide greater benefits than those which you would receive under your Intelligent SIPP. This will, however, depend on investment performance, the charges it applies and annuity rates applicable at that time, together with some or all of the risks described above;
- Your existing arrangements may offer valuable guarantees that would not be matched by your Intelligent SIPP e.g. if you are or were a member of a final salary pension scheme offered by your current or former employer, this may include a right to particular level of benefit on retirement. If you transfer benefits from this arrangement you will lose any such rights or guarantees that may have been offered;
- By transferring these benefits to your Intelligent SIPP you give up your right to receive benefits from your existing pension arrangement (including guaranteed benefits);
- You may be able to receive a larger tax free pension commencement lump sum from your existing arrangements than would be available if you transferred those benefits to your Intelligent SIPP.

Helping you Decide

What questions should I ask before I decide to proceed? In this document we have given you the answers to a number of important questions:

What is the Intelligent SIPP?

- The Intelligent SIPP is a 'Personal Pension Plan'.
- You or your Financial Adviser will select and appoint Investment Managers to arrange and administer your investments.
- You, your employer or a third party, may contribute to your Intelligent SIPP.
- You can choose to take a regular income from your Intelligent SIPP, make lump sum withdrawals or purchase an annuity, from the age of 55.
- From age 55 you can also take a tax free lump sum when you choose to access your Intelligent SIPP plan. This can be up to 25% of the value of your total pension fund in your Pension.

Am I eligible to contribute to the Intelligent SIPP?

To become a member of the Intelligent SIPP you must fall into one of the following categories:

- You are a UK Resident for tax purposes;
- You have relevant UK earnings;
- You are a non UK resident (but were a UK resident when you set up your

The Intelligent SIPP Key Features

Intelligent SIPP and have been a UK resident at some time in the previous 5 tax years);

- You are a crown servant (or spouse or civil partner of a crown servant) with earnings subject to UK tax.

How much can I contribute?

- There are no upper limits on the amount that you or a third party can contribute to your Intelligent SIPP in a tax year, as long as you have earnings to support the contribution, but only a certain amount will be tax privileged. The tax privileged amount is known as the annual allowance.
- The annual allowance for the current tax year is £40,000, but this may be restricted to £10,000 depending on which of the choices you make when you take your benefits under the Plan.
- No tax relief will be granted on contributions to your Pension made after age 75.
- The annual allowance takes into account contributions made from all sources.

This comprises:

- Member contributions;
- Contributions from an employer;
- Any contributions made by a third party on your behalf (which in practice are normally treated as if they were the member's own contributions, to take advantage of tax relief at source);
- Any contributions you make to any other pension arrangements you may have other than your Intelligent SIPP will also count towards the annual allowance;
- If one of your other schemes is a defined benefit pension (for example, a 'final salary' or 'average salary' scheme), the increase each year in value of your accrued rights is also treated as a contribution (in addition to your own contributions), using a standard factor set by law;
- Your contributions from these other arrangements will be aggregated with the contributions to your Intelligent SIPP when determining whether you have exceeded the annual allowance in a particular tax year;
- Contributions in excess of the allowance will be subject to a tax charge. This will be payable by you and is dealt with as part of your self assessment tax return and it will be your responsibility to monitor this. You should consult your Financial Adviser regarding any remaining tax allowance within a particular tax year;
- The annual allowance will not be tested in the year that you die; and
- Any contributions made by you or a third party other than your employer in excess of the higher of £3600 or your relevant UK earnings will be refunded to you.

What about tax?

- If you are a UK resident you will have tax relief on the higher of:
 - £3,600 gross; and
 - 100% of relevant UK earnings, capped at the relevant Annual Allowance;
- Any contributions made by your employer are paid to you gross. The employer can then claim relief (for example, against its liability to Corporation Tax) in respect of its contributions.
- If you are a non UK resident individual (but were in the past five years and when you joined the Intelligent SIPP) you will receive tax relief on contributions made by you or on your behalf up to £3600 gross.
- Your contributions to the Intelligent SIPP will be net of basic rate tax. The Operator will claim the basic rate tax relief from HMRC. The Operator will credit any basic rate tax reclaims to your Cash Account. e.g. to contribute £1,000 gross you will contribute £800. The Operator will claim £200 from HMRC on your behalf.
- If you pay tax at higher rates then you will be able to claim further tax relief at the higher rate. The Operator will reclaim the basic rate and you must reclaim the additional amount through your self-assessment tax return.
- Your fund will grow free of capital gains tax and UK income tax except that tax may not be reclaimed on UK dividends.
- The Government has introduced a new form of income withdrawal known as flexi-access drawdown, which generally replaces the previous alternatives of capped and flexible drawdown. However, if you are already in Capped Drawdown, you will have a choice of continuing in Capped Drawdown, or moving to flexi-access drawdown. You should seek advice on this option from your Financial Adviser.
- You now also have the new option of taking an "uncrystallised funds pension lump sum" (UFPLS) out of any part of your Fund which has not been designated to provide income withdrawal or to provide an annuity. The first 25% of any such sum is tax-free. You should seek advice from your Financial Adviser in relation to this option.
- You may take up to 25% of your fund as a tax free pension commencement lump sum, subject to not exceeding your lifetime allowance.
- All pension payments to you will be paid via the PAYE system unless otherwise agreed.
- The inheritance tax (IHT) position, in particular can be complex, though all forms of taxation are a major consideration in making investment decisions.

Tax rules can change at any time in the future. You should always take legal or professional advice on the impact of the tax rules on your pension benefits.

How do I invest my contributions?

- Cash payments and cash transfers into your Intelligent SIPP will be paid into your Cash Account held with such bank or building society as the Trustee may determine.
- You, or your Financial Adviser, will nominate an Investment Manager to administer, arrange and take investment decisions regarding the investments you have chosen to hold within your Intelligent SIPP.
- Intelligent Money do not accept any liability for any loss as a result of any action by an Investment Manager, IFA or any other person or body responsible for any investment management or associated ancillary services related your Intelligent SIPP.

What choices will I have when I decide to take benefits from my Intelligent SIPP?

- You can decide to take benefits from your Intelligent SIPP from the age of 55 or defer taking benefits for as long as you wish; you do not have to take an annuity at age 75.
- If you are suffering ill health, you may be permitted to take your benefits before you reach age 55.
- When you choose to take benefits from your Intelligent SIPP the value of your Intelligent SIPP will be tested against your lifetime allowance (if you have primary or enhanced or fixed protection, you must inform the Operator).
- From age 55 you are able to choose from any combination of a number of benefits following the Government's decision to enable members to access their pension funds with greater flexibility. These are:
 - a tax-free pension commencement lump sum of up to 25% of your Fund;
 - if you are first accessing your pension fund on or after 6 April 2015, or before that date you were accessing your pension savings through "flexible drawdown", an income, taxed at your marginal rate of income tax, taken from a "flexi-access drawdown fund";
 - if before 6 April 2015 you were using "capped drawdown" to access pension savings, you have the choice to either remain in capped drawdown, or to convert your fund into a flexi-access drawdown fund as explained above;
 - an uncrystallised funds pension lump sum, which can be paid as a lump sum from any part of your fund which has not already been crystallised. The first 25% of this will be free of tax, while the remainder will be taxed at your marginal rate of income tax;
 - purchasing a lifetime annuity to provide an income during your lifetime. You can choose whether this provides a fixed rate of income, or one that either increases or decreases during your retirement. You can also choose how long the annuity is guaranteed to be paid after your death, up to 10 years;
 - if any of your choices include either taking income from a flexi-access drawdown fund, or taking an uncrystallised funds pension lump sum, your Annual Allowance for further contributions will be replaced with the Money Purchase Annual Allowance currently set at £10,000. This means you will only be able to contribute this reduced amount without triggering a tax charge.
- Protected Rights ceased to exist on 6 April 2012, and are now treated as ordinary pension rights. As such any restrictions that used to apply in respect of these have fallen away.
- Your decision as to your choices in your circumstances is an important one. We, therefore recommend you discuss your retirement options with your Financial Adviser.
- You are also entitled to free, impartial guidance on your options under the Guidance Guarantee announced by the Government, under which you are entitled to a 30 minute consultation (face-to-face, by telephone or internet) in relation to your options. We recommend that you take this pensions guidance, if you choose not to we can provide you with details of how to access this guidance on request.

What is the lifetime allowance?

- The allowance is the amount of your accumulated pension arrangements (including your Intelligent SIPP and any other pension arrangement that you may have) that can be used to provide benefits without incurring a tax charge.
- The standard lifetime allowance set by HMRC is currently £1.25 million. In certain circumstances the lifetime allowance may be enhanced for members who benefited from a higher entitlement in previous tax years.
- It is necessary to apply to HMRC if you think you are entitled to an enhanced lifetime allowance and you should speak to your Financial Adviser for further information regarding this. You need to supply us with the confirmation from HMRC of any enhanced lifetime allowance applicable to you.
- When benefits are taken from your Intelligent SIPP, this is known as a benefit crystallisation event (BCE). The BCEs that are most likely to be relevant to your plan are:
 - taking a pension commencement lump sum;
 - taking income in the form of income drawdown;

The Intelligent SIPP Key Features

- purchasing a lifetime annuity;
- lump sum death benefit payments paid from funds which have not yet been applied to provide income drawdown;
- transfers to a qualifying recognised overseas pension scheme;
- when benefits are crystallised the value of the benefits being taken is tested against your lifetime allowance; and
- any benefits taken in excess of your available lifetime allowance will be subject to the following tax charges:
 - 25%, applied on any funds in excess of those used to generate an income (i.e. those designated for a drawdown pension, or used to secure a lifetime annuity); or
 - 55% on any lump sum taken in excess of the lifetime allowance.

What happens to my plan when I die?

- When you join the Intelligent SIPP, you will complete an expression of wish form which allows the trustees of the Intelligent SIPP to pay benefits to your Nominees when you die.
- The trustees will use an 'expression of wish' form to guide them in their decision as to how to pay this benefit, but this form is not binding upon them. This 'discretionary trust' structure means the payment can be made free from Inheritance Tax (IHT).
- The Government has introduced extensive new flexibilities to how your pension can be used after you have died, and generally reduced the amount of tax that will be payable on these options.
- The death benefits payable depend on your age at death and whether you have started to take benefits from your plan prior to your death.

What happens if I die before age 75?

If you die before reaching age 75 and prior to the commencement of taking benefits, the full value of your fund can be used to provide for your beneficiaries, subject to current HMRC rules and will usually be free of inheritance tax and other tax charges, since the same 'discretionary trust' structure is used as described above.

(Your Financial Adviser can explain the relevant tax charges if applicable to your death benefit)

If you had a drawdown pension fund that you had already drawn benefits from it can be passed tax-free to a chosen Nominee or Successor as either a drawdown pension, or as a lump sum.

Any amount of your Fund that you had not taken any benefits from, can also be passed to a Nominee or Successor, as a lump sum.

What happens if I die after age 75?

If you had a drawdown pension fund that you had already drawn benefits from, this can be passed to a chosen Nominee or Successor as either a drawdown pension, or as a lump sum. If it is taken as a drawdown pension, a tax charge will be applied at the same rate as the recipient pays income tax. If it is taken as a lump sum, a tax charge of 45% will be applied.

From April 2016 if you elect to take benefits or a lump sum, it will be taxed at the same rate of tax that the recipient pays income tax.

Further information on Death Benefits is available from the Scheme Administrator.

How do I receive communications regarding my Intelligent SIPP?

- Once your Intelligent SIPP is established, all communication in relation to your Intelligent SIPP will be provided to you or your Financial Adviser.
- Your Financial Adviser will be able to call Intelligent Money any time to request the latest valuation of your Intelligent SIPP, place buy and sell instructions, move in and out of the Cash Deposit Account and request annual benefit statements.

What are the charges?

Please refer to the fee schedule.

What will my Financial Adviser get?

- Intelligent Money does not pay commission to your adviser for recommending the Intelligent SIPP. Any Adviser Charges will be agreed between you and your Adviser.

Can I change my mind?

- Yes, you have the right to cancel your Pension within the first 30 days. On receipt of your completed application we will write to you to confirm we have set up your Pension. If you decide to cancel you must tell us by writing to us at our address within 30 days of the set up date.

What happens to my investments if I decide to change my mind?

- Depending on when you decide to exercise your right to cancel you may not get back your original investment but rather you will receive the original investment less any subsequent fall in value.
- Cancellation rights in respect of the underlying investments will depend on the nature of the underlying investment and where applicable will be detailed in the Investment Manager agreement.

Can I transfer other pension arrangements into the Intelligent SIPP?

- You may transfer other existing pension arrangements you may have into your Intelligent SIPP. You must provide details of the transferring scheme to the Operator using the Transfer Form which will be supplied on request and Intelligent Money will contact the transferring scheme to arrange for the transfer of your funds. Intelligent Money will inform you when the transfer is complete.
- If you wish to transfer your fund in from an overseas pension fund the Operator will establish whether the transferring scheme is a recognised overseas pension scheme that is not a registered scheme. If it is, the Operator will accept the transfer but the transfer amount will not qualify for tax relief. You are entitled to have your lifetime allowance enhanced to make up for this and you must apply to HMRC for this enhancement.

Can I transfer my Intelligent SIPP out to another scheme?

- You can transfer your fund out to another UK provider. Your new chosen provider will contact the Operator to initiate the transfer.
- If you wish to transfer your Intelligent SIPP Investments to an overseas pension provider, the Operator will establish whether the overseas scheme is a qualifying recognised overseas pension scheme (QROPS). If it is, the transfer can go ahead as an authorised payment. The transfer to a QROPS qualifies as a benefit crystallisation event and the amount to be transferred will be tested against your lifetime allowance.
 - If the transfer value exceeds your available lifetime allowance, then you will be charged tax at 55% on the excess amount

Contact information

This document is a brief guide to the Key Features of the Intelligent SIPP. Please refer to the Terms & Conditions within this document for further details.

For more detailed information about your Intelligent SIPP, please refer to the trust deed and rules which are available on request, and the Intelligent SIPP Terms & Conditions within this document.

If you require further information or have any queries, please contact the Operator in writing at:

Intelligent Money, The Shire Hall, High Pavement, Nottingham, NG1 1HN

Complaints

If you are not happy with the service you have received from us, please contact us in writing at the address provided above. Your complaint will be dealt with in accordance with our internal complaint handling procedures which are available on request. We will do everything we can to resolve your complaint. However, if you are not satisfied with our response you can refer the matter to either the Financial Ombudsman Service (FOS) or to the Pensions Ombudsman (PO). The FOS and PO are both independent statutory bodies that investigate and adjudicate on certain types of complaints and disputes relating to pension schemes and their members.

The FOS can be contacted at: The Financial Ombudsman Service, South Quay Plaza, 183 Marsh Wall, London E14 9SR. Tel: 0800 023 4567. **The PO** can be contacted at The Pensions Ombudsman, 11 Belgrave Road, London SW1V 1RB. Tel: 0207 834 2200.

If your complaint concerns the running of your Intelligent SIPP, you may be referred to The Pensions Advisory Service (TPAS), which is available to assist members and beneficiaries in connection with any difficulties they may have in relation to their pension scheme.

TPAS can be contacted at: The Pensions Advisory Service, 11 Belgrave Road, London SW1V 1RB. Tel: 0845 601 2923.

Making a complaint will not prejudice your right to take legal proceedings. Any complaint regarding the advice given to you by your Financial Adviser should be referred to them for review under their own complaints process.

Law

The terms of your membership of the Intelligent SIPP is governed by the laws of England and in becoming a member of the Intelligent SIPP you shall submit to the exclusive jurisdiction of the English courts.

These terms are effective as of 1st January 2015 and remain in force until a future update is released.

The Intelligent SIPP is a pension provided by Intelligent Money.

Intelligent Money is authorised and regulated by the Financial Conduct Authority (FCA) under FCA reference number 219473.

Details of Intelligent Money's FCA authorisation can be obtained on the FCA register at www.FCA.gov.uk or by calling the FCA on 0845 606 1234.



DATA PROTECTION ACT 1998

USE OF YOUR PERSONAL INFORMATION

Please read the following information before you complete the application form and sign the declaration.

The UK is one of the most highly regulated financial centres in the world. This is to safeguard the interests of consumers and other persons purchasing and being advised about investments, insurance and other financial products and in use of their personal data. Against this backdrop, we are required to make certain regulatory and statutory declarations to you.

All the information provided by you or a third party acting on your behalf in connection with your application for an Intelligent Pension will be held by Intelligent Money.

We may make checks with credit rating agencies to authenticate and verify your identity. These checks are to help us with our obligations at law. The scope and extent of the gathering of information from third parties depends on what type of service you are taking from us.

How is your information used?

Primarily, we use your data and data about you to complete transactions on your behalf. We may analyse and assess your data to maintain and develop our relationships with you.

We will retain your data according to the statutory requirements for regulatory products. If you want details of the statutory retention periods for various product types please contact us and we will obtain the latest legal position on your behalf.

Your data is held in our offices in computer-based and paper-based filing systems. Information about you will be kept after your plan is closed.

Your right to a copy of your personal data Under the Data Protection Act you have a right, upon payment of a fee, currently £10, to obtain a copy of the personal information that we hold about you. If you believe that any information held is incorrect or incomplete, you should contact us at our usual address. Any information that is found to be incorrect or incomplete will be amended promptly.