



PHOENIX WEALTH

INVESTMENT IN COMMERCIAL PROPERTY

**This guide explains our approach to
investment in commercial property
through both Family Suntrust (FST) and
the Retirement Wealth Account (RWA).**

We want to help guide you through the various stages of property investment.

1. We offer expertise in buying, selling and administering the property in the scheme.
2. We engage with a number of property specialists that have considerable experience in property investment. With them, we will work with you and your adviser to provide support throughout the period of property investment.
3. We split property investments into two classes. This allows us to keep many costs at fixed levels for the majority of cases.

Neither we, nor the property specialists, will give investment advice on the suitability of property investments. We recommend that you take independent specialist advice. This should include advice on any specific risks attached to any property purchase, sale or transfer.

You should read this guide along with your scheme's **Key features document, Terms & Conditions** and the **Property acceptability list**.

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Please note:

The information that follows is based on our current terms and our interpretation of current UK law and the practice of HM Revenue & Customs ('HMRC'). It should not be treated as legal advice or relied upon as a statement of law. It assumes that current tax rates, and the tax treatment of contributions, investments and benefits, will stay the same throughout the duration of the scheme. In practice, they may change at any time.

INTRODUCING OUR PROPERTY OPTION

Commercial property investments can be attractive as part of a balanced investment strategy.

There are a number of reasons for investing in commercial property including:

- rent and any capital growth on a property held in a registered pension scheme is free from income and capital gains tax
- tax relief on contributions to registered pension schemes means this could be a tax-efficient way of investing in property
- the ability to borrow to fund a property purchase.

However, if a significant proportion of your pension fund is invested in property it is more vulnerable to the market should it suffer a downturn than if you hold a wider range of investments. This may be to the detriment of the value of your pension benefits on retirement or death.

What type of property can I hold in my scheme?

In general, you can hold most UK-based commercial properties. It just needs to fall within the range of permitted investments we describe in your scheme's **Terms & Conditions**. Our **Property acceptability list** also gives examples of the type of properties we have accepted in the past.

We will review every property to assess its acceptability both within the HMRC's rules and the terms of the scheme. This means we can decline any application we think may be inappropriate or potentially gives rise to punitive tax charges.

It is only the property itself that is held in the scheme. It does not include fixtures, fittings or goodwill at any point during ownership of the property.

You should remember that:

Investments in different types of UK commercial property carry their own individual risks. Their value is not guaranteed and can fall as well as rise. You could get back less than invested. It is also important to note that the risks applying to commercial property are different to residential property. Returns in one do not necessarily follow the other. The value of commercial property can be affected by tenants unable to make rental payments or company tenants going into liquidation, for example. Finally, the value of a property is generally a matter of a property valuer's opinion and not fact.

How do you help?

Property investment is a complex area so we work with a number of specialists in property investment. We will work with our property specialist to give you support throughout the period of property investment.

Our property investment facility splits properties into two classes. This allows us to keep most costs at fixed levels for the majority of cases.

Who are your preferred specialists?

We use the services of a number of specialists. They are experienced in dealing with property purchase, administration and sales. They are well-established firms with whom we have negotiated competitive fees and agreed service standards.

Our preferred specialists include:

- Lambert Smith Hampton (LSH) for:
 - Valuations
 - Property administration
 - Property management
- Travelers Insurance Company Limited for 'All risks'
- CNA Insurance Company Limited for property owner's liability
- DWF, Lyons Davidson (English and Welsh properties only), Balfour & Manson (Scottish properties only) and John McKee (Northern Irish properties only) for legal services.

What are the two property classes?

Class A

- This category covers routine property investments up to a value of £750,000 with no more than one lease (which should be acceptable to us as an investment).
- The administration costs of the acquisition of the property will be fixed when quoted.

Class B

- This category covers more complex properties. It includes any property valued at over £750,000, or those with more than one lease. It also covers properties that fall outside Class A, such as:
 - properties with multiple titles; multiple tenants/leases, options and conditional contracts
 - property which cannot be let using a standard lease
- We will consider these cases individually and the cost of purchase/transfer will depend on the individual circumstances of each case. We will provide an indication of expected costs when full details of the property purchase are known.

For Class A property, most of the fees involved are fixed so you can benefit from time and cost savings as well as avoiding an unnecessary administrative burden. However, there may be times when the costs will vary for more complex property investments (Class B).

Who will actually own the property?

The property will be registered in our name, Phoenix Wealth Trustee Services Limited, as trustee. This means we will have legal title to the property. We must own the whole of the property.

- For FST the property will be an asset of the Pooled Fund and will not be earmarked for any specific Participant. It needs to be owned by one scheme and can't be split across multiple schemes. The purchase of any commercial property needs the agreement of all Participants.
- For RWA a property can be bought by an individual or by using funds from several RWA members. The funds are pooled together and each member's share of the property value will be identified.

You should remember that:

In relation to property investment, any decisions which must be taken, except for the decision to invest in or sell the property, will be made by us without discussion with you. These decisions may relate to (amongst other things) rent reviews, lease renewal, the exercise of break clauses in a lease, whether to pursue insurance or legal claims, etc. You should note that we do have the right to sell the property where there are insufficient funds to meet any costs or benefit payments which are due in accordance with your scheme's **Terms & Conditions**.

BUYING OR TRANSFERRING PROPERTY

How long does the property purchase or transfer take?

In our experience it can take between 3 to 6 months on average however we can't guarantee the timescales. We will be in regular contact with the property valuers, solicitors and any other parties involved so that we can keep you up to date through your financial adviser.

What do you need to start the process?

In order to start the process of buying or transferring a property we need to receive the **Family Suntrust - Property instruction form** or the **Retirement Wealth Account - Property instruction form**. We need the information in this form to make a decision on whether a proposed property would be an acceptable investment. We can't continue with the property purchase/transfer until this form is fully completed.

We will also need a valid Energy Performance Certificate (EPC) and there must be cleared funds available to cover:

- the purchase price of the property (if not a transfer)
- all associated costs (including VAT and property taxes).

You should remember that:

- You can instruct us to stop the property purchase/transfer at any point up to exchange of contracts (or conclusion of missives in Scotland).
- However, you will not be able to do so once exchange of contracts or conclusion of missives has occurred.

What happens next?

Once we have carried out an initial assessment of the information given in the items mentioned above we will need a property valuation. This will let us make a final decision about whether we will accept the property. The valuation must be:

- done by a member or fellow of the Royal Institution of Chartered Surveyors (RICS) in accordance with current RICS valuation Standards
- carried out no more than six months before the application for a property purchase.

The main body of the valuation needs to include:

- market value (subject to the existing or proposed lease)
- market value (subject to vacant possession)
- market rental value
- reinstatement value for insurance purposes
- confirmation that the property is acceptable to purchase and also suitable for a mortgage lender
- information relating to location, description, existing and intended use of the property
- information as to age and construction of the property with measurements as to the accommodation
- completion of the property observation checklist in accordance with the RICS guidance note 'Contamination and environmental matters; their implications for property professionals'
- information as to whether an asbestos management plan/survey is in place.
- description of current site use and operations including the name of the occupier and the nature of their business
- information as to whether the property is in an area which could be affected by flooding
- a site boundary plan – promap is preferred
- a site location plan
- photographs of the exterior, interior and any other relevant features.

We will not be able to process the property purchase/transfer until all the information has been supplied. We will normally appoint our preferred specialist (LSH) to carry out this work.

Then what happens?

If the property is acceptable and you still wish to invest we will instruct our solicitors to deal with the conveyance/transfer of the property title to us as Trustee. The solicitor will also prepare the new lease, or report on existing leases.

Once any queries have been resolved, the solicitors will agree a date for exchange of contracts (conclusion of missives, in Scotland) and completion with the solicitors for the vendor. All costs incurred in relation to buying or transferring property will be met from your pension benefits, regardless of whether it goes ahead or not.

What about leases?

There should be a minimum term outstanding of three years on an existing lease or if a new lease is needed it will be for a minimum of five years.

- **For existing leases**

Our solicitors will compare it to our standard lease. If the existing lease is acceptable, we may be prepared to take over the existing lease subject to the report on title from our solicitors. The review of one existing lease is included in the solicitor's standard charge.

- **For new leases**

We will expect our standard lease to be used. The lease will be finalised at the same time as the completion of the property acquisition.

Our preferred specialists involved in arranging or reviewing a lease will only act on our behalf. The tenant (including if the tenant is to be a scheme member or the company of a scheme member) must take their own legal advice regarding the lease.

Please note: The tenant must be responsible for all interior repairs and maintenance (either personally or through a service charge), outgoings and complying with all statutes and regulations.

Is the purchase subject to Value Added Tax (VAT)?

The purchase price of a property may be subject to VAT if either the:

- vendor previously chose to subject the property to VAT
- property was built within the last three years.

It may be possible to reclaim the VAT on behalf of the scheme if you decide that the property should be subject to VAT.

If the property is subject to VAT, it will also be payable on rental income. Tenants may be able to reclaim the VAT paid as part of their expenditure if they are VAT registered. VAT will also be charged on the subsequent sale price.

It is important to note there are circumstances where a property may not be subject to VAT. Your financial adviser will be able to provide further details.

VAT payable on the purchase price will be deducted from your scheme bank account/cash account. If there are insufficient funds to cover this, you must make arrangements to:

- sell assets, or
- make a contribution (if appropriate) to cover the amount due.

Even if VAT is not payable on the purchase price, there may be circumstances where the property can become subject to VAT at a later date. We will deal with all VAT procedures relating to the property investment.

You also need to think about:

1. **Energy Performance Certificate (EPC)**

A valid EPC is a requirement for all properties. It contains information about the buildings energy use, typical utility costs and any recommendations for improvements.

In England and Wales it will be illegal from 2018 to grant a new lease on a building with an EPC rating below E. If the proposed property has a rating of less than E we may not be able to accept it due to the cost to bring the property up to standard.

2. **Asbestos**

If the property was built before 2000, an Asbestos Management Survey must be carried out (if one has not previously been done) before we will proceed with the purchase/transfer of the property. If asbestos is found, an Asbestos Management Plan must be drawn up and put in place. It will be a condition of the lease that any asbestos is removed in accordance with the Asbestos Management Plan.

BORROWING TO FUND THE PURCHASE

You can ask us to apply to a lender for borrowing. The lender must be a registered UK financial institution.

Where borrowing is needed to help the overall purchase or transfer of the property, this must be organised from the start of the process. It is important to make sure the property is acceptable to the chosen lender and to obtain the terms on which they will lend to the scheme. Any proposed borrowing will have a direct impact on the valuation report to be produced, and who should prepare it.

1. LIMIT

The HMRC limits the amount that can be borrowed to 50% of the 'net market value' of your pension fund (immediately before the borrowing takes place). However, certain lenders may restrict this to a lower amount.

2. PARTIES

The finance is arranged between the lender and Phoenix Wealth Trustee Services Limited as legal owner of the property.

3. LENDER

You or your adviser will be responsible for selecting the lender and agreeing the commercial terms, interest rates, fees, the loan amount and the terms on which the loan will be provided, without our involvement. However, the agreement between you and the lender will always be subject to our agreement as the intended legal owner of the property.

4. RECALCULATION

It will be necessary to recalculate the maximum borrowing limit if you, or someone else investing in the property with you:

- starts taking pension benefits
- has benefits that become subject to a court order
- reaches 75
- dies
- transfers out of the scheme.
- Recalculation may lead to all or part of the borrowing needing to be repaid early.

5. REPAYMENT

The borrowing must be arranged on a capital and interest repayment basis.

6. LEGAL OWNERSHIP

The lender will take a legal ownership over the property that has been purchased.

7. LIMITED RE COURSE AGREEMENT

We will sign a limited recourse agreement if our solicitor approves. This entitles the lender to obtain money from your pension benefits (but not from the Trustee) if the proceeds from the sale of the property are not enough to repay the borrowing.

8. TAX CHARGES

If HMRC requirements for borrowing are not met you may incur unauthorised payment tax charges. You can read our **Tax and your pension** leaflet for more information.

Certain lenders may need you to maintain a suitable cash balance in your scheme bank account/cash account to cover ongoing capital and interest repayments. This will vary from lender to lender. Any borrowing may be restricted in accordance with the terms and conditions offered by the lender.

You should remember that:

There must be sufficient cleared funds in your scheme bank account/cash account to cover the repayments. As long as there are available cleared funds, borrowing repayments will be deducted. If you don't meet the regular borrowing repayments:

- we may need to sell assets to provide the money. This may be to the detriment of the value of your pension benefits
- the lender can take possession of the property and the other assets of your scheme/account and sell them based on the terms and conditions of the loan and the limited recourse agreement.

ADMINISTERING THE PROPERTY

We will be the legal owner of the property and landlord for letting purposes. The ongoing administration of the property will be performed by our preferred specialists.

What does property administration involve?

Property administration involves but is not limited to:

- the invoicing and collection of rent and when cleared forwarding these monies to your scheme bank account/cash account
- insuring the commercial property
- authorising payments relating to the commercial property
- raising with us any potential disputes/legal issues to ensure compliance with regulatory and legislative requirements. If not adhered to, this could result in costs to the scheme or an adverse effect on income and/or property value. This may be to the detriment of the value of your pension benefits on retirement or death
- arranging physical inspections to include, but not limited to, valuations, rent reviews, lease renewals
- dealing with and responding to property related correspondence.

Lambert Smith Hampton (LSH) will be responsible for the administration of the lease(s) which govern the occupancy of the property. This role will extend to, where appropriate, making sure services to be delivered by us are achieved at an economic cost and in accordance with current legislation.

Where applications are made for any amendment to the terms of occupation, LSH will have responsibility for the collation and delivery of all necessary information and any ongoing liaison with you.

Can I refurbish and renovate the property?

You will need to speak to us before you develop, refurbish, renovate or carry out any other change to the property. This is so we can determine who is responsible for any costs incurred and whether it is suitable as a pension scheme investment.

You should remember that:

- We may appoint a property manager, in addition to the property administrator, for properties which:
 - have more than one tenant
 - are vacant or partly vacant at any point or
 - are of unusual construction or usage.
- we will provide details of the fees payable and the process to be followed if such a property manager is required. If the property manager is already in place we will consider their suitability and whether their current contract is acceptable to us
- for RWA we need the appointment of a property coordinator in order to facilitate smooth ongoing administration. Their role will be to liaise with us and the other individuals investing in the property with you and deal with correspondence relating to the property. The property coordinator could be you, your adviser or someone else who is buying or transferring the property with you. No remuneration is payable from the member's fund for this role.

What happens if rent isn't paid?

We will take all steps necessary to enforce a lease and collect rent when due. This will include taking any necessary legal action to enforce the lease. Where any costs incurred in doing this cannot be recovered from the tenant they will be taken from the scheme's bank account/cash account.

If rental payments are missed and you are the tenant or the tenant is a connected party to you, failure to repay the missed rental payment(s) will mean an unauthorised payment has occurred which may result in a tax charge.

You should note that the value of commercial property can be affected by tenants unable to make rental payments or company tenants going into liquidation for example.

What happens if the property becomes vacant?

If any part of the property becomes vacant, costs may still be incurred although there will be no rental income in respect of it. In these circumstances a property manager will be appointed. Their costs, and any others normally recoverable from the tenant, will be met from your pension benefits.

SELLING THE PROPERTY

You can decide to sell the property at any time. If the property investment relates to funds from several RWA members, or there is more than one participant in an FST scheme you must all agree to the sale.

In order to start the selling process you need to contact us. However, you should get independent professional advice when deciding the most appropriate time to place the property on the market.

How long will the sale take?

It can take some time to sell a property (typically at least six months).

You should also note that:

- the proceeds of the sale could be less than you were expecting due to prevailing market conditions at that time. At retirement this could result in lower benefits than were expected
- it may take longer to sell than some other assets and it may not be possible to sell when you want. The delay could be considerable and depends on market conditions at that time. At retirement, this may result in a delay in paying benefits.

How will the cost of the sale be met?

All costs incurred in respect of the sale of the property, whether completed or not, will be charged to your scheme bank account/cash account. Once the property has been sold, the net proceeds (after all costs have been met) will be credited to your scheme bank account/cash account.

Will I need to sell the property if I leave the scheme?

If you leave the scheme and join another registered pension scheme, it may be possible for the property to be transferred to the other scheme (if they agree) in the form of an in-specie transfer. This means you may be able to transfer the commercial property, without the need to sell it for cash.

What happens if I want to transfer my benefits and the property investment relates to funds from several RWA/FST members?

If you want to take the property with you it may be possible subject to:

- the value of your benefits being more than the value of the property
- the agreement of the receiving scheme
- the agreement of all those invested in the property with you.

If the transfer is to be a cash transfer then assets (including the property) may need to be sold up to the value of the your benefits if there is not enough cash in the scheme bank account/cash account. Additionally, there are other ways to make the necessary cash available:

- the remaining members may be able to make additional payments into the scheme, or
- the remaining members can apply for additional borrowing subject to HMRC rules
- For FST only a new member can join the scheme bringing in additional contributions
- a combination of the above.

In what circumstances can the scheme administrator sell the property without agreement?

In certain situations it may be necessary to sell the property to raise cash. We have the power to sell scheme assets (including any commercial property) to make sure items such as capital and interest repayments on borrowing, benefit payments, fees and charges can be made when due. This may happen if you can't reach agreement concerning the sale of assets or there aren't enough funds in your scheme bank account/cash account.

If the property's value is low at the time, this may mean that the value of your benefits could be lower than the amount paid in. The order in which assets will be sold is set out in the scheme's **Terms & Conditions**. If we have to sell property, the proceeds of the sale could be less than you were expecting due to prevailing market conditions at that time and could be less than the amount paid for the property. In general, other assets of your scheme will be sold before any commercial property.

COSTS

Here are the costs relating to a property purchase or transfer and ongoing administration. The level of fees is subject to review and may be increased to reflect general inflation or a change in the amount of work required.

We can't set out all circumstances where costs will be incurred or what the level of these costs will be. But we will give you an estimate of costs arising as soon as reasonably possible. In most instances this will be before the cost is incurred. However, in some instances, for example, when urgent maintenance work is required, it may not be possible to provide an estimate in advance. You will always get a copy of an invoice for the work undertaken.

In the majority of instances costs will be paid from your scheme bank account/cash account, but certain costs can be recovered from the tenants. The amount needed to cover the costs will be taken as they fall due. If there aren't enough funds in your scheme bank account/cash account we may need to sell other assets in accordance with the scheme's **Terms & Conditions** to cover the costs.

You should remember that:

We will take any action we consider is reasonably necessary to protect our position as legal owner of the property and to make sure any agreements we have entered into in respect of the property are enforced. The costs incurred in relation to any dispute or litigation which arises in respect of the property investment, which cannot be recovered from the tenant, will be taken from your pension benefits.

A. Purchase/transfer costs

1. Energy Performance Certificate (EPC)

We will not accept a property unless it has a valid EPC. The cost of obtaining one will vary but should be no more than £250 plus VAT.

2. Property administrator's fees

As soon as the property purchase/transfer begins, you will be liable to pay for any costs incurred for work completed by LSH, even if the purchase/transfer does not proceed to completion. The total administration costs for purchase/transfer is £950 plus VAT. If the transfer/purchase does not go ahead then the cost will be subject to the stage in the process you reach:

- **Stage 1** £250 plus VAT (For LSH's assessment of the Property instruction form)*
- **Stage 2** £500 plus VAT (commission of the valuation report). The cost of the report is in addition and is agreed on a case by case basis before it is undertaken.

- **Stage 3** £750 plus VAT (once our solicitor has been instructed)
- **Stage 4** £950 plus VAT (the mortgage and VAT election arranged).

*There must be enough funds in the scheme bank account/cash account before LSH carries out its assessment of the **Property instruction** form.

3. Solicitor's fees

After the property has been valued we will appoint one of our preferred solicitors to proceed with the purchase/transfer. As soon as they are appointed, you are liable to pay for any costs incurred for the work they do, even if the property purchase/transfer doesn't complete. If you are purchasing/transferring more than one property separate fees will be charged for each one.

They will charge a fee for the transfer of ownership of the property to Phoenix Wealth Trustee Services Limited.

a)

(i) Class A property

- Freehold property - £3,750 plus VAT and disbursements.
- Leasehold property - £4,950 plus VAT and disbursements.

If a new lease is drawn up or a lease renewal is required then additional charges will apply.

- Without material amendments or negotiation - £950 plus VAT or 3% of the annual rent, whichever is higher.
- Subject to amendment or negotiation - £1,500 plus VAT or 3% of the annual rent, whichever is higher.

(ii) Class B property

Quoted on application.

b) Mortgage offer review

Where borrowing is needed, the solicitor will charge £2,750 plus VAT to review any deal with any documentation provided by the lender.

c) **Disbursements**

Local authority searches, coal mining searches, drainage and water searches, etc, carried out by the solicitors. Collectively these usually total £950. There will also be charges for property taxes (if the property is purchased) and registering the change of ownership with the Land Registry.

d) **Abortive fees/failure to complete**

Charged at 80% of recorded time at a rate of £300 plus VAT per hour.

e) **Property sale**

If a property is sold the solicitor will charge 0.5% of the sale's transfer value subject to a minimum fee of £1,500.

They will charge an additional £750 where a lease has to be assigned or surrendered simultaneously with the sale.

4. Insurance

The property will be insured through our block policies administered by Travelers Insurance and CNA Insurance.

The cost of insurance will be quoted on application and will be put on cover before completion. We will let you know the premium. The cost of these insurance policies will be met from your scheme bank account/cash account and subsequently recovered from the tenant under the terms of the lease.

B. Ongoing administration costs

1. Property administrator's fees

These relate to our duties as landlord and owner of the property. We will appoint LSH to look after the ongoing administrative duties on the property. This includes, but is not limited to:

- Collection and payment of rent
- Collection and payment of insurance and service charges
- Coordination of activities relating to letting the property
- Administration involved in rent review and lease renewals.

For FST

The costs for this work are covered by the investment fee apart from where your rent review or lease renewal is contested.

For RWA

The costs for this work are covered by an annual charge of £550 plus VAT per property.

The fee is payable annually in advance on or shortly after 1st February. Depending on the date the purchase/transfer completes, your first year's fee will be calculated pro-rata.

2. **Solicitor's costs**

Once the property has been bought or transferred, we may need to take advice from property specialists in relation to the ongoing management. This could include:

- contested rent reviews and lease renewals
- litigation
- sale of property.

3. **Insurance**

The property will be insured through our block policies administered by Travelers Insurance and CNA Insurance. The cost of these insurance policies will be met from your scheme bank account/cash account and subsequently recovered from the tenant under the terms of the lease.

4. **Property valuation**

An up-to-date property valuation, the cost of which is agreed on a case by case basis before it is undertaken, will be needed:

- every three years. This is payable after the third anniversary of the date the property purchase/transfer was completed or the date of the last valuation
- on other occasions, such as when pension benefits are taken or calculated or the sale of the property.

5. **Property management**

A property manager must be appointed for multi-tenanted properties, properties with common areas, properties where service charges are collected and properties we consider non-standard. Costs will be specific to the properties managed.

6. **Property inspection fee**

As scheme Trustee we may need to check that the use of the property complies with the rules of the scheme. The cost for each property inspection is £350 plus VAT.

7. **Energy Performance Certificate (EPC)**

As landlord we must hold a valid Energy Performance Certificate. These need to be reissued every 10 years. We will let you know the cost before getting it.

8. **Property disposal fee**

Lambert Smith Hampton will be appointed to coordinate and oversee the sale or transfer of the property. The current fee is £500 plus VAT and you will be liable to pay this fee even if the sale or transfer doesn't complete.

9. **Other costs**

There may be other costs associated with the ongoing investment in the commercial property (including charges incurred if the property is empty).

CONTACT US

The first point of contact for your Family Suntrust or Retirement Wealth Account is the Financial Adviser.

If you need to contact us directly you can call:

FST on 0345 034 2170 or RWA on 0345 129 9993

Our lines are open 8.30am to 5.30pm, Monday to Friday. As part of our commitment to quality service and security, telephone calls may be recorded..

You can also write to us at:

Phoenix Wealth,
Self Invested Pensions,
PO Box 1394,
Peterborough,
PE2 2TQ

Lambert Smith Hampton

Lambert Smith Hampton will be able to assist you with all aspects of property investment from initial enquiry to completion.

Call **01702 417955** (New purchase) or **0207 198 2123** (Existing investments)

Lambert Smith Hampton can be contacted Monday to Friday 9.00am to 5.30pm.

Email **PhoenixWealthPurchases@LSH.co.uk**

Please be aware that emails are not secure as they can be intercepted, so think carefully before sharing personal or confidential information in this way.

Address

Phoenix Property Purchase Team, Lambert Smith Hampton, UK House, 180 Oxford Street, London, W1D 1NN

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