

## Identifying the length of the hypothetical lease that is to be assumed at review

- The length of lease term assumed impacts on rental value
- Unless there is clear wording to the contrary, the presumption of reality will prevail
- The valuation implications of the assumed term must be viewed in conjunction with the property type, location, pitch, use and interplay of other review assumptions

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There are various possible options as to the length of the hypothetical lease term to be assumed on review:

- The unexpired residue
- The whole lease term
- The length of the period between reviews
- An expressly stated term of years
- An appropriate term having regard to market conditions.

It is widely known that on review the revised rent should be assessed on the basis of the landlord and tenant relationship that actually subsists as at the review date. The unexpired residue assumption conforms most closely to this scenario and will therefore be taken to be the term of the hypothetical letting, unless a clear and contrary intention is expressed within the lease provisions. Where the lease terminology is ambivalent, the courts will also consider the unexpired term to be the most appropriate option.

If the parties intend that the unexpired residue of the term should be assumed, then clear wording to this effect should be adopted such as, “for a term of years equal to the residue of the term originally granted by this lease which subsists at the relevant rent review date”.

The courts are reluctant to accept a hypothetical lease equal in length to the whole term originally granted unless such intention is expressed in the clearest words. For example, terminology such as, “the term of years originally granted” have frequently been interpreted by the court as “the unexpired residue” rather than “the whole term”.

If the parties’ actual intention is that the hypothetical lease should be the whole term originally granted, commencing on each relevant review date, then clear wording to this effect should be provided, such as, “for a term of 20 years computed from and commencing on the relevant review date”.

Given the various allowances which can be considered appropriate for longer/shorter lease terms, the wording to be included in the lease is highly relevant and should not simply be accepted as per the draft documentation. The valuation implications should be considered having regard to the property type, location, pitch, use, interplay with other review assumptions, etc. Whilst not every scenario can be accounted for, consideration should be given to the possible impact on review of the length of the hypothetical term when entering into a new lease.