

How to identify the length of the hypothetical term at review

- Assumed lease term impacts rental value
- When does the presumption of reality not prevail?

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The assumed lease term at review will be one of the following:

- The unexpired residue
- The whole lease term, as originally granted
- The length of the period between reviews
- An expressly stated term of years.

On review, the revised rent is often 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 with this scenario and will be taken to be the term of the hypothetical letting unless a clear and contrary intention is expressed within the lease provisions.

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 as “the whole term”.

Where 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 adopted – such as “for a term of 20 years computed from, and commencing on, the relevant review date”.

If the parties intend that the unexpired residue of the term should be assumed, then this should be specified, i.e. “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”.

Precise lease wording can impact dramatically on final rents, as allowances may be applied to lease terms outside local market ‘norms’. 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 value of the length of the hypothetical term when entering a new lease.