



Every Rent Review Clause must include some formula on which the parties or an arbitrator may base their calculation as to what is the market rent of a hypothetical letting of the property leased. Most rent review clauses attempt to define in great detail the exact basis of the hypothetical letting. It is normal to provide that certain matters are to be disregarded such as the goodwill of the lessee's business or genuine improvements made by the lessee. Some rent review clauses however include a provision that in assessing the market rent upon a review the existence of the provision for the review of the rent at intervals shall be disregarded. The letting value of property to be leased for a term of 20 years or upwards would almost certainly be substantially greater if, in assessing that rent, the provisions for a review of rent were to be ignored. It is generally agreed by valuers and lawyers practising in this area that such provisions are not appropriate. The hypothetical lease for which the letting value is to be calculated should be identical in terms to the existing lease so that the rent will be calculated on the same basis as that of the existing lease.

The Committee advised solicitors acting for clients taking lettings of the property or purchasing property held under rack rent leases to be on guard against the existence of such a provision. Solicitors should make absolutely sure that any client who elects to proceed despite the existence of such a provision in the rent review clause has been made aware of the full implications of their position.

The question of how the Courts would interpret such a clause has not arisen in Ireland yet as far as the Committee can ascertain. It has arisen in the U.K. in a case of *Pugh and Ors - v Smiths Industries Ltd. & Ors* 264 E.G. 823 where Mr. Justice Gouldings interpreted the provisions literally. The case was fully fought and argued and in a full and reasoned judgement, he considered the arguments that the Court should not take into account the provision requiring the existence of a rent review provision to be ignored, very carefully before making his decision. The decision is, of course, quite logical and it seems likely that it would be followed in our Courts.

TRAP FOR SOLICITORS IN RENT REVIEW CLAUSES