

## Premiums payable for a new lease and the role of relativity (Reiss v Ironhawk Ltd)

12/10/2018

**Property analysis: David Nicholls, barrister at Landmark Chambers, considers the case of Reiss v Ironhawk Ltd and explains why the Upper Tribunal (Lands Chamber)'s (UT) decision should cause valuers to sit up and take note.**

*Reiss v Ironhawk Ltd* [2018] UKUT 311 (LC)

### What are the practical implications of this case?

This was a decision by the UT. The context was the premium to be paid by a tenant on the grant of a new lease under [section 56](#) and [Schedule 13](#) of the Leasehold Reform, Housing and Urban Development Act 1993 ([LRHUDA 1993](#)). The dispute concerned the relativity to be applied to the agreed value of the freehold with vacant possession.

There are a number of practical implications. The case is a useful reminder that the starting point for valuers should be market evidence over the use of relativity graphs. However, it is important to remember that the fewer the differences there are between the comparable and the subject of the valuation, then the greater the weight that can be given to the comparable.

The case also illustrates the importance for valuers in considering a range of evidence in the event that the market evidence is inadequate—whether that be different ‘without Act rights graphs’ or the effect of the ‘with Act rights graph’, produced by research organisation Savills. A further point of significance for the UT was the fact that the relativity of two primary comparables had not been considered.

In other words, when conducting a valuation, it is important to stand back and consider the conclusion in light of the totality of the other evidence, as well as to cross-check relativity with comparable transactions where possible.

### What was the background?

[LRHUDA 1993, Sch 13](#), provides that the premium payable for a new lease is the aggregate of three different elements. Where the existing lease has less than 80 years unexpired, one of these elements is the ‘marriage value’.

Calculating ‘marriage value’ requires an assessment of the value of the tenant’s existing lease. This can often be problematic because sales of flats in the same neighbourhood of leases of a comparable unexpired term will have been on the basis that they carry with them the right to a new long lease under [LRHUDA 1993](#). This means that an adjustment would have to be made in order to disregard the effect on value of the rights under [LRHUDA 1993](#).

An alternative approach is to consider evidence of sales of flats on very long leases where [LRHUDA 1993](#) rights have no, or little, effect on value. Valuers can then assess the value of the flat on its existing lease by taking a proportion of the long lease value. This is known as relativity, which is the relationship between the value of a short lease and the freehold value of the same property with vacant possession. Relativity can be difficult to assess, and various bodies publish tables or graphs of relativity. The Lands Tribunal has held that relativity is best established by a valuer doing the best they can with such transaction evidence as may be available and graphs of relativity.

In this case, the agreed value of the freehold of the flat with vacant possession was £252,525. The tenant’s expert contended that evidence of transactions is of no assistance in obtaining relativity and he relied on a graph of relativity, which produced a figure of 93.5%, leading to a premium of £10,231. The landlord’s expert relied on transactional evidence in the vicinity. This produced a figure for relativity of 72.3%, leading to a premium of £37,150.

## What did the UT decide?

Although the UT recognised the primary importance of market evidence, it considered that the quality of the comparables used by the landlord's expert was poor because too many adjustments were necessary to make them useful. For instance, they varied in terms of the type of building, size, facilities and unexpired terms. The approach adopted by the landlord's expert was therefore rejected.

The UT also considered whether it could use indexation based on the HM Land Registry House Price Index and on the price paid by the tenant in December 2013. However, it decided that it was not appropriate to do so given that the transaction was more than three years before the valuation date.

The UT noted criticisms that had been made of the relativity graph relied on by the landlord's expert. It was from 2009 and, compared with four other similar graphs, it has the lowest relativity. Its shortcomings had been recognised in earlier cases.

The UT observed that there was an alternative to the tenant's expert's approach of using transaction evidence and the landlord's expert's approach of using without Act rights graphs. This alternative was to use a with Act rights graph and adjust for the benefit of the Act. The only with Act rights graph in common use is one produced by Savills, which was updated in 2016.

The UT concluded that the most reliable method of valuation was to use the Savill's enfranchiseable graphs. This gave a relativity of between 90.87% and 89.1%. The latter figure was preferred (subject to an agreed adjustment) because it was based on a graph prepared much closer to the valuation date. This resulted in a premium of £18,524.

*Interviewed by Jenny Rayner.*

*The views expressed by our Legal Analysis interviewees are not necessarily those of the proprietor.*

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