

Dispatch highlights some of the most important legal developments during the last month, relating to the building, engineering and energy sectors.

Dispatch

Expert determination

WH Holding Ltd v London Stadium LLP (Formerly E20 Stadium LLP)

[2026] EWCA Civ 153

At first instance, the High Court set aside an expert determination on the grounds that there had been a manifest error. As a result, it was not final or binding. E20 appealed.

Under a Concession Agreement dated 22 March 2013, E20 had granted WH rights to use the London Olympic Stadium during the football season as a home ground for West Ham United. Clause 20 of the Concession Agreement comprised an “anti-embarrassment” provision whereby E20 was entitled to share in any gains made by the shareholders of WH in connection with a sale or transfer of interests in West Ham United. Clause 50 of the Concession Agreement provided that any dispute relating to the calculation of the gain was to be referred to an expert whose decision was to be final and binding in the absence of manifest error.

E20 said that the judge had been wrong to find that the expert’s determination contained manifest errors, asserting that the expert’s conclusions were at a minimum not so obviously wrong as to admit of no difference of opinion. WH said that the original decision should be upheld on the additional ground that it was in accordance with commercial common sense.

Phillips LJ explained that where parties have simply agreed to be bound by an expert’s determination, they cannot challenge the outcome, provided that the expert has not departed from his instructions in any material respect (and absent fraud), even if the expert makes a mistake in reaching it. This is why parties who wish to contract on the basis that they will not be held to mistakes made by the expert in the course of carrying out his instructions include an exception for a determination affected by “manifest error”. In *Vebe Oil Supply & Trading GmbH v Petrotrade Inc* [2001] EWCA Civ 1832, Simon Brown LJ said that manifest errors were “oversights and blunders so obvious and obviously capable of affecting the determination as to admit of no difference of opinion”.

Phillips LJ said that: “Absent contractual terms which provide differently when interpreted in context, an error will be manifest if, after investigation limited in time and extent, it is so obvious (and obviously capable of affecting the determination) as to admit of no difference of opinion”.

E20 said that it was wrong for a judge first to consider whether the expert made a mistake, and then to consider whether the mistake was manifest. The task of the court was not to decide whether the expert was right or wrong, but only whether they had made a mistake that “leaps out at you”. Phillips LJ disagreed. The test applicable for manifest error invites a two-stage approach, namely, (i) whether there was “an oversight or blunder” and (ii) whether that error was so obvious as to admit of no difference of opinion.

Parties do not instruct the expert they appoint to interpret and apply the contractual formula correctly (the issue here); rather,

they instruct the expert to determine the dispute between them in that regard and to do so without making a manifest error. The general test for whether an expert has made a manifest error is fully applicable to a decision as to the interpretation of a contract: it is necessary to show not only that the expert has reached the wrong interpretation, but that his interpretation is so obviously wrong that it will admit of no difference of opinion.

As to the meaning of “obviously wrong”, the CA referred to the comments of Arden LJ in *HMV UK v Propinvest Friar Ltd Partnership* [2011] EWCA Civ 1708, who himself referred to the analysis of Akenhead J in *Braes of Doune Wind Farm (Scotland) Ltd v Alfred McAlpine Business Services Ltd* (See *Dispatch*, [Issue 94](#)), stating: “He uses the memorable phrase ‘a major intellectual aberration’ ... which I have found a useful way of bringing to mind that the error on which we are concerned, if there be an error, must be an obvious one”.

What about the expert determination here? Phillips LJ held that the approach taken by the expert was based on an arguable finding. That was a different starting point from that which WH and the judge at first instance agreed with, but was not so obviously wrong as to admit of no difference of opinion. The rest of the analysis followed from that starting conclusion in a manner which also could not be said to be obviously wrong, with the result that the determination was not manifestly in error.

Conflicts of interest

Eiger Funding (PCC) Ltd v Ridge and Partners LLP

[2026] EWHC 609 (TCC)

Eiger sought damages for professional negligence against Ridge, arising out of their work as Independent Fund Monitoring Surveyors (“IMS”). One of the issues related to an alleged conflict of interest. It was said that Ridge should never have acted as both the quantity surveyor for the developer and as an IMS. This dual role was in clear conflict with the RICS Professional Guidance.

The RICS professional standard note on Conflicts of Interest, 1st edition (2017), provides in Part 3 as to: “Party Conflicts: a) if a single regulated firm accepts 2 or more professional assignments in connection with the same transaction, or related transactions and the respective clients’ interest conflict, then there will probably be a Conflict of Interest or significant risk of a Conflict of Interest for the regulated firm (a Party Conflict)”. Where there is such a conflict, the firm should not act, unless the firm obtains Informed Consent in writing.

The phrase “Informed Consent” is defined and provides for a strict procedure whereby there is “consent given willingly and knowingly by a party who may be affected by a Conflict of Interest”.

The issue here was that Ridge had acted for the developer in preparing the 2015 Cost Appraisals, which had formed the basis of a fixed price lump sum of £10.2 million in the JCT Contract. The judge commented that when advising NWC in 2018, Ridge were in a clear conflict of interest: they were “marking their own homework”.

Ridge had not obtained informed consent; neither as defined in the RICS professional standard note nor by any other understanding of the term. The funders were aware that Ridge had acted for the developer on another project, but this was a different project and rather than attempting to obtain informed consent, Ridge had said there was no conflict.

One question for the court was whether this conflict was causative of any loss. In the view of Judge Williamson KC: *"the conflict was here potentially causative of loss"*. Whilst a conflicted party may give competent advice, the existence of the conflict may be of little importance. Here, however, the starting point for the advice was the fixed price lump sum figure of £10.2 million, which was said to be *"robust"*. Ridge did not mention to NWC that the figure of £10.2 million was their figure and one arrived at in 2015, after which construction costs had risen by about 20%. The judge said: *"They should have pointed this out to NWC. And they should have gone on to say that, in these circumstances, this was another reason why there was a significant risk that substantial costs would be incurred over and above those put forward by [the developer]"*.

Waiver, termination and prevention

UK Global Healthcare Ltd v Secretary of State for Health and Social Care

[2026] EWHC 561 (TCC)

DHSC, the ministerial department responsible for acquiring medical equipment throughout the COVID-19 pandemic, applied for summary judgment in respect of its counterclaim for £15.3 million. UKGH is a medical company specialising in the provision of healthcare facilities and equipment on an international level. The dispute arose out of two contracts entered into in May and June 2020 for the supply of 320 million medical gloves during the COVID-19 pandemic. Time was of the essence as stipulated in both contracts, with contractual deadlines of 30 June and 31 July 2020. No gloves had been delivered at all, although UKGH maintained that it was – and had generally been – ready, willing and able to supply the gloves. DHSC said that the contract was lawfully terminated by letter dated 28 October 2020. Alternatively, the contracts expired on 26 May 2021 and 7 December 2020.

UKGH said that there was at least a triable issue: they asserted that DHSC was in breach of contract, having prevented delivery in accordance with the contractual delivery dates by (i) insisting on testing to which it had no contractual right, (ii) wrongfully rejecting the goods, and (iii) failing to cooperate with UKGH as contractually required. UKGH further and alternatively asserted that DHSC had waived compliance with the delivery dates and/or was estopped from relying on either the delivery or expiry dates. Accordingly, the purported termination was unlawful.

Under CPR r24.3, the court may grant summary judgment if it considers that (a) the respondent has no real prospect of succeeding on the claim or defence, and (b) there is no other compelling reason why the issue or case should be disposed of at a trial.

Where one party voluntarily agrees to a request by the other not to insist on the mode of performance stipulated by the contract, the court may hold that they have waived their right to require that the contract be performed in that particular manner. A waiver may be oral or written or inferred from conduct.

As for termination, Constable J referred to the comments of Lloyd LJ in *Reinwood v L Brown & Sons* [2008] EWCA Civ 1090, that if a party refuses to perform a contract, giving a reason which is

wrong or inadequate, or giving no reason at all, or terminates a contract under a contractual provision to that effect, the refusal or termination may nevertheless be justified if there were facts in existence at the time which would have provided a good reason for the refusal. The judge considered that there was no reason why this should not apply in relation to facts which were known to that party at that time.

UKGH said that DHSC breached the contract by rejecting the gloves by email on 21 July 2020 and again within the Termination Notice. The judge considered that there was a reasonable prospect, or a more than fanciful one, that UKGH would establish at trial that DHSC had agreed to extend the delivery dates, or had waived the requirement to comply with them and/or was estopped from relying upon them. For example, there was no contractual basis upon which DHSC was entitled to the benefit of inspections or tests in relation to the products being supplied under the First Contract or the first phase of the Second Contract. The only contractual basis upon which DHSC could reject the goods following testing envisaged in the contracts was the post-delivery testing set out in the scheme under the contract.

There was also a real prospect of UKGH establishing at trial that DHSC had made clear that it expected to receive the benefit of more intrusive inspections/testing than was allowed for in the contracts and it had *"demanded"* or alternatively *"requested"* that the extra-contractual inspections and/or testing be undertaken prior to delivery. UKGH complied, making it clear that (i) the requests were extra-contractual; (ii) compliance would have an impact on its ability to deliver the goods in accordance with the prescribed timetable; and (iii) it required a formal variation reflecting any necessary extension of time.

DHSC had made it clear that it made total sense to vary the original dates in the contract to allow for both sides to obtain absolute assurance as to the standards to which the gloves were manufactured prior to delivery. As a result, there was also a real prospect that UKGH would establish at trial that it was objectively justified in understanding from these exchanges that, by late June 2020, there was no way that DHSC would require UKGH to comply with the delivery dates in the contracts, and that new delivery dates would be formalised in writing as required by the contracts.

Further, these facts, in the absence of any contractual method to extend time, arguably rendered time as no longer being of the essence and placed time for compliance with the delivery obligations at large. If, as a matter of fact, compliance with those requests meant that it was no longer possible to comply with the delivery deadlines, then that was, arguably, an act of prevention. If time was put at large, that would be a complete answer to DHSC's reliance upon the failure to comply with the original deadlines in order to justify termination of the contract.

This was sufficient to defeat the application for summary judgment.

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