Appendix-citis: Keep your Contracts Consistent

By Markus Esly | January 21, 2021

RELATED PRACTICES International Arbitration, Litigation

In *Altera Voyageur Production Ltd v Premier Oil E&P UK Ltd* [2020] EWHC 1891, the Commercial Court has addressed an issue of contract interpretation which has only been considered once previously by an English court. This struck us as interesting because the point can (and, in our experience, does) easily arise in practice.

The parties included a complex formula in their contract by which payments were to be adjusted in certain circumstances. They wrote out the formula in words and illustrated how it was meant to operate with worked examples. The difficulty was that the contract provision which contained the formula and the worked examples were inconsistent. In addition, one party maintained that there was also a clash between the main conditions of the contract and one of the appendices. The Commercial Court had to decide whether the additional steps for calculating the adjustment that were shown in the illustration, but were not referred to in the main contract provision, led to a result that was so commercially unreasonable that the example should be disregarded, because it must have contained an error. As will be seen, the decision in this case shows that all parts of the contract, including any appendices and examples, need to be carefully reviewed – the devil is in the detail.

The background to the dispute

Altera v Premier was a dispute under a charterparty for one of Altera's FPSOs, the *Voyageur Spirit*. She was hired by Premier and deployed in the Huntingdon field in the North Sea. The *Voyageur Spirit* may appear a somewhat unusual vessel to the uninitiated. The hull was designed by Sevan SSP and is circular, rather than ship-shaped resembling a large oil tanker as many other FPSOs do. The *Voyageur Spirit* has a diameter of 60 metres, and is capable of producing 30,000 bopd of oil and storing 270,000 bbls. She also exists as a Lego set, consisting of 1,300 bricks.

The charterparty for the Voyageur contained a mechanism by which the base hire would be adjusted depending on the availability of the vessel. Article 17.1 of the main conditions of the charterparty provided that such adjustments would be made by reference to a "Target Availability" and in accordance with the appendix to the contract (the provisions of which are addressed further below):

> *"Target Availability; Adjustments to Hire*
>
> *If, during the Service Period, there is a loss of time or reduction in production/processing operations of the [Vessel] attributable to [Altera or its group] as provided in Appendix M, that reduces or impairs the ability of the [Vessel] or any of its Systems to receive and process Well Product, provide water injection services and/or store or discharge Export Product such that the [Vessel] or any of its Systems falls below the Target Availability, then Daily Base Hire may be reduced as provided for in Appendix M.*
>
> *If there is an increase in the production/processing operations of the [Vessel] attributable to [Altera or its group] as provided in Appendix M, that increases the ability of the [Vessel] or any*

© 2026 Haynes and Boone, LLP

> *of its Systems to receive and process Well Product, provide water injection services and/or store or discharge Export Product such that the [Vessel] or any of its Systems increases the Target Availability, then Daily Base Hire may be adjusted as provided for in Appendix M."*

Altera's "*Daily Base Hire*" was defined in the charterparty as an amount "… *as may be adjusted from time to time in accordance with Appendix M."*

In the main conditions of the charterparty, the parties had further agreed that "*Target Availability*" for the vessel and its key 'Systems' was 95%, such that downtime for permissible shutdowns and maintenance over a period of 365 days could not exceed 18.25 days, or 438 hours. However, in the appendix to the charterparty, this time-based downtime allowance was then converted into an allowance for underproduction, to be measured in barrels. Determining whether the vessel had achieved its "*Target Availability*" in fact required a review of production, which was to be done on an annual basis. Once that had been done, the appendix to the contract contained the formula by which the hire due to Altera would be adjusted – upwards or downwards, depending on whether the target had been.

Before looking at the provisions in the appendices which contained the troublesome formula, it is worth noting that the concept of "*Target Availability*" made two further appearances in the main body of the charterparty.

Firstly, Clause 17.2 of the charterparty provided that if the vessel "… *continuously or regularly operates below the Target Availability* …" (i.e. 95%), then this was a "*deficiency*". In such an event, Premier could give written notice requiring Altera to submit a rectification plan. Ultimately, if Altera failed to remedy the deficiency so as to meet the "*Target Availability*", Premier could suspend payment of hire attributable to whichever 'System' of the vessel was responsible for the deficiency.

Secondly, the "*Target Availability*" also featured in the *Force Majeure* provisions of the charterparty: actual production was to be assumed at the level of the "*Target Availability*" (i.e. 95%) during any period of Force Majeure. This was relevant because if there were a Force Majeure event during which the vessel could not actually produce any oil, a deemed quantity would have to be used during the relevant annual review for the adjustment of Altera's hire. That deemed quantity would be set at the level of the "*Target Availability*", suggesting that this was the baseline performance that Premier was entitled to expect.

Upward or downward adjust of hire?

Turning to the contractual mechanism for the hire adjustment, for the purposes of determining the "*Target Availability*", the vessel's 'Systems' were divided into System A, being FPSO's the oil and gas process systems, and System B, the water injection system. A weighting factor was applied, such that System A had a weight of 0.9 and System B of 0.1. The next step was to measure daily production for both Systems against contractual targets, to determine whether there was a shortfall or "*Underproduction*". Whether Altera or Premier bore responsibility for this "*Underproduction*" would need to be determined based on the provisions of the contract. For present purposes, this allocation of responsibility does not matter since the problem arose at a subsequent stage in the calculation.

Once any "*Underproduction*" had been worked out, the charterparty then provided for an annual process by which the vessel's availability (measured against the production targets) would be established. The final step in the process was "*Determining [the]Actual Availability (%)*", through an equation that was expressed as follows in the appendix:

© 2026 Haynes and Boone, LLP

"Actual Availability (%) for each System and the [Vessel] shall be determined as follows:

Target Availability: 95% of Production Target

[Vessel] Availability: Actual Production + Company Underproduction

Actual Availability (%): [Vessel] Availability x 100
Production Target

(Actual Availability shall not exceed 100%.)"

From this, one could conclude that the aim of the parties was to determine whether the vessel had been able to produce at least 95% of the contractual target. The "*Actual Availability*" percentage was then to be used to adjust the hire. One might therefore expect that an "*Actual Availability*" of above 95% would lead to an upward adjustment of the hire for the vessel, benefiting Altera as the shipowner, with a downward adjustment to hire if performance fell below that threshold.

The formula for adjusting the hire also needed to take account of the weighting factor of System A (the oil processing system, with a factor of 0.9) and System B (water injection, with a factor of 0.1). Expressed in words in the appendix, this was to be done as follows:

"The following formula shall be applied, using the agreed WF per System, to determine the required Hire Adjustment to the Daily Base Hire.

In the event that Actual Availability is > 95% then the following formula applies to both systems:

(100% + (Actual Availability % - 95%) x2) x WF

In the event that Actual Availability is < 95% then the following formula applies:

(100% + (Actual Availability % - 95%) x1) x WF"

For the avoidance of doubt … or not!

Below the above wording, the parties had set out their two worked examples. These worked examples illustrated how the formula would operate in case of two assumed values for "*Actual Availability*" for both System A and System B. This is where the difficulty arose. The worked examples contained two additional steps that were not mentioned in the preceding paragraph of the appendix, where the formula had been written out in words.

The first additional step was a requirement to add together the percentages calculated for each System, to produce an overall percentage. In the Commercial Court, Altera and Premier both agreed that this must have been the intention of the parties, even though one could only find it in the worked examples.

The second additional step that appeared only in the worked examples gave rise to the dispute. This is because it changed the outcome of the calculation and could make a difference in the millions of dollars. That second step required the parties to take the overall percentage for both Systems, and divide it by 95, thus producing another percentage figure comparing the overall percentage (produced in the first additional step) to the Target Availability figure of 95%.

© 2026 Haynes and Boone, LLP

Going through a simplified version of a worked example helps to understand the unexpected effect of that second additional step. One worked example showed a scenario where Altera would benefit from an upward adjustment. It assumed that System A (oil) had performed at an "*Actual Availability*" of 92%, and System B (water) at 97.5%. Pausing here, recall that System A had a weighted factor of 0.9, so one might not expect Altera to get a bonus in these circumstances – since System A as the most important component had not met the 95% threshold. However, the worked example in the appendix, through the second additional step that was not included in the written out formula, nevertheless showed a bonus payment of just under 3%.

This bonus for Altera shown in the worked example was arrived at as follows:

- System A (under) performing at 92% produced a weighted percentage of 87.3% ((100+(92-95) x 0.9).
- System B performing at 95% produced a weighted percentage of 10.5% ((100+(97.5-95) x 2 x 0.1).
- Adding the two percentages together gave an overall percentage of 97.8%.
- That figure of 97.8% was 102.9% of the Target Availability of 95% of the contractual Production Target.

A windfall for the vessel's owners?

In the worked example described above, Altera was shown to be entitled to a bonus of 3%, as a consequence of applying the second additional step, in circumstances where Premier could have served notice of a deficiency in relation to System A (oil processing), and perhaps even withheld hire under Clause 17.2 if Altera could not remedy the issue within the contractual timeframe. On the facts of the case, Altera claimed an uplift in the "*Daily Base Hire*" of US$ 12 million, despite the 95% threshold not having been met.

Premier maintained that this could not be what the parties had objectively intended, because following the worked example with its two additional steps led to a bonus even when the Voyageur Spirit's oil and gas processing systems, whose performance should count for 90% based on their weighting, had failed to meet their contractual target. The second additional step meant that a bonus or an upward adjustment of hire would still become due if the combined performance of the Systems was below 95%, even though that (Premier said) was expressly the contractual target. In response, Altera submitted that there was no difficulty at all in interpreting the contract. All that had to be done in any review of the "*Daily Base Hire*" was to use the actual values in all the steps set out in the worked examples. The result of following this simple process, Altera said, was that it became entitled to the additional US$ 12 million in hire payments.

Re-writing the contract?

In the Commercial Court, Premier's case was that the worked examples contained a mistake and failed to reflect the preceding provision in the appendix to the charterparty in which the equation was set out. It said that the examples, which were just illustrations, could not change the meaning or effect of the actual formula that they were supposed to explain.

Premier further argued that the parties could not have intended to undermine the central notion that a particular performance target had to be met before additional payment was due, and especially not through mere illustrations. Instead, these illustrations / worked examples had to be considered in the context of the charterparty as a whole. Counsel for Premier submitted that the Commercial Court should depart from, or ignore, the last steps in the worked examples. Premier submitted that

© 2026 Haynes and Boone, LLP

this was permissible because all the conditions in which English law does permit a departure from the apparent meaning of contractual wording (here, the apparent meaning of the worked examples when looked at it in isolation) were satisfied.

Those conditions are that if it has become clear to a court or tribunal that (i) something must have gone wrong with the language used in the contract and (ii) it is also clear what the parties must have meant, then under English law (to quote Lord Hoffmann in the well-known decision in *Chartbrook Ltd v Persimmon Homes Ltd* [2009] UKHL 38):

> *"... there is not, so to speak, a limit to the amount of red ink or verbal rearrangement or correction which the court is allowed …"*

Premier also submitted that the charterparty was not properly drafted, and that this made it more appropriate for the Commercial Court to find that a departure from the odd and commercially nonsensical result suggested by the worked examples was warranted. Premier relied on the decision of the Supreme Court in *Arnold v Britton* [2015] UKSC 36, where Lord Neuberger noted that:

> *"... when it comes to considering the centrally relevant words to be interpreted, ... the less clear they are, or, to put it another way, the worse their drafting, the more ready the court can properly be to depart from their natural meaning. That is simply the obverse of the sensible proposition that the clearer the natural meaning the more difficult it is to justify departing from it …"*

One of the advantages of English law is that it will give effect to the wording of the contract, producing certainty as to the legal rights and obligations of the parties. With that in mind, the prospect of a judge or arbitrator getting out the red pen and re-writing the contract may seem daunting. However, while the power to correct mistakes through a process of construction exists, it is sparingly utilised, and only where the result that would otherwise follow is arbitrary, irrational and makes no commercial sense. The limits of the power to correct mistakes by interpretation were restated by the Court of Appeal in *Trillium (Prime) Property GP Limited v Elmfield Road Limited* [2018] EWCA Civ 1556, where Lewison LJ noted that the process of construction cannot be prayed in aid where the problem lies in:

> *"… a failure to think through the consequences of what the parties agreed, rather than any deficiencies in drafting …*
>
> *... The fact that a contract term was an imprudent one for a party to have agreed or that it has worked out badly or even disastrously is no warrant for departing from the clear language of the contract …"*

Instead, the ordinary meaning of the contract could only be departed from where the clause in issue was an "*obvious nonsense*".

How important are examples or illustrations in a contract?

Prior to *Altera v Premier*, the English Courts had only considered an alleged inconsistency between the contractual text describing a formula and an illustration of how it worked on one occasion. That was the case of *Starbev GP Ltd v Interbrew Central European Holdings BV* [2014] EWHC 1311, which concerned a sale and purchase agreement for the shares in a number of companies. Blair J

© 2026 Haynes and Boone, LLP

had to decide whether an example ought to be read literally, or subject to the preceding text. He noted that:

> *"There is in my view no reason why illustrations or examples should be construed differently than any other term in a contract. It could be said in the context of lengthy contracts in financial transactions with much boiler plate that illustrations or examples deserve particular attention as something to which the parties particularly turned their minds. … Ultimately, it depends on the terms of the illustration read in context …"*

Blair J was not quite prepared to say that there was anything special or especially persuasive about an illustration, but he did not rule out that an example could have particular importance in the right circumstances. In *Premier v Altera*, the Commercial Court has revisited that point, as we shall see.

The decision of the Commercial Court

Richard Salter QC, sitting as a judge of the Commercial Court, started by considering the quality of the drafting of the charterparty. Premier had argued that, since the provisions were not altogether clear, there was greater scope for the Commercial Court to effectively strike out the final step in the worked examples. The judge was inclined to agree that the drafting left something to be desired, and concluded that:

> *"This is therefore precisely the sort of contract in relation to which the court, in its attempt to ascertain the objective meaning of the language in which the parties have chosen to express their agreement, must be wary of focussing too narrowly on the dictionary meaning of individual words and phrases but must instead look at the terms of any particular provision in its commercial context and against the landscape of the instrument as a whole."*

It is interesting to note what precisely the judge considered to be indicative of 'poor drafting' – namely confusion in labelling and numbering some 'Figures' and 'Examples' in the appendices, errors in cross-referencing and remaining references to appendices which had been deleted or superseded in the final version of the charterparty. Such oversights or slips might happen in the heat of the negotiations and the drafting process, but they can (as they did here) give the impression of carelessness despite being relatively minor in nature. Perhaps stating the obvious, even minor errors in contract should be avoided – the prudent course is always to make time for a final, careful check of the document before signing it.

Next, the judge considered the argument that the threshold of 95%, the "*Target Availability*" referred to in Clause 17.1 in the main body of the charterparty, had to be the pivot point for determining any adjustment to Altera's hire, as anything else would not make commercial sense. He saw the force in the argument and did feel tempted to disregard the second additional step in the worked examples that gave Altera the additional US$ 12 million. However, the judge ultimately declined to re-write the parties' agreement in this manner. He came to that conclusion for the following reasons.

The parties' approach to adjusting the hire was complicated, and the mechanism was not set out in any one place in the contract. Instead, Clause 17.1 was just the starting point for the adjustment process. That provision specifically referred to the appendices for further detail of how the adjustment would be done – as it did the definition of "*Daily Base Hire*". While the concept of "*Target Availability*" did feature in Clause 17.1, the wording used by the parties did not give it any overriding importance. It was perfectly possible to read Clause 17.1 as envisaging that the detail of the calculations, to be found in the appendices, could lead to an upward adjust even though the 95% threshold was not met.

© 2026 Haynes and Boone, LLP

Premier had also relied on an 'inconsistency' provision in the charterparty, which gave priority to the main body of the contract – including Clause 17.1 – in the event of a conflict with one of the appendices. The judge found, however, that there was no true inconsistency or conflict within all the contractual documents in this case. The worked examples in the appendix might have modified the effect of, or supplemented, Clause 17.1, but that was not the same as contradicting the clause or being inconsistent with it. In reaching that conclusion, he was guided by the decision of the Court of Appeal in *Alexander v West Bromwich Mortgage Co* [2016] EWCA (Civ), noting that:

> *"One should not strive to avoid or to find inconsistency. Rather one should 'approach the documents in a cool and objective spirit to see whether there is inconsistency or not' …*
>
> *... As to what amounts to inconsistency ... it is not enough if one term qualifies or modifies the effect of another; to be inconsistent a term must contradict another term or be in conflict with it, such that effect cannot fairly be given to both clauses … inconsistency only arises where the provisions cannot sensibly be read together …"*

The judge did not accept that it was commercially illogical to provide for an increase in hire even when the performance of a System was below the 95% threshold, such that Premier could serve a notice of a deficiency under the contract. All this, as Altera had submitted, was just a matter for the negotiations between the parties. If they wanted to increase the hire where there was a default under the contract, then there was nothing stopping them from agreeing this – which is what the judge found they had done.

Of somewhat more concern to the judge was the possibility that Altera's hire might be the subject of an upward adjustment following a period of Force Majeure – since assumed production at the level of the "*Target Availability*" was likely to lead to that result. That, the judge said, seemed difficult to understand on a commercial level. Any upward adjustment as a result of Force Majeure would make "*little or no commercial sense.*"

Nonetheless, even that illogicality was not enough to persuade the judge to take a red pen to the worked examples. While it was possible that something had gone wrong with the language used by the parties, Premier had failed to persuade the judge that it was clear that such a mistake had happened. The effect of the worked examples was neither arbitrary, irrational nor obvious nonsense: it just happened to produce a good result for Altera. In coming to that conclusion, Richard Salter QC was prepared to ascribe particular importance to the worked examples, because:

> *"… it seems to me to be inherently more probable that the parties' true bargain is that to be found in the "Worked Examples". Narrative explanations and formulae may disguise (or, at least, not make clear) their consequences when applied to various factual situations. The whole point of the "Worked Examples" is to demonstrate with clarity the consequences of the formulae in Section 5 of Appendix M when applied to particular levels of "Actual Production". As Blair J said in the Starbev case [30]:*
>
> *... in the context of lengthy contracts ... illustrations or examples [may] deserve particular attention as something to which the parties particularly turned their minds ...*
>
> *Blair J was there speaking specifically of financial contracts. However, it seems to me that that principle is equally applicable to the sort of lengthy and detailed commercial contract with which the present case is concerned. It is often only when narratives and formulae are worked through that their true effect can properly be seen."*

© 2026 Haynes and Boone, LLP

Altera was entitled to the additional US$ 12 million in hire that it had claimed.

Conclusion

Decisions on contractual interpretation always turn on their own facts. However, there are a number of takeaway points that arise from *Altera v Premier*:

- Avoid even minor mistakes (such as errors in cross-referencing or redundant numbering) in contracts. If a dispute arises, this might allow your opponent to argue that the contract is badly drafted, and that this gives the court or tribunal more leeway to depart from the apparent meaning of the contract wording.
- Avoid relying overmuch on 'inconsistency' or 'order of precedence clauses' giving priority to the main contract clauses. Treat the appendices as an integral part of the contract, and check them carefully. Where one party may consider that the appendix contradicts the main contract, another – and the judge or arbitrator – may conclude that the appendix actually supplements or develops the contract conditions, such that there is no inconsistency.
- Treat worked examples or illustrations with great care. The Commercial Court found that the "*true bargain*" of the parties was set out in the illustrations, because the complexity of the adjustment mechanism was such that it warranted a practical explanation.
- Keep it simple. Do you really need an adjustment process or an equation that is spread out over several provisions in the main body of the contract and the appendices? Can the mechanism be contained in one place, and be expressed only once in clear terms? Saying things twice or adding an additional explanation 'for the avoidance of doubt' can have the opposite effect.
- Remember that English law takes the view that contracts mean what they say, unless a party can establish that something really has gone wrong with the language. Even some element of illogicality, or a commercially questionable outcome, may not suffice to bring into play the principle of correcting mistakes through interpretation or construction.

© 2026 Haynes and Boone, LLP