“You do the maths” - Should you refer issues of contractual interpretation to expert determination?

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PRACTICES Litigation, International Arbitration, Commercial Contracts

Expert determination is a form of ADR for issues arising in commercial contracts which usually require specialist technical, professional or scientific experience. Examples of matters which might be referred to expert determination include whether goods meet a particular specification or performance criteria, patent compliance, royalty calculations, valuations of shares or property, completion accounts, calculating post-completion consideration, valuing interests in oil and gas fields, and/or making price adjustments in energy supply contracts.

In this article, we review the key features of expert determination before turning to a recent Court of Appeal decision (*WH Holding Ltd* v *London Stadium LLP (Formerly E20 Stadium LLP)* [2026] EWCA Civ 153) concerning whether a decision by an expert was to be set aside because it contained a “*manifest error*”. Manifest error is one of the very few grounds on which an expert determination may be challenged. The question the parties had referred to the expert raised an issue of contractual interpretation, which proved to be tricky. There followed much legal argument and judicial discussion. Ultimately, the High Court at first instance and the Court of Appeal wrote 167 paragraphs altogether on whether there was a “*manifest error*”. It seems the answer was plainly not manifest. However, the Court of Appeal has now restated the test to be applied when looking for a “*manifest error*”, having been asked by both parties in the appeal to make refinements to the law as it previously stood.

Key features of expert determination

Expert determination is contractual in nature, but it is recognised and governed by the common law. Just like an arbitration clause, the parties can contract out of the court system but by and large need to live with the consequences, for better or worse. Expert determination is designed to enable a true specialist to resolve an issue within their expertise more cheaply and quickly than might be possible through formal adversarial proceedings (arbitration or litigation). In contrast with arbitrators and judges, an expert may properly adopt an inquisitorial role and is (generally) under no duty to consult or share with the parties the results of their own independent investigations.

The process depends on the expert determination clause in the contract. As is the case in arbitration, the parties are free to agree precisely how they would like their expert determination to proceed. Expert determination clauses may provide for submissions by both parties, as opposed to giving the expert carte blanche to come up with the answer, because parties may wish to ensure that they have their say. The procedure for an expert determination therefore merits careful consideration and drafting. There are fewer industry-accepted procedural rules for expert determination that can be incorporated by reference than in arbitration (although the ICC has published Rules Administration of Expert Proceedings). In practice, disclosure of documents, witness evidence, and/or oral hearings rarely feature in expert determination.

The parties should consider carefully who is to nominate the expert in case they do not agree, and make adequate provision for this in the contract. While expert determination is meant to be more

informal and less confrontational than arbitration or litigation, it is still a form of dispute resolution. Disputes have a habit of making cooperation between the parties less likely, so one should not assume that the 'right' expert would be agreed once the dispute has arisen. There are a variety of nominating bodies, depending on the industry or specialism, such as the Royal Institution of Chartered Surveyors, the Institution of Civil Engineers, the Institute of Chartered Accountants, the ICC and CEDR. The parties should also consider including specific, although not overly prescriptive, qualifications for their experts, and perhaps even include a shortlist of names.

There is limited judicial control over expert determination. There is no equivalent of the Arbitration Act 2025, which sets out in detail the English Court's supervisory function and powers. Instead, the High Court will intervene in an expert determination following common law principles. An issue on which the High Court will have the final say is the jurisdiction of the expert. Was the decision in fact rendered within what could properly be referred to the expert under the expert determination clause? Another issue for the High Court might be whether an expert determination may be set aside on the very limited, applicable grounds – lack of impartiality, fraud, or "*manifest error*". The Court of Appeal in *WHH* v *E20* had to consider the scope and application of the latter.

***WHH* v *E20* – the facts**

The case concerned the London Stadium, built using public money for the 2012 Olympics. It is owned by E20, a public body incorporated as a limited liability partnership. In 2013, E20 signed a concession agreement with WHH, the owner of West Ham United.

For those who do not follow the sport, West Ham United is an English Premier League football club. It was founded in 1895 as Thames Ironworks FC because of a strong connection with the London shipbuilding industry. The club is still today referred to by its nickname "The Hammers". Those who do follow English football may have noticed a strong similarity between the colours of the kit worn by West Ham and Aston Villa, another Premier League side. There is a story behind that.

In 1899, four Aston Villa players went to a fair in Birmingham. There, they met and challenged a Mr Bill Dove to a race. They wagered they could beat him. Mr Dove was fleet of foot and defeated all four Aston Villa players. Mr Dove's son happened to play for the then-fledgling Thames Ironworks FC. The Aston Villa players could not pay their wager, but being honourable men, instead offered Mr Dove an entire team's worth of football kit – in Aston Villa colours of course. Mr Dove gave the kit to his son, whose team gratefully used it, thus making it their team colours, too – which stuck.

The concession agreement and the 'overage' provision

In 2013, WHH signed a concession agreement with E20 allowing West Ham to use the London Stadium as their home ground for 99 years. At the time, WHH, and so West Ham itself, was substantially owned by Messrs Sullivan and Gold. Messrs Sullivan and Gold are reported to have acquired 50% of West Ham in 2010, when the club was valued at £105 million. The concession agreement contained an 'overage' provision. This type of clause is commonly found in property transactions. It allows the seller to claim an uplift on the sale price from the buyer if a certain trigger event happens after completion of the sale, which event increases the value of the property sold – for instance, the grant of planning permission.

In the London Stadium concession agreement, the overage clause was aimed at allowing E20 to "*share in the spoils*" (as WHH would later put it) if any shares in WHH were disposed of to anyone other than Messrs Sullivan and Gold (and certain related parties) during the term of the concession agreement. In short, by this clause E20 had secured the claw-back right to receive a corresponding

benefit if West Ham attracted substantial third party investment. This is not uncommon in the Premier League.

The sale by WHH of shares to 1890 Holdings

In November 2021, Mr Křetínský acquired 27% of the total share capital in WHH, including by buying shares from Messrs Sullivan and Gold. Mr Křetínský is a Czech lawyer turned billionaire through investments in the energy sector. He acquired his interest in West Ham through a company called 1890 Holdings.

The deal had three components parts: (i) a sale of existing shares, (ii) an option to buy more existing shares, and (iii) subscribing to new shares. Specifically, 1890 Holdings (i) acquired 187 existing shares from Messrs Sullivan and Gold for £25.8 million; (ii) acquired an option to buy an additional 1,022 existing shares from Mr Sullivan for a premium of £18 million (payable irrespective of whether the option would be exercised) – if exercised, the price payable for the additional shares would have been £282 million; and (iii) subscribed to newly issued shares in WHH for a total of £125 million.

Under the overage provision in the concession agreement, E20 stood to receive a payment called the "*Stadium Premium*" if there was a "*Qualifying Transaction*" exceeding a threshold value of £125 million. The contract defined Qualifying Transaction as:

> "*… any sale or transfer of any interest in the Club (directly or indirectly) by a Relevant Shareholder … (including any sale of any interest in shares, right to purchase shares, share purchase option or similar) or any transaction having the same or a substantially similar effect.*"

The deal with 1890 Holdings was clearly a "*Qualifying Transaction*" because Messrs Sullivan and Gold were "*Relevant Shareholders*". However, working out the value of the transaction for the purposes of the overage clause was not straightforward. The agreement had its own definition of what would be taken as the "*Consideration*" of any Qualifying Transaction, in order to assess whether the value of the deal was above the Threshold, and (if it was) to apply certain percentages to that Consideration to calculate the Stadium Premium payable by WHH to E20. In simplified terms, the Stadium Premium percentages were 7.5% applied to the initial portion of the Consideration from £125 to £150 million, then 10% on any portion from £150 to £200 million, and then 20% on any portion from £200 to £300 million.

The definition of the Consideration itself contained one two-letter word that proved to be of considerable importance. The whole definition read:

> "*Consideration means, for a Qualifying Transaction:*
>
> *(a) the amount paid or to be paid by a purchaser in that Qualifying Transaction for 100% of the share capital in the Club (to be calculated net of legal and advisory costs (but only to the extent that they are reasonable) incurred in relation to the Qualifying Transaction);*
>
> *(b) if 100% of the share capital in the Club is not sold in that Qualifying Transaction, an extrapolation of the value of 100% of the share capital in the Club on the basis of the consideration paid (or to be paid) for the percentage of the shares sold or to be sold;* ***or***
>
> *(c) if any share purchase option (or similar) in the Club is being sold in that Qualifying Transaction, an extrapolation of the value of 100% of the share capital in the Club on the basis*

of the consideration paid (or to be paid) for the shares sold or the consideration to be paid for the share purchase option (or similar)".

As would become apparent, the key question was the meaning and effect of the word "*or*" between limbs (b) and (c).

1890 Holding's acquisition of the existing shares fell into limb (b) – a sale of less than 100% of the share capital of WHH. Although Messrs Sullivan and Gold had sold 5.4% of the total shares in WHH (187 shares sold compared to 3,438 shares in total including the new subscription shares) for a price of £25.8 million, the Consideration (according to the parties' definition) was deemed to be the value of 100% of the share capital of WHH, on the basis of what the buyer had paid for the shares actually sold by Messrs Sullivan and Gold. Essentially, West Ham would be valued assuming all the shares had been sold at the same price at which Messrs Sullivan and Gold had sold their 5.4% of the shares – namely £138,000 per share. E20 then stood to receive an overage payment calculated on the basis of that assumed overall increase in the value of the club. The parties agreed that the Consideration so extrapolated from the share sale was deemed to be £475 million, being the notional value of 100% of the shares. Applying the percentages, this led to a gross Stadium Premium of £46.5 million. That was then reduced proportionately to reflect the fact only 5.4% of the shares had actually been sold, and not actually 100%. Accordingly, for the share sale, a Stadium Premium of £2.5 million was due. There was no dispute about that.

But there was also the call option. That fell within limb (c) of the definition of Consideration. The parties were agreed that to assess the Consideration for that part of the transaction, one should take the premium (price) paid for the option - not the ultimate purchase price for the shares if the option were subsequently exercised. The option required a payment of £18 million in return for the right to buy a set number of shares (1,022): that gives a 'value' per option share of around £17,600. Using that (notional) option share price to value 100% of the actual share capital if WHH gave a figure of £60.5 million. As a standalone transaction, this would be well below the threshold of £125 million, and no Stadium Premium would be due.

The option shares appear cheap if one takes the premium for the option as indicative of the value of the shares - £17,600 per share based on the option premium, as against the price of £138,000 per share that Messrs Sullivan and Gold received in the sale. However, it should be recalled that, if the option had been exercised, then 1890 Holdings would have acquired 1,022 shares for £282 million, which makes £275,929 per share. That makes the option look expensive. In fact, 1890 Holdings never exercised the option.

If, however, one were to treat both the share sale and the call option as a single, combined transaction, and added the extrapolated value of the 100% share capital of WHH for both scenarios together, that produced a total 100% value of £535.5 million (£475 million from the share sale extrapolation, plus $60.5 million from the option calculation). This increased the total gross Stadium Premium by £12 million to £58.5 million. One would then have to carry out a further calculation to reduce and arrive at a net Stadium Premium payable by WHH to E20, reflecting the proportion of option shares included in this calculation to the total share capital (1,022 option shares compared to 3,438 shares in total, so). That produced an *additional* payable / net Stadium Premium of £3.6 million attributable to the option if it were included in a single transaction. This was substantially more than the £2.5 million payable as the Stadium Premium for the shares that were in fact sold, on a stand-alone basis. By adopting a 'single transaction' approach, E20 would thus receive a 69% increase in the Stadium Premium – even though the option as a separate transaction would not trigger the overage clause at all.

Unsurprisingly perhaps, E20's position was that one had to adopt this 'single, combined Qualifying Transaction' approach and add the Stadium Premium for the sale and the option together. WHH resisted this, noting that the definition of Consideration separated the two limbs – (b) for the share sale and (c) for the option – by the word "*or*", so these were meant to be alternative approaches. WHH also noted that both limbs (b) and (c) each produced a different notional 100% value of West Ham, so it made no sense to then add them together and say that the sum total of the two 100% values was actually the correct 100% value. The concession agreement provided for the calculation of the Stadium Premium to be referred to expert determination, and that was duly done by the parties.

The parties' expert determination clause

Before turning to the substance of the expert's determination and the subsequent challenges of that decision in the High Court and then on appeal, a few points arise from the particular expert determination clause. This provided:

> "*The expert appointed may be an individual … and shall be generally recognised as an expert with a specialist capacity or area of knowledge in relation to the relevant issues that both the Concessionaire and the Grantor agree is relevant to the Matter for Expert Determination.*"

This clause does not, therefore, say what expertise the expert ought to have, but leaves this to the parties to agree. Such an approach is hard to recommend. It is far better to agree with more particularity in advance of any dispute arising which areas of dispute require which corresponding expertise. This could be done as simply as linking expertise to certain clauses in the contract. Another point to bear in mind is that, if it is not clear at the outset when drafting the contract what expertise might be required to decide a particular issue, it seems advisable to stop and think whether in fact that issue is suitable for a reference to expert determination.

The expert determination clause went on to say that the expert was to act "*as expert, and not as arbitrator*" (a commonly found form of words). The distinction between these two capacities of decision-making was described in *Bernhard Schulte GmbH & Co* v *Nile Holdings Ltd* [2004] EWHC 977 (Comm):

> "… the historic phrase 'acting as an expert and not as an arbitrator' connotes a concept which is clear in its effect. A person sitting in a judicial capacity decides matters on the basis of submissions and evidence put before him, whereas the expert, subject to the express provisions of his remit, is entitled to carry out his own investigations, form his own opinion and come to his own conclusion regardless of any submissions or evidence adduced by the parties themselves."

E20 and WHH were able to agree the identity of their expert: they jointly appointed a KC, and so presumably thought that legal expertise was required to determine the Stadium Premium, by construing the contract. They subsequently entered into a further expert agreement, setting out the specific terms on which their KC would act as expert. A further agreement like this would probably be needed in most cases, since an expert may very well be unwilling to act unless all necessary matters such as payment and immunity (an expert can in principle be liable to the parties in negligence) are settled on acceptable terms.

An obstructive party may refuse to participate in the appointment process, be it when it comes to identifying the expert or later when agreeing their detailed terms. An application to the High Court will be necessary to bring any such recalcitrant party back into line. In *Apache North Sea Ltd* v *Neo*

Energy Central North Sea Ltd [2023] EWHC 1345, the High Court proceeded on the assumption that a party who has agreed to an expert determination clause is under an implied duty to cooperate, and held:

> "*… The claimant appears to be suggesting that it cannot be required to concur with the appointment of an Expert other than on terms that it is willing to agree to and the defendants cannot unilaterally appoint an Expert. If that was literally correct, then it would enable the claimant to prevent a dispute being resolved by expert determination as had been agreed between the parties. It would of course be wrong in principle … for any party … to seek to defeat the Expert determination process agreed between the parties by wrongly refusing to cooperate in the appointment process. It is likely that any such attempt would be met with applications to the court for mandatory orders requiring the parties to give effect to what has been agreed.*"

Applications to the High Court to appoint an expert in the face of an obstructive party, though likely to be ultimately successful, mean incurring significant additional time and cost. The parties should therefore address as many practical appointment issues as possible upfront in the expert determination clause.

E20 and WHH's expert determination clause provided that: "*… the expert's determination shall (in the absence of manifest error) be final and binding … and not be subject to appeal …*". Absent express provision in the contract permitting a party to challenge a decision based on a manifest error, at common law the decision of an expert will be binding - no matter how wrong - unless (i) the expert has departed from their instructions in a material manner (such as by answering the wrong question) or (ii) the determination is the result of fraud. "*Fraud, of course, would vitiate the determination irrespective of whether it affected the result*: *'Fraud or collusion unravels everything*'" (per the Court of Appeal in *Veba Oil Supply & Trading GmbH* v *Petrotrade Inc* [2001] EWCA Civ 1832).

What did the expert decide?

Having considered the matter, the expert agreed with E20. The expert's starting point was the definition of "*Qualifying Transaction*":

> "*… any sale or transfer of any interest in the Club (directly or indirectly) by a Relevant Shareholder … (including any sale of any interest in shares, right to purchase shares, share purchase option or similar) or any transaction having the same or a substantially similar effect.*"

This was widely worded and, the expert concluded, could easily encompass the deal with 1890 Holdings with the two relevant components – the sale of the shares and the option. The parties had expressly said that the transfer of "*any interest*", including the "*right to purchase shares*" or a "*share purchase option*" was a Qualifying Transaction and so was something that could attract a Stadium Premium. The expert considered that the intention had been to cast a wide net, ensuring that the overage provision applied to all kinds of disposals that could potentially occur.

The expert found that the purpose of the definition of Consideration, with each limb being an alternative ("*or*"), was to work out the value of the transaction and its various component parts, but that this definition:

> "… *does not assist the exercise of interpreting the expression Qualifying Transaction. The definition of Consideration does not lead to the conclusion that an option to purchase other shares in an agreement or arrangement to sell share[s] must be treated as a separate Qualifying Transaction.*"

He did not think that the "*or*" constrained or undermined his reasoning (implicitly reading it as an "*and*"). The expert concluded that selling shares and granting an option in one and the same transaction was not uncommon (and something the parties as experienced commercial operators could have foreseen): he thought his construction of the contract made commercial sense. In the expert's determination, if a "*Qualifying Transaction*" had more than one component, one then had to apply the corresponding limb in the definition of Consideration to that component and, ultimately, add the resulting figures together for all components that were present – just as E20 had done.

What did the Judge decide?

WHH challenged that decision in the High Court, on the basis that the expert had committed a "*manifest error*". The Judge agreed.

Paul Mitchell KC, sitting as a High Court judge, noted that the expert had applied two different, extrapolated 100% valuations of West Ham. The definition of Consideration, however, provided for each extrapolation to be an alternatives only.

It followed that, for the expert and E20 to be right, there had to be wording elsewhere in the agreement that allowed blending the two alternatives into a hybrid calculation. No such wording could be found. E20 had to accept that, but argued that one should take account of the nature of overage provision, which was to capture a proportion of the overall consideration paid to Messrs Gold and Sullivan in any Qualifying Transaction. The Judge held that such considerations could not overcome the lack of clear wording in the concession agreement that could support a blended approach. To combine the two different valuations into a single one would be to invent a consideration for a transaction that had never taken place. He also found that the underlying calculation advanced by E20 already showed that there was not a single transaction. E20's share sale calculation assumed there had been a Qualifying Transaction in respect of 5.4% of the share capital, and that percentage was applied *pro rata* to work out the Stadium Premium. The calculation for the option assumed there had been a Qualifying Transaction in respect of 29.7%, and that percentage was then also applied *pro rata* to calculate the additional element of the Stadium Premium. The judge concluded that the expert had, therefore, made two errors: he had applied two different and mutually exclusive 100% valuations, and had treated two separate transactions as a single one.

The next question was whether the errors the judge had found were "*manifest*", such that the determination ought to be set aside. The judge found that a "*manifest*" error would have to be "… *obvious or easily demonstrable without extensive investigation.*" He did not accept that it was necessary to establish that the expert had committed a 'howler' or a 'blunder':

> "I am not persuaded that a party asserting that a reasoned expert determination which involves a point of contractual construction is obliged to prove that the expert has committed a "blunder", let alone that such a party must prove that an expert has committed a "howler" (whatever the correct definition of that is). I do not see how this terminology, with its pejorative overtones, can give a guide to the necessary qualities of an error in a reasoned determination. It may very well be that some errors can properly be characterised as blunders or even

> howlers; but ultimately, such errors would only be one subset of the whole range of errors that could be made."
>
> "Furthermore, for me to decide whether an error is to be labelled a "blunder" or "howler" would involve the application of almost purely subjective judgment. It would also inevitably involve casting aspersions on the expert's approach which are unfair (since he is not present) and probably do no party any good, especially where, as here, the expert has complete immunity from suit in relation to anything he has done."

Instead, the judge concluded that a "*manifest error*" was one that was "… *so obvious and obviously capable of affecting the determination as to admit of no difference of opinion.*" He concluded that the errors he had found came within that formulation, such that the expert's determination was not final and binding on WHH.

What did the Court of Appeal decide?

The Court of Appeal reviewed the authorities on the concept of "*manifest error*", notably the decision of the Supreme Court in *Sara & Hossein Holdings Ltd* v *Blacks Outdoor Retail Ltd* [2023] UKSC 2. Lord Justice Phillips distilled the following formulation from the case law:

> "*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.*"

On appeal, the parties were broadly in agreement that this was the correct test, but each of them wanted to refine it further. E20 argued that since the investigation into the alleged error had to be limited in time and extent, there should be no adversarial argument. Instead, the High Court should just read the expert's determination and decide whether upon such a review, the alleged error was, in fact, manifest – the context being that in E20's submission, if one just read the expert's decision without the assistance of detailed argument, one would not be able to say that it was 'manifestly wrong'. The Court of Appeal dismissed that suggestion. Instead, each party ought to be allowed to address the judge on whether the test had been met.

WHH in turn suggested that where an expert was applying a mathematical formula, the parties expected him to get it right. If, instead, the expert misunderstood or misapplied the formula, then that would (always) amount to a 'manifest error'. That argument also did not find any favour with the Court of Appeal. Lord Justice Phillips pointed out that:

> "*The Expert is not instructed to apply the formula in the Agreement (or, at an even higher level of abstraction, to "get the right answer"), but to determine a dispute between the parties, in this case as to the interpretation and application of the formula, without making a manifest error. There is no doubt that the Expert followed those instructions by determining the dispute (and WHH have not contended otherwise), the only issue being whether the Expert, in favouring E20's interpretation, made a manifest error.*"

Another difficulty with this argument was that it would require the classification of contractual into 'formulae' (where the expert had to get the answer right) and 'other terms', an exercise which the Court of Appeal saw as uncertain and ultimately unhelpful. Lord Justice Phillips noted that there had been numerous decided cases where experts had interpreted and applied contractual terms that could be described as amounting to or containing a formula, and the Courts had considered whether a manifest error had been made. There was no justification for applying a different test to

an expert who is applying contractual terms which required a mathematical calculation, or an expert who has been asked to interpret the contract generally. In each case: "*An arguable error will not suffice, however well founded the allegation of error may ultimately prove to be*."

Turning to the expert's reasoning, the Court of Appeal found that the interpretation of the contract adopted by the expert was arguable, and not obviously wrong:

> "*The expert was … entitled to take into account the purpose of the overage provision and to take the view that the intention of the parties was to take into account any monies received by Relevant Shareholders in excess of the Threshold, not to exclude some receipts from the transaction.*
>
> *It is true that the contractual provisions did not stipulate how to add or how to pro-rate the Adjusted Consideration arising from more than one element of a Qualifying Transaction, but that issue would seem to arise, or arguably so, in relation to any sale of multiple tranches at different prices. Again contrary to the Judge's view, I do not consider that the overage provisions in the Agreement are clear, nor that their application is straightforward in the situation under consideration. The Expert added the Adjusted Considerations in the order (b) plus (c) and pro-rated the Agreed Percentage Amounts for each element to reflect the number of shares in each transaction. If there was one Qualifying Transaction, that appears to have been an arguably sensible interpretation of how to apply the provisions to that situation.*"

This was despite the fact that, if the Court of Appeal had to decide the point itself, it would probably have reached a different conclusion:

> "*I accept the force of … the Judge's analysis, and if I were determining the proper interpretation of the Agreement, I might arrive at the conclusion that they are correct.*"

The aim of the exercise was not, of course, to substitute the Court's decision for that of the expert, and so the determination was upheld as final and binding on WHH.

Conclusion

The issue referred to this expert was really one of contractual interpretation. The decision at first instance contains a detailed review of the contract and the expert's reasoning. It resembles a judgment in an appeal from an arbitral award on a point of law (permitted under Section 69 of the Arbitration Act 2025 unless excluded by the parties). Reading between the lines, the judge at first instance may have ended up being drawn into the detail of the argument: he evidently fundamentally disagreed with how the expert interpreted the contract. On appeal, the Court of Appeal by necessity had to compare the expert's reasoning with that of the Judge, before addressing the legal issue raised by the parties and then coming to their own view on whether error was 'manifest'. The expert made the determination in February 2023. Three years later, the parties are back to square one: the expert's decision is not binding, and the parties still do not know how much Stadium Premium is payable. Perhaps they can now settle the matter with the benefit of all the judicial commentary on the contract and how it might work.

The moral of this story is that points of contractual interpretation, even if they ultimately involve the application of a formula, may not be suitable for expert determination. Commercial lawyers tend to use words to describe formulae or calculations, especially where there is complexity. Words are always open to interpretation, and it will rarely be possible to say that there is just one way of 'doing the maths'. If this question had been referred to arbitration under one of the major institutional rules,

it is suggested that the parties would have had a final and binding award (not subject to review for manifest error) earlier. For parties who already have in their existing agreements expert determination clauses for issues that require contractual interpretation, the Court of Appeal's decision is likely to reduce the risk of an in-depth review by the High Court in the event of a challenge. Pragmatically, of course, the clause in the contract could have been drafted to make it clear at the time of contracting what the parties actually meant: were the two separate valuations in the definition to be combined to give rise to a single payment, or not?