Manifesting grounds for challenge

by Richard Hanke, 3 Verulam Buildings

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Richard Hanke of 3VB analyses the decision in *WH Holding Limited v London Stadium LLP [2026] EWCA Civ 153* looking at the key clarifications that the case provides regarding the 'manifest error' phrase and how parties might draft contracts to avoid disputes.

Contracts that provide for an independent expert or a counterparty to make a determination will often provide that the determination can only be challenged if there is a manifest error. The typical intention is to provide greater certainty by narrowing the potential for dispute. So these clauses ought to help resolve disputes between parties arising out of the determination swiftly, if not prevent them arising altogether. Nevertheless, the question of whether there has been a manifest error is a frequent source of litigation.

The recent decision of the Court of Appeal in *WH Holding Limited v London Stadium LLP* [2026] EWCA Civ 153 provides a helpful reminder of the heavy limitations that this phrase places upon the ability of a party to challenge a determination, as well as resolving three lingering questions as to how disputes relating to the application of such clauses should be approached by the Court.

This decision concerned an expert determination about the amount payable under an agreement following share sales and an option agreement. The contract provided that the determination '*shall (in the absence of manifest error) be final and binding*'. At first instance it had been held that the expert had made two manifest errors. This was then overturned on appeal: although there had been errors, they did not meet the 'manifest' threshold. (For more information, see High Court wrong to set aside expert determination on basis of manifest error (Court of Appeal)).

The existing definitions

The core meaning of '*manifest error*' in the context of these clauses is well established. The most frequently cited definition is that of Lewison J in *IIG Capital LLC v Van Der Merwe* [2008] 1 All ER (Comm) 435 at [52] that a manifest error is one that is '*obvious or easily demonstrable without extensive investigation.*'

Practically, however, this definition provides only limited guidance to parties who are engaged in a dispute, who will often not agree if there was an error at all, still less whether it was an obvious one. It does little more than to offer an alternative perspective through paraphrasing. The assistance this definition offers is particularly limited because the courts have also accepted that in deciding whether there has been a manifest error, the Court can consider sophisticated argument and extrinsic evidence (*Amey Birmingham Highways Ltd v Birmingham City Council* [2018] BLR 225 at [87]). Some additional clarity can be found in the earlier formulation of Simon Brown LJ in *Veba Oil Supply and Trading GMbH v Petrotrade Inc* [2002] CLC 405 at [33] that the determination must have included: '*oversights and blunders so obvious and obviously capable of affecting the determination as to admit of no difference of opinion*'.

Both of these definitions were considered and approved by the Supreme Court in Sara & Hossein Asset Holdings Ltd v Blacks [2023] 1 WLR 575, which emphasises the significant distinction between an 'error' and a 'manifest error'. This decision also made clear that the question of how easily demonstrable an error must be to qualify depends upon the context in which it was made. It is not necessarily the case that the error must be immediately apparent from the face of the certificate or decision.

Taken together, these tests are comparatively straightforward to apply where the error complained of concerns a straightforward arithmetical operation. The position is less clear where the error concerns the interpretation of a contractual provision.

Here, more assistance can be found in the formulation in Invensys plc v Automotive Sealing Systems Ltd [2002] 1 All ER (Comm) 222 at [48] that: 'It is not enough for the purchasers to show that their interpretation of the agreement is right; they have to show that the expert's interpretation of the agreement was obviously wrong.' But this still does not clarify how the line between 'not right' and 'obviously wrong' should be drawn in practice.

Three clarifications of the test

In *WH Holding Limited*, the Court grappled with three particular issues concerning the process of drawing this line where the error was said to be one of contractual interpretation.

- First, the Court addressed an argument that the 'manifest' element meant that the Court should be able to determine the dispute in a highly abridged and streamlined process, essentially on the papers. This was rejected: the use of a manifest error clause did not prevent an ordinary adversarial trial. The need for trial to decide whether there had been an error does not preclude the error from having been manifest.
- Second, it was argued that the 'manifest' element operated as a gateway, such that the Court had to decide if the alleged error was sufficiently obvious before resolving whether there had in fact been any error. Phillips LJ also rejected this proposition. The appropriate path for analysing the contention that there had been a manifest error should follow two stages. The Court should start by determining whether there had been an error. It should then analyse whether the error was manifest or obvious.
- Third, The manifest error limitation is not dispensed with if an interpretation is required to determine the formula to be applied by the expert. Where the error is said to have been in an interpretative exercise, it is necessary, in line with the formulation from *Invensys plc* '*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.*'

In addition to resolving these issues, Phillips LJ also stated an alternative and helpful formulation of the threshold: '*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.*'

Applying this approach to the alleged manifest error, Phillips LJ went on to conclude that although the first instance judge might well have been correct in concluding that the expert's interpretation was erroneous, it did not reach the much higher threshold of being manifestly erroneous. Instead, there was 'at least some support' for the expert's interpretation. In circumstances in which it was an 'arguably sensible interpretation' there was scope for a difference of opinion, and there was no manifest error.

The decision in *WH Holdings* is a vivid reminder of the narrow scope for challenge when a determination can only be reviewed for manifest error. In that case, despite the determination being based on an interpretation of the contractual provisions that was most likely incorrect, it was not so terribly incorrect as to amount to a manifest error.

It can be contrasted with the recent decision in Nawaz-Khan v UAP Ltd [2026] EWHC 641 (Comm).. HHJ Keyser KC there held that one aspect of an interpretation of a contractual formula relied upon by an expert had been manifestly erroneous. The language used in reaching that conclusion highlights the necessary threshold: the Judge held that the expert had ignored the 'obvious' meaning of a clause, and had, as a result, followed an '*irrational*', '*arithmetically incorrect*' and '*manifestly inappropriate*' calculation.

How this affects drafting

These decisions emphasise, as is often the case, the importance of being as specific as possible in the drafting of clauses such as these.

- If there is a desire to ensure that they capture (or exclude) a particular category of error it is worth making this explicit. For example, if the parties want it to be possible to challenge any mistake, not just a manifest error then the term 'manifest error' should not be used. Alternatively, language can be added to take certain categories of error outside the manifest. For example, as in the contract in *Sara & Hossain* an addition such as '*or mathematical error or fraud*' could be used to retain a broad scope of challenge to these errors(). In a similar way, it would also be possible to exclude issues of contractual interpretation from a manifest error clause.
- It may also be helpful to define the expert's role in making the determination: is the role limited to conducting an arithmetical exercise, or does it include the broader resolution of a dispute that

may include questions as to the meaning of a contractual formula. This can reduce the scope for arguments about whether the expert should be making decisions about the interpretation of the contract.

Finally, consider whether these clauses could be challenged, for example under the Unfair Contract Terms Act 1977, (*Farol Holdings Ltd v Clydesdale Bank Plc* [2024] EWHC 593 (Ch). In order to avoid such challenge, these clauses should typically be drafted to give the parties to the contract more rights than they would have enjoyed by default.