



Neutral Citation Number: [2022] EWHC 1423 (Ch)

Case No: BL-2021-CDF-000013

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS IN WALES**  
**BUSINESS LIST (ChD)**

Cardiff Civil and Family Justice Centre  
2 Park Street,  
Cardiff, CF10 1ET  
Date: 10 June 2022

**Before :**

**HIS HONOUR JUDGE JARMAN QC**

Sitting as a judge of the High Court

**Between :**

**QUANTUM ADVISORY LIMITED**

**Claimant**

**- and -**

**QUANTUM ACTUARIAL LLP**

**Defendant**

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**Mr Guy Adams** (instructed by **Harrison Clark Rickerbys**) for the **claimant**  
**Mr Andrew Butler QC** (instructed by **Acuity Law Ltd**) for the **defendant**

Hearing dates: 25 May 2022  
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**Judgment Approved by the court**

This judgment was handed down remotely at 10.00 am on Friday 10 June 2022 by circulation to the parties or their representatives by email and by release to the National Archives.

## **HH JUDGE JARMAN QC:**

1. The essential issue in this claim is whether on its true interpretation a service agreement (the agreement) entered in between the claimant (Quad) and the defendant (LLP) on 1 November 2007, obliges LLP to provide tendering services for Quad, as Quad claims, or not, as LLP claims.
2. LLP was formed in 2007 as part of a re-organisation of three companies providing pension fund related services. Shortly after the agreement was entered into, it was novated by those companies to a company by then re-named as Quad. For ease of reference and as nothing turns on this for present purposes, my reference to Quad includes its predecessors, unless indicated otherwise.
3. The reason LLP was set up was that those involved in the other companies (one of which then had the name which Quad now has) had different ideas as to their future. The old Quad carried on business as a provider of administrative, actuarial and related services, primarily for defined benefit pension schemes. Martin Coombes, its single largest shareholder and managing director, wanted to diversify into a pensions and tax based consultancy, but his colleagues did not. They could not afford to buy him out.
4. Accordingly, it was agreed that the good will of the existing business of Quad would be ringfenced, and its existing clients would remain the clients of Quad. The new entity, LLP, would seek to develop and expand its own business. Quad's existing clients would be serviced by LLP which would

receive 57% of the fee income received from those clients representing the cost to it of providing such services. LLP would not receive any profit element for these services. Instead, it would take over all of Quad's staff and have the full use of its premises and equipment and the Quantum brand. It would also be able to develop new business with the existing client base without the usual risks of starting from scratch.

5. There were two stages of implementation. That in respect of the unregulated business of Quad was put into effect in April 2007 and then formalised by the agreement. The second stage related to regulated business.
6. The negotiations for the agreement were conducted mainly by Mr Coombes for Quad, and Mr Baldwin and Mr Reid-Jones for LLP. Originally a ten year term for the agreement was discussed, and eight drafts for such a term were produced between December 2006 and August 2007. However, concern was expressed by Mr Reid-Jones as to the impact on LLP of the termination of the agreement when LLP would lose most of its business and income at the end of a ten year period. At a meeting on 15 August 2007 attended by all three, Mr Coombes proposed extending the term to 99 years. The proposal for a 99 year term was agreed and incorporated in the express terms of the agreement. It is not clear why there was such a leap from 10 years to 99 years. Clause 15 deals with rights of termination in various situations, and clause 15.3 gives either party the right to determine on three month's written notice, but not before the expiry of the 99 year term.
7. It is not in dispute that the subjective intentions of the parties when entering into the agreement are not admissible as an aid to its construction. There was

general agreement as to the principles to be applied. I shall deal with these in more detail below. In summary, the court must ascertain the intention of the parties by reference to what a reasonable person having all the background knowledge available to the parties would have understood them to intend from the used language in the agreement. Thus the focus must be upon on the meaning of the relevant words in their documentary, factual and commercial context.

8. There was no disagreement as to that context in the present case, which is as summarised above. Accordingly, quite properly, whilst both parties filed written statements, no witness was called to give oral evidence.
9. Mr Adams for Quad made it clear that he does not contend that LLP are latching on to infelicities of language or oddities in the agreement. Nor does he rely upon any implication of terms into the agreement. It is his case that construed as a whole, the agreement makes clear that the business of Quad is to be serviced by LLP, that it was known to the parties at the time of the agreement that tendering or retendering had been and may in the future be needed to secure future business from existing as well as future clients, and that the parties may reasonably be taken to have intended from the wording they chose to adopt in the agreement, that such services includes tendering or retendering. There is no practical difference between the terms in the present dispute, save that the latter indicates to existing clients. Unless indicated otherwise, I shall use the former also to include the latter.
10. Mr Butler also relies upon the parties' knowledge at the time of the agreement that tendering may be necessary, and submits that as the agreement does not

expressly mention tendering, then such processes cannot be included in the services defined to be supplied by LLP under the agreement.

11. It is not in dispute that the costs of such processes in respect of any given client may run into tens of thousands of pounds, although no more precise figure was in evidence.
12. Mr Butler also relied, as context, on the fact that in the five months between the putting into effect of the provisions of the agreement in April 2007 and its formalisation in November 2007, LLP tendered on behalf of Quad for business from one of the latter's prospective clients, namely Swansea University. It is further common ground that LLP prepared further tenders for use by Quad during the first year of operation of the agreement. LLP say this was a commercial decision by LLP primarily to assist cashflow during that first year, but on the basis that the cost of this would need to be addressed in the future as LLP needed additional benefit over the agreed fee. Any subsequent tenders after the first year were subject to individual negotiation and agreement.
13. In my judgment, the preparation of such tenders by LLP does not assist in the interpretation of the agreement. The benefit of a successful tender would accrue to both parties, the benefit to LLP being an income stream from the business generated. Moreover, as Mr Adams pointed out, it is likely that any tenderer would factor in the costs of tendering to the calculation of fees set out in the tender.
14. Accordingly the focus of the exercise is properly upon the agreement itself. This is accordance with the principles to be applied. Both parties relied upon the helpful summary of those principles by Carr LJ in *Network Rail*

*Infrastructure Ltd v ABC Electrification Ltd* [2020] EWCA Civ 1645; (2020)

193 ConLR 66 at paragraph 19, as follows:

“i) When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean. It does so by focussing on the meaning of the relevant words in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the contract, (iii) the overall purpose of the clause and the contract, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions;

ii) The reliance placed in some cases on commercial common sense and surrounding circumstances should not be invoked to undervalue the importance of the language of the provision which is to be construed. The exercise of interpreting a provision involves identifying what the parties meant through the eyes of a reasonable reader, and, save perhaps in a very unusual case, that meaning is most obviously to be gleaned from the language of the provision. Unlike commercial common sense and the surrounding circumstances, the parties have control over the language they use in a contract. And, again save perhaps in a very unusual case, the parties must have been specifically focussing on the issue covered by the provision when agreeing the wording of that provision;

iii) When it comes to considering the centrally relevant words to be interpreted, the clearer the natural meaning, the more difficult it is to justify departing from it. 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. However, that does not justify the court embarking on an exercise of searching for, let alone constructing, drafting infelicities in order to facilitate a departure from the natural meaning;

iv) Commercial common sense is not to be invoked retrospectively. The mere fact that a contractual arrangement, if interpreted according to its natural language, has worked out badly, or even disastrously, for one of the parties is not a reason for departing from the natural language. Commercial common sense is only relevant to the extent of how matters would or could have been perceived by the parties, or by reasonable

people in the position of the parties, as at the date that the contract was made;

v) While commercial common sense is a very important factor to take into account when interpreting a contract, a court should be very slow to reject the natural meaning of a provision as correct simply because it appears to be a very imprudent term for one of the parties to have agreed, even ignoring the benefit of wisdom of hindsight. The purpose of interpretation is to identify what the parties have agreed, not what the court thinks that they should have agreed. Accordingly, when interpreting a contract a judge should avoid re-writing it in an attempt to assist an unwise party or to penalise an astute party;

vi) When interpreting a contractual provision, one can only take into account facts or circumstances which existed at the time the contract was made, and which were known or reasonably available to both parties.”

15. In this case the agreement is a professionally drafted bespoke long-term and relational contract and the court can properly expect the parties to adopt a reasonable approach in accordance with what is obviously the long-term purpose of the contract. In *Amey Birmingham Highways Ltd v Birmingham City Council* [2016] EWHC 2191 (TCC) at paragraph 93, Peter Jackson LJ, giving the lead judgment of the Court of Appeal, said:.

“93. I do, however, make this comment. Any relational contract of this character is likely to be of massive length, containing many infelicities and oddities. Both parties should adopt a reasonable approach in accordance with what is obviously the long term purpose of the contract. They should not be latching onto the infelicities and oddities, in order to disrupt the project and maximise their own gain.”

16. Both parties relied upon various terms of the agreements to support their case, and accordingly it is necessary to set out some of these.
17. There is only one recital to the agreement, which according to clause 1.8 formed an operative part of the agreement, and which states:

"Quad has resolved to appoint the LLP to carry out certain responsibilities for and on behalf of Quad in relation to its business, and the LLP agrees to carry out such responsibilities (the Services, as defined below) in consideration for the payment by Quad of the Administration Fees and any other payments due to Quad pursuant to this Agreement."

18. The definition of services is set out in the interpretation clause, clause 1, which contains several relevant definitions, the first of which is as follows:

"Clients" shall mean the clients and schemes to which Quad has provided any Services prior to 1st April 2007 together with such clients as are attributable to the Pipeline Business and any parties introduced either to Quad or the LLP by any of the Introducers during the Extended Period including (without limitation) those clients and schemes as are set out in Part 1 of Schedule 2 to this Agreement which expression shall include (where appropriate) any companies within the same group of companies as the relevant Client from time to time and any pension schemes sponsored by any Clients and any new entrants to such schemes;

19. The "Pipeline Business" is defined to mean "any engagements by Quad entered into with any of the Clients or Prospects or which are referred to Quad by any of the Introducers in connection with the provision of Services during the Extended Period". "Introducers" is defined to include all Clients as so defined, all those identified in Schedule 4 to the agreement, and everyone else with whom Quad had had face to face contact for the purposes of engendering a commercial relationship in the twelve months immediately prior to 1 April 2007. "Prospects" means those companies which had been targeted as potential new clients of Quad during the same period.

20. "Sub-Contracted Activities" mean those set out in schedule 6 of the agreement which are to be dealt with in accordance of clause 2.8. The schedule contains six bullet points with specific activities, such as "Lecture tours; meeting with senior level Client contacts" and "Soliciting Prospects for Quad [during the



period until the 31 March 2008]”. Clause 2.8 provides that such activities shall be subcontracted by LLP to a named third party or such other party as may be designated by Quad on terms approved by Quad. LLP would terminate such sub-contract if instructed by Quad to do so, and thereafter such activities may be carried out by Quad at the expense of LLP, or by such other party as Quad may nominate.

21. “Services” has the meaning set out in clause 2.1. That in turn provides as follows:

"2.1 With effect from the Effective Date [defined to mean 6 April 2007], Quad confirms the appointment of the LLP to be (subject to the provisions of clause 2.8 below) solely responsible for the provision to Quad of the services set out in Schedule 7 to this Agreement to the extent that they:- (a) relate to any engagements of Quad by the Clients, or (b) are referred to Quad or the LLP by any of the Introducers during the Extended Period [defined to mean the period from 6 April 2007 until 31 March 2008] (save where any Introducer receives a bona fide substantive financial reward from the LLP), or (c) relate to the Pipeline Business, together with such other services as the parties may agree from time to time in writing that the LLP is to perform for Quad (the 'Services'). Quad confers upon and grants to the LLP such power and authority as is necessary or desirable for providing the Services. The LLP hereby accepts the appointment to provide the Services to Quad, subject to the terms and conditions set out in this Agreement."

22. Clause 7 deals with the supply of the Services, which by clause 7.1 shall be provided by LLP to Quad subject to the terms of the agreement. Clause 7.2 provides that Quad shall from time to time supply LLP with all necessary information, data, documentation and other records and materials relating to the Services within sufficient time to enable the Services to be provided.
23. Clause 7.3, relied upon heavily by Quad, requires LLP to provide the Services “...in a professional, competent, diligent and efficient fashion” in accordance

with best industry practice, and to “devote such time and efforts as it deems reasonably necessary for the efficient operation of Quad’s Business.” Clause 7.4 requires LLP to comply with all regulatory requirements and to consider in good faith any recommendation made by Quad in LLP’s performance of the Services. Finally, without prejudice to the generality of LLP’s obligations in the agreement, the Services shall be performed to a standard “no less favourable than that provided by the LLP from time to time for other clients in respect of services the same or similar to the Services.”

24. Schedule 7 sets out the Services as "Provision of pensions consulting, actuarial, administrative and investment services, including by way of example:-

Actuarial

Compliance per Institute of Actuaries Guidance notes  
Consulting Actuary work for Company

Investment & Life assurance

For trusts

For individuals

Risk benefits for companies

Pensions Consultants

Compliance for trustees

Pensions administration

Record keeping

Benefit calculations

Routine member communications

Litigation support

Other

Benefit design consultancy and advice to company and trustees (that is not necessarily compliance).

Accounting and payroll

Other member communications — other than routine Liaison with investment managers, legal advisers

For the avoidance of doubt the above does not include taxation related advisory work.

Quad Administration

Preparation of (a) monthly and annual accounts for Quad in such format as Quad may reasonably request from time to time and (b) VAT/Corporation Tax/ statutory returns for Quad and provision of such other administrative support as Quad may reasonably require from time to time.

Handling of any claims against Quad

Preparing professional indemnity insurance proposal form and dealing with any actions against Quad (whether by any Client or otherwise) including notification of any actual or potential claim to professional indemnity insurers.”

25. It is not in dispute that, as the list is given by way of example, it is not exhaustive. It is clear that some of the services are to be provided to Clients, such as pensions consulting, actuarial and investment services. Others, such as administration services and those listed under Quad Administration and Handling of any claims against Quad, are services to Quad. Other examples in the list may be to either or both.
26. The issue which now arises between the parties is not the first issue arising out of the agreement. HHJ Keyser QC, sitting as a judge of the High Court dealt with several issues between the same parties in a judgment in 2020, the neutral number of which is [2020] EWHC 1072 (Comm). This was upheld in the Court of Appeal ([2021] EWCA Civ 277). Although I was referred to passages in these judgments to establish the background, they relate to different issues

and my focus will be upon the background as it relates to the issue which is before me.

27. Mr Adams submits that the subject matter of the agreement is Quad's business, which at the time of the agreement including the obtaining and performing of engagements to provide pensions consulting, actuarial, administrative and investment services to clients. To obtain such engagements it was necessary to participate in tendering from time to time. This point was not in dispute. For example there was a tender for an engagement with Cardiff Bus in 2004, and for Swansea University just before the agreement was finalised, as referred to above.
28. Mr Adams' submission continues that preparing tenders was a necessary aspect of Quad's business at the time that the agreement was entered into. Thereunder, LLP is solely responsible for the provision of consulting, actuarial, administrative and investment services for and on behalf of Quad for its continued business, including future engagements within the definition of Clients and including those introduced during the Extended Period and which relate to Pipeline Business. The Services, as defined, are all the activities which are reasonably necessary for LLP to carry on Quad's business, which expressly includes new engagements. As Quad's staff, and use of Quad's premises and equipment was transferred to LLP, Quad retained no means by which to undertake necessary tendering.
29. I accept that each of those points relied by Mr Adams as to the factual context to the agreement are important factors to take into account in interpreting the agreement. I also accept that at the time the agreement was entered into, Quad

retained no staff or had the use of offices or equipment. It does not follow in my judgment that the same could not be obtained. I do not accept, when having regard to the terms of the agreement, that the parties must be taken to have intended that Quad would not have the means to provide, or outsource, tenders. The agreement envisages that Quad may continue to carry certain activities in relating to its business, such as the Sub-Contracted Activities upon termination of the sub-contracts, or the provision of information pursuant to its obligations under clause 7.2.

30. There are other examples, such as the payment of the fees invoiced by LLP under clause 9.1, the requirement under clause 9.4 that both parties shall keep and make available for audit proper records and accounts for the calculation of the fee, and the obligation of Quad under 9.6 to review yearly the pricing under engagements with Clients and to use reasonable endeavours to have those increased by no less than the corresponding increase in the Average Earnings Index. By clause 9.7, LLP is to indemnify Quad in respect of all expenses it incurs in relation to the Clients. These examples, in my judgment, indicate that Quad may (or in the case of clause 9.4 must) be involved in some administrative activity, albeit to a relatively minor extent.
31. Mr Adams accepts that clause 7.3 cannot extend the meaning of Services as defined. It is clear that it cannot. Rather, he says that the clause shows that there must be an efficiency of operation, which is the underlying purpose of Quad's business. I accept that submission as far as it goes, but in my judgment that clause is directed at the standard of Services for the efficient operation of Quad's business. I take his point that to be efficient, that business must include

tendering, but in my judgment that does not greatly assist in the task of determining whether LLP under the agreement has the responsibility for carrying out tendering. This is in the context that tendering is likely to be for the benefit of both parties, the cost of which is likely to be a factor in setting the fees as part of the tendering process.

32. In order to determine that question, the focus in my judgment must be on the definition of Services in the agreement, which in turn involves a consideration of schedule 7. Mr Adams submits that tendering comes within “administrative services” and/or “such other administrative support as Quad may reasonably require from time to time.”
33. I accept that those are possible interpretations. On the other hand, as Mr Butler submits, whilst accepting that the examples set out in the schedule are not exhaustive, many of the examples are very specific. If such a specific activity as tendering, which the parties knew at the time of the agreement was a necessary and important part of Quad’s business, was intended to be included in the Services to be provided under the agreement, it might have been expected to be given as a specific example in schedule 7. The specific examples given of Services in respect of Quad’s administration are the preparation of monthly and annual accounts and VAT/Corporation Tax/statutory returns, which are ongoing rather than occasional services.
34. Whilst there is then an addition of “such other administrative support as Quad may reasonably require,” in my judgment the phrase “administrative support” and/or “reasonably” falls to be construed in context, which includes the words immediately preceding them and the remainder of the schedule.

35. Mr Butler relies on subsequent emails between the parties as to which one should carry out tenders. In some instances, the parties were able to agree how the cost was to be split. In so far as these, and parts of witness statements, convey the subjective understanding of the parties as to the meaning of the agreement on this point, then they are inadmissible. He also relies upon some of the emails to suggest that the costs of tendering was not including in the 57% percentage fee. Mr Adams, whilst not accepting this position, submits that even if they were not, that is not relevant to the proper interpretation of the agreement. In my judgment, the fact that the costs of tendering may not have been included in the calculation of the 57% fee does not assist in such interpretation, in light of the factors already referred to, namely that tendering was to benefit both parties, that the cost was likely to be factored into the calculation of fees as part of the process, and that the process is an occasional rather than an ongoing one.
36. Both sides referred to other clauses of the agreement to support their respective cases, but in my judgment, these add little if anything to the consideration of the main points set out above and in any event not sufficient to tilt the balance one way or another.
37. My assessment of the meaning of the agreement in light of the factors identified in *Network Rail*, is as follows:
- i) The natural and ordinary meaning of the phrases “administrative services” and “other administrative support as Quad may reasonably require from time to time” in the context of the agreement is not such,

in my judgment, as to extend to the specific and occasional and important task of tendering. This favours LLP's interpretation.

- ii) The other relevant clauses make it clear LLP was appointed to carry out only "certain responsibilities for and on behalf of Quad in relation to its business." It is clear that other responsibilities or potential responsibilities in relation to its business were retained by Quad as set out above. These does not significantly assist either way.
- iii) The overall purpose of the agreement was to ensure that the Services as defined were carried out for Quad by LLP to ensure the efficient operation of Quads business. This tends to favour Quad's interpretation.
- iv) The fact and circumstances known to the parties at the time of the agreement are summarised above. In my judgment these do not provide a clear indication as to which interpretation is the proper one.
- v) As for commercial common sense, this does not assist in the proper interpretation, given that both parties benefit from successful tendering and that the costs thereof are likely to be factored into the fees enjoyed as a result.

38. In conclusion, after carrying out that assessment, in my judgment the proper meaning of Services to be rendered by LLP under the agreement does not include tendering. The conclusion set out in i) above outweighs that arrived at in iii).



39. I will hand down judgment remotely. Counsel helpfully agreed that any consequential matters not agreed could be determined on the basis of written submissions. Such submissions should be filed, together with a draft order agreed as far as possible, within 14 days of hand-down.