

# IT - Negotiating Certain Terms in IT Contracts

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In *Vogon International Limited v The Serious Fraud Office* [2005], a dispute arose in relation to the interpretation of the payment terms in the contract between the parties.

The Serious Fraud Office ("SFO") hired *Vogon International Limited* ("Vogon") to retrieve email data from computerised tapes used during a criminal investigation. Prior to entering into the agreement, *Vogon* calculated its estimated fee based upon number of completed backups. When *Vogon* later submitted its quotation to the SFO, the costs were determined in relation to number of completed Microsoft Exchange databases.

*Vogon* processed 39 backups from the tapes provided by the SFO in relation to two Microsoft Exchange Databases. *Vogon* sent an invoice to the SFO for £314,375 for the 10 days' work needed to process the 39 backups.

The SFO claimed that the sum due was based upon the number of completed Microsoft Exchange databases, so paid *Vogon* £22,500.

The court ruled in the SFO's favour as follows:-

the word "database" had no single meaning and so it was necessary to consider the word in its contextual meaning;

the question was not what the word "database" was capable of meaning, but what it meant within the contract;

in the context of the quotation and the accompanying cover letter, all references to databases were references to a server;

furthermore, *Vogon's* construction of "database" was commercially unlikely, given the difference between the resulting charges;

*Vogon* could not claim a case of mistake or estoppel as this would be contrary to legal principle; and

*Vogon* should pay the SFO's costs as *Vogon's* invoice for such a large sum had been dishonest and opportunistic.

*Vogon* appealed this decision to the Court of Appeal ("CA"). The CA held that:-

the court was correct in its interpretation of the contract and awarding the SFO its costs;

however, court was wrong to make a finding against *Vogon* that it had been dishonest and opportunistic where dishonesty had not been argued by the SFO nor did *Vogon* have the opportunity to defend itself against such findings.  
Comment : Parties should seek legal advice at the outset of negotiations. This could avoid excessive legal fees and save valuable time, in the event of a dispute.

If you require further information contact us at: [enquiries@rtcoopers.com](mailto:enquiries@rtcoopers.com)

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