

IFFO Appeal Decision

R v [REDACTED]

1. On [REDACTED] April 2025 a Panel comprising members of the Legal Aid Agency's (LAA) Executive Team and a Bar Council Representative considered a dispute in relation to the payment due under the IFFO Contract in the above case. The members of the Panel were [REDACTED]
[REDACTED] The Panel's unanimous decision and reasons are set out below.
2. Counsel in this matter, who was representing [REDACTED] is [REDACTED]
[REDACTED]
3. The Panel was asked to determine whether it is reasonable for the LAA's Criminal Case Unit ("CCU") to take the position that the reasonableness of the return of the brief by [REDACTED] can only be determined at the conclusion of disciplinary proceedings against him, and so it is reasonable and proportionate for the CCU to delay making any payment until the conclusion of those proceedings.
4. [REDACTED] was charged as one of [REDACTED] defendants in a complex matter, divided into three trials, all of which (the Panel understands) have now concluded. The case was classified as a Very High Cost Case (VHCC) with funding to be administered by the LAA's CCU. It is current practice for counsel in VHCCs to be funded under Interim Fixed Fee Offer contracts (IFFOs)¹. [REDACTED] signed an IFFO contract on 6 July 2020, counter-signed by the LAA on 8 July 2020 ("the IFFO Contract"). The IFFO Contract at Clause 3 states that unless otherwise agreed and subject to the modifications in the IFFO Contract, the LAA Standard Crime Contract 2017 is incorporated into the terms of the IFFO Contract.
5. The facts of the dispute are set out in the bundle provided to the Panel. These are not repeated here: instead a chronology of the key dates is set out below. There appear to be some discrepancies between the dates of the correspondence in the bundle and the dates given in the review decision at pages 53-62 of the bundle but these are not material².
6. In essence, on [REDACTED] 2024, [REDACTED] notified the LAA of disciplinary proceedings initiated against him by the Bar Standards Board ("BSB") and that the hearing in those proceedings was scheduled to take place in February 2025, at the same time as the trial in the [REDACTED] case. He therefore advised the LAA of his withdrawal from the [REDACTED] case.
7. The LAA decided to withhold any further payments from [REDACTED] until such time as the BSB proceedings concluded. This is the basis of the dispute as articulated.

¹ IFFOs are headed "VHCC Individual Case Contracts for self-employed advocates"

² e.g. p59 of the bundle at para 27 refers to an email of 16 November 2024, but the Panel has not been provided with an email of that date and instead considers that this may refer to a message dated 17 December 2024 at p43 of the bundle; page 59 of the bundle at para 30 refers to an email dated 23 December 2024 and the panel has not been provided with such an email.

Date	
2012 - 2013	Events leading to eventual BSB disciplinary proceedings
21 November 2019	██████ plea trial and preparation hearing (PTPH)
15 December 2019	Classification of ██████ proceedings as VHCC
6-8 July 2020	Signature of IFFO contract between ██████ and LAA
13 July 2020	Instalment 1 of £70,900 paid by LAA to ██████
8 January 2021	50% of Instalment 2 of £35,450 paid by LAA to ██████
By 1 June 2021	Page count reaches approx. 170,000 pages thus exceeding the uplift threshold in the IFFO contract [see p 67 of the bundle]
September 2022	██████ first aware of BSB investigation (but note entry at September 2023)
September 2023	██████ notified that disciplinary proceedings would follow from the investigation [see p64 of the bundle, in response to paragraph 19 of the LAA review at p 57]
6-7 November 2024	██████ notifies LAA of his withdrawal from the case on the basis there is a clash between the case and a future disciplinary hearing scheduled February 2025
13 November 2024	LAA advises ██████ that it will not determine further payments until the outcome of the BSB proceedings and reserves the right to review payments to date by reference to Clause 5.10
19 November 2024	Trial judge sanctions ██████ withdrawal from trial
17 December 2024	LAA maintains position in email of 13 November 2024 to defer further payments until outcome of BSB proceedings; refers to Clauses 21.12 and 21.18 of the Standard Terms, incorporated into IFFO contract
29 January 2025	██████ notifies LAA that BSB hearing has been postponed from February 2025 and seeks payment
13 February 2025	LAA advises ██████ that the route to challenge the LAA decision is via Clause 27.1 of the IFFO Contract
March 2025	██████ gives early guilty plea and is sentenced [see p 64 of the bundle]: no full trial takes place.
5 March 2025	██████ appeals the LAA's decision to delay determination and payment of fees under the IFFO Contract
18 March 2025	LAA undertakes formal review
21 March 2025	LAA sends appeal panel bundle to ██████
28 March 2025	██████ makes submissions in relation to the appeal

8. The Panel considered the following clauses under the IFFO Contract. These are set out in the Annex to this decision:

- Clause 1.2 IFFO
 - Clause 3 IFFO
 - Clause 2.2 Standard Terms
 - Clauses 14.8A to 14.8F Standard Terms as inserted by Clause 3.15 IFFO
 - Clauses 5.6 to 5.11 IFFO
 - Clauses 21.12 and 21.18 Standard Terms
 - Clause 24.1 Standard Terms
 - Clause 27.1 Standard Terms as inserted by Clause 3.20 IFFO
 - Clause 30 Standard Terms
9. The Panel notes that in its message of 13 November, the LAA accepted the withdrawal and refers to Clause 5.10 as the basis for withholding further payments. Clause 5.10 states: *"If we decide that it was unreasonable for you to return the instructions, cost may be withheld or, if already paid, recouped"*. This provision also appears to the Panel to form the basis of the question which the Panel is asked to determine, namely the reasonableness of the return of the brief.
 10. However, in its message of 17 December 2024, the LAA makes reference to Clause 21.12 and states: *"we have taken the decision to await the outcome of the BSB proceedings to determine whether the circumstances in this case would be deemed to be a material breach of Clause 21"*. The Panel has not been asked to determine whether there has been a material breach.
 11. In relation to the reasonableness of the return under Clauses 5.9 and 5.10, the Panel notes that the trial judge unequivocally accepted the withdrawal of [REDACTED] from the trial. In light of this, the Panel is of the view that it would be very difficult for any court (and therefore for the Panel) to find that the withdrawal under the IFFO Contract was unreasonable.
 12. Furthermore, there is no provision in the IFFO Contract for the CCU to decide that the reasonableness of the return of the brief may be determined by reference to the conclusion of any disciplinary proceedings. The Panel notes that [REDACTED] is still permitted to practice, and notes that there is no relationship between the matter underlying the disciplinary proceedings and the [REDACTED] trial. Accordingly, the Panel finds that it is not reasonable for the CCU to elect to determine the reasonableness of the return at the conclusion of the disciplinary proceedings. The reasonableness of the return falls to be decided based on the facts available at the time of the return itself. In that regard, the Panel finds that the acceptance of the return by the trial judge is persuasive.
 13. It follows from this that the Panel does not consider it reasonable and proportionate for the CCU to delay making payment until the conclusion of the BSB proceedings.
 14. Although this question was not asked of the Panel, the Panel went on to consider which elements of the payments under the IFFO Contract are in fact payable by the LAA to [REDACTED] under the IFFO Contract, and whether any sanctions should be applied. It also considered the application of Clause 21.
 15. Clause 14.8B is relevant. It provides that:

“if you reasonably withdraw your services [...] during or after the First Hearing you will receive payment of the Stage 1 Instalment and the Stage 2 Instalment”.

The “First Hearing” is defined in Clause 14.8A as the first hearing at which the Client enters a plea. [REDACTED] had entered a first plea in November 2019.

16. The Panel finds that the withdrawal of the services by [REDACTED] took place during or after the First Hearing. Having found that the withdrawal was reasonable, the Panel considers that the Stage 1 and Stage 2 instalments are payable.
17. The Panel went on to examine Clauses 14.8E and 14.8F in relation to the payment of an uplift. It does not seem to be in dispute between the parties that the total volume of material served in relation to the case exceeded the total volume of material served as at the date of the contract and that accordingly, an uplift pursuant to Clauses 14.8E and 14.8F is payable in principle. Nor does it appear to the Panel that the value of any such Additional Material Payment (“AMP”) is in dispute. Clause 14.8E states that the AMP is payable “[i]f following the date of this Contract but prior to the full trial of the Case concluding”, the criteria for such a Payment are met”. The increase in volume of material arose prior to the full trial of the Case. Clause 14.8F provides that “the requirement for any such AMP to be paid shall be assessed at the conclusion of the case”. The case has now concluded. The Panel is of the view that the contractual requirements for the payment of the uplift are met.
18. The Panel had regard to the breach of contract by [REDACTED]. By failing to inform the LAA of the BSB proceedings by, at the latest, September 2023, [REDACTED] breached the requirement at Clauses 21.12. [REDACTED] accepted that he was bound by this Clause, but maintained he was not aware of it at the time. As noted above, in its message of 17 December 2024, the LAA refers to Clause 21 but this point is not examined further in the review decision of 18 March.
19. It is not possible for the Panel to determine how the LAA would have responded if there had been a timely notification of the proceedings and what impact, if any, the delay in notification may have had. The Panel has not been asked to determine whether the breach is material and in any event is not in a position to decide this.
20. Clause 24 of the Standard Terms provides that a Sanction may be imposed where (inter alia) there has been a material breach. Clause 30 of the Standard Terms governs the position on a delay, omission or waiver by the LAA of the exercise of its rights. Given that the Panel has not made a decision as to the materiality of the breach, it has also not made a decision in relation to the imposition of a Sanction. Even if the Panel were to find that a material breach had taken place, the Panel is mindful of the obligation in Clause 2.2 of the Standard Terms that the imposition of any Sanction should be proportionate.
21. That said, the Panel wishes to stress the importance that all terms of the IFFO Contract, including those incorporated by reference to the Standard Terms, are adhered to by all parties.

Decision of [REDACTED] April 2025

Extracts from IFFO Contract and Standard Terms 2017

Clause 1.2 IFFO

“*Stage 1 Instalment*” means , subject to clause 3.15B below, the first instalment in the sum of £<> being a one third share of the Fixed Fee which, subject to your satisfactory provision of Contract Work in accordance with the requirements of this Contract, shall be payable by us to you, within thirty (30) days of the Contract Start Date;

“*Stage 2 Instalment*” means, subject to clause 3.15B below, the second instalment in the sum of £<> being a one third share of the Fixed Fee which, subject to your continuing satisfactory provision of Contract Work in accordance with the requirements of this Contract, shall be payable by us to you, within thirty (30) days of receipt of your Claim following the commencement of the full trial and for the avoidance of doubt “trial” is not taken to commence on the date of a preparatory hearing;

“*Stage 3 Instalment*” means the third and final instalment in the sum of £<> being a one third share of the Fixed Fee which, subject to your continuing satisfactory provision of Contract Work in accordance with the requirements of this Contract, shall be payable by us to you, within 30 days of receipt of your Claim following the date on which the trial of the Client concludes and for the avoidance of doubt the scope of “trial” in this context shall include sentencing following conviction but exclude any appeal following conviction of the Client, [retrials] or confiscation proceedings;

Clause 3 IFFO: Incorporation of the Standard Terms for VHCC Providers

Unless agreed otherwise by the parties in writing the Standard Terms shall be incorporated into the terms of this Contract subject to the modifications set out below [...]

Clause 5 IFFO: Return of instructions/Continuity of Service

5.6 You must inform us within a reasonable period if you become aware that you may not be able to continue working on the Case.

5.7 You may only return the instructions and withdraw from the Case in accordance with the Relevant Professional Body’s code of conduct.

5.8 Where you return the instructions, you must provide written reasons and supply any information we may reasonably request that will assist us in determining whether the return was reasonable.

5.9 Where we decide it was reasonable for you to return the instructions you will be paid in accordance with clause 14.8B of the Standard Terms (as amended in accordance with clause 3.15B above).

5.10 If we decide that it was unreasonable for you to return the instructions, costs may be withheld or, if already paid, recouped.

5.11 We will consider each return of instructions on a case by case basis and in line with the Relevant Professional Body’s code of conduct.

Clause 2.2 Standard Terms

2.2 You shall ensure that neither you nor any of your Affiliates brings the legal aid scheme into disrepute by engaging in any unprofessional or unlawful conduct which is likely to substantially diminish the trust the public places in the legal aid scheme, regardless of whether or not such conduct is related to your obligations under this Contract. Any operation of this Clause is subject to our obligation to act as a responsible public body and any sanction must be proportionate. [...]

Clause 14 Standard Terms as inserted by Clause 3.15 IFFO

14.8A If it is directed by the court (for whatever reason) that the Case against the Client shall not proceed, you shall be entitled to receive payment (according to the point at which such direction is given) on the following basis:

- i. where it is confirmed prior to the first hearing at which the Client enters a plea (the "First Hearing") that the Case against the Client shall not proceed to trial, you will receive payment of the Stage 1 Instalment only; and
- ii. where it is confirmed at or after the First Hearing that the Case against the Client shall not proceed to trial (whether by reason of guilty plea(s) or for other reasons), or where the prosecution offers no evidence, you will receive payment of the Stage 1 Instalment and Stage 2 Instalment.

14.8B If, prior to the First Hearing you cease providing Contract Work to the Client (either because you withdraw your services or the Client withdraws instructions) you will receive payment of the Stage 1 Instalment only. If you reasonably withdraw your services or the Client withdraws instructions during or after the First Hearing you will receive payment of the Stage 1 Instalment and the Stage 2 Instalment.

14.8C If the full trial of the Case has not commenced within six (6) months of the Contract Start Date, you may submit a Claim for an interim payment in relation to the Stage 2 Instalment. The value of any such interim Claim shall be a sum equal to fifty percent (50%) of the total value of the Stage 2 Instalment and subject to your ongoing satisfactory provision of Contract Work such amount shall be paid to you within thirty (30) days of your valid Claim for the same being received.

14.8D In circumstances where the actual duration of the Client's trial continues for more than ten days in excess of the period listed for such trial (for whatever reason), or concludes more than ten days before the end of the period listed (as per the court listing extant at the date of this Contract as set out in the Background to this Contract) then a proportionate adjustment will be made to the Stage 3 Instalment in order to reflect what will be regarded as a material variation to the original anticipated duration of the trial. Such adjustment shall be calculated by adding or subtracting (as applicable having regard to the adjusted length of the trial) a pro-rata daily rate to/from the original value of the Stage 3 Instalment stated in this Contract. The said daily rate shall be calculated by dividing the total Stage 3 Instalment by the total number of working days falling within the period originally listed for the trial (as per the court listing extant at the date of this Contract as set out in the Background to this Contract) and then multiplying that amount by the number of days by which the actual trial exceeds or falls short of the anticipated trial period. This amount shall then be added to or subtracted from the original Stage 3 Instalment in order to calculate the new final payment to be made to you.

14.8E If following the date of this Contract but prior to the full trial of the Case concluding there is an increase in the total volume of material served in relation to the Case which is equal to or exceeds thirty percent (30%) of the total volume of material which has previously been served in relation to the Case as at the date of this Contract, then an additional sum shall be payable to you in order to reflect the additional work undertaken in relation to such material (the "Additional Material Payment"). The applicable percentage for the purposes of this Clause shall be calculated by reference to the total number of pages of new material which is served after the date of this Contract relative to the total number of pages already served as at the date of this Contract. For the purposes of this calculation whether the material served following the date of this Contract is used or unused shall be irrelevant.

14.8F The value of any Additional Material Payment shall be arrived at by applying the percentage increase determined in accordance with Clause 14.8E above against the combined value of the Stage 1 Instalment and the Stage 2 Instalment in order to calculate the appropriate amount. The requirement for any such Additional Material Payment to be paid shall be assessed at the conclusion of the Case and, subject to such amount being agreed by the parties it shall be payable by us to you within thirty (30) days of a valid Claim being submitted by you to us in accordance with the requirements of this Contract. For the avoidance of doubt, an Additional Material Payment may never exceed the total combined value of the Stage 1 Instalment and the Stage 2 Instalment.

Clause 21 Standard Terms

Professional disciplinary proceedings: 21.12 You must notify us immediately if you become aware of (and provide details) of any professional disciplinary proceedings brought by any Relevant Professional Body concerning any of your personnel and must notify us of the outcome of them.

Failure to Notify: 21.18 Any material breach by you of any of the provisions in this Clause 21 will be deemed to be a Fundamental Breach

Clause 24 Standard Terms

24. Sanctions Applying Sanctions 24.1 We may apply any Sanction: (a) if you have materially breached this Contract or any other agreement between you and us from time to time;

Clause 27.1 Standard Terms as inserted by Clause 3.2 IFFO

27.1: If you disagree with any action we have taken or not taken, or a decision we have made, under this Contract you must provide details of the matter in writing to the VHCC Case Manager to request a formal reconsideration of the action, inaction or decision. Any such request must be made within 21 days of the action or inaction or the date we notify you of the decision. Following receipt of your request the VHCC Case Manager shall refer the matter to our high cost case team for formal review. If the response provided to you by the high cost case team does not resolve the matter then you may escalate the dispute for consideration by our executive team and designated representative(s) of the Bar Council. A final written response shall be provided to you within 28 days of such escalation.

Clause 30 Standard Terms

If we waive, delay or omit to exercise rights

30.3 No failure by us to exercise any power (or to insist upon strict compliance by you with any obligation or condition) shall constitute a waiver of any of our rights under this Contract.

30.4 No waiver by us of any particular default by you shall affect or impair our rights in respect of any other default (of any kind) by you.

30.5 No delay or omission by us to exercise any rights arising from any particular default by you shall affect or impair our rights in respect of such default or any other default (of any kind) by you.