

IFFO Appeal Decision

R v T [REDACTED]

On [REDACTED] January 2026, a Panel comprising a Bar Council Representative, a member of the Legal Aid Agency's ("LAA") Executive Team and a Senior Lawyer from the Government Department met to consider a dispute in relation to an IFFO Contract in the above case. The members of the panel were [REDACTED] (Bar Council representative), [REDACTED] (LAA Executive committee) and [REDACTED] (Government Legal Department). The Panel's unanimous decision and reasons are set out below.

- i. The subject of the dispute is whether Counsel instructed in this case, [REDACTED] KC and [REDACTED], (together, "Counsel") are entitled to 50% of an Additional Material Payment as part of a re-trial payment under Clause 14.8H of their IFFO Contracts dated [REDACTED] December 2022.
- ii. Counsel submitted representations on 29 September 2025 and 1 December 2025 stating that, on their interpretation of the contract, in circumstances where an Additional Material Payment had been agreed in relation to the first trial under clause 14.8E, where a re-trial payment is to be made under clause 14.8H, it should be calculated as half of the aggregate of both the Stage 1 and Stage 2 fees agreed at the Contract Start Date plus half the Additional Material Payment made under clause 14.8E. This is argued on the basis that Clause 14.8H expressly states that one half of stage 1 and stage 2 payments are to be made, which Counsel say must include any Additional Material Payments, otherwise the Clause would have simply referred to a one third payment (as in the definitions of Stage 1 Instalment and Stage 2 Instalment in Clause 1.2).
- iii. The LAA contends that the natural meaning should be given to the terms of the contract, and that clause 14.8H is clear that the value of the retrial payment is simply 50% of the combined sum of the Stage 1 and Stage 2 instalments previously paid to counsel. The LAA says that where the re-trial is listed to begin more than 6 months after the conclusion of the original case, 14.8H does not include consideration of the Additional Material Payment in the re-trial payment.
- iv. Counsel argues that the LAA's reading of the contract would result in unfairness because a late signer would receive a higher fee than an early signer. They contend this would result in irrationality and manifest unfairness.
- v. The Panel carefully and thoroughly considered the appeal bundle provided and, in particular, considered clauses 1.2 and 14.8 to 14.8H(ii) of the IFFO Contract. Clause 1.2 provides definitions for use within the contract. The Panel notes the following definitions:

"Contract Work" means all necessary advocacy and associated work in relation to the Case (including but not limited to attendance at conferences and work in relation to restraint of assets, sentencing and subject to Clause 3.15B any retrial of the Case) but shall exclude work required in relation to any appeal following conviction of the Client or confiscation proceedings;

“Fixed Fee” means, subject to Clause 3.15B below, the sum of [£ [REDACTED] QC/£ [REDACTED]] being the total fixed amount payable by us to you for the provision of all Contract Work in accordance with the terms of this Contract;

...

“Stage 1 Instalment” means, subject to clause 3.15B below, the first instalment in the sum of [£ [REDACTED] QC/£ [REDACTED]] 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 [£ [REDACTED] QC/£ [REDACTED]] being a one third share of the Fixed Fee which, subject to your continuing satisfactory performance 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 [£ [REDACTED] QC/£ [REDACTED]] 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;

- vi. The “Fixed Fee” is the fee agreed at the signing of the contract between the parties. Payment of it is divided into three Stage instalments, of (almost) equal value. The “Fixed Fee” is also described as being the total fixed amount payable by the LAA to counsel for all Contract Work. The definition of “Contract Work” is subject to Clause 3.15B in relation to a retrial. 3.15B amends clauses 14.1 to 14.20 of the 2017 Standard Crime Contract Standard Terms, and in the amended paragraphs 14.8 to 14.8H(ii) set out the basis of when and if stage 1 to 3 payments will be paid in various circumstances, together with the reasoning and basis of calculation for “Additional Material Payments” and how payments are calculated in the event of a retrial.
- vii. For example, clauses 14.8A and 14.8B provide for when only a Stage 1 payment will be made - if the Client enters a plea prior to the first hearing or counsel ceases to provide contract work before the First Hearing; and when a Stage 2 payment will also be made - if the Client enters a plea after the first hearing, or if counsel otherwise reasonably ceases to provided Contract Work during or after the First Hearing.
- viii. Clauses 14.8E, 14.8F and 14.8H are of most relevance to this dispute:

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 of 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.

...

14.8H Where such retrial is listed to begin more than six (6) months after the date on which the original Case concluded the value of the Retrial Payment shall include an amount equal to fifty percent (50%) of the combined sum of the Stage 1 Instalment and Stage 2 Instalment previously paid to you in respect of the Case...

- ix. Where additional material is served prior to the full trial, the first sentence of Clause 14.8E deals with the circumstances of and reasoning for an Additional Material Payment being made. The remainder of Clauses 14.8E and 14.8F sets out the method for calculating that payment. These clauses only refer to Stage 1 and Stage 2 Instalments in relation to how the Additional Material Payment is to be calculated. Such payments are not and do not become part of any Stage Instalments in any clause in the contract. The Stage Instalments are defined only by Clause 1.2.
- x. Clause 14.8H deals with circumstances where a retrial is listed at least 6 months after the original trial, as in this case. It states that a Retrial Payment shall include an amount equal to 50% of the combined sum of the Stage 1 and Stage 2 instalments previously paid to you in respect of the Case. There is no reference to taking into account any other payment in the Stage Instalments.
- xi. The Stage 1 and Stage 2 Instalments are clearly defined within clause 1.2 of the two IFFO Contracts. They do not include the Additional Material Payment. The Stage Instalments are the amounts that were previously paid to both counsel on

December 2022 and September 2023 respectively. The Additional Material Payment was a separate sum, payable and calculated under a separate clause.

- xii. 14.8H(i) deals with circumstances in which additional material is served in relation to the retrial which was not previously served in relation to the initial trial. As such, it is irrelevant to the issue at hand and Counsel rightly do not rely upon this provision.
- xiii. The Panel notes that there are different provisions governing remuneration of Counsel in a retrial to those relating to the original trial. If the conditions in clause 14.8H are met, the contract states that the Retrial Payment to Counsel shall include an amount equal to 50% of the combined sum of the Stage 1 and Stage 2 instalments.
- xiv. Since the contract does not explicitly *include* any provision within 14.8H for the Additional Material Payment set out and defined in clause 14.8E, the Panel concludes that the Retrial Payment does not factor in the Additional Material Payment; rather, the Retrial Payment is to be calculated on the basis of the Stage 1 and Stage 2 payments as agreed on the Contract Start Date. The Panel agrees with the position of the LAA.

January 2026