

Legal Briefing

Ted Lowery considers a case in which delays in setting up a project bank account left a sub- contractor exposed

E & T L Jones (Civils) Ltd v Vale of Glamorgan Council [2026] EWHC 2054 (TCC)

In the Technology and Construction Court

Before His Honour Judge Keyser KC sitting as a Judge of the High Court

Judgment delivered 4 August 2026

The facts

On 23 August 2023, Vale of Glamorgan Council ("**the Council**") entered into a main contract with ISG Construction Ltd ("**ISG**") for the construction of a school extension in Penarth. The main contract was based on the NEC4 form and in line with Welsh government policy included clause Y(UK)1 requiring the establishment of a project bank account to protect payments to any works package sub-contractors identified as Named Suppliers.

Clause Y1.7 required ISG to include in its applications the amounts due to Named Suppliers in accordance with relevant sub-contracts. Clause Y1.8 required the Council to make the due payments into the project bank account.

The project bank account was to be governed by a trust deed made between the Council and ISG. Following a delay due to planning issues, the trust deed was executed by ISG and the Council on 2 April 2024. The trust deed required ISG to start a bank account with Santander and provided that the Council undertook to pay all sums due to ISG and/or the Named Suppliers into this account as and when they became due. These payments were to be kept separate and held on trust for ISG and the Named Suppliers in the amounts owed to them. In Schedule 1 to the trust deed, the words "To be confirmed" appeared in the space left for listing the Named Suppliers. Schedule 3 comprised a joining deed for adding Named Suppliers to the list in Schedule 1.

On 12 April 2024, ISG sent a copy of the trust deed to Santander, but the establishment of the project bank account was delayed largely because of mislaid paperwork and personnel changes within Santander. The works commenced during early 2024 and pending developments with Santander, the Council made interim payments direct to ISG.

On 15 May 2024, E & T L Jones (Civils) Ltd ("**Jones**") and ISG entered into a groundworks sub-contract based upon the NEC4 form and incorporating clause Y(UK)1. On 5 August 2024, Jones issued an application for payment for £486,017.67 which ISG in turn included in its own main contract application for £1,121,427.30 to the Council on 15 August 2024. The Council paid ISG this amount on 5 September 2024, but ISG entered into administration on 20 September 2024, before passing any payment onto Jones.

Jones commenced proceedings against the Council claiming the £486,017.67, contending that pending the establishment of the project bank account, the Council should have withheld payments and had breached clause Y1.8 by making payments directly to ISG. Whilst acknowledging that it had not been formally identified as a Named Supplier, Jones argued that as a sub-contractor to ISG, it was a Supplier within the class of persons intended to have the benefit of the project bank account and as such, was entitled to enforce clause Y1.8.

The issue

Was Jones entitled to recover the £486,017.67 from the Council?

The decision

The judge distilled Jones' case into four broad issues:

On the first issue, the judge found that the main contract did not confer on Jones the right to sue the Council for breach of clause Y1.8: whilst Jones was from 15 May 2024 a Supplier, (as defined) it was never a Named Supplier, within the definition in clause Y1.1(2) in circumstances it was not identified as such in Schedule 1 to the trust deed and had never executed a joining deed pursuant to Schedule 3. The judge dismissed Jones' attempts to circumvent this reality: (i) the submission that clause Y1.8 extended to Suppliers was plainly wrong; and, (ii) the suggestion that the failure to make Jones a Named

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Supplier was a breach of the main contract, that the Council should not be allowed to profit from, could not succeed where Jones was not a party to the main contract and had no qualifying claim under section 1(1) of the Contracts (Right of third Parties) Act 1999, where the main contract expressly conferred third party rights on Named Suppliers but not on those not so named.

Given this conclusion, the remaining three issues did not require determination, but the judge addressed them briefly:

- The Council was not in breach of clause Y1.8 of the main contract by making direct payments: where there was no project bank account, no Named Suppliers and clause Y1.8 did not have the effect of prohibiting any payment before the account was established, direct payments were permissible.
- The argument that Jones' loss had been caused by the Council's breach of contract – in making direct payments and thereby failing to press ISG to establish the project bank account – was dismissed. Santander appeared to be responsible for the delay and there was no evidence that the account would have been set up in time for Jones' purposes if ISG had been incentivised to achieve the same.
- The Council would have been able to defend claims by ISG where ISG had waived any breach of clause Y1.8 by accepting direct payments, absent a project bank account.

Commentary

Project bank accounts are an excellent idea but are not especially common. The potential benefits of such accounts for sub-contractors and suppliers are illustrated by this case: Jones was unfortunate that administrative delays left the project bank account arrangements incomplete at the point they were needed.

Ted Lowery
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