

INTERIM FIXED FEE OFFER – FURTHER DECISION

V

Legal Aid Agency

APPEAL PANEL DECISION

Appeal Panel:

Introduction:

1. On the [REDACTED] September, 2021 the Panel considered an appeal under clause 3.20 of the Interim Fixed Fee Offer (IFFO) contract finding in favour of the appellants. At the conclusion of the appeal the Panel made the following orders:
 - i. That the LAA amend the contracts in discussion with the appellants to facilitate an additional payment at this stage of the case. This payment would be in full and final settlement of any sum payable under the additional material payment scheme. This arrangement would be contingent upon the appellants formally agreeing in writing to this course of action.
 - ii. It was further ordered that the LAA and appellants enter now into negotiations as to the level of such payment.
 - iii. It was not necessary, at this stage, for the Panel to determine the process for assessing and determining the level of payment. The Panel reserved the right, however, to hear further representations should there be a further dispute as to the value of the sum to be paid.
2. The Panel was asked to reconvene on the [REDACTED] November, 2022 following a request from counsel for an additional payment at the conclusion of the substantive trial. The LAA declined to make this payment in light of the clear direction of the Panel that the original early, additional payment would be in full and final settlement.
3. Counsel disputed that decision and the LAA decided the Panel should consider the position. Counsel did not agree that this was a matter for the Panel.

4. The Panel reconvened on the [REDACTED] November to determine if it had any role in this dispute.

Background:

5. Following the Panel's decision on the [REDACTED] September, 2021 the LAA advised counsel that there was no need to vary the contract to reflect the appeal outcome (see [REDACTED] *email of the 1st October, 2021*). This was contrary to the clear directions of the Panel. The Panel had not been asked to consider the LAA's proposed course of action.
6. It appears there may have also been further communications in which the LAA suggested to counsel that the terms of the contract should remain as originally drafted. It is suggested that counsel were advised they would be contractually entitled in due course to the uplift, albeit 70% of the payment would be made in advance. At this preliminary stage the Panel had not seen evidence from either side in relation to this point. It is noted, however, that the LAA's decision not to vary the contract lends weight to the assertion that the LAA advised an uplift would be available later.
7. On the [REDACTED] August, 2022, at the conclusion of the substantive trial, counsel contacted the LAA to ask that the remaining 30% be paid. This was on the basis that additional material, in excess of what had been anticipated, had been served. Counsel justified the request by reminding the LAA that the contract had not been varied. As such counsel asserted they remained entitled to the additional payment.
8. The LAA declined to make any additional payment referring counsel to the clear decision and orders of the Panel made on the [REDACTED] September, 2021. Counsel reminded the LAA that the contract had not been amended and the terms as originally drafted, agreed and signed remained. As such the uplift clause remained valid.
9. Counsel accepted that had the contract been amended, as per the Panel's decision, then that would have meant the early additional payment would have represented full payment. The contract was not amended, however, and therefore that payment did not represent a full and final payment.
10. In light of this, the LAA decided that the Panel should be asked for its view on the matter. Counsel disputed the LAA's decision arguing that the Panel could not amend the contract.

Does the Panel have a role?:

11. The Panel was agreed that the LAA had failed to follow its clear decision as to how the original complaint was to be resolved. There was no explanation as to why the LAA had ignored the decision and orders of the Panel. In particular, the Panel was

concerned and surprised that no steps had been taken to obtain counsels' written agreement. The Panel also noted that there was limited evidence as to what had happened after the September decision had been made.

12. The Panel was concerned that its decision had not been followed. The Panel was clear that if its original decision had been adhered to then the current dispute would not have arisen.
13. Having considered the matter fully the Panel concluded that it did not have a role in settling this dispute. Under clause 3.20 of the Interim Fixed Fee Offer (IFFO) contract, it is for the appellants to escalate a dispute to the Panel not the LAA. In this case counsel were clear that this was not a matter for the Panel and had not sought to pursue this remedy.
14. Although in its decision on the [REDACTED] September, 2021 the Panel had reserved the right to hear further representations should there be a further dispute as to the value of the sum to be paid that was not the case here. That order would have applied if there had been a dispute as to what represented a fair payment at the time the early additional payment was made. That was not the case here as it appears both parties had agreed that sum without difficulty.

Conclusion:

15. Whilst it was troubling that counsel, having given undertakings before the original Panel hearing, and being aware of the Panel's clear decision made in September 2021, now sought additional payments, it remained the case that the LAA had failed to follow the directions of the Panel. If the LAA had done as directed then this issue would not have arisen.
16. Counsel does not wish to escalate this matter to the Panel. The LAA does not have a right under clause 3.20 to refer a matter to the Panel. Nor can the Panel step in and make further directions or orders. The Panel is agreed it is functus officio.
17. The Panel declines to make any decision in relation to this dispute.

This is the agreed decision of the IFFO Appeal Panel, [REDACTED] November, 2022:

[REDACTED]
[REDACTED]
[REDACTED]