

IFFO Appeal Decision

R v [REDACTED]

On [REDACTED] October 2019, a Panel comprising members of the LAA's Executive Team and a Bar Council representative met to consider a dispute in relation to an IFFO Contract in the above case. The members of the Panel were: [REDACTED]. The Panel's unanimous decision and reasons are set out below.

- i. The subject of this dispute is whether Counsel instructed in this case [REDACTED] are entitled to a second retrial payment under Clause 14.8H of the IFFO Contract.
- ii. [REDACTED] QC submitted on behalf of both Counsel that in the particular circumstances of this case including the fact that the original fixture for the retrial was broken due to the Defendant's continued ill health and was now fixed for a date more than two years after the conclusion of original trial merited the payment of a second retrial fee. Counsel submitted that the Contract did not cater for all eventualities and therefore it should be implied to include a clause relating to reasonable remuneration in circumstances not specifically covered by the Contract. In the alternative [REDACTED] invited the panel to consider whether in the circumstances it would be appropriate to make an ex-gratia payment to Counsel.
- iii. The LAA submitted that no further retrial fee could be paid as no further retrial had been ordered. There was no scope under the Contract to make a further retrial payment on the basis that the original retrial fixture had been broken and the retrial relisted at a much later date.
- iv. The Panel considered the appeal bundle provided and in particular Clause 14.8H of the IFFO Contract.
- v. The Panel agreed with submissions put forward by the LAA. The Contract makes provision for the payment of an additional fee where any retrial is listed to begin more than six months after the date on which the original trial concluded. Counsel has already claimed and been paid this additional payment. There is no scope under the Contract for additional payments to take into account broken fixtures or subsequent adjournments.
- vi. The Panel notes the Appellants' request that consideration be given to whether an ex-gratia payment could be made to take into account the particular circumstances of the case. The Panel concluded that this was not a determination that could be made by them. It is open to the LAA and Counsel to explore this option further outside of the appeal process.

[REDACTED] October 2019