

IFFO Appeal Decision

R v [REDACTED]

1. On [REDACTED] June 2023, a Panel made up of 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]
[REDACTED]. The Panel's unanimous decision and reasons are set out below.
2. The subject of this dispute is whether Counsel instructed in this case¹ are entitled to an additional material payment under Clause 14.8E of the IFFO Contract.
3. The Panel considered the appeal bundle provided and in particular Clause 14.8E.
4. On behalf of Counsel, it was submitted that the total volume of material served in the case following the date of the Contract exceeded 30% of the total volume of material that had previously been served as at the date of the Contract, and accordingly an additional material payment was due. This was on the basis that:
 - the Clause referred to material "served";
 - this should be interpreted to mean prosecution material, both when assessing the total volume of material previously served as at the date of the Contract, and when assessing the volume of additional material served;
 - the fact that defence material had been included when agreeing the fixed fee under the Contract did not alter the meaning of Clause 14.8E;
 - at the time of agreeing the Contract, there were 71,735 pages of material served, and accordingly the threshold for an additional material payment would be met where at least 21,520 (or 30% of 71,735) additional pages were served.
5. The LAA submitted that no additional payment was due because the threshold in Clause 14.8E had not been met. The LAA submitted that, by including defence material for remuneration when agreeing the fixed fee, that material then became part of the total volume of material both for the purposes of calculating the fixed fee and when invoking paragraph 14.8E. A total of 121,735 pages thus formed the basis of the fixed fee calculation and the Clause 14.8E baseline.
6. The Panel agreed with the submissions put forward by Counsel. Clause 14.8E makes clear reference to the 30% threshold being met by reference to material served. Giving the words their ordinary meaning, this means that the figure is to be calculated by reference only to prosecution material served on the defence. The fact that the agreed fixed fee was increased as a result of submissions made in respect of the quantity of defence material does not alter the meaning of the wording in Clause 14.8E. The Panel notes that it would have been open to the parties to agree to vary Clause 14.8E to make clear that the 30% threshold would be reached by reference to the total number of pages used to calculate the fixed fee, rather than the number of pages served.
7. The Panel hopes that, having provided its decision in relation to the construction of Clause 14.8E, the parties are able to reach an agreement as to the appropriate number of additional pages. In this regard it notes that Counsel initially claimed 27,276 additional pages had been served and the LAA, upon reviewing the pages in question, considered that an additional 29,802 pages had been served. Counsel only sought to claim a yet higher page count following the LAA's rejection of the contractual construction contended for by Counsel, which construction we have concluded was correct.

[REDACTED] June 2023