

## IFFO Appeal Decision

R v [REDACTED]

1. On [REDACTED] July 2025 a Panel comprising of members of the LAA's Executive Team and a Bar Council Representative met to consider a dispute in relation to the payment due to Counsel under their IFFO contracts in the above case. The members of the Panel were:

[REDACTED]  
The Panel's unanimous decision and reasons for it are explained below.

2. This appeal concerns the correct Stage 3 Instalment payment to counsel in respect of a retrial, which payment is dependent on the length of the retrial. Clauses 14.8G and 14.8H of the IFFO contract govern the payment regime for retrials, including, if the specified conditions are met, a 50% payment of the original stage 1 and 2 payments and an additional material payment . There is no dispute in relation to these elements of the LAA's calculation.
3. Clause 14.8H(ii) provides for the calculation of the Stage 3 payment: -

*14.8H (ii) Each day of the retrial hearing(s) shall be remunerated at a daily rate equal to that which would have been payable to you in circumstances where the actual duration of the original trial continued for more than ten (10) days in excess of the original period listed for such trial as calculated and in accordance with Clause 14.8D. Any Claim made by you for the Retrial Additional Sum shall be made after the conclusion of the retrial and shall be payable by us to you within thirty (30) days of your valid Claim being received. For the avoidance of doubt the scope of "retrial" in this context shall include sentencing following conviction but exclude any appeal following conviction of the Client or confiscation proceedings.*

4. In calculating the Stage 3 payment for counsel engaged in a trial that is not a retrial, the LAA consider that the assessment of the "*number of days by which the actual trial exceeds...the anticipated trial period*" includes all working days and is not limited to sitting days. However, the LAA considers that, where counsel is engaged in a retrial, the assessment of the number of days is limited to sitting days. A consequence of this approach is significantly different payments to counsel for the 'trial' element of the case, depending on whether or not counsel concerned was conducting the trial for the first time or as a retrial. Counsel in this appeal challenge this approach.

5. The dispute the panel are asked to resolve is whether the terminology used in Clause 14.8H(ii) “*Each day of the retrial hearing(s)*” should be construed as limiting the assessment of number of days to ‘sitting days’ (as argued by the LAA) or as ‘working days’ (as argued by counsel).
6. The calculation of the payment for “*each day of the retrial hearing*” is to be calculated in accordance with Clause 14.8D, which clause governs the calculation of the Stage 3 payment for the original trial in circumstances where “*the actual duration of the ...trial*” has, (as relevant here), exceeded the period listed for trial by more than ten days and provides:

*14.8D In circumstances where the actual duration of the Client’s trial continues for more than ten days in excess of the period listed for such trial (for whatever reason), or concludes more than ten days before the end of the period listed (as per the court listing extant at the date of this Contract as set out in the Background to this Contract) then a proportionate adjustment will be made to the Stage 3 Instalment in order to reflect what will be regarded as a material variation to the original anticipated duration of the trial. Such adjustment shall be calculated by adding or subtracting (as applicable having regard to the adjusted length of the trial) a pro-rata daily rate to/from the original value of the Stage 3 Instalment stated in this Contract. The said daily rate shall be calculated by dividing the total Stage 3 Instalment by the total number of working days falling within the period originally listed for the trial (as per the court listing extant at the date of this Contract as set out in the Background to this Contract) and then multiplying that amount by the number of days by which the actual trial exceeds or falls short of the anticipated trial period. This amount shall then be added to or subtracted from the original Stage 3 Instalment in order to calculate the new final payment to be made to you.*

7. The calculation therefore involves the following steps. First, the Stage 3 instalment is divided by the total number of working days falling within the period originally listed for trial. This is then multiplied by “*the number of days by which the actual trial exceeds...the anticipated trial period.*” This amount is then added to the Stage 3 Instalment to calculate the new payment due.
8. It is common ground that, if the case is not a retrial, the appropriate number of days multiplier figure is 108 days, which figure represents the number of working days in the trial (both sitting and non-sitting). Given that the method of calculation directed to

be used in Clause 14.8H(ii) is that set out in Clause 14.8D, in our view it is difficult to see how a different definition of number of days is appropriate.

9. The panel considers that the term “*each day of the retrial hearing*” in Clause 14.8H(ii) should be construed in the same way as “*the number of days...[of] the actual trial*” in Clause 14.8D.
10. It follows that the assessment of the number of days should be same whether the trial is a trial or a retrial and in the present case we understand that the number of days is agreed to be 108.
11. The Panel notes that the retrial provisions remunerate Counsel in a different way to the original trial. This is principally achieved by paying Counsel 50% of the original total of the first two instalments if the conditions in clause 14.8H are met. That reflects the fact less work is required when a full trial fee has already been paid under the Contract.

■ July 2025