

IFFO Appeal Decision

R v [REDACTED]

On [REDACTED] September 2018 a Panel comprising of members of the LAA's Executive Team and a Bar Council Representative met to consider a dispute in relation the payment due to Counsel under their IFFO Contracts in the above case. The members of the Panel were: [REDACTED]
[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 an Additional Material Payment in accordance with Clause 14.8E of the IFFO Contract.
- ii. [REDACTED] (Chambers' Finance Director) submitted on behalf of Counsel that Clause 14.8E was triggered as the IFFO offer made to Counsel was based on an estimated page count of 150,000 pages for digital evidence, however, there were in fact 1.5 million pages. This material was therefore additional to the IFFO offer and should be remunerated through clause 14.8E.
- iii. The LAA submitted that as the digital material had been served prior to the Contract being issued Clause 14.8E could not be triggered. There is no provision under the Contract to effectively re-negotiate the fee once it has been accepted by Counsel.
- iv. The Panel considered the appeal bundle provided and in particular Clause 14.8E of the IFFO Contract.
- v. The Panel agreed with submissions put forward by the LAA. There is no dispute that the material was served at the time that fees were being negotiated.¹ In order for Clause 14.8E to be engaged additional material must be served after the Contract has been signed, specifically it provides:

*"If following the date of this Contract but prior to the full trial of the Case concluding there is an increase in the total volume of material served in relation to the Case which is equal to or exceeds thirty percent (30%) of the total volume of **material which has previously been served** in relation to the Case **as at the date of this Contract**, then an additional sum shall be payable to you...."*

[emphasis added]
- vi. In this case the digital material had been served, but not quantified at the time the fee offer was agreed. It was clear at the time that the offer was made that 150,000 pages was not the true page count, but was put forward as a reasonable figure for the purposes of agreeing a fee at that stage.
- vii. It would have been open to all Counsel to negotiate a fee based on a larger number of pages from the digital devices prior to signing the IFFO Contract. However, once the offer was accepted and the Contract signed that was the end of the negotiation process. For the reasons set out above Clause 14.8E was not triggered.

[REDACTED] September 2018

¹ As noted in the request for re-determination p.58