

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 the dispute before the Panel was whether the applicable "additional material payment" fee for this case should be:
 - 30% as submitted by the LAA;
 - 100% as contended by the Appellants¹; or
 - another percentage between 30 and 100, the maximum permitted under the IFFO contract.
- ii. In reaching their decision the Panel considered the submissions and bundle prepared by the LAA; the submissions and bundle prepared by Counsel for [REDACTED] and the submissions, three bundles and two USBs prepared by Counsel for [REDACTED].
- iii. The Panel expressed some dissatisfaction with the way in which the appeal had been presented by all parties. In any future cases the Panel would expect to see a greater degree of communication between the parties to narrow the issues in dispute and more clearly set out the areas of disagreement.
- iv. The Panel carefully considered whether the appeal was capable of resolution on the papers provided or whether further work was required by the parties to assist the Panel in reaching a decision. On balance, and taking into account the fact that there had already been some delay in this case, the Panel determined that the appeal could proceed. The Panel concluded that, on the basis of the material and submissions before them, the appropriate fee was that which reflected a 100% increase in the total volume of served material.
- v. The Panel carefully considered Clause 14.E of the IFFO Contract which states:

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 in order to reflect the additional work undertaken in relation to such material (the "Additional Material Payment"). The applicable percentage for the purposes of this Clause shall be calculated by reference to the total number of pages of new material which is served after the date of this Contract relative to the total number of pages already served as at the date of this Contract. For the purposes of this calculation whether the material served following the date of this Contract is used or unused shall be irrelevant.
- vi. The Panel agreed that the express wording of Clause 14.E requires the additional material payment to be calculated by reference to the total number of pages of new material served after the date of the Contract relative to the total number of pages actually served at the point which the Contract is signed.

- vii. The Panel noted that the wording of Clause 14.E is not satisfactory in cases such as this where, quite properly, an element of forecasting has been taken into account at the time of negotiating the Contract.
- viii. The Panel noted that in terms of the additional material served it was particularly unhelpful that the LAA's description of material appeared to have been derived from information provided by a different defence team (not subject to the appeals process) and that they appeared to have considered the material as provided by a different defence team. This had resulted in the case manager asserting that he had been unable to locate or open various documents when these were clearly present and functional on the USB provided by [REDACTED].
- ix. The Panel also noted that the LAA decision making and appeal submissions focussed only on the quantification of documents served in Excel format and did not appear to deal with the additional material served in Word, PDF or PNG formats. The Panel therefore took the view that the quantification of the additional non-Excel material was not in dispute.
- x. Having interrogated the additional served material as provided by [REDACTED] the Panel were satisfied that even taking into account the LAA's page count for the Excel material an additional material payment of at least 75% was appropriate.
- xi. The Panel considered that there was some force in the LAA's overarching submission that some reformatting of the Excel spreadsheets was required in order to produce a reasonable page count for those documents. The Panel also agreed that in view of the quantity of the material a granular consideration would be too time consuming and therefore it would be sensible to take a reasonably broad-brush approach based on a dip-sampling exercise.
- xii. However, on the information before them the Panel were unable to accept the figures put forward by the LAA in respect of the Excel material. The underpinning methodology for the figures had not been provided and no clear explanation was given to support the range of figures provided in case manager's decision dated 15 February 2019. The further review of the decision by [REDACTED] on 9 May 2019 was equally lacking in detail and had not attempted to deal with a number of specific issues and discrepancies raised by the Appellants. No further clarity or explanation was provided in submissions provided by the LAA on appeal. The Panel found that they were unable independently to replicate the case manager's page count for the [REDACTED] document, which was referred to as an example in the LAA's submissions.
- xiii. The Panel found that the lack of precise explanation for the figures arrived at and lack of evidence to support the figures coupled with a number of factual errors within the decision-making process meant that the Panel could have no confidence in the figures put forward by the LAA.
- xiv. As the counter argument had not satisfactorily been made out the Panel considered that in the specific circumstances of this case it would be reasonable to calculate the additional material payment by reference to the figures advanced by the Appellants in respect of the unformatted Excel documents.