

## IFFO Appeal Decision

R v [REDACTED]

On [REDACTED] May 2024 a Panel comprising members of the Legal Aid Agency's (LAA) Executive Team and a Bar Council Representative met to consider a dispute in relation to the payment due under the IFFO Contract in the above case. The members of the Panel were [REDACTED]. The Panel's unanimous decision and reasons are set out below.

1. Counsel in this matter, representing [REDACTED], are [REDACTED].
2. The Panel was asked to make two determinations:
  - a. by Junior Counsel only, to determine the approach to be taken to the calculation of the Additional Material Payment, as defined in Clause 14.8E of the IFFO Contract;
  - b. by Counsel, to determine the approach to be taken to the calculation of additional trial days for the purpose of an adjustment pursuant to Clause 14.4D of the IFFO Contract.

a. Additional Material Payment under Clause 14.8E

3. Junior Counsel's position on the Additional Material Payment is that the 30% threshold prescribed by Clause 14.8E for an Additional Material Payment to be made under the IFFO Contract is met and exceeded. Junior Counsel submits that the additional material page count amounts to at least 172.7% of the original page count and that on this basis, a 100% uplift is payable. Junior Counsel submits that this position is reached by reference to an additional 378,310 pages served under cover of the Notices of Additional Evidence 6-15.
4. The position of the LAA is that the additional served material amounts to 14,231 pages, or 6.5% of the original page count served. On that basis, the 30% threshold specified by Clause 14.8E is not met and so no Additional Material Payment is due. This conclusion was reached by the LAA undertaking an exercise to review, in particular, 4 Excel documents. Having identified that print preview had been used to generate the page count, the LAA noted that one tab in particular was poorly formatted and generated a page count of 85,599 pages, whereas the LAA attributed to that tab a page count of 32 pages. This tab was then replicated over 4 exhibits, and, combined with the other additional material served, generated a total print preview page count of 342,396 pages. A process of reweighting or reformatting the pages had been undertaken by the LAA to reach the figure of 14,231.
5. The Panel considered clause 14.8E of the Contract which 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 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.*

6. The Panel considered that blank pages and pages which contain no data are not “*pages of new material*”. The number of pages listed on the prosecution’s Notice of Additional Evidence cover sheet was not determinative. The Panel considered that it was not necessary to reformat the served material. It was sufficient to view the Excel document in ‘page break preview’ to assess whether pages qualified as pages of new material or were in fact blank or contained no data. Having viewed the example spreadsheet in this way the Panel considered, having regard to the large number of blank pages, that it was unlikely that the additional material threshold was reached.

b. Additional Trial Days under Clause 14.8D

7. The Contract was agreed on the basis of a trial lasting 70 days. It is agreed between the parties that, whatever the calculation performed under Clause 14.8D, the first requirement of that clause is met in this case, namely that if “the actual duration of the Client’s trial continues for **more than ten days in excess of the period listed** [emphasis added] for such trial (for whatever reason) [...], 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”.
8. Counsel’s position is that the trial lasted for a total of 100 days, including 2 days for sentencing, and excluding weekends and bank holidays. No reduction is to be made for periods of 5 days or more when the court is not sitting.
9. The LAA’s position is that where the court did not sit for 5 days or more, those periods of 5 days or more should be excluded from the total number of trial days for the purposes of the Clause 14.8D calculation. This is premised on an assumption that such a period would allow Counsel to accept instructions in other cases pending resumption of sitting days in the trial.
10. The Panel considered Clause 14.8D of the Contract which provides:

*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.*

11. The Panel approached the dispute on the basis that the parties both agreed that the calculation was based on the number of working days the trial had lasted. The Panel considered that there was no contractual basis for excluding periods of 5 working days or more when applying this approach. Accordingly the Panel agreed with Counsel’s trial length calculation.
12. The Panel noted that the previous decision of the Panel in [REDACTED] to which its attention was drawn, specifically confined itself to interpreting the meaning of ‘days’ within the first part of Clause 14.8D.