

IFFO Appeal Decision

R v [REDACTED]

1. On [REDACTED] May 2024 a Panel comprising members of the Legal Aid Agency's Executive Team and a Bar Council Representative met to consider a dispute in relation to the payment due to Counsel under the 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. Counsel in this matter are [REDACTED] representing [REDACTED] and [REDACTED] and [REDACTED] representing [REDACTED] (together "Counsel").
3. The Panel was asked to determine the approach to be taken to the calculation of the Additional Material Payment in this case, as defined in Clause 14.8E of the Contract. Provision for an Additional Material Payment is set out in the IFFO Contract at Clauses 14.8E and 14.8F:

14.8E 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.

14.8F The value of any Additional Material Payment shall be arrived at by applying the percentage increase determined in accordance with Clause 14.8E above against the combined value of the Stage 1 Instalment and the Stage 2 Instalment in order to calculate the appropriate amount. The requirement for any such Additional Material Payment to be paid shall be assessed at the conclusion of the Case and, subject to such amount being agreed by the parties it shall be payable by us to you within thirty (30) days of a valid Claim being submitted by you to us in accordance with the requirements of this Contract. For the avoidance of doubt, an Additional Material Payment may never exceed the total combined value of the Stage 1 Instalment and the Stage 2 Instalment.

4. Counsel's position is that the 30% threshold specified in Clause 14.8E was met and exceeded in this case. Counsel's position is that at least 150,000 pages of additional material were served after the date of the Contract, including 114,783 emails (which themselves would amount to considerably more than 114,873 pages). The Contract was signed on the basis of a page count of 102,236 pages. Accordingly, Counsel's position is that Counsel is entitled to an Additional Material Payment of 100%, as calculated under Clause 14.8F.
5. The LAA's position is that although the 30% threshold in Clause 14.8E was met, an Additional Material Payment of 57% is payable when calculated under Clause 14.8F. The LAA arrived at this figure by conducting a weighting exercise in relation to the 114,783 emails. When combined with the other served material to which no weighting exercise was applied, this comes to a total of 57,774 pages, equating to a 57% uplift. The LAA's position is that the wording of Clause 14.8E which states that "*an additional sum shall be payable to you in order to reflect the additional work undertaken*" forms the basis of this weighting exercise, and states that there are circumstances when material might be provided in a format which cannot be readily reduced to pages, requiring some form of analysis to ensure the Additional Material Payment reflects the additional work required.

6. The Panel considered that the position put forward by Counsel was correct, and that an Additional Material Payment of 100% under Clause 14.8E is payable.
7. The basis for calculating the additional material payment is set out clearly and unambiguously in the Contract, as set out above. There is no provision in the Contract for the weighting exercise conducted by the LAA in this case to determine the total number of pages of new material served.

Decision of ■ May 2024