1985 No. 302

MAGISTRATES' COURTS

Magistrates' Courts (Costs in Criminal Cases) (No. 2) Rules (Northern Ireland) 1985

Made	*31st October 1985*
Coming into operation	*1st December 1985*

The Lord Chancellor in exercise of the powers conferred on him by Article 13 of the Magistrates' Courts (Northern Ireland) Order 1981(**a**) and section 7 of the Costs in Criminal Cases Act (Northern Ireland) 1968(**b**) on the advice of the Magistrates' Courts Rules Committee and after consultation with the Lord Chief Justice hereby makes the following rules:—

Citation and commencement

1. These rules may be cited as the Magistrates' Courts (Costs in Criminal Cases) (No. 2) Rules (Northern Ireland) 1985 and shall come into operation on 1st December 1985.

Revocation

2. The Magistrates' Courts (Costs in Criminal Cases) Rules (Northern Ireland) 1985(**c**) are hereby revoked.

Interpretation

3. In these rules—

"the Act" means the Costs in Criminal Cases Act (Northern Ireland) 1968;

"witness" means a person properly attending to give evidence, whether or not he gives evidence, and includes a person accompanying a witness where the court is satisfied that it is reasonable that the witness should be accompanied by that person;

"session" means over three hours and up to three and a half hours;

"full day" means over seven hours.

Orders for the payment of costs of prosecution or defence fees for solicitors or council

4. Where a magistrates' court makes an order under section 2 or 3 of the Act for payment by a convicted person of the whole or any part of the costs of the prosecution or under section 3 of the Act for the payment by the Secretary of State or, as the case may be, by the prosecutor of the whole or any part of the costs of the defence, the amount ordered to be so paid for the fees of a solicitor or counsel or any party appearing in person shall be determined by the court in accordance with Schedule 1.

(**a**) S.I. 1981/1675 (N.I. 26)
(**b**) 1968 c. 10 (N.I.) as amended by 1978 c. 23
(**c**) S.R. 1985 No. 144

Sums payable in connection with the attendance of witnesses

5. Where an order is made by a magistrates' court under section 2 of the Act for the payment of an amount as compensation for the expenses, trouble or loss of time properly incurred in, or incidental to, the attendance of a witness to give evidence or of an interpreter such amount shall be determined by the court in accordance with Schedule 2.

Dated 31st October 1985 *Hailsham of St. Marylebone, C.*

SCHEDULE 1

Amounts payable for fees of solicitors or counsel

1. The court may order the payment of—

(*a*) such amount not exceeding £75 as the court thinks just, in respect of the remuneration and outlay (other than outlay incurred in connection with witnesses recoverable under rule 5 and Schedule 2) of the solicitor for the prosecution or, as the case may be, the defence in taking instructions, preparing the case, attending in court and where counsel is not instructed conducting the proceedings at the hearing and in respect of all other reasonable charges incidental to the proceedings.

(*b*) where it is reasonable to instruct counsel, such amount not exceeding £75 as the court thinks just, in respect of counsel's fees; or

(*c*) such amount for costs and outlay incurred by a party appearing in person as the court thinks fit.

2. Where the court, having regard to the exceptional length, difficulty or complexity of the proceedings, is satisfied that the amounts prescribed in paragraph 1 are inadequate, it may notwithstanding that paragraph, make a special order for the payment of a greater sum.

A special order under this paragraph shall contain a full statement of the reasons for making it.

SCHEDULE 2

Amounts payable in connection with the attendance of witnesses, etc.

PART I

Travelling

1.—(1) Where the witness travelled to and from court by public conveyance or, in the opinion of the court, could reasonably have done so but instead incurred greater expense, there may be allowed a sum not exceeding the amount of the fare which was actually, or would have been, paid for travelling by public conveyance.

Provided that, unless for a special reason the court otherwise directs, only second class fare shall be allowed for travel by railway.

(2) Where the witness has travelled to and from the court by private conveyance and, in the opinion of the court, it was reasonable that he should have done so, there may be allowed in respect thereof—

(*a*) if the vehicle is a car, a sum calculated at the rate of 30·4p per mile each way; or

(*b*) if the vehicle is a motor cycle, a sum calculated at the rate of 8·0p per mile each way;

(*c*) if the vehicle is a motor cycle of 151 cc — 250 cc, a sum calculated at the rate of 12·0p per mile each way; or

(*d*) if the vehicle is a motor cycle of 251 cc or over, a sum calculated at the rate of 16·0p per mile each way.

Provided that, where the court considers it unreasonable that he should have travelled by private car the sum payable shall be calculated at the rate of 13·8p per mile.

(3) The rates specified in paragraph (2) shall be increased—

(i) by a supplement of 2·0p per mile each way for the first, and 1·0p per mile each way for each additional passenger carried to whom a travelling allowance would otherwise have been payable under this Part; and

(ii) by the amount of any expenditure necessarily incurred on parking fees, provided the court considers the use of a private conveyance to have been reasonable.

(4) Where the witness has travelled to and from the court by a hired vehicle and, in the opinion of the court, it was reasonable that he should have done so, there may be allowed, in respect thereof, the amount of the fare and any reasonable gratuity paid.

Provided that, where the court considers it unreasonable that he should have travelled by hired car, there may be allowed the amount which would have been paid for travelling by public transport.

PART II

Subsistence and Lodging

Professional or expert witness

2. Where a witness in practice in a fee-paid profession (hereinafter referred to as "a professional witness") or a medical witness of consultant status or other professional or specialist witness of comparable status (hereinafter referred to as "an expert witness") has been necessarily absent from his place of residence overnight for the purpose of attending as a witness there may be allowed a sum not exceeding £31·55 for subsistence and lodging in respect of each night during which he is so absent.

Ordinary witness

3.—(1) Where a witness, other than a professional or expert witness, has been necessarily absent from his place of residence overnight for the purpose of attending as a witness there may be allowed a sum (hereinafter referred to as "an overnight allowance") not exceeding £40·70 in respect of each period of 24 hours or fraction thereof during which he is so absent overnight.

(2) Where on any day such witness (for the purpose of attending as a witness) has been necessarily absent from his place of residence, business or employment for a continuous period

(other than a period for which an overnight allowance is payable) exceeding 5 hours there may, for his subsistence be allowed a sum not exceeding the appropriate amount specified hereunder, namely—

Continuous period of absence		*Amount*
		£
Over 5 hours but not over 10 hours	...	2·50
Over 10 hours	...	5·50

PART III

ALLOWANCES FOR SERVICES RENDERED BEFORE ATTENDANCE IN COURT AND FOR LOSS OF REMUNERATION

TIME OR EQUIVALENT EXPENSES

Professional Witnesses

Examination and reports

4.—(1) Where a professional witness carries out an examination and/or furnishes a report there may be allowed such sum as the court thinks reasonable, not exceeding the appropriate amount specified hereunder, namely—

		£	
Full medical examination and report	...	15·50	
Short medical examination and report	...	9·80	
Extracts from medical records:			
Straightforward factual extract	...	5·70	
More complicated extracts/extracts with opinions	...	9·80	
Very lengthy examination and/or report	...	19·60	per hour
up to	...	68·50	per session

Consultation and court attendance

(2) Where a professional witness attends a consultation on a non-attendance day at court there may be allowed an attendance allowance at the rate of £13·20 per hour (including travelling time) but not exceeding the limits specified hereunder—

Period of absence from home or place of business		*Amount*
		£
Over 1 hour up to 2 hours	...	26·30
Over 2 hours up to 3 hours	...	39·50
Over 3 hours up to 3½ hours (session)	...	46·10

(3) Where a professional witness attends court to give professional evidence there may be allowed such attendance allowance not exceeding the appropriate amount hereunder, namely—

Period of absence from home or place of business		*Amount*
		£
Up to 2 hours	...	30·80
Over 2 hours up to 4 hours	...	50·00
Over 4 hours up to 7 hours	...	75·00
Full day	...	100·00

Expert Witnesses

Examination and reports

5.—(1) Where an expert witness carries out an examination and report there may be allowed such amount as is claimed and as the court considers reasonable but not exceeding the appropriate amount specified hereunder, namely—

		£	
Standard examination	...	46·10	
Examination and report of a very special nature or complexity up to	...	92·30	per session

Consultation attendance

(2) Where an expert witness attends a consultation on a non-attendance day at court, there may be allowed such attendance allowance as the court considers reasonable but not exceeding £17·60 per hour (including travelling time) subject to a maximum of £61·50 per session or £123·00 per full day.

Court attendance

(3) Where an expert witness attends court to give expert evidence there may be allowed such attendance allowance not exceeding the appropriate amount specified hereunder—

Period of absence from home or place of business		*Amount* £
Up to 2 hours	...	36·90
Over 2 hours up to 4 hours	...	73·70
Over 4 hours up to 7 hours	...	110·50
Full day	...	147·40

Ordinary witness

6. Where a witness, not being one to whom paragraph 4 or 5 applies, is by reason of his attendance in court necessarily absent from his place of residence, business or employment, he shall be allowed in respect of actual financial loss or additional expenses such amount as is claimed not exceeding £11·25 per day provided that, where the court is satisfied, on the production of evidence, that such actual financial loss or additional expense necessarily incurred exceeds £11·25 the court may allow such amounts as the court thinks reasonable.

Evidence of loss of wages must be certified by the employer. The amount allowed will be net of income tax and earnings related social security contributions.

EXPLANATORY NOTE

(This note is not part of the Rules.)

These rules provide for the maximum amounts which may be ordered by a Magistrates' Court in a criminal case to be paid by the defendant or, as the case may be, by the prosecutor for solicitors' or counsel's fees or for personal litigants' costs or in connection with the attendance of witnesses at the hearing. The rules replace the Magistrates' Courts (Costs in Criminal Cases) Rules (Northern Ireland) 1985, which are revoked. The new rules increase certain amounts payable in connection with the attendance of witnesses.