

1979 No. 452

JUDICATURE, NORTHERN IRELAND

MAGISTRATES' COURTS

**Magistrates' Courts (Costs in Criminal Cases) Rules
(Northern Ireland) 1979**

Made 14th December 1979

Coming into operation 1st January 1980

The Lord Chancellor in exercise of the powers conferred on him by section 23 of the Magistrates' Courts Act (Northern Ireland) 1964(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) Rules (Northern Ireland) 1979 and shall come into operation on 1st January 1980.

Revocation

2. The Magistrates' Courts (Costs in Criminal Cases) Rules (Northern Ireland) 1978(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.

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

4. Where a magistrates' court makes an order under section 2 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 shall be determined by the Court in accordance with Schedule 1.

(a) 1964 c. 21 (N.I.)

(b) 1968 c. 10 (N.I.) as amended by S.I. 1978 No. 1101 (G.B.)

(c) S.R. 1978 No. 375

Sums payable in connection with the attendance of witnesses

5. Where an order is made by a magistrates' court under section 2 or 3 of the Act for the payment of an amount as compensation for the expense, 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.

Hailsham of St. Marylebone, C.

Dated 14th December 1979.

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

2. Where the court, having regard to the exceptional length, difficulty or complexity of the proceedings, is satisfied that the amounts prescribed by 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 1

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 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 16.4p per mile each way; or
- (b) if the vehicle is a motor-cycle, a sum calculated at the rate of 3.5p 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 7.3p 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 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 £19.65 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 £23.05 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	1.60
Over 10 hours	3.40

PART III

Allowances for services rendered before attendance in court and for loss of remunerative time or equivalent expenses

*Professional witnesses**Examinations 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—

	£
Extract from record	4.05
Examination of a particular aspect of a case	4.65
Examination of a particular aspect of a case of exceptional complexity or involving an unusual length of time	6.60—10.85
Very lengthy examination and/or report taking over 2½ hours	17.90

Consultation 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 £5.00 per hour but not exceeding the limits specified hereunder—

Period of absence from home or place of business	Amount £
Up to 4 hours	15.90
Over 4 hours	31.75

Provided that where such a witness has had to engage a substitute or attends for more than one case at a consultation or in court the sum allowed shall not exceed the expense incurred or the sum claimed up to a maximum of £31.75 irrespective of the length of absence involved.

*Expert witnesses**Examinations 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—

	£
Examination and report (including a second report if required)	30.00
Examination and report of a very special nature or complexity	35.00

Consultation Attendance

(2) Where an expert witness attends a consultation on a non-attendance day at court, there may be allowed an attendance allowance at the rate of £8.00 per hour, or, in exceptional cases, up to £12.00 per hour, subject to a daily maximum of £70.00.

Court Attendance

(3) Where an expert witness attends court to give expert evidence there may be allowed such amount [as is claimed and] as the court considers reasonable but not exceeding the appropriate amount specified hereunder, namely—

Period of absence from home or place of business	£
Up to 4 hours	50.00
Over 4 hours	70.00

Provided that where the expert witness attends for more than one case there may be allowed such amount as the court thinks just subject to a daily amount of £70.00 irrespective of the length of absence involved.

(4) Where an expert witness receives notice of not more than 48 hours of cancellation of his attendance in court he shall be allowed the sum of £15.00.

Ordinary Witness

6.—(1) 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 £6.20: provided that where the court is satisfied, on the production of evidence, that such actual financial loss or additional expense necessarily incurred exceeds £6.20 the court may allow such amount as the court thinks reasonable.

EXPLANATORY NOTE

(This note is not part of the rules but is intended to indicate their general purport.)

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 in connection with the attendance of witnesses at the hearing. The rules replace the Magistrates' Courts (Costs in Criminal Cases) Rules (Northern Ireland) 1978, which are revoked. The new rules increase certain amounts payable in connection with the attendance of witnesses. The amounts payable in connection with legal fees are also increased.