



JCS

Justices' Clerks' Society

England and Wales

News Sheet
No: 05/2006

2nd Floor, Port of Liverpool Building
Pier Head, Liverpool L3 1BY
DX: 715708 Liverpool 14

Tel: 0151 255 0790 Fax: 0151 236 4458

E-Mail: secretariat@jc-society.co.uk

Website: www.jc-society.co.uk

13th March 2006

Ref: 66.0607

CIRCULATED DIRECT TO ALL MEMBERS OF THE JUSTICES' CLERKS' SOCIETY

Dear Colleague

ADMINISTRATIVE COURT DECISION MAKING – EXPERT WITNESS COSTS

News Sheet 16/2005 provided details of a decision of the Administrative Court to refuse permission for Judicial Review in relation to a claim by an expert witness for the “time spent travelling to and from court”.

The news sheet indicated that the decision would have serious implications for the way in which many courts pay interpreters and asked members to inform the Secretariat of any problems arising.

It is clear from the information received that the decision has created difficulties in that interpreters are reluctant to take on work that would involve them in travelling long distances. As a result, the Society has approached the DCA with a view to addressing the issue.

The response of the DCA is that it is their view that payment for attendance at court to give evidence under Regulation 20 can extend to time spent travelling to and from court, within the terms of the guidance in paragraph 4.4 of the DCA Guide to Allowances.

Paragraph 4.4 states that “the attendance fee should reflect total time involved” and “the scales of guidance reflect attendance based on the normal court day and local travel, and should be adjusted upwards if longer journeys are undertaken or the attendance stretches significantly beyond the usual court sitting time”.

The DCA has also advised that the rates mentioned in the Regulations are prescriptive in relation to ordinary and professional witnesses but that in the case of experts they are non prescriptive and are at the discretion of the courts. The DCA guidance further states that the guidance rates should only be exceeded exceptionally.

Courts may therefore conclude that the decision in Vogel could be narrowly construed as simply upholding the right of determining officers to use their discretion under the Regulation, rather than as determining that time spent travelling to and from court cannot be claimed.

Please see below a copy of the DCA letter to the Society addressing the issue (with the agreement of the DCA).

“ADMINISTRATIVE COURT DECISION MAKING - EXPERT WITNESS COSTS

We've been provided with a copy of your News Sheet No: 16/2005 issued following the decision of a single judge to refuse permission for Judicial Review in the case of Vogel v Leeds District Magistrates' Court. You have invited comments from your members on how the observations of the Administrative Court, when refusing permission for Judicial Review, might cause problems when employing court interpreters. I thought we ought to write to you setting out our views on the decision taken in Vogel as it affects both expert witnesses and court interpreters.

We were previously aware of the decision in Vogel as it had been brought to our attention by an expert who sought our guidance. We responded by confirming that the application for permission to apply for Judicial Review was refused on the grounds that payment to experts are at the discretion of the court under regulation 20 of the Costs in Criminal Cases (General) Regulations 1986. However, we further advised that it would be wrong to adduce from this case that payment for time spent travelling to and from court should not be claimed. We reminded the expert of paragraph 4.4 of our Guide to Allowances which states that:-

*“The attendance fee should reflect the total time involved that day, that is, including travelling and waiting time, and also any extended hearing time. The scales of guidance reflect attendance based on the normal court day and local travel, and should be adjusted upwards if longer journeys are undertaken or the attendance stretches significantly beyond the usual court sitting time. Payment of court interpreters' fees, where the court has arranged for the interpreter to attend on behalf of the defendant, is governed by the agreement reached between the court and the interpreter. **See Guidance to Staff in the Crown Court and the Court of Appeal (Criminal Division) on the Procedure for Arranging Interpreters for Defendants – issued by Court Service Headquarters – and Guidance on the Use of Interpreters in the Magistrates' Courts – issued by the Justices' Clerks' Society.**”*

However, we also advised the expert that the Administrative Court appeared reluctant to grant applications to challenge the discretion of the courts in this area.

I hope this assists should you wish to provide further guidance to your members”.

I trust that this further guidance addresses the problems that have arisen following the issue of the original guidance contained in News Sheet 16/2005.

Sid Brighton
Chief Executive

“Putting Justice First”