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Justices' Clerks' Society

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

Dear Colleague

ADMINISTRATIVE COURT DECISION MAKING – EXPERT WITNESS COSTS

I am circulating for information details of a recent 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/from court", as it clarifies an issue not included (correctly, as it turns out, as the decision goes against the applicant) in the Judicial Studies Board Guide. The Claimant is a veterinary surgeon who attended the trial (and an earlier aborted trial) of an RSPCA prosecution for cruelty. He appears in courts across the UK and states that he regularly recovers an allowance (£100 per hour) for time spent travelling to/from court (claiming only where the "travelling" takes more than one hour each way) in addition to the allowances (up to the daily maximum), for travel expenses and hotel fees etc. He was paid his claim in full but the "travelling time" (12 hours @ £100 + VAT) was refused on taxation. He chose to make his claim as an "expert" witness rather than as a "professional" witness. The expert witness "hourly rates / [up to maximum for the] day rates" are far higher than the "period of absence rates" allowed in respect of the professional witness.

In refusing permission for JR, HJ Calvert-Smith made some succinct observations, which clearly set out the correct approach. The court had responded in some detail using the "acknowledgement of service" and were told that the Treasury Solicitor would provide representation if leave had been granted.

Vogel –v- Leeds District Magistrates' Court
CO/3857/2005

"Permission is hereby refused.

Observations:

The Regulations are clear.

Payments to an expert such as yourself are at the discretion of the court. Reg 20 Costs in Criminal Cases (General) Regulations 1986.

They may be made as follows:

1. *For attending to give evidence – Reg 20.*
2. *For work necessary in connection with preparation of that evidence – Reg 20.*
3. *For necessary overnight absences – Reg 21(1).*
4. *For Travel in respect of actual fare paid – Reg 24.*

There is nothing in the Article 6 equality of arms point. The defendant did not suffer as the result of the proper application of the regulations.

“Professional” witnesses, which include veterinary surgeons (Reg 15), may claim for travelling time which the court may grant in its own discretion but are subject to a different regime in respect of their other fees as is pointed out in the Acknowledgement of Service.”

There are serious implications for the way in which many [possibly all] courts pay interpreters (explicitly a form of “expert” under the Regs), especially those for obscure language interpreters who travel the length and breadth of the country – the decision means they cannot be paid “travelling time”, just the travel cost and time at court (min 3 hours for regular interpreters).

The Society is aware that courts do pay the fees demanded by some interpreters, especially where it is an obscure dialect, and no doubt “authorise” payment from central funds even where the Rules do not allow it, but it is difficult to envisage how the courts lawfully pay anything other than the standard hourly rates.

The Society would be interested in learning just how much of a problem exists in relation to interpreters fees and in the light of responses, would consider if this is something that needs to be raised with HMCS or direct with the Lord Chancellor

Sid Brighton
Chief Executive