

Tribunal Circular

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Taking/Receiving evidence from witnesses abroad

This circular sets out a summary of the key issues arising when considering receiving video link or telephone evidence from a witness who is located abroad. This guidance is focussed on MPT hearings as oral evidence is extremely unlikely to be required in IOT hearings.

Summary

Our guidance [Receiving Witness Evidence at MPT Hearings](#) has been updated to reflect the circumstances where, during the course of considering whether to receive oral witness evidence from a witness located abroad, the MPT must consider whether permission from another state is required in order to receive that evidence. This guidance also covers a range of other issues, including guidance for parties and decision makers on vulnerable witnesses and oral evidence in chief.

Please note there is no requirement for permission from another state for video link or telephone evidence:

- ▶ Where a witness is in the UK, a Crown Dependency or British Overseas Territory;
- ▶ Where a person is giving oral submissions or written evidence (rather than oral evidence) from abroad. For registrants presenting their case remotely from a location abroad, the permission process will only apply if they elect to give oral evidence.

Upper Tribunal in *Secretary of State for the Home Department v Agbabiaka*¹

Permission from another state (whether on an individual or general basis) is required before **oral evidence**² can be taken from that state by a court or tribunal in the United Kingdom. The decision in *Agbabiaka* ('Agbabiaka') confirmed that this

¹ [2021] UKUT 286 (IAC)

² Such permission is not considered necessary in the case of written evidence or oral submissions.

requirement applied to immigration tribunals and other “administrative tribunals” as well as courts falling within the jurisdiction of His Majesty’s Court and Tribunal Service (‘HMCTS’).

While the MPTS is not a court or administrative tribunal within that meaning, *Agbabiaka* explains that: “[W]henever the issue arises in a tribunal about the taking of evidence from outside the United Kingdom, the question of whether it would be lawful to do so is a question of law for that country, whether or not that country is a signatory to the Hague Convention... In all cases, therefore, what the Tribunal needs to know is whether it may take such evidence without damaging the United Kingdom’s diplomatic relationship with the other country.” [19 – emphasis added].

Role of the Foreign, Commonwealth and Development Office (FCDO)

The FCDO has established a Taking of Evidence Unit (‘ToE Unit’) with the role of ascertaining whether overseas states object to the taking of oral evidence from individuals within their territory.

The FCDO has compiled a list of states where their general position on permission is known. For states which are either not listed, or where the state has indicated that permission on an individual basis must be requested (before some or all tribunals), the ToE Unit must be approached to seek permission of the relevant state in respect of each and any individual intending to give evidence from that state. Where a party informs the MPTS with sufficient notice, the MPTS will contact the ToE Unit directly to seek permission to receive evidence from a witness who is/will be abroad if the country/state is not on the FCDO’s list, or where the list indicates that permission on an individual basis is required. This approach will apply from 1 November 2023 for hearings starting from 22 January 2024.

Where a party fails to notify the MPTS, either at all or in insufficient time, the MPTS may decline to assist the party in obtaining permission. If a party fails to obtain permission, the witness evidence may be rendered inadmissible.

Decision making

MPTS Case Managers will continue to decide video link and telephone evidence applications in advance of the hearing where they can do so. MPTS Case Managers cannot determine disputed remote evidence applications unless they relate to a vulnerable witness.

Where tribunals need to make decisions on whether or not to permit video link or telephone oral evidence from a witness, our guidance sets out:

- ▶ How to approach applications relating to witnesses in the UK – from page [13];
- ▶ How to approach applications relating to witnesses outside the UK, including considerations that apply specifically to: (i) nationals and citizens; and (ii) tourists – from page [16];
- ▶ Additional considerations when the person located abroad is the practitioner whose case is under consideration – from page [22].

Kind regards
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