



## TRIBUNALS JUDICIARY

### PRACTICE STATEMENT

#### FIRST-TIER TRIBUNAL (TAX CHAMBER)

#### WITNESS SUMMONSES AND ORDERS TO PRODUCE DOCUMENTS

This Practice Statement has been made by the Chamber President to give guidance to the Tribunal and to Tribunal users on the practice adopted in relation to the issue of witness summonses and orders to produce documents in the Tax Chamber.

##### Introduction

Rule 16 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ("Tax Chamber Rules") provides that, on the application of a party or on its own initiative, the Tribunal may:

- (a) by summons (or, in Scotland, citation) require any person to attend as a witness at a hearing at the time and place specified in the summons or citation; and
- (b) order any person to answer any questions or produce any documents in that person's possession or control which relate to any issue in the proceedings.

In this Practice Statement, unless otherwise indicated, references to the issue of a witness summons includes the issue of a citation in Scotland and also include an order for the production of documents or to answer questions, whether associated with the issue of a summons or made independently.

##### Application for a witness summons

###### *Territorial limitation*

The Tribunal cannot issue a witness summons to an individual unless that individual is in the UK or otherwise has a presence in the UK, such as a residential address or place of business. The Tribunal may issue a summons to an individual who lives outside the UK but who is temporarily in the UK, but will exercise caution before doing so. The Tribunal will take account of the requirement for the efficient conduct of the proceedings.

###### *Prior request to witness*

In a normal case, no application for a witness summons should be made by a party unless that party has first requested the witness to attend, and any of the following apply: (i) the witness has refused to attend; (ii) the witness has not indicated willingness to attend, despite being requested to do so; (iii) the witness has agreed to attend, but the applicant has reason to believe that the witness will not do so; or (iv) the witness has agreed to attend, but only on condition that a summons is issued. This latter situation may arise, for example, if a witness needs to produce evidence, such as to an employer, of the requirement to attend the Tribunal, or if confidentiality obligations would otherwise prevent the witness from agreeing to give evidence.

If, exceptionally, a party has a reason for not making a prior request for the witness to attend voluntarily, the application must set out that reason.

*Relevance of evidence*

In order for a witness summons to be issued, the Tribunal must be satisfied that the evidence sought to be obtained is relevant to the issues in the proceedings. Relevance is to be tested by reference to the stated cases of the parties.

*Procedure on application*

An application for a witness summons must be in writing. It must be delivered to the Tribunal and, unless the Tribunal otherwise directs, served on all parties to the proceedings and, in normal circumstances, on the proposed witness.

The application must include:

- (a) the name and UK address of the proposed witness;
- (b) where the proposed witness lives outside the UK, but is temporarily in the UK, evidence of the connection of the proposed witness in the UK;
- (c) the nature and relevance of the evidence which the proposed witness is expected to be able to give. Relevance must be shown by reference to the stated cases of the parties;
- (d) the reasons why the Tribunal should consider that there is a real likelihood that the evidence will materially assist the Tribunal in its determination of an issue or issues in the proceedings;
- (e) in the case of an application for an order for production of documents (whether alone or in conjunction with the issue of a witness summons), the specific documents or class of documents sought to be produced, and why it is considered that those documents are in the possession or control of the person concerned;
- (f) in the case of an application for a separate order that a person answer questions, the precise questions that are sought to be put;
- (g) either evidence of a prior request to the witness to attend voluntarily and of the reason why the applicant considers the witness will not attend voluntarily or, exceptionally, the reason why no prior request has been made;
- (h) the reasons why the application has been made at the time it is made;
- (i) if it is not intended to serve the application on the proposed witness, the reasons for not doing so;
- (j) a statement setting out why the applicant considers the issue of a summons would not cause unfair prejudice to any other party, and why it would be in the interests of justice for the Tribunal to issue the summons; and
- (k) a statement setting out what provision is to be made in respect of payment of the necessary expenses of the witness in attending the tribunal hearing, and who is to pay those expenses.

An application may be rejected if it does not comply with these requirements.

*Service of application on the proposed witness*

In normal circumstances a copy of the application should be served on the proposed witness. That will enable the witness to have the opportunity to object to the summons before it is issued.

If, because of urgency or other circumstances, it is not considered appropriate for the application to be served on the proposed witness, the Tribunal *may* issue the summons without requiring such service. In such a case, under Rule 16(4) and (5), the person who receives the summons may apply to the Tribunal for the summons to be varied or set aside.

**Determination by Tribunal**

If no objection, from another party or from the proposed witness, is received within 14 days after service of the application on them, the Tribunal will normally determine the application without a hearing.

If an objection is made, the Tribunal will consider whether it is able to determine the application without a hearing. If so it will determine the application on the papers.

Otherwise, the Tribunal will list a hearing of the application at which the applicant, the other party to the proceedings and the proposed witness (if served with the application), will be entitled to attend and be represented.

On an application by a proposed witness for a summons to be varied or set aside, the Tribunal will normally list a hearing.

**Issue of the summons or order**

If the Tribunal determines that a summons or order should be issued, it will prepare and issue the summons or order in accordance with Rule 16.

A witness summons will include:

- (a) a requirement that the named witness attend a hearing of the Tribunal. The requirement may be in respect of a hearing on a specific date, and at a specific time, or a future hearing the date of which is to be notified to the witness. In either case, unless the Tribunal directs (which it will only do in exceptional cases) a shorter period, at least 14 days' notice of the hearing will be given;
- (b) where known, the date, time and place where the witness is required to attend;
- (c) the nature of the evidence the witness will be asked to give;
- (d) the documents, or class of documents, required to be produced;
- (e) what provision is made for the witness' necessary expenses of attendance, and who is to pay them;

(f) a statement of the right of a witness who did not have the opportunity to object to the issue of the summons before it was made to apply for it to be varied or set aside; and

(g) a statement of the consequences of failure to comply with the summons.

### **Witness statement of summoned witness**

The Tribunal has no jurisdiction to require a summoned witness to prepare and serve a witness statement, although it would be helpful if such a witness were to do so. If a witness statement is prepared, it should be served on all parties to the proceedings, together with copies of all exhibits.

If the summoned witness does not serve a witness statement, the Tribunal may:

(a) exercise its power under Rule 16 to require the summonsed witness, as a separate matter, to answer questions; and/or

(b) direct a preliminary hearing (to which the witness would also be summoned to attend) for the purpose of examination-in-chief of the witness.

### **Parties' approach to a summoned witness**

Any party to the proceedings may properly approach the summoned witness, and produce for that witness any documents that have been disclosed for the purpose of the proceedings, provided that:

(a) in doing so there is no breach, or contemplated breach, of an obligation of confidentiality;

(b) that party discloses to the witness their interest in the proceedings; and

(c) all correspondence and documents passing between that party and the witness is disclosed to the other parties, and any conversations are recorded in writing and the written note is disclosed to the other parties.

### **Failure of witness to comply with summons**

If a summoned witness fails to comply with a summons, or there is a failure to comply with an order for production of documents or to answer questions, under Rule 7(3) of the Tax Chamber Rules the Tribunal may refer the matter to the Upper Tribunal and ask the Upper Tribunal to exercise its powers under section 25 of the Tribunals, Courts and Enforcement Act 2007 ("the 2007 Act").

Under section 25 of the 2007 Act, the Upper Tribunal has, in England and Wales, the same powers in this respect as the High Court, and in Scotland of the Court of Session. If it finds the summoned witness, or other relevant person, in contempt of court, it may impose a penalty up to a maximum of two years' imprisonment and an unlimited fine.

### **Necessary expenses of attendance**

The following are regarded as falling within the scope of "necessary expenses of attendance" of a witness, which must be provided for:

(a) out-of-pocket expenses, including travelling, accommodation and subsistence expenses (as relevant); and

(b) financial loss incurred by the witness as a direct consequence of appearing as a witness.

In relation to the category of financial loss at (b) above, the amount to be provided for is limited to the amounts payable to witnesses in High Court proceedings in respect of loss of earnings.

The current limits are set out in the Guide to Allowances under Part V of the Costs in Criminal Cases (General) Regulations 1986, published by the Ministry of Justice, Criminal Remuneration Branch in June 2007. A copy of that Guide may be downloaded via the following link:

[Guide](#) to Allowances

**Colin Bishopp**  
**President, First-tier Tribunal (Tax Chamber)**  
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