



First Tier Tribunal (Property Chamber)

Presidential Guidance Note 1 of 2022 Giving Evidence from Abroad

This guidance is issued to draw the attention of judges and parties in proceedings in the First Tier Tribunal Property Chamber ('the Tribunal') to the decision of the Upper Tribunal in ***Agbabiaka (evidence from abroad; Nare guidance)*** [2021] UKUT 286 (IAC), concerning the procedure to be followed when a party to a case wishes to rely upon oral evidence given by video or telephone by a person (including the party themselves) who is abroad i.e. in the territory of a Nation State other than the United Kingdom.

When permission is needed

The Tribunal continues to offer remote hearings by video and telephone conferencing to parties in a number of instances, including for full hearings. The default position is that if you and your witnesses are due to attend such a hearing, the Tribunal expects you will be doing so from within the jurisdiction of the United Kingdom.

Increasingly, the Tribunal has been informed only on the date fixed for hearing that a party or their witness is outside of the jurisdiction of the United Kingdom and expects to give evidence by video or telephone link from abroad.

There is no automatic right to do so, including from other European countries, in which pre-Brexit reciprocal arrangements no longer apply.

If a party or any of their witnesses intend to give evidence from somewhere that is not in the United Kingdom, meaning that they are outside the jurisdiction of the Tribunal, case law now provides that they must prove to the Tribunal that there is no legal or diplomatic barrier to the Tribunal taking that evidence from them, from the country or state in which they are located. In ***Agbabiaka***, the principle was stated as follows:

There has long been an understanding among Nation States that one State should not seek to exercise the powers of its courts within the territory of another, without having the permission of that other State to do so. Any breach of that understanding by a court or tribunal in the United Kingdom risks damaging this country's diplomatic relations with other States and is, thus, contrary to the public interest...Whenever the issue arises in a tribunal about the taking of evidence from outside the United Kingdom ... 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... it is not for this (or any other)

tribunal to form its own view of what may, or may not, damage the United Kingdom's relations with a foreign State.

The Tribunal has therefore put in place procedures for obtaining confirmation that there is no legal or diplomatic barrier to a party or their witness giving evidence to it from abroad. In all cases, whether a party or witness may give evidence from abroad remains at the discretion of the Tribunal, even where the country in question has no objection.

Process

Permission to rely on evidence from abroad will only be given where:

- (a) The country in which the witness is situated does not object;
- (b) The Tribunal then decides, in its discretion, also to give permission.

Stage 1

The party seeking to rely on oral evidence from abroad must notify the Tribunal of their intention to do so, and request that the Tribunal contacts the Taking of Evidence Unit of the Foreign and Commonwealth Office to establish that there is no legal, diplomatic or other barrier. The Tribunal will then liaise with the Taking of Evidence Unit on the party's behalf to establish that there is no objection in principle, and whether there are additional processes that must be completed conditional to consent being given.

Stage 2

If the country in question objects, or places conditions on consent that are not achievable (whether due to time constraints or otherwise), the party will not be permitted to rely on oral evidence from abroad, instead the witness may rely on the detailed written witness evidence of the individual in question. The Tribunal will consider the appropriate weight to give such written evidence.

If it is established that there is no diplomatic or other barrier to evidence being given from the country in question, the party seeking to rely on oral evidence from abroad must then apply to the Tribunal to rely on such evidence. The Tribunal will consider whether it is fair, just and reasonable in accordance with the overriding objective in rule 3 of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 to permit the party seeking to adduce oral evidence from abroad to do so.

Complying with the process

Details of how to comply with this process are available from the Tribunal. Please note that the processes are different for the Residential Property, the Land Registration and the Agricultural Land and Drainage Division. You should contact the Tribunal staff to obtain the appropriate procedural guidance as early in the proceedings as possible.

Judge Siobhan McGrath
Chamber President
16 August 2022