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**First Tier Tribunal (Property Chamber)**

**Presidential Guidance Note 1 of 2024**

**Giving Evidence from Abroad**

This guidance revokes and replaces the Presidential Guidance Note 1 of 2022.

This Guidance Note 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), and concerns the revised 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.

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 Tribunalthatthere 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 Senior President of Tribunals has clarified that the Property Chamber is a Civil and Commercial Tribunal. The procedures to be adopted when a party or witness wishes to give oral evidence from abroad has therefore been clarified as follows.

In all cases, the final decision 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:

1. The country in which the witness is situated does not object;
2. The Tribunal then decides, in its discretion, also to give permission.

***Stage One***

Permission from the country in question is **NOT** required where individuals wish to give video and telephone evidence from within the United Kingdom, i.e. anywhere in England, Wales, Scotland or Northern Ireland; Crown Dependencies like Jersey, Guernsey or the Isle of Man; or British Overseas Territories: Anguilla, Bermuda, British Antarctic Territory, British Indian Ocean Territory, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn, Henderson, Ducie and Oeno Islands, St Helena, Ascension and Tristan da Cunha, South Georgia and the South Sandwich Islands, The Sovereign Base Areas of Akrotiri and Dhekelia, Turks and Caicos Islands and Virgin Islands. Those individuals should provide their ***Stage Two*** application to the Tribunal (below).

The party seeking to rely on oral evidence from abroad from a country not listed above must take one of the following routes to obtaining permission from the country in question:

Step 1: FCDO records unconditional consent

If the FCDO has published a response from the country concerned giving unconditional consent to evidence being taken from within its jurisdiction, the requesting party should provide their ***Stage Two*** application to the Tribunal (below). The list can be found here: <https://www.gov.uk/guidance/taking-and-giving-evidence-by-video-link-from-abroad>

If:

1. there is no record of consent from the country,
2. the consent recorded is conditional,
3. the consent recorded does not apply to civil and commercial courts and tribunals, or
4. The individual seeking permission is not a citizen or lawful resident of the country concerned,

then move to Step 2.

Step 2: Hague Convention Signatories

If the country in question **is a Hague Convention** signatory (check here: [HCCH | #20 - Authorities](https://www.hcch.net/en/instruments/conventions/authorities1/?cid=82)), each person who wishes to give evidence must contact the country in question to enquire whether they need its permission for the direct taking of oral evidence via video link/telephone from that country.

1. **If the country concerned confirms that you/your witness can proceed with no further formalities**, provide your stage two application to the Tribunal (below) accompanied by:
2. evidence that the country concerned has confirmed you can proceed even though you/your witness are not a citizen/lawful resident;
3. confirmation that the country concerned is a Hague Convention signatory.
4. **If the country concerned requires a formal letter of request**, each person who wishes to give evidence from the country concerned must contact the Central Authority in England and Wales for the Taking of Evidence under the Hague Convention, which is the Foreign Process Section (‘FPS’) in the Royal Court of Justice, to check the formal arrangements. The FPS will also answer any questions. There may be a fee:

Email:  [foreignprocess.rcj@justice.gov.uk](mailto:foreignprocess.rcj@justice.gov.uk)

Tel:       020 3936 8957, option 7 (Foreign Process Section)

1. **Once you/your witness has written confirmation that the country concerned has given consent**, provide your ***Stage 2*** application to the Tribunal (below) accompanied by:
2. Evidence that the country concerned has given its consent for you/your witness to proceed;
3. Confirmation the country concerned is a Hague Convention Signatory.

There may be a fee for this process. The Tribunal is not able to waive the fee or provide Help with Fees for these requests.

Step 3: Non-Signatory to the Hague Convention

If the country concerned is a non-Hague Convention country, you/your witness must contact the FPS to ask them to prepare a **Letter of Request for Taking of Evidence by Video Conference/Telephone**.

A separate letter of request is required for each witness. Each request will incur a fee of £150. The Tribunal is not able to waive the fee or provide Help with Fees for these requests.

You/your witness will need to tell the FPS the following information:

1. the nature of the proceedings for which the evidence is required, giving all necessary information with regard to them,
2. the questions to be put to the person to be examined, or the subject matter about which he is to be examined, and
3. local language translations must be included.

The FPS can be contacted to advise further about this process:

Email:  [foreignprocess.rcj@justice.gov.uk](mailto:foreignprocess.rcj@justice.gov.uk)

Tel:       020 3936 8957, option 7 (Foreign Process Section)

Once you/your witness has received confirmation that the country concerned has given its consent, provide your ***Stage Two*** application to the Tribunal (below) accompanied by evidence that the country concerned has given its consent.

***Objections***

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 must either attend or 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.

***Stage 2***

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 and Agricultural Land and Drainage, and the Land Registration Division. You should contact the Tribunal staff to obtain the appropriate procedural guidance as early in the proceedings as possible.

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**Judge Siobhan McGrath**

**Chamber President**

14 August 2024