



First-tier Tribunal (General Regulatory Chamber) Presidential Guidance Note: Number 1 of 2025

TAKING ORAL EVIDENCE FROM ABROAD

This guidance replaces the Presidential Guidance Note Number 2 of 2022, which shall no longer have effect from the date of this document. It follows new arrangements agreed by HM Courts and Tribunals Service (HMCTS) and the Foreign, Commonwealth & Development Office (FCDO).

INTRODUCTION

1. 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. The giving of oral evidence from another Nation State ("the foreign State") requires the permission of that State.
2. This Guidance is issued to assist with the procedure when a person wishes to participate in a hearing by video or audio from outside the United Kingdom.

REQUIREMENT FOR PERMISSION

The requirement for permission

3. Subject to paragraph 8 below, where a party wishes to rely on live oral evidence by video or audio from abroad, the person seeking to rely on that evidence will, in all cases, need permission from the Tribunal.
4. Permission is required even where no legal or diplomatic objection has been raised by the country in question.
5. The obligation to obtain judicial permission to adduce oral evidence from abroad rests on the person wishing to rely on that evidence.
6. When considering whether to grant permission, the Tribunal will need to be satisfied that the foreign state in question consents and that no legal or diplomatic barriers prevent the witness from giving evidence in the territory in which they are situated. Each case will be considered upon its own merits. It shall remain a matter of judicial discretion by reference to the overriding objective (found at Rule 2 of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 ('the 2009 Tribunal Rules')), whether such oral evidence should be admitted.

Circumstances where permission is not required.

7. Permission is not needed for written evidence, or for submissions (whether oral or written).

8. Permission is not required where an individual wishes to give video or 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 the British Virgin Islands.

THE PROCESS

9. Authority has now been sought from all States with whom there exists a diplomatic relationship for permission in Tribunal proceedings to take live video or audio evidence from within a foreign State's jurisdiction. Responses from those countries are now published on FCDO's website.
10. The party seeking to rely on live oral evidence by video or audio from abroad should check the FCDO website for information about whether a country has given permission for the use, in Tribunal proceedings, of live video or audio evidence taken from within their jurisdiction. This is published at following link:
<https://www.gov.uk/guidance/taking-and-giving-evidence-by-video-link-from-abroad>.

Countries that have objected

11. If a foreign state has expressly objected/refused permission, then oral evidence from that foreign state cannot be taken.

Countries which have consented, countries which have not responded to the FCDO and countries that have specified that individual permission is required.

12. The following guidance should be considered by the person seeking to rely on calling oral evidence from abroad bearing in mind that if they wish to make their own enquiry for permission from the relevant overseas state, they will have to pay a fee (see below):
 - a) whether it is necessary for the witness/party to give oral evidence,
 - b) whether the witness/party could address the disputed issues adequately through a written statement.
 - c) whether the appeal could be considered on the papers
13. The party seeking to rely on live oral evidence from abroad should **EITHER**
 - a) Complete the required details in response to question 2.5 of the 'GRC Case Management Questionnaire' (which is sent by the Tribunal to the parties upon the filing of an appeal). This will be treated by the Tribunal as a request for permission to rely on live oral evidence from abroad; or
 - b) Make a request for permission to rely upon live oral evidence from abroad using Form GRC5. This request should be supported by:
 - (i) the name of the proposed witness;
 - (ii) the foreign state from which they will be giving evidence;
 - (iii) evidence of their citizenship or residence in that foreign state;

(iv) an explanation as to why the evidence is necessary by reference to the disputed issues.

14. The request will be considered by a Judge or Registrar of the Tribunal.

In the case of consenting countries

15. The Tribunal may grant permission to hear oral evidence from abroad where a foreign state has consented.

Countries that have specified individual permission is required or countries that have not replied to the FCDO.

16. The FCDO may be able to make additional enquiries with the foreign state in question ("Country X").
17. If the proposed evidence is likely to be relevant to the disposal of the appeal, the Judge or Registrar will instruct HMCTS administration to inform the requestor to contact the Taking of Evidence from Abroad Unit ('ToEU') on toe.enquiries@fcdo.gov.uk. The ToEU will need the relevant details of the case including the date of the hearing, whether the witness is a resident or citizen of Country X, and the type of Tribunal. The ToEU will contact the requester directly if further details are required.
18. The ToEU will send the requestor details on how to pay the Consular Fee, currently £150, for the service. This fee is payable directly to FCDO. HMCTS do not have the power to reduce or remit this fee. Requesters pay the same fee for the service, no matter where they are in the world. The fees are approved by the Privy Council and laid before Parliament. Once the ToEU receive payment confirmation, they will send the requester a holding reply to acknowledge receipt of payment and advise them of next steps.
19. The ToEU will contact the Embassy or High Commission who will check with the Ministry of Foreign Affairs ('MFA') if the Government of Country X has any objection to residents or nationals of Country X providing evidence by video link from Country X to administrative tribunals in the UK. The MFA will be given a deadline of six weeks to respond.
20. The Tribunal will further consider the request for permission to rely on oral evidence from abroad as soon as possible after receipt of the ToEU information.
21. If the ToEU notify the requester that permission has been granted, then the Tribunal may give permission for that evidence to be taken.
22. If the foreign state in question has offered a conditional grant of permission, then the Tribunal may only admit the proposed oral evidence if satisfied that the party in question has met the conditions imposed.
23. If the foreign state in question requires more information, the Tribunal will consider whether in the circumstances it is appropriate for further time to be given by reference to the overriding objective in rule 2 of the 2009 Tribunal Procedure Rules.
24. If the Government of Country X does not respond by the six-week deadline, then the ToEU will inform the requester that given the lack of response, the FCDO recommends that the taking of evidence should not take place at this time. The requester should then inform the Tribunal. In such cases, the Tribunal should proceed

on the basis that it cannot be satisfied that permission has been given and should refuse to admit the oral evidence.

PRACTICAL ARRANGEMENTS WHEN HEARING ORAL EVIDENCE FROM ABROAD

25. The party relying on the oral evidence should ensure the witness is available to participate in the hearing at the appointed time.
26. That party will be responsible for providing the Tribunal with the witness' email address so that joining links can be sent to the witness.
27. The Tribunal shall only use approved platforms to take oral evidence from abroad by video link, such as the Video Hearing Service or Cloud Video Platform. More information on these platforms may be obtained from <https://www.gov.uk/guidance/what-to-expect-when-joining-a-telephone-or-video-hearing>

IN ALL CASES - DELAY

28. There may be delay in proceedings if the FCDO needs to contact an overseas Embassy or High Commission. It will always be a matter for judicial discretion by reference to the Overriding Objective as to whether the listing of the application or appeal should be refused or delayed to await that reply.
29. The Tribunal will balance the prospect of delay while seeking to ensure that insofar as is reasonably practicable, the best evidence is before the Tribunal in accordance with the overriding objective set out in Rule 2 of the 2009 Tribunal Procedure Rules.
30. The following are likely to be relevant considerations for the Tribunal:
 - (a) whether it is necessary for the witness to give oral evidence by reference to the disputed issues.
 - (b) whether the witness could address the disputed issues adequately by providing written answers to questions posed by the opposing party; and
 - (c) whether delay could be avoided altogether by the witness travelling to a third country where it is known there are no diplomatic objections to the giving of oral evidence.

Judge Mark O'Connor
Chamber President (General Regulatory Chamber)
February 2025