



TRIBUNALS  
JUDICIARY

## UPPER TRIBUNAL IMMIGRATION AND ASYLUM CHAMBER

### GUIDANCE NOTE 2013 No 2: Video link hearings

This guidance note is issued under paragraph 7 of Schedule 4 to the Tribunals, Courts and Enforcement Act 2007 (“the 2007 Act”).

#### The relevant rules

1. In rule 1 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (“the Upper Tribunal Rules”), a “hearing” is defined as “an oral hearing and includes a hearing conducted in whole or in part by video link, telephone or other means of instantaneous two-way electronic communication”.
2. Rule 2 states that the overriding objective of the UT Rules “is to enable the Upper Tribunal to deal with cases fairly and justly”. Rule 2(2) explains that dealing with a case fairly and justly includes-
  - “(a) dealing with the case in ways that are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;
  - (b) avoiding unnecessary formality and seeking flexibility in the proceedings;
  - (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
  - (d) using any special expertise of the Upper Tribunal effectively; and
  - (e) avoiding delay, so far as compatible with proper consideration of the issues.”
3. Rule 5 provides that, subject to the provisions of the 2007 Act and any other enactment, “the Upper Tribunal may regulate its own procedure, including by giving directions. Rule 5(3)(g) states that, in particular, the Upper Tribunal may “decide the form of any hearing”.

#### General principles

4. The ideal form of hearing in UTIAC is where the appellant<sup>1</sup>, the supporting witnesses and the advocates are all physically present in the same courtroom

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<sup>1</sup> In this Guidance, references to the appellant are references to the person who was the appellant in the appeal before the First-tier Tribunal.

as the judge<sup>2</sup>. Such an arrangement gives the Tribunal the best opportunity to evaluate the appellant and witnesses as they give their evidence, receive new documentary information, and maintain an informed dialogue with the advocates.

5. However, it is recognised that there are occasions when all or part of the hearing may need to be conducted by video link in order to give effect to the overriding objective (see above); in particular, to ensure participation, avoid delay and avoid excessive cost.
6. The decision whether to conduct a hearing by video link is a matter for directions by a judge on an application duly made by a party.
7. UTIAC sits outside London at certain court and/or tribunal hearing centres. Where a party and his or her advocate reside (or are otherwise based) in the UK outside reasonable travelling distance from UTIAC's main hearing centre<sup>3</sup>, it may be appropriate to apply for a transfer of venue from London to one of those hearing centres, rather than to apply for a hearing by video link.
8. An application to hear a party, witness or advocate by video link must be made by a party to UTIAC in writing, as soon as possible after permission to appeal to UTIAC has been granted, and in any event, must be made not later than 5 working days after the date the notice of hearing in UTIAC was sent out.
9. Wherever possible, the party making the application should first consult with the other party, with a view to securing agreement as to the application (including its terms). In any event, the application should state whether the other party has been consulted and what views, if any, that other party has expressed concerning the application.
10. Every application should explain:
  - a. why the application is made and why any alternatives would be impractical;
  - b. what arrangements are proposed and who will bear the costs of them; and
  - c. in the event that the application is granted, the latest time by which any consolidated and paginated bundle of documents to be used at the hearing will be available.

### **Video links between sites in the UK**

11. UTIAC prefers a video link to be between the hearing centre specified in the notice of hearing and another UTIAC hearing centre, convenient to the parties, where there is a court clerk to assist in the conduct of the proceedings. In such a situation, the expectation is that the appellant<sup>4</sup>,

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<sup>2</sup> In this Guidance, references to a judge are references to the member or members of UTIAC assigned to hear the appeal.

<sup>3</sup> Field House, 15 Breams Buildings, London, EC4A 1DZ

<sup>4</sup> See fn 1 above.

witnesses, advocates (including the Home Office's presenting officer) and any Tribunal-appointed interpreter will all be present in the courtroom in the other hearing centre, together with any members of the public who wish to observe the proceedings<sup>5</sup>.

12. In certain circumstances, it may be possible for advocates to participate by video link with Field House from suitable professional premises (with the costs involved being borne by the party making the application). In such circumstances, the expectation described in paragraph 11 above may need to be modified; for example, by the other advocate being present in the courtroom in which the judge is present or in a suitable third location (provided that relevant technology is available and sufficiently reliable). It is unlikely that the use of professional premises as described in this paragraph will be appropriate where it is proposed that oral evidence should be taken from those premises.

### **Video links in overseas cases**

13. An application to receive oral evidence from an appellant<sup>6</sup> or witness who is overseas is unlikely to be granted unless it is established to UTIAC's satisfaction by the party making the application that:
  - a. the time and effort involved in making those arrangements are likely to be reasonable and proportionate, given the nature of the case (see paragraphs 2, 4 and 5 above);
  - b. technological and logistic arrangements are in place so that the evidence can be received at the time required;
  - c. The appellant or witness will be giving evidence from a location at which arrangements are in place to satisfy the Tribunal that the circumstances in which the evidence is given are appropriate;
  - d. the identity of the appellant or witness can be established satisfactorily;
  - e. the Tribunal can be satisfied as to who else will be present while that evidence is being given;
  - f. the costs of hearing the evidence will be borne by the party making the application; and
  - g. all such inquiries as may be required by paragraph 14 below have been made and that no objection has been forthcoming from the foreign government concerned.
14. It should not be presumed that all foreign governments are willing to allow their nationals or others within their jurisdiction to be examined before a tribunal in the United Kingdom by means of video link. If there is any doubt, the party making the application should make appropriate enquiries with the Foreign and Commonwealth Office (International Legal Matters Unit,

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<sup>5</sup> In certain circumstances, the Upper Tribunal may give a direction under rule 37 of the Upper Tribunal Rules that a hearing, or part of it, is to be held in private. Subject to that qualification, the public are also entitled to be present in the courtroom in which the judge is present.

<sup>6</sup> See fn 3 above.

Consular Division), with a view to ensuring that no objection will be taken at diplomatic level.

**Certificate of compliance**

15. Where permission has been granted for a party, witness or advocate to participate in a hearing by video link, the party requesting that permission shall provide the Tribunal with written confirmation, to be received not less than 7 working days before the date of that hearing, that the arrangements specified in UTIAC's grant of permission are in place. Failure to comply with the requirement to submit a certificate of compliance is likely to result in permission to participate by video link being withdrawn.

The Hon Mr Justice Blake  
30 September 2013