

## **First Tier Tribunal (Property Chamber) (Residential Property)** **Guidance Note for Parties: Giving Evidence from Abroad**

1. The Tribunal continues to offer remote hearings by video and telephone conferencing to parties in a number of instances, including for full hearings.
2. The expectation of the Tribunal is that if you and your witnesses are due to attend a hearing, you will be doing so from within the jurisdiction of England and Wales.
3. Increasingly the Tribunal has discovered only on the date fixed for hearing that a party or their witness is abroad, and expects to give evidence by video or telephone link from outside the jurisdiction of England and Wales.
4. There is often no automatic right to do so. This has been particularly affected by Brexit, meaning that former reciprocal arrangements must now be checked.
5. If you or any of your witnesses intend to give evidence from somewhere that is not in the United Kingdom, meaning that you or they are outside the jurisdiction of the Tribunal, **case law now provides that you must prove to the Tribunal** that there is no legal or diplomatic barrier to the Tribunal taking that evidence from you, from the country or state in which you or your witness is staying (*Agbabiaka (evidence from abroad, Nare guidance) Nigeria* [2021] UKUT 286 (IAC) (26 October 2021)).
6. In practice, however, the HMCTS administration will undertake obtaining this proof on your behalf. To take advantage of this service you must contact the case officer for your case as soon as possible, and in any event **no later than 5 days after you receive the Tribunal's Directions**. If you do not do so as early as possible there is a chance that you will not get confirmation in time for the hearing.
7. You must provide the case officer with the following information:
  - the name of that person (if it is you, your full name);
  - the country the person would be giving evidence from; and
  - what the evidence would be about.
8. The Tribunal office will then contact the Taking of Evidence Unit ('TOE') of the Foreign, Commonwealth and Development Office ('FCDO'), to establish whether they are aware of any legal or diplomatic objection by the country from which you or your witness intend to give evidence to the Tribunal by video or telephone.
9. If the response from TOE is that the country has given consent, the case officer will notify you as soon as possible and send you a Form Order<sup>1</sup> to complete. Completion of this form is required because even when the TOE indicates that the state concerned has given consent, whether you/your witness will be given permission to give evidence from abroad in your particular case **remains at the discretion of the Tribunal**. You must therefore apply to the Tribunal using Form Order<sup>1</sup> (<https://www.gov.uk/government/publications/ask-the-first-tier-tribunal-property-chamber-for-case-management-or-other-interim-orders>) for permission to rely on the oral evidence.
10. The Form Order<sup>1</sup> must be emailed back to the Tribunal and copied to all other parties to the case. The subject line of your email must be marked with the address of the property and case number. **It must** provide the following information so that appropriate case management steps can be taken:

- The time-difference between London (whether GMT or BST) and the country from which you will present your case/your witness will give evidence;
- A written explanation from you or from your witness, explaining why you are not able to attend the hearing from inside the jurisdiction of England and Wales;
- Confirmation that you/your witness have access to the necessary equipment (a laptop or tablet) and reliable internet connectivity for the purposes of attending the hearing;
- Confirmation that you are requesting that you be given permission for your/your witness's oral evidence to be given from the country in question;
- Why a detailed written witness statement is not sufficient and oral evidence is necessary.

11. If the response from TOE is that the country has not given its consent for you to present your case or your witness to give evidence by video or telephone, then you/your witness will be permitted to rely on detailed written evidence signed with a statement of truth. The weight to be attached to that written evidence will be decided by the Judge, taking into account that you or your witness is not able to be questioned on the contents.

12. If there is a delay in response from TOE, so that by **two calendar weeks before** the hearing the Tribunal has not been able to confirm your or your witness's ability to give oral evidence to the Tribunal from the country in which you/they are staying, the Tribunal will consider whether or not to permit a postponement to allow time for receipt of TOE's response.

13. If the Tribunal needs to consider a postponement, you will need to make an application using Form Order1 by email to the Tribunal and to all other parties in the case, explaining why the postponement should be granted instead of the Tribunal deciding the case on your or your witness's written evidence.

14. The Tribunal will determine the postponement application in accordance with the overriding objective, taking into account amongst any other relevant matters any avoidable delay in notifying the Tribunal of your/your witness's intention to give evidence from abroad, the availability of detailed written evidence provided in accordance with case management directions, and the relative prejudice to each party in granting or refusing the adjournment.

15. Please note, the Tribunal cannot offer you additional guidance on this issue, beyond the contents of this Guidance Note.

16. If you do not follow this process, it is likely that you or your witness will not be permitted to give evidence from abroad.

Updated June 2022