



IMMIGRATION AND PUBLIC LAW

GOLDSMITH
CHAMBERS

“REMOTE HEARINGS AND EVIDENCE FROM WITNESSES WHO ARE OVERSEAS”

16TH FEBRUARY 2021

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GOLDSMITH
CHAMBERS

INTRODUCTION

- ▶ (i) timetabling and pre-hearing planning
- ▶ (ii) what to consider and do before calling a witness who is overseas
- ▶ (iii) the remote hearing day itself

TIMETABLING AND PRE-HEARING PLANNING

- ▶ -ASA: 28 DAYS AFTER RESPONDENT BUNDLE OR 42 DAYS AFTER ACK OF NOTICE OF APPEAL WHICHEVER IS LATER
- ▶ -STATE THE CASE: ANY NEW MATTERS?
- ▶ -BUNDLE TO ACCOMPANY THE ASA
- ▶ -MAY RESULT IN A CONCESSION AND A GRANT OF LEAVE!

QUESTIONS TO ASK

- ▶ CMRH: YOU CAN REQUEST ONE IF NEEDED
- ▶ -ANY MISSING EVIDENCE? BUNDLES? ASA/REVIEW?
- ▶ -WITNESSES/OVERSEAS?
- ▶ -ANY OTHER DIRECTIONS?

OVERSEAS WITNESS

- ▶ -TYPE OF APPEAL? ISSUES?
- ▶ -IS IT SAFE TO CALL THE OVERSEAS WITNESS?
- ▶ -CORE ISSUES: WILL THEY ADD VALUE?
- ▶ -NEW OPPORTUNITY TO HEAR FROM AN OVERSEAS WITNESS

THE RULES AND GUIDANCE NOTES

- ▶ FIRST TIER TRIBUNAL PROCEDURE RULE 14
- ▶ UPPER TRIBUNAL PROCEDURE RULE 15
- ▶ UPPER TRIBUNAL GUIDANCE NOTE 2013 NO 2: VIDEO LINK HEARINGS:
 - ▶ “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, Consular Division), with a view to ensuring that no objection will be taken at diplomatic level.”

Nare (evidence by electronic means) Zimbabwe [2011] UKUT 00443 (IAC)

- ▶ *“If the proposal is to give evidence from abroad, the party seeking permission must be in a position to inform the Tribunal that the relevant foreign government raises no objection to live evidence being given from within its jurisdiction, to a Tribunal or court in the United Kingdom. The vast majority of countries with which immigration appeals (even asylum appeals) are concerned are countries with which the United Kingdom has friendly diplomatic relations, and it is not for an immigration judge to interfere with those relations by not ensuring that enquiries of this sort have been made, and that the outcome was positive. Enquiries of this nature may be addressed to the Foreign and Commonwealth Office (International Legal Matters Unit, Consular Division). If evidence is given from abroad, a British Embassy, High Commission or Commonwealth may be able to provide suitable facilities.”*

CJ (international video-link hearing: data protection) [2019] UKUT 126

- ▶ *(1) "The arrangements made to enable the appellant to give evidence in his human rights appeal by video link between the British High Commission in Kingston, Jamaica and the Tribunal's hearing centre in the United Kingdom did not involve the transfer of data to a third country, for the purposes of the General Data Protection Regulation ((EU) 2016/679).*
- ▶ *(2) Even if that were not the case, the transfer was lawful under the derogation in Article 49(1)(e) of the Regulation (transfer necessary for establishment, exercise or defence of legal claims)."*

STEPS TO TAKE

- ▶ (1) Who is the witness?
- ▶ (2) Where are they?
- ▶ (3) Check the “*Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters*”
- ▶ <https://www.hcch.net/en/instruments/conventions/status-table/print/?cid=82>

“Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters”

- ▶ If the UK has accepted the accession, you can call them!
- ▶ CHECK THE LIST:UK ACCEPTED ACCESSION include but not limited to:
- ▶ ARGENTINA RUSSIAN FEDERATION
- ▶ UKRAINE SOUTH AFRICA
- ▶ BELARUS
- ▶ LATVIA
- ▶ MEXICO
- ▶ POLAND

BUT.....

- ▶ YOU CAN CONTACT THE FCDO IN ANY EVENT: PLEASE DON'T ASSUME!
- ▶ <https://www.gov.uk/guidance/service-of-documents-and-taking-of-evidence>
- ▶ “Enquiries regarding video link usage should be emailed to SOPEnquiries@fcdo.gov.uk with brief details of the case. Your enquiry may need to be sent to an embassy or High Commission for guidance and this can take time.”

INCLUDE THE FOLLOWING:

- ▶ *“Please provide the following information*
- ▶ • *the names and addresses of the parties to the proceedings and their representatives*
- ▶ • *the nature of the proceedings for which the evidence is required, giving a full summary of the pending action*
- ▶ • *the names and addresses of the persons to be examined*
- ▶ • *the evidence to be obtained or other judicial act to be performed*
- ▶ • *the specific questions to be put to the persons to be examined or specific statement of the subject matter about which they are to be examined*
- ▶ • *if documents are to be produced a specific list of the documents is required*
- ▶ • *video link enquiries should be made prior to arranging court dates as the FCDO may need to check with the Embassy or High Commission in the destination country. This takes time.”*

CPR: 34.13

- ▶ CPR 34.13:
- ▶ <https://www.gov.uk/guidance/civil-procedure-rules-parts-21-to-40/part-34-witnesses-depositions-and-evidence-for-foreign-courts>

SUMMARY

- ▶ - early pre planning
- ▶ - Check the Hague Convention list
- ▶ - Write to the FCDO
- ▶ - Update the Tribunal and respondent
- ▶ - Make the necessary arrangements for the witness to give evidence.

Contact Details

- ▶ THANK YOU- QUESTIONS?
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