

Taking oral evidence from overseas in tribunal proceedings

As users of The First-tier Tribunal for Scotland, Upper Tribunal for Scotland, The Mental Health Tribunal for Scotland, The Pensions Appeals Tribunal and The Lands Tribunal for Scotland will be aware, SCTS makes the following request of parties who wish to lead oral evidence from witnesses located outside of the UK in tribunal proceedings. It is helpful if parties contact the tribunal to make staff aware of their intention to lead such evidence. It is also helpful if parties confirm whether the proposed witness is a citizen or a resident in that country or not, so that the tribunal is made aware of the reason for the request that oral evidence is given from that country.

In the case of *Secretary of State for the Home Department v Agbabiaka* [2021] UKUT 00286, the UK Upper Tribunal held that parties to proceedings before the First-tier Tribunal who seek to lead oral evidence from witnesses located overseas were to ascertain whether the government of that foreign state had any objection and if there were any legal objections to the giving of evidence from its territory by making enquiries with the 'Taking of Evidence Unit' of the Foreign, Commonwealth and Development Office ("FCDO").

The FCDO has put in place a process whereby it facilitates tribunals based in the UK seeking approval from other jurisdictions for evidence to be taken remotely from those jurisdictions.

A number of signatory states to the Hague Convention of 18 March 1970 on Taking of Evidence Abroad in Civil or Commercial Matters consider that it applies to requests for taking of evidence by video link by foreign courts and expects letters of request to be submitted, rather than the FCDO process being followed.

The approach currently recommended to the judiciary in these tribunals is that, where it is proposed that a witness located overseas is to give evidence remotely, it will only seek permission from the jurisdiction in which that witness is located if the witness does not agree to give evidence.

As has been made clear on the SCTS website, as well as individual chamber and tribunal websites, if a party wishes to lead oral evidence from a witness located in a jurisdiction outside the UK, they should make SCTS Tribunals' administration aware of this as soon as it is known that a witness requires to give evidence from outside the UK. It is ultimately a matter for the presiding judge as to whether a witness may give their evidence remotely from outside the UK.