



## Tribunal hearings: What to do if you have a witness abroad

If you have an employment tribunal hearing coming up and you want one of your witnesses to be able to give evidence via video link from abroad, there are specific steps you now need to take in order to be able to do this (and you should do this as early on in the proceedings as possible).

### Background

During the pandemic there was a huge increase in remote and hybrid hearings and parties became familiar with witnesses giving evidence from home, including where home was outside of the jurisdiction. Tribunals were generally happy to allow this. However a case in October 2021 put the brakes on this permissive approach and parties must now seek permission to rely on oral evidence by video from a witness who is not in the UK (or a Crown Dependency or British Overseas Territory).

In those circumstances, permission must be sought from the jurisdiction where the witness will be giving evidence from. It is the responsibility of the party who requires the witness to raise this issue with the court/tribunal.

The Employment Tribunal issued presidential guidance on 27 April 2022 (updated 25 July 2022) setting out what steps to take in such circumstances.

### So what do you need to do?

1. As soon as possible, notify the Employment Tribunal office handling the case that you may need to rely on oral evidence from a witness based overseas and what state/jurisdiction the witness would be in when they give evidence.
2. The tribunal will then check against any published list of countries which generally permit such evidence to be given. To date no list has been published (it is expected that the Presidential Guidance will also be updated when the list is published). If necessary (i.e. the list is not yet published or the list does not cover that country), the tribunal will contact the Taking of Evidence Unit (ToE Unit) at the Foreign, Commonwealth and Development Office (FCDO) to ask them what that state's position is.
3. The ToE Unit will then either draw on experience from past requests involving that jurisdiction (in which case it may be able to give

guidance fairly quickly) or make an enquiry via the relevant British Embassy or British High Commission for that country. In the latter case, it can take months to get a response – so the process should be started as early as possible.

4. Once the ToE Unit has completed its enquiries, it will inform the tribunal of the outcome.
5. The tribunal in turn will then confirm to you whether you have permission for the witness to give evidence from abroad and whether there are any conditions imposed on that permission.

If you are concerned about how long the enquiries are taking or any conditions imposed on the permission, you should raise this with the tribunal as soon as possible so it can consider whether any additional case management is necessary.

A note of caution: This is a very new process and it can be extremely slow. It is hoped that over time it will become quicker as more information is available as to which jurisdictions permit witnesses in their jurisdiction giving oral evidence in a UK employment tribunal. For now though, parties are encouraged to raise this issue as early as possible with the tribunal to ensure hearings are not delayed or disrupted.

Parties should refer to the [Presidential Guidance](#) on this topic, as well as any other updated guidance that is published.