



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA074662016

THE IMMIGRATION ACTS

Heard at Manchester
on 2 August 2017

Decision and Reasons promulgated
On 30 August 2017

Before

UPPER TRIBUNAL JUDGE HANSON

Between

CBD
(anonymity order made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Mensah instructed by AJO Solicitors

For the Respondent: Mr McVeety Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a decision of First-tier Tribunal Judge Alty promulgated on 12 December 2016 in which the Judge dismissed the appellant's appeal on protection and human rights grounds.
2. The appellant is a Nigerian national born on 18 November 1992 who entered the UK lawfully in September 2010 as a student. Leave in such capacity was

extended until 8 January 2016. On 4 January 2016, the appellant claimed asylum was refused by the respondent and appealed to the First-tier Tribunal.

3. Permission to appeal the decision of the Judge was granted by another judge of the First-tier Tribunal on the basis it was said the refusal by the Judge to admit evidence by electronic means or to adjourn the proceedings in order to facilitate the means to facilitate such evidence was “fairly arguable”.

Error of law

4. The grounds seeking permission to appeal to the Upper Tribunal asserted (1) that the Judge excluded the evidence of a key witness living abroad, (2) erred in refusing to adjourn, and (3) failed to take into account the evidence of a witness and make a proper assessment of the witness’s evidence.
5. The Judge records in the decision under challenge the procedure on the day [5-17]. The Judge notes at [6] that an application was made at the outset of the hearing to facilitate the provision of evidence given by Skype from a named witness in Ghana (Ms D). Ms Mensah had submitted this person’s evidence was key to one of the main issues in the appeal, namely the appellant’s sexuality. The Judge records that Ms Mensah stated she could facilitate the provision of the evidence on the day on her laptop or alternatively that the hearing could be adjourned. The Presenting Officer in attendance indicated no objection to evidence being given by Skype but left the matter in the hands of the Judge.
6. The Judge reminded himself in [7] of the reported decision of *Nare (evidence by electronic means) Zimbabwe [2011] UKUT 00443 (IAC)* but found the principles outlined in that case had not been followed and, in particular, that the government of Ghana had not confirmed they had no objection to the provision of live evidence from its jurisdiction.
7. The Judge concluded it was not appropriate to take evidence from the witness by Skype and then went on to consider whether the proceedings should be adjourned [8 - 9]. The Judge noted it had not been brought to the attention of the judge hearing the CMR that there was a witness from overseas requiring consideration. At [9] the Judge finds:

“9. In reaching a decision, I have also taken into account that no indication is given today as to what steps it is proposed to take to facilitate the provision of video evidence or whether it is anticipated that there will be any objection from the Ghana government. No procedural timetable is suggested. Consequently, I am unclear whether Ms D’s evidence is likely to become forthcoming or when.”

8. The Judge proceeded with the appeal in relation to which the appellant and a named witness, the appellant’s partner Mr T, gave evidence in English. The Judge considered the documentary evidence provided in the bundle together with the documentary evidence referred to at [13], provided by Ms Mensah on the day, relating to Country Information and Guidance report concerning Nigerian sexual orientation and gender identity claims, March 2015. The Judge noted the main issue related to the credibility of the appellant’s claim. Having considered the evidence the Judge concludes at [44] that:

“44. In conclusion, I find that the Appellant has not given a plausible, coherent and consistent account of her sexuality and the risk posed by it or of the risk of forced marriage. Although none of my findings above are determinative in themselves, when taking an overall view, I find that the Appellant has not demonstrated that she has a well-founded fear of persecution for the purposes of the Refugee Convention by reason of her membership of a PSG.”

9. It is not disputed that an application for the witness, who at that time was in Ghana, to give evidence by Skype was made on the day. Ms Mensah submitted her instructing solicitors had written to the Tribunal in advance indicating that a witness would give evidence by Skype. It is claimed no witness statement was prepared from the witness and that there is no evidence before the Upper Tribunal or before the Judge of the date when the representatives were aware that Skype evidence was to be given.
10. It was also submitted on the appellant’s behalf that the representatives were not aware of the precedent guidance provided in case law and thought a simple letter indicating a wish to give evidence by electronic means would suffice.
11. It was not disputed that there was at least one potential witness as to the appellant’s sexuality, her claim being to be bisexual, in the United Kingdom but they were not called. Ms Mensah submitted the witness was in a difficult position and did not want to give evidence or assist the appellant although it is also the case that no applications were made to the First-tier Tribunal for an order compelling the witness’s attendance. The Judge also considered this issue at [33] but did not find the claim the witness did not wish to attend the hearing on the basis the relationship had not ended well, although initially claiming it was due to the cost of travelling from Scotland to Manchester, compatible with the fact the witness had provided a letter in support.
12. It was submitted on the appellant’s behalf that had the Judge granted the adjournment and investigations undertaken and the *Nare* process followed, the deficiencies in the evidence gathering process, both before and at the hearing, could be rectified.
13. It was further submitted on the appellant’s behalf that the issue of fairness in the adjournment application had to be considered where the evidence that was required had a bearing on the decision. It was submitted that the need to hear from witnesses was relevant.
14. On behalf of the Secretary of State, Mr McVeety referred to the fact there was a witness statement from Ms D in which that witness states that she moved to Ghana as a result of the ‘anti-gay’ laws in Accra in Nigeria. If the witness went to Ghana to escape homophobia it undermines the claim the witness could not approach the Ghana authorities, due to any real risk of ill-treatment, to obtain their permission for her evidence to be given from their jurisdiction.
15. Mr McVeety also referred to the fact that the witness in the UK who had not attended had also provided a witness statement which had been considered by the Judge.

16. The Secretary State has no evidence of receiving correspondence relation to this matter and submits the Judge considered the fairness issue and the evidence given.
17. The witness is a person whom the appellant has known for some time and it would have been known at the time of the CMR that if that person was to give evidence such evidence would have to have been given by indirect means, such as video link or Skype. It is not made out such evidence could not be given from Ghana, even if it could not be given from Nigeria, but it is clear no effort was made to contact the Ghanaian authorities.
18. It was not disputed on the appellant's behalf that there was one witness in the United Kingdom and two overseas and it was accepted there was no evidence of a real risk of harm in Ghana on the basis of disclosure.
19. The issue of evidence by electronic and other means is a matter which has had to be addressed by the Courts and Tribunal's in light of the digital age where the availability of devices makes such means of communication part of everyday life, for some.
20. There is an issue raised regarding whether the appellant's solicitors communicated adequately with the First-tier Tribunal in relation to this matter and it is disturbing to note a submission being made that those representatives did not appreciate the appropriate procedure if electronic evidence was to be given, when the authority referred to by the Judge is dated 2011.
21. In *R (on the application of AM (Cameroon) v AIT [2007] EWCA Civ 131* the Court of Appeal said that unfair decisions on interlocutory matters, such as adjournments or the admission of evidence, can amount to errors of law. Such decisions will have to be grounds for arguing that they display gross procedural unfairness or a complete denial of natural justice. In the instant case the Court of Appeal thought that was the case because the judge refused to adjourn when the appellant was medically unfit to give evidence; because he listed the case for a day when counsel was not available; and because he refused permission for evidence to be taken on the phone.
22. The consideration by the Judge of the application to admit evidence and to adjourn required the exercise of discretionary case management powers.
23. In *Nare (evidence by electronic means) Zimbabwe [2011] UKUT 00443 (IAC)* the Upper Tribunal held that the decision whether to allow evidence to be given by electronic means is a judicial one, requiring consideration of the need to do so, the arrangements at the distant site, and the ability to assess such evidence, by reference to guidance such as that set out here. The Tribunal said "the usual model in the common-law system is for direct oral evidence to be given in the courtroom. Departures from that model are likely to reduce the quality of evidence, the ability of the parties to test it, and the ability of the judge to assess it, particularly where it has to be assessed against other oral evidence. Any application to call oral evidence by electronic link therefore needs to be justified." The Tribunal then issued the following non comprehensive guidance.
 - (i) A party seeking to call evidence at an oral hearing by electronic link must notify all other parties and the Tribunal at the earliest possible stage, indicating (by way of witness statement) the content of the proposed evidence. (If the

evidence is uncontested, an indication of that from the other parties may enable the witness' evidence to be taken wholly in writing.) (ii) An application to call evidence by electronic link must be made in sufficient time before the hearing to allow it to be dealt with properly. The application should be made to the relevant judge (normally the Resident Senior Immigration Judge) at the hearing centre at which the hearing is to take place, and must give (a) the reason why the proposed witness cannot attend the hearing; (b) an indication of what arrangements have been made provisionally at the distant site (c) an undertaking to be responsible for any expenses incurred. (iii) The expectation ought to be that the distant site will be a court or Tribunal hearing centre, and that the giving of the evidence will be subject to on-site supervision by court or Tribunal staff. (iv) 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. (v) The application must be served on all other parties, in time for them to have a proper opportunity to respond to it. (vi) The decision whether to grant the application is a judicial one. The judge making the decision will take into account the reasons supporting the application, any response from other parties and the content of the proposed evidence, as well as of the overriding objective of the rules. If the application is granted, there may be further specific directions, which must be followed.

24. The above guidance was not given as a whim but to ensure proper procedure is followed to enable a court or tribunal to obtain the best available evidence given by the person claiming to be giving it, in a secure environment, allowing two-way communication, and to enable adequate domestic and international arrangements to be made. What is clear is that such cannot be organised or satisfied by an application made on the day of the hearing.
25. Considering the specific elements of the guidance the Upper Tribunal finds as follows:
26. Point (i): *A party seeking to call evidence at an oral hearing by electronic link must notify all other parties and the Tribunal at the earliest possible stage, indicating (by way of witness statement) the content of the proposed evidence.* The appellant comprehensively failed to deal with this point, failing to notify either the respondent or the First-tier Tribunal until the morning of the hearing or very near thereto. It has not been made out that notification was given at the earliest possible stage, especially in light of the fact Ms Mensah was unaware of the date the appellant's solicitors were aware when evidence would need to be given by

this method. The failure to give adequate notice denied the opportunity for the parties to establish whether the evidence of the witness, then in Ghana, is uncontested. As stated, a witness statement had been filed the witness indicating there was communication with the appellant's representatives but they failed to contact the respondent in relation to this issue.

27. Point (ii:) *An application to call evidence by electronic link must be made in sufficient time before the hearing to allow it to be dealt with properly. The application should be made to the relevant judge (normally the Resident Senior Immigration Judge) at the hearing centre at which the hearing is to take place, and must give (a) the reason why the proposed witness cannot attend the hearing; (b) an indication of what arrangements have been made provisionally at the distant site (c) an undertaking to be responsible for any expenses incurred.* The appellant comprehensively failed to deal with this requirement. It is not acceptable for an advocate to make an application on the day evidence to be given by this means, seeking to justify a failure to comply with guidance by claiming such evidence could be given by Skype on the advocates own laptop. Not all hearing centres have Wi-Fi and some buildings, even if part of the estate has a signal, not all parts of that building do. Whilst the modernisation programme should remedy any shortfalls in the future that is not the current position. There also appears to have been no indication what arrangements had been made in Ghana, which are as important as the arrangements in the UK, especially in ascertaining the identity of the person giving the evidence, reliability of signal, available time for such evidence to be given, together with the jurisdictional point which is discussed below.
28. Point (iii): *The expectation ought to be that the distant site will be a court or Tribunal hearing centre, and that the giving of the evidence will be subject to on-site supervision by court or Tribunal staff.* No notice was given relation to the aspect of what supervision, and by whom, was proposed in relation to the witness in Ghana.
29. Point (iv): *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.* This is the jurisdictional point referred to above. At no time was any approach made to the Ghana authorities to ascertain whether they have any objection to live evidence been given from within their territory to a Tribunal in the United Kingdom or to the relevant Embassy. The importance of such enquiries is reinforced by the Upper Tribunal stressing the need for avoiding interfering with diplomatic relationships by ensuring that the host State is satisfied with such evidence being given. This is not a communication by way of a recreational conversation with family or friends but a means of formally giving evidence to a court or tribunal.

30. Point (v) *The application must be served on all other parties, in time for them to have a proper opportunity to respond to it.* The only application that it can safely said was made was that made on the day by Ms Mensah, indicating a comprehensive failure of the appellant to advise the respondent and First-tier Tribunal. Attempting to ‘ambush’ an opposing party in this way is grossly unfair and a breach of natural justice in itself. Although the Presenting Officer gave an oral response at the hearing that is not determinative as it is arguable a proper response to an application could not have been made until all aspects of the guidance had been properly addressed, including the jurisdictional point.
31. Point (vi): *The decision whether to grant the application is a judicial one. The judge making the decision will take into account the reasons supporting the application, any response from other parties and the content of the proposed evidence, as well as of the overriding objective of the rules. If the application is granted, there may be further specific directions, which must be followed.* The Judge considered and made the decision taking all the matters the First-tier Tribunal had been asked to consider into account, including the overriding objectives set out in the First-tier Tribunal Procedure Rules.
32. This Tribunal has also noted the Practice Directions on the taking of video evidence at CPR PD 32 Annex 3 (see Annex A below for full text), which state that “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 court in England or Wales by means of VCF. If there is any doubt about this, enquiries should be directed to the Foreign and Commonwealth Office (International Legal Matters Unit, Consulate Division) with a view to ensuring that the country from which the evidence is to be taken raises no objections to it at a diplomatic level.”
33. This is an issue that has therefore been canvassed and in relation to which guidance has been given, for some time.
34. I do not find the Judge erred in law in refusing to admit the evidence by Skype on the day in light of the history of this matter, including the comprehensive failure of the appellant to comply with the published guidance.
35. In relation to the challenge to the decision of the Judge not to adjourn the hearing, based upon the decision of the Upper Tribunal in *Nwaigwe (adjournment: fairness)* [2014] UKUT 00418, Ms Mensah places particular reliance upon [5] of the judgment in which it is found:
- “5. In the Rules matrix outlined above, rule 21(2) is a provision of critical importance. Its effect is that where a party applies for an adjournment of the hearing, the Tribunal is obliged, in every case, to consider whether the appeal can be “justly determined” in the moving party’s absence. If the decision is to refuse the application, this must be based on the Tribunal satisfying itself that the appeal can be justly determined in the absence of the party concerned. This means that, in principle, there may be cases where an adjournment should be ordered notwithstanding that the moving party has failed to demonstrate good reason for this course. As a general rule, good reason will have to demonstrate in order to secure an adjournment. There are strong practical and case management reasons for this, particularly in the contemporary litigation culture with its emphasis on efficiency and expedition. However, these considerations, unquestionably important though they are, must be tempered and applied with the recognition that a fundamental common law right, namely the right of every litigant to a fair hearing, is engaged. In any case where a

question of possible adjournment arises, this is the dominant consideration. It is also important to recognise that the relevant provisions of the 2005 Rules, rehearsed above, do not modify or dilute, and are the handmaidens, their master, and the common law right in play.”

36. The Judge was fully aware of the requirements of fairness when considering the application. There was no basis on which the application was sought other than to arrange for the evidence from Ms D to be given from abroad. As noted by Mr McVeety, a witness statement had been provided with the evidence and the Judge makes a specific finding that it was unclear from the submissions made whether Ms D’s evidence was likely to be forthcoming or when.
37. It has not been made out when considering the submissions made to the Upper Tribunal, the chronology and aspects considered by the Judge, that either the decision to refuse to admit the evidence of Ms D by Skype or the refusal of the application to adjourn for this purpose falls outside the reasonable exercise of the discretionary case management powers available to the Judge. It has not been made out either decision is unfair or that the appellant has been denied the opportunity to put her case to the First-tier Tribunal in a manner identified by procedural requirements.
38. It is not made out that the Judge erred in law in relation to either procedural decisions sufficient to amount to a material error of law sufficient to warrant a grant permission to appeal to the Upper Tribunal.
39. The appellant fails to make out any arguable error in relation to any other aspect of the Judges decision.

Decision

40. **There is no material error of law in the First-tier Tribunal Judge’s decision. The determination shall stand.**

Anonymity.

41. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 29 August 2017

ANNEX A

CPR PD 32

ANNEX 3

VIDEO CONFERENCING GUIDANCE

This guidance is for the use of video conferencing (VCF) in civil proceedings. It is in part based, with permission, upon the protocol of the Federal Court of Australia. It is intended to provide a guide to all persons involved in the use of VCF, although it does not attempt to cover all the practical questions which might arise.

Video conferencing generally

1. The guidance covers the use of VCF equipment both (a) in a courtroom, whether via equipment which is permanently placed there or via a mobile unit, and (b) in a separate studio or conference room. In either case, the location at which the judge sits is referred to as the 'local site'. The other site or sites to and from which transmission is made are referred to as 'the remote site' and in any particular case any such site may be another courtroom. The guidance applies to cases where VCF is used for the taking of evidence and also to its use for other parts of any legal proceedings (for example, interim applications, case management conferences, pre-trial reviews).
2. VCF may be a convenient way of dealing with any part of proceedings: it can involve considerable savings in time and cost. Its use for the taking of evidence from overseas witnesses will, in particular, be likely to achieve a material saving of costs, and such savings may also be achieved by its use for taking domestic evidence. It is, however, inevitably not as ideal as having the witness physically present in court. Its convenience should not therefore be allowed to dictate its use. A judgment must be made in every case in which the use of VCF is being considered not only as to whether it will achieve an overall cost saving but as to whether its use will be likely to be beneficial to the efficient, fair and economic disposal of the litigation. In particular, it needs to be recognised that the degree of control a court can exercise over a witness at the remote site is or may be more limited than it can exercise over a witness physically before it.
3. When used for the taking of evidence, the objective should be to make the VCF session as close as possible to the usual practice in a trial court where evidence is taken in open court. To gain the maximum benefit, several differences have to be taken into account. Some matters, which are taken for granted when evidence is taken in the conventional way, take on a different dimension when it is taken by VCF: for example, the administration of the oath, ensuring that the witness understands who is at the local site and what their various roles are, the raising of any objections to the evidence and the use of documents.

4. 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 court in England or Wales by means of VCF. If there is any doubt about this, enquiries should be directed to the Foreign and Commonwealth Office (Legalisation Office) [email] with a view to ensuring that the country from which the evidence is to be taken raises no objection to it at diplomatic level. The party who is directed to be responsible for arranging the VCF (see paragraph 8 below) will be required to make all necessary inquiries about this well in advance of the VCF and must be able to inform the court what those inquiries were and of their outcome.

5. Time zone differences need to be considered when a witness abroad is to be examined in England or Wales by VCF. The convenience of the witness, the parties, their representatives and the court must all be taken into account. The cost of the use of a commercial studio is usually greater outside normal business hours.

6. Those involved with VCF need to be aware that, even with the most advanced systems currently available, there are the briefest of delays between the receipt of the picture and that of the accompanying sound. If due allowance is not made for this, there will be a tendency to 'speak over' the witness, whose voice will continue to be heard for a millisecond or so after he or she appears on the screen to have finished speaking.

7. With current technology, picture quality is good, but not as good as a television picture. The quality of the picture is enhanced if those appearing on VCF monitors keep their movements to a minimum.

Preliminary arrangements

8. The court's permission is required for any part of any proceedings to be dealt with by means of VCF. Before seeking a direction, the applicant should notify the listing officer, diary manager or other appropriate court officer of the intention to seek it, and should enquire as to the availability of court VCF equipment for the day or days of the proposed VCF. The application for a direction should be made to the Master, District Judge or Judge, as may be appropriate. If all parties consent to a direction, permission can be sought by letter, fax or e-mail, although the court may still require an oral hearing. All parties are entitled to be heard on whether or not such a direction should be given and as to its terms. If a witness at a remote site is to give evidence by an interpreter, consideration should be given at this stage as to whether the interpreter should be at the local site or the remote site. If a VCF direction is given, arrangements for the transmission will then need to be made. The court will ordinarily direct that the party seeking permission to use VCF is to be responsible for this. That party is hereafter referred to as 'the VCF arranging party'.

9. Subject to any order to the contrary, all costs of the transmission, including the costs of hiring equipment and technical personnel to operate it, will initially be the responsibility of, and must be met by, the VCF arranging party. All reasonable efforts should be made to keep the transmission to a minimum and so keep the costs down. All such costs will be considered to be part of the costs of the proceedings and the court will determine at such subsequent time as is convenient or appropriate who, as between the parties, should be responsible for them and (if appropriate) in what proportions.

- 10.** The local site will, if practicable, be a courtroom but it may instead be an appropriate studio or conference room. The VCF arranging party must contact the listing officer, diary manager or other appropriate officer of the court which made the VCF direction and make arrangements for the VCF transmission. Details of the remote site, and of the equipment to be used both at the local site (if not being supplied by the court) and the remote site (including the number of ISDN lines and connection speed), together with all necessary contact names and telephone numbers, will have to be provided to the listing officer, diary manager or other court officer. The court will need to be satisfied that any equipment provided by the parties for use at the local site and also that at the remote site is of sufficient quality for a satisfactory transmission. The VCF arranging party must ensure that an appropriate person will be present at the local site to supervise the operation of the VCF throughout the transmission in order to deal with any technical problems. That party must also arrange for a technical assistant to be similarly present at the remote site for like purposes.
- 11.** It is recommended that the judge, practitioners and witness should arrive at their respective VCF sites about 20 minutes prior to the scheduled commencement of the transmission.
- 12.** If the local site is not a courtroom, but a conference room or studio, the judge will need to determine who is to sit where. The VCF arranging party must take care to ensure that the number of microphones is adequate for the speakers and that the panning of the camera for the practitioners' table encompasses all legal representatives so that the viewer can see everyone seated there.
- 13.** The proceedings, wherever they may take place, form part of a trial to which the public is entitled to have access (unless the court has determined that they should be heard in private). If the local site is to be a studio or conference room, the VCF arranging party must ensure that it provides sufficient accommodation to enable a reasonable number of members of the public to attend.
- 14.** In cases where the local site is a studio or conference room, the VCF arranging party should make arrangements, if practicable, for the royal coat of arms to be placed above the judge's seat.
- 15.** In cases in which the VCF is to be used for the taking of evidence, the VCF arranging party must arrange for recording equipment to be provided by the court which made the VCF direction so that the evidence can be recorded. An associate will normally be present to operate the recording equipment when the local site is a courtroom. The VCF arranging party should take steps to ensure that an associate is present to do likewise when it is a studio or conference room. The equipment should be set up and tested before the VCF transmission. It will often be a valuable safeguard for the VCF arranging party also to arrange for the provision of recording equipment at the remote site. This will provide a useful back-up if there is any reduction in sound quality during the transmission. A direction from the court for the making of such a back-up recording must, however, be obtained first. This is because the proceedings are court proceedings and, save as directed by the court, no other recording of them must be made. The court will direct what is to happen to the back-up recording.

16. Some countries may require that any oath or affirmation to be taken by a witness accord with local custom rather than the usual form of oath or affirmation used in England and Wales. The VCF arranging party must make all appropriate prior inquiries and put in place all arrangements necessary to enable the oath or affirmation to be taken in accordance with any local custom. That party must be in a position to inform the court what those inquiries were, what their outcome was and what arrangements have been made. If the oath or affirmation can be administered in the manner normal in England and Wales, the VCF arranging party must arrange in advance to have the appropriate holy book at the remote site. The associate will normally administer the oath.

17. Consideration will need to be given in advance to the documents to which the witness is likely to be referred. The parties should endeavour to agree on this. It will usually be most convenient for a bundle of the copy documents to be prepared in advance, which the VCF arranging party should then send to the remote site.

18. Additional documents are sometimes quite properly introduced during the course of a witness's evidence. To cater for this, the VCF arranging party should ensure that equipment is available to enable documents to be transmitted between sites during the course of the VCF transmission. Consideration should be given to whether to use a document camera. If it is decided to use one, arrangements for its use will need to be established in advance. The panel operator will need to know the number and size of documents or objects if their images are to be sent by document camera. In many cases, a simpler and sufficient alternative will be to ensure that there are fax transmission and reception facilities at the participating sites.