

GUIDANCE NOTE ON FOREIGN EVIDENCE PERMISSION REQUIREMENTS - UPDATED POSITION FOLLOWING TAKING OF EVIDENCE (ToE) CLARIFICATION

1. EXECUTIVE SUMMARY

- 1.1 The Foreign, Commonwealth & Development Office (FCDO) Taking of Evidence Unit (ToE) has provided information clarifying that the Solicitors Disciplinary Tribunal (SDT) proceedings fall outside the scope of the Taking of Evidence Process, meaning permission from the FCDO and foreign authorities is no longer required when taking evidence from witnesses abroad.

2. BACKGROUND

Previous Position

- 2.1 Following the decision in *Agbabiaka*, the SDT required parties seeking to rely on oral evidence from witnesses in foreign jurisdictions to obtain approval from the FCDO ToE. This process was designed to ensure compliance with the Hague Evidence Convention and prevent UK proceedings from offending foreign state sovereignty.
- 2.2 On the 11 June 2025 ToE clarified that such approval was no longer required.

3. CURRENT POSITION

ToE Clarification

- 3.1 The FCDO ToE has confirmed in writing that:

"The legal principle underlying the Taking of Evidence process is that States are sovereign equals, and one State will not do anything that breaches the other State's sovereignty.

If cases heard at the Solicitors Disciplinary Tribunal are wholly private proceedings and do not have any state authority behind them, then these would fall outside the purview of the ToE Team and therefore the Taking of Evidence Process would not apply."

Supporting Confirmation

- 3.3 The Foreign Process Section at the Royal Courts of Justice has separately confirmed that letters of request are not required for taking evidence from abroad in SDT proceedings.

Rationale

- 3.4 The SDT does not exercise powers of the state and operates as an independent statutory tribunal outside the scope of His Majesty's Courts and Tribunal Services (hereafter referred to as 'HMCTS'). This distinguishes it from court proceedings that would typically require foreign evidence permissions.

4. PRACTICAL IMPLICATIONS

Practical Implications:

- **No requirement** for parties to obtain FCDO ToE approval before taking evidence from witnesses abroad;
- **No requirement** for letters of request to foreign authorities;
- Proceedings can proceed without the delays previously associated with the permission process.