



**An Binse um Achomhairc i dtaobh Cosaint Idirnáisiúnta**  
**The International Protection Appeals Tribunal**

---

**Chairperson's Guideline No. 2022/1**

**on Taking Evidence from Appellants and Other Witnesses**

---

**Preliminary Issues**

**[1] Background**

- [1.1] The International Protection Act 2015 and the International Protection Act 2015 (Procedures and Periods for Appeals) Regulations 2017 set out various matters relating to the conduct of Appeals before the Tribunal. This guideline is intended to supplement the Act and Regulations and not to supplant them. In case of conflict, the provisions of the Act or relevant Regulation shall take precedence over this guideline.
- [1.2] This guideline applies to oral hearings before the Tribunal involving appellants and other witnesses.
- [1.3] This guideline is informed by the Act, the Regulations, Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status, *Evidence and Credibility Assessment in the Context of the Common European Asylum System (CEAS) – A Judicial Analysis*, (IARMJ/EASO, 2018), *Vulnerability in the context of applications for international protection – A Judicial Analysis* (IARMJ/EASO, 2021), and the UNHCR Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status (December 2011). Consideration has also been given to relevant case law and academic commentary.
- [1.4] The guideline takes account of legal developments in light of the Criminal Justice (Perjury and Related Offences) Act 2021. It also incorporates guidance in the above mentioned Judicial Analyses and also reflects that oral hearings may now also occur by AV means.
- [1.5] This guideline is issued pursuant to s.63(2) of the Act and replaces Chairperson's Guideline No. 2019/1 on Taking Evidence from Appellants and Other Witnesses as issued on 28<sup>th</sup> January 2019.

## [2] Definitions

### [2.1] In this guideline the following terms have the following meanings:

**“Act”** means the International Protection Act 2015 and shall include, where the context so permits or requires, any secondary legislation made thereunder.

**“Appeals Regulations”** means the International Protection Act 2015 (Procedures and Periods for Appeals) Regulations 2017 (S.I. No. 116 of 2017).

**“Appeal”** means an appeal under the Act.

**“Appellant”** means an appellant pursuing an appeal before the International Protection Appeals Tribunal and shall, where the context so admits or requires, include his or her representative, if any.

**“International Protection Officer”** means a person who is authorised under section 74 of the Act to perform the functions conferred on an international protection officer by or under the Act.

**“JA on Evidence and Credibility”** means *Evidence and Credibility Assessment in the Context of the Common European Asylum System (CEAS) – A Judicial Analysis* (IARMJ/EASO, (2018).

**“JA on Vulnerability”** means *Vulnerability in the context of applications for international protection - A Judicial Analysis* (IARMJ/EASO, 2021).

**“Presenting Officer”** means an officer of the Minister or another person nominated by the Minister to be present at and participate in an oral hearing before the International Protection Appeals Tribunal and, in person or through a legal representative, explain to the Tribunal the recommendation of the international protection officer that is the subject of the appeal (per s.42(6)(b) of the Act).

**“Procedures Directive”** means Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status.

**“Qualification Directive”** means Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

**“Tribunal”** means the International Protection Appeals Tribunal established under the Act and shall, where the context so requires, include a Tribunal Member assigned to determine an appeal.

**“UNHCR Handbook”** means the UNHCR “Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status”, December 2011.

**“Vulnerable Persons”** means persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation.<sup>1</sup>

**“Witness”** means a person, including an appellant or a third party, who gives evidence, including on oath or by affirmation, to the Tribunal.

### **[3] Basic Principles**

- [3.1] The UNHCR Handbook states that while the burden of proof *“in principle rests on the applicant, the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner. Indeed, in some cases it may be for the examiner to use all the means at his disposal to produce the necessary evidence in support of the application”*.<sup>2</sup> International protection decision making therefore requires a more engaged role of the decision-maker in the examination process.
- [3.2] Witnesses include, but are not limited to, appellants. Witnesses besides appellants may include family members, persons from the same country of origin as the appellant, and other persons who may be able to provide testimony regarding an appellant’s claim.
- [3.3] Oral evidence can be of critical importance in the determination of international protection appeals. Appellants and other witnesses of fact may be able to provide the Tribunal with evidence about events relevant to an appellant’s case. Furthermore, expert witnesses with specialist knowledge of, for example, country conditions may be able to give an expert opinion on the factual evidence or provide the Tribunal with important contextual information. Generally, this note applies to the taking of evidence from both appellants and witnesses who are not appellants, while noting particular issues that arise in relation to either category. Section 16 of this note applies to expert witnesses in particular.
- [3.4] Interpreters are never witnesses. An interpreter should never be asked, or permitted, to give information on country conditions, cultural information or provide any information in their own right, save, exceptionally, where a misunderstanding is occurring and the interpreter must provide information to deal with the misunderstanding.
- [3.5] The Tribunal must treat witnesses fairly, with dignity and respect according to their needs, irrespective of their gender, marital status, family status, age, disability, sexual orientation, race, or religion.

---

<sup>1</sup> Article 21 of Directive 2013/33/EU.

<sup>2</sup> UNHCR Handbook, para.196.

- [3.6] Where required and possible, additional support should be provided, and any reasonable adjustments to the process of conducting a hearing should be made to ensure that all witnesses have equal access to information and support. This might include, for example, the use of an interpreter in order to ensure appropriate communication through a language the appellant may reasonably be supposed to understand.
- [3.7] Barriers to effective examination at hearings before the Tribunal range from technical complications to the cultural, educational, linguistic and psychological factors that affect how witnesses who may be victims of human rights abuses communicate their past experiences.
- [3.8] It should be borne in mind that witness examinations in international protection hearings may produce elements of testimony that are unclear, conflicting, vague or incomplete.<sup>3</sup> The *JA on Evidence and credibility* assessment in this regard states:

*“Applicants are required to recall relevant past and present facts to substantiate their application. Expectations about the applicant’s ability to provide such facts and reliance on credibility indicators such as sufficiency of detail, internal and external consistency are based on assumptions about human memory. It is therefore important in the assessment of evidence and credibility that decision-makers have realistic expectations of what an applicant should know and remember. Memory is very personal and varies from one person to another. Moreover, it may vary depending on factors, including age or any traumatic events they may have previously experienced.”<sup>4</sup>*

See the aforementioned *JA on Evidence* for further guidance on this matter, including in respect of particular issues arising in this regard in respect of cases involving traumatic experiences, cultural differences, gender, and sexual orientation and identity.<sup>5</sup>

- [3.9] The Tribunal has the task of assessing the credibility of claims made by alleged victims of persecution, serious harm and human rights violations or those who claim to be at risk of such treatment. Credibility assessment therefore can be critical in the consideration of an appeal. It is for this reason that, when assessing evidence provided by an appellant, the Tribunal should always apply best legal practice in respect of credibility assessment. Those principles may apply by analogy when assessing the evidence of witnesses who are not appellants. When a supporting witness is found to provide evidence that is potentially corroborative of an appellant’s claim, the Tribunal Member should make a specific finding on the witness’s credibility, distinct from that of the appellant. There will be no need, however, to make a specific credibility finding

---

<sup>3</sup> See Rosemary Byrne; “Assessing Testimonial Evidence in Asylum Proceedings: Guiding Standards from the International Criminal Tribunals”, in *International Journal of Refugee Law*, Volume 19, Issue 4, 1 December 2007, p.614.

<sup>4</sup> *JA on Evidence*, p.169

<sup>5</sup> *JA on Evidence*, part 6.

on a supporting witness whose evidence is found to have limited or no corroborative value.<sup>6</sup>

### **Pre-Hearing Matters**

#### **[4] Oral Hearing?**

[4.1] Section 42(1) of the Act provides that the Tribunal shall hold an oral hearing for the purposes of an appeal under s.41 where the appellant has requested a hearing in the notice of appeal, or the Tribunal is of the opinion that it is in the interests of justice to hold an oral hearing. Thus, it may be that the interests of justice will require an oral hearing in order that the Tribunal may hear witness evidence. It should be remembered that, except where otherwise provided, an international protection appeal may be determined without an oral hearing (s.42(3) of the Act).

[4.2] An applicant may, pursuant to s.42(2)(a) of the Act, withdraw a request for an oral hearing, by giving notice, which shall set out the reasons for the withdrawal, to the Tribunal not later than 3 working days before the hearing date. Although even in this event the Tribunal, pursuant to s.42(2)(b), must consider, having regard to the interests of justice, whether, nonetheless, to hold an oral hearing. The Tribunal should be sensitive to the fact that an appellant may wish not to give evidence for a variety of reasons. The Tribunal also may convene a hearing at which legal submissions only would be heard, and at which an appellant does not give oral evidence.

#### **[5] Directing Witnesses' Attendance**

[5.1] The Tribunal has a power to direct the attendance of a witness at a hearing. Section 42(8)(a) provides that, for the purposes of an oral hearing, the Tribunal may direct in writing any person, other than the Minister or an officer of the Minister, whose evidence is required by the Tribunal, to attend before the Tribunal on a date and at a time and place specified in the direction and there to give evidence and to produce any document or thing<sup>7</sup> in his or her possession or control specified in the direction.

[5.2] Pursuant to s.42(7) of the Act, an appellant may request that the Tribunal direct the attendance of a witness. Where an appellant's notice of appeal includes such a request, the Tribunal must determine whether the proposed witness should be directed to attend before it pursuant to s.42(8). In making this determination, the Tribunal is required to have regard to the nature and purpose of the evidence proposed to be given by the witness as indicated in the notice of appeal.

---

<sup>6</sup> *Kumaz* (11085; 22 June 1994).

<sup>7</sup> Excluding a document or thing relating to information, which the Minister or the Minister for Foreign Affairs and Trade directs that the information be withheld in the interest of national security or public policy ("ordre public"). See, e.g., *A.P. v Minister for Justice and Equality*, unreported, Court of Appeal (Gilligan J., Peart and Hogan JJ. Concurring), 17 April 2018.

[5.3] In directing a witness to attend, including in respect of an hearings by audio-video (A/V) means, the Tribunal should arrange that the witness be written to with information about the Tribunal and the appeal process before the hearing so that the witness can know what to expect, and so that any necessary arrangements can be made. Where attendance is to be at the Tribunal premises, the notice to the witness should inform the witness that:

- (a) they should arrive at the Tribunal in good time for the scheduled hearing;
- (b) on arrival at the Offices of the Tribunal, they should present themselves at reception, and not speak to other witnesses about the case before the hearing or at any breaks during the hearing.

Whether attendance is at the Tribunal premises or by way of A/V means, the notice should inform the witness that:

- (c) they should inform the Tribunal if they require an interpreter in order to ensure appropriate communication through a language the witness may reasonably be supposed to understand;
- (d) they should inform the Tribunal whether they will be giving evidence on oath or by affirmation, and, if they will be giving evidence on oath, what holy book will be required for that purpose;
- (e) that the Old Testament, New Testament, and Quran will be provided by the Tribunal, for an on-site hearing, and that if the witness wishes to use another religious text, that they should bring that to the hearing;
- (f) that, where hearing is conducted by way of A/V means and the witness will be giving evidence on oath, the witness should ensure that they have the relevant holy book to hand at the hearing;
- (g) they should inform the Tribunal of any other special requirements or needs that they might have relevant to attending as a witness; and
- (h) any requirements in respect of interpretation, the oath, or other special requirements should be notified to the Tribunal 10 working days before the date of the hearing.

## **[6] Appellants in combined hearings**

[6.1] It should be borne in mind that pursuant to Regulation 8 of the Appeals Regulations the Tribunal may conduct two or more oral hearings together where it appears to the Tribunal that

- (a) each of the cases concerned relates to some common matter,
- (b) each of the cases concerned relates to members of the same family, or
- (c) it is otherwise reasonable and just that the cases should be heard together.

In such circumstances, two or more hearings may involve the same witness or witnesses (including appellants) such that it will be efficient to combine the hearings. The Tribunal Member has a discretion about how to conduct the hearing and, for example, is

entitled to consider that the evidence of one spouse would be more reliable if not influenced by having heard the evidence of the other spouse.<sup>8</sup>

[6.2] However, combined hearings should generally be used: *“only ... where the factual basis of each claim is so intertwined that it is only by considering them together that there can be a fair and proper evaluation of the evidence. In practice this is likely to be confined to family cases where each member relies on the same Convention reason of reasons arising out of a contemporaneous factual background”*.<sup>9</sup>

[6.3] In a combined hearing each appellant should be afforded an opportunity to address the Tribunal in private. For this reason, and in order to enable best evidence to be given, appellants in a combined hearing will be asked to give evidence separately. If one or more appellants object to a combined hearing, the Tribunal may consider affording them the opportunity to have separate hearings and to call one or more of the appellants as witnesses in each other’s hearings.

## **[7] Vulnerable appellants or other witnesses**

[7.1] Exceptionally, vulnerable appellants may opt not to give oral evidence at a hearing, for example where there is medical evidence of a risk of re-traumatisation, or where they have mental health conditions that would impair their ability to give evidence. In such cases, other witnesses may still be called and legal submissions heard at an oral hearing.

[7.2] Vulnerable persons, including children, should be called to give oral evidence only where the Tribunal determines that the evidence is necessary to enable the fair hearing of the case consistent with natural justice, and that the vulnerable person’s welfare will not be prejudiced.

[7.3] Whether to direct the attendance of a vulnerable person as a witness should be decided by reference to all available evidence and the submissions of the appellant and presenting officer. It may be appropriate for the Tribunal to invite input from interested parties, such as a child’s parent or guardian.<sup>10</sup> It may be appropriate for the Tribunal to direct that the evidence should be given by other means directed by the Tribunal pursuant to s.42(8)(c) of the Act.

[7.4] In respect of applicants who are minors, the Tribunal should consider if it is appropriate for a minor to make a statement in the presence of a person who, although acting as a responsible adult, is known to have strong influence over the minor.<sup>11</sup> It should not be assumed that a minor applicant wants a specific person, even

---

<sup>8</sup> [ADN \(South Africa\) v IPAT \[2019\] IEHC 627](#), Humphreys J., 31 July 2019.

<sup>9</sup> *Tahir* (00/TH/01307; 7 June 2000).

<sup>10</sup> UK Tribunals Judiciary (First Tier and Upper Tribunal), *Senior President of Tribunals’ Practice Direction on Child, Vulnerable Adult and Sensitive Witnesses*, paras 2-4.

<sup>11</sup> *JA on Vulnerability*, p.249, citing Tallinn Circuit Court (Estonia), judgment of 23 December 2015, case no 3-15-2383.

a guardian or parent, with them during the hearing.<sup>12</sup> Even where it may appear unlikely that the Tribunal will be assisted by hearing evidence from a minor who is 12 or younger, young children also have a right to express their views on matters directly affecting them and may well be able to express them.<sup>13</sup>

## **At the Hearing**

### **[8] At the outset of the hearing**

- [8.1] Measures should be taken to ensure that the hearing room or place from which a witness is appearing remotely, as the case may be, is a safe environment for all and to ensure, as applicable, that appellants and other witnesses have appropriate places to wait on the Tribunal's premises while evidence is being given by the other witnesses at a hearing on the premises of the Tribunal.
- [8.2] The Tribunal should assure the appellant and any other witnesses that the hearing is confidential, and explain that the hearing is held in private (pursuant to s.42(4) of the Act).
- [8.3] The appellant's consent is required for an observer (for example a Presenting Officer in training, a student or other person attending with the permission of the Tribunal), to be present at a hearing.
- [8.4] The Tribunal should explain to the appellant and any other witness the working rules that the Tribunal is applying for the hearing, including the running order of any witnesses giving oral evidence.
- [8.5] In setting the working rules for the hearing, the Tribunal should bear the following principles in mind:
  - (a) In conducting an oral hearing, the Tribunal shall permit an officer of the Minister or another person nominated by the Minister to be present at and participate in the hearing and, in person or through a legal representative, explain to the Tribunal the recommendation of the international protection officer that is the subject of the appeal (per s.42(6)(b) of the Act);

---

<sup>12</sup> JA on Vulnerability, p.249, citing UK, Joint Presidential Guidance Note no 2, op. cit. (fn. 755 above), para. 10.1(iv).

<sup>13</sup> JA on Vulnerability, p.249. The JA notes the *CRC Committee, General comment no 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, CRC/C/GC/14*, Introduction, Section 1.A, second para.: 'The fact that the child is very young or in a vulnerable situation (e.g. has a disability, belongs to a minority group, is a migrant, etc.) does not deprive him or her of the right to express his or her views, nor reduces the weight given to the child's views in determining his or her best interests'; and CRC Committee, 2018, *Y. B. and N.S. v Belgium*, op. cit. (fn. 366 above), para. 8.8, concerning a child who was '5 years old when the second decision on the authors' application for a humanitarian visa was made and ... would have been perfectly capable of forming views of her own regarding the possibility of living permanently with the authors in Belgium'.



- (b) In conducting an oral hearing, the Tribunal may direct that it proceed in a particular order (reg.7(a) of the Appeals Regulations);
- (c) An oral hearing must proceed with due expedition (s.42(6)(e) of the Act);
- (d) The Tribunal must conduct an oral hearing as informally as is practicable, and consistent with fairness and transparency (s.42(6)(d) of the Act);
- (e) Subject to the above principles, and the principles of fairness, natural justice and good administration, and bearing in mind the fundamental matters it has to determine, the Tribunal has discretion to conduct the hearing in a manner it considers appropriate depending upon the circumstances of the case.

**[9] At the start of a person’s evidence**

- [9.1] The Tribunal should introduce all persons in attendance, including observers (if present), at the outset of a person’s evidence.
- [9.2] The Tribunal should endeavour to put the appellant or other witness at ease so that the person can focus on his or her evidence.
- [9.3] The Tribunal should explain to the appellant or other witness how the examination will proceed, and how to address the Tribunal.
- [9.4] The Tribunal should ensure that the person understands that if he or she has any problems speaking in English, or through the interpreter provided, that he or she should inform the Tribunal at once.
- [9.5] The Tribunal should tell the appellant or other witness that he or she is free to request a break at any time and does not have to give a reason for this. If a break is taken, the witness should be instructed not to discuss the hearing with anyone for the duration of the break.
- [9.6] The Tribunal should inform the appellant or other witness that he or she may take time in answering questions, and that he or she must inform the Tribunal if he or she does not understand any question.
- [9.7] The Tribunal should explain to the appellant or other witness that the appellant’s legal representative (if there is one), the presenting officer (if there is one), and the Tribunal, may have questions for him or her during the hearing.

**[10] Interpreters**

- [10.1] If necessary, an appellant or other witness should be provided with the services of an interpreter to ensure appropriate communication through a language the appellant may reasonably be supposed to understand. The Tribunal should also ensure that appropriate communication is provided in respect of interpreters needed for the giving of evidence by non-English speaking witnesses other than appellants.

[10.2] If concerns arise in relation to the effectiveness and suitability of the interpreter, the Tribunal will pause the hearing to clarify matters and, if necessary, postpone the hearing to a later date. The hearing should then be restarted on the next date, from the beginning.

[10.3] Where the Tribunal hears evidence on oath or by affirmation other than through English, via an interpreter, the interpreter should be directed under s.42(8)(c) to swear the interpreter's oath (or provide an affirmation). The appropriate forms of oath and affirmation are set out in the appendix to this Guideline. See the following section for more information on oaths and affirmations.

## **[11] Oath/Affirmation**

[11.1] For the purpose of an oral hearing, the Tribunal may take evidence on oath or on affirmation and for that purpose may cause persons attending before it to swear an oath or make an affirmation.<sup>14</sup> This power includes a power to administer the oath or affirmation.

[11.2] In order to ensure consistency of approach, and recognising that the Oireachtas does not legislate in vain,<sup>15</sup> the Tribunal should take evidence on oath or affirmation unless the Tribunal is of the opinion that to do so is not in the interests of justice. In particular, the Tribunal may take the view that it is in the interests of justice for a child under the age of 14 not to swear an oath or make an affirmation<sup>16</sup>, or if the Tribunal is satisfied that the witness does not understand the meaning of the oath or affirmation.

[11.3] The power to administer an affirmation can be used only where the appellant or other witness objects to swearing an oath, either on the grounds of having no religious belief or because to do so is incompatible with his or her religious belief. In that regard, every person upon objecting to being sworn, and stating, as the ground of such objection, either that he has no religious belief, or that the taking of an oath is contrary to his or her religious belief, shall be permitted to make his or her solemn affirmation instead of taking an oath.<sup>17</sup>

[11.4] An oath or affirmation is valid so long as the witness appreciates the solemnity of the occasion and the additional moral obligation to speak the truth, which arises in the situation.

[11.5] The Tribunal should explain, or confirm that the witness understands, that in giving evidence on oath or by affirmation, the witness is promising to tell the truth, and that

---

<sup>14</sup> Section 42(8)(d) of the Act.

<sup>15</sup> *Director of Public Prosecutions -v- J.C.* [2015] IESC 31 (MacMenamin J.) at para.8. See also in the instant context: [ND \(Albania\) and Ors v IPAT and Anor \[2020\] IEHC 451](#), Humphreys J., 22 September 2020.

<sup>16</sup> Children Act 1997, s.28(1) and s.28(3) - this applies to civil proceedings generally involving the administration of justice.

<sup>17</sup> Section 1, Oaths Act 1888.

giving false evidence after doing so is an offence. In particular, the Tribunal should explain that:

- Pursuant to s.2(1) of the Criminal Justice (Perjury and Related Offences) Act 2021, a person commits an offence of perjury if he or she, in, or for the purpose of the proceedings before the Tribunal, gives a statement material in the proceedings while lawfully sworn as a witness or as an interpreter, that is false, and he or she knows to be false.
- Pursuant to s.3(1) of that Act, a person commits an offence of subornation of perjury if he or she procures, persuades, induces or otherwise causes another person to commit perjury, knowing or being reckless as to whether the other person is committing such offence.
- Pursuant to s.7 of the same Act, a person commits an offence if he or she, with intent to mislead the appeal proceedings,
  - (a) fabricates evidence by any means other than as provided for in respect of perjury or subornation of perjury, or
  - (b) knowingly makes use of such fabricated evidence.
- A person who commits any such offence is liable
  - (a) on summary conviction, to a class B fine or to imprisonment for a term not exceeding 12 months, or both, or
  - (b) on conviction on indictment, to a fine not exceeding €100,000 or imprisonment for a term not exceeding 10 years, or both.

[11.5] The Tribunal should explain that an oath has religious significance and an affirmation does not, and that the person's evidence will be considered in the same way whether the evidence is given under oath or by affirmation.

[11.6] The Tribunal Member should explain to the witness that, if they take a break or if the hearing is adjourned while they are providing evidence, they remain under oath or affirmation where applicable. However, if a considerable amount of time has elapsed, the oath or affirmation may need to be administered again.

[11.7] The witness should bring their own holy book to the hearing. Copies of the Old Testament, New Testament and Quaran may be made available at a hearing that takes place at the premises of the Tribunal. Certain holy books, such as the Quaran, should be kept in an appropriate container at all times and remain covered.

[11.8] Where the hearing is held on the premises of the Tribunal, for the purpose of taking an oath, the Tribunal should ensure that the appellant or other witness has, or is provided with, the appropriate holy book, and is provided with the card with the appropriate oath or affirmation. The Tribunal Member should also have a copy of the relevant oath or affirmation. The Tribunal Member should read the card, and have the witness, if necessary through an interpreter, repeat it. The Tribunal Member

should then ask the appellant or other witness to state his or her name, and the person should then state his or her name.

[11.9] Where the hearing is held remotely by way of audio-video link, the witness or interpreter should, as appropriate, have their own holy book ready in the place they are, or alternatively, they can refer to an appropriate e-book.<sup>18</sup>

[11.10] In the event that the Tribunal anticipates taking an oath other than in the Christian, Jewish or Islamic forms, the Tribunal Member should seek guidance from the Chairperson in advance of the hearing in order that appropriate arrangements can be made. Regard may be had to *Stringer on Oaths* for guidance in such circumstances.<sup>19</sup>

[11.12] Where the Tribunal hears evidence on oath or by affirmation other than through English, via an interpreter, the interpreter should be directed under s.42(8)(c) to swear an interpreter's oath (or provide an affirmation).

[11.13] Where an appellant or other witness gives evidence on oath or by affirmation other than through English, via an interpreter, the interpreter should take the oath or give an affirmation before the relevant witness does so.

[11.14] The appendix to this guideline provides the applicable oaths in the Christian, Jewish and Islamic forms and the applicable affirmation, and an interpreter's oath and affirmation.

[11.15] The Tribunal having the power to administer an oath for the purpose of verifying the statements of applicants and witnesses, the forms and ceremonies used in administering an oath are immaterial for the purposes of the Criminal Justice (Perjury and Related Offences) Act 2021, if the oath has been administered in a form and with ceremonies which the person taking the oath has accepted without objection or has declared to be binding on him or her (s.11 of the 2021 Act).

## **[12] Principles to bear in mind when the appellant or other witness is giving evidence**

[12.1] In conducting an oral hearing, the Tribunal is obliged to allow for the examination and cross-examination of the appellant and any witnesses (s.42(6)(f) of the Act).

[12.2] In conducting an oral hearing, the Tribunal must ensure that a witness who is not an appellant is present only for the duration of his or her evidence (reg.7(b) of the Appeal Regulations). However, the Tribunal may, if it considers it reasonable and just to do so, in order to enable best evidence to be given, ask a witness to address the Tribunal in the presence of the appellant's legal representative and the presenting officer but in the absence of the appellant himself or herself.

---

<sup>18</sup> Section 31(1) Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020.

<sup>19</sup> *Stringer, Oaths and Affirmations in Great Britain and Ireland* (1928, 4<sup>th</sup> Ed.).

- [12.3] The Tribunal should afford an opportunity to the appellant (including via his or her legal representative, if present) and the presenting officer (if there is one) to raise further relevant questions for a witness.
- [12.4] Questioning should be done in a sensitive manner, taking into account the person's personal characteristics or vulnerability, as appropriate.
- [12.5] In the event that the Tribunal considers that questions being put to an appellant or other witness are unreasonable, unfair, offensive or aggressive, the Tribunal should intervene to ensure that appropriate standards are applied. The tone of all parties at the hearing should be courteous, in line with the inquisitorial nature of the proceedings.

### [13] Expert Witnesses

- [13.1] An expert witness is someone whose level of specialist knowledge or skill in a particular field is such that it qualifies him or her to give an opinion on factual matters falling within the area of his or her expertise. Expert evidence may therefore be produced in support of an appeal where there are relevant issues that require a particular expertise, which may not otherwise be available to the parties or to decision-makers.<sup>20</sup> The opinion of an expert is admissible in evidence if the subject is one on which competency to form an opinion can only be acquired by special study or experience.<sup>21</sup>
- [13.2] Expert evidence should be the independent product of the expert, uninfluenced by the parties. An expert witness's role is to assist the Tribunal by providing objective, unbiased opinion on matters within his or her expertise. The expert witness must not assume an advocacy role.<sup>22</sup> Expert reports tendered as evidence should declare the expert's knowledge of their duty to the Tribunal to fulfil this role.
- [13.3] The duties of an expert witness include that he or she:
- (i) provide information and express opinions independently, uninfluenced by the litigation;
  - (ii) consider all material facts, including those which might detract from the expert witness' opinion ;
  - (iii) be objective and unbiased;
  - (iv) avoid trespass into the prohibited territory of advocacy;
  - (v) be fully informed;
  - (vi) act within the confines of the witness's area of expertise; and

---

<sup>20</sup> *Evidence and Credibility Assessment in the Context of the Common European Asylum System (CEAS) – A Judicial Analysis*, Produced by the International Association of Refugee Law Judges European Chapter (IARLJ-Europe) under contract to EASO (2018), para.4.7.1.

<sup>21</sup> *McFadden v Murdock* [1867] IR 1.

<sup>22</sup> Compare Practice Direction 10, <https://www.judiciary.uk/wp-content/uploads/2018/12/practice-directions-iac-dated-18-dec-2018.pdf>.

(vii) modify, or abandon one's view, where appropriate.<sup>23</sup>

[13.4] Where an expert witness's key purpose is to give his or her opinion on the factual evidence, the expert witness should normally give evidence after all witnesses of fact.

[13.5] An expert witness may refer to the learning of others in his or her field to support his or her opinion.

**[14] At the conclusion of a witness's evidence**

[14.1] After a witness has given his or her evidence, the Tribunal should thank the witness for his or her contribution to the appeal. The Tribunal should explain to a witness who is not an appellant that he or she is free to leave the Tribunal's premises or log-off the A/V hearing link, as the case may be.



---

**Hilka Becker**  
**Chairperson**  
**International Protection Appeals Tribunal**

**Dated the 8<sup>th</sup> of February 2022**

---

<sup>23</sup> *MOJ & Ors (Return to Mogadishu) Somalia* CG [2014] UKUT 00442 (IAC), para.25.

## Appendix

### Forms of Oaths and Affirmations

#### 1. Witness's Oath - Christian

The Tribunal Member hands a copy of the New Testament to the witness. New Testament raised in witness's right hand, left hand not raised.

Witness: I swear by Almighty God that the evidence I shall give to the Tribunal shall be the truth, the whole truth and nothing but the truth.

Tribunal: What is your name please?

Witness: *States name*

#### 2. Witness's Oath - Jewish

The Tribunal Member hands a copy of the Old Testament to the witness. Old Testament raised in witness's right hand, left hand not raised.

Witness: I swear by Almighty God that the evidence I shall give to the Tribunal shall be the truth, the whole truth and nothing but the truth.

Tribunal: What is your name please?

Witness: *States name*

#### 3. Witness's Oath - Islamic

The Tribunal Member hands a covered copy of the Quran to the witness (the Tribunal Member should not touch the Quran directly).

Witness: I take this oath on the Quran, believing in the Quran as the true word of Allah, believing in Allah as the true God above us, and I swear that whatever I tell the Tribunal will be the truth.

Tribunal: What is your name please?

Witness: *States name*

#### 4. Witness's Affirmation

Witness: I solemnly sincerely and truly declare and affirm that the evidence I shall give to the Tribunal shall be the truth, the whole truth, and nothing but the truth.

Tribunal: What is your name please?

Witness: *States name*

## **5. Interpreter's Oath - Christian**

A copy of the New Testament is handed to the interpreter. New Testament raised in interpreter's right hand, left hand not raised.

Interpreter: I swear by Almighty God that I will well and truly interpret and explain to the Tribunal the evidence given in this oral hearing, according to the best of my skill and understanding.

Tribunal: What is your name please?

Interpreter: *States name*

## **6. Interpreter's Oath - Jewish**

A copy of the Old Testament is handed to the interpreter. Old Testament raised in interpreter's right hand, left hand not raised.

Witness: I swear by Almighty God that the evidence I shall give to the Tribunal shall be the truth, the whole truth and nothing but the truth.

Tribunal: What is your name please?

Witness: *States name*

## **7. Interpreter's Oath - Islamic**

A copy of the Quran, covered, is handed to the interpreter (the Tribunal Member should not touch the Quran directly).

Witness: I take this oath on the Quran, believing in the Quran as Allah's true word, believing in Allah as the true God above us, and I swear that I will well and truly interpret and explain to the Tribunal the evidence given in this oral hearing to the best of my skill and understanding.

Tribunal: What is your name please?

Witness: *States name*

## **8. Interpreter's Affirmation**

Interpreter: I do solemnly sincerely and truly declare and affirm that I will well and truly interpret and explain to the Tribunal the evidence given in this oral hearing, according to the best of my skill and understanding.

Tribunal: What is your name please?

Witness: *States name*