

GRAND COURT PRACTICE DIRECTION NO.2/2004¹

PROCEEDINGS BY WAY OF VIDEO CONFERENCING CIVIL OR CRIMINAL

1. Introduction

- 1.1 This practice direction **applies to all** applications seeking the sanction of the Court for the use of video conferencing (VCF).
- 1.2 The purpose of this practice direction is to explain and clarify certain procedures and arrangements necessary in this relatively new method of taking evidence in trials or in other parts of any legal proceedings, for example, interim application case management conferences and pre-trial reviews. Further guidance is given in the Video Conferencing Guide appended to this practice direction.
- 1.3 VCF equipment may be used both (a) in a courtroom, whether via equipment which is permanently placed there or via a mobile unit, and (U) 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.

2. Preliminary Arrangements

- 2.1. 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 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.
- 2.2 The application should be made to any of the Judges of the Grand Court. 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.
- 2.3 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 – in civil cases - referred to as “the VCF arranging party”.

¹ See later amendments to the Evidence Law in 2004.

2.4 The VCF arranging party must contact the listing officer or other appropriate officer of the court 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 the necessary contact names and telephone numbers, will have to be provided to the listing officer 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.

3. Costs

3.1 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.

4. Recording

4.1 The VCF arranging party must arrange for recording equipment to be provided by the Court so that the evidence may be recorded at the local site.

4.2 Application for a direction from the Court must be made for the provision of recording equipment at the remote site by the arranging party.

4.3 No other recording may be made of any proceedings via VCF, save as directed by the Court.

Dated this 26th day of May 2004

The Hon. Anthony Smellie, Q.C., Chief Justice.

VIDEO CONFERENCING GUIDE

This guidance is for the use of video conferencing (VCF) in civil proceedings. It is in part based upon the protocol of the Federal court of Australia and CPR 32 Practice Direction of the Courts of England and Wales. 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 that may arise.

VIDEO CONFERENCING GENERALLY

1. 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 recognized 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.
2. 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 the documents.
3. It should be presumed that all foreign governments are willing to allow their nationals or others within their jurisdiction to be examined before a court on the Cayman Islands by means of VCF. If there is any doubt about this, enquiries should be directed to the Foreign and Commonwealth (International Legal matters Unit, Consular Division) 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 VCF arranging party 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.
4. Time zone differences need to be considered when a witness abroad is to be examined in Cayman via 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 working hours.

5. 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.
6. With current technology, picture quality is good, but not as good as television picture. The quality of the picture is enhanced if those appearing on VCF monitors keep their movements to a minimum.

PRELIMINARY ARRANGEMENTS

7. 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.
8. 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.
9. 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 encompass all legal representatives so that the viewer can see everyone seated there.
10. 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.
11. In cases where the local site is a studio or conference room, the VCF arranging party should make arrangements, if practicable, for the Royal Court of Arms to be placed above the judge's seat.
12. In cases where 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 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.
13. 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 the Cayman Islands. The VCF arranging party must make all appropriate prior enquiries and put in place all arrangements necessary to enable the oath or affirmation to be taken in accordance with 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 the Cayman Islands, 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.
 14. 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.
 15. 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 the 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.

THE HEARING

16. The procedure for conducting the transmission will be determined by the judge. He will determine who is to control the cameras. In cases where the VCF is being used for an application in the course of the proceedings, the judge will ordinarily not enter the local site until both sites are on line. Similarly, at the conclusion of the hearing, he will ordinarily leave the local site while both sites are still on line. The following paragraphs apply primarily to cases where the VCF is being used for the taking of the evidence of a witness at a remote site. In all cases, the judge will need to decide whether court dress is appropriate when using VCF facilities.

It might be appropriate when transmitting from courtroom to courtroom. It might not be when a commercial facility is being use.

17. At the beginning of the transmission, the judge will probably wish to introduce himself and the advocates to the witness. He will probably want to know who is at the remote site and will invite the witness to introduce himself and anyone else who is with him. He may wish to give directions as to the seating arrangements at the remote site so that those present are visible at the local site during the taking of the evidence. He will probably wish to explain to the witness the method of taking the oath or of affirming, the manner in which the evidence is taken, and who will be conducting the examination and cross-examination. He will probably also wish to inform the witness of the matters referred to in paragraph 5 and 6 above (co-ordination of picture with sound, and picture quality).
18. The examination of the witness at the remote site should follow as closely as possible the practice adopted when a witness is in the courtroom. During examination, cross-examination and re-examination, the witness smut be able to see the legal representative asking the question and also any other person (whether another legal representative or the judge) making any statements in regard to the witness' evidence. It will in practice be most convenient if everyone remains seated throughout the transmission.