

Custodian Abroad Cross Border Collection

When evidence is located abroad, its collection becomes a complex legal exercise before a technical one. This guide addresses international data transfer, blocking statutes, and local law, outlining routes for collection and the importance of planning with local counsel to reconcile English disclosure duties with foreign law.

e-discovery.uk, Computer Forensics Lab. Published 2026-08-31.
<https://e-discovery.uk/library/custodian-abroad-cross-border-collection>

CROSS - B ORDER COLLECTION · A GUIDE FOR UK LAWYERS Custodian Abroad:
Cross-Border Collection Data Transfer, Blocking Statutes and Local Law When the Evidence
Sits in Another Country COMPUTER FORENSICS LAB

§ ABOUT THE AUTHOR PREPARED BY COMPUTER FORENSICS LAB E-DISCOVERY TEAM
ESTABLISHED 2007 · LONDON ISO 17025-ALIGNED PROCEDURES CROSS-B ORDER
COLLECTION TRANSFER & BLOCKING-STATUTE ANALYSIS CPR PART 35 EXPERT
REPORT S FULL CHAIN-OF-CUSTODY DOCUMENTATION

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§ HOW A SPECIALIST LABORATORY CAN ASSIST Working with Computer Forensics Lab Speak to a forensic examiner, not a salesperson. INSTRUCT THE LAB NEW ENQUIRIES EMAIL - DISCOVERY

Questions and answers

The court has ordered disclosure. Can we just image the custodian's device abroad?

No: an English order does not make it lawful to collect and export data in another country, whose law governs the data (§2). Depending on the jurisdiction, self-help collection may breach data-protection, labour, secrecy or blocking-statute law, and in some places be a criminal offence (§4, Example 1). Engage local counsel first and choose a route lawful where the data sits.

What is a blocking statute and why does it matter so much?

It is a law that criminalises gathering or export in g evidence located in the country for foreign proceedings otherwise than through official channels (the French statute is the classic example, §4). It matters because the ordinary collection English disclosure expects can be a crime where the data sits, and the only lawful route may be a letter of request through the foreign court (§5, Example 1): slow, but lawful.

Is moving the data to England just a logistics question?

No: it is a restricted international transfer under the UK GDPR needing a lawful transfer mechanism (adequacy, the IDTA or Addendum, or a litigation derogation) and usually a transfer risk assessment (§3). Treating it as mere logistics is a data-protection breach in the collection itself. Data minimisation, transferring only relevant material, reduces both the risk and the volume crossing the border.

Can cloud-side collection avoid the whole problem?

It can avoid much of it where the data sits in a UK-controlled corporate account, because collection happens server-side without a foreign act or a foreign-device search (§5, Example 2): but it does not dissolve local law, the custodian's personal data is still processed and their local rights and the provider's data-centre locations may still bite. It is often the cleanest route, but the local-law analysis still applies.

What do we tell the English court if foreign law blocks disclosure?

The truth, early and with evidence: put the constraint to the court candidly, supported by local-counsel evidence, and show the lawful maximum being done, letters of request, in-country collection, cloud-side routes (§7, Example 1). The court distinguishes a genuine, evidenced foreign-law bar from a party sheltering behind an overstated one, and rewards the party that surfaced and planned around the constraint rather than concealing it.

Can the employee just consent to us collecting their device abroad?

Sometimes, but be careful: many jurisdictions treat employee consent as not freely given and disregard it (§5,

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