

ROLE AND FUNCTIONS OF THE HEAD OF INTERNATIONAL FAMILY LAW JUSTICE

Delia WILLIAMS

Lawyer to Lord Justice Thorpe (Head of International Family Justice for England and Wales), United Kingdom

Activity report from the International Family Justice Office for England and Wales from September 2005 – December 2008

Most, if not all of you, will be familiar with Sir Mathew Thorpe's work as Head of International Family Justice for England and Wales. He is the vice-president of the Family Division, a senior Court of Appeal Judge and the designated specialist family judge for the Hague Network. When not sitting as Court of Appeal Judge, a lot of his time is spent abroad speaking at international family law conferences and teaching less experienced judges how to deal with international family cases. He is also called upon in an advisory capacity by the government and chairs committees on mediation and international family law. He is any or all of the following during one day: Judge, consultant, expert, educator, negotiator, mediator, diplomat and facilitator.

Our office has a wide remit (managing international conferences, hosting official foreign delegation or training and exploring assistance). However, to hold true to the title of this conference, the focus of this report is on the role of Lord Justice Thorpe as designated specialist family judge for the Hague and EJM Networks and the work of his office to support him in that capacity.

In order to advise and assist all who contact the office on matters of International Family Justice, it is essential that he is properly supported to deal with the communication and administration that this role imposes. We are fortunate enough to have been allocated a budget which allows for an administrative secretary and a lawyer. I am the lawyer for the office and my title is that of Legal Secretary to the Head of International Family Justice.

The inclusion of a lawyer in the team allows the office to operate expediently and autonomously since most cases require immediate attention. Within the context of urgent international family justice matters, I am called upon as "facilitator/legal advisor" mainly when:

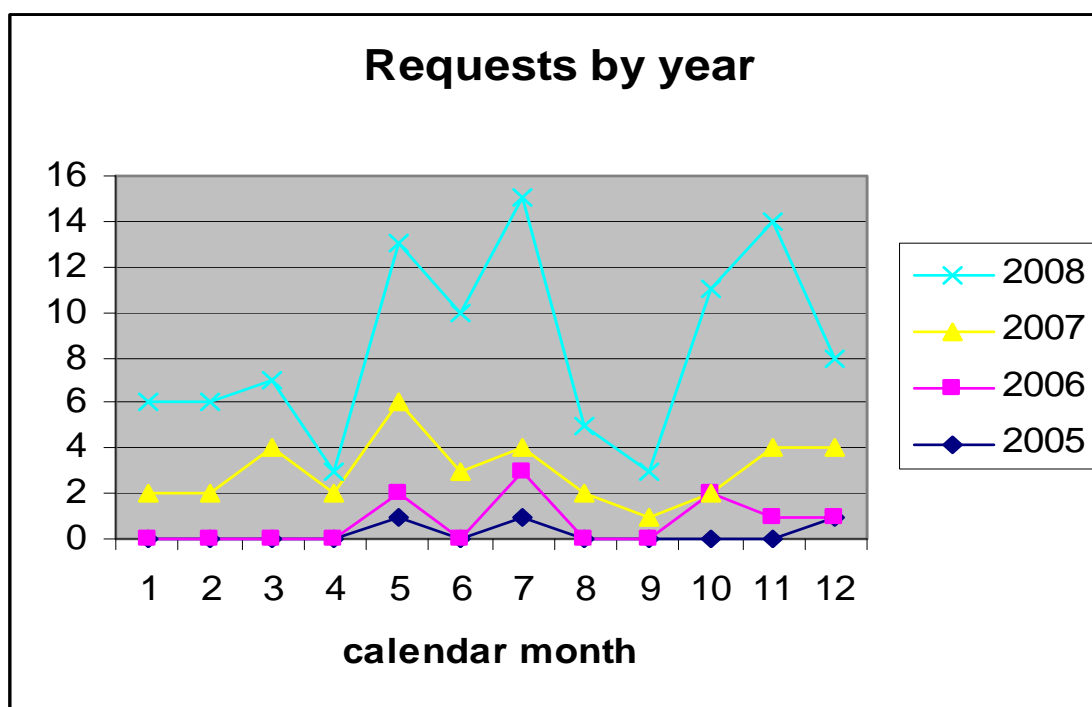
1. There arises a need for direct communication between judges from different jurisdictions in specific cases.
2. A judge, either domestic or international, needs advice and assistance relating to an international family law matter.

On a practical level, both domestic judges and practitioners request assistance via telephone, e-mail or fax or by visiting me in person (my office is conveniently situated in the Royal Courts of Justice). The request details are noted and I then decide whether immediate action is called for.

Lord Justice Thorpe and I liaise at least twice a day if not more, even when he is abroad. We will discuss the matter and decide the necessary course of action. I will then deal with it accordingly, and finally the office will log the case on our internal database.

As a Hague Network Judge, Lord Justice Thorpe is keen to share with colleagues what he has learned from international conferences, particularly regarding innovations or developments in international family law. Wherever possible we publicise both the existence and the work of the office, ensuring that domestic family lawyers are kept abreast of our activities and the services we provide. Information is disseminated to professionals, government officials and judges through committees such as the International Family Law Committee, and both Thorpe LJ and I have written papers published in law journals and on the internet. It seems to be working. Since my arrival 16 months ago, cases on which we have been asked to help have increased dramatically in number.

Requests by year



We are getting busier and busier. The explanation for the decline in the most recent month is that the data had to finish mid-December. However, within two days, four more cases came to the office, three involving non-Hague jurisdictions (Morocco, India and Dubai) and one involving Portugal.

Following the example of the excellent work from the Netherlands,¹ the office has, over the last few months, gone digital. We have created a database of requests for assistance on individual cases. This now provides an instantly accessible and invaluable tool for the future, as well as formalising and streamlining the day to day management of case traffic.

Chart 1: external/international requests

The external requests we receive invariably come to the office through either the European network for family liaison judges (an adjunct to the EJM contact points)

¹ The *Office of the Liaison Judge on International Child Protection*- Report from 1 January 2006-May 2008 by The District Court of The Hague, Family Division

or from the Network list created by the Permanent Bureau of the Hague Conference on Private International Law.

External Requests for Assistance 2005-08

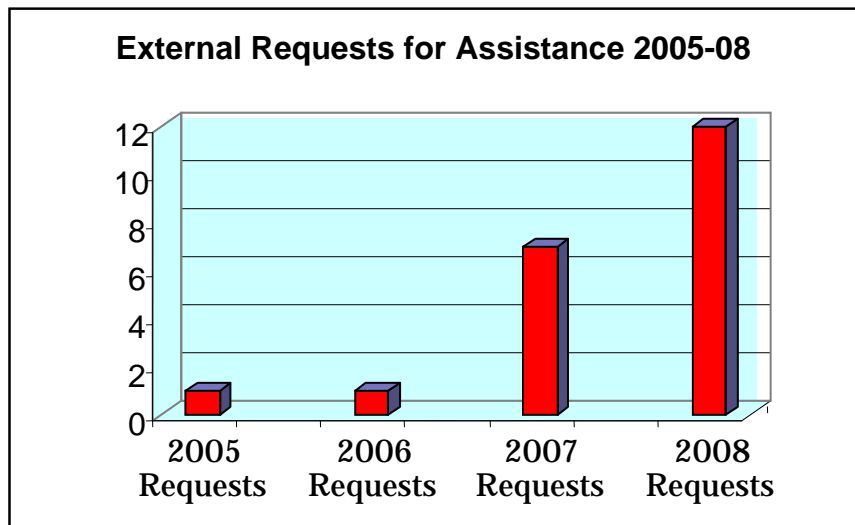


Chart 2: internal/domestic requests

The requests we receive internally are from the judiciary, practitioners (both solicitors and barristers) and government departments such as the Central Authority and the Foreign and Commonwealth Office. We have labelled this group "officials".

Internal Requests for Assistance 2005-08

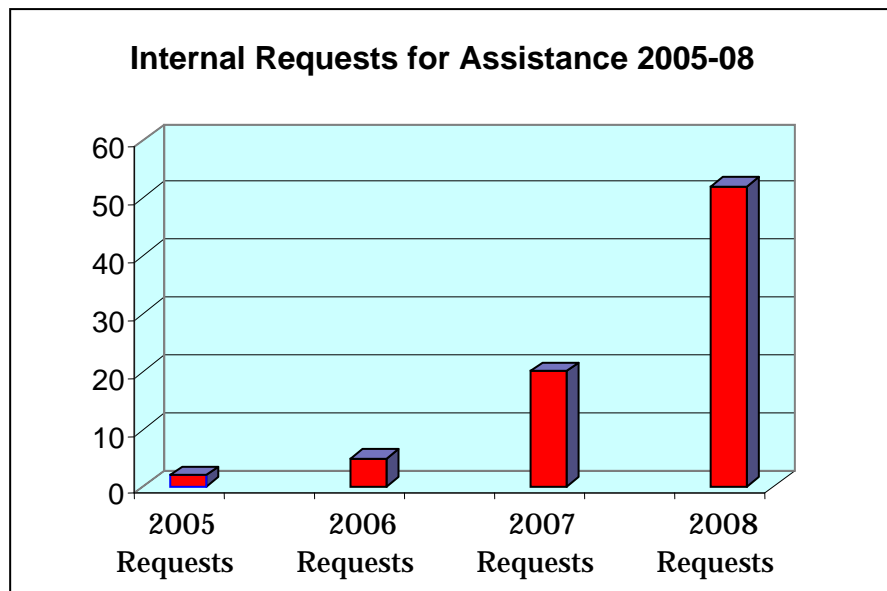
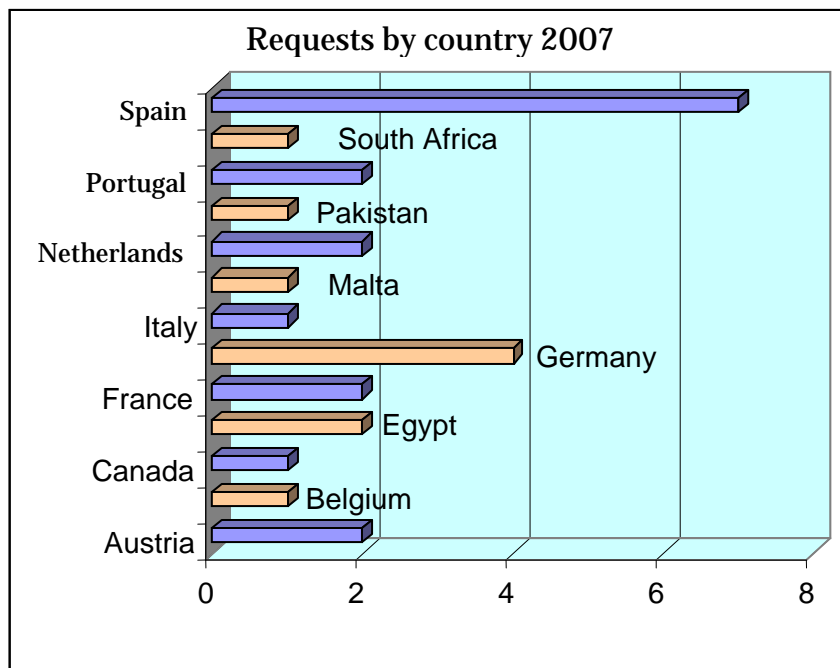


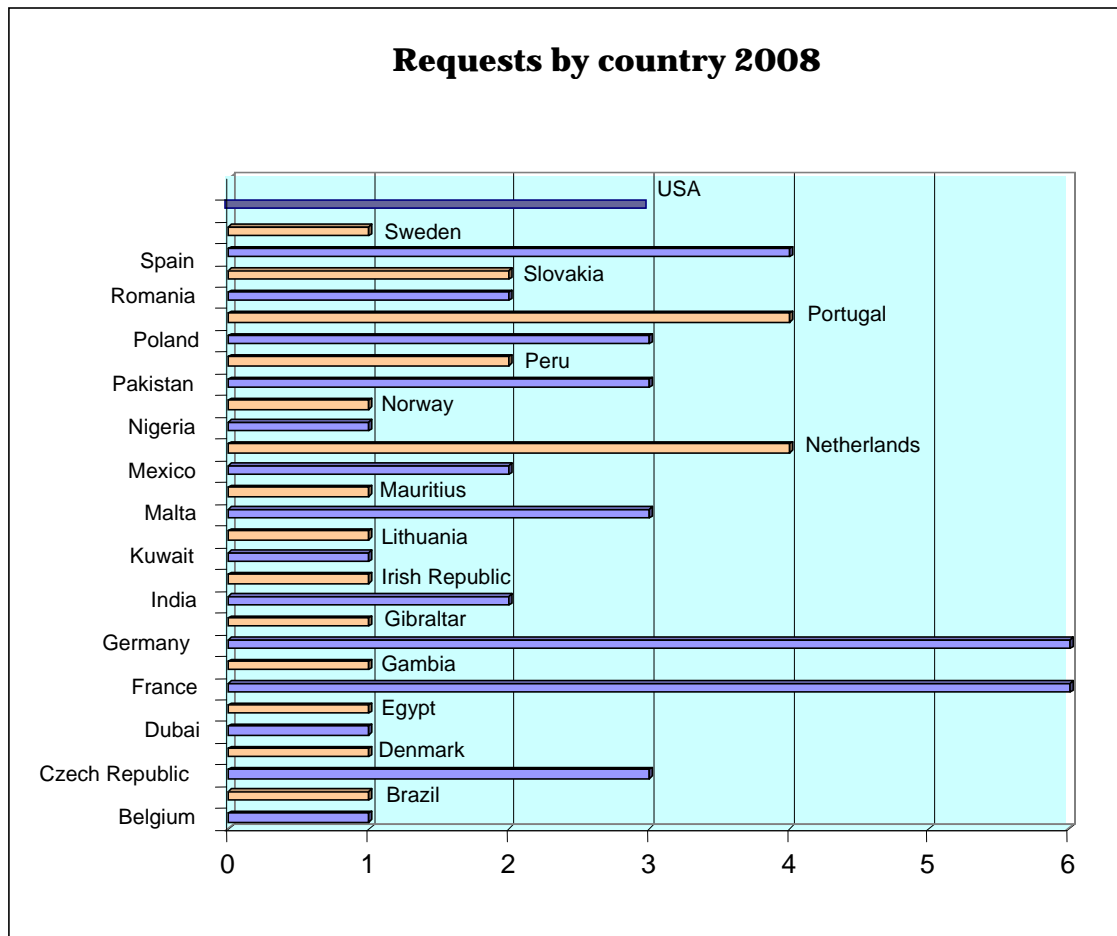
Chart 3: With which jurisdictions do we work most frequently?

These requests are both internal and external and relate to which jurisdiction the case involves

Request by country 2007



And in 2008



Clearly, there is an increase in the number of jurisdictions with which we are requested to assist.

In any one of the 101 cases logged in 2008, what the statistics do not show is how much communication, on average, involved with one request. Typically, there will be numerous exchanges over a period of, on average, three days to two weeks, involving all parties, their legal representatives (barristers and solicitors) and Judges. Every attempt is made to try to deal with the case as expeditiously as possible. By way of illustration, please see Appendix 1 for timeline breakdown and successful outcome for one such request. Appendix 2 shows statistics resulting from our Bi-lateral agreement with Pakistan.

In conclusion, the roles and functions of the Head of International Family Justice in the jurisdiction of England and Wales are many and varied. It seems clear that judges in a similar position certainly benefit from a team of support staff. People in my position should be proactive, organised and have an ability to digest information as quickly as possible and to react appropriately. There are times when I should always defer to the Judge for answers, but with training and confidence (coupled with the fact that the Judge may be in court or abroad) the support staff should be able to answer most questions themselves and should take the initiative needed to progress the case. Many of the cases need to be dealt with on the same day.

In many instances, dealing with a request requires collaboration with our Central Authority. We maintain regular communication and it is a valued relationship of mutual support.

Whilst the cases that we deal with are never 'happy' ones, we have at least had excellent results with regard to speeding up the process, in keeping with the spirit of the Hague Convention. Equally, there are some Hague Convention jurisdictions that we still find it difficult to communicate with. It is hoped that through feedback on individual cases, practice, experience and important conferences we can overcome these obstacles. Whilst communication with some jurisdictions is admittedly nascent, we have never had an approach rebuffed or ignored.

It is essential that family law judges across the world should be supported as much as possible to ensure a growing worldwide commitment to the facilitation of International Family Justice.

APPENDIX 1

Here is a timeline breakdown of a request and its outcome:

The problem: A clash of jurisdiction relating to a US/UK divorce. The legal costs in this case exceed £50,000. The total assets are said to be £220,000.

Summary:

H (Husband) petitioned for divorce in US.

W (Wife) in England.

W applies to strike out H's American petition for want of jurisdiction. She failed. On appeal she also failed.

H applies for a stay of the English proceedings. UK Judge decides that England is '*forum conveniens*' and refused H's application a stay of the English petition. The husband has not appealed.

H made further applications in the US, including a restraining order to stop W from pursuing her application in England (Day 1).

Timeline (17 days)

Day 1

- English legal team acting for Wife (W) contact the office to ask for advice as to how to resolve a jurisdictional dispute between a County Court in UK and a US Court in Washington State, USA.
- International Family Justice (IFJ) office responds on the same day suggesting direct judicial communication. We ask for brief summary of the facts, the names of the two judges involved in UK and US, whether all parties are happy that this correspondence should take place, and for details of important dates (*i.e.* next court dates *etc*).

Day 2

- W's legal team suggest direct judicial communication to English Judge
- English Judge happy to comply as long as The Husband's (H) legal team are aware of this and that all parties are aware of this communication.

Day 10

- W's legal team confirm H happy for communication to take place. Summary of the case is set out to IFJ office.

Day 13

- IFJ office sends case summary and request for direct judicial communication to three Hague Network Judges for the US.
- Judge Kreeger contacts the office and acknowledges receipt of request on the same day. Volunteers to contact specific judge by phone and then to forward our e-mail to him.
- UK Judge e-mails IFJ office to give contact details. Details given included work phone, home phone, mobile number and two e-mail addresses.
- Judge in US indicates via Judge Kreeger that he is happy to communicate with UK Judge on the matter

Day 14

- Judges communicate via e-mail to agree summaries of the case and to organise a time to speak directly over the telephone

Day 16

- Telephone conversation between judges takes place
- Summary is written and agreed by both judges
- UK Judge orders proceedings should be adjourned for 14 days in order for US Judge to address the matter with US counsel.

Day 17

- Notice is given to this office of successful communication and a record of all exchanges provided

The direct judicial communication was set up and concluded in a matter of days. It involved many e-mails and telephone calls both to and from all parties involved. This communication counts as just one request in our international case log file.

APPENDIX 2

The UK-Pakistan Liaison Protocol

This is another role and function of the office of the Head of International Family Justice for England and Wales. The work involves co-operation with the Child Abduction Section of the Foreign and Commonwealth Offices as well as solicitor's firms in the UK and Pakistan, and requires effective communication with, and assistance from, the Network Judge for Pakistan. This office keeps a digital database of every case we assist with.

1. The Liaison System

The UK Network Judge is Lord Justice Thorpe. All correspondence, orders *etc* are sent to the IFJ office. The office will acknowledge receipt and then action by corresponding with the Pakistani Network Judge. His details are not disclosed to the public and direct correspondence to him is discouraged.

2. Dealing with the enquiry

The cases are classified into categories according to what type of request it is, see tables below

Documents are then faxed to Pakistan with Lord Justice Thorpe's approval.

3. Child Abduction Section (CAS) at the FCO must be notified

4. Update the Pakistan Protocol Case Log

5. Provide advice if a domestic judge requests it

November 2007

	"Strict" *	"Spirit / Esprit" **	Holiday prevention / Prévention vacances
Total number of cases brought under the Protocol since 2003	15	40	42
Total number returned/resolved since 2003	8	17	31
Total number of ongoing cases	7	23	11
In how many cases did parents commence legal proceedings in Pakistan? ***	6	15	N/A
Where legal proceedings took place in Pakistan, how many cases resulted in returns?	5	8	N/A
How many returns resulted from a Pakistani court issuing an order for return? ****	1	3	N/A

* 'Strict' : Where there is a UK custody order in place at the time of the abduction

** 'Spirit' : Where there is no custody order in place and no formal arrangement between parents

'Holiday Prevention' : Where a court order is drawn up giving permission for a parent to 1) take a child on holiday to Pakistan but drawing attention to the 2) UK - Pakistan Protocol if a parent should refuse to return a child.

*** In a number of cases left-behind parents initiate proceedings in Pakistan, but, for a number of reasons, the proceedings are not concluded – *e.g.* the child is returned to the UK before the court process is completed, the left-behind parent cannot afford to continue with the case, the child cannot be located.

**** These cases are examples of the Protocol process running in full – from a UK court ordering the return of the child to the UK to the Pakistani court ordering the same.

Pakistan Protocol Statistical Summary

November 2008

	"Strict"	"Spirit"	Holiday prevention
Total number of cases brought under the Protocol since 2003	15	43	53
Total number returned or resolved since 2003	9	32	45
Total number of ongoing cases	6	11	8
In how many cases did parents commence legal proceedings in Pakistan?	7	16	N/A
Where legal proceedings took place in Pakistan, how many cases resulted in returns?	5	11	N/A
How many returns resulted from a Pakistani court issuing an order for return?	1	7	N/A