



JUDICIARY OF  
ENGLAND AND WALES

# Office of the Head of International Family Justice for England and Wales

## Annual Report

1 January–31 December  
2012

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## Preface

This is a report on the activities of the Office of the Head of International Family Justice for England & Wales (the “**Office**”) from 1 January 2012 to 31 December 2012.

Since 2005, the Office has functioned as a centre of expertise and helpdesk for general enquiries in the field of international family law for the judiciary and practitioners in this jurisdiction and overseas. Its main role is to support and facilitate cross-border judicial collaboration and direct judicial communication and to enhance the expertise necessary for handling the large numbers of cases relating to aspects of private international law.

The need for all involved in family law to integrate a trans-national mindset into their approach to resolving cases is self-evident, especially given globalisation, increasing movement of persons across borders, and the ever rising number of family units which are truly international.

The 2012 year serves to emphasise this. From the Office’s perspective, it has been busy. The year has seen, and the Office has played a role in, Part II of the Hague Conference on Private International Law’s Sixth Special Commission into the 1980 Hague Child Abduction Convention. It has brought, in November 2012, the entry into force in the UK of the 1996 Hague Child Protection Convention. Furthermore, major conferences such as the 9<sup>th</sup> bi-annual Anglophone-Germanophone Standing Judicial Conference on International Family Law (Thun, Switzerland) and the 3<sup>rd</sup> Commonwealth/Common Law Standing Conference for International Family Judges (Hong Kong SAR, China) have continued to be key fora for addressing the issues raised by family disputes with an international dimension.

Since the Office’s establishment, practitioners, judges, litigants, charities, government officials and others, from the UK and abroad, have requested its assistance year on year. 2011 saw a 96% increase in requests on 2010. 2012 continues the trend. It has seen a 40.5% rise in requests made, the numbers exceeding what was estimated in the 2011 Annual Report. This is mirrored in terms of jurisdictions the Office has dealt with. 2012 saw the Office receive requests concerning disputes relating to 71 jurisdictions, a 40% increase on 2011. Of those 71 jurisdictions, the Office was able to offer meaningful assistance in relation to 46 of them (c.65%).

The continued rise in requests to the Office for assistance is largely attributable to two factors. The first is the ever increasing number of international family cases coming before the courts, necessitating assistance from an overseas judge or vice versa. The second is the increasing awareness amongst judges and practitioners throughout the world of the service that the Office provides and the benefits it can bring. This is particularly relevant in the Office’s facilitation of trans-national judicial collaboration. Baker J for example, in *HSE Ireland v SF (A Minor)* [2012] EWHC 1640 (Fam) (para [26]), stated that in the context of facilitating the making and enforcement of orders for the welfare of children: “Judicial co-operation is not only encouraged but essential”. Such views were fortified by Prof. Gillian Douglas in her brief commentary on the case: “...Ongoing co-operation both between the care authorities and the courts hearing regular reviews of the case, facilitated by the mechanisms in place for international judicial liaison, will be an important safeguard for the child’s own rights in such circumstances” (September [2012] Fam Law 1087-1088).

Whilst in the process of drafting this report, the Office assisted in facilitating the personal intervention of the Attorney General of one EU Member State to guarantee that a mother who had been subject to a European Arrest Warrant, would not be subject to prosecution on her return with her child. Leading Counsel in that case, in an e-mail to the Office wrote: *“The speed and effectiveness of international judicial communication as a means of securing an important trans-jurisdictional safeguard has, in my experience, never been more strikingly demonstrated”*.

Judicial collaboration can only be effective through the dedication of judges from around the world, members of judicial networks, both formal and informal, who strive to make themselves available to assist regardless of caseload or time constraint, ever mindful of course, of the need to maintain judicial independence and fairness to the parties at the centre of the dispute. We would like to extend our profound thanks to them for all their assistance, and to the Permanent Bureau of the Hague Conference on Private International Law whose support for direct judicial communication has been steadfast.

There have been cases in 2012 where the Office has received the assistance of judges from jurisdictions which are not represented amongst the membership of the International Hague Network of Judges. We would, in particular, like to extend our thanks to Chief Justice Ian Chang SC of Guyana for his assistance, and to the Department for International Development for facilitating contact between the Office and the Sudanese judiciary.

A large number of cases the Office has dealt with have additionally required the support of the Child Abduction Unit of the Foreign and Commonwealth Office, and the International Child Abduction and Contact Unit (“**ICACU**”) which carries out the Lord Chancellor’s functions as the Central Authority for England & Wales for a number of international instruments. We wish to recognise their hard work, the constraints under which they operate, and their dedication.

We acknowledge, as would all individuals concerned or involved with family justice, the additional emotional distress that is caused to any family by the inclusion of an international dimension. It is incumbent upon anyone who works in such a sensitive area to try and find ways of mitigating such stress, to the extent that it is possible to do so. The Office has proved an integral tool to assist in international family cases and we hope that this report goes in some way to highlight this.



Rt. Hon. Lord Justice Thorpe  
Head of International Family Justice  
for England & Wales



Mr. Edward Bennett  
Legal Secretary to the Head of  
International Family Justice  
for England & Wales

# Introduction

Since its creation in April 2005, the Office has delivered both the objectives of the Head of International Family Justice and a service to judges and practitioners both within England & Wales and in other jurisdictions faced with a pending case with an English dimension.

The recent developments over the period covered by the report will be discussed in Chapter 1. Chapter 2 sets out the legal framework, while Chapter 3 addresses the Office's duties and functions. Chapter 4 provides a statistical analysis of the cases that the Office dealt with, including requests for judicial collaboration and general enquiries. Chapter 5 lists the conferences and international meetings attended by the Head of International Family Justice and his Legal Secretary during the period covered by the report. Personnel data and finances are dealt with in Chapters 6 and 7 and, finally, a bibliography of articles and papers written by the Office is provided in Chapter 8.

# Chapter 1: Developments in 2012

## 1.1 Entry into force of the 1996 Hague Child Protection Convention

This critically important convention entered into force in the UK on 1 November 2012, three months after ratification at the end of July. The Office received its first request for assistance relating to the 1996 Convention in December 2012 and the Court of Appeal heard the first case in England & Wales interpreting it in early 2013<sup>1</sup>. A practice guide, produced by the Ministry of Justice, with the approval of the Head of International Family Justice, was made available to assist practitioners and judges in February 2013<sup>2</sup>. The Hague Conference has additionally produced a Handbook for the 1996 Convention which can be accessed via the Hague Conference website<sup>3</sup>.

Further information about the 1996 Convention and its impact can be found in Chapter 2 ('Legal Framework').

His Honour Judge Philip Waller CBE was the major contributor to the drafting of the necessary rules of court for the operation of the 1996 Convention within our jurisdiction. The main rules are to be found in the Family Procedure Rules 2010 at Chapter 6, Section 2, Rules 12.58–12.71.

## 1.2 Developments in judicial collaboration/direct judicial communication

### England & Wales

Since at least 1998, case law has served to emphasise how integral trans-national judicial collaboration can be and has been to family disputes with an international angle. Failures to have recourse to it when the option of utilising it was available has led to short shrift from the appellate courts<sup>4</sup>.

In 2012, judicial collaboration was mentioned in at least one reported Court of Appeal decision, *Re B (Children)(residence order: implementation)* [2012] EWCA Civ 1631 and features in at least five judgments of the High Court, one of Pauffley J *Re Z (a child)* [2012] EWHC 139 (Fam), one of Moylan J *C (A Child) (Jurisdiction and Enforcement Orders relating to child)* [2012] 2 FLR 1191, and three of Baker J, *O v P* [2011] EWHC 2425 (Fam), *HSE Ireland* (see 'Preface') and *WK (Minors)* [2012] 2 FLR 762. It also received its first Supreme Court mention in *Re E (Children) (Abduction: Custody Appeal)* [2012] 1 AC 144.

<sup>1</sup> *Re Y (A Child)* [2013] EWCA Civ 129

<sup>2</sup> <http://www.justice.gov.uk/downloads/protecting-the-vulnerable/official-solicitor/international-child-abduction-and-contact-unit/1996-hague-convention-guide.pdf>

<sup>3</sup> See "Revised Draft Practical Handbook on the Operation of the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of", Prel. Doc. No 4 of May 2011, drawn up by the Permanent Bureau. Available on the Hague Conference website at < [www.hcch.net](http://www.hcch.net) > under "Child Abduction Section" then "Special Commission meetings on the practical operation of the Convention" and "Preliminary Documents / Information Documents".

<sup>4</sup> cf. *Chorley v Chorley* [2005] EWCA Civ 68 at para [44], *Abbassi v Abbassi* [2006] 2 FLR 415 at paras [13] and [21], and *Re W (Children)(Relocation: Removal outside Jurisdiction)* [2011] 2 FLR 409 at paras [105] – [106]

The Office has, in addition, been involved in many reported cases throughout the year without featuring in a written judgment. The proceedings culminating in *Re J (Children)* [2012] EWCA Civ 1511 are one example of this.

## International

July 2012 saw the publication of the latest version of the Hague Conference's *Emerging Guidance regarding the development of the International Hague Network of Judges and General Principles for Judicial Communications, including commonly accepted safeguards for direct judicial communications in specific cases, within the context of the International Hague Network of Judges*<sup>5</sup> (the “**Emerging Guidance**”). The origins of the Emerging Guidance lie in the *Conclusions and Recommendations* of the Fifth Meeting of the Special Commission to review the operation of the 1980 Hague Child Abduction Convention and the practical implementation of the 1996 Hague Child Protection Convention (30 October–9 November 2006). The section relating to judicial communications contained the recommendation that the future work of the Permanent Bureau would include exploring the value of drawing up principles concerning direct judicial communication which could serve as a model for the development of good practice. The section was drafted by a group of judges, the co-chairman being Lord Justice Thorpe. The Office is supportive of the Emerging Guidance and has been seeking to encourage both its use and citation in the English courts and overseas. This is becoming increasingly important as cross-border judicial collaboration in international family cases increases in prominence<sup>6</sup>.

In April 2012, the *Conclusions and Recommendations* of Parts I and II of the Hague Conference's Sixth Special Commission into the operation of the 1980 Child Abduction Convention and the 1996 Hague Child Protection Convention were published<sup>7</sup>. Amongst other things, the Special Commission recommended that the Permanent Bureau, in relation to future work, promotes the use of the Emerging Guidance and continues to strengthen and expand the International Hague Network of Judges. Furthermore, the Permanent Bureau is to draw up a short information document for judges on direct judicial communication. A draft of this document is expected to have been prepared by July 2013. It is anticipated that the draft document will be discussed at the 15th anniversary conference of the International Hague Network of Judges (17–19 July 2013).

### 1.3 Developments in Relocation Law

#### International cases

The only significant appellate decision in 2012 was *Re F (Permission to Relocate)* [2012] EWCA Civ 1364, [2012] 3 FCR 443, where the Court of Appeal (Pill, Toulson and Munby LJ) dismissed the appellant father's appeal of the trial judge's decision to allow the mother's relocation proposal. The case was subsequently refused permission to appeal to the Supreme Court.

Two other Court of Appeal cases were heard at the end of 2012, namely *Re E (Children)* [2012]

<sup>5</sup> <http://www.hcch.net/upload/wop/abduct2011pd03ae.pdf>

<sup>6</sup> Its uses have been encouraged by Part X to the European Commission's Good Practice Guide to Brussels ii bis and the Hague Conference's *Good Practice Guide to the 1996 Hague Convention*, cf. Chapter 3 ('The Role and Activities of the Office'), at para 3.1

<sup>7</sup> [http://www.hcch.net/upload/wop/concl28-34sc6\\_en.pdf](http://www.hcch.net/upload/wop/concl28-34sc6_en.pdf)



EWCA Civ 1893, and *Re O (A Child)* [2012] All ER (D) 39 (Dec). Both are applications of the law to the particular facts, and have little bearing on relocation law itself. Similarly with the three High Court decisions which were reported.<sup>8</sup>

## Internal Relocation

The only reported case was *Re S (Residence Order: Internal Relocation)* [2012] EWCA Civ 1031, [2012] 3 FCR 153. There is some discussion of the relevant principles, with Sir Mark Potter repeating the phrasing used by Wall LJ in *Re L (Internal Relocation: Shared Residence Order)* [2009] EWCA Civ 20, [2009] 1 FLR 1157, namely that the correct approach to an internal relocation case is ‘to look at the factual matrix and determine what was in the child’s best interests’ (at para [37]).

### 1.4 Relocation Law Working Group

Following the 3rd Commonwealth/Common Law Standing Conference for International Family Judges in August 2012, the Head of International Family Justice convened and has been chairing an informal working party formed to consider the formulation of possible factors to be reflected in judgment in relocation cases. The group consists of Prof. Nigel Lowe, Dr. Rob George, Prof. Marilyn Freeman, Timothy Scott QC, Mr Justice Moylan, Prof. Mark Henaghan, Prof. Nicki Taylor and Edward Bennett (Secretary).

The group is intended to be inter-disciplinary, i.e. researchers, judges, academics and practitioners. It aims to pool expertise and research developing in England and New Zealand.

The group’s conclusions and recommendations will be published at the 2<sup>nd</sup> International Family Law and Practice Conference, held under the auspices of the Centre for Family Law and Practice, London Metropolitan University on 3–5 July 2013.

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<sup>8</sup> *Re Z (A Child)* [2012] EWHC 139 (Fam); *S v Z (Leave to Remove)* [2012] EWHC 846 (Fam), [2012] 2 FLR 581; *Re L (A Child)* [2012] EWHC 3069 (Fam).

### 1.5 3<sup>rd</sup> Commonwealth/Common Law Standing Conference for International Family Judges, Hong Kong (August 2012)

The theme of the conference was ‘The role of Common Law in the future development of International Family Justice’. The conference was attended by some 100 judges and other experts. Some of the key *Conclusions and Recommendations* were:

2. *Adequate resources, including administrative and legal resources, should be made available to support the work of judges in international family justice. In addition, where appropriate, States should consider establishing an office to support the work of the judiciary in international family justice and, in particular, those designated as a contact in their jurisdiction for cross-border disputes, including Members of the International Hague Network of Judges (hereinafter the IHNJ).*
8. *The continuing increase in the number of international family disputes across the globe highlights the importance of the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (the 1996 Hague Convention) and similar bilateral protocols in international family law. In this respect, participants encourage those States which are not yet Party to the 1996 Hague Convention to give, or continue to give, their active consideration to it.*
9. *States that have not yet designated a judge to the IHNJ are encouraged to do so forthwith. The interest expressed by a number of States represented at the meeting in designating a judge to the IHNJ is welcomed.*
10. *States that are not yet Party to the 1980 or 1996 Hague Conventions are actively encouraged to designate a judge to the IHNJ.*
11. *The benefit to international child protection cases of direct judicial communications, in particular communications facilitated by Members of the IHNJ, has been demonstrated over many years. The practical experience shared during the meeting was considered to be extremely helpful to all participants. The wide dissemination of this experience internationally was encouraged.*
13. *The Central Authorities designated under the 1980 and 1996 Hague Conventions are encouraged to take a proactive view to their role under the Conventions and to fulfill their duties to the fullest extent. In this respect, Central Authorities are encouraged to provide all possible support to their International Hague Network Judge(s) where requested.*
14. *Where possible and appropriate, the executive should consult with the court(s) dealing with international family law matters on proposed legislation in this area which will affect the court(s).*
17. *The Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption (the 1993 Hague Convention) instills principle into international adoption and properly regulates this sensitive area. States that are not yet Party to the 1993 Hague Convention are urged to actively consider ratification of, or accession to, this Convention.*

18. *The difficulties concerning the legal status of the children born as a result of international surrogacy arrangements and the broader concerns arising in respect of such arrangements, including the need to protect all parties to such arrangements from exploitation and abuse, and the need to protect the children born as a result of such arrangements, are apparent from the global jurisprudence. As a result, participants consider that there is a need to put in place regulation, at an international level, regarding international surrogacy arrangements. The meeting welcomes and strongly supports the work that the Hague Conference on Private International Law is doing in this field acknowledging the diversity in domestic laws.*

## 1.6 9<sup>th</sup> Anglophone-Germanophone Standing Judicial Conference in International Family Law, Switzerland (August 2012)

The 9th Anglophone-Germanophone Conference saw judges, practitioners and civil servants from across the English and German speaking worlds discuss key issues in areas of international family law and practice. Participants included the Swiss Minister of Justice, the President of the Federal Supreme Court and a Judge from the Principality of Lichtenstein, the first time that a representative from that state has attended. At the conference, the President of the Federal Supreme Court, Dr. Meyer, spoke of the need for Switzerland to nominate a judge to the International Hague Network of Judges. In the first half of 2013, two Swiss judges, one German speaking and one French speaking, were welcomed as new members of the network.

As part of its *Chair summaries and conclusions*, the Conference highlighted three issues:

- (i) *In the framework of the 1980 Hague Convention, the return remedy is not effective unless it is swift. The Conference observes the worldwide tendency towards longer return proceedings with concern.*
- (ii) *In the case of a lawful temporary international relocation the participants observe the need for clarification, in particular in relation to the legal consequences (especially habitual residence, the question of continuing international jurisdiction and the application of the Hague Child Abduction Convention).*
- (iii) *The participants regret the economic restrictions which have been observed in the field of mediation procedures. In particular legal aid should be available at the least in international child issues.*

The Standing Conference expects that England & Wales will host the 10th Anglophone-Germanophone Conference in 2014.

## Chapter 2: Legal framework

### 2.1 The 1980 Hague Child Abduction Convention

The most important treaty in international family law is the 1980 Convention which deals with the civil aspects of international child abduction. There are now more than 80 contracting states to the 1980 Convention, including all EU Member States. In 2012 South Korea and Lesotho acceded to the Convention, with the Convention entering into force in Guinea and Lesotho.

The Convention provides a hot pursuit remedy leading to the summary return of an abducted child. It recognises that the interests of children are of paramount importance in matters relating to their custody and it aims to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access.

The application of the 1980 Convention does not involve any investigation of wider welfare issues. Once the abduction has been established then the duty of the court is to return the child to the State of habitual residence to enable any welfare issues to be investigated and dealt with in that State. The court determining the return application is not concerned with the wider issues and to investigate them or to weigh them in balance is to trespass upon the territory and responsibility of the court of the child's habitual residence.

There are two aspects to child abduction:

- 1) Wrongful Removal
- 2) Wrongful Retention

Although the duty to order summary return is general, it is not absolute since the 1980 Convention recognises a number of exceptional defences. The essential element of the successful application is the wrongful removal or retention at a time when the applicant was exercising rights of custody. Rights of custody are not specifically defined but may, at a minimum, amount to contact together with a restriction on the other parent's right to relocate abroad without consent or order of the court.

The 1980 Convention is the cornerstone of international family law. Those who framed it could not possibly have foreseen its phenomenal strength, endurance and beneficial practicality. More than thirty years after its creation it remains a vital living instrument. Over those thirty years it has brought incalculable benefits to the global community.

The efficacy of the 1980 Convention remedy depends upon the administrative contribution of the Central Authority in support of the judicial proceedings. Over the years of the operation of the 1980 Convention, Central Authorities have built up experience and expertise. Experience has also taught

us that the judicial proceedings need to be both expedited and elevated to a high level within the justice system.

The UK implemented the 1980 Convention through Part I of the Child Abduction and Custody Act 1985, and Schedule. 1 to that Act sets out the Articles of the 1980 Convention as directly incorporated into UK law. Schedule. 1 does not reproduce the 1980 Convention in its entirety. Neither the Preamble nor Articles 1 or 2, for example, are included. Other provisions not specifically enacted are Articles 20, 23, 25, 33, 34 and 35.

Domestic rules of practice and procedure under the 1985 Act for England & Wales are provided by Part 12 of the Family Procedure Rules 2010.

## 2.2 The 1996 Hague Convention

As at 3 December 2012, the Convention had 38 contracting states. It complements the 1980 Convention and remedies some of the defects that have emerged after some thirty years of experience in the operation of the 1980 Convention.

Its utility is being principally felt in the field of international contact orders. Following the decision of the Court of Appeal that Article 21 of the 1980 Convention did not confer jurisdiction on the domestic court to make a contact order<sup>9</sup>, the 1980 Convention has been a limping instrument in the field of international contact. The 1996 Convention enables contact orders to be automatically enforceable internationally as though the order had been made as a domestic order in the court which is asked to enforce. Furthermore Article 23 of the 1996 Convention, by providing for advanced recognition, should overcome the absence of jurisdiction to make mirror orders exposed in the case of *Re P (A Child: Mirror Orders)* [2000] 1 FLR 435.

Whilst the court proceedings invoking the 1980 Convention are confined to the High Court there is no such concentration of jurisdiction for the 1996 Convention. Accordingly it will be necessary for a much larger body of practitioners and judges to develop familiarity and expertise.

## 2.3 The 2007 Hague Convention

The Hague Convention of 23 November 2007 on the International Recovery of Child Support and other forms of Family Maintenance (the “**2007 Convention**”) will when ratified by the European Union ensure the effective international recovery of child support and other forms of family maintenance between all States party to the Convention. It will provide similar remedies to the European Maintenance Regulation (see paragraph 2.5 below), except that the European Union has decided Member States will operate the 2007 Convention for the time being with respect to child and spousal maintenance only.

<sup>9</sup> *Re G (A Minor) (Enforcement of Access Abroad)* [1993] 1 FLR 669

## 2.4 The Brussels II (bis) Regulation

Child abductions within EU Member States, with the exception of Denmark, have been governed by Council Regulation 2201/2003 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, since March 2005, known as Brussels II bis. This Regulation refers to the 1980 Convention and lays down further rules on subjects such as the voice of the child, the time frame within which a case must be dealt with, the procedure in the court of habitual residence when a return order is refused and the cooperation between the authorities of the Member States.

According to Article 11(6)–(8), the authorities of the Member State where the child was habitually resident must be informed of the order on non-return issued pursuant to Article 13 of the 1980 Convention. The parties then have three months from the date of notification to make submissions concerning the custody of the child. Notwithstanding an order not to return the child on the grounds of Article 13 of the 1980 Convention, any subsequent judgment which requires the return of the child issued by the court in the Member State where the child was habitually resident prior to the wrongful removal or retention, shall be enforceable in order to secure the return of the child.

Whilst the Office offers a global service, the majority of the referrals to it originate in proceedings issued under Brussels II bis.

Article 65 provided for Commission review of Brussels II bis by 1 January 2012. The process began in early 2013. As with any proposals made by the Commission, these will be subject to negotiation by Member States. The Commission intends to instruct an independent agency to report the commencement of a long drawn process which is unlikely to achieve revision before 2015.

## 2.5 The Maintenance Regulation

The EU Regulation 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and co-operation in matters relating to maintenance obligations entered into force on 18th June 2011 and provides pan European (with the exception of Denmark) reciprocal enforcement of and establishment for orders relating to maintenance.

## 2.6 Implementation of the 2007 Convention

Implementation of the 2007 Convention is also an EU obligation. The EU was due to ratify in January 2013 but has not yet done so. When it does, the 2007 Convention will come into force on the first day of the month following three complete months post ratification. The relevant regulations are as follows:

- SI 1770/2012 The International Recovery of Maintenance (Hague Convention 2007)

(Rules of Court) Regulations 2012. These came into force on 31 July 2012;

- SI 2806/2012 The Family Procedure (Amendment no 4) Rules 2012. These came into force on 20 December 2012; and
- SI 2814/2012 The International Recovery of Maintenance (Hague Convention 2007) Regulations 2012. These will come into force on the day the Convention enters into force in respect of the EU.

## Chapter 3: The role and activities of the Office

### 3.1 Judicial collaboration

The principal focus of the Office is the facilitation of trans-national judicial collaboration, the process by which judges of different jurisdictions communicate with each other to assist with the practical aspects of resolving a case with an international angle in the best interests of justice. A judge in State A, by way of example, may want to be sure that safe harbour orders are possible in State B. He may want to know whether the threat of criminal proceedings can be neutralised. He may want to know how quickly an issue can be listed. The judge in State B may want information as to the law or as to the progress of the proceedings in State A: for instance what protective measures are necessary to safeguard the child on return. ‘Direct judicial communication’ specifically refers to judicial collaboration involving direct communication (such as by telephone, video link, or e-mail) between judges of different jurisdictions.

International judicial collaboration is facilitated at first instance through network judges, such networks being both formal and informal. From the perspective of England & Wales, the two most important networks are the International Hague Network of Judges (the “**IHNJ**”) which operates under the auspices of the Hague Conference of Private International Law, and the network of Family Law Judges which works within the framework of the European Judicial Network (the “**EJN**”<sup>10</sup>). The role of the network judge is to encourage and facilitate international judicial co-operation on matters of family justice.

As Singer J stated more than a decade ago, “*in an appropriate case real advantages can be reaped when judges in different jurisdictions can communicate and collaborate*”<sup>11</sup>. Judges can improve the quality of justice delivered in the domestic courts of the world through judicial collaboration. Such collaboration can reduce delay, reduce financial costs to litigants and to individual States and can reduce the emotional distress that can often be heightened in such cases. Furthermore, it is explicitly recognised in the Good Practice Guide to Brussels II bis<sup>12</sup> and the Draft Practical Handbook to the 1996 Hague

10 Council Decision 2001/470 created a European Judicial Network ‘to improve and expedite effective judicial co-operation between members states in civil matters’. The EJN was launched in 2002. There is an obligation on each Member State (except Denmark) to nominate at least one contact point. The contact point nominated by England & Wales is an official in the Ministry of Justice. Out of the impetus for the contact point to have judicial support as and when required, an informal network of European judges emerged which broadly operates in the same way as the Hague Network. The use of the EJN, both formally and through these network judges is commonplace in international family proceedings and, indeed, is encouraged in part X of the Good Practice Guide to Regulation EC 2201/2203 (Brussels II revised) produced by the European Commission (cf. also the comments of Thorpe LJ in *Chorley v Chorley* at para [44] and *Barbara Mercredi v Richard Chaffe* [2011] EWCA Civ 272 at paras [89]-[90]). In addition, the European Commission has never demurred from the conclusions and recommendations of a conference it sponsored, the 2009 EC – HCCH conference on direct judicial communication, which encourage both the appointment of network judges with the appropriate expertise and the use of direct judicial communication in suitable cases.

11 *Re M and J (Abduction: International Judicial Collaboration)* [2000] 1 FLR 803

12 cf. Part X of the Good Practice Guide to Regulation EC 2201/2203, Part 5 of the Revised Draft Practical Handbook on the operation of the 1996 Hague Convention (May 2011)



Convention that transfers of jurisdiction<sup>13</sup> from the courts of one state to another can be facilitated by judicial collaboration, as an alternative in appropriate cases<sup>14</sup>, to other mechanisms that are in place, such as transmitting requests through Central Authorities.

The Head of International Family Justice is a Court of Appeal judge, nominated network judge for the purposes of the IHNJ for the Hague Conventions, nominated network judge for the purposes of the EJN and the co-chairman of the Association of International Family Law Judges.

Whilst the IHNJ is linked to the 1980 Hague Child Abduction Convention, in practice, judicial collaboration is not restricted to child abduction cases. Over the last 14–15 years, judicial collaboration has been utilised effectively across the family law spectrum, including in public and private law children cases, relocation, inter-country adoption, surrogacy, matrimonial finance, and proceedings relating to forced marriages.

Both judges and practitioners request assistance via telephone, email or fax or by visiting the Office in person. The request details are noted and acknowledged immediately. If direct judicial communication is required, the Office aims to establish contact within one week and so far it has succeeded in achieving this target. On average a request concerning a specific case is transmitted to the relevant network judge within 48 hours of receipt. It can take up to two weeks for us to receive a response, sometimes longer, however with those jurisdictions with which we have the strongest collaboration (Australia, Germany, South Africa, USA, Canada, Spain and the Netherlands) we usually hear back within 24 hours.

The practicalities involved call for a large amount of administrative and collaborative work by all. The inclusion of a lawyer in the Office allows it to operate expeditiously and autonomously since most cases require immediate attention. It ensures that judicial collaboration can take place without prejudicing the parties at the centre of a dispute, or compromising the independence of each judge involved and acts as a further safeguard to prevent network judges being exposed to inappropriate requests, such as those seeking legal advice with a view to avoid instructing local lawyers.

Chapter 4 gives an overview of the requests for assistance the Office dealt with in the period covered by this report.

### 3.2 General enquiries

In addition to facilitating direct judicial communications between judges in England and Wales and their foreign counterparts, the Office serves as a help desk for judges, practitioners, officials and academics. The queries received are wide ranging from questions concerning the problems associated

<sup>13</sup> A.15 Brussels II bis, A.8-9 Hague Convention 1996

<sup>14</sup> This has been recently emphasised by Cobb J in *LM (A Child)* [2013] EWHC 646 (Fam) at para [39]: “It is unfortunate that this request for transfer has not been determined more swiftly. I recognise that the mother herself made individual efforts to accelerate the process. Where an Article 15 request is made, it would be helpful, in my judgment, for the requesting State to communicate such a request at once through the offices of the International Judicial Network; further or alternatively, the court in the requesting State should invite one of the parties in that case (in a public law matter, the public authority, I suggest) to drive along the request, and seek directions for the judicial determination of such a request, in the requested State. These routes may prove to be more effective, and speedy, than the alternative of communicating the request through the Central Authorities designated by BIIR.”

with inter-country surrogacy, to mediation, to guidelines concerning judges meeting with children.

General enquiries are sent in the same way as requests for direct judicial communication; by telephone, email or fax. As with the liaison requests, general enquiries are dealt with immediately. The Office aims to answer questions within the shortest timeframe possible, and usually does so within 48 hours.

### 3.3 Association of International Family Judges

Lord Justice Thorpe's proposal for the creation of the Association of International Family Judges was first published at the Anglophone/Germanophone Standing Judicial Conference in Vienna in September 2008 where it received an enthusiastic response. Dissemination of information concerning the proposed Association continued at the Judicial Conference in Brussels in January 2009, jointly convened by the Hague Permanent Bureau and the European Commission. The Association was then established with Lord Justice Thorpe being appointed co-chairman.

The Association disseminates information on developments in international family law and practice. The membership list constitutes a directory that enables members to communicate individually knowing that the judge in the selected jurisdiction will be ready and willing to reciprocate. The Association is open to specialist common law and civil law judges and, to some extent, has helped the better understanding and better collaboration between common law and civil law jurisdictions.

The administration is managed by a part-time administrator, the cost of whom is met by the subscriptions.

The Association was granted observer status at the 6th Special Commission and therefore had the right to lodge a working document. At a meeting of the members of the Association present in the Hague in June 2011, it was decided that the Association should put down a working document to ensure that at the meeting in January 2012 there was a discussion on the creation of legal instruments to strengthen existing Conventions and to provide supra-national guidance on how relocation applications should be decided. Although the Association's working document was simply a matter of record it is important as a platform for future work. The Association continues to support the work of the International Family Judiciary. At the invitation of the 6<sup>th</sup> World Congress on Family Law and Children's Rights, the Association designed and successfully presented a day forum open to all sitting and retired international family judges on the eve of the Congress in Sydney on 17 March 2013.

### 3.4 International Family Law Lecture

The Annual International Family Law Lecture, organised by the Office, is customarily given in the summer and has taken place in London since 2007. It traditionally has the support of the judiciary, the Family Law Bar Association and Resolution. Previous speakers include His Honour Judge Peter

Boshier (Law Commissioner, New Zealand Law Commission and formerly Principal Family Court Judge), Prof. Patrick Parkinson, Prof. William Duncan CMG (formerly Deputy Secretary General of the Hague Conference), and Judge Vincent de Gaetano (Judge of the ECtHR). The 2012 lecture was given on 1 May by the Honourable Chief Justice Diana Bryant AO of the Family Court of Australia. The 2013 lecture will take place on 5 July at the Centre for Family Law and Practice, London Metropolitan University. The lecture will be delivered by Judge Allan Rosas of the Court of Justice of the European Union.

### 3.5 Relocation Research

In 2011 a new research project into relocation disputes, funded by the British Academy and run by Dr. Rob George of Oxford University, was approved by the President in accordance with rule 12.73(c) Family Procedure Rules 2010. The Office assisted in the gathering of data for this research, which Dr. George is currently analysing.

The aim of the project was to look at relocation cases in 2012 which were litigated but not subsequently appealed, with a view to finding out more about everyday disputes in England and Wales in order to inform the relocation debate.

By the end of the year, 93 international cases and 22 domestic ones had been submitted to the project. Analysis of those cases is now underway, but some preliminary findings can be reported, though they are subject to change as the analysis goes on.

The proportion of relocation applications granted in both categories was virtually identical – 72.0% for international cases, 72.7% for domestic ones. The average age of the children in both sets of cases was also the same (6¾ years, with a standard deviation of 3½ years). The mother was the parent seeking to relocate in all the domestic cases, and in 92.5% of the international ones.

Looking at the international cases only, just over half (54%) could be characterised as ‘going home’ cases, where the applicant was seeking to return to her original home country. Around a quarter (27%) might be called ‘lifestyle’ applications, though there was some overlap between these cases and the ‘going home’ cases which suggests that any categorisation of cases, and any assessment of the implications of such categories, will need to be done carefully. In around a fifth of cases, the main reason for seeking to relocate was a job offer for either the applicant herself or for a new partner.

Respondents’ cases were almost universally focused on the effect that the move would have on the child’s relationship with him. In those cases where the respondent successfully established either that the applicant had an ulterior motive in seeking relocation (which was claimed in 25% of cases, but accepted by judges only occasionally), or that the move was poorly planned in terms of practicalities (claimed in 16% of cases, and accepted by judges fairly frequently when it was claimed), relocation was less likely to be permitted.

Fuller analysis of these cases will be forthcoming during 2013.

### 3.6 Working Group 11

At the European Judicial Network meetings of the Central Authorities on 19 June 2008 and 8 June 2009, there was broad consensus that information on national proceedings on the application for the return of the child should be compiled and disseminated. The meeting in 2008 resolved to establish this working group, a decision confirmed in 2009. The group was entitled 'Working Group 11' to reflect the fact that it would primarily examine applicable national proceedings under Article 11(3) of Brussels II bis. The Head of International Family Justice is Chairman of Working Group 11.

The working group was tasked with:

- compiling and disseminating information on national proceedings on the application for the return of the child under Article 11(3) of Brussels II bis;
- compiling and disseminating information on national experiences with courts specialised in the area of cross-border parental child abduction; and
- identifying possible common minimum standards for return proceedings.

A best practice guide for Judicial Proceedings under Article 11 was drafted. The European Commission is currently investigating distribution and translation related issues.

In tandem with Working Group 11, a separate, independent working party was established to collate and analyse statistics into the volume of A.11 cases. Working Group 11 now takes this work forward.

### 3.7 Mediation Working Group

In 2011 a working group was set up by the EJN to investigate and report on international family mediation in cases of international child abduction. The terms of reference of the group are to draw a synthesis of the different related initiatives and works undertaken in this area, notably those of the Hague Conference, with the possibility of appealing to the expertise of the European Parliament Mediator for International Parental Child Abduction, of mediators and organizations specialized in cases of child abduction and of liaison judges for cases of child abduction. The group will report on its work and propose to the Council and the Commission the most appropriate and efficient means to promote and improve the use of international family mediation in cases of international parental child abduction, in compliance with the applicable legal instruments as well as when the abduction occurs with a State which is not a party to a Convention.

The Legal Secretary to the Head of International Family Justice attended the first meeting of the working group in Brussels in April. At that meeting, the group settled a questionnaire which was dispatched to all Member States for responses. On 20 September 2012 the Office submitted a response to the questionnaire. Work is ongoing, with Sir Peter Singer representing the UK.

### 3.8 Judicial visits

The Office arranges family-law study programmes for those judges who are visiting the jurisdiction and would like to learn more about our family justice system.

Amongst other visits, every year, the Supreme Court of Japan supports a year-long study programme for junior Japanese judges, a programme that has taken place for many years. During the 12-month programme the judges spend, on average, a month observing the work of the family courts.

This induction to our family justice system is organised by the Office. In 2012 Judge Hosokawa completed a four-week programme which encompassed: (i) shadowing solicitors and barristers; and (ii) marshalling at the Family Proceedings Court, County Court, Principal Registry of the Family Division, Family Division and the Court of Appeal. Judge Akihiro Noguchi of the Osaka District Court arrived in the UK at the start of the 2012-13 legal year. His family law programme, which will be of a similar length, will commence mid-2013.

### 3.9 Conferences

The Head of International Family Justice and his Legal Secretary are regularly invited to attend conferences on international child protection and judicial co-operation. Some are highly influential such as the bi-annual Anglophone-Germanophone and Anglophone-Francophone Standing Judicial Conferences in International Family Law.<sup>15</sup> The list of conferences and international meetings which the Head of International Family Justice or members of his Office attended in 2012 features in Chapter 5.

### 3.10 International Family Law Committee

The Head of International Family Justice chairs the International Family Law Committee. The Committee was established in 1993 with the approval of the then President of the Family Division. It consists of judges, barristers, solicitors, academics and officials. Its views are, on occasion, sought for consultations. The Committee meets four times a year at the Royal Courts of Justice.

In 2012, the Committee met on 17 January, 18 April, 18 July and 14 November.

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<sup>15</sup> N.B. the Commonwealth/Common Law Standing Judicial Conference is equally influential.

### 3.11 Officials' Working Group

The Group acts as a free-standing mechanism, created to ensure the efficient dissemination of information between the Office and the main Departments of State. Its membership consists of representatives from, amongst others, the Judicial Office, Ministry of Justice, Foreign and Commonwealth Office, Department for Education and the judiciary.

The Group usually meets quarterly, in between meetings of the International Family Law Committee, but independent of it. In 2012, it met on three occasions, 7 March, 13 June and 3 October.

## Chapter 4: Case requests/statistical breakdown

Cases should be referred to the Office in two instances:

1. Where a need arises for direct communication or judicial collaboration between judges from England and Wales and another jurisdiction; and/or
2. Where a judge, from England & Wales or overseas, needs advice and assistance relating to an international family law matter.

Cases are regularly referred to the Office by practitioners, charities, litigants and civil servants in the first instance, with a view to establishing in advance of a hearing, whether the service the Office provides might be of use, were the trial judge to ultimately deem it appropriate.

The requests come via telephone, email/fax or by a visit to the Office which is situated in the Royal Courts of Justice in London.

The statistics within this report highlight the dramatic increase over the years in the number of specific cases that come to the Office through the IHNJ or EJNI as well as requests from informal judicial contacts that the Office has developed in countries such as Nigeria, India and Japan. The Office does, however, only see a small proportion of the cases handled by the Central Authorities for England & Wales, Scotland and Northern Ireland under the various international instruments and by the Foreign and Commonwealth Office Consular Directorate. It is important to remember that the number of cases is larger than that shown in these statistics.

### 4.1 Specific case requests

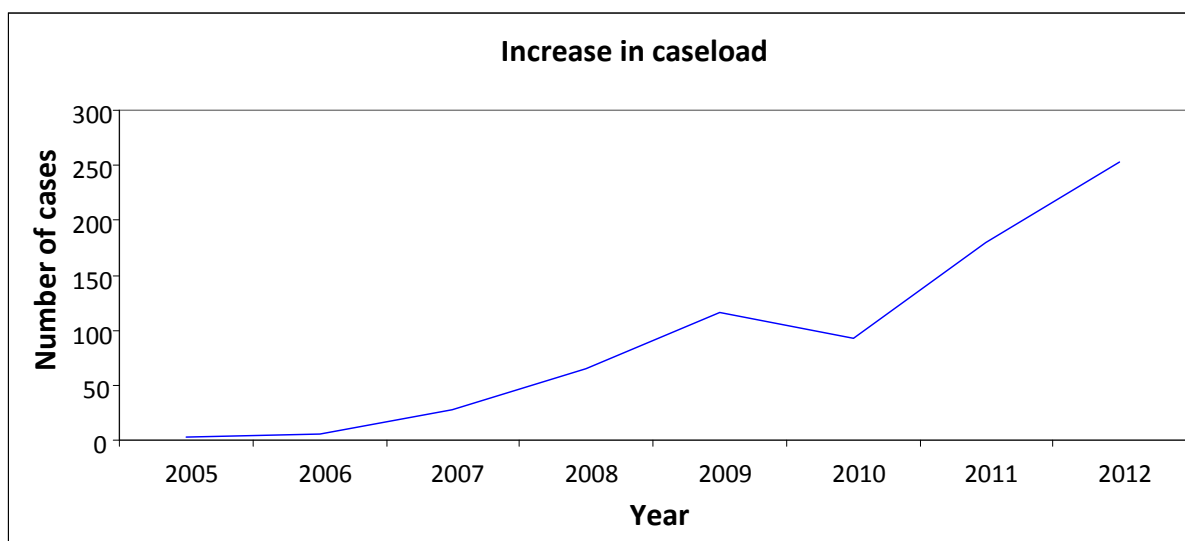
The increased movement of persons from all backgrounds, brought on by globalisation, has undoubtedly led to an increasing number of family law cases with an international dimension. Recent substantial research funded by the Nuffield Foundation, published in early 2013 but in relation to 2011, makes this point well in relation to child abduction cases concerning the 1980 Hague Child Abduction Convention<sup>16</sup>. It points towards the number of applications made under the 1980 Convention rising globally since the late 1990s<sup>17</sup>.

<sup>16</sup> N.Lowe & V.Stephens, 'The timing of 1980 Hague Abduction Convention Applications: the 2011 findings' (Cardiff Law School, 2013)

<sup>17</sup> Ibid, p.14: "Globally, there has been an increase in the number of applications under the Convention, that is, from 954 applications worldwide in 1999, to 1,259 in 2003 and 1,961 in 2008. In England and Wales there was a large rise in the number of return applications between 2003 and 2008. In 2008, the ICACU dealt with 383 incoming and outgoing applications – a 32% increase on the 290 in 2003 and a 39% increase on the 275 in 1999. Since then, the number of return applications dealt with by the ICACU has increased further with 407 such applications in 2009, 288 in 2010 and 444 in 2011".

The work of the Office follows this trend and continues to grow year on year (albeit with a slight dip in 2010). 2012 has been no exception to this, with the Office receiving 253 new requests for assistance. We estimate that this is due to a combination of the increasing number of international family cases, and greater awareness<sup>18</sup> of the benefits that the Office provides in appropriate cases.

Year	Cases	% increase
2005	3	N/A
2006	6	100% increase on 2005
2007	27	350% increase on 2006
2008	65	141% increase on 2007
2009	116	78% increase on 2008
2010	92	21% decrease on 2009
2011	180	96% increase on 2010
2012	253 <sup>19</sup>	40.5% increase on 2011



Cross-border judicial communications in these cases are often complicated and lengthy. Each request for assistance may lead to numerous exchanges which might take place over a period of days, weeks and even months and years. Furthermore, it is not infrequent for the Office to be involved at the start of the litigation process, cease being involved for a period, and then have its services called upon at a subsequent stage.

As at 24 April 2013, the Office has received 75 requests for assistance since 1 January 2013. In

<sup>18</sup> Judicial collaboration in relation to family matters has featured consistently in English case law since at least 1998, cf. *Re HB (abduction: children's objections to return)* [1998] 1 FCR 398

<sup>19</sup> Two requests have deliberately been counted twice making the figure 253 as opposed to 251. This is because two cases required the making of separate requests to separate jurisdictions. One involved making requests to Guyana and Bangladesh. The other involved requests to the Czech Republic and Slovakia.



addition, it is dealing with a small number of matters carried over from previous years.

## 4.2 2012 Incoming/Outgoing Split

The number of outgoing requests vastly outweighs those coming from overseas judges, practitioners, and civil servants. Outgoing requests have encompassed the panoply of family law disputes. Most have been abduction or relocation cases, but adoption, matrimonial finance, forced marriage, validity of marriage have all featured.

The number of incoming requests was mostly focussed on public and private law children cases. However, towards the end of 2012, there was a small rise in the number of requests coming from overseas courts concerning the enforcement of maintenance. It is anticipated that these enquiries will continue in 2013, given the complexities of the international maintenance regime in England & Wales.

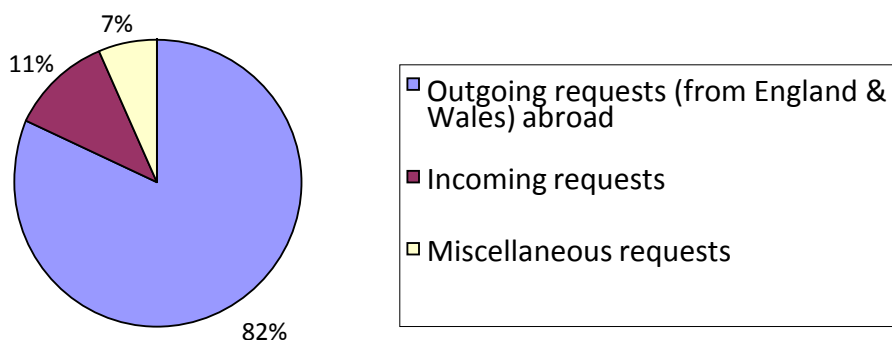
The establishment of the Office in 2005 has been perceived globally as a very positive development. England & Wales continues to be regarded as at the forefront of developments in international family law and practice, and judicial collaboration in particular<sup>20</sup>. It may be that the requests the Office has received from foreign jurisdictions to assist them in establishing contacts with over overseas jurisdictions are reflective of this.

	Number of requests	%
Outgoing requests (from England & Wales) abroad (including requests to Northern Ireland, Crown Dependencies, and Scotland)	207 <sup>21</sup>	82%
Incoming requests	29	11%
Miscellaneous requests (including: (i) requests from self-represented litigants unrelated to international family law issues; and (ii) requests from overseas for assistance with another overseas jurisdiction)	17	7%

<sup>20</sup> Chief Justice Bryant AO of the Australian Family Court, referred to the move in England & Wales from having an IHNJ network judge in 2005 to a fully fledged Office as “groundbreaking” in 2009. D.Bryant, ‘Direct Judicial Communications in 2018: what can we expect?’ *The Judges Newsletter on International Child Protection*, Vol. XV (2009) pp 172-174. Currently, only England & Wales and the Netherlands have offices supporting the role of the network judge.

<sup>21</sup> As per footnote 19, this figure includes the two requests which have been counted twice.

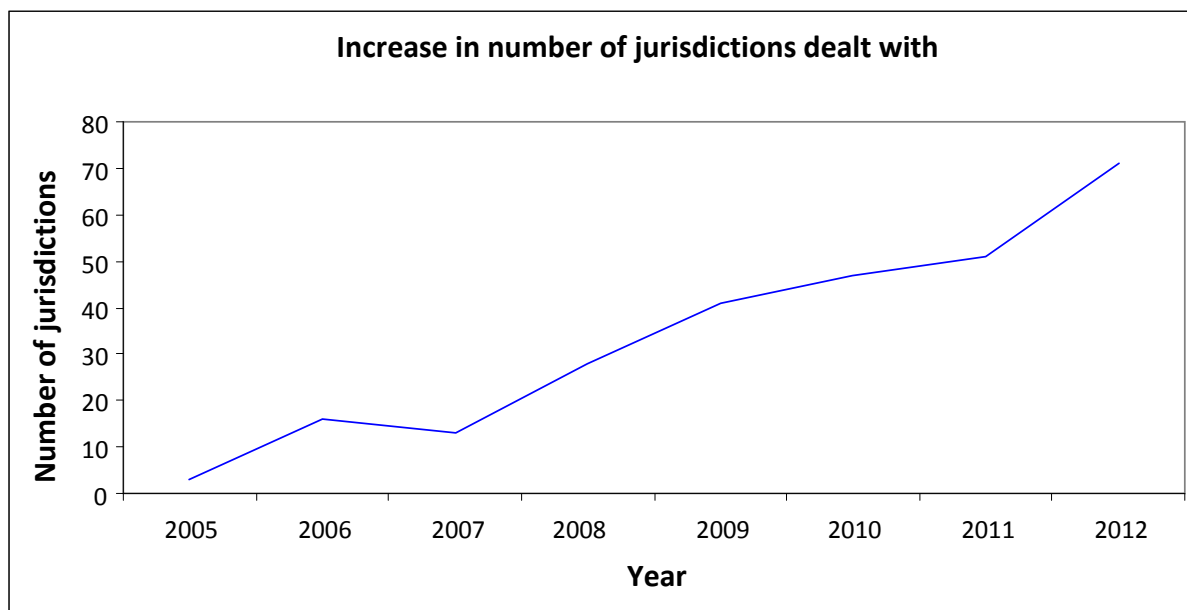
**Break-down of requests for assistance received by the Office during 2012**



### 4.3 Jurisdictional overview

Year	Jurisdictions	% increase
2005	3	N/A
2006	6	100% increase on 2005
2007	13	117% increase on 2006
2008	28	115% increase on 2007
2009	41	46% increase on 2008
2010	47	15% increase on 2009
2011	51	9% increase on 2010
2012	71 <sup>22</sup>	40% increase on 2011

<sup>22</sup> Bailiwick of Jersey, Scotland, Northern Ireland and the Isle of Man counted as separate jurisdictions.



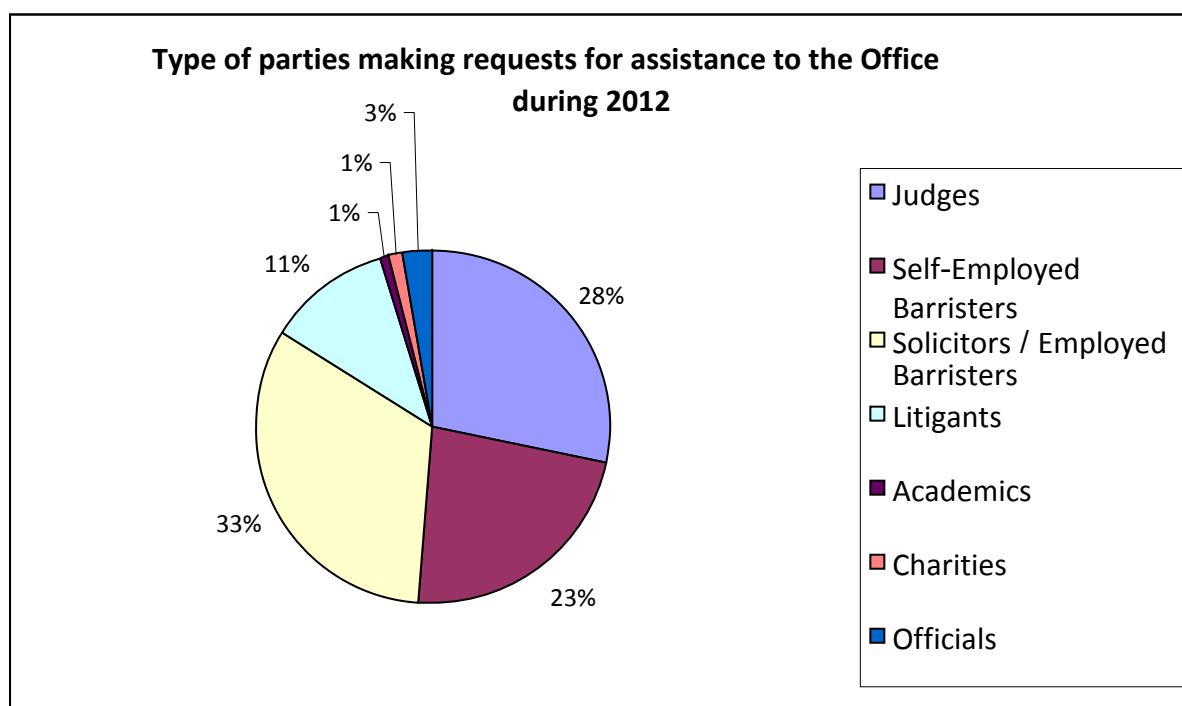
As with the number of requests, 2012 has seen a rise in the number of jurisdictions the Office has dealt with. The vast majority of these jurisdictions were contacted through judges nominated to the EJN and the IHNJ. Contact with a minority was achieved either: (i) through informal contacts that the Office had established; or (ii) through being put in touch with jurisdictions through government ministries such as the Foreign and Commonwealth Office, or the Department for International Development.

Judicial collaboration is very dependent on relationships that the Office maintains with judges of overseas jurisdictions, the material and time constraints which network judges operate under, and the ultimate commitment of respective states and judiciaries to engage with this form of international co-operation<sup>23</sup>. In 2012, what has been particularly encouraging is that out of the 71 jurisdictions the Office was called on to assist with, contact with 46 lead to tangible assistance with a case (c.65%).

<sup>23</sup> cf. E.Bennett, 'Resolving family disputes in a globalised world: the role of judicial diplomacy', *Diplomat Magazine* (December 12/ January 13 issue)

#### 4.4 Requesting party

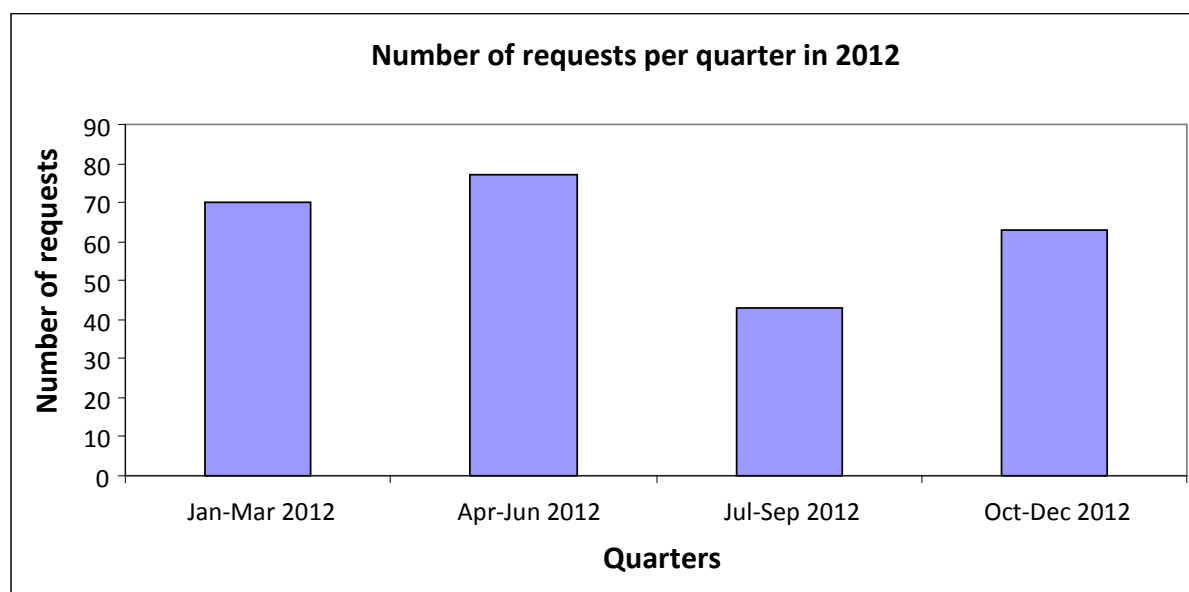
Requesting Party	Total (%)
Judges	72 (28%)
Self-Employed Barristers	57 (23%)
Solicitors/Employed Barristers (including legal teams of local authorities)	83 (33%)
Litigants (including McKenzie Friends)	29 (11%)
Academics	2 (1%)
Charities	3 (1%)
Officials (includes Cafcass and the Central Authority)	7 (3%)



As with 2011, the vast majority of cases are referred to the Office by practitioners and judges. Judicial collaboration, as its name implies, has to ultimately be conducted between judges, or at the very least to have their sanction. It is not appropriate for practitioners to assume that the Office will be able to assist in the absence of any judicial involvement. However, the Office has found it to be good practice if practitioners approach it in the first instance to ascertain whether it might be able to assist a trial judge, in order to raise it with him/her at the hearing.

### 4.5 Number of requests in each quarter

Quarter	Number of Requests	% of total
January – March 2012	70	27.7%
April – June 2012	77	30.4%
July-September 2012	43	17%
October – December 2012	63	24.9%

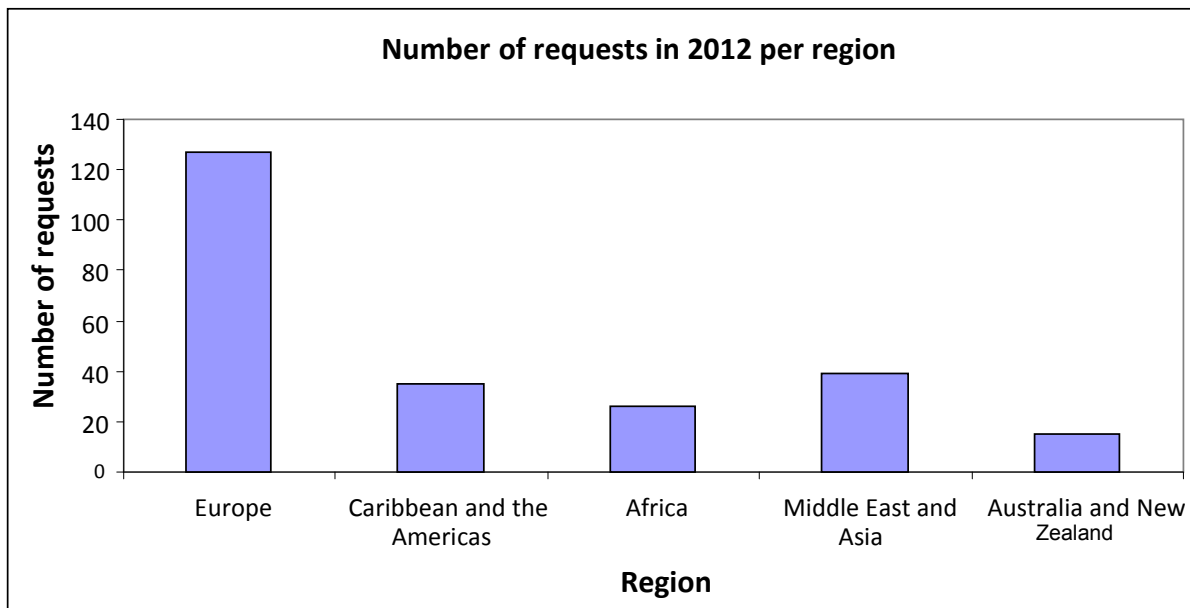


Unlike in 2011 where the number of requests was greatest in the fourth quarter, 2012 marks a change from this, with the largest number of requests coming in the first half of the year.

### 4.6 Jurisdictional breakdowns

General note: The totals below add up to 242 cases. This is because they do not take into account 11 requests which were either: (a) not related to an international matter; or (b) sought generic advice without specifying any particular jurisdiction.

Region	Number of requests	Percentage (of the 253 requests)
Europe	127	50.2%
Caribbean, North, Central and South America	35	13.8%
Africa	26	10.3%
Middle East and Asia	39	15.4%
Australia and New Zealand	15	5.9%



#### 4.6.1 Europe: jurisdictional breakdown

As has been common over the last few years, more cases concerned Europe than any other part of the world with 127 requests. This amounts to c.50% of the total number of cases referred to the Office in 2012, a figure which has grown from 42% in 2011, 25% in 2010 and 26% in 2008.

The majority of European requests involved Poland (14), Spain (12), France and Germany (10 each), Slovakia (9) and the Republic of Ireland (7). We are fortunate in having excellent relationships with Spain, France, Germany, Slovakia and Ireland. Slovakia initially appointed a Judge to the EJN in 2012, subsequently nominating him to the IHNJ on 24 April 2013. His help has been invaluable, especially in a number of sensitive cases which were highly contentious, from a political perspective, in Slovakia.

It is to be regretted that neither Poland nor Italy have appointed sitting judges to the IHNJ or to the network which operates within the framework of the EJN. This has significantly impeded formal judicial collaboration with both jurisdictions.

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24 i.e. such as requests from one overseas jurisdiction to assist in establishing direct judicial communication with another.

<b>Country/ Jurisdiction</b>	<b>Outgoing Requests</b>	<b>Incoming Requests</b>	<b>Other<sup>24</sup></b>	<b>Total number of Requests</b>
Austria	-	1	-	1
Belgium	2	2	-	4
Cyprus	1	-	-	1
Czech Republic	3	-	-	3
France	10	1	-	11
Germany	10	3	-	13
Greece	1	-	-	1
Hungary	1	-	1	2
Italy	3	-	-	3
Republic of Ireland	7	-	-	7
Bailiwick of Jersey	-	-	1	1
Latvia	4	-	1	5
Lithuania	3	-	-	3
Malta	1	-	-	1
Isle of Man	-	1	-	1
Moldova	1	-	-	1
The Netherlands	3	1	-	4
Northern Cyprus	3	-	-	3
Northern Ireland	1	-	-	1
Poland	14	3	-	17
Portugal	4	-	-	4
Romania	1	-	-	1
Russian Federation	6	-	1	7
Scotland	1	-	-	1
Slovakia	9	1	1	11
Spain	12	1	-	13
Sweden	2	1	-	3
Switzerland	2	-	1	3
Ukraine	1	-	-	1
<b>Total</b>	<b>106</b>	<b>15</b>	<b>6</b>	<b>127</b>

### 4.6.2 Caribbean, North, Central and South America: jurisdictional breakdown

Canada and the USA are both highly developed jurisdictions as regards judicial collaboration. The first known recorded instance of direct judicial communication in relation to the 1980 Convention took place between courts of both countries<sup>25</sup>. Canada has two network judges (one for Common Law, one for Civil law), its judges have a bench book which concerns direct judicial communication, and its case law has been supportive<sup>26</sup>.

Direct judicial communications between an English judge and American judge are perhaps the most straightforward to arrange. That is because; firstly, there is no language barrier and; secondly, the American judges are quite used to communicating with a brother judge involved in inter-state proceedings concerning the same child. There are currently four US judges nominated to the IHNJ.

In the United States, judicial collaboration is regulated, at least as regards disputes concerning children, by nearly identical statutes enacted in 49 of the 50 states<sup>27</sup> that are patterned after the Uniform Child Custody Jurisdiction and Enforcement Act<sup>28</sup> (“UCCJEA”). The Act, and its predecessor, the Uniform Child Custody and Jurisdiction Act, was drafted to deal initially with domestic law issues arising pre 1968 where no system across the US’ states existed for uniformly determining which state had jurisdiction to make orders in child custody cases<sup>29</sup>. The UCCJEA essentially promotes co-operation between the courts of different US states so that a decision on the issues of custody and contact rights is made in the state that can best decide the case in the interest of the child. In those states and territories that have passed legislation which follows the UCCJEA model, communication between US courts and overseas courts are treated, for the most part, as if they take place between the courts of US states.

In a similar vein, jurisdictions from Central and South America have been equally supportive of judicial collaboration and have been extremely helpful. In 2012, particular credit has to be given to Brazil, Ecuador, Mexico, and Venezuela. 2012 saw the first time that judicial collaboration with Guyana, which does not have a judge nominated to the Network, successfully occurred and we reiterate our thanks to Chief Justice Chang SC for his swift assistance, and to Justice Joseph Tam of Trinidad & Tobago.

<sup>25</sup> *D v B*, 17 May 1996, Superior Court of Quebec, Terrebonne.

<sup>26</sup> Most notably in the case of *Hoole v Hoole* [2008] B.C.J. No 1768

<sup>27</sup> N.B. and the District of Columbia and the US Virgin Islands

<sup>28</sup> The UCCJEA is a model act that was approved for adoption by the Uniform Law Commission (“ULC”), an association of state governments in the United States that drafts proposed uniform laws for adoption by the individual states on subjects where uniformity is desirable and practicable. Acts approved by the ULC have no force of their own. The acts merely provide a uniform pattern of legislation recommended for adoption by the individual states, and only become law in the individual states that have adopted them.

<sup>29</sup> J.Garbolino, ‘The experience of judges from the United States of America with Direct Judicial Communication’ Vol XV, *The Judges Newsletter on International Child Protection*, Autumn 2009, pp 24-35.



<b>Country/ Jurisdiction</b>	<b>Outgoing Requests</b>	<b>Incoming Requests</b>	<b>Other</b>	<b>Total number of Requests</b>
Belize	1	-	-	1
Brazil	3	-	-	3
Canada	6	-	-	6
Colombia	1	-	-	1
Cuba	1	-	-	1
Ecuador	2	-	-	2
Guyana	2	-	-	2
Mexico	3	-	-	3
St Vincent	1	-	-	1
Trinidad and Tobago	1	-	-	1
United States of America	10	1	-	11
Venezuela	3	-	-	3
<b>Total</b>	<b>34</b>	<b>1</b>	<b>-</b>	<b>35</b>

#### 4.6.3 Africa: Jurisdictional breakdown

As with 2011, the majority of requests involved Kenya, Ghana and Nigeria.

Kenya, although not itself operating the 1980 Convention, has nominated a sitting judge to the IHNJ. The judge has continued to provide the Office with invaluable assistance throughout 2012.

We also have excellent collaboration with South Africa which has a designated IHNJ network judge and Nigeria which does not, but with whose judges the Office has built effective relationships.

As with the Pakistan Protocol (see below), England & Wales has a bilateral agreement at a judicial level with Egypt in respect of child abduction known as the ‘Cairo Declaration<sup>30</sup>’. The Cairo Declaration has not borne the fruit that the Pakistan Protocol has and we do not anticipate this changing in the near future.

<sup>30</sup> 17 January 2005, cf. Part V, Practice Guidance, pp. 2772-2774 of the *Family Court Practice 2012*.

<b>Country/ Jurisdiction</b>	<b>Outgoing Requests</b>	<b>Incoming Requests</b>	<b>Other</b>	<b>Total number of Requests</b>
Cameroon	2	-	-	2
Democratic Republic of Congo	1	-	-	1
Egypt	2	-	-	2
Eritrea	1	-	-	1
Ghana	4	-	-	4
Ivory Coast	1	-	-	1
Kenya	3	-	-	3
Morocco	2	-	-	2
Nigeria	3	-	-	3
Sierra Leone	1	-	-	1
South Africa	1	1	-	2
Tunisia	1	-	-	1
Uganda	2	-	-	2
Zimbabwe	1	-	-	1
<b>Total</b>	<b>25</b>	<b>1</b>	-	<b>26</b>

#### 4.6.4 Middle East and Asia: jurisdictional breakdown

The vast majority of cases the Office dealt with, in relation to the Middle East and Asia, concerned Pakistan.

We have endeavoured to promote a bilateral agreement for the return of children with to/from Pakistan. The judicial agreement with Pakistan was launched as the Pakistan Protocol in January 2003<sup>31</sup>. The Pakistan Protocol is based on the premise that the state of the child's habitual residence has primary jurisdiction to decide matters of welfare and accordingly the child abducted from that jurisdiction should be returned there expeditiously.

The Office communicates regularly with the Pakistani Liaison Judge, Mr Justice Jilani (Supreme Court of Pakistan), in relation to protocol cases for which a separate log is kept<sup>32</sup>.

<sup>31</sup> See the Pakistan Protocol, [2003] Fam Law 199 (Part V, Practice Guidance, pp.2769-2770 of *The Family Court Practice 2012*).

<sup>32</sup> The Head of International Family Justice in conjunction with his Administrative Secretary are responsible for dealing with cases invoking the Protocol. All figures relating to the protocol are solely those which the Office is aware of.

<b>Country/ Jurisdiction</b>	<b>Outgoing Requests</b>	<b>Incoming Requests</b>	<b>Other</b>	<b>Total number of Requests</b>
Bangladesh	1	-	-	1
Peoples' Republic of China	3	-	-	3
India	3	-	-	3
Iraq	2	-	-	2
Japan	1	-	-	1
Jordan	1	-	-	1
Kuwait	2	-	-	2
Malaysia	1	-	-	1
Pakistan (non protocol requests)	13	-	-	13
Philippines	3	-	-	3
Saudi Arabia	1	-	-	1
Sri Lanka	-	1	-	1
Turkey	4	-	-	4
United Arab Emirates (Dubai)	2	1	-	3
<b>Total</b>	<b>37</b>	<b>2</b>	-	<b>39</b>

#### 4.6.5 Pakistan Protocol Statistical Summary 2012

The implication from the figures is that there has been a fall in the number of cases brought under the protocol. We would not be so quick to come to that conclusion. The Office only records orders sent into it from the trial court. We suspect that it may well be that judges, through over-familiarity, possibly have been overlooking obligations to send orders in.

	<b>Strict</b>	<b>Spirit</b>	<b>Holiday</b>
Total number of cases brought under the Protocol since 2003	17	83	87
Total number returned/resolved since 2003	15	62	81
Total number of ongoing cases	2	21	6
In how many cases did parents commence legal proceedings in Pakistan? *	7	18	N/A
Where legal proceedings took place in Pakistan, how many cases resulted in returns?	5	13	N/A
How many returns resulted from a Pakistani court issuing an order for return? **	1	1	N/A

\* In a number of cases left-behind parents initiate proceedings in Pakistan, but, for a number of reasons, the proceedings are not concluded – eg 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. We are not always made aware if proceedings resulted in return.

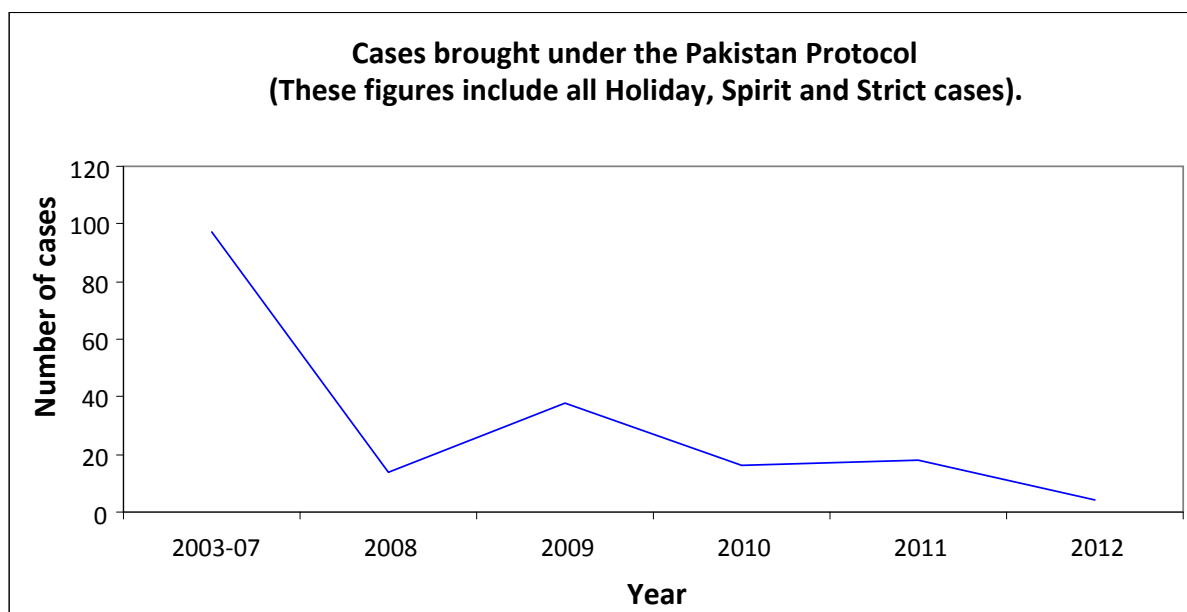
*Strict cases: where the child was removed from the UK in breach of an existing UK court order.*

*Spirit cases: where there was not a UK court order in place at the time of the removal, but the principles of the Protocol are applied 'in spirit'.*

*Holiday prevention cases: where the Protocol has been cited in a court order that gives one parent permission to take a child to Pakistan on holiday.*

### Number of cases brought under the Pakistan Protocol

	<b>2003-7</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	
Holiday	42	11	13	9	10	2	
Spirit	40	3	23	7	8	2	
Strict	15	0	2	0	0	0	
<b>Totals</b>	<b>97</b>	<b>14</b>	<b>38</b>	<b>16</b>	<b>18</b>	<b>4</b>	<b>187</b>



#### 4.6.6 Australia and New Zealand: jurisdictional breakdown

We have excellent relationships with both Australia and New Zealand, and always receive tireless, efficient, and exemplary levels of assistance from them. In 2012, Australia, along with the Isle of Man and Austria, were the only jurisdictions where incoming requests exceeded outgoing ones.

Whilst we have had fewer requests involving Australia in 2012 than in 2011, the total number of requests for both jurisdictions remains 15 as there were no requests for assistance in 2011 in respect of New Zealand.

<b>Country/ Jurisdiction</b>	<b>Outgoing Requests</b>	<b>Incoming Requests</b>	<b>Other</b>	<b>Total number of Requests</b>
Australia	4	6	-	10
New Zealand	1	4	-	5
<b>Total</b>	<b>5</b>	<b>10</b>	-	<b>15</b>

#### 4.7 Case studies from 2012/early 2013

##### a) England & Wales/New Zealand

A mother wrongfully removed a child from New Zealand to England & Wales. Father commenced proceedings in England. Mother raised the ‘grave risk’ exception, alleging serious sexual abuse by the father against her and the child. Care proceedings were triggered in New Zealand by these allegations. Hogg J requested that the Office urgently get in touch with the New Zealand Network Judge to ascertain what was going on in New Zealand, the time frame for any welfare hearing, whether the New Zealand courts required English professional agencies to assist in any investigations, whether the mother could participate in a hearing through a video link, etc. The Office Lawyer spoke with the New Zealand family judge at 1:00am that morning. The New Zealand judge prepared a substantial letter to Hogg J providing clarity as to what was going on, contributing to Hogg J holding that the mother’s allegations were not made out.

##### b) England & Wales/France

A mother involved in care proceedings relating to her children wrongfully removed them to France where she hid with them on a waterlogged caravan site where they did not attend school, were not registered with a doctor, and the mother had no income. The Office liaised with the French network judge and the Foreign Office to encourage, at the request of the English court, French social services to step in. They did so within two days and the children were ultimately safely returned.

##### c) England & Wales/Australia

A judge, sitting in the North of England, sought the Office’s assistance in making enquiries of the Australian courts as to whether mirror orders could be facilitated in a relocation application.

The Office assisted in having the matter swiftly listed by the Australian Family Court, and in helping to arrange a hearing of that court, with the parties and their legal representatives making submissions by video link to the judge in Australia.

**d) England & Wales/Cyprus**

The Court of Appeal recently held that a child should return to Cyprus by no later than 23 February 2013. The mother voluntarily agreed to return to the country with the child. On 15 January 2013, the mother was arrested on a European Arrest Warrant which was issued by the Cypriot Central Authority. The Office, on 21 February, communicated with the Cypriot liaison judge, who in turn liaised with the Cypriot Attorney General. Subsequently, on 22 February, the Office had assurances that no prosecution would occur and if one had started, it would be dropped.

**e) England & Wales/France**

A French court was dealing with a mentally incapacitated adult. It was considering whether to allow him to travel to England and live there so that he could be close to his family. The Office assisted in facilitating the process whereby responsibility for his welfare could be transferred from the French authorities to the relevant local authority in England.

**f) England & Wales/The Netherlands**

Care proceedings existed in relation to a child based in England & Wales. Whilst the child was a British citizen, the mother had overstayed her leave, and the father wished to take no part in the proceedings. The local authority was in the process of assessing some of the child's relatives based in the Netherlands with a view to them ultimately caring for the child. The Dutch-based relatives were immigrants to that country, one of whom was still waiting to receive a Dutch passport. The Office has been assisting with the Office of the Dutch Liaison Judge in facilitating any necessary procedures, hearings and court orders that may be required if it is ultimately decided that it would be in the child's best interests to live with its relatives in the Netherlands.

**g) United States of America/England & Wales**

A US judge, in relation to jurisdictional matters connected with a private law children dispute before him, sought the assistance of the Office in facilitating direct judicial communication with an English judge who had dealt with the matter when it was being litigated before the English courts. The Office assisted in facilitating a US court hearing in which the English judge participated via telephone.

## Chapter 5: Visits/conferences

<b>Date</b>	<b>Location</b>	<b>Event</b>	<b>Individual(s) attending on behalf of the Office</b>
25-31 January 2012	The Netherlands (the Hague)	Part II of the Sixth Special Commission into the 1980 Hague Convention, convened by the Hague Conference on Private International Law	Lord Justice Thorpe and Victoria Miller
9-10 February 2012	Belgium (Brussels)	European Judicial Network Meeting	Lord Justice Thorpe
5-7 March 2012	The Netherlands (the Hague)	Euromed Justice III Project	Lord Justice Thorpe
29-30 April 2012	Belgium (Brussels)	European Judicial Network Meeting	Lord Justice Thorpe
1 May 2012	UK (London)	The International Family Law Lecture. Given by the Hon. Chief Justice Diana Bryant AO, Chief Justice of the Family Court of Australia	Lord Justice Thorpe, Victoria Miller and Edward Bennett
10 May 2012	Czech Republic (Prague)	EU funded judicial training for Member State Judges	Lord Justice Thorpe
21-24 May 2012	Caribbean (Bermuda)	Regional Seminar co-sponsored by the Hague Conference and the Commonwealth Secretariat: 'The work of the Hague Conference on Private International Law and its relevance for the Caribbean region and Bermuda'	Lord Justice Thorpe
24 June 2012	UK (London)	Seminar on 1996 Hague Convention organised and sponsored by 4 Paper Buildings	Lord Justice Thorpe, Victoria Miller and Edward Bennett
25-27 June 2012	Spain (Barcelona)	Conference for e-learning teaching civil law judges family law (amongst other things)	Lord Justice Thorpe

June 2012	UK (London)	Seminar at the Nuffield Foundation, given by Prof. Trevor Buck presenting his research project 'an evaluation of the long term effectiveness of mediation in cases of international parental child abduction'	Victoria Miller and Edward Bennett
3-4 July 2012	Belgium (Brussels)	European Judicial Network Meeting	Lord Justice Thorpe
27-31 August 2012	China (Hong Kong SAR)	Children's Forum and Commonwealth Common Law Conference	Lord Justice Thorpe, Lady Justice Black, Mr Justice Moylan
5-8 September 2012	Switzerland (Thun)	9th bi-annual Anglophone-Germanophone Standing Judicial Conference in International Family Law	Lord Justice Thorpe, Mr Justice Mostyn, Senior District Judge (now HHJ) Waller CBE, HHJ Everall QC, HHJ Karsten QC and Edward Bennett
9-10 October 2012	Cyprus (Nicosia)	EJN Meeting and Conference on Matrimonial Property Regimes	Lord Justice Thorpe
9 November 2012	UK (London)	Address to Family Law Sub Group at Bond Solon Annual Expert Witness Conference 2012	Lord Justice Thorpe and Edward Bennett
28 November 2012	UK (London)	Field Court Chambers for the book launch of 'International Adoption' (Jordans, 2012)	Edward Bennett
28 November 2012	UK (London)	International Family Law Group LLP sponsored lecture by Prof Louise Ellen Teitz, First Secretary, Permanent Bureau of the Hague Conference	Lord Justice Thorpe
3-5 December 2012	France (Paris)	Seminar at the Ecole nationale de la Magistrature	Lord Justice Thorpe
11-13 December 2012	Spain (Madrid)	Euromed Justice III Project	Lord Justice Thorpe



## Chapter 6: Staff

Head of International Family Justice

The Rt. Hon. Lord Justice Thorpe

Legal Secretary

Edward Bennett<sup>33</sup>

Administrative Secretary

Karen Wheller

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<sup>33</sup> N.B. Edward Bennett took over from Victoria Miller in August 2012.

## Chapter 7: Finances

The Judicial Office sets aside a modest annual budget to cover the cost of travel and participation in a range of international events. The budget supports the pursuit of the Lord Chief Justice's overarching objectives for international activity and specifically the pursuit of objectives relating to International Family Justice. The majority of the costs associated with the participation of the Head of International Family Justice in European and international events and meetings are covered, however, by event organisers.

The Judicial Office pays the salary of the solicitor/barrister acting as Legal Secretary as well as the salary of the administrative secretary.

## Chapter 8: Bibliography of papers published/given

### March

- Lord Justice Thorpe, 'William Duncan and the Judges', March 2012 *IFL* 82-83

### June

- Lord Justice Thorpe, 'The Pakistan Protocol' June 2012 *IFL* 167-169
- Lord Justice Thorpe, keynote address at 4 Paper Buildings' seminar on the 1996 Hague Convention.

### August

- Mr Justice Moylan, 'Custody, Care & Control to Shared Parental Responsibility', paper delivered at the Second Children's Issues Forum 2012, University of Hong Kong, 27-28 August 2012
- Lord Justice Thorpe, Opening speech at the Hong Kong International Family Justice Judicial Conference (following the Hon. Chief Justice Geoffrey Ma), 29 August 2012
- Mr Justice Moylan, 'International Networking: Judicial Communications (England & Wales)', paper presented at the Hong Kong International Family Justice Judicial Conference, 30 August 2012
- Lord Justice Thorpe chaired a panel consisting of Prof Mark Henaghan (Otago University) and Dr Rob George (Oxford University) discussing 'A commentary on relocation and future work and trends', Hong Kong International Family Justice Judicial Conference, 30 August 2012
- Lady Justice Black, 'Rules – Hindrance or Help ?', Hong Kong International Family Justice Judicial Conference, 30 August 2012.
- Lord Justice Thorpe, 'Judicial Activism in the International Movement of Children: a prime building site for development', Papers of the 9<sup>th</sup> Anglophone-Germanophone Standing Judicial Conference in International Family Law, Thun pp122-124

## September

- Lord Justice Thorpe, 'Judicial Network Update' September 2012 *IFL* 259-260

## December

- Edward Bennett commences monthly blog post for the Office on Jordans' International Child Law Information Portal
- Edward Bennett, 'Resolving family disputes in a globalised world: the role of Judicial Diplomacy' *Diplomat Magazine* (December 12/January 13 edition)