

A. The feasibility and/or desirability of the appointment of a liaison judge or authority

1. Yes, the senior Family Judge in the High Court, Mr Justice Gillen (who hears incoming applications under the Hague Convention on the Civil Aspects of International Child Abduction) has been designated as the liaison judge for Northern Ireland.

2. N/A.

B. Administrative aspects

1. (a) The Northern Ireland Court Service (which discharges the functions of the Central Authority in Northern Ireland), recognised that Mr Justice Gillen, as the designated senior Family Judge in the High Court, was best placed to undertake the role of the liaison judge in Northern Ireland. It therefore proposed, and the Lord Chief Justice of Northern Ireland endorsed, Mr Justice Gillen's appointment.

(b) The role/functions of the liaison judge have not been strictly defined, the assumption being that a measure of fluidity confers a greater opportunity to explore and develop methods of communication and co-operation which facilitate the achievement of the objectives underpinning the Convention. Accordingly, Mr Justice Gillen operates within the limits of his own discretion and judgment.

(c) Northern Ireland is a small jurisdiction and the proximity of the Central Authority to the Royal Courts of Justice has helped in the maintenance of direct and mutually beneficial lines of communication. Mr Justice Gillen is aware of the relevant personnel within the Northern Ireland Court Service and information/queries/requests are exchanged via 'phone, e'mail and the mail service.

(d) No language difficulties have been encountered to date. However, translation services are used in the context of outgoing applications and appropriate services can be arranged as and when necessary.

Yes.

(f) Not officially. However, other States are aware of Mr Justice Gillen's functions in respect of the Convention following recent judicial and other seminars. In particular, personnel in the Central Authority in the Republic of Ireland, with whom we have most contact, are aware of the position.

C. Practical and legal aspects

1. The instances where communications at the international level arise in Northern Ireland are rare. Hague Convention cases are dealt with only by the High Court of Justice in Northern Ireland. However, the Court is ready to participate in such communications and has done so on at least one occasion. The circumstances were as follows:

On 26 April 2001, a Hague Convention application came before the Court regarding three children who had allegedly been abducted from the USA and taken to Northern Ireland by their mother. The application was mounted on behalf of the father, who was then residing in America. The mother expressed concerns as to what would happen if she returned to the USA with the children.

Having discussed the case with Counsel for each party, Mr Justice Gillen contacted, by telephone, Assistant Superior Judge McElyea in Georgia, USA. At appendix A, there is a precise note (headed "Direct Judicial Communications") of what Mr Justice Gillen revealed to the AS Judge. Before making contact, Mr Justice Gillen discussed, and agreed, with Counsel precisely what would be revealed to the AS Judge. Needless to say, the communications were conducted in the presence of Counsel who could hear both what Mr Justice Gillen was saying and what the AS Judge was saying. At appendix B there is a copy of the AS Judge's responses (headed "Direct Judicial Communication between The Honourable Mr Justice Gillen and The Honourable Ellen McElyea etc"). Both documents were circulated to Counsel.

As a result of the direct communications with the AS Judge, a seemingly intractable situation was resolved.

2. No written judicial decision issued with regard to the above communications, other than a court record of the two notes referred to at "Question 1" above.

3. The procedural and legal safeguards surrounding communications at the international level between judges or between a judge and another authority in the context of cases involving child abduction or access/contact should be as follows:

(i) The procedure should be used sparingly and resorted to in a fairly limited number of instances. For example:

(a) to ascertain reassurances concerning potential or outstanding criminal charges, which may be a stumbling block in negotiations between the parties;

(b) to clarify the nature of any undertakings which may have been given in the past or which are now being given and, if necessary, to establish the effect of such undertakings;

(c) to ensure that jurisdictional conflict is, if possible, removed or at least the risks minimised;

(d) in some cases, to reassure the abducting parent that, upon return to the country from where the child was abducted, there will be the opportunity for a prompt hearing to deal with matters of concern, such as protection for her or the abducted child, provision of legal representation, contact, custody and, perhaps, the involvement of social services etc.;

(e) it is crucial that steps are taken to ensure that the procedures in EU countries comply with Article 6 of the European Convention on Human Rights and that, in countries outside the EU, fair procedures are adopted. The subject matter of communications should not, ** include any discussion on the merits of the case which may well be heard in the country to which the child is being returned or even in the country to which the child has been taken. It must also be made clear to all the parties that the purpose of the communication is to afford an opportunity to clarify matters of procedure in both countries and to exchange information on defined issues, as undertakings, the possibility of criminal prosecution on foot of the abduction etc. The issues, be raised should, therefore, be narrowly confined and carefully agreed before the communication takes place;

(f) in no circumstances should there be judicial communication or judicial liaison in the context of a specific case, unless all the parties have been advised

in advance of the precise nature of the proposed communication and their views carefully canvassed;

(g) the parties or their representatives should be present to hear all of the communications (for example, by means of a conference call facility). The judge should have the discretion to raise, again in the presence of the parties, his opposite number any further issue which the parties wish to have clarified, provided he deems it appropriate;

(h) it is imperative that a record be kept of these communications, not only for the purposes of any appeal that may be instituted, but also for the removal of ambiguity or doubt as to what has been said. That record should be forwarded to the judge in the receiving country, with whom the communication has been carried on, as well as the representatives of the parties;

(i) there should be confirmation in writing of any agreement which is made on foot of the communications and the record of the communications should be appended to the agreement;

(j) if the child is to be returned, s/he should not be returned until the record/confirmation mentioned above has been circulated to all the parties and to the judge of the receiving country, so as to remove any uncertainty or ambiguity. This is particularly important where the parties or judges communicating do not share a common language and translation is being relied upon. All the records and agreements should be drawn up in the language of both judges and parties; and

(k) such communications should only be embarked on with the consent of the parties and should not be executed by a judge in the absence of such agreement.

D. General

1. Northern Ireland is wedded to the development of an international judicial liaison network. It is particularly relevant in this jurisdiction (and, indeed, the rest of the United Kingdom) because of the proximity of the Republic of Ireland. The legal systems in the United Kingdom and the Republic of Ireland are extremely alike and the judges, particularly in Northern Ireland and the Republic of Ireland, are often well known to each other, meeting at conferences etc. In a wider context, international judicial liaison can be crucial to the resolution of particular problems which may present as a stumbling block in the absence of early judicial liaison. Often, the abducting parent has real and genuine fears of a return, which can be speedily resolved without resort to a lengthy and acrimonious hearing, which may only be likely to inflame raw wounds. Moreover, a culture of judicial liaison lends itself not only to the resolution of particular cases but also to the spread of ideas and frameworks, which can serve to influence the development of family law in individual countries. The key to this development is an increase in seminars at both a national and international level. An example of this is that the Children Order Advisory Committee in Northern Ireland is currently looking at the issue of delay in cases involving children in both public and private law. As a result of communications made (and indeed friendships formed) at the recent Fourth Meeting of the Special Commission to Review the Hague Convention, direct judicial communication has ensued on how this problem has been approached in Australia and New Zealand. The result has been extremely enlightening and, without doubt, the Northern Ireland family law system is going to benefit. This simply would not have happened at this level without the benefit of this international judicial conference. International

problems can only be solved by international liaison. It is imperative to engender a gathering momentum for such co-operation.

2. Yes. The U.K. is contributing to the establishment of a European Judicial Network in Civil and Commercial Matters. The aim of the network, which will be formally launched in December 2003, is to provide information on the legal systems of the Member States of the E.U., thereby facilitating cross border litigation.

3. As a general principle, the Northern Ireland Court Service recognises the benefits associated with the dissemination of information relating to the operation and application of the Hague Convention.