C.280/04

Parliamentary Commissioner Act 1967

Report by the Parliamentary Commissioner for Administration

(the Ombudsman) to

The Rt Hon Sir John Stanley MP

of the results of an investigation into a complaint made by

Lady Catherine Meyer
21 First Street
London
SW3 2LB

1. Lady Meyer complained that the Lord Chancellor's Department mishandled the case of her two sons who had been abducted in Germany by her then estranged husband. (The Lord Chancellor's Department have since been replaced by the Department for Constitutional Affairs, however, for the sake of simplicity I shall refer to both bodies as "the Department" throughout this report.) In particular, Lady Meyer complained that the Department failed to give her accurate, reasonable, clear and consistent advice about the 1980 Hague Convention on the Civil Aspects of International Child Abduction (the Hague Convention), especially the provisions dealing with contact; that they failed to follow up her case appropriately after a German Higher Court had refused to order the return of the children under the Hague Convention; that the Department dealt poorly with letters and queries about her case; and that they had not provided proper explanations for what happened, or apologised for their shortcomings. Lady Meyer's particular concern was that the Department had failed to offer her appropriate advice about the implications that Article 21 of the Hague Convention might have in relation to her case.

2. My investigation began in January 2004 when I had received the Department's comments on Lady Meyer's complaint. I have not put into this report every detail investigated by the Ombudsman's staff, but I am satisfied that no matter of significance has been overlooked.

Administrative background

3. The Foreign and Commonwealth Office (FCO) produce an information leaflet entitled "If It All Goes Wrong" to assist parents in cases where a child has been taken or kept overseas without their consent. It explains that where the child has been abducted to a country which is a member of the Hague Convention, the UK Central Authority will handle the case, and may be able to process the legal action to have the child returned to the United Kingdom. In England and Wales the Central Authority are the Child Abduction Unit (CAU) of the Department. The CAU are an administrative body and are responsible for administering the work of the Hague Convention. The staff in the CAU provide advice to parents, solicitors and others on the steps they may take to recover children who have been abducted illegally to a foreign country. They send and receive applications for the recovery of children wrongfully removed from, or kept away from their habitual residence, and for enforcement of rights of access, liaising with Central Authorities in other countries as necessary.

4. The Guide to Good Practice (the Guide) published in January 2003 by the Hague Conference on Private International Law states that the Central Authority should provide information about the practice and procedure in each country; be able to give proper advice to applicants; and establish strong links to the justice and welfare system of the Contracting State for co-operating with the courts and the legal profession. Page 59 of the Guide states that Article 21 of the Hague Convention (paragraph 9) facilitates access arrangements and requires Central Authorities to remove, as far as possible, all obstacles to the exercise of such rights. Article 7(f) imposes an obligation (on Central Authorities) to take all appropriate measures to make arrangements for organising or securing the effective exercise of rights of access. Articles 7 and 21 together require Central Authorities to co-operate in promoting the peaceful enjoyment of access rights.

Legislative background

5. The objects of the Hague Convention are stated in Article 1 as being: to secure the prompt return of children wrongfully removed to, or retained in, any Contracting State to their place of habitual residence; and to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in other Contracting States. Article 3 says that the removal or retention of a child is to be considered wrongful where it is in breach of custody rights under the law of the State where the child was habitually resident immediately before the removal or retention; and, at the time of that removal or retention, those rights were actually being exercised, or would have been so exercised but for the removal or retention.

6. Article 7 of the Hague Convention sets out the role and responsibilities of the Central Authorities. It says that they should co-operate with each other and promote co-operation amongst the competent authorities in their respective states to secure the prompt return of children and to achieve the other objects of the Hague Convention. The Article says that, in particular, they should, either directly or through any intermediary, take all appropriate measures to: establish the whereabouts of a child who has been wrongfully removed or retained; prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures; secure the voluntary return of the child or to bring about an amicable resolution of the issues; to exchange, where desirable, information relating to the social background of the child; to provide information of a general nature as to the law of their state in connection with the application of the Hague Convention; initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organising or securing the effective exercise of access rights; where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers; to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child; and to keep each other informed with respect to the operation of the Hague Convention and, as far as possible, to eliminate any obstacles to its application.

7. Article 8 provides that any person claiming that a child has been removed or retained in breach of custody rights may apply either to the Central Authority of the child's place of habitual residence, or to the Central Authority of any other Contracting State, for assistance in securing the return of the child. Any such application must contain: information about the identity of the applicant, the child, and of the person alleged to have removed or retained the child; the date of birth of the child (where available); the grounds on which the application for the return of the child is based; and all available information relating to the whereabouts of the child and the identity of the person the child is presumed to be with. The application may also contain copies of any relevant decisions or agreements, certificates or affidavits relating to the law of the state of habitual residence, and any other relevant documents.

8. Article 12 says that where a child has been wrongfully removed or retained in terms of Article 3 and, at the time that judicial or administrative proceedings commence in the country where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the Central Authority concerned shall order the return of the child. However, under Article 13 the Central Authority are not bound to order the return of the child if the person who opposes the return can establish that: the applicant was not actually exercising their custody rights at the time of the removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or there is a grave risk that the return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation. The Central Authority may also refuse to order the return of the child if they find that the child objects to being returned, and has attained an age and degree of maturity at which it is appropriate to take account of the child's views. In considering the circumstances referred to in Article 13, the Central Authority should take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's place of habitual residence.

9. Article 21 of the Hague Convention provides that an application to make arrangements for organising or securing the effective exercise of rights of access may be presented to the Central Authorities in the same way as an application for the return of the child. It says that the Central Authorities are bound by the

obligations of co-operation which are set out in Article 7 to promote the peaceful enjoyments of access rights and the fulfilment of any conditions to which the exercise of such rights may be subject. The Central Authorities should take steps to remove, as far as possible, all obstacles to the exercise of such rights. The Central Authorities, either directly or through intermediaries, may initiate or assist in the institution of proceedings with a view to organising or protecting these rights and securing respect for the conditions to which the exercise of those rights may be subject.

10. The Child Abduction and Custody Act 1985 and Part VI of the Family Proceedings Rules 1991 give effect to the Hague Convention in English Law.

Chronology

11. **1992** Under a legal separation agreement of 14 April 1992, Lady Meyer had sole custody of her two sons (born in May 1985 and May 1987). Her estranged German husband (whom I shall call Mr A) had access rights, and it was agreed that the children would live with Lady Meyer in England.

12. **1994** On 6 July 1994 the boys left England to spend the summer with their father in Germany, due to return on 28 August 1994. On 22 August 1994, Mr A wrote to Lady Meyer to explain that the boys had expressed a wish to live in Germany and to attend school there and, as a result, he would not be returning them to England. That same day, Lady Meyer received a copy of a decision by a German court in which Mr A's application for the transfer to him of custody of the children (which was made without Lady Meyer's knowledge) was rejected.

13. On receipt of that letter, Lady Meyer contacted her solicitors for advice. On 25 August 1994 the solicitors faxed a Child Abduction Questionnaire to the Department as an application for them to issue proceedings for the return of the boys under Article 12 of the Hague Convention. The solicitors also said that they had advised Lady Meyer to begin proceedings through the English courts, in order to obtain a Residence Order, along with a Specific Issues Order directing Mr A to return the boys, and a Prohibited Steps Order preventing him from removing them again following their return.

14. On 30 August 1994 the Family Division of the High Court of Justice ordered that Lady Meyer's children be made wards of court during their respective minorities or until further order of the court. It was also ordered that the children should be placed in the interim care and control of Lady Meyer. Mr A was ordered to return the children to the jurisdiction of England and Wales and into the interim care of Lady Meyer. Mr A was also given leave to apply to vary or discharge the order on 48 hours' notice to Lady Meyer's solicitors. The court declared that the retention of Lady Meyer's children outside of England and Wales was a wrongful retention pursuant to, and in the terms of, Article 3 of the Hague Convention.

15. The Department had the application translated into German and submitted it to the German Central Authority on 1 September 1994. In their fax cover sheet, the Department said that they had yet to receive a completed Legal Aid application from Lady Meyer and that they would usually await the receipt of that form before submitting the application. They explained, however, that the application was urgent because Lady Meyer's solicitor had informed the Department that Mr A had left his residential address with the boys and Lady Meyer had been unable to locate their whereabouts. Lady Meyer was anxious to avoid the risk of Mr A leaving Germany with the boys. The Department asked the German Central Authority what precautions they could take to prevent Mr A from leaving Germany, and whether it would be possible to locate his whereabouts. Lady Meyer's solicitor also arranged legal representation for Lady Meyer in Germany. In the meantime (on 31 August 1994) Lady Meyer's solicitors had written to the Department enclosing Lady Meyer's completed Legal Aid application and supporting documents. The Department faxed a copy of the form to the German Central Authority (on 1 September 1994). The German Central Authority acknowledged receipt of Lady Meyer's application on 2 September 1994.

16. Mr A then made a further application to the Verden District Court in Germany (the Verden court) to grant him custody of the boys. On 20 September 1994 the court rejected his application, and ordered the immediate return of the boys to England under the Hague Convention (leaving the final custody arrangements to be settled by any further custody or divorce proceedings). The

court rejected his claim that returning the children immediately would risk serious psychological damage to them. The court said that the psychologist's report presented by Mr A had to be viewed with certain reservations, as it had been obtained for the sole purpose of supporting Mr A's view. The court also said that it would scarcely be possible to establish the serious risk of psychological damage to the children, even on the basis of the report. The court also felt that as the children were only 9 years and 7 years old there could be no question of considerable intent to stay in Germany on their part. Following the hearing, Mr A asked for half an hour to say goodbye to the boys, and Lady Meyer's lawyer agreed. Mr A put the boys in the back of his car and drove off with them. Mr A went to Celle, where he obtained a stay of execution (on an ex parte basis) from the Celle Higher Regional Court (the Celle court) against the order made by the Verden court. Mr A also submitted an appeal against the decision of the Verden court. On 30 September 1994 the High Court of Justice issued a summons to Mr A.

17. On 20 October 1994 the Celle court heard Mr A's appeal and overturned the decision of the Verden court. They decided that Lady Meyer's application to have the boys returned to the United Kingdom should be rejected pursuant to Article 13 Section 2 of the Hague Convention, on the grounds that the boys opposed such a return. The court were satisfied that the children had attained an age and maturity sufficient for them to understand the procedure. In discussion with the judge, it appeared that Lady Meyer's eldest son's primary reason for wanting to remain with his father was because he was German. The court were satisfied that both boys were expressing their own opinions and not ones that had been imposed upon them externally.

18. On 27 October 1994 the Department asked the German Central Authority if there was any further action that Lady Meyer could take to regain custody of the boys through the German Courts. The Department stressed to the German Central Authority that Lady Meyer was distressed that her views had not been heard at the appeal hearing, that she had been unable to speak to the boys, and that she felt that the boys had been influenced by their father. The German Central Authority replied on 31 October 1994. They explained that the decision of the Celle court was not appealable unless it violated constitutional law. The German Central

Authority went on to explain that it was open to Lady Meyer to apply for custody of the boys at any time. The Department asked the German Central Authority to provide further information about how a custody order might violate constitutional law. On 9 November 1994 the German Central Authority said that there was a general right to file a constitutional complaint if constitutionally guaranteed rights were violated by the courts. They advised Lady Meyer and her legal representatives to read the judgment of the Celle court as soon as it became available, with a view to finding out whether there was any sign of a constitutional breach. The German Central Authority warned that a complaint to the Constitutional Court was exceptional.

19. On 6 December 1994 Lady Meyer wrote to the then Lord Chancellor to draw his attention to her case. She explained that her children had been abducted on two occasions, and that she had had no access to them since 6 July 1994. She sought the Lord Chancellor's help in pursuing the matter.

20. On 15 December 1994 the Lord Chancellor replied. He told Lady Meyer that he had studied a translation of the judgment of the Celle court, and was satisfied that the court had taken full and careful account of the relevant articles of the Hague Convention before reaching its decision. He also said he was charged with the duty of seeing that applications were brought before the courts without undue delay. He said that he could not, however, influence the decisions of the tribunals hearing those applications; be they in Germany or England and Wales. He said *"I would certainly voice my concern if I thought the Convention was being disregarded, but I do not think that is the case"*. The Lord Chancellor declined to meet with Lady Meyer on the grounds that there was nothing he could do to help her.

21. **1995** On 9 January 1995 Lady Meyer wrote again to the Lord Chancellor. She said that she was disappointed with his letter of 15 December 1994. She explained that at the time the court had interviewed her sons, she had not seen them for almost five months. She said that no-one had questioned why the boys were expressing particular views. She also said that she had not been interviewed by the Celle court. She said that, in light of all of the above, could it really be said that the court had taken full and careful account of the Hague Convention.

22. In a letter of 10 January 1995 to Lady Meyer's Member of Parliament, and again in one of 3 March 1995 to Lady Meyer's Member of the European Parliament (MEP), the Lord Chancellor set out what had happened, and the Department's role in such matters. He described the Celle court's judgment as *"long and considered;"* said that he could see nothing in the judgment to suggest that the court had disregarded or overlooked any of the provisions of the Hague Convention; and that he could not interfere with the use of the court's judicial discretion.

23. On 14 January 1995 Lady Meyer wrote to the Minister at the Department. She said that Mr A had defied both the English and German courts. She said that the judges had found in Mr A's favour without making any attempt to test the truth of the evidence presented by him, or to hear any of her evidence. She asked why the German courts had not sought to obtain an independent psychologist's report. She also asked whether German courts recognised orders issued in the British courts.

24. On 19 January 1995 the Department wrote to Lady Meyer's solicitors. They said that it was important to clarify that the matter which had been before the family courts in Verden and Celle was not who should have custody of the children, but only whether the boys should be returned to England, their country of habitual residence, or remain in Germany. They said *"The decision that the courts had to make was therefore directed to where the decision about the children's future should be made, not what that decision should be"*. The Department had made further enquiries of the German Central Authority about the procedures adopted by the Celle court. In particular, they had asked why Lady Meyer had not been invited to make submissions. In a faxed reply of 14 December 1994, the German Central Authority had said that the only matter before the court was whether the children objected to being returned and whether they had attained an age and degree of maturity at which it was appropriate to take their views into account. The German Central Authority had added that it appeared that the only people who had been summoned to appear before the court were the children. The Department concluded by saying that they felt that the German Central Authority had done all that they could reasonably be expected to

have done. The Department did not think that it would be appropriate for Lady Meyer to direct a complaint about her treatment at the hands of the German judiciary to the German Central Authority. However, the Department said that they would ask the German Central Authority whether they were aware of any cases in Germany involving child abduction which had been taken to the European Court of Human Rights.

25. Also on 19 January 1995, Lady Meyer wrote to the Lord Chancellor. She said that she believed her children were being manipulated by Mr A. She said *"My sons are taken to a psychologist, are manipulated, cut off completely from their mother and living under strict order and a whole case is based on their evidence!!! I also believe (so do my eyewitnesses) that my husband has learnt a "technique" to keep the boys under control. This is not only a legal outrage but a human one: two small children treated in such a horrific way in order for my husband to win a legal case! My husband is actually using article 13 as a tool for his case and to block any access of mine. I have not been with my children for 6 ½ months and cannot talk to them on the telephone – which also makes it pretty obvious that this whole case is really the "will of the father", not the children. My husband is now using article 13 for the custody matter. This is again an aberration, and certainly not the spirit of the convention".*

26. On 20 January 1995 the Lord Chancellor's Private Secretary wrote to Lady Meyer. She said that there was nothing that the Lord Chancellor could do to help her, although she sympathised with her sad situation. She said that the Lord Chancellor could not seek to interfere with the decisions of a court in Germany, any more than he could seek to interfere with the decision of an English court. She went on to say that it would be improper for the Lord Chancellor, in his ministerial capacity, to raise questions about judicial decisions. She explained that *"an order refusing return under the Hague Convention is not an order granting custody to either parent"*. She also said that she understood that Lady Meyer had made an application under the European Convention for the enforcement of the order granted to her on 30 August 1994, which gave her care and control of her sons and made them wards of court.

27. On 21 January 1995 Lady Meyer wrote to the CAU. She said that previous letters from the CAU had stated that they had asked the German Central Authority what steps she could take to regain custody, but that under German law she already had custody. She added that she fully understood that the decision of the Celle court had nothing to with custody, but said that Mr A was using Article 13 of the Hague Convention to prevent her from having access to her sons.

28. On 22 January 1995 Lady Meyer again wrote to the Minister. She said *"You explain the purposes of the Hague Convention and the European Convention. As I mentioned in my last letter, I still have custody under German Law, yet all my legal and human rights have been violated. I cannot see, let alone speak to my sons. This can surely not be in the spirit of the Convention and certainly not in the interest of two small boys! That a man who has twice abducted children, defied both English and German Court orders should be allowed to apply psychological pressure on his own children in order to obtain a favourable judgement on appeal, seems to make rather a mockery of the Convention"*. Lady Meyer went on to say that the Minister had explained that one of the purposes of the European Convention was the enforcement of court orders in contracting countries. She said that her children had been made Wards of Court on 30 August 1994, and on 30 September 1994 a summons had been issued by the High Court of Justice, but that both had been ignored.

29. On 23 January 1995 Lady Meyer sent a fax, via the CAU, to the German Central Authority. Lady Meyer had made seven applications for interim access since 21 October 1994, all of which had been rejected by the Verden court. She said that the Celle court had failed to question whether the views expressed by her children were actually their views, or those imposed upon them by their father. She said that she was being prevented from having any contact with her children, including by telephone. Lady Meyer requested that her children be observed by a neutral psychologist, and sought an early resolution as she feared the damage being done to her children. That same day the CAU faxed to the German Central Authority a statement prepared by Lady Meyer, in which she set out her version of the events that had taken place. The CAU said that Lady Meyer objected to the children being interviewed by an unqualified psychologist who she believed to be a friend of Mr A. The CAU said that Lady Meyer requested that the children be

interviewed by an independent psychologist. They added that they understood from Lady Meyer that Mr A had filed an application at the Celle court for the immediate transfer of custody of the children to himself. The CAU said that it appeared that there would be no hearing on the matter and asked whether, in view of the fact that Lady Meyer had a European Convention application in progress in Germany, it would be possible for Mr A to seek transfer of the custody rights. The CAU said that Lady Meyer was also considering appointing a new German lawyer and asked whether that would be wise at that stage in proceedings.

30. On 23 January 1995 Lady Meyer's German lawyer wrote to her. He explained that there would be a change of judge in Verden after 1 February 1995. He added that he had also been served with a divorce application, and a brief seeking the immediate transfer of custody from Lady Meyer to Mr A. He explained that he would need to respond to the court quickly because the application had been made on an ex parte basis, however, he felt that it was unlikely that the judge would grant any such order without giving Lady Meyer the opportunity to reply.

31. On 24 January 1995 the CAU wrote to Lady Meyer enclosing a copy of the report from the German psychologist. The report said that returning the children to London would entail a serious risk of psychological damage.

32. On 25 January 1995 the Verden Court transferred residency of the children to Germany on an ex parte basis.

33. On 3 February 1995 the German Central Authority wrote to the CAU to say that they had forwarded all legal aid documents to the court in September 1994. They said that it did not appear that any application had been made. They added that their opinion was that Lady Meyer's monthly income was too high for her to receive legal aid. Also on 3 February Lady Meyer's MEP wrote to the Lord Chancellor. He said that he would like to express his deep concern that the court procedure seemed to be in gross contravention of the Hague Convention. He continued *"I should be most grateful therefore if you would look into this matter and let me know whether you are satisfied that the letter and spirit of the Hague Convention have been observed in this case and if not, whether representations*

may not be made to the German authorities on this matter. My fear is that chaos is caused, which cannot be in the best interests of the children involved, if national courts are allowed to undertake separate and contradictory proceedings".

34. On 7 February 1995 the CAU prepared a briefing note for the meeting that day between the Lord Chancellor, the Minister, Members, and representatives of the Department and the FCO, setting out the background to Lady Meyer's case. That note said *"This is not a difficult case; far from it, there are many like it. In the modern world an increasing number of families have connections with more than one country. The only decision that has been made so far is that the children's future should be decided in Germany rather than England. We have to trust the courts of other countries to reach decisions in the best interests of children in the same way that we expect them to trust us. This applies particularly to those countries with whom we are parties to the various international conventions. Both the parents are represented by lawyers in England and Germany; [Lady Meyer] is best advised to follow their advice in trying to convince the Family Court in Verden that she is the parent best suited to play the major role in caring for the children".* At that meeting one of the Members said that he wished the Lord Chancellor to intervene informally and bring attention to the fact that this case could call the European Union into disrepute. He said the Celle court had excluded Lady Meyer from the proceedings, which constituted an inherent failure of natural justice which would not have occurred in Britain. He said that Britain should stand up for its jurisdiction and, if necessary, take the case to the Hague. He went on to say that there should be parity of treatment within Hague Convention countries, and that Britain should be able to register its dissatisfaction with the way the matter had been dealt with. The Lord Chancellor said that there was little he could properly do in the matter, and that the obligations under the Hague Convention were clear.

35. On 7 February 1995 Lady Meyer met the head of the CAU to express her concerns and to discuss her case. During the course of the meeting, Lady Meyer said that she had concerns about the way in which the Hague Convention was being operated in her case. She said that the Celle court had issued a stay of execution on an ex parte basis against the Verden court's decision that the

children should be returned. In the report of that meeting to the Lord Chancellor, the CAU said that it was clear that, although the Celle court might not have heard Lady Meyer, she had been represented throughout the proceedings by her lawyer, who had not objected to the procedure adopted by the court. The report said that Lady Meyer was uncertain about the standing of the Youth Office within the proceedings under the Hague Convention, and the CAU had agreed to take that point up with the German Central Authority. Lady Meyer had explained that she was worried about the forthcoming custody proceedings before the Verden court. She was concerned that she would not get a fair hearing because Mr A had strong legal connections in the area. The CAU had suggested that Lady Meyer should talk to her German lawyers about the possibility of asking for the hearing to be transferred to another court within the district. Turning to the matter of the children's wishes, the report said *"[Lady Meyer] reverted to article 13 of the Hague Convention, saying that she believed that her husband had manipulated the working of the Convention to his own ends. It was at this point that I explained in more detail the workings of the Hague Convention, to the effect that it was intended to be a summary proceeding for determining jurisdiction, and not an investigation into the merits or, indeed, the reasons why children expressed the views they did. That was a matter for the court dealing with custody. [Lady Meyer] said, however, that she believed that the children's wishes were not only being used to achieve his own ends within the Hague Convention proceedings, but also to restrict her access rights"*. The report then turned to issues under the European Convention. It explained that Lady Meyer had applied for registration and enforcement of the order of 30 August 1994 (paragraph 14). The CAU had received an application from the German Central Authority for a certificate of enforceability. The report said that they were in some doubt about that application because the wardship proceedings had been instituted by Lady Meyer's English lawyers, not with any intention of enforcing the order under the European Convention, but merely to provide support for the application under the Hague Convention – in particular to obtain a declaration of wrongful removal and to bolster her claims for the exercise of custodial rights. The CAU were concerned that those orders had been obtained on an ex parte basis after the abduction and, as far as they were aware, had never been served on Mr A. They said that, by their very nature, ex parte proceedings excluded representations by either her husband or the children. They added that although Article 12 of the

European Convention envisaged the enforcement of orders obtained after an abduction or wrongful retention, there were a number of defences in Article 13 which seemed to be applicable. The CAU said that Lady Meyer thought that an application under the Hague Convention itself might provide some support for her case and accordingly the CAU said that they would issue a qualifying certificate of enforceability. The CAU said that it was a difficult case in which the court would have to make a decision which had the best chance of preserving the children's relationship with both parents. They said that an application should be made for an independent psychiatric report and restoration of her rights of access, so that the children did not lose their memory of her, and that her case did not go by default. In addition to agreeing to contact the German Central Authority to find out what standing the Youth Office in Verden had in Hague Convention proceedings, the CAU had agreed to issue a qualified certificate of enforceability in respect of the order of 30 August 1994. They had also agreed to make enquiries of the Secretariat of the European Court of Human Rights to find out if any cases under the Hague Convention had been referred to the court as being in breach of the European Convention on Human Rights.

36. On 8 February 1995 Lady Meyer sent a fax to the CAU to explain that Mr A had made an ex parte application to try to stop her access rights. Lady Meyer said that a 30 minute hearing had been arranged for 23 February to discuss the custody arrangements. Lady Meyer expressed concern that the newly appointed judge had no previous experience of custody matters.

37. On 9 February 1995 the CAU issued the certificate of enforceability in respect of the order of 30 August 1994 (paragraph 14). The certificate stated that that order was enforceable under the jurisdiction of England and Wales. They also sent a fax to the German Central Authority to ask what standing the Youth Office in Verden had in Lady Meyer's Hague Convention proceedings.

38. On 10 February 1995 the Department wrote to the Member following the meeting of 7 February between Lady Meyer and the CAU. The Department explained that Lady Meyer had set out her concerns in some detail and they repeated the information that they had given to Lady Meyer at that meeting (paragraph 35).

39. On 21 February 1995 the German Central Authority faxed the CAU to ask whether Mr A had been notified in advance of the proceedings that had taken place in the High Court on 30 August 1994 (paragraph 14). They said that if he had not been notified, the order might not be recognised or enforceable under the European Convention. The CAU replied by fax on 22 February. They said that Mr A had not been notified in advance because the application had been made on an ex parte basis. They confirmed that Mr A had been served with the proceedings and the wardship order after the hearing.

40. On 26 February 1995 Lady Meyer wrote to the Lord Chancellor's Private Secretary. She said that she had made an application to the European Court of Human Rights on her own behalf and that of her sons. However, she had been advised that such applications could take years and asked whether the Department could expedite matters. She added that a hearing at the Verden court on 23 February had not gone well.

41. Lady Meyer made an appeal to the German Constitutional Court, which was turned down in March 1995.

42. On 20 March 1995 the CAU wrote to Lady Meyer to say that they were sorry that matters had not turned out as she had hoped at the hearing at Verden court on 23 February (paragraph 40). They also expressed concern that it had not been possible to make arrangements for Lady Meyer to see her children before the case came back to court on 30 March 1995. The CAU advised Lady Meyer that the Council of Europe had said that no child abduction cases under the European or Hague Conventions had ever come before the European Court of Human Rights. The CAU said that they did not think that it would be possible for the Department to help in trying to expedite a case before either the Commission or the European Court of Human Rights.

43. On 25 March 1995 Lady Meyer wrote to the Lord Chancellor's Private Secretary. She said that she had seen her children for a total of three and a half hours in nine months. She also said that the German Central Authority had yet to decide whether to recognise the certificate of enforceability issued on 9 February

(paragraph 37), and asked the Lord Chancellor to try to obtain an answer from them. Lady Meyer said that the Verden court were due to decide the issue of custody on 30 March and that her German lawyer had advised her that she was unlikely to receive a fair hearing. Lady Meyer went on to say that *"I fully appreciate that you cannot interfere in the judicial system of Germany, however I would appreciate very much if the Lord Chancellor could possibly write to the Minister of Justice in Germany to express concern about this case. This is so obviously an aberration of justice and an outrage"*.

44. On 29 March 1995 the German Central Authority sent a fax to the Department. It said *"I would like to inform you that the legal review of [Lady Meyer's] European Convention application has been finished. It was decided that a motion under the European Convention should be filed with the competent family court in Verden. The application has been sent to the court today [by fax]"*.

45. On 30 March 1995 the Verden court granted temporary custody of the children to Mr A (although the children were still wards of the High Court of Justice – paragraph 14).

46. On 4 April 1995 the Verden court suspended Lady Meyer's access rights until 30 June 1995. From 1 July 1995 Lady Meyer was awarded three hours' access each month, to take place at either Mr A's home or the District Youth Welfare Office. Commencing October 1995, Lady Meyer was awarded contact with her children from 10am to 6pm on the first Saturday of every month.

47. On 5 April 1995 the CAU wrote to Lady Meyer confirming the outcome of an internal discussion held on 4 April. They confirmed that they would be writing to Lady Meyer's German lawyers to find out whether, in their view, the order of the Verden court (paragraph 44) was unusual. They would also ask whether there were any grounds for appeal on the basis that the judge was plainly wrong or had wrongly exercised her discretion. They would ask whether there were any procedural irregularities which might provide the foundation for a formal complaint or an application to have the judgment set aside. They also planned to ask for a transcript of the judgment.

48. On 3 May 1995 Lady Meyer's German lawyer wrote to her British lawyer regarding the position of the divorce proceedings. He said that he had been asked by Lady Meyer to report on the question of pendency of divorce proceedings in Germany where proceedings in the same divorce were simultaneously pending in England. He explained that the position in German law was that the proceedings which were first rendered pending should be implemented. Proceedings were deemed to have been rendered pending if a copy of the petition had been served upon the opposing party. He explained that the divorce proceedings before the German court were not yet pending, since the petition had not been duly served. He felt that only the divorce proceedings in London were pending.

49. On 10 May 1995 Lady Meyer's German lawyer wrote to the CAU. The lawyer explained that Mr A had been granted temporary custody of the children and that, at a second hearing (paragraph 46), Lady Meyer's access rights had been suspended until 30 June 1995. Lady Meyer had lodged an appeal, against both decisions, but concern was expressed that the final divorce hearing might take place before the appeal was heard. The lawyer said that the rulings of 30 March 1995 were by no means to be regarded as normal and representative. He said that it was unusual for the mother of the children not to be granted temporary custody and that he felt that excessive and unilateral attention was paid to the wishes of the young children. He said that a further unusual aspect in the case was the fact that Mr A had taken the children illegally and that that breach of the Hague Convention had been retrospectively sanctioned by the rulings of the German court. That meant that the German court had been continuing retrospectively to approve that illegal action on the part of Mr A. He said that, based on his experience, he regarded the court's decision as by no means representative; indeed, he considered it to be unusual.

50. On 16 May 1995 Lady Meyer's German lawyer again wrote to the CAU. He drew their attention to false allegations that Lady Meyer had attempted to re-abduct the children. He said that with regard to custody proceedings, it should be pointed out that the court in Verden, without hearing any evidence, had assumed the veracity of an incident on 13 January 1995 and had taken that incident as grounds for its decision. He said that according to Mr A, Lady Meyer

had attempted on 13 January 1995 to abduct the two children from their school in Verden/Luttum. The lawyer said that Lady Meyer had made repeated statutory declarations confirming that at no time had that been her intention. He said that it should have been necessary for the court to proceed to the hearing of evidence, as a unilateral description of the incident had been used to the detriment of Lady Meyer. Turning to the subject of divorce proceedings, the lawyer said that Lady Meyer had already, prior to her husband, filed a petition for divorce in London. That petition had been duly served upon Mr A. He said that parallel to that, Mr A had filed his own petition for divorce with the Verden court. The lawyer said that no documents had, to date, been served upon Lady Meyer in that matter, and that in his opinion the divorce proceedings in England accordingly had priority. He said that the court in Verden had obviously adopted a different view and had been attempting to secure service upon Lady Meyer. He said that the German court was attempting, outside its own competence, to retain the divorce proceedings in Germany, despite the fact that proceedings were rendered pending at an earlier date in England.

51. On 22 May 1995 the CAU wrote to Lady Meyer's British lawyer. They said that Lady Meyer's German lawyer had said that there were two actions before the court; one concerning the temporary custody arrangements for the children, the other about what access (contact) arrangements should be made for the non-custodial parent. They said that the German lawyer had been very careful to explain that under German domestic law it was possible to effect temporary custody arrangements for the custody of children of a marriage during the separation of their parents, pending divorce. Final arrangements would then be settled during the divorce proceedings. They said that the decisions were under appeal and it was clear from the German lawyer's letters that the appeals would essentially be based on the evidence before the court, and not on a fundamental defect of procedure or denial of justice, such as would justify the formal involvement of the British Government. The CAU also wrote to Lady Meyer the same day. They said that they did not think that there were any possible grounds for involvement on the part of the British Government. They added that the decisions that had been made were of a temporary nature only. As there were no apparent procedural defects, they felt that there was nothing more that they could

do, other than to advise Lady Meyer to continue to keep in contact with her lawyers.

52. On 25 May 1995 Lady Meyer wrote to the CAU. She said that she was not a lawyer, but that her elementary knowledge of law and of human rights had always led her to understand that one had a right to defence and representation. She said that the fact that the Verden court had made an ex parte decision on 25 January 1995, without waiting for her defence, constituted a breach of her human rights and a denial of justice. She said that the local courts had repeatedly denied her any rights of defence and representation of her evidence. She added that she had no doubt that, in view of that evidence, the British Government would recognise that there had been a denial of justice and violation of Human Rights.

53. In May 1995 the CAU wrote to Lady Meyer's German lawyer. They said that they agreed with the view that the court's decisions were unusual and that given that the court had only been dealing with temporary custody, pending the final determination of the divorce proceedings, the wishes of the children had been given undue weight. They added that they also agreed that the German lawyer had been right when he had said that the decision had effectively sanctioned the wrongful retention of the children by Mr A. However, they went on to say that, unless there had been procedural errors in the way the decision had been reached, there would be no grounds for involving the British Government.

54. On 5 June 1995 Lady Meyer wrote to the CAU. She said *"As the Central Authority for England and Wales of the Lord Chancellor's Child Abduction Unit you recognise that "the court decision was unusual" and "has effectively sanctioned the wrongful retention of the children", yet you inform me that "if there was no procedural errors"….. you "do not think there is any ground for involvement on the part of the British Government". What is the role of the Child Abduction Unit if it takes the view that it should not intervene in a case of child abduction?"* Lady Meyer concluded *"I would very much like to receive the comments and justifications of the Lord Chancellor's department regarding its apparent unwillingness to protect three of its citizens"*. She added that the denial

of visitation rights and telephone contact with her children was a violation of a fundamental human right.

55. On 11 June 1995 Lady Meyer wrote to the Lord Chancellor. She complained that the German courts were applying the law as they saw fit, and in doing so were defying European law, violating human rights and acting outside their jurisdiction, and that, so far, no-one had stopped them. Lady Meyer explained that custody of the children had been transferred to Mr A, without her evidence being considered. She said that she had been given no visitation rights for the first three months, and three hours a month thereafter. She added that the Verden court had been acting outside its competence by intending to declare her divorced under its jurisdiction even though her English divorce had been served first. Lady Meyer said that that defied European and German law.

56. On 23 June 1995 the German Central Authority sent a fax to the CAU confirming that they had closed their file on Lady Meyer's Hague Convention case.

57. On 30 June 1995 Lady Meyer wrote to the CAU. She said that at her last meeting with them (which had apparently been held on 9 June 1995, but of which there was no note in the papers) they had concluded that an English intervention should be considered at that stage and that they would try to pinpoint the right person for that purpose, be it at the FCO or someone within the Department. Lady Meyer asked whether the CAU had had any further thoughts in that respect. She added *"My case clearly portrays how the current legal system protects abductors at the detriment of innocent children and law abiding parents. We both know this cannot be right and must be exposed"*.

58. On 22 July 1995 Lady Meyer wrote to the Minister. She said that the FCO and the CAU had recently advised her that the British Government could only intervene where there was evidence of denial of justice. She said that her German lawyers had duly provided such evidence and that the CAU had confirmed that it was the proper time for the British Government to intervene. She said that the Minister's conclusion (apparently contained in a letter dated 5 July 1995) had

backtracked from that position and had *"[thrown her] back to the German local courts"*.

59. On 25 July 1995 the Minister wrote to a Member following an article about Lady Meyer's case which had appeared in the press. He said that Lady Meyer's concerns about the basis on which the Celle court had reached its decision regarding jurisdiction, and the subsequent decision of the Verden court regarding temporary custody of the children, were matters which had to be properly resolved under German law. He said that the Department's CAU had endeavoured to help Lady Meyer as far as had been possible within the limitations of their statutory role, and had written to her German lawyer to seek his views on the orders that had been made. He added that there was no basis in procedural terms on which the British Government could properly intervene further, and that he could only suggest that Lady Meyer continue to consult those representing her in England and in Germany regarding the progress of the pending appeals.

60. On 21 August 1995 the CAU prepared an internal document about developments in Lady Meyer's case. They said that Lady Meyer was becoming increasingly anxious about her inability to exercise even limited rights of access. She had not spoken to her children in eight months, and they expressed sympathy for her position. They said *"whatever view the Court may have taken about the children's care it should certainly support her rights to access unless it can positively be demonstrated that it would be against the interests of the children to do so. In those circumstances, perhaps we could press the German Central Authority as to what steps they would be prepared to take under the provisions of the European Convention to enforce [Lady Meyer's] access order"*.

61. On 31 August 1995 the CAU wrote to the German Central Authority accordingly. The same day the CAU wrote to Lady Meyer's British lawyers saying *"As you know, [Lady Meyer] applied through the [CAU] under both Conventions for the return of her children to England. [Lady Meyer] has told me that she is now being denied all access to her children in Germany. I would be very grateful if you could indicate whether you will be pursuing an application under the European Convention for the enforcement of [Lady Meyer's] access*

rights, and what, if any, additional steps you will be taking to secure rights of access for her."

62. On 2 September 1995 the Member wrote to the Departmental Minister seeking clarification of some points that the Minister had made in his reply to an adjournment debate relating to Lady Meyer's case. He said *"you indicated that there might be 'the foundation of a formal complaint or an application to set aside the judgment'. Please could you confirm that what you had in mind was the possibility of a formal complaint or application by your Department to the relevant authority in Germany."* He asked whether the further information the Minister had received from Lady Meyer's lawyers provided such a foundation for a formal complaint. The Member also asked for confirmation that, as Lady Meyer had filed her divorce petition first, the proceedings in Britain would take precedence. He asked what steps the Department would take to protect the jurisdictional precedence of the English courts.

63. On 4 October 1995 the Celle court decided on an ex parte basis to reduce Lady Meyer's contact with her children to four hours per month.

64. On 17 October 1995 the French Ministry of Justice wrote to the CAU (because Lady Meyer has joint French/British citizenship). They said that Lady Meyer had expressed concerns about her physical safety at a forthcoming access visit. They said that the German judge had ordered her to go alone, and it was precisely that isolation which terrified her. They asked the CAU to refer the matter urgently to their German counterpart so that all measures could be taken to ensure that Lady Meyer could exercise her access rights peacefully. They said that it seemed that the best protection would be the presence of a neutral third party authority.

65. On 22 November 1995 Lady Meyer's British lawyers wrote to the CAU about the progress in Lady Meyer's divorce proceedings. They said that Mr A had been successful in obtaining a stay of Lady Meyer's divorce proceedings at a German court hearing on 8 November. They said that the petition had been stayed pending pronouncement of the German divorce decree, whereupon it had been dismissed.

66. On 5 December 1995 the CAU faxed the German Central Authority. They said that the Celle court had previously made an order granting Lady Meyer very limited access. They said Lady Meyer had informed them that Mr A had not been allowing the access visits to take place peacefully each time Lady Meyer travelled to visit her sons in Germany. The CAU asked the German Central Authority to consider assisting Lady Meyer to organise the effective exercise of her access rights under the terms of Article 21 of the Hague Convention. The CAU said that they would submit a formal application if the German Central Authority were able to assist in that manner. The German Central Authority replied the same day saying that Lady Meyer had applied for the return of her children under both the Hague Convention and the European Convention, and that the German Central Authority had assisted with those applications. They added that there had also been proceedings in Germany in relation to the custody of the children, with which they had not assisted. They said that they did not consider Lady Meyer's case to be a typical Article 21 case. They said that if Mr A did not permit the access, as established by the court order, Lady Meyer had to apply under German law to enforce the access order through the courts. They concluded that they were unable to offer any further assistance.

67. On 14 December 1995 Lady Meyer wrote to the Member. She said that she could not understand why the Department were not supporting her when the denial of justice was absolutely clear. On 18 December the CAU sent a fax to Lady Meyer's British lawyer explaining that the German Central Authority could not help her under Article 21 of the Hague Convention.

68. **1996** On 1 February 1996 the Minister wrote to the Member. He said if Lady Meyer's German lawyer took the view that there were now aspects of her case which could provide a proper basis for intervention by the British Government, it was open to him to raise them (with the Minister).

69. On 4 March 1996 Lady Meyer wrote to the CAU. She said that on 20 February 1996 the Verden court had decided that the divorce proceedings should take place in Germany, and that a psychologist should examine the children before a decision was made on custody. Lady Meyer's lawyer requested

that the psychologist should be independent, from a neutral country, and should speak both French and German, but the court had appointed a German psychologist who did not speak French. She asked the CAU to intervene to try to persuade the court that a more independent psychologist should be appointed.

70. On 26 March 1996 Members representing Lady Meyer met with representatives of the Department. A Member said that he felt that Lady Meyer's case should have been dealt with in England, as she had been treated appallingly. He felt that the Department should have taken a tougher line with the German authorities, and that Mr A's actions amounted to legalised kidnap. He said that a newspaper article had singled out Germany for its lamentable record in cases where custody was disputed and one of the parents was German. He added that Lady Meyer's accounts of the visits with her children painted an appalling picture and that the Government could not sit back and wash their hands of the matter. The Chairman of the All Party Working Group on child abduction said that the case was a classic example of one which should have been settled amicably. He said the British Government should have acted as soon as the children had been taken illegally by their father. The Departmental Minister said that the British Government would only be able to intervene if there was evidence of material irregularity. A Member said that there was ample evidence of material irregularity: the children were abducted before the second hearing; Lady Meyer had no rights of access; the court's psychologist was nominated by the children's father. The Minister said that the crucial fact was that Lady Meyer's lawyer had not complained or provided any evidence of material irregularity. The Members requested that the government intervene on the grounds that the procedures adopted by the German courts generally were inappropriate. The Minister told them that, as in the United Kingdom, the German courts were strictly independent of the Executive, and that it would not be appropriate for one government to intervene in the judicial matters of another.

71. On 12 April 1996 the FCO sent the CAU an update on Lady Meyer's case. They explained that since the monthly access visits in Verden had been agreed, Lady Meyer had made five visits. They said *"The pattern is as follows. She goes to her husband's house in a forest outside Verden where her two sons (now 9 and 11) sit with a female family friend playing games. She joins in, trying to*

re-establish her relationship with her children. This is difficult as the children are nervous. [Lady Meyer] feels intimidated as the doors are locked, and she is aware of her husband's family, friends and advisers in the adjoining house. No visit has lasted more than one and a half of the four hours allotted once a month". They added that they kept in touch with Lady Meyer, her German lawyer, the Verden Jugendamt Youth Office, the Ministry of Justice in Hanover, and with Minister President Schroder. They said that Herr Schroder remained interested in the case, and that he thought the access arrangements were mean, and that he would be ready for any further approach on how to improve matters. They said Lady Meyer had established a good track record of low profile visits on Mr A's terms, which by any reasonable standards were not conducive to helping her re-establish a normal relationship with her children. They concluded that she had been refused a request to have the visits on more neutral territory in a less artificial atmosphere, but that her lawyer would continue to press for that.

72. On 15 April 1996 the CAU spoke to the Honorary Legal Adviser to the Consul General of Hamburg. The CAU asked whether it would be possible and desirable to ask the court to prepare a welfare report on the children. The adviser said that it was possible to ask but the court would not be obliged to prepare such a report for a foreign consulate. The legal adviser said that he had been trying to contact the Prime Minister of Lower Saxony to see whether he could bring any influence to bear to try to achieve a more favourable access arrangement for Lady Meyer.

73. On 23 April 1996 Lady Meyer wrote to the CAU to notify them that her application to have an independent psychologist appointed had been rejected. The court said that Lady Meyer's German was sufficiently good that a French-speaking psychologist would not be necessary, and also that German was the language of the court. Lady Meyer said that the court were also requiring her to pay maintenance to Mr A.

74. **1997** On 8 April 1997 Lady Meyer telephoned the CAU asking them to help her to increase and improve her access arrangements with her children. The CAU advised Lady Meyer to apply to the Verden court to vary the existing German access order. Lady Meyer advised the CAU that she had been told by the German

authorities that access could only be increased or altered with the consent of Mr A. The CAU advised her that that comment might be true in relation to requests by maternal grandparents for access, but that it could not apply to access between Lady Meyer and her children. Lady Meyer also said that she had applied to the Verden court almost a year ago for legal aid to pursue her access case, but had yet to receive a decision from the court. The CAU advised that, upon written confirmation of that information from Lady Meyer, they would contact the German Central Authorities to request their assistance in speeding up the court's decision.

75. On 9 April 1997 Lady Meyer wrote to the CAU repeating her request, made in a telephone call the day before, that they help with her legal aid application and the enforcement of her access rights. She added that she had been unemployed for two years and was no longer in a position to pay her lawyer. She said that the court were also requiring her to pay maintenance, backdated to November 1995. Turning to her access rights, she said that her German lawyers had advised her that in Germany, unlike Britain or France, access rights could not be enforced.

76. On 23 April 1997 the CAU wrote to Lady Meyer to ask her to clarify some issues in relation to her access application. They asked when and at which court Mr A's lawyer had filed the application to cancel her access rights. They noted that the judge had requested a psychological report, and asked whether that report would also cover access issues.

77. On 24 April 1997 the CAU wrote to Lady Meyer's German lawyer to ask for clarification on a number of points. They asked for an update on Lady Meyer's application for legal aid which had been submitted a year earlier. They also asked whether the psychologist had filed a report on access rights in response to the court's request. The CAU also asked for information about any provisions which existed under German law to enable Lady Meyer to enforce her access rights. Additionally, the CAU asked the lawyers for a copy of an order that had been issued by the Celle court on 4 October 1995. They particularly wanted to know whether that order provided for indirect contact between Lady Meyer and her children.

78. On 2 May 1997 Lady Meyer replied to the CAU's letter of 23 April (paragraph 76). She confirmed that Mr A had filed an appeal at the Celle court on 11 September 1995, and that on 4 October 1995 the Celle court had reduced her temporary access rights.

79. On 6 May 1997 Lady Meyer's German lawyers replied to the CAU's letter of 24 April (paragraph 77). They said that the court had yet to reach a decision in relation to Lady Meyer's application for legal aid. They explained that in order to qualify for legal aid under the German system, the court would need to be satisfied that Lady Meyer was sufficiently poor within the meaning of the law, and also that the application had a likelihood of success. He said that, in his view, there would be no problems in terms of the likelihood of success of the action, but that the court had some doubts about whether Lady Meyer was sufficiently poor. He confirmed that he had written again to the court to try to elicit a decision. Turning to the psychological report, he said that the report had been commissioned shortly before 2 December 1996. He added that the reports had yet to be completed. In relation to access arrangement under German law, he said that Article 1634 I BGB (German Civil Code) provided that the parent who had not been granted custody had a right of personal access to the child. That Article also provided that both the parent with custody and the parent entitled to exercise personal access rights must refrain from any action which might prejudice the relationship between the child and the other parent.

80. On 28 May 1997 the CAU wrote to the German Central Authority. They explained that Lady Meyer had written to them outlining her concerns in respect of enforcing her access rights and the delay that she was experiencing in obtaining a decision on her application for legal aid. They asked what assistance the German Central Authority could give in respect of enforcing Lady Meyer's access rights, and whether the Verden or Celle courts could assist with enforcement. They said that in October 1995 the Celle court had reduced Lady Meyer's access rights. They said that she had last seen her children in May 1996 (12 months previously).

81. On 2 June 1997 the German Central Authority replied to the CAU. They said that they had spoken to Lady Meyer's German lawyer. They had been told

that, as part of the adjourned divorce proceedings, the court had ordered access rights for Lady Meyer. They said that there was no way that they could assist Lady Meyer because the matter was already pending before the court.

82. On 5 June 1997 the CAU wrote to Lady Meyer to say that they had been advised that divorce proceedings were pending in Germany, and that in those proceedings, the German court had awarded access rights to her. They asked Lady Meyer to confirm whether that was the correct position, as the German Central Authority had said that her access rights could not be enforced as the matter was already pending before the German court. The CAU also asked for a copy of the latest court decision concerning access arrangements.

83. On 6 June 1997 Lady Meyer telephoned the CAU. She said that a hearing on 27 May 1997 regarding custody and access issues had been adjourned to a date in September 1997. She said that no decisions had been made regarding either the divorce or access, and that no final hearing had been arranged. Lady Meyer said that she was seeking shared custody and for her children to make access visits during their school holidays. Lady Meyer requested that the CAU contact the German Central Authority to ask them to clarify why they were under the impression that she had been granted further access rights when no final decision had been made. Lady Meyer called the CAU again later that same day, when the CAU told her that any efforts to enforce her existing access rights, by means of an application for a coercive penalty, could later prejudice any decision made by the court during the divorce proceedings. The note of the call recorded that Lady Meyer agreed. Lady Meyer also explained that the hearing had been adjourned because the psychologist's report had only been made available one week before. She said that the hearing was likely to take place in either late September or early October, by which time she would not have seen her children for almost 17 months. Lady Meyer discussed the possibility of obtaining a High Court order in respect of visitation/access. However, any such order would have to be obtained on an ex parte basis and subsequently served upon Mr A. The CAU agreed to write to the German Central Authority to point out that no final decision had in fact been made in respect of the divorce proceedings. Lady Meyer agreed to send the CAU a copy of the psychologist's report.

84. On 10 June 1997 the CAU sent a fax to the German Central Authority. It explained that the divorce hearing had been adjourned and that access rights had not therefore been granted. The CAU said that the last access order had been made on 4 October 1995 (paragraph 78). They sought the further views of the German Central Authority. The German Central Authority replied by fax on 18 June. They said that they were unable to assist because there were clearly already divorce proceedings, including custody and access proceedings, before the Verden court.

85. On 21 June 1997 Lady Meyer wrote to the CAU to ask whether they had received a response from the German Central Authority on the questions of her legal aid application and her access rights (see paragraph 80). She said that the divorce proceedings had been delayed until September 1997 and that all attempts to contact Mr A had been unsuccessful. Lady Meyer said that under Article 21 of the Hague Convention the Central Authorities were obliged to assist her to secure and exercise access rights, and that she had not seen her children since May 1996. Lady Meyer said that she had been led to believe that her children were no longer at their old address and that she was unaware as to where, and with whom, they were currently living.

86. On 27 June 1997 the CAU replied to Lady Meyer's letter of 21 June. They said *"As to the exercise of your access rights, I enclose a letter dated 2 June 1997 received from the German Central Authority, from which you will see that they have spoken to your German lawyer…, but feel that they cannot assist you in exercising your rights of access because you are already represented and there are proceedings pending before the German court….. I regret to say that they have also said that they are not able to help you in relation to your application for legal aid"*. The CAU suggested that Lady Meyer ask her German lawyer whether he could make any representations to the authorities about her legal aid application.

87. On 8 July 1997 the CAU wrote to Lady Meyer's German lawyers. The CAU said that they had written to the German Central Authority to ask for their help in enforcing Lady Meyer's access rights, and in pursuing a determination of her application for legal aid. They explained that the German Central Authority had

taken the view that, because Lady Meyer had already instructed German lawyers to act for her in the forthcoming divorce proceedings, they were unable to help. The CAU went on to say that it was clear from their conversation with Lady Meyer that she was becoming increasingly disappointed and frustrated. Lady Meyer had told them that, under the provisions of an order made on 4 November 1995 by the Celle court, she had been granted four hours' access to her children per month at their father's house. The CAU said that Lady Meyer had contended that the children's father had been obstructing access and that a suggestion had been made that she should see the children at the Jugendamt. However, the Jugendamt had said that they were unwilling to help because the children were at school during the week, and they were not available to assist at the weekends. The CAU said that, if what Lady Meyer had said was right, there was grave cause for concern. She already had a very limited amount of access to her children and travelling had proved to be extremely costly and time-consuming. They added that it did not seem right that the order of the German court which had been in existence so long should be so blatantly ignored. They said the Authorities seemed neither willing nor able to enforce their own orders. The CAU considered that to be a serious matter, and added that there had been a decision by the European Court of Human Rights to the effect that a failure to have in place proper enforcement methods for access constituted a breach of Human Rights, (Hokkanen –v – Finland (50/1993/445/524)) insofar as it was a breach of a right to family life. The CAU said that, in regard to the application for legal aid, perhaps the lawyers could do all that they could to try to encourage the appropriate authorities to reach a decision. The CAU understood from Lady Meyer that a hearing would take place in September which would make final decisions about the divorce proceedings, custody and access. They said that, unless some attempt was made to secure the enforcement of Lady Meyer's present access order, there would be very little confidence in any final order that the court made. The CAU concluded by offering any further appropriate help as necessary.

88. On 28 July 1997 Lady Meyer wrote to the Parliamentary Secretary of the Department. She said that the German courts had been acting in defiance of the Hague Convention. Lady Meyer explained that, since their abduction, she had been able to see her children for only a few hours and in what she described as harrowing circumstances. Lady Meyer said *"Your officials have on their files all*

the details of what has become a long running case. I would only want to add the following points. The German courts continue to justify their unreasonable position on the basis that I intend to re-abduct the children – something which is wholly false and contradicted even by their own police force. They also say that it is the will of the children to remain with their father in Germany. But the conditions of psychological pressure under which my children live in Germany are such that my husband and his family have created a self-fulfilling prophecy". Lady Meyer went on to say that while she wanted her divorce to be finalised as soon as possible, she was concerned that any custody and access decisions made by the court would be highly prejudicial. She said that her access request was very modest – to be able to see the children in normal conditions and for them to be able to spend part of each school holiday with her outside Germany. She described the visitation rights granted by the court as being "*little better than a prison visit"* as they required her to meet her children in a government office in Verden, with a third party present at all times. She appealed to the Department to intervene on her behalf before the divorce hearing scheduled for 30 September.

89. On 4 August 1997 Lady Meyer's German lawyer wrote to the CAU. He said that legal aid had still not been granted and that the application was only under the authority of the Verden court at that time. He said that the Federal Public Prosecutor had no jurisdiction over the matter, and was only engaged in implementing foreign judgments and orders in the Federal Republic. He went on to say that he had made further enquiries of the Verden court, and had asked for the matter to be dealt with urgently. He said that the divorce hearing would take place on 30 September 1997; that the psychologist's reports had been submitted but were not accepted by himself or Lady Meyer, since the special language aspects of the parties had been totally ignored. In the meantime, Lady Meyer had made a request to the court for permission to be able to see her children under the supervision of the British Consul-General in Hamburg, but they were still awaiting the court's decision. Lady Meyer's lawyer went on to say *"We must first therefore await the decision of the District Court Verden, but I have to confess that like yourself I am not very confident. Once a decision has been reached, it will then be possible to take legal action at the Higher Regional Court Celle. Only then can complaints of violation of human rights be brought before a European authority or a European court of justice".*

90. On 7 August 1997 the Family Policy Division of the Department wrote to Lady Meyer. They said that Lady Meyer had suggested that the German courts were acting without regard to the terms of the Hague Convention and the European Convention. However, in Lady Meyer's case, the Verden court had made a return order in September 1994, but Mr A had successfully appealled to the Celle Court. That court had held that the children had objected to being returned and were of an age and maturity for their views to be taken into account under Article 13 of the Convention. The Department said that, in their view, that had been the end of proceedings under the Hague Convention. They said *"[We] must inform you that Ministers of the Crown and British officials cannot comment on or intervene in cases which are or have been before the courts, whether in this country or elsewhere. To do so in this country would be a breach of the fundamental principle that the judiciary in this country are, and are seen to be, independent of Government. In the international context, the Government of the United Kingdom is committed to respecting the operation of courts in other jurisdictions"*.

91. On 13 September 1997 Lady Meyer wrote to the CAU to say that she was taking a different approach at the forthcoming divorce hearing, and intended only to pursue an access agreement which would enable her to have her sons to stay during their school holidays. She added that she remained rather pessimistic about the outcome of that hearing. She enclosed a copy of a letter that she had sent to her German lawyer in which she said that in order to try to secure a better access agreement, she felt that it would be best for her to acquiesce (with great reluctance, but for the sake of her children) to the children continuing to reside in Germany. She would accept the psychologist's report's conclusion that relations between her and her children must be normalised for the boys' sake. Lady Meyer also accepted that, while there was absolutely no basis for Mr A's fear that she would attempt to re-abduct the children, the fear existed on his part, and would need to be taken into account when trying to rebuild confidence between them. In return, she said, Mr A should understand that the existing access arrangements were stressful and unnatural for both her and the children, and that far from normalising the relationship with her children, they were making the situation worse. She said that future access should take place in her own environment and

away from third parties. In exchange, she would give a formal undertaking that she would not abduct the children. Lady Meyer felt that those suggestions offered Mr A all the reassurance he needed, while allowing the report's recommendations to be implemented. Lady Meyer said *"[This arrangement] offers a way ahead which puts my dispute with him behind us and gives priority to the future welfare of the children. It means my putting to one side what I consider to be a massive injustice against me and my children"*.

92. On 23 September 1997 the Verden court refused Lady Meyer's application for legal aid.

93. On 30 September 1997 Lady Meyer's divorce was finalised. Custody was granted to Mr A on the grounds that there were problems at that time within the children's relationship with their mother, and the children had expressed the wish to continue to live with their father. Regarding access, the court said that Lady Meyer had the right to visit her children subject to arrangements with the IAF Association in Hamburg (the Association of Dual Nationality Families and Partnership, Hamburg Regional Association).

94. On 2 October 1997 Her Majesty's Consul-General wrote to the CAU to update them on Lady Meyer's case. He said that Lady Meyer had come to accept some time ago that she was unlikely to regain permanent custody of her children when her divorce was granted. He said that she was therefore prepared to see custody go to Mr A so long as she was granted access visits on reasonable conditions and in a place other than Verden. He added that he had in the meantime conveyed the message discreetly to Mr A and the Verden authorities that Lady Meyer was no longer holding out for all or nothing, but was prepared to negotiate on the basis of the forgoing of her custody application in exchange for reasonable access. He said that he had had the good fortune to meet informally the new Permanent Secretary equivalent of the Lower Saxony Ministry for Justice and European Affairs, and that he had done a certain amount behind the scenes which had been helpful. The Consul-General went on to say *"This hopeful sign was born out by the atmosphere at the proceedings. The young lady judge who had previously seemed hostile to [Lady Meyer] was clearly keen to reach a just and reasonable outcome at this hearing…. It was however [Lady Meyer's] own*

efforts which led to the satisfactory outcome of these proceedings. She has been tireless in her efforts to see her children again in neutral surroundings, and made contact with the organisation International Social Services (ISS), which provides facilities for access visits". The letter went on to explain that the judge had put a proposal to Mr A which included the ISS hosting the access visits at their Hamburg branch, but that Mr A had clearly been unhappy with that proposal. After consulting his lawyers, Mr A agreed to the proposal, and the judge had said that that amounted to a court order and therefore Mr A had to take the children to Hamburg when a date could be found for the visit, probably in January 1998. The judge had summed up by saying that she did not want to see Mr A back in court again, in the foreseeable future at least. The Consul-General said that Lady Meyer now had the opportunity to see her children, which she had last done one and a half years previously. He added that the ISS would have the authority to observe the visits and decide how often they should take place. He added that Germany was due to introduce the concept of joint custody in 1998, and that if Lady Meyer was able to resume a normal relationship with her children she might then consider applying for joint custody. The Consul-General concluded by saying *"Finally, it is clear, not only is this not yet the end of the story for [Lady Meyer], but that there are a very large number of similar cases in France and possibly also in the UK. In these circumstances, I believe – and the Ambassador agrees – that there would be merit in the Lord Chancellor's Department (Child Abduction Unit) getting in touch with their opposite number in the French Justice Ministry to see whether there is hope for a common approach to the German authorities. One lesson to be drawn from this case is that persistence and the right kind of pressure can pay off".*

95. On 12 November 1997 Lady Meyer's new husband wrote to the Consular Division of the Foreign and Commonwealth Office (copied to the CAU) to notify them that he and Lady Meyer had married and moved to Washington DC. He explained that there had been further proceedings in the Verden court on 30 September 1997, when Lady Meyer's divorce had been finalised. Mr A had been awarded custody of the children. The letter continued *"[Lady Meyer] acquiesced reluctantly in the custody decision on the advice of her lawyers, on the grounds that it would have been futile to challenge it and that tactically it would put her in a better position to secure her main objective: regular access to her*

children outside Germany". He reported that the judge had instructed Mr A not to stand in the way of a reunion between Lady Meyer and her sons on the premises of a third party in Hamburg in January 1998. That meeting would be supervised by the IAF (a support organisation for marriages between Germans and spouses of other nationalities). He explained that Lady Meyer was seeking further information about her children, including details of where they were living and which school they were attending, and was seeking the support of the British Authorities to do this.

96. FCO replied to Lady Meyer's husband on 15 December 1997. They said that they were committed to continuing to provide Lady Meyer with the high level of support that they had provided to date, and to which she was entitled as a British Citizen. They went on to say *"we have advised your wife against pursuing her case through the media on the grounds that it would harden opinion in Verden and allow her former husband to make a plausible case that the children were being subjected to undue pressure. This, we believe, is one of the reasons why the case has dragged on so long. It is no secret that [Lady Meyer] has not always taken the same view and we have occasionally had to agree to differ. We also take the point that her battle has helped to raise public interest in child abduction both here and in France"*. They added that Lady Meyer's husband's letter had given the impression that the French government had been making the running throughout, whereas their reading of the file showed that, as soon as FCO had become aware of Lady Meyer's plight, they had given her constant advice and support. FCO said that while the French had clearly been ready to raise concerns on Lady Meyer's behalf, they were less clear about what practical action the French had taken. The FCO said that it appeared that the court and most of the officials concerned were now much more sympathetic towards Lady Meyer, and that they were also becoming increasingly more irritated by Mr A. The FCO concluded *"The key to progress now, it seems to me, is to keep the temperature down and to prepare for the access meeting to take place in the best possible circumstances"*. Turning to the information that Lady Meyer was seeking, they said that an independent professional psychologist was going to interview Mr A in mid-January and the children in early February. They felt that it was appropriate to leave it to the psychologist, in the first instance, to obtain details of where the children lived and went to school, and to arrange for the

regular copying of school reports. They also said that they had obtained an address where Lady Meyer could send letters to her children, but that they could not guarantee that there would be no interference with mail and Christmas presents, but that Mr A would be very foolish to act so improperly when the court were taking such a close interest in the case.

97. **1998** In a letter of 6 January 1998, the Department told another Member that the case had been outside the ambit of the Hague Convention since the decision of the Celle court in the autumn of 1994 that the children should not be returned. The Minister acknowledged that the German court had made an order at the final divorce hearing on 30 September 1997 that Lady Meyer should have access to her children. He said that if difficulties arose in the implementation of that order, Lady Meyer could seek the assistance of the CAU. He said *"The 1980 European (Council of Europe) Convention on the Recognition and Enforcement of Decisions concerning Custody of Children and on the Restoration of Custody of Children deals with the recognition and enforcement of court orders. If the German court fails to enforce the order, the CAU will be able to seek enforcement through the German Central Authority, which is located in the Federal Ministry of Justice"*.

98. On 7 January 1998 Lady Meyer's husband again wrote to FCO. He said that he did not want to leave the impression that the British Authorities had been reluctant in their support. He said that the FCO had raised the question of practical action taken by the French authorities on Lady Meyer's behalf. He said that they had claimed to have raised her case with the Germans on a number of occasions, including at Franco-German summits. He went on to say *"Your letter [of 15 December 1997] also raises the question of the media. You will have noticed that in the last nine months [Lady Meyer] has given no interviews. As a former Press Secretary, I am more aware than most of the two-edged sword that media exposure can be. By and large, I agree with you that for the moment the disadvantages of publicity predominate"*. He added that they could not rule out the possibility of the story breaking again, in view of their high profile positions in Washington DC, but that Lady Meyer was not doing anything to encourage such further media attention. He said *"As to the present situation, as you yourself point out, there are already clear signs of her former husband's delaying tactics.*

The already leisurely timetable set by the Verden court for the first access meeting has slipped. [The IAF representative] is sympathetic and doing her best. But she herself has emphasised to [Lady Meyer] that she cannot move without the co-operation of both parents. My wife accepts that since the 30 September Verden judgment, [Mr A] must be allowed enough rope to hang himself. But, given the behaviour of him and his family over the last three years, this is a situation which she, as a mother, cannot be expected to endure indefinitely. I myself witnessed the human toll that all this takes on my wife, when [Mr A's] family contrived at Christmas to stop [Lady Meyer] from talking to her children on the phone. Numerous attempts on Christmas Eve and Christmas Day to speak to the children were deflected either by prevarication, lying or simply refusing to answer the phone".

99. Also on 7 January 1998 the CAU wrote to Lady Meyer. They said that it was important *"to set out very clearly the extent of the Foreign and Commonwealth Office's involvement in your case. There is no doubt that you have been receiving a very high level of support, far greater, I might say, than anyone would receive if they were involved in an equally difficult and contentious dispute over their children in the United Kingdom. It has to be recognised that there are limits to which states can become involved in private law disputes."* The CAU then reiterated the advice that they had offered Lady Meyer at an earlier meeting in respect of re-building her relationship with her children. That advice included keeping in regular contact with the children, sending them letters or postcards approximately once every three weeks, and checking during conversations with the boys whether they were receiving her letters. The CAU suggested that if it became apparent that the boys were not receiving her letters, she could then take the matter up with her lawyers.

100. On 19 January 1998 Lady Meyer replied to the CAU. She said that, in spite of the many conversations they had had, the CAU had failed to grasp that the steps they were advising her to take in order to bring her closer to her children, were precisely those which she had been seeking to make. She said that she had been unable to do so because Mr A had managed to block any attempts to contact her children. Lady Meyer explained that she was seeking an access visit in February 1998 (following the decision of the Verden court on

30 September 1997) and she was waiting to see whether Mr A would obstruct that visit and that, if he did, she would be seeking the help of the British authorities.

101. On 30 January 1998 FCO wrote to Lady Meyer's husband. They said *"I understand …. that [the IAF representative] has already interviewed [Mr A] and plans to see the children at the beginning of February. She appears determined to do everything possible to ensure that the access meeting takes place as requested in the week 14-22 February. We have no reason at this point to believe that she will not be successful. We must hope that notwithstanding the reports of his obstructive behaviour over Christmas [Mr A] realises the serious consequences of any attempt to block this meeting. If the meeting is blocked we would raise the matter with the German authorities"*.

102. On 11 February 1998 the CAU sent a fax to the then Minister regarding Lady Meyer's case. It said *"I agree with [you] that,…. the German system of family justice…. does not appear to have effective remedies for the enforcement of access orders. I am not impressed by the German position that these matters are not susceptible to review by the executive because they concern judicial independence. Judicial independence means the ability to make decisions free from political pressure, it is the responsibility of the states to provide an efficient, effective and accessible system of justice. Failure to do so may, in the context of family law, amount to a breach of Articles 6 and 8 of the European Convention of Human Rights."* In relation to Lady Meyer's case itself, the CAU said *"Putting aside for the present the fact that I am at the moment uncertain about the tactical implications of the suggestions in the first paragraph [of Lady Meyer's letter of 19 January 1998] that I have failed to grasp something, I agree with Lady Meyer that the real test will be whether the access visit in Hamburg takes place"*. The fax also said that a proposed extension to the Brussels Convention was unlikely to improve matters. They felt that the problem did not lie in the international instruments, but the delay and lack of effective remedies for enforcement (including the unwillingness of the courts to enforce their own orders) in some contracting states.

103. On 2 March 1998 Lady Meyer's husband wrote to the FCO. He explained that the access visit had gone very badly. Mr A had refused to abide by the access

agreement reached in Verden on 30 September 1997 (paragraph 93), and the Verden court had declined to enforce it. He said that the visit had shown that Mr A was *"unwilling to let the children see [Lady Meyer] on territory which he does not control"*. He said that his wife was now in a complex Catch 22 situation. Her children had been led to believe that she had abandoned them and that that made it progressively easier for Mr A to use *"the will of the children"* argument to avoid any meetings on neutral ground. They had been told that there was no basis for official representations to the German authorities and asked if it was not appropriate now, when would it be. He said: *"If things continue exclusively on the private legal track, Mr A is likely to achieve what must be his aim of blocking proper access to her sons until they are adults. Her fear is that they will then be irredeemably poisoned against her. Her older son told her on 21 February that, according to his father, she could see him and his brother at any time, if she wished to"*. He said that he hoped that they would now agree that a basic right was being denied, and that there were sufficient grounds for action by the British authorities. He said that Lady Meyer's requests were modest. She had reluctantly acquiesced to Mr A having custody and her children having their home in Germany, and was seeking access for part of each of the school holidays, and normal contact access by telephone and letter between those visits. He also enclosed a document prepared by Lady Meyer which described what had happened during the access visit. It explained that Mr A had refused to bring the children to the IAF centre citing as his reasons *"the will of the children"*, a fear of abduction, and the *"unprofessional"* attitude of the IAF. Lady Meyer eventually saw her children for less than 30 minutes at Mr A's home, where she was not allowed to be alone with them.

104. On 5 March 1998 another Member wrote to the Department to complain that Lady Meyer's access rights were being denied in breach of Article 21 of the Hague Convention. He said that an agreement over access had been reached before the Verden court on 30 September 1997 but that due to *"obstruction and prevarication"* by Mr A, Lady Meyer had not secured any access with her children until 21 February 1998, when she had seen them for 13 minutes. It had been the first time that Lady Meyer had seen her children since May 1996. The Member said *"It could not be clearer that the Central Authority in Germany is blatantly in breach of its clear obligations to promote the peaceful enjoyment of*

access rights for Lady Meyer and the removal of all obstacles to the exercise of those rights. In these circumstances I trust that you will give me your assurance that the UK Central Authority will now make the strongest representations to the German Central Authority over the denial of the access rights to which Lady Meyer is entitled under the Hague Convention".

105. On 20 March 1998 FCO wrote to Lady Meyer's husband. They said it seemed clear that Mr A would do all that he could to frustrate the legal process. They said they were not familiar with German law but had discussed the case at length and that in the light of the court's unwillingness to enforce the agreement reached on 30 September on technical grounds; the probability that it would be unwilling to take action against Mr A for his failure to comply with the earlier agreement; and, the suggestion that Lady Meyer's lawyer was *"in cahoots"* with Mr A's lawyer, or at best, unwilling to run up against Mr A's family they supported the recommendation that Lady Meyer should appoint a new lawyer. They added *"You write in your letter of 9 March, that it is hard to see how, even with a new lawyer, the German justice system alone will find a remedy: but [we] fear that it is equally hard to see any realistic prospect of securing satisfactory access visits for [Lady Meyer] other than through the German legal system".* They said that the CAU advised that it was important to seek an order from the court specifying where and when the access visits should take place. They said that an order from the court providing for a series of meetings on specific dates could provide the additional lever allowing a decision to be enforced. They also offered to take formal action to press for an early hearing should Lady Meyer decide to pursue such action.

106. On 23 March 1998 Lady Meyer's husband again wrote to FCO. He explained that Lady Meyer had been advised by her German lawyer that *"[her] access rights can now be established by initiating an entirely new legal process, which will require the negotiation of specific dates and places with her ex-husband. ….the 30 September judgment as it relates to access is different in kind from its divorce and custody provisions and is not enforceable".*
Lady Meyer's husband went on to say that while he had acknowledged that it was an unsatisfactory situation, the lawyer's letter had sought to blame Lady Meyer for it, by claiming that, had she not been in such a hurry to get a divorce, proper

access rights could have been negotiated. The lawyer had added that the judge had been astounded that Lady Meyer had not insisted on firm dates for her access visits. Lady Meyer's husband described those comments as *"disingenuous"*. He said that the German lawyers had advised Lady Meyer not to fight for custody because it would be futile and delay the divorce. They had also emphasised that to facilitate access to her children, it was in Lady Meyer's best interest to move quickly to give Mr A the divorce and custody that he had been seeking. Lady Meyer had not been warned that by reaching an agreement based upon mediation through the IAF, she would be prejudicing her access rights. Nor had she been warned that such an agreement would be unenforceable. Her husband said that, had she been given such advice, she would not have agreed on 30 September 1997 to finalise the divorce or the custody arrangements.

107. On 25 March 1998 a meeting took place between the Lord Chancellor and a Member. The Lord Chancellor expressed the view that it no longer served any purpose to regard the case as an abduction case. He said that there appeared to have been a breach of a consent order and that, in his view, her lawyers should be seeking to negotiate a new agreement. He added that, if that was not possible, there would be no alternative but to go back to the courts, and that it would not assist her to come before the German courts if a condemnatory statement about the German legal system had been made by the Lord Chancellor. The Member stressed that it was for Lady Meyer to determine whether it was an access or an abduction matter. She also had to decide whether she wanted a negotiated settlement or to have her children back. However, both parties agreed that the case had passed the point of the Hague Convention. The Member explained that Mr A had put obstacles in the way of the agreement under the consent order. They agreed that the consensual route was best for children, but was not always realistic. The Member said that the failures of the last few years and the bias in favour of Mr A had left him with little confidence in the German legal system. He said that although he would not advocate *"waving a banner"*, perhaps the Lord Chancellor could raise the matter with his German counterpart to see whether the advice that Lady Meyer had been given matched up with the explanation of procedures and remedies available to her. The Lord Chancellor said that judicial independence was as much an article of faith in Germany as it was in the United Kingdom. The Member said that it could be raised in a human

rights context, as it was clear that Lady Meyer's human rights as a mother were not being observed.

108. On 25 March 1998 the CAU sent a fax to the then Lord Chancellor's Private Office. The fax said that it had become apparent that the proceedings before the Verden court were regarded as having been closed, and that no enforceable order had been made on 30 September 1997. Turning to what action should then be taken, the CAU said *"the fact of there being no enforceable order changes things radically. Our approach to the German authorities has been on the basis that they should be enforcing their own orders – but with no order in place, that criticism cannot be made, and they may simply point to the fact that there is no enforceable order (bearing in mind we have a "no order" principle in the Children Act 1989) and that we have defined our duties under Article 21 of the [Hague Convention] as being limited to finding solicitors willing and able to take the applicant's instructions. [We] suggest that the advice Lady Meyer should now be given … is that she should instruct solicitors in England who are experienced in international access cases involving Germany. Those solicitors will know which lawyers to go to in Germany, and how Lady Meyer's case should be advanced to achieve her litigation objective – that is, having unsupervised access to her children in Germany and staying access in America".* The CAU added that, although it was not normal practice, they would be prepared to tell Lady Meyer which firm of solicitors they thought would be best suited to the task of representing her.

109. On 26 March 1998 the Lord Chancellor responded to the fax of 25 March. He said they had established at a meeting on 25 March with a Member that the agreement had been between the parties but had not been made an order of the court and was therefore not enforceable through the courts. He had advised the Member that his view was that the abduction history of the case was serving only to cloud the contemporary reality. That reality was that Lady Meyer should have been seeking to enforce her rights to access, which she must have under German Law, through the appropriate court. He said that she needed to be put into prompt contact with a German lawyer who specialised in family, custody and access matters so that an application for appropriate relief could be made on her behalf to the court and promptly. He added that relying on German lawyers who knew

about the Hague Convention, but who were not specialists in ordinary applications, would waste time and get nowhere. He went on to say that he wanted to revert to the Member promptly with a recommendation of an appropriate German lawyer to pass on to Lady Meyer whom she might consult and so demonstrate a willingness to help her in her longstanding predicament.

110. On 4 April 1998 the Department replied to the Member's letter of 5 March (paragraph 104). They said that they had lately established that the access agreement of 30 September 1997 had been by consent, and had not been made an order of the German court. Without a court order the German authorities might not accept that there were access rights which could be enforced under Article 21, but they had written to the German authorities about that. The Department went on to say that the duties of the Central Authorities under Article 21 had been considered by the Court of Appeal in England, and had been defined as being limited, in the case of foreign applicants wishing to enforce access rights in England and Wales, to finding solicitors willing to accept the foreign applicant's instructions to institute proceedings for a contact order under section 8 of the Children Act 1989. They did not think that the Central Authority for England and Wales could ask the German Central Authority to do more than they were obliged to do themselves.

111. On 20 April 1998 the Member wrote to the Department again. He said that he was glad that the Department had written to the German Central Authority to establish whether the access agreement of 30 September 1997 represented a legally enforceable agreement. He added *"Article 21 of the Convention does not use the phrase legal rights of access, it refers simply to 'rights of access' or 'access rights'"*. The Member also said *"I am surprised that you should say with regard to the German Central Authority's obligation under Article 21 that '[We] do not think that the Central Authority for England and Wales can ask the German Central Authority to do more than they are obliged to do themselves'. The equivalent provision to section 8 of the Children Act 1989 in German law, if there is one, will no doubt be framed differently from that in our own domestic legislation. Moreover, the key issue surely is how the German Central Authority believe they are obliged to discharge their responsibilities to implement Article 21 themselves regardless of how that responsibility may be interpreted by other*

signatories of the Convention. I should be grateful if you could tell me what conclusions the German Central Authority have reached after any relevant court cases in their own country as to how their obligations to implement Article 21 of the convention should be fulfilled". The Member also enclosed a copy of a paper entitled "The Implementation of Article 21 of the Hague Convention on International Child Abduction in Germany". He said that paragraph 2 of that document indicated that, in the absence of an access agreement (that meets the Article 21 requirements) by consent, the German Central Authorities would have to take legal action.

112. Also on 20 April 1998 Lady Meyer's husband wrote to the FCO. He said that Lady Meyer accepted the advice that she needed a new lawyer and that she had instructed one. He said the lawyer's preliminary advice had been that Lady Meyer's case had been very badly handled, in particular at the 30 September 1997 hearing, and that she had no alternative but to start all over again with the Verden Court to secure enforceable access visits. He added that at some point it would be useful to ask the German authorities to expedite a hearing and also to bring the German Ambassador in London up to date, but that before doing so, Lady Meyer wanted the considered advice of her new legal team once they had got deeper into the case.

113. On 24 April 1998 the CAU wrote to the German Central Authority to explain that Lady Meyer continued to experience serious difficulties in securing access to her children. They said that matters had not improved since September 1997 when her divorce had been finalised and Mr A had been given custody of the children. The CAU explained that the first access visit had been due to take place in January 1998 in Hamburg under the supervision of IAF. The CAU went on to say that *"[We] regret to say that when a meeting between Lady Meyer and her children eventually took place in February 1998, it did not go well. [We] understand that [Mr A] delayed meeting the representative of IAF and then rearranged the dates of the proposed visits. Ultimately, he refused to take the children to Hamburg, leading to two days of negotiations, which ended with an offer being made to Lady Meyer that she could see the children at [Mr A's] home at Verden on 21 February 1998. Though most unsatisfactory, Lady Meyer could hardly refuse, and went to Verden to see her children. [We] are sorry to tell you*

that her account of that meeting makes very sad reading. She saw her children for little more than a quarter of an hour; [We] need hardly say how deeply upsetting this was for Lady Meyer, who, since May 1996, has not seen her children at all. Indeed, [we] believe that she has only seen them for some 9 hours since they were retained in Germany by their father in August 1994, and then only in the most oppressive circumstances". They added that she had received little or no information about their progress at school, their health or their lives. The CAU went on to explain that, while no formal access order appeared to have been made by the court, the judge had made it clear that she did not expect Mr A to stand in the way of contact between Lady Meyer and her children. They went on to say *"In those circumstances, I shall be grateful if you will, under the provisions of Article 21 of the Hague Child Abduction Convention, do everything that you can to promote peaceful enjoyment of Lady Meyer's rights of access to her children. If there is anything that I can do to assist you in achieving this, please let me know. I shall also be grateful if you will let me know how your Central Authority regards its duties under Article 21 of the Hague Abduction Convention and also whether there are any reported cases or other material available which describe the scope and nature of your duties under that Article".*

114. On 27 May 1998 the CAU sent a minute to the Department's Family Policy Division in which they set out the response they had received from the German Central Authority in response to their request for assistance under Article 21 of the Hague Convention (paragraph 113). The minute said *"You will see that my German colleagues have asked why no application for access rights has been filed. The German Central Authority have sent application forms to be filled in and signed by Lady Meyer and have also asked for her proposals in relation to access. I assume, however, that it will not be necessary to send on these forms or ask Lady Meyer about her proposals, because I understand from recent correspondence received from the [FCO], the British Embassy in Paris, the British Consulate General in Hamburg and [Lady Meyer's husband], that Lady Meyer has now instructed another German lawyer to apply for access".* The minute went on to say that they had been notified that the court in Verden would not be prepared to consider an access visit in May because they wanted further investigations to be made. The CAU said that they felt that there was nothing further they could do to assist Lady Meyer.

115. On 14 June 1998 the Minister told the Member that the Department had been told that it was open to Lady Meyer to apply for access through the Central Authority citing Article 21, and that they had sent her a set of the relevant application forms. He said that that advice was inconsistent with the advice which the German Central Authority had given before. He said that when Lady Meyer had written to the Department in April 1997 asking for help with access to her children, they had submitted an Article 21 application to the German Central Authority; but the latter had told them that there was no need for such an application because the issue of access was already before the court in the divorce proceedings.

116. On 11 August 1998 Lady Meyer's husband wrote to FCO. He said that *"A combination of [Mr A's] manoeuvres, and an absence of any sense or urgency on the part of the Verden court, has led to a situation in which, almost one year on from the divorce and custody hearing, [Lady Meyer] still* ***has no access rights whatsoever****"*. He said that Lady Meyer had seen her children for 20 minutes in the presence of a third party; and discovered that the access agreement was unenforceable under German law.

117. On 27 October 1998 Lady Meyer's husband again wrote to FCO to bring them up to date with her case. He explained that the judge had refused to hold an access hearing while they had been in Europe in September. He said that following difficult negotiations to arrange mutually convenient dates, the hearing had been arranged for 10 December. He said that Lady Meyer's application would again be modest. She was seeking access to her children on neutral ground in Hamburg, without the presence of a third party representing Mr A. Thereafter, Lady Meyer would be seeking an arrangement that would allow the children to visit her in Washington DC or elsewhere for part of each school holiday. She also intended to insist upon regular school reports and unhindered contact by telephone and letter. Lady Meyer was also seeking an access visit to her children on the weekend after the hearing. He asked whether it would be possible for the Consul-General to attend the hearing on 10 December and said that he believed that the French Consul-General would also be present. Lady Meyer's husband said that he recognised the constraints on intervening in the proceedings of the

German legal system, but said that there were a few points that he felt could usefully be raised with the German authorities. In particular, he said that in the four and a half years since the children had been abducted, Lady Meyer had been denied the opportunity to be alone with her children; he felt that that was a denial of a basic human right. He said that many of the decisions taken in the case, had been based upon the children's alleged wish not to see their mother. He said that, in doing so, the court had ignored the possibility that the children had been indoctrinated by Mr A's family. He explained that the children had been told that Lady Meyer had abandoned them, and that she was free to see them whenever she wanted. When Lady Meyer had disputed that version with her eldest son, he had called her a liar.

118. The FCO replied to Lady Meyer's husband on 6 November 1998. They wished Lady Meyer well for the December hearing, and confirmed that the British Consul-General would be available to attend. They added that they would also arrange for low-key representations to be made to express how keen they were that the hearing should proceed on 10 December, in the hope of avoiding any further delay.

119. **1999** On 2 February 1999 Lady Meyer's husband again wrote to FCO to provide them with a further update. He said that the first access visit agreed by the court on 10 December 1998 had taken place on 23 January 1999. He said that the visit had been difficult for all concerned. He added that Lady Meyer was due to see the boys for a few days in a row for the first time in April 1999, and said that they were concerned that the behaviour displayed by the children at the first access meeting might be an indication that Mr A was seeking to undermine the court order.

120. On 28 March 1999 Lady Meyer's husband wrote to FCO to say that, as expected, Mr A had informed them that he would not be taking the children to Hamburg for the planned four-day access visit from 5-8 April. Mr A said that the children had refused to come and that he did not consider it to be in their best interests to force them. Mr A said that Lady Meyer could see the children at his house in Verden on Easter Monday. He said that Lady Meyer's position was *"that we finally have an agreement; that both sides must abide by it; that there can be*

no question of [my] crossing the Atlantic for the fourth time in four months to spend only one day in Verden; that the paramount interest of the children lies in their enjoying the love and security of both parents; and that both sides must work together to overcome their natural fears". They said that they were waiting to hear whether the judge would enforce the December 1998 order.

121. On 7 April 1999 Lady Meyer's husband wrote to FCO to confirm that Mr A had maintained his stance and had not brought the children to Hamburg for the April visit. He said that the worse news was that it appeared that they would be forced to take further action through the German courts. Lady Meyer's German lawyers had advised them that the judge would want several weeks to review the situation, and may want to interview the children again and request a further hearing. He said *"In any event, we cannot expect an early decision, still less any sanctions against [Mr A]."* He continued *"[Mr A] refused to honour the access agreement made at the time of the divorce hearing in September 1997. As you will recall, the judge then told us that the agreement was unenforceable because it did not specify exact times, dates and place. It took 15 months to obtain another hearing – last December. This finally gave [Lady Meyer] a detailed programme of access visits. It is this programme which [Mr A] has just violated. Instead of seeing this agreement promptly enforced by the judge, we are now faced once again with court proceedings of indefinite length, uncertain outcome and the usual costs"*. Lady Meyer's husband concluded by saying that he felt that the time had come to ask FCO to make representations to the German authorities to have the agreement enforced without further delay. That would entail reinstating the lost four-day visit at another time, as well as sticking to the visits in May (a weekend) and in August in Washington DC (10 days), as laid down in the December 1998 agreement.

122. On 3 May 1999 Lady Meyer's husband again wrote to the FCO. He said that they had now been advised that the Verden court were not prepared to enforce the December agreement without a further hearing. He added that the original judge had begun indefinite maternity leave and that no replacement had been found. He said that the new judge, when appointed, would need considerable time to become familiar with the case and so no legal timetable of any kind existed to enable Lady Meyer to challenge Mr A's actions. He said that Lady Meyer's lawyers had

now applied for the enforcement of a scheduled May access visit under threat of sanctions against Mr A. They had also requested that *"the will of the children"* argument be properly examined by an expert in Parental Alienation Syndrome. Lady Meyer's husband repeated his view that the time had now come for official British intervention.

123. On 14 May 1999 the Verden court refused Lady Meyer's application to threaten Mr A with a fine if he failed to allow the access visit planned for 21 May 1999. The court said that they believed that Mr A was doing everything possible to motivate the children towards positive contact with their mother.

124. On 1 June 1999 Lady Meyer's husband wrote to the FCO to say that Lady Meyer's German lawyer had decided against applying for a further hearing. He had decided instead to send formal letters of complaint to the Ministries of Justice, as well as to the Verden court itself. In those letters the lawyer accused the court of bias, unwarranted delay and their refusal to allow for the manipulation of the children's will. Lady Meyer's husband repeated his call for official British intervention.

125. On 12 October 1999 Lady Meyer's husband wrote to the FCO. He said *"[Lady Meyer] will not give up the battle to secure enforceable access to her children. This is now the heart of the matter. She is taking legal advice both on possible future action in the German courts and on bringing the case before the [European Court of Human Rights]. All our experience and advice… tell us the same thing: that German protestations as to the independence of the courts notwithstanding, [Lady Meyer] will not make progress unless her case is raised at the political level"*.

126. **2000** On 29 June 2000 the Department refused an approach from FCO suggesting that the Lord Chancellor raise the matter with the German authorities, on the grounds that that would constitute unwarranted interference with the legal proceedings of another country.

127. On 7 September 2000 the FCO produced a briefing note for the Minister setting out the best way to draw Lady Meyer's case to the attention of the

German/US working group on child abduction. The note said that the preferred option was to submit a note on the case to the working group which would be handed to the German authorities on Friday 8 September (in advance of a court hearing they had been advised was scheduled for Monday 11 September).

128. On 15 September 2000 Lady Meyer sent a fax to the Department. In it she explained that the hearing of 11 September had not gone well and that Mr A had failed to attend. Lady Meyer said that the independent psychologist's report commissioned by the court, indicated that it would be in the best interests of the children to visit her at her home. The judge described the report as being *"on the verge of bias"*. The hearing was later adjourned because Mr A's lawyer had only been instructed to act for him in respect of the issue of access visits in the United States. As the court had rejected the proposal for such visits, the lawyer felt that he would need to discuss the matter with Mr A.

129. On 10 October 2000 the Verden court decided that the children should spend half of their school holidays with Lady Meyer in the United States, with the first of those access visits due to take place on 20 October 2000. Mr A appealed against that decision to the Celle court. The Celle court heard Mr A's appeal on 10 November 2000. They overturned the ruling of the Verden court and decided that Lady Meyer should be granted a single access visit which would take place in Switzerland from 2 to 7 January 2001.

130. On 2 January 2001 the children did not arrive for the planned visit and so Lady Meyer's lawyer again contacted the Celle court. The Celle judges subsequently issued a writ which warned Mr A that he would face a DM 50,000 fine if he failed to send the children on a later plane. However, the children still did not arrive. Lady Meyer was then advised to file a motion to have the fine enforced.

131. On 8 February 2001 the Celle court rejected the motion on the grounds that it was no longer relevant as the period during which the access visit should have taken place had since passed. The court also rejected Lady Meyer's application for further access visits and instead commissioned a further report from a different

psychologist. The psychologist submitted his report on 26 July 2001, although he had not interviewed Lady Meyer.

132. On 23 October 2001 the Celle court decided on the basis of the psychologist's report to cancel all access visits until the end of 2002. By that time the children would be almost 18 and 16 years old. Under German law it is not possible for parents to apply for access after a child has reached 16 years of age.

133. **2002** On 19 July 2002 the Family Policy Division of the Department submitted a briefing note to the Minister ahead of a meeting (on 23 July) between the Minister, the FCO and a Member. That note set out the Department's position in relation to Lady Meyer's case. Primarily, the Department took the view that they should no longer have any involvement in the case because, in their view, they had ceased to be responsible for it when the proceedings for the return of the children failed in October 1994. They were also keen to stress that the German court system responsible for Hague Convention cases had been overhauled. In particular, the German Ministry of Justice had reduced the number of courts dealing with cases under the Hague Convention from 600 to 24 on the basis that fewer judges would lead to greater expertise. The meeting arranged for 23 July was subsequently rescheduled.

134. On 23 September 2002 Lady Meyer, three Members and a Minister from FCO met to discuss her case. A Member said that there were three key points that he was seeking to raise. The first was that there had been a lack of co-ordination between the Department and the FCO in their handling of Lady Meyer's case. The Member said that the time had come to consider involving the British Government and that, in his opinion, there was a great deal more that the Department and FCO could do to assist Lady Meyer. The second point raised by the Member was that Lady Meyer appeared to be in a worse position with regard to action taken by the British Government because she was a British Citizen and the wife of the British Ambassador to Washington DC. He said that while the President of the United States and the French President had both raised the matter with the German Chancellor, the case had never been raised at a senior level by the British Government. He asked that the Prime Minister raise the matter at the next European Summit. The Member's third point

was a request that the Department should liaise with the FCO. He also asked that the Lord Chancellor raise the matter with his opposite number (that is, the Head of the German judicial system). The Member said that he had previously raised the case with German officials. He stressed that the United Kingdom had an excellent relationship with Germany, but that there had been a miscarriage of justice and that alone merited the intervention of the British Government. Lady Meyer then said that her case was not unique and that she had been contacted by other people experiencing similar frustrations with the German courts. She said that help was available from Government Departments and MPs but she felt that the British Government was perhaps not prepared to make representations that could upset countries with which the United Kingdom shared a good relationship. In response the Minister said that, in her opinion, there had been mismanagement of Lady Meyer's case. She said that no individual was to blame, but there was evidence of a lack of co-ordination and that Lady Meyer had suffered because of her position as the wife of a British Ambassador. The Minister said that the British Government had failed to use their influence and offered an apology.

135. On 24 September 2002 Lady Meyer and two Members met with the Minister and other representatives from the Lord Chancellor's Department. Lady Meyer explained that she was still pursuing her case to ensure that the same mistakes were not made again. She said that she was particularly upset with the way in which the Department had handled her case. Lady Meyer also said that the Minister's understanding of her case was incorrect. The Minister set out the Department's role in assisting individuals pursuing applications under the Hague Convention. She said that although Lady Meyer's application under the Hague Convention for the return of the children had failed, and her application for contact had not been successful, it remained open to her to submit an application under Article 21 of the Convention to pursue contact. The Member asked whether it would be possible to see the case papers in the hope that doing so would clear up any confusion about the way in which Lady Meyer's case had progressed. The Minister said that she would need to clarify whether that was possible. Another Member said that nobody had previously suggested that Lady Meyer could still pursue an application under Article 21 of the Hague Convention. The minutes of the meeting stated *"A general discussion followed between all parties as to how an application under Article 21 could be made and*

how long this might take. It was felt that the latter question was particularly pertinent given that the youngest of [Lady Meyer's] children would be 16 years old in May 2003. Officials confirmed that if [Lady Meyer] made such an application, the [Department] would do whatever was within its power to ensure that matter progressed swiftly". Lady Meyer explained that the reason that she had not previously pursued an Article 21 application was because she had received advice from the Department, following the decision in 1994 that the children should not be returned, that there were no further Hague proceedings she could pursue.

136. On 9 October 2002 the Minister from the Department wrote to the Member to follow up the points raised at the meeting on 24 September (paragraph 135). The Minister said *"The [CAU] file has no record of anyone in the Unit or the Department advising Lady Meyer that she could not make an Article 21 application. Indeed, when the return proceedings ended, an Article 21 file was opened in readiness should an application be made. No application was received but the CAU continued to shadow the domestic proceedings in Germany in case they could offer any assistance. Once domestic proceedings had commenced, Lady Meyer would not have been advised to make an Article 21 application in tandem as this would have duplicated both the effort and the cost (since the usual, and in many cases only, way of making "arrangements" under Article 21 is by facilitating proceedings in the courts of the country where the child is residing".* The Minister confirmed that it remained open to Lady Meyer to submit an Article 21 application with regard to her younger son, but that her older son was now outside the scope of the Hague Convention as he was over 16. The Minister said that she would ask for any such application to be considered as expeditiously as possible.

137. Also on 9 October 2002 the FCO Minister wrote to update the Member following their meeting on 23 September (Paragraph 134). She said that they would ensure that the Prime Minister was briefed to raise the matter with the German Chancellor at the next EU summit (on 24-25 October). She would also ensure that the Home Secretary was briefed in order to raise the matter with the German authorities. She explained that they were in consultation with the Department about a possible intervention by the Lord Chancellor. The Minister

said that, with regard to greater co-operation with the Department, they were going to arrange a joint Ministerial meeting to take place when Lady Meyer was next in the country.

138. On 16 October 2002 representatives from FCO and the Department met to discuss the issue of international child abduction. The minutes of that meeting said that *"there had been criticism from Lady Meyer and others that they had not been aware of the Hague Convention and in particular of the provisions of Article 21 for access"*. They accepted that there might be a need for better publicity to promote awareness, particularly amongst solicitors. The minute also noted that, while there were *"problem countries"*, in general, the Hague Convention worked well. They said that Lady Meyer had pressed for high-level representations to be made to Germany, but that the German authorities had since improved the manner in which Hague Convention cases were handled and officers felt that they should be careful to avoid jeopardising the good work and improvements that had already been made. Both the Department and FCO said that they had no jurisdiction to act if a parent chose to pursue action through the domestic courts, rather than make an application under the Hague Convention. They said that they had no power to intervene but could, if problems were identified, make bilateral representations. They noted that Lady Meyer had not submitted an application for access under the Hague Convention, and that the problems she had experienced had related to domestic court action.

139. On 22 October 2002 Lady Meyer and the Member attended a meeting with representatives from the Department and FCO. The Member asked the Department when they had opened an Article 21 file in Lady Meyer's case, and also why, if a file had been opened, no action had been taken. The Member also said that he could not understand why, if the Department had been shadowing the court proceedings, they had not contacted Lady Meyer. Lady Meyer said that, in her opinion, the Department had taken away opportunities of allowing her access to her children. She said that the Department had accepted the position of the German courts and that that view had been reflected in all communications that she had had with the Department. Lady Meyer said that facts had been distorted and replies to Parliamentary Questions had omitted the salient fact that a court order for the return of the children had been defied and that her ex-husband had

then abducted the children for a second time. Lady Meyer added that she felt that the Department had an obligation to ensure that parents were advised of all avenues open to them and that they should not be expected to fend for themselves. Lady Meyer explained that, in 1994, she had had no knowledge of the Hague Convention or her ability to lodge an application for access under Article 21. She said that in meetings with the Department at the time, she had been told that following the failure of return proceedings under the Hague Convention, the advice she had been given was to pursue access through the German civil courts. She said that, both in a Parliamentary debate in 1995 and again in an adjournment debate in 2002, it had been said by Ministers that the Hague Convention proceedings were effectively dead in late 1994. Lady Meyer said that that was incorrect. She added that she would like official records to reflect, for the sake of her children, that due to the failure on the part of the Department to give her accurate advice, she had not had an opportunity to make an application for access under Article 21. The CAU said that they had opened an Article 21 file in April 1997. The Member explained that, while Lady Meyer was grateful for the offer to handle any Article 21 application expeditiously, she had decided not to pursue such an application. The Member stressed that that decision was not because Lady Meyer did not want to secure access arrangements, but because in view of the fact that her youngest son would turn 16 in seven months' time, it was unlikely that any such application could be processed and successfully resolved in the time available.

140. On 2 November 2002 Lady Meyer wrote to the Minister at the Department saying *"I declined the [Department's] offer to take forward an Article 21 application under the Hague Convention simply because it is too late. Indeed, it will be impossible to bring such an application to a conclusion before my younger son's 16th birthday in May 2003. I wish to place on record what I said at the meeting (on 22 October), namely that had I received the correct advice from [the CAU] in 1994, I would have sought an application – for both my sons – long ago. I also pointed out that rather than defending my rights as a British subject and as a mother, the [Department] threw me back, as early as December 1994, into the hands of the German legal system even though after my then-husband's defiance of the Verden court order and the ex parte hearing at the Celle court, it should have been obvious to all concerned at the [Department] that*

I was not going to get a fair hearing from the local German courts". Lady Meyer added that she felt that the Department had repeatedly omitted from the record that her ex-husband had abducted their children for a second time, following the decision of the Verden court that the children should be returned to their mother immediately. She confirmed *"so far as my own case is concerned, I must insist that the record be corrected and that the [Department] recognise that they, and the [CAU] in particular, grossly mishandled my case. It is very important to me that one day I shall be able to point out to my children that our enforced separation was not for lack of effort on my part to secure justice"*.

141. On 20 November 2002 the German Chancellor wrote to the Prime Minister He said *"I, too, feel that the matter of Lady Meyer's right of access to her children is a very sad case. However, it has been decided by independent courts. I can well understand Lady Meyer's wish to have direct access to her children. However, her two sons, who are now 15 and 17 years old, have expressly declined to have any contact with their mother. For this reason, the competent court ruled last year that Lady Meyer should be denied access to her children until the end of 2002 but encouraged her to seek contact with them through letters and telephone calls. I am not aware of other similar cases in which there are difficulties between British and German parents. Nevertheless, I welcome your proposal for bilateral technical talks and suggest that the competent ministries contact each other to this end"*.

142. In her reply of 25 November (to Lady Meyer's letter of 2 November (paragraph 140) the Minister said that she had placed Lady Meyer's letter on file but that she could not comment on decisions of the German courts. The Minister said that the Department participated fully in action to improve the operation of the Hague Convention and that they would continue to work with the Permanent Bureau of the Hague Conference and other States' Parties.

143. **2003** In a Parliamentary Question on 7 January 2003 a Member asked the Minister if the Department would take steps to contact parents who had reported prevention of access to their children to the CAU to determine if their problems were ongoing, and to offer them assistance as appropriate. The Member also asked what progress had been made on Lady Meyer's case. In her reply, the

Minister explained that the CAU discharges the Lord Chancellor's functions as Central Authority under the 1980 Hague and European Conventions. She went on to say that Article 21 of the Hague Convention enabled applications via the designated Central Authorities to make arrangements for organising or securing the effective exercise of rights of access, and the European Convention enables a person who has obtained in one Contracting State a decision on rights of access to apply via the Central Authorities for the purpose of having the decision recognised or enforced in another Contracting State. The Minister said that any parent resident in England and Wales whose child was resident in Germany could apply to the CAU, but there were no plans to contact parents who had reported difficulties, but had not made such an application. The Minister said that no such application had been made in Lady Meyer's case. The Member also asked the Minister whether the Department would take action against countries that had denied British parents reasonable access to their children who were being held abroad. The Minister said that if there was any clear evidence of countries who were Contracting States to the Hague and European Conventions holding children of British parents and denying those parents reasonable access to their children, in breach of their obligations under the Conventions, consideration would be given to all appropriate courses of action to rectify the situation.

144. On 21 January 2003 the Minister at the Department wrote to Lady Meyer. She said *"I can only reiterate that there is no evidence on the file that you were advised not to make an application under Article 21 of the Hague Convention"*. The Minister went on to explain that *"There is an important distinction to be made between proceedings under the Hague Convention for the return of the child under Articles 8-20, and those concerning rights of access under Article 21. The former provisions place clear duties on central authorities and judicial or administrative authorities of contracting states to ensure the child is returned, unless certain exceptional circumstances exist. Article 21, in contrast, provides for the central authorities to co-operate in making 'arrangements for organising or securing the effective exercise of rights of access', but does not place any duty on the judicial or administrative authorities of the state where the child is present to order access or enforce such an order. It is therefore much more limited in its scope"*. The Minister added that, where proceedings for access were under way

before foreign courts, an application under Article 21, while always possible, would generally be able to add very little to the action already being taken.

145. On 24 February 2003 in a further Parliamentary Question another Member asked the Minister what steps the Department would take to discharge their obligations in relation to rights of access under Article 21 of the Hague Convention in circumstances where the left-behind parent was in the United Kingdom and the abducted child was with its other parent in a state that had ratified the Hague Convention. In her reply the Minister explained that, in such circumstances, parents could apply to the CAU. They would then transmit the application to its counterpart in the other country, monitor the case, liaise with all interested parties and assist as necessary, for example with applications for legal aid.

146. In a Parliamentary written answer of 14 March 2003, the Minister said that the CAU ensured that all parents who had not achieved their child's return under the return provisions of the Hague Convention were advised of the possibility of seeking access through Article 21.

147. On 14 April 2003 Lady Meyer complained that the Minister had not answered her questions properly; she insisted that she had not been advised earlier on of her rights under Article 21, but had instead been forced to embark on a fruitless and expensive seven-year action in the German legal system. She said she did not know whether a timely application under that Article would have been any more successful, but had been denied the opportunity. Lady Meyer said that the positions adopted, and the advice given, by the Department throughout her case, had amounted to a dereliction of their various obligations as the United Kingdom's Central Authority. Lady Meyer said *"Article 7(f) in particular requires a Central Authority to be active in securing the effective access rights. My experience has been that the [Department] has been an obstacle, not a help, in that respect"*.

148. In a reply of 4 May 2003, the Minister did not accept that the Department had mishandled matters, and said that it had been for Lady Meyer and her advisers to decide whether or not to take legal action. The Minister reiterated that

the purpose of Article 21 was for the Central Authorities to co-operate in making arrangements for organising or securing effective rights of access. The Minister added that access was a matter for the domestic jurisdiction in the country where the child was living. She concluded *"While it is possible to make an Article 21 application when access proceedings have already started, an application is not likely to succeed when access proceedings are happening already. Under Article 27, Central Authorities are not bound to accept applications which are not well founded. Central Authorities are required to inform applicants forthwith of the reasons for refusal. You say you were informed of the reasons in your case".*

Interview with Lady Meyer

149. During the course of the investigation the Ombudsman's officers met Lady Meyer to discuss her complaint. Lady Meyer set out the background to her complaint in great detail and explained the redress that she was seeking. She said that she hoped that my investigation would result in an accurate record of the events that had taken place; in particular, Lady Meyer was concerned that the Department's records did not appear to reflect the fact that Mr A had abducted the children for a second time, following the hearing at the Verden court on 20 September 1994 (paragraph 16). Lady Meyer said that she was also seeking an apology from the Department together with assurances that parents finding themselves in the same situation in future would receive more appropriate advice and sympathetic treatment. Lady Meyer said that she was also seeking an **ex gratia** payment in respect of the financial loss she considered that she had suffered as a result of the Department's failure to give her correct and appropriate advice. She said that she had been forced to sell her former home for less than its market value in order to continue to finance her case through the German courts. Lady Meyer was also seeking compensation for lost earnings as she had lost her job as a result of the need to take repeated amounts of time off from work to attend court hearings in Germany. Lady Meyer also believed that her legal bill might have been substantially reduced had she been advised in October 1994 that it was open to her to submit an application for access under Article 21 of the Hague Convention.

The Department's response to the complaint

150. The Department said that they had given Lady Meyer reasonable, clear and consistent advice about the Hague Convention in relation to her case. They said that the CAU had processed her original application for a return order, which was successful but subsequently overturned on appeal. They explained that *"Applications for contact can either be made under Article 21 of the Hague Convention or direct to the German courts. An Article 21 application will offer assistance to the applicant in obtaining legal representation but will then be a matter for the courts in the jurisdiction in which the child is resident. As Lady Meyer had already obtained legal representation in Germany and begun contact proceedings an Article 21 application would simply have duplicated what she had done and hence she was not advised to make such an application".* The Department added that, throughout the period since her children were abducted, they had given Lady Meyer every assistance.

Findings

151. I look in turn at the handling of Lady Meyer's applications under the Hague Convention; the Department's alleged failure to follow up the case following the decision that the children should not be returned; the Department's handling of Lady Meyer's complaint; and their failure to provide explanations and apologies for their alleged shortcomings.

The handling of the Article 12 application

152. I note that the application to the Department to issue proceedings for the return of the children under Article 12 of the Hague Convention took the form of a completed Child Abduction Questionnaire which was faxed to them on 25 August 1994 (paragraph 13). The Department had the application translated into German and faxed it to the German Central Authority on 1 September 1994 (paragraph 15) stressing that the application was urgent because there was some uncertainty about the whereabouts of Mr A and the children. Lady Meyer also wanted to prevent the possibility that he would remove the children from Germany. The Department also arranged legal representation for Lady Meyer in Germany. The German Central Authority acknowledged receipt of Lady Meyer's application on 2 September 1994. It seems to me that the Department were suitably mindful of the urgency of Lady Meyer's application, and that they took

appropriate and timely steps to bring the application to the attention of the German Central Authorities. I can therefore see no evidence of administrative fault in the Department's handling of this aspect of Lady Meyer's case.

153. Following the decision of the Celle court that the children should not be returned under Article 12 (paragraph 17), the Department asked the German Central Authority, on 27 October 1994, whether there were any further steps that Lady Meyer could take to try to regain custody of her children (paragraph 18). The Department stressed to the German Central Authorities that Lady Meyer had concerns about the way in which the appeal hearing had been conducted, in particular, that her views had not been heard by the court. (That is of course a matter which Lady Meyer's German lawyers could have raised with the court at that time, but apparently decided not to do so.) The German Central Authority replied on 31 October 1994 (paragraph 18) explaining that there was no appeal against the decision of the Celle court unless it violated constitutional law, but that it was open to Lady Meyer to apply for custody through the German courts at any time. The Department did not, however, let matters rest there, but went back to the German Central Authority to ask them to explain how such orders might violate constitutional law. The German Central Authority's reply of 9 November 1994, that there was a general right to file a constitutional complaint if constitutionally granted rights were violated by the courts, but that such complaints were exceptional, was immediately passed on to Lady Meyer. Whilst therefore, it is clear that the outcome of the Celle hearing was both disappointing and distressing for Lady Meyer, I can find no evidence that the Department mishandled her application under Article 12 of the Hague Convention. I do not question the Department's assertion that they had no authority to interfere in the workings of the German judicial system. I also note that, once the Celle court had rejected Lady Meyer's application to have the children returned to the United Kingdom, the Department sought appropriate advice about any further appeal routes that might be open to her. That being so, I cannot see what more the Department could reasonably be expected to have done in relation to this aspect of Lady Meyer's complaint.

154. During the course of her interview with the Ombudsman's officers, Lady Meyer said that it was a matter of deep concern to her that the Department had consistently failed to acknowledge that Mr A had abducted the children for a second time, following the hearing at the Verden Court on 20 September 1994 (paragraph 149). Whilst I cannot see that that would have made any difference to the Department's handling of the case, it was clearly a very important omission in Lady Meyer's eyes. I therefore asked the Department to apologise for that failing and to check their records to ensure that the events following that hearing are accurately recorded. The Department said that they had always acknowledged that the children had been taken by Mr A from the Verden court. They said that, in their view, it would not be correct to describe that event as an abduction within the meaning of the Hague Convention, because for such an abduction to have taken place the children would have to have been taken from one jurisdiction to another. The Department added that as the children had remained in Germany throughout they were still subject to the first retention and so there was no second abduction (within the terms of the Hague Convention). The Department added that their records were accurate and correct with regard to the events after the Verden hearing. The Department said that they did not believe that there had been a failure on their part in respect of this aspect of Lady Meyer's complaint. It seems to me that the difficulty here is that Lady Meyer and the Department attribute different definitions to the term "abduction". The Department consider abductions purely within the terms of the Hague Convention. As the children were not moved from one jurisdiction to another following the hearing at the Verden court, it seems to me that the Department are correct when they state that the events did not constitute a further abduction **under the terms of the Hague Convention**. However, Lady Meyer has taken a wider view of the term. The Verden court had ordered that the children should be returned to her and it was after that order that Mr A took the children for a second time. Accordingly, Lady Meyer is of the view that Mr A's decision to take the children in contravention of that court order did amount to a further abduction and I am inclined to agree. While I can understand Lady Meyer's need to have such events properly recorded, as the Department only consider abduction in terms of children being removed to another jurisdiction, I see no evidence that they have acted maladministratively in refusing to refer to the events at Verden as a second

abduction. I am also satisfied that the Department's files do contain adequate records of the events following that hearing.

Issues relating to the application under Article 21

155. I turn now to Lady Meyer's complaint that the Department failed to give her clear and reasonable advice about the possibility of making an application to organise and secure effective rights of access to her children under Article 21 of the Hague Convention. Lady Meyer contends that following the decision of the Celle court on 20 October 1994, she was advised by the Department that proceedings under the Hague Convention were at an end, and that any application for access would need to be made through the German courts. It is clear from the Ombudsman's investigation that the Department felt that they had ceased to be responsible for the case at that point. That view was, however, incorrect. While proceedings under Article 12 had been concluded at that stage, the Department remained responsible for advising and assisting Lady Meyer in respect of any further proceedings that she might have wished to bring under the remainder of the provisions of the Hague Convention. I criticise the Department strongly for failing to recognise that their involvement did not automatically end at the time that the return proceedings were concluded.

156. Lady Meyer said that it was not until 24 September 2002 that the Department advised her that she could make an application for access under Article 21 of the Hague Convention (paragraph 135). For their part, the Department have said that they opened an Article 21 file in April 1997 when Mr A had been awarded custody of the children as part of the divorce proceedings (paragraph 139). The question, therefore, is at what point should the Department have advised Lady Meyer of the possibility of making an application under Article 21? Lady Meyer's application under Article 12 of the Hague Convention effectively ended on 20 October 1994, when the Celle court refused to order the return of her children to the United Kingdom. In the light of that, and given that the Department were aware that Lady Meyer had had no contact with her children for some three months at that stage, it seems to me that it was at that point that the Department should have advised Lady Meyer of her rights under Article 21. I note the Department's view that Lady Meyer had access to professional legal

advisers, both in the United Kingdom and Germany, who could also have drawn her attention to the possibility of an Article 21 application. While I accept that point, nevertheless it seems to me that the Department had a key responsibility, as the Central Authority for Hague Convention cases in England and Wales, to provide clear and comprehensive advice to Lady Meyer about all the possibilities open to her. I therefore criticise the Department for failing to do that. Further, whilst I appreciate that this cannot now help Lady Meyer, I asked the Department to ensure that in future, where other parents whose cases fall within the terms of the Hague Convention, report that they are having difficulties in obtaining access to their children, they are advised that it is open to them to make an Article 21 application. I also asked the Department to ensure that any relevant literature and their website reflect that position. The Department said that their current literature and website contain relevant information about Article 21 and that they are kept under constant review.

157. Although they did not alert Lady Meyer to that option, it is clear (paragraph 66) that the Department were fully aware of the possibility of her making an application as early as December 1995, when they wrote to the German Central Authority to ask whether they would be prepared to assist Lady Meyer in the exercising of her access rights, in line with Article 21. The German Central Authority took the view that Lady Meyer's case was *"not a typical Article 21 case"* and that, if Mr A was obstructing access visits, Lady Meyer would need to pursue the matter through the German family courts. It is not clear to me why the Department should have felt it necessary to seek the advice of the German Central Authority as to whether Lady Meyer could submit an Article 21 application, as the question does not appear to me to be one specific to the German legal system. The question of whether an Article 21 application could be made, in cases where court proceedings are already underway through the courts in the children's country of residence, appears to me to be a general one, and one which could have been put to the Department's own legal advisers. Furthermore, I would question whether it was prudent for the Department to rely solely on the advice of the German Central Authorities, particularly in view of concerns expressed by Lady Meyer that her case had not been handled fairly by the German Authorities. Had the Department sought their own internal legal advice, it seems to me that it

would have led to one of two situations arising. First, that advice might have confirmed that the position was that stated by the German Central Authority. The Department might then have felt that the German courts were not interpreting the Hague Convention correctly and, on that basis, they may have been more minded to make high level representations to the German Authorities. Alternatively, the Department's own legal advisers might have disputed the advice given by the German Central Authorities, which would have enabled the Department to clarify the position regarding the application of Article 21 much earlier. Had that been the case, the Department might have been in a position to advise Lady Meyer in December 1995 that it was open to her to make an application under Article 21. I put that point to the Department. They said that they have ready access to advice from their own internal lawyers. The Department added that at the relevant time Lady Meyer's case was being conducted within the CAU by one of their barristers. The Department said that implementation of rights under the Hague Convention varies between different contracting states. For example, in England and Wales the courts have decided that Article 21 provides no further rights for the left-behind parent than those contained within domestic law. The Department added that their own legal advisors were only able to offer advice in relation to domestic law and practice. It was for that reason that the CAU decided to seek advice from the German Central Authority under the provisions in the Hague Convention that provides for co-operation between Central Authorities (paragraph 6). While I do not consider the Department's decision to seek such advice from the German Central Authority to be maladministrative, it might be helpful if in the future they could consider whether the particular circumstances of a case (such as Lady Meyer's expression of concern over the handling of her case by the German Central Authority) warrant the need to seek additional corroborative advice.

158. The Department later said that they had not advised Lady Meyer to submit an Article 21 application, because to do so would only serve to duplicate both the efforts and costs involved, as she was already pursuing her case through the German court system. While I fully accept that the Department were not intending in any way deliberately to withhold information that might be helpful to Lady Meyer, and that they were sincere in their belief that submitting an Article 21 application at that stage would not have been helpful, I nevertheless take the view that that decision should have been for Lady Meyer to make. I would have

expected the Department to have set out all the options for her, albeit drawing her attention to the limitations of the Article, and their views on the likely impact of such an application. It would then have been for Lady Meyer to determine – presumably with appropriate legal advice – what course of action she wished to pursue. The Department said that it is always a difficult judgement for anyone in a position of giving any advice to a left-behind parent as to when an Article 21 application should be made. They said that it is important to ensure that all attempts to achieve return have been exhausted if an application for access is not to signal acquiescence and a concession that an order for return is no longer being pursued. The Department added that Article 21 provides an avenue into access proceedings in the domestic courts where the child is resident. The Department accept that the CAU should advise all left-behind parents of the possibility of applying for contact under the Hague Convention, and have assured me that they have been routinely providing such advice to left-behind parents since at least 1998. I welcome the Department's assurance that appropriate advice is now being given to left-behind parents. The Department have also asked me to offer their apologies to Lady Meyer through this report for their failure to advise her earlier that an application could be made under Article 21, and I am happy to do so.

159. Having criticised the Department for failing to advise Lady Meyer in October 1994 that it was open to her to submit an Article 21 application, I turn to the effect that that omission had upon Lady Meyer's case. It is clear that Lady Meyer believes that an application through the Central Authorities under Article 21 might have carried more weight with the German courts than her own civil application. Lady Meyer also believes that she might have been able to secure effective and enforceable access rights much sooner, and without the need for as many court hearings as in the event took place, therefore saving her considerable legal costs. Certainly, had the Department advised Lady Meyer in 1994 that she could submit an Article 21 application, the Hague Convention would also have required them to provide Lady Meyer with details of lawyers with expertise in such applications. If she had then decided to transfer her case to such a lawyer, it is always possible that that might have had a positive impact on both the duration and outcome of Lady Meyer's legal action. Furthermore, had Lady Meyer continued to experience difficulties in obtaining access to her children after the submission of an Article 21 application, the Department might

have felt that they had a stronger basis on which to make representations to the German Central Authority, given that the Hague Convention places an obligation upon relevant authorities to remove, as far as possible, obstacles to access. However, all of that can be a matter for speculation only. And most critically, as the Department have correctly stated, while such applications are made through the relevant Central Authorities, they still fall to be decided by the courts in the country where the child is residing. Whilst, therefore, I have considerable sympathy with Lady Meyer's very distressing experience and her very understandable concern that she was deprived of a possible opportunity to obtain or improve access to her children, I do not see that it is possible to establish now, with any degree of certainty, what the likely outcome would have been had Lady Meyer submitted an application under Article 21 of the Hague Convention in 1994, and certainly not possible to conclude that the overall outcome would necessarily have been any different. It follows from that, that I have no grounds for recommending that the Department should meet any part of Lady Meyer's costs as she requested (paragraph 149).

Handling of Lady Meyer's complaint

160. Lady Meyer complained that the Department had failed to take appropriate action when it became apparent that the German courts were unwilling or unable to enforce her rights of access to her children. The Department received numerous requests from Lady Meyer and from various representatives and Members of Parliament on her behalf, to intervene officially in her case, and to raise it with the German Authorities, but no such action was taken. I note that the Department and the Lord Chancellor repeatedly said that they were concerned that by making such representations, it would appear that they were attempting to interfere in the workings of the German judicial system. However, on 6 January 1998, in a letter to a Member who had written on Lady Meyer's behalf (paragraph 97), the Department said that, if Lady Meyer continued to experience difficulties in the implementation of the contact order, she could contact the CAU for assistance. Despite that statement, the CAU wrote to Lady Meyer the very next day in response to her request for assistance (paragraph 99) saying that she had already had a high level of assistance and that there was little more that they could do. I note that the CAU later told the Lord Chancellor (paragraph 108) that as Lady Meyer had no enforceable order in place, no representations could be made

to the German Authorities on her behalf. Then in October 2002, the Department appeared to take the view that there could be little basis for making high level representations to Germany, because that country had since overhauled their court system in relation to Hague Convention cases, and any such approaches might jeopardise the *"good work and improvements that had already been made"* (paragraph 138). While I accept that the changes in the German legal system would help to ensure that future such cases should be handled more effectively, I do not see that those improvements would have had a direct bearing upon Lady Meyer's position. The point of any such representations was surely to try and assist her to remedy the very painful and difficult position she was in personally, as a result of past failures of the system, rather than to seek general improvements to Germany's systems.

161. I accept that the Department had no power to intervene in the judicial systems of other signatories to the Hague Convention (any more than they would have the authority to intervene in matters before the English Courts). However, having offered to make representations, if Lady Meyer continued to experience difficulties in obtaining access to her children, I would expect the Department to stand by that offer. I also find the CAU's attitude that, as there appeared to be no enforceable court order, there was little they could do to assist her, extremely unhelpful, given that a significant part of Lady Meyer's complaint was that she was unable to obtain an enforceable order.

162. I also find that the Department have, on occasion, misunderstood the points that Lady Meyer has raised, or appeared to have little grasp of the realities of her position. I note, for example, that the Department wrote to her saying that there was no evidence on their file to suggest that Lady Meyer had been advised not to make an application under Article 21 (paragraph 144). However, Lady Meyer's complaint was that she had never been advised that making an application under that Article was a possibility, not that she had been advised not to do so. I criticise the Department for failing to make that distinction. I also consider that the advice that the Department offered to Lady Meyer, intended to help her to rebuild her relationship with her children, was at best of no practical use to her, and at worst

deeply insensitive. It is not surprising that it was perceived by Lady Meyer to show a complete lack of understanding of her case (paragraph 99). That advice included sending regular letters and postcards to her children, and checking with them during the course of conversations whether they had received those letters, whereas Lady Meyer had of course repeatedly complained that Mr A was denying her all contact, including telephone contact with her children. I criticise the Department for failing to ensure that the advice that they offered to Lady Meyer was appropriate and duly sensitive to her situation. The CAU are responsible for assisting people at a time of deep distress, when they are extremely vulnerable and in need of significant external support. That being so, it is particularly important that staff within the CAU are able to provide appropriate and comprehensive advice in a clear and sympathetic manner. I asked the Department for an assurance that staff within the CAU were able to provide the required quality of service. The Department said that the CAU is responsible for dealing with people who find themselves facing the same sorts of problems such as those that confronted Lady Meyer, and that they aim to do so as effectively and as sensitively as possible. The Department added that Lady Meyer had had extensive meetings with the CAU and that staff in that unit had made particular efforts to resolve the issue. The Department apologised through this report if Lady Meyer felt that insufficient sensitivity to her situation was extended to her. The Department also apologised to Lady Meyer for the shortcomings in this respect that the Ombudsman had identified during the course of this investigation.

163. I have also considered whether the Department should offer Lady Meyer an **ex gratia** payment in recognition of the additional worry and distress that their failings caused her. However, I am mindful of the fact that such payments are generally very modest, and would therefore do little to compensate Lady Meyer for the effects which the Department's actions may have had upon her. It is for that reason, and after consultation with Lady Meyer, that I have decided not to recommend such a payment in this case.

Conclusion

164. The Department failed to provide Lady Meyer with the level of service that she was reasonably entitled to expect. The Department have apologised for their failings and have offered their assurances that in future cases left-behind parents

will receive full and appropriate advice. I consider those apologies and assurances to be a satisfactory outcome to a justified complaint.

March 2005

Nicola Bubb
Senior Investigation Officer
duly authorised under section 3(2) of the
Parliamentary Commissioner Act 1967