

Presentation by Angie Potter (UK Liaison Magistrate in France) for the 11th International Association of Prosecutors (IAP) European Regional Conference, The Hague, 16-18 February 2011

Good morning ladies and gentlemen. My name is Angie Potter. I am a prosecutor from the Crown Prosecution Service of England and Wales and I recently took up post as the UK Liaison Magistrate in France.

It is a privilege to be here at the IAP European Regional Conference and a great pleasure to meet you.

This morning I'm going to talk briefly about:

- the role of the Liaison Magistrate
- my experience as a Liaison Magistrate, and
- requesting evidence from the UK.

My background

My background has been mainly in customs departments. I've given legal advice to UK officers on the execution of **incoming** Letters of Request for Mutual Legal Assistance. I've prosecuted cases involving cross-border crime such as:

- drug smuggling;
- cigarette smuggling and other excise evasion cases; and
- tax fraud, including Value Added Tax fraud, particularly VAT carousel fraud or Missing Trader Intra-Community fraud.

I've also advised other UK prosecutors on drafting **outgoing** letters of request to request evidence from other countries for **UK** investigations and prosecutions.

And I've provided advice on **extradition** and drafted **European Arrest Warrants**.

Last year I worked at **Eurojust** here in The Hague for 6 months, as Seconded National Expert at the UK National Desk. I **chaired coordination meetings** on cross-border investigations and prosecution cases involving 2 or more EU Member States; I facilitated the negotiations and drafting of **JIT Agreements** for the setting up of **Joint Investigation Teams (JITs)**; and provided day to day advice and liaison on cases registered at Eurojust.

Then in October last year I started my posting in Paris as **UK Liaison Magistrate**.

The role of the Liaison Magistrate

The role of the Liaison Magistrate was created by the **Joint Action 96/277/JHA** of 22 April 1996 and was adopted by the Council on the basis of Article K3 of the Treaty on European Union, concerning a framework for the exchange of Liaison Magistrates to **improve judicial co-operation** between the Member States of the European Union.

The purpose of Liaison Magistrates is to **increase the speed and effectiveness of judicial co-operation** and at the same time **facilitate better mutual understanding between systems**. The Joint Action describes judicial co-operation as the main instrument in combating international crime and fraud, in particular fraud affecting the Community's financial interests.

Who are Liaison Magistrates?

Liaison Magistrates are:

- prosecutors, judges or magistrates;

- with experience of prosecution and of international co-operation;
- they represent their **prosecuting and judicial authorities** and they also liaise with their **national police authorities** and other investigation authorities (e.g. customs investigators);
- they liaise mainly on **bilateral** matters between their home country and their host country; and
- they are normally based in the host country's **Ministry of Justice**.

The UK has 5 Liaison Magistrates. We are based in **France, Spain, Italy, the United States and Pakistan**. All of us are prosecutors.

There are also Liaison Magistrates from France and Italy based in the UK.

***To tell you a bit about
my own experience as a Liaison Magistrate:***

My work as UK Liaison Magistrate in Paris includes the following:

Liaising on Letters of request for mutual legal assistance –

My main task is to facilitate the requesting of evidence from France for use in UK criminal investigations and prosecutions via Letters of Request for mutual legal assistance. Many of these cases relate to serious organised crime and cross-border crime.

I liaise regularly with UK prosecutors and with French judges and prosecutors, advising them on the **drafting and transmission of Letters of Request** to France and to the UK. I.e advising on the best way to ask for the evidence you need

(and ensuring that you provide enough background information about your case to enable the receiving authority to execute your request).

And I can advise where to send a Letter of Request and whether it can be sent by direct transmission.

I obtain updates about UK Letters of Request that have been sent to France, and I liaise with the French authorities to try to ensure that the requested evidence is provided in time for the UK trial.

Occasionally I may organise or recommend meetings, videoconferences or visits to discuss cases or general casework issues re Mutual Legal Assistance and Extradition. These meetings may be to **discuss evidence** or to **resolve conflicts of jurisdiction** to assist the case teams in reaching an agreement about **which people should be prosecuted in which jurisdiction**.

Being located in the heart of the French Ministry of Justice enables me to quickly identify relevant contacts in the French authorities who can help to resolve any problems arising from Letters of Request.

Liaising on European Arrest Warrants –

I advise UK prosecutors and our French counterparts on the execution of European Arrest Warrants between the UK and France. I may obtain and provide updates to the UK or French authorities about the **progress of proceedings in court** in relation to a **European Arrest Warrant**. I may also advise, for example, on issues concerning the principle of **speciality** – i.e. if the state which issued the EAW needs to prosecute the person for **further offences** (offences which were not included in the EAW when it was issued) – I may advise on how to request consent from the receiving authority to prosecute the person for those additional offences.

I am currently helping to organize a visit by a group of UK judges who deal with extradition, who would like to meet with French counterparts in order to develop a greater understanding of how the EAW system works in France, particularly in relation to the **issuing** of an EAW and **what happens when a person is surrendered from the UK to France pursuant to an EAW**. The UK Liaison Magistrate in Italy is arranging a similar visit, for the UK judges to meet with their **Italian** counterparts.

Training and presentations

I attend training sessions to enhance my own knowledge about the **French legal system** and **judicial co-operation procedures in France** – and also to keep my knowledge up to date about **UK law and procedures** in relation to judicial co-operation.

My role also includes delivering training and presentations and producing and updating **guidance notes** for **UK** prosecutors and **French** judges and prosecutors - on the differences between our legal systems, and how those differences affect judicial co-operation between our two countries.

The better we understand each other's law and procedures in relation to MLA, the more effectively we'll be able to overcome obstacles that arise because of the differences between our systems – and the greater the chances of being able to obtain the requested evidence ***in time for the trial***, and in a form which is ***admissible*** in our court.

Representation and diplomacy

... are other aspects of the Liaison Magistrate role - **representing the UK** at meetings with officials at all levels in the French Ministry of Justice, concerning cases which involve

the UK and France. The cases are often **sensitive or high profile**.

By meeting contacts **face-to-face**, we aim to promote **good relations** between the UK and French prosecuting and judicial authorities in order to **facilitate effective judicial co-operation**.

Policy questions and policy contacts

Periodically I provide assistance to the **Justice and Home Affairs policy administrators** at the British Embassy in Paris, by updating them about **changes in the French Ministry of Justice** (for example, by giving them early information about the appointment of the **new French Minister of Justice** Michel Mercier and his team). And I'm often able to assist the policy administrators by **identifying relevant officials** within the French Ministry of Justice with whom they can **liaise on particular issues**.

I regularly visit the British Embassy to access my secure email account in order to receive sensitive information and documents (such as copies of Letters of Request).

Occasionally I research and answer questions from the French authorities about UK criminal law and procedure – or questions from the UK authorities about French criminal law and procedure, or I help to **identify relevant contacts** who can **answer questions on specific areas of law**.

So my work in facilitating judicial co-operation brings me into contact with a wide range of people: prosecutors, judges and investigators from the UK, France, Europol and Interpol, Eurojust, the European Judicial Network; the Central Authorities for MLA and EAWs, Ministry of Justice officials and criminal policy administrators.

Requesting evidence from the UK – “Help Us to Help You” handout.

The **handout** for this session is a guidance note which I produced entitled “**Help us to Help You**”, to help the authorities of other countries in requesting evidence from the UK.

One of the most important points I’ve highlighted in the guidance note is that, to request the gathering of evidence in the UK that requires the use of **coercive powers** such as warrants to **search** properties and **seize** evidence, or to request **intrusive** investigation measures such as orders to require officials from telephone companies or banks to provide **telephone** and **bank account** evidence - it is necessary to give sufficient background information in the Letter of Request to enable the UK officer to convince the UK court that the measure is **necessary and proportionate**.

In particular, under our ***Police and Criminal Evidence Act 1984***, the requirements for applying for a search warrant are very stringent (whether the search is required for a UK case or on behalf of a foreign authority).

In applying to the UK court for a search warrant the UK officer needs to give a set of specific information to the court, including:

- the **exact address** that needs to be searched;
- what **evidence you expect will be found** there and **why** that evidence is **necessary** for your case;
- why you believe that evidence is **still present on the premises** and has not been **taken away or destroyed**;
and
- why there is not a **less intrusive** way of obtaining that material (e.g. by **summonsing** the person in control of that material **to court** and ordering them to **produce the material to the court**).

If the court's not satisfied with the information provided it will not issue a search warrant and it will therefore not be possible to conduct the requested search.

So if sufficient information is not provided in the Letter of Request to justify the need for a search warrant, it's likely that the authority which receives your Letter of Request will contact you and ask you to provide the necessary further information. That can, of course, cause **delay**.

My guidance note contains, on page 1, a **link** to the more detailed **UK Central Authority Guidelines** on Mutual Legal Assistance, which are on the internet, on the UK Home Office website. The UK Central Authority Guidelines contain a "**search warrant form**" in the annexes which may assist you in providing all the necessary information to enable the UK executing officer to persuade the UK court that a search warrant is necessary.

So we hope this guidance will be a useful source of reference for you when you're drafting a Letter of Request to the UK.

Conclusion

That is the end of my presentation. I hope you have found this session helpful. If you have any questions please feel free to ask them now.

Thank you for your attention.

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