



Neutral Citation Number: [2021] EWFC 73

Case No: BD18D03258

**IN THE FAMILY COURT**  
**SITTING AT LEEDS**

Sitting Remotely

Date: 03/09/2021

**Before:**

**MRS JUSTICE ARBUTHNOT**

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**Between:**

**ASSIM BALAL HUSSAIN**

**Petitioner**

**- and -**

**NAZIA PARVEEN**

**Respondent**

**- and -**

**THE QUEEN'S PROCTOR**

**Intervenor**

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**The Petitioner appeared in person**

**Mr Karim Andani (of Ashwells Law LLP) for the Respondent**

**Mr Simon P G Murray (instructed by Government Legal Department) for the Intervenor**

Hearing date: 13<sup>th</sup> July 2021; Draft Judgment: 10<sup>th</sup> August 2021  
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**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MRS JUSTICE ARBUTHNOT

## **Mrs Justice Arbuthnot:**

### Introduction

1. This is a hearing listed to decide two preliminary and potentially dispositive issues in relation to a talaq, or Islamic divorce. The first issue is whether this court has jurisdiction to decide the second issue. The second issue is more contentious than the first.
2. In summary of the second issue, the Petitioner contends that when he married the Respondent in Pakistan, she remained married to her ‘first’ husband as her divorce from him was transnational in nature and could not be recognised in this jurisdiction. Her marriage to the Petitioner therefore should be annulled. Mr Andani who assists the Respondent argues that her divorce from her ‘first’ husband should be recognised in this jurisdiction, it was not a transnational divorce as it took place in Pakistan.
3. In a very helpful detailed skeleton argument, having considered the authorities, the Queen’s Proctor represented by counsel Mr Murray, agreed with the Petitioner’s position.
4. It is important for the parties to bear in mind that the decision that this court is to take relates to the validity and recognition of the ‘first’ divorce in this jurisdiction. Whatever the decision, it does not affect the position of the divorce and indeed ‘second’ marriage in Pakistan.

### Proceedings

5. On 18<sup>th</sup> June 2021, this matter came before HHJ Kloss sitting in Leeds Family Court who made directions.
6. In his order, he said that two significant issues of law should be determined at a preliminary hearing to be dealt with (a) on submissions and (b) on the basis of the factual matrix as asserted by the Respondent in her witness evidence.
7. For the avoidance of doubt, HHJ Kloss set out the issues of law as follows-

“(a) On the assumption that the Respondent’s ‘first’ divorce was valid in Pakistan and that she was therefore free to marry the Petitioner in Pakistan (and did so), is the Court in this jurisdiction entitled to consider whether her ‘first’ divorce would have been recognised in the UK, for the purpose of proceedings relating to her ‘second’ divorce?

(b) If the Court is so entitled, the Respondent’s evidence is that the talak was pronounced in the UK and then presented to the Union Council in Pakistan where the divorce was obtained. On that basis, was this a transnational divorce incapable of recognition in this jurisdiction?”
8. HHJ Kloss said that the listing of a preliminary hearing was appropriate and proportionate, as the decision on the law might remove the need for expert evidence

on the divorce laws in Pakistan and for determining the disputed factual issues between the parties.

Hearing on 13<sup>th</sup> July 2021

9. A bundle of evidence was provided to the court including statements from the parties and their witnesses. The court also had skeleton arguments from the Petitioner who was representing himself, Mr Andani who was assisting the Respondent and Mr Murray for the Queen's Proctor. Mr Murray had also provided a bundle of authorities.
10. I heard from Mr Murray for the Queen's Proctor first who set out the law. I was very grateful for his assistance. I then heard from the Petitioner in person who adopted Mr Murray's arguments and then Mr Andani for the Respondent who contended Mr Murray's analysis of the law was wrong and that this court should depart from precedent.
11. It was clear from the arguments of the parties and of Mr Murray for the Queen's Proctor that they agreed this court had jurisdiction to consider the second question. The law and authorities were clear. I will deal with jurisdiction very shortly, later.

Background

12. Both parties make allegations against each other including that certain key documents being relied on have been forged. It is not necessary for these proceedings about a question of law to consider the veracity of the allegations made by the Petitioner against the Respondent and *vice versa*.
13. I take the background and the steps taken to obtain the talaq (an Islamic divorce) from the witness statement of the Respondent and from her skeleton argument. I heard no live evidence from any of the witnesses.
14. Ms Parveen, the Respondent, married her 'first' husband, Mr Aslam, in Pakistan on 1st November 2000. They lived together for a short period of time (a matter of weeks) before Mr Aslam returned to the United Kingdom. The Respondent remained in Pakistan. There were no children of the relationship.
15. In a witness statement provided to the Respondent, the 'first' husband says he did not have the financial resources to bring the Respondent to the United Kingdom. In any event it is agreed that in February 2008 he was given an ultimatum by the Respondent's family members. He was either to sponsor the Respondent so she could move to the United Kingdom or he should divorce her.
16. On 10th February 2008 Mr Aslam pronounced talaq in England. In the form of a letter, the pronouncement was given to the Respondent's brother.
17. The letter went to a mosque in Bradford where it was converted into a divorce certificate on 10th February 2008 (exhibits NP2 at I12 and NP3 at I13). A mufti from the mosque, the witness Mr Jamil Ahmed (L1), explained that the letter met the requirements for an Islamic divorce and it had to be registered with the Union Council

in Pakistan. He said the letter did not meet the requirements for an English or a Pakistani divorce.

18. The divorce certificate issued by the mosque in Bradford went to the Respondent in Pakistan (NP2 at I11). It was then provided to the local Union Council in Pakistan. A document from the Union Council is exhibited at NP5 I20. It sets out the date of notice of divorce as being 21st February 2008, the date of failure of conciliation as 29th May 2008 and the date of “effectiveness of divorce as 29th May 2008”. This procedure initiated by the ‘first’ husband was in accordance with the Muslim Family Laws Ordinance in 1961 which governs marriage and divorce in Pakistan.
19. The Respondent married the Petitioner in a Nikha ceremony in Pakistan on 19th December 2008. The Respondent moved to this country on 28<sup>th</sup> March 2009 and lived with the Petitioner. In due course, the marriage broke down.
20. The Petitioner now seeks the marriage to be declared a nullity on the basis that the Respondent remained married to the man she married on 1st November 2000. The Petitioner says her subsequent marriage to him was bigamous.

The Petitioner’s case was the following:

First issue - jurisdiction

21. The Petitioner relied on sections of the Domicile and Matrimonial Proceedings Act 1973 and the Family Law Act 1986 (“the 1986 Act”) as interpreted in various cases which allow the courts in this jurisdiction to consider the validity of overseas divorces. Based on the legislation and the case law the Petitioner contended that the Court had jurisdiction in the matters subject to these proceedings.

Second issue – transnational divorce?

22. In relation to the second issue, the Petitioner, relied on the 1986 Act, Part II Recognition of Divorces, Annulments and Legal Separations and in particular section 46 which sets out the grounds for recognition of overseas divorces.
23. The Petitioner contended that complying with the Muslim Family Laws Ordinance in 1961 for divorce would amount to “proceedings”.
24. The first fundamental step of the proceedings would have been the ‘first’ husband, Mr Aslam’s, pronouncement of talaq which was in written form. Without that pronouncement there would have been no effective divorce. This was the initiation of the proceedings.
25. In his well-argued skeleton, the Petitioner relied on *R. v Secretary of State for the Home Department, Ex parte Ghulam Fatima* [1986] A.C. 527 (“*Ex parte Ghulam Fatima*”) where the House of Lords considered a talaq pronouncement in this jurisdiction where the wife lived in Pakistan before notice was sent to the relevant authority in Pakistan. The Court held that the divorce was not entitled to recognition as it was a divorce merely concluded abroad. Although the Court was considering the Recognition of Divorces and Legal Separations Act 1971 (“the 1971 Act”), the Petitioner contended the same principles would apply under the 1986 Act.

26. The Petitioner further relied on the more recent case of *Berkovits v Grindberg* [1995] 1 FLR 477 (“*Berkovits v Grindberg*”) where a ‘get’ or ‘gett’, a Jewish divorce, was written in this jurisdiction before being pronounced in Israel.
27. The Petitioner raised further arguments about whether the failure of the husband to provide the letter or document to the Chairman of the Union Council was a further reason for invalidating the divorce. In view of my decision on the second issue, I will not consider the other arguments raised.
28. In summary, the Petitioner contended that the Respondent’s arguments were ill-conceived. Her divorce proceedings started in this jurisdiction and concluded in Pakistan. The divorce was a transnational one.

The Queen Proctor’s case was the following

The first issue - jurisdiction

29. The Queen’s Proctor’s position was that this court had jurisdiction to consider the question of the recognition and validity of an overseas divorce as was abundantly clear from the legislation and the authorities.

The second issue – transnational divorce?

30. Mr Murray considered the definition of “proceedings” as set out in the 1986 Act, the distinction in section 46 of the 1986 Act between overseas divorces “obtained by means of proceedings” in section 46(1) and such divorces “obtained otherwise than by means of proceedings” in section 46(2) was unclear.
31. The word “proceedings” is defined in section 54(1) of the 1986 Act to mean “judicial or other proceedings”. That phrase had appeared in the 1971 Act and also in the Hague Convention and had given rise to considerable difficulty and consideration in a number of authorities.
32. *Quazi v Quazi* [1980] AC 744 was one such case. The House of Lords held that a Pakistani talaq which had taken place entirely in Pakistan under the Pakistan Muslim Family Law Ordinance of 1961 was within the phrase “other proceedings” (skeleton argument C5, paragraph 14) which was not to be limited to quasi-judicial proceedings.
33. Lord Fraser said that the only limitation on the scope of “proceedings” was that “they should be officially recognised and legally effective in that country”. Lord Scarman said that proceedings were “any act or acts, officially recognised as leading to divorce in the country where the divorce was obtained” (page 824). The talaq in *Quazi* was entitled to recognition as other proceedings under section 2(a) of the 1971 and the marriage could be declared as dissolved.
34. The Court of Appeal in *Chaudhary v Chaudhary* [1985] Fam 19 decided on a narrow interpretation of “other proceedings” and held that a bare “talaq” (where the divorce is accomplished by a pronouncement alone and where there is no requirement to register in some way with an authority) was not within the phrase “other proceedings” in section 2 of the 1971 Act.

35. Relying on the authorities, Mr Murray argued that a divorce by talaq can only be recognised in England if the “entirety of the relevant proceedings takes place in Pakistan”.
36. Mr Murray placed particular significance on *Ex parte Ghulam Fatima* and the post 1986 Act case of *Berkovits v Grindberg*. The latter case involved the obtaining of a get where the writing of the get occurred in England and was followed by the delivery of the get to the wife in Israel. These proceedings occurred in two different countries, where there were found to be in each country steps in the proceedings leading to the dissolution of the marriage.
37. Mr Murray explained in his skeleton that as the proceedings had occurred in different countries, and as “proceedings” was held to be a concept “territorial in nature, relating to the jurisdiction of a particular judicial authority within a specific geographical location, it was impossible to recognise a divorce as having been obtained in the country in which the get was delivered” (paragraph 20 of his skeleton).
38. Mr Murray considered the Respondent’s argument but suggested that although she contended that section 46 of the 1986 Act assisted her argument, the court should return to the meaning of “proceedings” considered in the authorities referred to above.
39. Mr Murray disagreed with the Respondent’s argument that the registration in Pakistan meant that it was a foreign divorce capable of recognition. He concluded that the talaq in 2008 was a transnational divorce.

40. The Respondent’s case was the following

First issue - jurisdiction

Mr Andani for the Respondent accepted that this Court had jurisdiction to consider the issues raised in the case.

Second issue – transnational divorce?

41. Mr Andani contended that the 2008 divorce was valid and should be recognised in this jurisdiction as the proceedings took place in Pakistan.
42. The Respondent pointed out that in terms of public policy, the courts did not wish to create any form of “limping marriage”, where the marriage was valid in one country but not in another. If the divorce from the ‘first’ husband was not recognised in this jurisdiction, a limping marriage would be created.
43. Having considered the position at Common Law, Mr Andani looked at the relevant legislation starting with the 1971 Act. The 1971 Act incorporated elements of the Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations (“the 1970 Hague Convention”). Mr Andani accepted that the 1971 Act and the 1970 Hague Convention were considered in *Ex parte Ghulam Fatima (supra)* where it was held that the divorce could not be recognised as valid under section 2 and section 3(1) of the 1971 Act.
44. Mr Andani argued that the 1986 Act changed the position of talaqs. Sections 44 to 55 of the 1986 Act contained the codification of the Law Commission’s

recommendations. In the argument Mr Andani considered the various sections of the Act. He contended that the pronouncement of the talaq alone could not bring about a divorce recognised in this jurisdiction or in the jurisdiction of Pakistan. There must be compliance with the prescribed procedure.

45. Mr Andani relied on the case of *Sulaiman v Juffali* [2001] EWHC 556 (Fam) where the then Mr Justice Munby considered the case where a bare talaq was pronounced in England and at the time there was no need for registration in the Kingdom of Saudi Arabia. The talaq was effective at the moment it was pronounced but the divorce could not be recognised under section 44 of the 1986 Act as it had not been issued by a court of civil jurisdiction in England and Wales.
46. The Respondent also relied on *H v S (Recognition of Overseas Divorce)* [2012] 2 FLR 157. In *H v S*, the talaq had been pronounced in Saudi Arabia and then registered there (the law had changed in Saudi Arabia since *Sulaiman v Juffali*). This was found to be a valid divorce recognised in this jurisdiction.
47. The final case the Respondent relied on was *Solovyev v Solovyeva* [2014] EWFC 1546 where a Russian couple went to the Russian Consulate in England where they were divorced in compliance with Russian law. As the divorce took place in England and Wales, the Court found that it did not comply with section 44 of the 1986 Act as it had not been granted by a court of civil jurisdiction.
48. I am not sure that the factual backgrounds of the three cases above assisted Mr Andani's argument.
49. In his argument, Mr Andani said the 1971 Act focussed on the "proceedings by which the divorce was concluded" (paragraph 63 of his skeleton) and examined the location of the litigation process. He contended that that was why *Ex parte Ghulam Fatima* was a case restricted to the 1971 Act.
50. In contrast the 1986 Act "relies on a more purposive intent to avoid the creation of limping marriages by considering divorces obtained through proceedings and those otherwise obtained" (paragraph 64 of his skeleton). The Act also will allow recognition of "informally" obtained divorces so long as they are effective under the law of the land where the divorce was obtained.
51. Mr Andani argued that the talaq in this case was pronounced and then converted into a religious divorce within this jurisdiction. Neither the pronouncement of the talaq nor the involvement of the mosque in England dissolved the marriage. It had to be registered with the Chairman of the Union Council in Pakistan. After 90 days, the marriage was dissolved. On that basis Mr Andani argued that the divorce was obtained by proceedings in Pakistan as that was where the marriage was dissolved and a divorce certificate obtained.
52. Mr Andani considered the case of *Berkovits v Grindberg* and distinguished it on the basis that the Jewish 'get' divorce requires judicial intervention, via the religious court, the Beth Din, and said this was fundamentally different to the talaq.
53. He also relied on articles 5 and 10 of the 2019 European regulation no. 1259 of 2010. On looking at the regulation, it appeared to me that it concerned rules which decided

which national law would apply in cross border divorces and separations in participating European countries. These did not include Pakistan. I did not find that regulation of relevance to the arguments.

54. On a pragmatic note, Mr Andani emphasised that migration had increased since 1986 and the courts should move with the times. He also said that the Respondent could not afford to apply for a ‘khula’ (the divorce instigated by a woman) because she could not afford the cost.
55. He relied on Practice Direction 12J and contended that the Respondent was the victim of domestic abuse perpetrated by the ‘first’ husband and was a victim of transnational abandonment. The authorities relied on by the Petitioner and counsel for the Queen’s Proctor had not considered these issues. The Respondent should not be penalised for following the correct procedures under Pakistani Law.
56. The Respondent also raised some factual issues which I do not need to determine, including the contention that the Petitioner would have known the Respondent had been married previously because of their close familial relationship.

#### The Law and discussion – second issue

57. The 1986 Act sets out the grounds for recognition of an overseas divorce, annulment or legal separation in sections 45 and 46:

##### Section 45:

“45. Subject to sections 51 and 52 of this Act, the validity of a divorce, annulment or legal separation obtained in a country outside the British Islands (in this Part referred to as an overseas divorce, annulment or legal separation) shall be recognised in the United Kingdom if, and only if, it is entitled, to recognition—

(a) by virtue of sections 46 to 49 of this Act, or

(b) by virtue of any enactment other than this Part.”

##### Section 46:

“46. —Grounds for recognition.

(1) The validity of an overseas divorce, annulment or legal separation obtained by means of proceedings shall be recognised if—

(a) the divorce, annulment or legal separation is effective under the law of the country in which it was obtained; and

(b) at the relevant date either party to the marriage—



(i) was habitually resident in the country in which the divorce, annulment or legal separation was obtained;  
or

(ii) was domiciled in that country; or

(iii) was a national of that country.

(2) The validity of an overseas divorce, annulment or legal separation obtained otherwise than by means of proceedings shall be recognised if—

(a) the divorce, annulment or legal separation is effective under the law of the country in which it was obtained;

(b) at the relevant date—

(i) each party to the marriage was domiciled in that country; or

(ii) either party to the marriage was domiciled in that country and the other party was domiciled in a country under whose law the divorce, annulment or legal separation is recognised as valid; and

(c) neither party to the marriage was habitually resident in the United Kingdom throughout the period of one year immediately preceding that date.

(3) In this section “the relevant date” means—

(a) in the case of an overseas divorce, annulment or legal separation obtained by means of proceedings, the date of the commencement of the proceedings;

(b) in the case of an overseas divorce, annulment or legal separation obtained otherwise than by means of proceedings, the date on which it was obtained.

(4) Where in the case of an overseas annulment, the relevant date fell after the death of either party to the marriage, any reference in subsection (1) or (2) above to that date shall be construed in relation to that party as a reference to the date of death.

(5) For the purpose of this section, a party to a marriage shall be treated as domiciled in a country if he was domiciled in that country either according to the law of that country in family matters or according to the law of the part of the United Kingdom in which the question of recognition arises.”

58. The relevant features of this case are closest to the factual background set out in two authorities that have been relied on by Mr Murray and the Petitioner. One predates, and the other postdates, the 1986 Act. The first is *Ex parte Ghulam Fatima* which considers the interpretation of sections 2 and 3(1) of the 1971 Act and the second is *Berkovits v Grindberg* which postdates the 1986 Act.
59. In *Ex parte Ghulam Fatima* the husband Mr Afzal pronounced talaq in England against his wife who was resident in Pakistan. He complied with the Muslim Family Laws Ordinance 1961 and sent a written notice of the talaq to the Chairman of the local Union Council in Pakistan and to his wife. The provisions of the Muslim Family Laws Ordinance of 1961 allow for the marriage to be dissolved 90 days after the receipt of the notice by the local Union Council and that is what occurred.
60. Later, Mr Afzal wanted to bring his fiancée, the appellant, to the United Kingdom. She was refused entry as the immigration officer considered Mr Afzal's talaq divorce was not recognised in the United Kingdom.
61. The decision of the immigration officer was judicially reviewed. The High Court held that the talaq divorce was not a valid divorce within the definition of section 2 and section 3(1) of the 1971 Act. The applicant's appeal to the Court of Appeal was dismissed and the House of Lords dismissed her appeal thereafter.
62. Section 2 of the 1971 Act provides as amended:
- "Sections 3 to 5 of this Act shall have effect ... as respects the recognition in the United Kingdom of the validity of overseas divorces ... that is to say, divorces ... which—
- (a) have been obtained by means of judicial or other proceedings in any country outside the British Isles; and
- (b) are effective under the law of that country."
63. By section 3:
- “(1) The validity of an overseas divorce or legal separation shall be recognised if, at the date of the institution of the proceedings in the country in which it was obtained—”
- (a) either spouse was habitually resident in that country; or
- (b) either spouse was a national of that country."
64. The essential question for the House of Lords was whether the divorce obtained by Mr Afzal was to be recognised as a valid overseas divorce under section 2 of the 1971 Act.
65. The two questions posed by the then Mr Justice Taylor in the High Court which were approved by the Court of Appeal were firstly whether the talaq divorce was obtained by proceedings wholly in Pakistan, or by proceedings partly in England and partly in Pakistan.

66. If the former, then the appellant would succeed as the divorce would have been a valid overseas divorce. However, if the talaq divorce was obtained by proceedings which took place partly in England and partly in Pakistan then the second question would arise. Would proceedings partly in England and partly in Pakistan qualify for recognition under sections 2 and 3 of the Act of 1971, or must the proceedings be wholly outside the British Isles.
67. Lord Ackner said at page 534: “In short, the pronouncement of the talaq is the initiation of the Pakistani divorce proceedings, which has no effect unless and until made effective by compliance with the requirements laid down by section 7 of the 1961 Ordinance”.
68. Lord Ackner continued: “Given that the pronouncement of the talaq was the institution of the proceedings, then such institution took place in the United Kingdom and not in Pakistan where the divorce was obtained. Accordingly its validity cannot be recognised since the requirements of section 3(1) set out above cannot be satisfied. This demonstrates that the wording of section 2 and section 3(1) when read together make it clear that the "proceedings" in section 2(a) must be a single set of proceedings which have to be instituted in the same country as that in which the relevant divorce was ultimately obtained”.
69. Had the 1971 Act applied to these present proceedings there would be no doubt that what had taken place between the Respondent and Mr Aslam was a single set of proceedings which had been started in this jurisdiction and completed in Pakistan.
70. The second authority, one that postdates the 1984 Act is *Berkovits v Grindberg*. As set out above, these were proceedings involving a get, where the writing of it occurred in England and the procedure was completed by the delivery of the get to the wife in Israel.
71. The question which arose for decision was whether the get obtained in Israel was "an overseas divorce" within section 45 of the Family Law Act 1986. Mr Justice Wall considered *Ex parte Fatima (supra)*. The question for him was whether *Ex parte Fatima* remained good law in the light of the 1986 Act.
72. As Wall J said at page 149, D : “There is no doubt that the phrase in section 3 of the Act of 1971 "at the date of the institution of the proceedings in the country in which it was obtained" unequivocally linked the "obtaining" of an overseas divorce to the "proceedings" instituted in the same country as that in which the divorce was obtained and thus predicated one set of proceedings all taking place in the same country. The wording of the Act of 1986 is different; the question is whether or not the result is different.”
73. Wall J considered whether a divorce obtained by means of a get was "obtained by means of proceedings" within section 46(1) of the Family Law Act 1986. Wall J looked at whether it had been Parliament’s intention to change the law and decided it had not been the intention to reverse *Ex parte Ghulam Fatima*.
74. Wall J concluded that if given its natural meaning the section should be read as referring to one set of proceedings which, for the purposes of recognition under section 46(1), must be instituted in the country in which the divorce was obtained.

75. Wall J said the statute required that at the date the proceedings were commenced one of the parties must be either habitually resident or domiciled in or a national of the country in which the divorce was subsequently obtained. “In my judgment it is entirely consistent with the concept of proceedings that they should be geographically connected not only to the place where the divorce is obtained, but to the place in which they are instituted. If there is only one set of proceedings, then the "habitual residence" requirement must be linked geographically not only to the country in which the proceedings are commenced, but also to the country in which the divorce is obtained”.
76. Wall J continues: “All this accords with the concept of "proceedings" set out in the statute, which in my judgment is territorial in nature and relates to the jurisdiction of a particular judicial authority within a specific geographical location”; he rejected the argument that the enactment of section 45 and 46 of the 1986 Act altered the law in relation to transnational divorces and overturned the decision of the House of Lords in *Ex parte Ghulam Fatima*.
77. Wall J said ““Obtained by means of proceedings" connoted a process rather than a single act. If that process is part of a judicial process (proceedings) and therefore linked to one judicial authority, it seems to me that there is logic and sense in saying that the proceedings must begin and end in the same place. Accordingly, the mere fact that the divorce is "obtained" in the sense of "finalised" or "pronounced" in one country cannot in my judgment dissociate the process of "obtaining" it from the proceedings in which it was obtained.”.
78. It was argued before him that there could be a distinction drawn between a get and a talaq, he said that policy considerations were properly a matter for Parliament and not for the courts. If there was a distinction to be drawn it was a distinction which Parliament should draw after the full public debate on all the questions of policy which arise.
79. Wall J considered the public policy argument raised by Mr Andani in this case when he said the question as to whether or not in an increasingly multiracial and multi-ethnic society transnational divorces should continue not to be recognised and said it was a matter for Parliament.

## Conclusion

### The first issue - jurisdiction

80. The first issue raises the question of jurisdiction, whether a court in this jurisdiction is entitled to consider the recognition and validity of the Respondent’s ‘first’ divorce for the purpose of proceedings relating to her ‘second’ divorce. I will consider issue 1 shortly. It is clear from the 1971 and 1986 Acts and from a line of authorities including in my judgement the two significant ones, that of *Ex parte Ghulam Fatima* and *Berkovits v Grindberg* which raise similar questions to the one I am asked to decide, that I have jurisdiction to consider the issues raised by the Petitioner.
81. The answer to the first question posed by His Honour Judge Kloss is yes.

The second issue – transnational divorce?

82. The second issue is whether in the case of a talaq pronounced in England but presented to the Union Council in Pakistan where the divorce was obtained, this is a transnational divorce incapable of recognition in this jurisdiction under the 1986 Act.
83. There is no doubt that, on the facts of this case, the criteria laid down in section 46(1) (a) and (b) are satisfied. On the face of it, and in the absence of expert evidence, the Respondent and Mr Aslam's divorce is effective under the law of Pakistan and there is no doubt that, at the date the proceedings were commenced, the Respondent was both a national of, and habitually resident and domiciled in Pakistan.
84. The question which arises for decision therefore is whether the talaq obtained in Pakistan is "an overseas divorce" within sections 45 and 46 of the 1986 Act obtained by means of proceedings.
85. I have set out above the arguments and the authorities. The Respondent relies on three cases that in my judgement are not on the point.
86. *Sulaiman v Juffali* was a case with a different factual background. A bare talaq was pronounced in England at a time when there was no requirement to register the talaq in Saudi Arabia. That divorce could not be recognised under the relevant provisions of the 1986 Act as it had not been issued by a court of civil jurisdiction in England and Wales.
87. The Respondent also relied on *H v S (Recognition of Overseas Divorces)*(*supra*). In *H v S*, all of the talaq proceedings had taken place in Saudi Arabia. It was not transnational and was found by the court to be a valid overseas divorce recognised in this jurisdiction.
88. The Respondent relied on *Solovyev v Solovyeva* (*supra*) where a Russian couple went to the Russian Consulate in England where they were divorced in compliance with Russian law. As the divorce in the Russian Consulate took place in England and Wales, the Court found that it did not comply with the provisions of the 1986 Act and could not be recognised as a valid overseas divorce.
89. Mr Andani also relied on *Maples v Maples* [1987] 3 All ER 188 (Fam Div). where a limping marriage was created by the court finding a divorce, which started with a get written by the husband in London but was dissolved in Israel, was not capable of recognition under the 1971 Act. He said this case would have been decided differently after the 1986 Act. I do not agree with his analysis.
90. In my judgement, the significant authorities are *Ex parte Ghulam Fatima* and *Berkovits v Grindberg*. *Ex parte Fatima* considered a talaq in similar circumstances to the talaq obtained in this case. The Respondent's argument is that *Ex parte Fatima* was decided under the 1971 Act and not the 1986 Act. Mr Andani contends that the law was changed by the 1986 Act and that I must not follow *Berkovits v Grindberg* as it concerned a divorce involving the Beth Din, a specialised court that considers Jewish laws.

91. Apart from the fact that *Berkovits v Grindberg* involved a different religious framework, there are obvious factual parallels to this case. In *Berkovits v Grindberg*, the get occurred in England and the announcement at the Beth Din was in Israel. These were found to be proceedings which were transnational. In this case, Mr Aslam pronounced talaq in England which was given in the form of a letter to the respondent's brother. The letter went to a mosque in Bradford where it was converted into a divorce certificate. The Bradford mosque divorce certificate went to the Respondent in Pakistan. It was then provided to the Union Council in Pakistan where after 90 days the divorce was effective as at 29<sup>th</sup> May 2008.
92. The first question is whether the procedure set out above consists in proceedings within the meaning of the 1986 Act.
93. The question of what constituted "proceedings" was considered by Lord Ackner in *Ex parte Ghulam Fatima*. Relying on *Quazi v Quazi (supra)* he said that the pronouncement of talaq was the initiation of the Pakistani divorce proceedings. These concluded with the procedure involving the Union Council of Pakistan.
94. In *Berkovits v Grindberg*, Mr Justice Wall considered whether the 1986 Act had changed the law so that *Ex parte Ghulam Fatima* was no longer good law. He found that it had not. There is no reason for me to depart from his approach. The 1986 Act did not change the approach of the 1971 Act to "proceedings".
95. I do not accept Mr Andani's contention that the involvement of the Beth Din in *Berkovits v Grindberg* meant that it was a transnational divorce involving a court and that this court should distinguish that case from the current one. I do not find the distinction of any significance. Lord Ackner made it clear in *Ex parte Ghulam Fatima* that proceedings in an Islamic divorce start with the pronouncement of talaq and are concluded by the Union Council of Pakistan in this case declaring the "effectiveness of divorce" as at 29<sup>th</sup> May 2008. The proceedings would not reach the Union Council without a talaq pronouncement. They are bound together and are the necessary parts in a set of proceedings which started in this jurisdiction and concluded in Pakistan.
96. On a pragmatic note, Mr Andani said that the Respondent could not apply for a 'khula' (the divorce instigated by a woman) because she could not afford the cost. He also said that she was victim of domestic abuse in that the 'first' husband abandoned her in Pakistan after living with her for a few weeks. He said the Respondent should not be penalised for following the correct procedures under Pakistani Law.
97. I am not convinced that Practice Direction 12J applies to the Respondent's situation but I accept that from what she has said she considered she had a valid divorce and would not have entered into the marriage with the Petitioner otherwise. I anticipate that this decision will cause her hardship and a great deal of worry but I consider I am bound by the statute and its interpretation as set out in the authorities which are a precedent this court must follow.
98. I conclude therefore that *Ex parte Ghulam Fatima* is good law. As Mr Justice Wall in *Berkovits v Grindberg* makes clear, the 1986 Act has not changed the position. From a clear reading of the statute as explained by the authorities referred to above, the proceedings are transnational. Mr Andani argues that there are policy considerations

in favour of a change of approach to such divorces. This may or may not be the case but any change must be effected by Parliament and is not for the courts.

99. The answer to the second question is yes.
100. The answers to both questions above lead this court to declare the Respondent's 'first' divorce proceedings of February to May 2008 a nullity.

Anonymisation of this judgment

101. At the end of the hearing on 13<sup>th</sup> July 2021 I reserved judgment and I received written arguments from the Petitioner and Respondent about the anonymisation of the judgment.
102. On 20<sup>th</sup> July 2021, the Petitioner argued that the court should apply the general rule that there should be no anonymisation of the judgment.
103. On 27<sup>th</sup> July 2021, Mr Andani on behalf of the Respondent said that if her name was published there would be "extreme" social consequences for her. He said "polyandry" is a religious offence punishable "in the strictest terms". He said that social ostracization was also a strong possibility. He said the Petitioner would publicise the judgment to destroy the Respondent and disparage her in the community.
104. The Queen's Proctor said the decision about the anonymisation of the judgment was a matter for the court.
105. Rule 39.2 of the Civil Procedure Rules sets out the general rule that a hearing should be in public with certain exceptions. Rule 39.4 is relevant to the Respondent's application.
106. **"39.2**

"(1) The general rule is that a hearing is to be in public. A hearing may not be held in private, irrespective of the parties' consent, unless and to the extent that the court decides that it must be held in private, applying the provisions of paragraph (3).

(2) In deciding whether to hold a hearing in private, the court must consider any duty to protect or have regard to a right to freedom of expression which may be affected.

(2A) The court shall take reasonable steps to ensure that all hearings are of an open and public character, save when a hearing is held in private.

(3) A hearing, or any part of it, must be held in private if, and only to the extent that, the court is satisfied of one or more of the matters set out in sub-paragraphs (a) to (g) and that it is necessary to sit in private to secure the proper administration of justice –

- (a) publicity would defeat the object of the hearing;
- (b) it involves matters relating to national security;
- (c) it involves confidential information (including information relating to personal financial matters) and publicity would damage that confidentiality;
- (d) a private hearing is necessary to protect the interests of any child or protected party;
- (e) it is a hearing of an application made without notice and it would be unjust to any respondent for there to be a public hearing;
- (f) it involves uncontentious matters arising in the administration of trusts or in the administration of a deceased person's estate; or
- (g) the court for any other reason considers this to be necessary to secure the proper administration of justice.

(4) The court must order that the identity of any party or witness shall not be disclosed if, and only if, it considers non-disclosure necessary to secure the proper administration of justice and in order to protect the interests of that party or witness.

(5) Unless and to the extent that the court otherwise directs, where the court acts under paragraph (3) or (4), a copy of the court's order shall be published on the website of the Judiciary of England and Wales (which may be found at [www.judiciary.uk](http://www.judiciary.uk)). Any person who is not a party to the proceedings may apply to attend the hearing and make submissions, or apply to set aside or vary the order.

- 107. Rule 39.2 (1) to (3) concerns the requirement for a hearing to be in public. In non-covid times this hearing would have been held in public.
- 108. Rule 32.2(4) concerns the anonymisation of a judgment. The question for the court is whether non-disclosure is necessary to secure the proper administration of justice and in order to protect the interests of the Respondent.
- 109. I have made it clear that the decision set out above relates to the position of the Respondent in this jurisdiction and does not affect the validity of her divorce in Pakistan. Mr Andani for the Respondent is concerned that she will be punished in Pakistan for bigamy. He contends she may suffer from social ostracization and that the Petitioner may well destroy her life and disparage her. Mr Andani argued that there is a parallel between these proceedings and children proceedings. There is not.
- 110. The answers to these concerns are that in Pakistan she has not committed either bigamy or any criminal offence. She remains divorced in that jurisdiction.



111. I accept there may be a considerable degree of embarrassment and some misplaced feeling of shame on her part but I must put in the balance the important public interest in there being an open debate about transnational divorces. The removal of parties' names stifles open debate, there is less interest if the parties' names are not disclosed.
112. On balance, I do not consider that the Respondent's interests require protection by the anonymisation of this judgment. I understand the Respondent feels genuine concerns and fears but what it comes down to is she is concerned about what people will say in the community. If there is gossip, it can be answered by the Respondent pointing out that she had no idea she was not divorced. She has not been prosecuted for bigamy, there is no shame in what happened to her. On the face of it her 'first' divorce was conducted in ignorance of the law in this jurisdiction. Any gossip will blow over. In the balancing of these competing interests, the public interest in open debate trumps the Respondent's concerns.
113. This is the judgment of the court.