

Neutral Citation Number: [2022] EWFC 150

**IN THE FAMILY COURT  
SITTING AT LIVERPOOL**

**Case No LV19D05813**

IN THE MATTER OF  
The Matrimonial Causes Act 1973

The final hearing of the Amended Petition held on:  
23 – 27 May 2022

And following written submissions on costs received 26 October 2022

This composite judgment was handed down on 2 November 2022

**Before His Honour Judge Greensmith**

**BETWEEN**

**W**

**Petitioner**

**-and-**

**H**

**Respondent**

**UPON hearing**

Mr Gareth Thomas of counsel for the Petitioner  
And the Respondent who was assisted by his McKenzie Friend Mr Ison.

**JUDGMENT**

**HHJ Greensmith:**

1. This is the final hearing in the matter of a contested divorce between W and H. For ease of reference throughout this judgment I refer to Mrs W as “the Wife” or “The Petitioner” and Mr H as “the Husband” or “the Respondent”. Collectively they will be referred to as “the Parties”.
2. The Parties were married on 9 April 2014 at in, Australia. At the time the Petition was issued the Parties, as they are now, were both habitually resident in England and Wales.

3. The Husband is aged 45 and is an obstetrician who currently undertakes work through a number of agencies and companies on an ad-hoc basis. The Wife is also aged 45 and is a qualified social worker.
4. There are three children of the family each of them born to the Parties during the marriage. A was born on 6 July 2013; B was born on 10 September 2014; C was born on 1 April 2016. The children are the subject of protracted Children Act proceedings which are currently ongoing in the Family Court at Lancaster. Those proceedings are allocated to and are being conducted by His Honour Judge Baker. The children are subject to a child arrangement order; they live with the Wife and have regular contact with the Husband.
5. The Parties lived together until 9 March 2017 when the Wife left the Husband. The Parties have not lived together since their separation.

#### Participation Directions

6. In considering how to ensure a fair trial incorporating best practice and the implementation of procedural justice the Court has had particular regard to the lead judgment of Baker LJ in S (Vulnerable Party: Fairness of Proceedings) [2022] EWCA Civ8. This was reported during the case management stage of these proceedings and its rulings were instrumental in the Court postponing the final hearing to enable the Husband to be assessed as to his need for an intermediary and the appointment of such being funded at public expense.
7. These proceedings are, I think, an exemplar of how a Court needs always to be mindful of the need to consider an assessment for an intermediary even where the surrounding circumstances may not immediately alert the Court to this. The Husband in this case is an obstetrician. At first blush, he is not typical of Court users who are assessed for the support of an intermediary. By whatever means the Husband manages his autism in his own professional environment, is not the concern of this Court. The concern of this Court is to ensure the Husband is able fully and fairly to participate in this process to ensure the Court has the best evidence available to reach a just result. Nothing less will ensure the appropriate application of the Overriding Objective.
8. The Husband has a diagnosis of Level 1 Autistic Spectrum Disorder which makes it difficult for him to engage in the legal process: he has only recently received a professional diagnosis; the letter confirming the diagnosis, which the Court has been

provided with, is dated 10 July 2020 and is from the Husband's Consultant Clinical Psychologist.

9. The interpretation of the statutory test, as set out below, highlights the necessity of regarding significant personality traits of either party as being an essential element when considering a person's behaviour within the context of a marriage. The Husband's autism is an essential element of the Court's consideration.
  
10. Within these proceedings there has not been an application for expert evidence to be adduced to assist the Court being informed as to how the Husband's autism may have affected his behaviour and his reaction to the behaviour of others. This is not a criticism and I do not feel in any way disadvantaged as a result. This is because I have been able to refer myself to the Equal Treatment Bench Book: February 2021 Edition: December 2021 Revision ("the ETBB") as a reference for understanding how autistic people see the world.
  
11. Regarding the nature of participation directions, I have the benefit of The Advocate's Gateway ("TAG") and particularly Toolkit 15 contained therein. The Judicial College provides targeted training on this subject during its judicial training delivered by the Cross Jurisdictional Faculty to all newly appointed judges. I have played a role in the design and delivery of this training for several years. I therefore feel equipped to address the Husband's autism for the purpose of these proceedings without recourse to further expert evidence or material.
  
12. Dr Stephen Shore (an autistic professor of special education at Adelphi University and an internationally acclaimed expert in the field of understanding autism) once said,

*"When you meet one person with Autism, you've met one person with Autism".*

During my analysis of my findings as to the Husband's behaviour I consider it appropriate to ask myself, how relevant is this adage in the context of the test to be applied in these proceedings?

13. The fact that the Husband is autistic may very well explain certain aspects of his behaviour towards the Wife; but the test is not, is the Husband's behaviour excusable? Neither does the test simply exclude the natural personality traits of a Respondent as being irrelevant in the analysis. The test is more nuanced. A full explanation of how to approach the traits of each party is set out below.
14. The Husband's behaviour must be viewed in the context that he is autistic and that raises the question: is there is a reasonable expectation upon the Wife to make attempts to understand and to accept aspects of his behaviour which are caused or contributed to by his autism?
15. The Husband identifies as a person who has received a diagnosis of autism later in life. The letter received by the Court postdates the Parties' separation by some three years and the date of issue of proceedings by one year. The ETBB informs, "It is not uncommon for people to be diagnosed with autism later in life following events such as redundancy or pending retirement, when the stresses trigger anxiety and demonstrably autistic behaviour."
16. I have no evidence to be able to determine when the Wife became aware that the Husband received his diagnosis nor indeed when she became aware that he is autistic. This timing of this knowledge, or lack of it, is a factor which I will have to consider when analysing the Husband's behaviour and its effect upon the Wife.
17. To assist the Husband, an intermediary was asked by the Court to assess him and to advise the Court as to whether he would benefit from an intermediary being present in Court throughout the course of the final hearing. The Husband cooperated fully with the assessment process which resulted in detailed recommendations from the intermediary. The intermediary was appointed and paid for by the Court service and sat with the Husband throughout the final hearing.
18. The Wife also was deemed to be a vulnerable party by reason of the allegations of coercive behaviour and economic control she had made against the Husband in her Amended Petition.

19. A ground rules hearing was held on 19 April 2022. The hearing was attended by counsel for the Wife and the Husband's McKenzie friend Mr Ison. The Husband was excused from attending the hearing at his request. Miss Pike, the intermediary attended the hearing which was conducted by me. Detailed recordings and participation directions were made as follows:

*i. UPON IT BEING recorded*

- a) The matter was listed as a Ground Rules Hearing in advance of the Final Hearing of the defended divorce now listed for 23<sup>rd</sup> to 27<sup>th</sup> May 2022.*
- b) Mr Ison has been instructed to assist as the Respondent's McKenzie friend (and, subject to the Court's approval, his advocate) at this Ground Rules Hearing and the Final Hearing. The Court as a preliminary point and at the commencement of the hearing granted Mr Ison a right of audience for this hearing and the Final Hearing and any preliminary matters in relation thereto pursuant to The Legal Services Act 2007 Schedule 3 Paragraph 1(2). Any document or notices served on Mr Ison prior to and during the hearing will be deemed to be good service on the Respondent. The Court deems service by email of any documentation to be good service and service is deemed to be effective upon receipt of any email.*
- c) The Court has had sight of the Petitioner's re-amended schedule of questions to be put in cross examination to the Respondent and considered that they comply with guidance on the questioning of vulnerable witnesses as contained in the Equal Treatment Bench Book and the Advocates Gateway Toolkit.*
- d) The intermediary was given sight of the questions and raised no objection to the phraseology. Ms Pike confirmed that she was of the view that the questions are unlikely to elicit simple one-word answers from the Respondent*
- e) Ms Pike had carried out an intermediary assessment of the Respondent during the morning of the hearing in person and in the Court building and had provided the Court with her initial report. The Parties were provided with a copy of this report.*
- f) The Court has exercised its duty pursuant to FPR 2010 r3A.3 by considering the vulnerability of each of the Parties as witness in these proceedings. The Court has considered FPR 2010 PD3AA 2.1 in forming its conclusions as to the vulnerability of the Parties.*
- g) The Court considers the Respondent a vulnerable witness by reason of his Autistic Spectrum Disorder.*

*h) The Court considers the Petitioner a vulnerable witness by reason of the allegations of coercive behaviour and economic control she has made against the Respondent*

**IT IS ORDERED**

**Participation directions made pursuant to FPR 3A and PD 3AA**

- 1) The Court approves the appointment of Ms Pike as the Respondent's intermediary and her reasonable costs shall be met by HMCTS.
- 2) By no later than 4pm 13<sup>th</sup> May 2022 the intermediary shall send to the Court and the Petitioner's solicitors her suggestions as to how the Respondent should be invited to expand upon his answers if they simply comprise yes or no answers
- 3) The Court noted the suggested participation directions in respect of the Respondent set out in Ms Pike's report dated 19.4.21 and approved the same.
- 4) The Respondent shall attend the said final hearing and shall have the option of attending remotely from the vulnerable witness suite at Court and his intermediary shall be in attendance with him remotely from the said witness suite. The Respondent's advocate, Mr Ison, shall attend in person at Court.
- 5) The Petitioner and her advocate shall attend the hearing in person.
- 6) The Respondent shall file and serve upon the Petitioner's solicitor by no later than 4pm 13<sup>th</sup> May 2022 a list of questions to be put in cross examination of the Petitioner. In default of such questions being served by the time stated the Respondent shall not be permitted to put any questions in cross-examination to the Petitioner without leave of the Court. The said questions shall be put by the advocate.
- 7) Witness template and other directions relating to the final hearing:

20. The Court is aware that the Husband's application for leave to appeal the order arising from the ground rules hearing which was made on 19 April 2022 was dismissed by Sir Jonathan Cohen on 5 May 2022 as totally without merit.

**The Law**

21. Section 1 of the Matrimonial Causes Act 1973 is the relevant statutory provision that applied as at the date of issue of the Petition which states:

- i. (1) Subject to section 3 below, a Petition for divorce may be presented to the Court by either party to a marriage on the ground that the marriage has broken down irretrievably.*

- ii. *(2)The Court hearing a Petition for divorce shall not hold the marriage to have broken down irretrievably unless the Petitioner satisfies the Court of one or more of the following facts, that is to say:*
- iii. *[it is only s1(2)b which is relevant to these proceedings]*
- iv. *(b)that the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent;*
- v. *(3)On a Petition for divorce it shall be the duty of the Court to inquire, so far as it reasonably can, into the facts alleged by the Petitioner and into any facts alleged by the Respondent.*
- vi. *(4)If the Court is satisfied on the evidence of any such fact as is mentioned in subsection (2) above, then, unless it is satisfied on all the evidence that the marriage has not broken down irretrievably, it shall, ... grant a decree of divorce.*

22. Relevant case law is collated out in the judgment of Munby P in Owens v Owens [2017] EWCA Civ 182. The President considered all the jurisprudence he considers necessary to establish whether the test is met and cites a number of cases which highlight specific elements of the test. Case law which is relevant to this matter can be summarised as:

In Ash v Ash [1972] Fam 135 Bagnall J. said:

- i. *“The general question may be expanded thus: can this Petitioner, with his or her character and personality, with his or her faults and other attributes, good and bad, and having regard to his or her behaviour during the marriage, reasonably be expected to live with this Respondent?”*

*The concept of the test being a mixture of subjectivity and objectivity was expanded in Livingstone-Stallard v Livingstone-Stallard [1974] Fam 47 where Dunn J. said:*

- ii. *Would any right-thinking person come to the conclusion that this Husband has behaved in such a way that this Wife cannot reasonably be expected to live with him, taking into account the whole of the circumstances and the characters and personalities of the Parties?”*

*This approach was more recently endorsed Butterworth v Butterworth [1997] 2 FLR 336, 340, by Brooke and Balcombe LJJ.*

*In Owens the President summarised the law as it then was (and remains for the purpose of this application) as:*

- b. The Court has to evaluate what is proved to have happened in the context of this marriage,*
- c. looking at this Wife and this Husband,*
- d. in the light of all the circumstances and*
- e. having regard to the cumulative effect of all the Respondent's conduct.*

*The Court then has to ask itself the statutory question: given all this, has the Respondent behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent?*

23. The law relating to establishing the test required before a decree can be granted under s1(2)b was restated as above in the hearing of the appeal of the case before the Court of Appeal, when the case was heard by the Supreme Court in Owens v Owens [2018] UKSC 41. Lord Wilson further emphasised at paragraph 41 that:

*It is clear ... That section 1 of the 1973 act does not require the behaviour under the subsection to have caused the breakdown of the marriage*

24. When considering the effect of the behaviour relied upon the Court must have due regard to Section 2(3) of the 1973 Act which requires the Court to disregard allegations of behaviour where the behaviour was known to the Petitioner and the Petitioner nevertheless went onto live with the Respondent after the conclusion of the behaviour relied upon. In the context of this case, this provision is of limited application as many of the allegations are traits of behaviour which are continuous in their nature.

25. At the conclusion of the Petitioner's evidence, the Respondent applied in the face of the Court for the Amended Petition to be dismissed as he contended that the Petitioner had failed to meet the evidential burden to prove her case and that the Respondent, therefore had no case to answer. I referred the Respondent to BB(Children) [2021] EWFC 20. This case summarises the law relating to such



applications in the Family Court and re-enforces the strong presumption that the Court should have the benefit of hearing from both sides before reaching its conclusion. The application was refused.

26. Finally, it is established law that where facts are alleged, it is for the party alleging a fact to prove it. The standard of proof is the civil standard of the balance of probabilities. An allegation is either proved or it is not: the binary system applies as approved in Re B [2008] UKHL 35.

### **History of these proceedings**

27. The Wife issued her divorce Petition on 19 June 2019. The Petition was issued on the basis that the marriage had irretrievably broken down. The Petition asserted that the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent. The form used was the requisite form and in paragraph 7.2 the following was included as being, “Brief details to support the reasons” for the application:

- i. The Petitioner would say that the Respondent has been controlling throughout the relationship.*
- ii. The Petitioner would also say that the Respondent is manipulative and can behave in a way that she would describe as bullying.*
- iii. As a result of the Respondent’s behaviour the Petitioner has lost self-confidence and no longer socialises with friends due to the controlling behaviour she has suffered from the Respondent.*
- iv. The Petitioner would say that the marriage has irretrievably broken down and as a result cannot reasonably be expected to remain married to the Respondent.*
- v. The Petitioner therefore wishes to be divorced.*

28. The divorce proceeded on this basis and the Wife made an application for a decree nisi. A district judge issued a certificate of entitlement to decree nisi on 10 December 2019. A decree nisi was pronounced on 2 January 2020. On 5 December 2020 the Husband applied for the certificate and the decree nisi to be set aside. On 20 April 2020 a district judge dismissed the Husband’s application. The Husband appealed

against the decision to dismiss. I granted the appeal on 23 December 2020 and the certificate of entitlement and the decree nisi were set aside by my order.

29. On 1 February 2021 I granted the Wife's application to file an Amended Petition. An Amended Petition was filed on 25 February 2021. In her Amended Petition the Wife retained the first three paragraphs of paragraph 7.2 of the Petition and deleted paragraphs 4 and 5. The Amended Petition expanded the particulars for divorce which were headed "Amended particulars for divorce". The amended particulars for divorce stated as follows:

*The Petitioner would say that she has numerous examples of the Respondent's behaviour towards her which led to the irretrievable breakdown of her marriage but would say that the Respondent had a (sic) severe control issues and was ultimately a bully. She would say he was utterly charming to outsiders and would speak really well to manipulate situations.*

*The Respondent would make sure that the Petitioner gave all her money from her bank account to him to pay towards the marital home that they were going to buy. This left her penniless and totally dependent upon him. The Petitioner would say that the Respondent purposefully took away her financial independence. The Respondent placed money into a joint bank account that the Respondent had access to for bills/mortgage/household items/shopping and anything needed for the children. The surplus of monies was kept hidden from the Petitioner and she had no idea what these funds were used for. There was approximately £2000 surplus per month and he would never account to what these monies were utilised for. The marital home at Sheppard Avenue was purchased by borrowing funds from the Respondent's parents, which they obtained by way of a mortgage. The Petitioner was never shown any paperwork and was given the page for the signature only and would never see the entire papers. The Petitioner would never know what she was signing and went along with it as she felt conditioned by the Respondent to simply do as she was told. She was taken to the parents' home where a neighbour was present with both of the Respondent's parents and was asked to sign the papers so that they could obtain funds on behalf of myself and the Respondent this was because the Respondent had a poor credit rating because he had been in arrears with his previous ex-Wife. The Petitioner was*

*pressured by all three particularly the Respondent into signing the paperwork and this was witnessed by the neighbour. The Petitioner was never given full details of all the paperwork, all the papers or how the mortgage was being set up. The Petitioner didn't even know who they were borrowing the funds from. All the Petitioner was told was that it was an interest only mortgage as this was all they could get and we then owed the monies to them.*

*When the party's second child was nine months old (Daniel) he needed to be in his own bedroom but he remained in a cot in the party's room. The three year old child (Joseph) was still in a cot in another room, he was still in a cot and the Respondent would not let the Petitioner buy a bed. Joseph was ready to be toilet trained could not get in and out of his cot and the Petitioner therefore ended up taking the side of the clock down to allow him access to the toilet. The Petitioner would say that she was always told she could purchase beds for the children when they move house. Daniel the second child was still in a cot in the second bedroom which was also used as the Respondent's office, there was paperwork everywhere, a daybed that was never used, a desk and chair, filing cabinets and the whole room was littered with paperwork together with hundreds of medical journals. The Petitioner would say she managed to get a cot in one corner of the room and I put posters on the wall trying to make it more child focused. Daniel could not use this room other than to sleep in because there was literally no were (sic) that he could play. The Petitioner will say she could not stand up to the Respondent. This would lead to a terrible atmosphere and he would verbally abuse her if she attempted in anyway to stand her ground.*

*Examples of what would be said to the Petitioner:-*

*"frankly the three boys can manage quite well without their mother- they don't need you"*

*"you are a bigot you don't respect my views"*

*"my family hate you, I want you to leave the house if they come to visit and leave me in with the boys"*

*"I wish I'd never married you but I can't divorce you because I have no valid suit"*

*“the house is always a mess and it’s all your fault”*

*“you are not a good enough mother”*

*“you are not a good enough Wife”*

*“you are a horrible person”*

*one particular occasion the Petitioner recalls was in 2015 as this was when she used to access the sure start centre with the children for a playgroup the Respondent was extremely angry with her. The Respondent verbally abused her in the usual way as set out above and she dared to say back to him “well why don’t you divorce me” the Respondent said at her and said “he knew the law and he had no grounds to divorce me so he couldn’t”. The Respondent continued to badger her and call her names to the point where she was so upset she left the property with their two boys and went to the usual playgroup in the sure start centre. The Petitioner was seen by staff who could see she was so upset and took her into a room to speak to them. They were so concerned by her demeanour that when she attended for the next play session they had a worker from first steps domestic abuse service in attendance to speak with her and through the discussions first steps advice was that she was living with an abuser.*

*The Respondent would try to find ways to argue with the Petitioner so that he could belittle her. The Respondent would purposely leave lots of paperwork around especially on the floor in the living area and in the hall and kitchen. The Respondent had a desk upstairs also. If the Petitioner moved any of the paperwork or it was touched while she tried to tidy the house he would be furious and the Respondent would tell me (sic) her that she had lost his possessions.*

*Paperwork surrounded the home, the home was cluttered and constantly untidy. The Respondent would tell the Petitioner that this was her fault and that she would leave the house in a mess but the Respondent would not let her move any of the paperwork which was actually causing the clutter and mess. The Respondent was completely controlling.*

*Further examples of the Respondent control behaviour included never allowing the children access to all areas of our own house. The children were only allowed in the back living room of the house. The Respondent erected a safety*

gate across the area between the living room and kitchen area. The Petitioner filled this room with an abundance of toys to try to make it as entertaining for the boys as possible as they were only allowed in this area each day behind the safety gate. The Petitioner therefore took the children to as many playgroups and activities as possible to escape from the house to ensure they have some freedom.

The Respondent will bully the Petitioner to the point where she felt that she always had to go along with what he wanted for an easier life. This also gave some peace when the Respondent was in the property. The Petitioner will hear the key going into the front door and would be on eggshells as to what mood the Respondent would begin. If the Respondent came home and had been upset in the days his mood will be terrible and the Petitioner would be fearful of talking to him and would simply try to continue to focus on herself and the children until he engaged her. When the children go to bed he would sit with his laptop on his knee all evening and will put his arm up with his hand out to the Petitioner's face and tell her to wait if she attempted to speak. The position will have to wait for permission from him to be able to speak.

The Petitioner discussed with the Respondent the possibility of becoming a representative from (sic) Avon. Initially he said that this was not a good idea and he then looked into the same and completely overtook the organisation and the setup of the small business which the Petitioner had wanted to do for some

Independence. The Respondent organised where she would canvas, organised buying and setting up the products and insisted that she was out for at least half of the evenings per week either collecting booklets or taking orders. This will be throughout the winter in all weathers, he would come home from work wait for her to get the children ready for bed and then demand that she go out to collect brochures or to deliver products. The area he gave her to working was vast and it took many evenings. The Petitioner did this right up until the birth of her third child and indeed following the birth. If she advised the Respondent she was tired he would say to her "I knew you would want to do this- I put in all the work you want to quit" he would continue doing this until the Petitioner would relent and went out. When the Petitioner arrived home the Respondent would say that she

*was treating him as a babysitter and she should not leave him at home with three boys to take care of.*

*Throughout the period of our relationship the Petitioner lost a lot of her friends, they stop coming to see her because the atmosphere in the home was so uncomfortable. The Respondent would make anyone who came into the home uncomfortable, he would speak to her in a derogatory way and belittle her.*

*During the wedding reception Respondent made a speech. The Petitioner's father told her that he felt that the Respondent was derogatory towards her and her father during the speech.*

*In 2017, the Respondent had been on nights for weeks and the Petitioner had been alone all week with the three boys. Henry was nine months old, Daniel was two years old and Joseph was three years old. The Parties were going away with the boys to their caravans at the weekend and intended to leave on the Friday. The Petitioner was left with the task of arranging all of the clothes, items needed for the weekend away, food and all essentials. The Respondent arrived home at 10 AM in the morning when she greeted him he asked if she was ready to leave for the trip. The Petitioner told in the children have been particularly demanding that she did not have everything ready Respondent was furious, he stated that as a result of her not being ready to leave that he would not go away with me and was taking the boys away for the weekend without. The Petitioner had to beg and plead him to allow her to go on the weekend away as planned (the Petitioner did not want to miss out on seeing the boys having a holiday in the caravan and he eventually allowed her to go. However the Respondent made her weak and unbearable and so uncomfortable because he continually verbally abused as set out above. When he was not verbally abusing her and saying derogatory things he would ignore her completely.*

*The Petitioner would say the marriage has irretrievably broken down and as a result cannot reasonably be expected to remain married to the Respondent.*

*The Petitioner therefore wishes to be divorced.*

30. The Husband maintained that the marriage was not validly constituted. Essentially the Husband was asserting that the ceremony that the Parties underwent in Australia

did not amount to a valid marriage. This proved to be wrong. The Wife had failed to produce or file what the Husband considered to be a valid certificate of marriage. Sanctions were imposed upon the Wife resulting in the Petition being struck out. Upon the Wife filing a valid certificate of marriage an application from relief from sanctions was granted on 11 June 2021 and by an order of that date the proceedings were re-instated as defended divorce proceedings. That part of the Respondent's answer to the Petition averring that no legal marriage was entered into between the Parties was struck out pursuant to FPR 2010 4.4(1).

31. Despite the marriage having been found as a fact by the Court to be a valid marriage the Husband has failed to acknowledge this. He refers in his Amended Answer, repeatedly, to the "purported marriage". this is a noun phrase the Husband repeats in his final statement (see para 12) for the final hearing and one he uses when giving oral evidence. Further, in his statement the Husband says:

*"Although the order of 11 June 2021 has stated 'that part of the Petition averring that no legal marriage was entered into between the Parties is struck out pursuant to FPR 4.4(1)' the Court should be aware that the Respondent has sought to appeal this decision and will seek that the appeal Court set aside this order and allow him to rely upon such an argument, as further set out in his statements to the Court dated 10 march 2020 and 19 April 2020".*

32. This Court is not aware of leave to appeal having been granted in respect of the strike out order made in 2021. When I made the order striking out this element of the answer, I gave an extempore judgment during which I found as a fact that the Husband had always known that his marriage to the Wife was valid.

33. An Amended Answer was filed on 7 July 2021. The body of the Amended Answer reads:

*AMENDED ANSWER DEFENCE TO DIVORCE PETITION [amended as at 07.07.21]*

*The Respondent notes that the Petitioner has failed to comply with the Family Law Protocol and did not engage with the Respondent prior to presenting her Petition, in order to try and avoid the need for a contested divorce. The Respondent would wish the Court to have regard to this matter in considering any application for costs.*

*The Respondent does not, at present, accept that a marriage recognisable in English law exists between the Petitioner and himself. The Respondent notes that he requested further information from the Petitioner in this regard (when she initially suggested, through her solicitors, that she would be seeking a divorce), but that he has not received any response from the Petitioner*

*The Respondent notes that the Petitioner's Petition is based upon her making an allegation that he has behaved in such a way that she cannot reasonably be expected to live with him (section 6.1 of her application) and has also considered the details provided at section 7.2 of her application. The Respondent considers that the only statements that could possibly be regarded as providing any allegations of his having behaved in such a way that the Petitioner cannot reasonably be expected to live with him are:*

- a. That she 'would say' that he was controlling throughout the relationship*
- b. That he was manipulative*
- c. That she 'would say' that he can behave in a way 'that she would describe' as*
  - i. bullying*
  - ii. The Respondent notes that no specific actions are given by the Respondent to justify these*
  - iii. very broad allegations of behaviour. For the avoidance of doubt, the Respondent disputes*
  - iv. that he was controlling during the relationship, that he is manipulative or that he behaves in a bullying manner. The Respondent notes that he has a diagnosis of Level 1 Autistic Spectrum Disorder. Although this diagnosis has only recently been given to him, the Respondent considers that his behaviour throughout the purported marriage was very similar in nature to that prior to when the Petitioner first met the Respondent. In addition, the Respondent believes that the Petitioner's description of the behaviour of which she complains as having been present "throughout the relationship", indicates that she considers his behaviour to have not changed during the relationship. In the light of the fact that there is no suggestion of the behaviour complained of by the Petitioner amounting to a change in behaviour from prior to the purported marriage, the Respondent cannot see how such behaviour can fulfil the statutory requirement for it to constitute behaviour such that the Petitioner cannot reasonably be expected to live with him, as the Petitioner would have clearly have been aware of the nature of the Respondent's behaviour prior to the purported marriage and effectively accepted it by entering into the purported marriage.*

*In addition, the Respondent has reflected and concluded that he does not feel that it is in the best interests of the children of the marriage for their parents to be divorced at the present time. The Respondent notes that his understanding of the views of the Petitioner are very*



*limited due to her refusal to engage with the mediation he proposed upon the Parties' separation in 2017.*

*In conclusion, the Respondent does not believe that any marriage (if such exists) has*

- v. irretrievably broken down and that reconciliation is not possible. He does not believe that*
- vi. the Petitioner's Petition for divorce makes any allegations which appear to satisfy the criteria of irretrievable breakdown as mandated by Section 1 of the Matrimonial Causes Act 1973, and thus asks the Court to dismiss the Petition.*

*The Respondent believes that the Petition submitted is 'totally without merit' and would ask that in dismissing the Petition, the Court makes a declaration to this effect.*

*The Respondent believes that the Petitioner should pay the costs of his defending this*

- vii. Petition.*
- viii. 7th September 2019*
- ix. Amendments made on 07.07.21*

*Although the Order of 11th June 2021 has state that 'that part of the Respondent's Answer to the Petition averring that no legal marriage was entered into between the Parties is struck out pursuant to FPR 4.4(1)' [paragraph 2], the Court should be aware that the Respondent has sought leave to appeal this decision and will seek that the appeal Court set aside this order and allow him to rely upon such an argument, as further set-out in his statements to Court dated 10th March 2020 and 19th April 2020.*

*The Respondent does not accept that I 'had a [sic] severe control issues and was ultimately a bully' or that he 'was utterly charming to outsiders and would speak well to manipulate situations'. In any event, he believes that even if the Court were to find that this was the case, such behaviour is a part of his personality (particularly having autism) and was present before the purported marriage such that the Petitioner was well aware of it when such a marriage allegedly took place and cannot constitute behaviour such that the Petitioner cannot reasonably be expected to live with the Respondent.*

*The Respondent notes that the Petitioner makes claims that he would 'make sure that the Petitioner gave all her money from her bank account to him ...' and that this 'left her penniless and totally dependent upon him'. He also notes that she 'would say that the Respondent purposefully took away her financial independence'. The Respondent completely denies any such allegation and puts the Petitioner to proof in this regard.*

*The Respondent does not accept that there was a 'surplus of monies' or that the same was 'kept hidden from the Petitioner' or unaccounted for in any way. Again, the Respondent*

*holds the Petitioner to proof in this regard and will argue that any inability to provide any evidence to support such an allegation (as such would clearly exist if the allegation was true) should be accepted as evidence of the Petitioner's untruthfulness in these proceedings.*

*The Respondent notes that the Petitioner argues that his behaviour during the purchase of the marital home constitutes relevant behaviour for the purposes of her Petition for divorce. However, it is important for the Court to be aware that the property was purchased in late 2012, well before the Petitioner argues that the marriage took place. The Respondent believes that the fact that it is the Petitioner's case that she proposed marriage to the Respondent in 2012, shows how the Petitioner is clearly willing to be completely untruthful with the Court and that even her Amended Petition is totally without merit.*

*The Respondent specifically argues that the Petitioner is being dishonest in stating that she 'was never shown any paperwork and was given the page for signature only and would never see the entire papers' or the other arguments made by the Petitioner in that paragraph of her Petition. The Respondent also notes the Petitioner's suggestion that his parents acted inappropriately and that this was witnessed by their neighbour. The Respondent will seek a witness summons for both his parents and their neighbour such that the Court can determine whether the allegations made by the Petitioner are true. The Respondent believes that such a determination is very important (despite the alleged behaviour occurring before the purported marriage) as it will provide evidence as to the truthfulness of the Petitioner's evidence.*

*The Respondent disputes the allegations made by the Petitioner with regard to sleeping arrangements for the children or that they constitute behaviour which would mean that she could not reasonably be expected to live with. The Respondent will also give evidence that he accepted that a larger house would be more appropriate for the family and that the Petitioner and himself had been making plans to move to a larger home for a considerable time prior to the separation.*

*The Respondent disputes that the Petitioner 'could not stand up to the Respondent' or that this 'would lead to a terrible atmosphere'. In any event, he would argue that this allegation does not raise any argument regarding the behaviour of the Respondent upon which the Court will be required to adjudicate.*

*The Respondent completely disputes that 'he would verbally abuse her [the Petitioner] if she attempted in anyway [sic] to stand her ground'.*

*The Respondent denies that he made the statements the Petitioner claims he made in her section of the Petitioner quoting 'examples' or that he made any similar statements.*

*The Respondent disputes that on the 'one particular occasion' in 2015 quoted by the Petitioner that he 'was extremely angry with her', that he 'verbally abused her in the usual way', that he made the comments as described by the Petitioner or that he 'continued to badger her and call her names'.*

*The Respondent disputes that he 'would try to find ways to argue with the Petitioner so that he could belittle her', that he would 'purposefully leave lots of paperwork around especially on the floor in the living area and in the hall and kitchen' or that 'if the Petitioner moved any of the paperwork or it was touched whilst she tried to tidy the house he would be furious and the Respondent would tell me that she had lost his possessions'. In any event, the Respondent does not believe that even were this to be true that it would constitute behaviour such that the Petitioner could not be expected to the Respondent.*

*The Respondent disputes that 'paperwork surrounded the home was cluttered and constantly untidy'. In any event, the Respondent does not believe that even were this to be true that its cause or its severity would mean that it would constitute behaviour such that the Petitioner could not be expected to live with the Respondent.*

*The Respondent disputes that he would 'tell the Petitioner that this [the allegedly untidy house] was her fault and that she would leave the home in a mess but the Respondent would not let her move any of the paperwork which was actually causing the clutter and mess' or that he 'was completely controlling'.*

*The Respondent notes the Petitioner's allegation that part of his alleged 'controlling behaviour' involved 'never allowing the children free access to all areas of our home'. The Respondent would say in this regard that it is entirely normal for pre-school children [the eldest was 3 years old at the time of separation] to not be allowed to have free access to all areas of the home as part of normal parenting to protect them from the usual dangers in the home. The Respondent believes that such safety measures were put in place by both parents as a matter of common sense and there was nothing controversial about this whilst the Petitioner and Respondent lived together.*

*The Respondent disputes that the 'children were only allowed in the back living room of the house' although he accepts that this was the main area of the house where the family sat together and the children played.*

*The Respondent accepts that he 'put a wide safety gate across the area between the living room and the kitchen area'. He believes that this was an entirely sensible action to prevent the three children from the dangers inherent in a kitchen environment. Whilst the Respondent physically installed the safety gate, he did this because he generally tended to undertake DIY*

*in the home as the Petitioner suggested she did not have the skills or experience to do the same. The Respondent is clear, however, that the Petitioner thought that installing a safety gate was a good idea for the safety of the children and was totally in agreement with his installing it.*

*The Respondent disputes that he 'would bully the Petitioner to the point where she felt that she always had to go along with what he wanted for an easier life'.*

*The Respondent does not believe the Petitioner is being truthful when she states that she 'would hear the key going into the door and would be on eggshells as to what the Respondent would be in'. The Respondent disputes that he would come home and that his 'mood would be terrible' and that the Petitioner 'would be fearful of talking to him'.*

*The Respondent does not dispute that he would sometimes use his laptop in the evening to undertake work or household administration or even deal with matters that the Petitioner had asked him to deal with on her behalf. The Petitioner would wish the Court to be aware that he dealt with many matters on behalf of the Petitioner, but this was always at her request and instigation and he did this because he felt it was part of his role to do whatever he could to help the Petitioner when she asked him for help. The Petitioner notes that matters that he helped the Petitioner with included, administration for her work through a limited company, her employment dispute with Manchester City Council, arrangements for the repair of her car and her personal injury claim following a RTC she was involved in in 2013, her personal injury claim against Manchester City Council and many other matters. Such matters took up a considerable amount of the Respondent's time. The Respondent disputes that 'he would sit with his laptop on his knee all evening'. Even were this allegation to be true, the Respondent does not believe that it would constitute behaviour such that the Petitioner could not reasonably be expected to live with him.*

*The Respondent completely disputes that he ever put his hand out into the Petitioner's face and would tell her to wait if she attempted to speak and that she would 'have to wait for permission from him to be able to speak'. This is a completely false allegation made by the Petitioner.*

*The Respondent notes the allegations made by the Petitioner with regard to her Avon business. However, the Petitioner has completely misrepresented the situation in many ways. The Petitioner did not discuss the possibility with the Respondent as she states; he returned home from work one day to be told the Petitioner that someone had knocked on the house door and recruited her! The Petitioner raised this with the Respondent, as she said she would need him to do the necessary work for the business which involved the computer, as she felt*

*she would not be able to do this. The Respondent reluctantly agreed, as although he felt he had too much on to want to do this, he felt he should support the Petitioner in something she had decided to do.*

*The Respondent denies that he 'organised where she would canvas' and recalls that this was determined by an Area Manager directly with the Petitioner.*

*The Respondent accepts that he did enter the orders onto the Avon website, but as stated above this was because the Petitioner had asked him to do this for her.*

*The Respondent denies that he 'insisted that she [the Respondent] was out for at least half of the evenings per week, either collecting booklets or taking orders.*

*The Respondent denies that he made the statements regarding the Petitioner's allegedly wanting to quit as stated by the Petitioner.*

*The Respondent also denies that he would say that the Petitioner 'was treating him as a babysitter and that she should not leave him at home with three boys to take care of'. The Respondent does not see how the Petitioner believes that such a statement could be consistent with her previous allegations that he would 'demand that she go out to collect brochures or deliver products'.*

*The Respondent denies that the Petitioner's friends 'stopped coming to see her because the atmosphere in the home was so uncomfortable', that he 'would make anyone who came into the home uncomfortable' or that 'he would speak to her in a derogatory way and belittle her'.*

*The Respondent disputes that he made a speech which was derogatory towards her and her Father and notes that the Petitioner claims that her Father felt that this was the case. The Respondent holds the Petitioner to proof in this regard and if the Petitioner fails to provide evidence from her Father to support this allegation, will ask that the Court take such a failure into account in determining the truthfulness of the Petitioner's allegations as a whole. The Respondent disputes the allegations made by the Petitioner with regard to the events in February 2017. He particularly disputes that he was 'furious' or that he made the statements that the Mother alleges he made. The Respondent also disputes that he 'made the weekend unbearable and so uncomfortable for her because he continually verbally abused her' or that 'he would ignore her completely'.*

*The Respondent notes the allegations made by the Petitioner in her initial Petition, prior to her seeking and being given permission to amend her Petition. For the avoidance of doubt, the Respondent disputes that he was controlling during the relationship, that he is manipulative or that he behaves in a bullying manner. The Respondent notes that he has a*

*diagnosis of Level 1 Autistic Spectrum Disorder. Although this diagnosis has only recently been given to him, the Respondent considers that his behaviour throughout the purported marriage was very similar in nature to that prior to when the Petitioner first met the Respondent. In addition, the Respondent believes that the Petitioner's description of the behaviour of which she complains in her initial Petition as having been present "throughout the relationship", indicates that she considers his behaviour to have not changed during the relationship. In the light of the fact that there is no suggestion of the behaviour complained of by the Petitioner amounting to a change in behaviour from prior to the purported marriage, the Respondent cannot see how such behaviour can fulfil the statutory requirement for it to constitute behaviour such that the Petitioner cannot reasonably be expected to live with him, as the Petitioner would have clearly have been aware of the nature of the Respondent's behaviour prior to the purported marriage and effectively accepted it by entering into the purported marriage.*

*In addition, the Respondent has continued to reflect and remains of the view that he does not feel that it is in the best interests of the children of the marriage for their parents to be divorced at the present time. The Respondent notes that his understanding of the views of the Petitioner are very limited due to her refusal to engage with the mediation he proposed upon the Parties' separation in 2017.*

*In conclusion, the Respondent does not believe that any marriage (if such exists) has irretrievably broken down and that reconciliation is not possible. He does not believe that the Petitioner's Petition for divorce makes any allegations which appear to satisfy the criteria of irretrievable breakdown as mandated by Section 1 of the Matrimonial Causes Act 1973, and thus asks the Court to dismiss the Petition.*

*The Respondent believes that the Petition, even on the amended basis, remains 'totally without merit' and would ask that in dismissing the Petition, the Court makes a declaration to this effect.*

*The Respondent believes that the Petitioner should pay the costs of his defending this Amended Petition.*

### **The evidence**

34. For the final hearing the evidence in this case was limited to a statement each from the Parties and each party gave oral evidence. Consistent with the order made, at the ground rules hearing, each party was permitted to file and serve questions in advance.

There was no limit placed on the Parties as to the number of questions which could be filed however each party was given notice that they would be limited to putting their questions and obtaining answers within the time allowed by the hearing template.

35. Upon my consideration of the draft questions, I disallowed a number of questions of each party. I made a case management order on the Friday before the hearing started on Monday in the following terms:

*The following questions are disallowed. To assist the Parties the Court has given broad reasons for its position. There may be other reasons not stated.*

*[Reasons for disallowance were given as:*

The question is of no evidential value or relevance and the answer to the question will not assist the Court to determine the legal test it has to apply;

The question refers to negotiations between the Parties which are potentially privileged. The answers may be relevant to the question of costs, but not the test the Court has to apply at this stage;

The question relates to issues not raised in the pleadings or the Parties' evidence within their statements filed for the final hearing;

The question relates to issues not raised in the pleadings or the Parties' evidence within their statements filed for the final hearing;

The question is impossible to answer;

The question is not a question;

The question is unfair.]

I disallowed 76 of the Husband's questions out of a total of 180 and 3 of the Wife's 30 questions.

36. The Wife did not take issue with the order. The Husband made representations at the commencement of the hearing claiming that the case management order was potentially unfair by way of discrimination. I listened carefully to the Husband's submissions and ruled that the questions had been disallowed fairly, appropriately, and proportionately for the reasons given. The hearing continued on the basis that the written questions were put to each party and then each party was permitted to expand upon their answers by way of re-examination in the usual way.

37. Whilst the Husband had been given permission to instruct Mr Ison as his advocate, he chose not to do so for the preliminary part of the hearing whilst the Wife answered

the pre-prepared questions. The Husband agreed that it would be inappropriate for him to ask questions of the Wife, she having been denoted a vulnerable witness and asked me to ask the questions of the Wife on his behalf, which I did.

38. Regarding the Husband's cross-examination the Court offered the opportunity to Mr Ison to put the questions to the Husband. The Husband politely explained that he would prefer the Court to put the questions. The Husband said that he was used to seeing my face on the screen and that having heard the manner in which the questions being put to the Wife it was his preferred choice that I put questions to him. I took the view that this was eminently sensible and was consistent with the Court endeavour to ensure procedural fairness. It was also compliant with the Husband's Following the Husband's answers, but without direct consultation between Mr Ison and the Husband, Mr Ison asked one supplementary question which assisted the Husband to clarify a point he had made during cross examination.
39. At the conclusion of the evidence each party was invited to file and serve written submissions the timetable of which was agreed with Mr Thomas for the Wife and the Husband who rightly consulted upon this point with Mr Ison. The timetable for filing written submissions was therefore helpfully agreed by the Parties. The Court has received written submissions from Mr Thomas which were forwarded to the Husband for him to prepare his written submissions and file sequentially. Both Parties have filed their written submissions to assist the Court in its deliberations.
40. I pause at this point to express the Courts gratitude to both Parties Mr Thomas and Mr Ison who demonstrated a high degree of cooperation and respect for the Court process. The Court is also immeasurably grateful to the intermediary, Ms Pike, without whose professionalism I cannot see how this hearing would have been effective.
41. In Mr Thomas' closing submissions, he highlights eight subheadings of behaviour which he relies upon on behalf of his client to demonstrate that the Husband has behaved in such a way that the Wife cannot reasonably be expected to live with him. In a further valid submission, the Court is asked to accept that there are a large number of allegations relating to the Husband's behaviour and that the Court should not have to be satisfied that each and every allegation proved to conclude that overall, the test provided for in section 1(2)(b) is met.
42. I have considered the particulars in the Amended Petition, the Respondent's answer and both Parties statements as supplemented by their respective oral evidence. I



understand that I must take an holistic view of the evidence in relation to behaviour throughout the entire marriage. In addition to the behaviour during the marriage I am asked to have regard to some of the Husband's behaviour prior to the marriage. The Wife says this behaviour is relevant when it happened without her knowledge and where she only became aware of it after the marriage (or even after the Parties separated).

43. The Husband says that some aspects of his pre-marital behaviour served as an indicator as to what the Wife could expect following the marriage and that where such simply continued into the marriage the Wife should not be able to say that he has behaved in such a way as she cannot reasonably be expected to live with him as she was forewarned as to how he might behave.
44. Each of these propositions has some merit and I will refer to them where necessary and give such weight as I deem appropriate.
45. I have decided to address the Wife's allegations by following the subheadings set out in Mr Thomas' submissions; the particulars in the Amended Petition are quite discursive and somewhat muddled. The particulars are not numbered, and neither are the paragraphs limited in their content to particular allegations. The language slips seamlessly from first to third person. Overall, it is not an impressively drafted document and would have benefitted from more professional or experienced input or oversight. Whilst the Husband has always represented himself, the Wife has always had the benefit of professional representation. I do not wish to cause any unnecessary professional embarrassment by my comments, but I do wonder whether the fee earner involved in this significantly important (and very costly) litigation has been effectively supervised.
46. I think the fairest way of approaching the allegations is to follow counsel's lead. Mr Thomas has gone to lengths in his submissions to collate the allegations into a semblance of order which I find, for the purpose of my analysis to be useful and I am grateful to him for this. I will therefore use the same headings as those adopted by Mr Thomas.

### **Bullying and controlling behaviour and belittling of the Petitioner**

The Wife says in paragraph 20 of her statement,

*"I felt I could not stand up to him. If I did say anything this would lead to a terrible atmosphere and the Respondent would be verbally abusive towards me". In support of this*

*contention Wife refers to a period after Daniel was born alleging that the Husband would not allow her to buy Joseph an appropriate bed and littered Daniel's bedroom with paperwork.*

During cross examination the Wife amplified this particular issue and having explained her concerns she went onto explain how she found a solution. Essentially, the Wife took the advice of her friends and utilised a travel cot with a new mattress as a short term solution pending the house move. Regarding the Husband's reaction to this the Wife said: "I wouldn't say it was against his wishes, because I hadn't discussed putting that travel cot up in the bedroom; it was just an idea that someone had and said, "so your child can be safe". I'd said beforehand to the Husband, "you know this isn't safe; we ought to buy a cot". And his words were, "Well, we don't need to buy a cot because we're going to be moving soon and then [the child] will eventually go in a bed and he could use that cot". So, he didn't want to purchase something, but I was concerned about the safety of our child, so obviously, that was sorted out. And then, I remember the Husband coming home that evening and going to the bedroom; I was in the bedroom at the time when he walked in. And he just looked at the travel cot and went, "hmm" and walked off. But no, there was no conversation about, "How dare you have a travel cot", it was just; it happened, it was dealt with, so he [the child] was safer."

47. I formed the view that the manner in which she described this example of behaviour in her statement was somewhat exaggerated as she was able easily to find a solution, albeit a temporary one. This was consistent with the Husband's response in evidence whose response to this example was to say that he had questioned the efficacy of replacing beds prior to removal saying that he thought it not to be a good idea to buy packaged furniture which would then have to be taken apart on moving. He said that he was unable to understand this allegation until it was fully explained in cross examination and having listened to the Wife's explanation, he recalled that whilst his Wife did see the bedding to be a problem, she nevertheless found a solution by using an alternative bed for the child.
48. Under the same heading and referring to paragraph 20 the Wife gave nine quotes of what she says the Husband has said to her. Each of the quotes is derogatory in its content and if said would be unpleasant to hear no matter what the context. Neither the statement nor the Wife's oral evidence is specific as to when any of the phrases were used. Indeed, there is no corroborative evidence that any of the phrases were used during the time the Parties were living together, or whether the Parties had lived together for 6 months following any of the alleged phrases having been used. Whilst it would normally be reasonable to assume that allegations of the Husband's behaviour contained within the Petition and the statement would be restricted to the period when the Parties were living together, when I consider the Wife's evidence as a whole, and the Husband's flat denial to use such statements are not find myself able

to assume or indeed to find that these comments were made by the Husband, let alone during the course of cohabitation.

### **The Respondent not allowing the children free access to the house**

49. The Wife's evidence in her statement on this matter is set out in paragraph 24. The Wife says, "The Respondent would never allow free access to our home for the children. They were only allowed in the back living room of the house. The Respondent put a safety gate across the area between the living room and the kitchen area and I therefore filled this room with toys to try to make it as entertaining for the boys as possible as they were only allowed in this area each day behind the safety gate." In the Wife's evidence she conceded that the two living areas in the house and the main living area was part of the kitchen. In his evidence the Husband explained that the house had an open plan living area, that there was a small living room at the front which was reserved as an adult room and at the back of the house was much bigger and have patio doors leading to the garden. The Husband explained that this was the room for the children, and they use it as a playroom/family room. The Husband confirmed that he had put a gate restricting the movement of the children into areas of the house where they could come into danger although consider this to be perfectly reasonable and explained that as he was out of work all day, when the Wife had exclusive control of the children, she was perfectly at liberty to let them wander wherever they chose. It was clear from Husband's evidence that he was at an absolute loss as to how this behaviour could be described as giving rise to the Wife concluding that she could not reasonably be expected to live with him, and I agree with the Husband's position.

### **The Respondent putting out his hand and stopping her speak**

The Wife's evidence in respect of this allegation is contained in her statement where in paragraph 23 she says,

*"I would be fearful of speaking to him, he would sit with his laptop on his knee all evening and he would put his hand out in my face and told me to wait a final attempt to speak. It became to the point where I needed permission from him to speak in my own home."*

During the Wife's evidence she elaborated during the following exchange:

Q. *Right, so this is about the reference to the use of the laptop in the evenings. "In your paragraph three on page B49, it is wholly untrue that I used to stop you from speaking by holding my hand out to your face, is it not?"*

*So, he'd be here, there's a settee so it's a long settee here and he'd be sat here, and I'd be sat; he was facing so he'd be on the end, and I'd be sat here. He'd be typing away on his laptop and I'd go, "do you know what, love?" And he'd go, "just wait, wait" then he'd finish what he was doing and then he'd go, "yes?"*

50. The Wife accepts that she relied on the Husband extensively to assist her with her companies to be able to operate her Avon franchise. The Wife also accepts that during the evening the Parties conversed. Considering this allegation in the context of the marriage it seems to me that this is a further example of the Wife exaggerating. There may have been the odd occasion when the Husband has been busy working on his computer and focusing on a matter when he's asked not to be interrupted. I do not accept that the Wife has sufficiently made out a case that this was even a frequent event or even that it was usual.

#### **Avon**

51. The Wife's allegations under this heading relates to her taking on an agency or franchise for the sale of Avon products. The Parties evidence differs as to how the Wife became involved in Avon the material allegation is that the Wife maintains that the Husband effectively controlled the Wife's engagement to the extent that he was dictating where she should canvas and when she should leave the home to distribute sales literature. It is the Wife's stated case that she took on the agency for some independence, but the Husband's controlling nature would not allow this. The Husband's position as stated in his oral evidence was that the Wife informed him that she had signed up to Avon and told him, "You're going to have to do all the computer stuff". He says that far from interfering in the agency he was supportive and carried out the administrative function which the Wife was unable to undertake. During the Wife's evidence I formed the view that she had overstated her position. I refer particularly to the allegation of the Wife that the Husband directed where she should canvas and where she must work when those directives came from the company itself. In my judgment, the Wife again exaggerated to the point where she presented a false picture in an attempt further to present the Husband as controlling.

52. Having regard to the personality traits of the Husband it is my finding that the Husband's attempts to help the Wife in this venture were genuine, well intentioned and proportionate. It may be that the Wife regretted having committed herself to

undertaking quite strenuous and demanding work while pregnant but there is no cogent evidence that the Husband's approach was controlling or disproportionately intrusive. Any impression of this, the Wife had should have been regarded by her in the context of the Husband's autism, as I explain later.

### **Financial control**

53. A specific allegation of financial control by the Husband was presented by way of an example of an incident which occurred *prior to the Parties marrying*. It involves the Parties signing mortgage guarantee documentation at the home of the Husband's parents. The Wife presents a picture of the Husband and his parents conspiring to have the Wife sign documentation the results of which would give the Husband's parents an interest in their future property. I am troubled by this having been given as an example of financial control within the marriage. Firstly, because whatever occurred, and it is impossible to establish exactly what did occur, it certainly did not occur during the marriage. This means that the Parties married after such behaviour occurred and that they remained living together for a far greater period than six months after the event.
54. Secondly, it seems to me that the Wife benefited from the financial arrangement as she was able to purchase with the Husband a property with the support of the Husband's parents; a property which she would in all likelihood been unable to purchase without that support as she already owned her own property in her own name.
55. Thirdly, the Wife confirmed during her evidence that she did not ask to read the document at the time of signing and has not asked to read it since nevertheless, the Wife was able to explain that it was this document that meant that the Parties were able to buy a house for them both to live in following their proposed marriage.
56. Of potentially more relevance than the obtaining of the mortgage with the support of the Husband's parents is the Wife's allegation that the Husband controlled the finances throughout the marriage and deprived her of any form of independent means. The Wife's statement bears quoting,

*"I believe that the Respondent took away my financial independence. The Respondent put money into a joint account that I have access to this was to pay for the bills/mortgage/household items/shopping and anything needed for the children. The Respondent clearly had a surplus of money. This was always kept*

*hidden from me. I therefore only had access to monies for bills, the home and the children and I would never have any funds from myself. There was an approximate surplus of £2000 per month.”*

57. In her oral evidence the Wife undermined her allegations in this regard. The Wife confirmed that she had her own bank account which she had maintained since before the marriage and had access to the joint account.

58. An extract of the Wife’s cross examination exemplifies the problem the Court has in finding that the Wife’s allegations are sustainable:

*Q. Next question, “did you really have no money in any bank account of your own?”*

*A. During the marriage?*

*Q. Well that is the question, “did you really have no money in any bank account of your own?”*

*A. I don’t know, throughout the whole marriage I don’t know what money I had.*

*Q. Pardon?*

*A. I don’t know what money I had throughout the marriage; I did have one bank account of my own that I had before the marriage that I’ve still got now to this day.*

*Q. Next question, “if so, when did you first have no money?”*

*A. As in respect of when, I don’t understand. We had a joint bank account that I got money for myself and the children from during the marriage.*

*Q. The next question is, “when did this last until?” Well, I think you have answered that have you not?*

*A. Until the end of the marriage.*

*Q. “Did you really have no money from 2011-2017?”*

*A. No, I was working for some of that time; I was working before I had the children.*

*Q. “How many bank accounts did you have at the time?”*

*A. I had my own bank account and a joint bank account with the Respondent.*

*“Were all your accounts empty for the whole of that time?”*

*A. Oh, I’ve no idea; I don’t think any, either of them or any of them would have been empty because the bank would have closed them so, I presume there was some money in them.*

She said that she had no idea if the bank accounts were funded or were empty; she confirmed she must have had some money in them because she was able to

buy a caravan from her own money which cost (on the Wife's evidence) £12,500. Significantly, she said, "I have financial independence until I had my first child because I had been working as a social worker." The Wife went on to confirm that she could and can access the Halifax account online and that she had access to a joint account with the Nationwide she said that she had a debit card which she could use to buy goods and obtain cash and that she made purchases from that account. The Wife said, "He didn't control the spending from that bank account." The Wife went on to say, "He didn't stop me buying anything for myself." The Wife was asked, "Do you agree that to buy items that you wanted to buy, gave you financial independence as you did this without speaking to [the Husband]? She answered:

*"Yeah, I bought things without permission ... I don't have any examples of things that I wanted that I couldn't get, to be honest."*

In Mr Thomas's submissions he acknowledges that it has to be accepted that the Wife's oral evidence was ambivalent. In my judgment the Wife's evidence was not ambivalent, rather, it presented an accurate overall picture of the Wife's financial status throughout this marriage and I find that the Wife was not financially controlled throughout the marriage; rather she unfortunately confused her position of financial dependency following the birth of the first child with being financially controlled.

### **The March 9, 2017 incident**

59. An incident occurred on 9 March 2017 which the Wife claims was the final straw in the relationship between herself and the Husband and which prompted her to leave him. The Parties did separate, and they had not lived together since. The Wife's account of the incident as set out in paragraph 29 of her statement presents a rather different picture to the way in which the incident is referred to by His Honour Judge Baker in a judgement handed down in the Parties' Children Act proceedings, to which I have been referred. According to the Wife in her statement in these proceedings, whilst dropping Joseph at nursery she became convinced that she had brought Daniel with her and that he was not in her car. His Honour Judge Baker was rather more forthright in his description of what happened and describes the incident as a, "Bizarre set of circumstances caused by the Wife having forgotten that she didn't have Daniel in her care and that he was in the safe hands of the father". What

followed was the Wife reporting to the police that Daniel was missing and the police visiting the family home. Whatever the Wife told the police resulted in the police accusing the Husband that he had abducted Daniel. This incident has to be set in the context of a father being at home looking after his child while the child's mother took the other child to nursery and then suddenly being confronted by uniformed police officers making allegations of child abduction. An event of this type would be difficult enough for any father to comprehend let alone cope with but for this Respondent an autistic person, the police allegations must have been horrific. What followed is not contentious and was little short of a nightmare for the Husband who was arrested under the Mental Health Act and detained for assessment. Meanwhile his child was removed from his care and placed with social services. The Husband was subsequently (after several hours wait) assessed by a psychiatrist and fortunately immediately released. This incident has been (and remains) the subject of findings in other proceedings and I have no intention of attempting to make findings which may not be consistent with those already found as I understand they remain contentious. My finding on the information, which is uncontentious, is that the Husband's behaviour in this overall context is not such as would meet the relevant test.

### **The wedding**

60. At first blush this may seem, as Mr Thomas has suggested, an event peripheral to the main issue as the allegation relates to something alleged to have been said at the Parties' wedding by the Husband and is only reported to the Wife, after the Parties have separated. The law is clear, though, that the behaviour referred to need not have caused the breakdown and need not have even taken place during the Parties' marriage. As stated above, provided the behaviour did not come to the knowledge of the Petitioner more than 6 months prior to the date of separation, it does not matter that the behaviour may have occurred prior to or even on the day of the Parties' marriage.
61. My reason for discounting this allegation is not because I consider it to be peripheral, it is because it is hearsay, upon which I am unwilling to give any or sufficient weight for it to be considered cogent or reliable evidence. Such evidence is potentially admissible, but the length of time that has passed and the vague nature of its content lead me to give no evidential weight to this allegation at all.



### **The Respondent's insistence that there was never a valid marriage**

62. This is the aspect of the Husband's behaviour that has the potential to give me the most concern. In his closing submissions Mr Thomas says that it is open to the Court to consider this aspect of the Husband's behaviour and its relevance for the purpose of applying the test under s1(2)(b) MCA 1973. I do not agree entirely with that submission. To take this approach would be to approach the behaviour in a purely objective manner when the duty of the Court is to approach the issue both objectively and subjectively.
63. The Wife was not cross examined on her reaction to this aspect of the Husband's behaviour, so the Court has the evidence contained in her statement which was not challenged by any one of the 185 written questions the Husband originally wished to put to the Wife.
64. In her statement, the Wife says, while commenting on her wedding ceremony:
- "I was not provided with any reason for the marriage not to feel valid. I have never believed that our marriage was not a valid one. Prior to our wedding we visited the marriage celebrant (this was a few days before) we had a meeting with her, and she explained the process. We signed our marriage certificate on the day and I never once believed we were not married. I am extremely pleased that I have at last been able to prove we are legally married."*
65. The above statement of the Wife is the only evidence the Court has as to the impact the Husband's mis-placed denial of the validity of the Parties' marriage had on the Wife. Whatever the Husband alleged, the Wife confirmed that at no time did she feel the marriage was not valid. When Mr Thomas says he will leave it to the Court to measure this aspect of the Husband's behaviour against the test, he was right to say this in the context of their being a dearth of evidence to draw upon. It could have been pleaded that the Husband's behaviour had a devastating effect on the Wife as the denial goes to the very heart of their union; this is not how this issue was pleaded to the Court. If I look at this aspect of the Husband's behaviour wholly objectively, I could reach a conclusion that no party to a marriage could reasonably be expected to live with their spouse when the spouse is in absolute denial of the lawful existence of the marriage. However, the application of the test is, as I have stated above, more nuanced; I have to reach a conclusion as to how this behaviour has affected this Petitioner. The evidence of this is limited to the wording contained in the Wife's statement. It is not even pleaded in the Amended Petition. While I accept that the

Wife was extremely pleased to be able to prove that she had been lawfully married to the Husband there is insufficient evidence before the Court for me to find that the Husband's continued denial has so much impact on the Wife that *this Wife* cannot reasonably be expected to live with *this Husband*.

### **Other allegations**

66. Before moving onto the evidence of the Parties I must, for the sake of completeness reiterate that I have chosen to use as examples of pleaded behaviour those referred to in the closing submissions of Mr Thomas. I can assure the Parties that I have considered all the allegations mentioned in the Amended Petition and where they are not covered by the above there are no allegations which I consider would support any different conclusion as I have reached when viewed in the whole context of the marriage, even if proved.

### **The Parties' evidence**

67. I pause at this stage to record my general assessment of the Parties' evidence as given to the Court.
68. I found the Wife to be a largely ineffectual and unconvincing witness. The oral evidence of the Wife was peppered with inconsistencies and contradictions of her own written evidence. The following serve as examples:
69. The Wife's evidence regarding her Avon agency was that the Husband was controlling to the extent that he told her where to canvass: her oral evidence contradicted this as she confirmed she was told by the company where to canvass.
70. The Wife's written evidence regarding financial control was clear that the Husband had total control of the finances to the extent that he deprived her of money and the ability to spend it as she chose: her oral evidence was that not only did she have access to substantial savings (enough to buy a caravan) but that she had free access to money and was not limited by the Husband in her day-to-day savings.
71. In oral evidence the Wife openly confirmed, "We had a joint bank account; I got money for myself and the children from it during the marriage ... I had my own bank account and a joint bank account with the Respondent ... I have no idea if my accounts were empty, there must have been some money in them." These are statements inconsistent with the Wife's Amended Petition which contained the following allegation: "The Respondent would make sure that the Petitioner gave all

of her money from her bank account to him to pay towards the marital home that they were going to buy. This left her penniless and totally dependent upon him.”

72. The Wife’s evidence regarding the children was that the Husband controlled their movements in the house and that she had to leave to house to give them freedom: during oral evidence she confirmed that the children were restricted to a large family area and that she had the ability to let them roam as they wished during the day when she was able to supervise.

73. Further the Wife made major concessions during her oral evidence which were inconsistent with the picture she paints in her statement. For example, she said she did not feel bullied in general despite stating in para 19 of the statement that, “Ultimately the Respondent is a bully.” The absolute language that is a feature of the Amended Petition and the statement is simply not replicated in the Wife’s oral evidence. While this may be acceptable and understandable in small measure, where it is in large measure it must, in my judgment undermine the integrity and reliability of the allegations as a whole. The following exchange gives an example of such:

*Q. Would you say that B’s tone of voice is regarded by you as being him bullying you?*

*A. No.*

*Q. Do you feel bullied by his tone of voice?*

*A. No.*

*Q. And mannerisms I think yeah, did you feel bullied simply by B’s tone of voice and mannerisms towards you?*

*A. What, just in life; just in general?*

*Q. Yes?*

*A. No.*

*Q. Not in general?*

*A. No.*

74. During her evidence the Wife accepted that the Husband was untidy before and during the marriage and went on specifically to deny that the Husband’s untidiness was pleaded as a ground for her divorce. This is despite the Amended Petition containing the allegation:

*The Respondent would purposely leave lots of paperwork around especially on the floor in the living area and in the hall and kitchen. The Respondent had a desk upstairs also. If the Petitioner moved any of the paperwork or it was touched while she tried to tidy the house, he would be furious and the Respondent would tell me (sic) her that she had lost his possessions. Paperwork surrounded the home, the home was cluttered and constantly untidy. The Respondent would tell the Petitioner that this was her fault and that she would leave the house in a mess but the Respondent would not let her move any of the paperwork which was actually causing the clutter and mess.*

75. Making allowances for nerves and the fact that no-one ever remembers events perfectly (such is the nature of recall) I found the Wife's evidence significantly to lack reliability. I do not think the Wife was deliberately lying in her oral evidence. I think she was being honest. I have formed the opinion that the particulars of the Amended Petition and the Wife's statement do not present as a accurate picture of the behaviour of the Husband as they might or should have done.
76. I found the Husband to be a credible and reliable witness. At no point was I able to identify a material inconsistency in his oral evidence. The Husband made concessions and was clear in his explanations giving context to the Wife's claims; for example, referring to the Avon allegations he said there were bits which were true and bits which were untrue, and he was able to explain convincingly his role in supporting the Wife's business with clarity and, I concluded, without exaggeration or minimisation. The Husband offered an explanation for the Wife's allegation of financial control saying that she is probably confusing control with dependency, which I accept.
77. Where there is a difference between the evidence of the Husband and the Wife, it is the Husband's evidence I prefer.
78. In my analysis of the Husband's behaviour and the effect this will have had on the Wife I have first to contextualise the behaviour with regard to the Husband's diagnosis of autism as alluded to above. As I stated in my introduction, I must consider the effect of the Wife's knowledge of the Husband's late diagnosis of autism and how this informs my application of the test. The evidence I have, suggests that the Wife did not know the Husband had a formal diagnosis of autism until after the Parties separated: after the proceedings were issued but before the Petition was amended.

79. I am satisfied, having heard the evidence and considered the reference material I have named, particularly the ETBB, that the Husband's autism is likely to have had a significant impact upon the manner he has behaved throughout the marriage (and where relevant, before the marriage). In so far as there was a period the Wife did not know of the diagnosis of autism it may be understandable that she may have reacted badly to aspects of the Husband's behaviour. Once, though, the Wife (as a trained and qualified social worker) was put on notice of the diagnosis, either formally or otherwise, it is appropriate to expect her to make such allowances or adjustments as are reasonable. Rather than making simple allowances, my view is that the Wife has sought to capitalise upon the Husband's autistic traits as evidence of behaviour to attempt to satisfy the test. I am not suggesting that any type of behaviour from someone who is autistic has to be tolerated; that would make a nonsense of the way the Court of Appeal has directed the test should be applied. I am looking at this marriage and this Petitioner and this Respondent. Here we have a marriage between a doctor and a social worker; both professionals who can reasonably be expected to show a level of empathy and professional understanding of the personalities of the other within the marriage they have committed to.
80. For the sake of completeness, I have considered whether is necessary or appropriate for me to find whether the marriage has broken down irretrievably. My view is that it would be potentially wrong to make this finding at this stage. Upon the dismissal of these proceedings either party may commence fresh proceedings under the new law, and it will be for a judge in those proceedings to make such a declaration if appropriate. It is unnecessary that I do so, and to do so may be seen as to fetter the discretion of the Court in any future applications.
81. It follows from my observations above that I am unable to make findings supportive of specific elements of the Husband's behaviour which would meet the test. Looking at the whole picture and applying the five point test of Munby P in Owens I am not satisfied that the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.

### **Costs**

82. The Respondent seeks various costs orders against the Petitioner and her solicitor. The Petitioner does not seek any orders for costs save for assessment of her legal aid costs.

## **The Law relating to costs**

Part 28 of the FPR contains the following provisions regarding the Courts ability to make costs orders and its discretion not to do so

28.1. The Court may at any time make such order as to costs as it thinks just.

28.3.(1) This rule applies in relation to financial remedy proceedings.

(2) Rule 44.3(1), (4) and (5) of the CPR do not apply to financial remedy proceedings.

(5) Subject to paragraph (6), the general rule in financial remedy proceedings is that the Court will not make an order requiring one party to pay the costs of another party.

(6) The Court may make an order requiring one party to pay the costs of another party at any stage of the proceedings where it considers it appropriate to do so because of the conduct of a party in relation to the proceedings (whether before or during them).

(7) In deciding what order (if any) to make under paragraph (6), the Court must have regard to—

(a) any failure by a party to comply with these rules, any order of the Court or any practice direction which the Court considers relevant;

(b) any open offer to settle made by a party;

(c) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;

(d) the manner in which a party has pursued or responded to the application or a particular allegation or issue;

(e) any other aspect of a party's conduct in relation to proceedings which the Court considers relevant; and

(f) the financial effect on the parties of any costs order.

83. In KS v ND [2013] EWHC 464 Lord Justice Ryder made the following observations:

*15. I now turn to the question of costs. At first instance the mother incurred costs of £37,500 (all of which was borrowed from friends and other lenders) and the father nearly £58,000 of which he had paid £21,000. In the appellate proceedings they have run up costs of about £15,000 each. It can therefore be seen that the sums paid in costs completely dwarf the sums they were arguing about. Time and again judges point out the madness of litigating in this way; and time and again their admonitions fall on deaf ears. At the end of the day all we can do is to express concern about such extreme folly, and if it is ignored then the parties will have to live with, and take responsibility for, the consequences of their decisions.*

84. The case of Gojkovic v Gojkovic (No 2) [1991] 2 FLR 233 gives authority for the concept that where the no order principle does not apply in matrimonial proceedings by virtue of R28.3(5) there should be a *rebuttable presumption* (my emphasis) that costs will follow the event. This approach also received approval more recently in Solomon v Solomon & Ors (Rev 1) [2013] EWCA Civ 1095.

#### **History of the divorce litigation**

85. The following orders have been made throughout the divorce proceedings which are the potential subject to adjudication as to whether a costs order should be made.

1 Feb 2021	Costs in the cause
5 May 2021	Costs reserved to next hearing
11 June 2021	Costs in the case
18 Oct 2021	Costs in the petition
19 Apr 2022	Costs in the suit
24 May 2022	Costs reserved
23 June 2022	Costs reserved

86. Following the conclusion of the divorce hearing the parties were encouraged to agree outstanding costs and in default a timetable for written submissions as to liability was set which has been complied with by both parties. The Court now has the benefit of the parties' written submissions. This aspect of the judgment has been considered by the Court without a further hearing, the Court considering it disproportionate for such a hearing to take place.
87. I have carefully considered both parties submissions and make the following observations which the parties should consider to be findings for the purpose of my decision as to respective costs liabilities. The parties should recall that I have retained personal conduct of this case since dealing with the Respondent's various appeals against the orders of district judges and have, as a result of judicial continuity, had the benefit of an in-depth knowledge of the proceedings. I consider myself to be uniquely placed to make the following findings without the need for further expansion or justification.
88. The divorce suit has been hotly contested by the Respondent. The essence of the defence to the divorce was in two parts. The first and most significant element of the defence was that the parties were never legally married. It was the Respondent's case that the parties had undergone a ceremony of marriage in Australia but that the marriage was not legally recognised by the Australian authorities as amounting to a lawful marriage upon which a petition could be issued. The Respondent took advantage of the Petitioners inability to locate a certified copy of the marriage certificate; the petition was supported by a record of the marriage ceremony which was considered sufficient by the Court staff to issue the petition and for the divorce to progress to a decree nisi (subsequently appealed and rescinded for unconnected reasons). During the proceedings the Petitioner's solicitor faced immense challenges in obtaining a certified copy of the certificate from Australia and incurred significant expense in doing so. Once the copy was obtained, I struck out this element of the Answer and ruled in an extempore judgment that the Respondent had known all along that the marriage was lawful. The Respondent attempted to appeal this decision and ruling but was unsuccessful. In my judgment the Respondent's approach in this regard was conduct which it is appropriate to take into account when considering the question of liability for costs.



89. The Respondent made an open offer in February 2022 to the Petitioner to compromise the proceedings and prays this in aid of his case that he should benefit from an order for costs. The offer was wholly conditional upon the Petitioner:
- a) Agreeing to amend her petition to a two year separation with consent.
  - b) The issue of whether the Petitioner's solicitor should pay the Respondent's cost to remain a live issue.
  - c) The appeal against the strike out order referred to above to remain live.
  - d) The Petitioner to pay the Respondent's costs of defending the divorce (albeit not to be enforced without leave for any period the Petitioner was legally aided)
90. Regarding this proposal I make the initial observation that the first condition is misconceived as an amended pleading dates back to the date of issue of that pleading, when the Respondent had not indicated he would consent to a divorce. My more condemning observation is that in my judgment, this was not a genuine attempt to resolve matters between the parties. Quite the opposite, it was an attempt by the Respondent further to engage the parties in continuing protracted and expensive litigation.
91. It is of note that the Respondent is not a stranger to the litigation process and must be fully acquainted with how matrimonial litigation can become extended unless steps are taken to limit its course. The Respondent's previous divorce led to 3 reported Court of Appeal decisions. In addition, the parties have been extensively involved in private children proceedings which began in this Court and have been subsequently transferred to the Family Court at Lancaster. My assessment of the offer made by the Respondent is that it was entirely reasonable and appropriate for the Petitioner to refuse the offer. I go further to say that the making of an offer in these terms was more likely than not an attempt by the Respondent to place inappropriate pressure on the Petitioner and was an attempt to extend the course of this litigation unnecessarily and in contravention of the Overriding Objective. Thus, it was conduct which I take into account in my analysis of costs liability.
92. Having regard to the Court's discretion as set out in the law above and looking at the overall picture, including the findings I have made, it seems to me that fairness must dictate that where there is a presumption that costs should follow the event, that

presumption should be rebutted and that there should be no further orders in relation to costs either in the main suit or the related financial proceedings.

**93. My order will be:**

- a. The Amended Petition is dismissed.
- b. There will be no order for costs save for Legal Aid Assessment of the Petitioner's costs where appropriate.