

IN THE FAMILY COURT SITTING AT OXFORD

FC v WC (declarations relating to dissolution of French PACS)

Date: 21 October 2024

Before :

HHJ Vincent sitting as a s9 Deputy High Court Judge

Between :

**FC
- and -
WC**

Applicant

Respondent

Zoe Harrison (instructed by **Claire Devine of Marc White & Co., solicitors**) for the
Applicant
The Respondent was not represented

Hearing date: 2 September 2024

Approved Judgment

This judgment was handed down remotely at 10.00am on 21 October 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

HHJ Vincent:

Introduction

1. The applicant and respondent are British nationals. They are in a loving, committed, long-term relationship, and have every intention of remaining so. In 2019, when living in France, they entered into a French form of civil partnership, a 'PACS'. In 2022 they returned to live in England. Their intention was to dissolve the PACS and enter into a civil partnership in this jurisdiction. They had been given to understand that this was extremely simple, but unfortunately, they have found themselves embroiled in a tangle of red tape.
2. A way has been found through their difficulty. I have made two declarations that confirm the parties' PACS has been dissolved, and they are free to enter into a civil partnership in this jurisdiction. In this judgment, which follows on from that decision, I set out the background, the evidence considered, and the route taken to resolve the issue. I am grateful to the applicant's solicitor Claire Devine, and her barrister Zoe Harrison, for their assistance.
3. The respondent was not technically represented, but he is fully aligned to the applicant's position, and has contributed to the joint witness statement.

History

4. The parties met and started their relationship in 2009. They had both previously been married. While they were fully committed to one another, they did not wish to marry again. Civil partnerships for couples of the opposite sex did not become available in England until December 2019, so that was not an option.
5. In 2011 they moved to Switzerland to live and work.
6. In April 2018 they retired to France, buying a home together just outside Bordeaux. Their intention was to settle there permanently.
7. They became aware that in France, couples of the opposite sex could enter into a PACS, which they understood to be a 'light touch' civil partnership; less than the formality of a marriage, but nonetheless a sign of their mutual commitment, and something that would provide an extent of formality to their financial arrangements. They understood that the PACS would bring with it some tax benefit; they would be taxed jointly, and would bring some inheritance advantage, in that if one died before the other, the survivor would inherit the estate if that was provided for in a will. Their understanding was that French inheritance law might present something of a

minefield for them, particularly as they each had children from their previous marriages.

8. Accordingly, the parties entered into a PACS on 29 August 2019.
9. Family circumstances then brought about a change in their plans. In 2022, the parties decided to return to the UK to support their children and grandchildren [*description of circumstances redacted*]. They sold their property in August 2022 and moved back to the UK, renting first and then buying a home together in Oxfordshire in April 2024.
10. As part of this process, they updated their wills, as they no longer had any assets in France. During the course of discussions with their adviser, he suggested it might be a good idea to dissolve the PACS and enter into a civil partnership in the UK. His advice was that it would simplify their tax affairs, as they would not have to explain to HMRC the nature of the PACS every time they filed their returns. Further, he said that the UK may at some point in the future change its tax treatment of a French PACS, but it was impossible at that stage to advise when or in what way that might happen.
11. The parties sought advice from their local registry office, and were advised that they needed to dissolve their PACS in France before they could enter into a civil partnership in the UK. The parties then completed a form to dissolve the PACS, and sent it by post to the local town hall in France, along with identification evidence.
12. Shortly thereafter, they received a certificate dated 10 March 2023, confirming that the PACS had been dissolved.
13. When they came to plan their civil partnership in England, things became more complicated.
14. They had a number of different meetings with the local registry office. They were asked to obtain translations of the original PACS registration documents, the dissolution certificate, and then official documents showing the applicant's name at birth, her marriage certificate and paperwork from her divorce.
15. Once all the paperwork was gathered, it was sent on to the General Register Office (GRO). The GRO requested further information regarding the parties' nationality, habitual residence and domicile.
16. On 24 May 2023 the parties received a letter from a casework manager at the GRO, who told them:

'Our role is to ensure that your dissolution is capable of recognition under UK law to ensure that you are legally free to re-marry ...

Unfortunately, our view is that your dissolution is not capable of recognition under UK law and as such your proposed civil partnership arrangements cannot proceed.

...

The recognition in the United Kingdom of overseas dissolutions is governed by the CPA 2004 and we have viewed the dissolution of your overseas partnership as a dissolution after proceedings under section 235(1) of this Act. Section 235(1) states that the validity of an overseas dissolution, annulment or legal separation obtained by means of proceedings shall be recognised if at the relevant date either party to the partnership:

- (i) Was habitually resident in the country in which the dissolution, annulment or legal separation was obtained; or*
- (ii) Was domiciled in that country; or*
- (iii) Was a national of that country.*

From the statement you provided to the Superintendent Registrar it appears that at the commencement of your dissolution (“the relevant date”) neither party to the dissolution was a French national and was not resident or domiciled in France. Under the circumstances it appears that your dissolution is not capable of recognition under section 235(1)(b).’

17. There was a certain amount of going back and forth, but ultimately, the caseworker remained unmoved. The parties were advised to apply to the Family Court for a declaration that the dissolution was valid, alternatively for a dissolution of the PACS under English law.
18. In order to apply for a dissolution of the PACS under English law, the parties understood that they would have to say their relationship had irretrievably broken down, and sign a statement of truth confirming that was true. As their relationship was and is still going strong, this was not something they were able to do.
19. They therefore applied to the Family Court for a declaration that the dissolution was valid.
20. In the application notice, the reason given for dissolving the PACS was in line with the advice they had been given, that HMRC ‘*may not fully understand*’ the parties’ tax status as a result of the civil partnership.
21. The first hearing was in June 2024. Having met the parties, I was confident there was unlikely to be any sinister motive behind the application. Nonetheless, I directed that

they file a statement to explain in more detail the tax reasons behind their decision to enter into the PACS and then to dissolve it. I needed to be satisfied the Court was not effectively being invited to support a tax avoidance scheme. Next, I wanted to understand the information the parties had submitted in support of their application to dissolve the PACS. If PACS was equivalent to a civil partnership in this jurisdiction, it seemed possible the parties might have been required to sign a document confirming their relationship had broken down irretrievably, when this was not true. I needed to be satisfied the Court was not being invited to make a declaration on a false basis.

22. I further directed the parties to obtain a report from an expert, to advise the Court as to the nature of the PACS, and whether or not the steps taken in this case had been effective so as to dissolve it.

23. I listed a further hearing to take place once the further evidence had been filed.

The evidence

24. The evidence confirmed that the factual circumstances are as I have set out within the judgment. The parties are two honest and decent individuals who have followed advice at every turn, but unfortunately been put to significant expense, and had to wait a long time to progress their civil partnership. In their statement, they say:

'[O]ur intentions for dissolving the PACS and entering into a Civil Partnership here were nothing more than an effort to simplify our relationship status, to reflect the fact that we were no longer resident in France (and retained no assets there), and instead were and are making our permanent home in England. We thought it would be a straightforward process and are dismayed that we find ourselves involved in court proceedings concerning what appear to be complex issues of law. We would like to assure the court that our motivation is not now and never has been to evade any tax here or abroad, and we simply want to formalise our committed and cohabiting relationship.'

25. I am satisfied as to the truth of this statement. The parties' motivation is entirely proper.

26. The expert report is prepared by Françoise Bonnaille-Valmorin. She is dual-qualified, with offices in both Paris and Toulouse, and is a qualified solicitor in England and Wales, working as a consultant for an international family law firm based in London. Her report is an interesting read, clear and authoritative.

27. Ms Bonnaille-Valmorin first sets out the nature of a French PACS, and how it compares with, or differs from, a civil partnership under English law.

28. She says that the PACS was originally created to give status to same-sex couples and to give tax and social advantages. She says PACS are very common in France; in 2022 there were 235,000 opposite sex marriages celebrated, and 199,000 opposite-sex PACS concluded. She outlines the essential characteristics of a PACS:

- Partners have a duty to assist each other financially in accordance with their financial capabilities;
- The day-to-day expenses are debts that are considered joint;
- The partners to the PACS benefit from joint tax declarations, some favourable employment law rules, and social security cover equivalent to those enjoyed by married couples;
- Partners under PACS are exempted from succession tax if there is a will in place (whereas cohabitantes pay inheritance tax at 60% as they are considered as strangers to one another).

29. The main difference between a PACS and a marriage is that a PACS does not give rise to rights of maintenance, lump sum payments or other compensation upon dissolution.

30. Compared to a civil partnership under English law, a PACS differs in the following respects:

- Assets remain separate. There is no principle that what has been earned or purchased during the PACS should be treated as joint property. Each partner retains his/her assets, income, and pension. The partners under the PACS can choose to purchase a property together as joint tenants or as tenants in common, and property law rules will apply;
- There are no financial claims against the other partner upon dissolution of the PACS. Each party retains what they have and only share what they have purchased together. If there is no mention of percentage of ownership in their purchase deed, they divide it 50/50. If there is any dispute, the courts only have jurisdiction to deal with it so far as it relates to the joint property;
- Upon dissolution of PACS by death, there is no financial entitlement, save that the surviving partner can remain living at the sole property of the other if it was the joint residence at the time of death, and this provision lasts for one year.

31. Ms Bonnaille-Valmorin then describes how a French PACS is obtained and dissolved. Two non-French nationals can contract a PACS if (and only if) they live together in

France. It is possible to enter into a PACS while living abroad if one of the partners is a French national.

32. The most common way to register a PACS is at the town hall of the parties' place of residence. The parties submit identification documents and a joint declaration. They then attend a short meeting where the registrar will check the documentation, stamp it, and issue a certificate. The PACS is registered on each of the party's birth certificate (which is a document that records all significant events, including adoption, marriage, divorce, PACS, death).
33. There is no requirement to establish grounds to dissolve a PACS. A PACS is very easily dissolved, as a paper exercise, by one of the following means:
 - By death;
 - By marriage;
 - By joint declaration;
 - By unilateral decision.
34. Ms Bonnaille-Valmorin reviewed the PACS certificate in this case, and the certificate of dissolution and confirms that both are valid. She advises that there are no further steps that need to be taken.
35. She advises that the parties could not seek dissolution of their PACS under English law, because it has already been dissolved in France.

[Legal route to the declaration](#)

36. Having reviewed the evidence, I was satisfied that the Court should if possible assist these parties, by acknowledging the dissolution of the PACS, so that they could enter into a civil partnership.
37. I have been ably assisted by Miss Harrison, who prepared a clear and concise skeleton argument, and took me through the alternative routes that she submitted would enable me to make the declarations sought. Two of the options come from the Civil Partnership Act 2004 (CPA 2004), and the third by invoking the inherent jurisdiction of the court.
38. There appears to be only one reported case in England dealing with a French PACS, *V v W* [2024] EWFC 111, Poole J. However, rather than being about dissolution of a PACS, it was about the recognition of an existing French PACS in this jurisdiction, by virtue of being, *'treated as an "overseas relationship" under the CPA 2004 such that the parties have all the rights and obligations that flow from a domestic civil partnership, including the right to financial remedies on dissolution.'* The case is of interest, but is not relevant to my determination.

Section 58 CPA 2004

39. The parties seek recognition of the dissolution of their PACS. Following the advice of the GRO, the parties initially applied to the court for a declaration under section 55 Family Law Act 1986. In fact, it is section 58 of the CPA 2004 that provides for declarations in relation to civil partnership. Section 55 of the FLA 1986 relates to marriage or divorce.
40. Section 58(1) of the CPA 2004 provides as follows:

Declarations

(1) Any person may apply to the High Court or the family court for one or more of the following declarations in relation to a civil partnership specified in the application—

- (a) a declaration that the civil partnership was at its inception a valid civil partnership;*
- (b) a declaration that the civil partnership subsisted on a date specified in the application;*
- (c) a declaration that the civil partnership did not subsist on a date so specified;*
- (d) a declaration that the validity of a dissolution, annulment or legal separation obtained outside England and Wales in respect of the civil partnership is entitled to recognition in England and Wales;*
- (e) a declaration that the validity of a dissolution, annulment or legal separation so obtained in respect of the civil partnership is not entitled to recognition in England and Wales.*

(emphasis added to highlight the declarations applied for in this case)

41. The Court only has jurisdiction to entertain an application under section 58 CPA 2004, if the conditions set out at section 224 of the Act are met, as follows:

Applications for declarations as to validity etc.

The court has jurisdiction to entertain an application under section 58 if (and only if)

—
(a) either of the civil partners in the civil partnership to which the application relates

—

- (i) is domiciled in England and Wales on the date of the application,*

(ii) has been habitually resident in England and Wales throughout the period of 1 year ending with that date, or

(iii) died before that date and either was at death domiciled in England and Wales or had been habitually resident in England and Wales throughout the period of 1 year ending with the date of death, or

(b) the two people concerned registered as civil partners of each other in England and Wales and it appears to the court to be in the interests of justice to assume jurisdiction in the case.

42. The parties were habitually resident and domiciled in England on the date of the application and had been so for a year preceding that date. This entitles them to apply for one or more of the section 58 declarations.

43. I have concluded that the parties are entitled to a declaration under section 58(1)(c) of the CPA 2004, but not section 58(1)(d). Below I explain why that is.

(i) Declaration under section 58(1)(d) CPA 2004 that the validity of a dissolution is entitled to recognition;

44. Section 59 of the CPA 2004 provides:

(1) Where on an application for a declaration under section 58 the truth of the proposition to be declared is proved to the satisfaction of the court, the court must make the declaration unless to do so would be manifestly contrary to public policy.'

45. The Court has to be satisfied that the overseas civil partnership has been dissolved as a matter of fact, but also that the conditions for recognising it are met.

46. Section 234 of the CPA 2004 provides that *'the validity of an overseas dissolution ... is to be recognised in the UK if, and only if, it is entitled to recognition by virtue of section 235-237.'*¹

47. Section 235 of the CPA 2004 provides that:

Grounds for recognition

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

¹ Section 236 sets out a discretionary power to refuse recognition of overseas dissolution in certain circumstances such as the proceedings having taken place without proper notice to the other party, or on public policy grounds. Section 237 contains supplementary provisions relating to recognition of dissolution.

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

(b) at the relevant date either civil partner—

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

(ii) was domiciled in that country, or

(iii) was a national of that country.

48. 'Obtained by means of proceedings' can entail a legislative or administrative process, including making an application to the town hall on paper as the parties did in this case, see *Botwe v Brifa* [2021] EWHC 2307 (Fam) per Cobb J.

49. The parties were not habitually resident, domiciled in, nor nationals of France at the time of the dissolution, and therefore they are not entitled to recognition of the dissolution under section 235.

50. This is in line with the conclusion that Cobb J reached in *Botwe v Brifa*. In that case, the husband claimed the parties had been divorced in Ghana by way of customary ceremony. The wife disputed this had been an effective process, and applied for divorce in England. Cobb J held that the customary ceremony had been effective to achieve a divorce in Ghana (thus satisfying section 46(2)(a) FLA 1986, the equivalent of section 235(1)(a) in this case). However, he held that the divorce could not be recognised in England and Wales, as the parties did not fulfil the habitual residence/domicile/nationality requirements at the time of obtaining the foreign divorce.

51. In his judgment, Cobb J acknowledged the difficulties arising from this outcome:

66. *I recognise that this places these parties in a difficult situation; for obvious reasons, the courts here are loath to refuse recognition where the effect is to create what is called a 'limping marriage'. Holman J, in considering the provisions of section 51 of the FLA 1986 in *Olafisoye v Olafisoye (No.2) (Recognition)* [2010] EWHC 3540 (Fam) described the approach (at [36]) thus:*

"The effect of non-recognition here of a divorce which is valid or effective in the country where it was made is to create a so-called 'limping marriage' i.e., that the parties are treated as still being married here, when they are not so treated elsewhere. That is so obviously undesirable that the court leans, so far as possible and consistent with the legislation and justice, against exercising a discretion so as to produce a limping marriage."

Mostyn J in Liaw v Lee [2015] EWHC 1462 (Fam) at [31]^[3] articulated further the unsatisfactory nature of the outcome which has emerged here:

"... it is undesirable to have two different decrees absolute in different places in relation to the same marriage. A decree absolute is a matter of status and it is undesirable that the parties should have inconsistent decisions as to when their marriage was finally ended".

67. Be that as it may, the outcome of this application is that the wife is entitled to pursue her petition for divorce in this jurisdiction.

52. The circumstances of this case are analogous to *Botwe v Brifa*. The parties meet the criteria for applying for a declaration, they have established on the facts that their dissolution was valid, but they cannot satisfy the requirements of section 235, to enable that dissolution to be formally recognised by operation of section 58 of the CPA 2004. This was the reason given by the GRO for refusing to recognise the dissolution of the PACS.

(ii) Declaration under section 58(1)(c) that the civil partnership did not subsist on a specified date;

53. In the alternative, Miss Harrison proposes that the court may make a declaration under section 58(1)(c) of the CPA 2004, that their civil partnership (PACS) did not subsist after 10 March 2023.

54. The requirements in relation to domicile, habitual residence, and nationality under section 235 CPA 2004 only apply to the recognition of the validity of an overseas dissolution (by the making of a declaration under section 58(1)(d)). There is no equivalent provision, and therefore no such requirement, in relation to a declaration that the partnership did not subsist on a given date, pursuant to section 58(1)(c).

55. So, pursuant to section 59, if *‘the truth of the proposition to be declared is proved to the satisfaction of the court, the court must make the declaration unless to do so would be manifestly contrary to public policy.’*

56. There are no cases directly on point, but obiter dicta which suggests that the threshold for refusing declarations under section 55 FLA 1986 (and by extension section 58 of the CPA 2004) on public policy grounds is very high. For example, in *Al Saleh v Nakeeb* [2021] EWHC 3186 Poole J said at paragraph 35:

*‘[T]he Law commission recommended that the declarations that are now listed under s 55 of the FLA 1986 **should be available ‘as of right’** but subject to ‘the power of the court, in exceptional circumstances, to withhold relief as a matter of public policy.’*

(para 3.40 emphasis added)

57. There are no public policy grounds on which to refuse the declaration sought in this application. As Miss Harrison submits, on the contrary, it would be manifestly against public policy to allow parties such as these to have lost the benefits and protections of the PACS, but to be unable to replace them with those that would have been afforded to them by entering into a civil partnership. It would be all the more unfair, given that they have at every turn followed advice given to them.
58. The truth of the proposition to be declared, that the PACS did not subsist after 10 March 2023, can evidently be proved to the satisfaction of the Court. The parties have provided copies of the original PACS, the dissolution certificate and the Court has the benefit of Ms Bonnaille-Valmorin's expert advice, confirming that the dissolution is valid. The parties do not need to establish anything further in terms of residence or domicile.
59. In the circumstances, I find that the parties are entitled to a section 58(1)(c) declaration 'as of right', that the civil partnership did not subsist after 10 March 2023.

(iii) **Inherent jurisdiction**

60. In addition to the section 58(1)(c) declaration, Miss Harrison invites me to make an additional, free-standing, declaration under the inherent jurisdiction.
61. The inherent jurisdiction cannot be used to grant any of the section 58 CPA 2004 declarations by the back door. Section 59(4) of the CPA 2004 provides that, '*no declaration which may be applied for under section 58 may be made otherwise than under section 58 by any court.*'
62. However, Miss Harrison submits that it is open to the Court to make a different declaration, which is not contained within the existing statutory regime, but which still achieves the parties' ultimate aim. Thus, she invites me to make a declaration that, '*the parties are not currently married or civil partners in this or any other jurisdiction, and are free to enter into marriage or civil partnership in England & Wales.*'
63. As encouragement, Miss Harrison has referred me to a number of cases where the inherent jurisdiction has been invoked in a similar way:
- To make a declaration of non-recognition in respect of a voidable marriage (e.g. forced marriage), *Re SA (by her litigation friend, the Official Solicitor) (Declaration of Non-Recognition of Marriage)* [2023] EWCA Civ 1003;
 - To make a declaration, on the application by personal representatives of a deceased party to matrimonial proceedings, that a property adjustment order

remained valid and enforceable against the other party (*Lane v Lane* [1986] 1 FLR 283;

- To correct a procedural irregularity. In *Amadasun v Amadasun* [1992] 1 FLR 585 the decree nisi failed to specify which of two ceremonies had created the marriage. The court made a declaration that the second ceremony was of no legal consequence, thus enabling the decree nisi to be amended and then made absolute;
- To make a declaration that a ceremony did not create the status of a marriage at all (*Hudson v Leigh (status of non-marriage)*) [2009] EWHC 1306 (Fam); and
- To make a declaration that a second ceremony in England, following a first valid, legal marriage in the US, was of no legal effect and was a non-marriage. This case most closely matches the current circumstances, because a declaration under the court's inherent jurisdiction was made in addition to a declaration under section 55(1)(c) FLA 1986 that the English marriage did not subsist after the date of the US divorce. The declaration was made in an uncontested application as a precautionary measure to avoid confusion regarding the husband's marital status should he die prematurely (*Galloway v Goldstein* [2012] EWHC 60 (Fam), per Mostyn J.)

64. In all the circumstances of this case, I find that a declaration under the inherent jurisdiction is justified, for the following reasons:

- (i) The declaration under the inherent jurisdiction does add something to the statutory framework, as it makes clear that the parties are free to marry or enter into a civil partnership. As has been established, it is possible to have a declaration that there has been effective dissolution of a previous civil partnership or marriage, but still not have that recognised so as to enable the parties to enter into a new one;
- (ii) Without the declarations, the parties have no way forward. In *Botwe v Brifa*, the foreign divorce was not recognised, but the parties were able to bring alternative proceedings within this jurisdiction. In this case, the PACS is dissolved but if not recognised, the parties cannot apply for dissolution in this jurisdiction, because their relationship has not irretrievably broken down;
- (iii) In those circumstances, the parties would be left unable to marry or enter into a civil partnership in this jurisdiction. This is a significant interference with their Article 8 rights (respect for private and family life) and Article 12 rights (to marry and to have a family) under the ECHR;
- (iv) The parties are well-intentioned, share the same goal, and have found themselves in this situation only by following the advice of others;

- (v) They are seeking only to have their relationship recognised by the law of the country where they live, and where all their assets are held. Neither party is seeking any ancillary benefits or advantages, e.g. to avail themselves of a more advantageous legal system;
- (vi) The declaration would underline respect for the laws and procedures of another country;
- (vii) There is no opposition to the application. The Attorney General's office has been notified of the parties' predicament and of the application and chosen not to participate in these proceedings or raise any objection.

65. For these reasons, I shall make two out of the three declarations sought:

- (i) A declaration under section 58(1)(c) CPA 20024, that the civil partnership did not subsist on a specified date; and
- (ii) A declaration, pursuant to the inherent jurisdiction, that *'the parties are not currently married or civil partners in this or any other jurisdiction, and are free to enter into marriage or civil partnership in England & Wales.'*

66. I hope that this will enable the parties to register their intention to enter into a civil partnership. I wish them the best for the future.

HHJ Joanna Vincent
Family Court, Oxford
21 October 2024