

Financial Remedies

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An interesting case that determined a French PACS could be declared dissolved within statutory framework despite conflicting advice.

[FC v WC \(declarations relating to dissolution of French PACS\) \[2024\] EWFC 291](#)

Facts

The parties were British nationals and entered into a French PACS (a sort of civil partnership wherein assets remain separate, financial claims cannot be brought on dissolution and there is no entitlement on death) when they were both living in France. Upon their return to England in 2022, they were advised to dissolve their PACS and enter into an English civil partnership so as to simplify their tax affairs. HMRC required the couple to explain to them each time they filed their tax returns, the nature of the PACS [p10]. Their local registry office had also advised them to dissolve their PACS, but advised they would need to first dissolve it in France before they could enter an English civil partnership. A dissolution certificate dated 10 March 2023 was received and the parties took steps to enter into a civil partnership.

After presenting the relevant documentation to the General Register Office, the parties were informed that the dissolution was not capable of recognition under S.235(1) Civil Partnership Act 2004 (CPA 2004) as at the date of their dissolution, neither party was a French national, habitually resident or domiciled in France. The parties proceeded to apply to the Family Court for a declaration that the dissolution was valid, or in the alternative for the Family Court to dissolve the French PACS. An expert report was received during proceedings detailing the nature of the PACS and the effectiveness of the dissolution. The expert confirmed that the dissolution was valid. The judgment of HHJ Vincent sitting as a S.9 Deputy High Court judge, set out the routes to dissolution in the English Courts.

Judgment

There were three possible routes that would enable the court to make the declaration of dissolution [p39-42].

1. A declaration under S.58(1)(c) CPA 2004 that the civil partnership did not subsist on a specific date (ie. the date of the dissolution certificate 10 March 2023)
2. A declaration under S.58(1)(d) CPA 2004 that the validity of the dissolution is entitled to recognition
3. By invoking the inherent jurisdiction to make a freestanding declaration

HHJ Vincent determined that the parties could not obtain a declaration via S.58(1)(d) as although they had established that the PACS was dissolved 'in fact', there had not been compliance with the required under S.233-235 CPA 2004, namely, that the dissolution had to be obtained by means of proceedings [p44-49]. Given the parties were neither habitually resident, domiciled or nationals in France at the time of the dissolution, they were not entitled to the declaration under S.58(1)(d). However, at p43, HHJ Vincent concluded that the parties were entitled to a declaration under S.58(1)(c) since there is no requirement to comply with the condition of S.235 CPA 2004, nor an equivalent provision. Therefore, the parties need only show that the PACS did not subsist after 10 March 2023 which, if proved to the satisfaction of the court, the court must make the declaration in accordance with S.59 CPA 2004 unless it were manifestly contrary to public policy. It was argued that 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' [p57].

HHJ Vincent granted the declaration 'as of right' under S.58(1)(c) given the original PACS, dissolution certificate and expert evidence confirmed that the dissolution was valid.

The Court was invited to make an additional freestanding declaration by invoking the inherent jurisdiction. At [p61] HHJ Vincent noted that the inherent jurisdiction could not be invoked to grant a declaration under S.58 CPA 2004 by the back door. However, a freestanding 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 would achieve the same and ultimate aim [p62]. A declaration in these terms was deemed justified because [p64]:

- It adds something to the statutory framework and makes clear the parties are free to marry or enter into a civil partnership
- Without the declarations, the parties had no way forward: they could not apply for divorce in this jurisdiction as their relationship had not irretrievably broken down
- Without the declarations, the parties would be left unable to marry or enter into a civil partnership which constituted a significant interference with their Article 8 and Article 12 rights
- The parties shared the same goal and only found themselves in this situation by following the advice of others
- They only seek for their relationship to be recognised by the law of the country in which they live
- A declaration would undermine respect for the laws and procedures of another country

- The application was not opposed

Two declarations were granted.

Practical Consequence

A dissolution validly obtained abroad may be declared a valid dissolution for the purposes of entering a marriage or civil partnership with the same partner in England & Wales.



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