

Mostyn J. and ‘amicable’ divorces

“Divorce or separate amicably, without lawyers - amicable is a stress-free way to divorce and separate that doesn’t cost the earth. Make your agreements legally binding, sort out your finances and if you have children, create a future where they can thrive.”

So reads the blurb on the website of “amicable” (<https://amicable.io>), whose activities received the judicial thumbs-up from Mostyn J. on 20th January 2020, handing down judgment in **JK v MK & (1) E-Negotiation Ltd (t/a ‘amicable’) (2) The Queen’s Proctor (Interveners) [2020] EWFC 2.**

amicable (spelt with a little ‘a’) charged the parties £300 for helping with preparation of their divorce petition and application for decree nisi, and a further £300 for drafting a simple precedent-compliant cleanbreak order (which the parties had negotiated) together with accompanying Form A, D81, joint disclosure statement. Their letter forwarding the same to the court attracted the attention of the court and this application.

Using a ‘purposeful’ rather than ‘absurd and literal’ interpretation of the Legal Services Act 2007, Mostyn J held that the work of amicable did not involve a conflict of interest (that suggestion was abandoned at the hearing) or “doing things that are forbidden to non-lawyers under the terms of the LSA 2007”. Nor would advising the parties have been contrary to the LSA 2007.

Granting declarations as to the lawfulness of amicable’s activities, Mostyn J. opined that “there can be no doubt that the initiative of amicable has *greatly improved access to justice* for many people effectively disenfranchised from the legal process by the near total withdrawal of legal aid” and, whilst unregulated, provided a “*clear social benefit*”.

Whilst amicable are not (yet) advertising ‘as approved by Mostyn J’ on their website, and Mostyn J was clear in pointing out that the decision only related to the business model of amicable, and not this sector of the internet generally, only time will help quantify the challenge the decision makes to the lives and practices of busy, high street solicitors.

6 February 2020
Nicholas Starks
St Ives Chambers, Birmingham



[2020] EWFC 2

JK (Petitioner) v MK (Respondent) & (1) E-NEGOTIATION LTD (T/A 'amicable') (2) THE QUEEN'S PROCTOR (Interveners) (2020)

Fam Ct (Mostyn J) 20/01/2020

FAMILY LAW - LEGAL PROFESSION

CONFLICT OF INTEREST : DIVORCE : FINANCIAL REMEDIES : LEGAL SERVICES : QUEEN'S PROCTOR : RESERVED
LEGAL ACTIVITIES : ONLINE DIVORCE FACILITATORS

Declarations were made that the first intervener company's business as an online divorce facilitator did not violate the Legal Services Act 2007 Sch.2 para.4 or para.5 and did not create a conflict of interest by acting for both parties in assisting them with preparing their divorce petition and financial remedy order.

The court was required to determine whether the first intervener company's business was undertaking activities which were forbidden to non-lawyers under the Legal Services Act 2007.

The petitioner and respondent wished to divorce uncontentionally and wished to agree a simple clean-break financial remedy order. They jointly approached the company which was an online divorce facilitator to help them prepare a divorce petition. The company also drafted a financial remedy order for them and sent the documents under cover of a letter on the company's headed notepaper stating that the fee should be paid from the company's account. A concern was raised by the court that the company might be in a position of conflict of interest in acting for both parties and might be undertaking activities which were forbidden under the 2007 Act. The Queen's Proctor was invited to intervene under the Matrimonial Causes Act 1973 s.8.

Declarations were sought pursuant to the common law power referred to in the Senior Courts Act 1981 s.19(2)(a). The company's founder gave evidence that the company was not engaged in litigation on their customers' behalf but it assisted customers with their financial negotiations and helped to fill in the necessary forms and other court documents when agreements were reached. The company had established a system of red flags that were raised if there might be a conflict of interest and then the company would decline the case and send the parties to solicitors.

The issues raised were whether there was a conflict of interest for the company to act for both parties and whether the company's activities violated Sch.2 para.4 and para.5 of the 2007 Act.

HELD: Conflict of interest - All parties agreed that the concern was unfounded and that no conflict of interest arose. Joint instruction of solicitors happened frequently in divorce cases. A declaration was made that the company was not placed in a position of conflict of interest by acting for both parties under the terms of its business model (see paras 17-21 of judgment).

Legal Services Act 2007 Sch.2 para.4 - "reserved legal activities: conduct of litigation" - The giving of legal advice per se by someone who was not a qualified lawyer was not prohibited under Sch.2 para.4 of the 2007 Act, *Agassi v Robinson (Inspector of Taxes) (Costs)* [2005] EWCA Civ 1507 and *Heron Bros Ltd v Central Bedfordshire Council* [2015] EWHC 1009 (TCC) applied. Nothing done by the company violated para.4. The company was entitled to a declaration accordingly. However, the covering letter sending the documents to the court should be changed so that it was not on the company's headed notepaper. Taking the fee on the company's account was not objectionable (paras 26-31).

Sch.2 para.5 - "reserved instrument activities" - The draftsman of para.5 was speaking of legal documents which created, settled, transferred or otherwise disposed of a legal or beneficial interest. A purposive interpretation, rather than a literal one, led to the conclusion that the drafts which the company had helped to come into existence were not within the scope of para.5 as they were not instruments within its meaning, *Powell v Ely* [1980] 1 WLUK 276 doubted. The divorce petition was a tick-the-box exercise and the government itself offered a service for completing the form online. An unqualified person would not have "prepared a document for use in legal proceedings" unless they had been a major contributor to its drafting and filed the document with the court. The company filed nothing with the court as all filing was done by the customer which was a clear distinction. In generating documents, the company did not violate para.5 and a declaration was made accordingly. There was nothing wrong with a petitioner giving the company's address as his alternative business address (paras 34-42, 44).

Judgment accordingly

Counsel:

For the petitioner and respondent: In person

For the first intervener: Vikram Sachdeva QC

For the second intervener: Simon PG Murray