

EAST ANGLIA DIOCESAN MARRIAGE TRIBUNAL

A GUIDE TO MARRIAGE NULLITY



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You will most probably have taken up this booklet with some trepidation and the prospect of having to go through the annulment process is not necessarily a pleasant one. You are by no means alone in having these feelings. Very few people approach our Marriage Tribunals without a serious reason for doing so, and without a difficult story to tell. It may be that you are a Catholic by birth and familiar with the domestic life and language of the Church, or you may be from another faith background and find Catholics to be a strange breed, even downright odd! The following introduction and explanations are based on the presumption that you are unfamiliar with the Catholic Church as well as the Tribunal Process, so if they appear to be teaching Grannies to suck eggs, then apologies are due.

This booklet is designed to guide you through the process, at least the initial part, so that you will be able to have a realistic and well-informed idea of what you are committing yourself to. It is a long process, and therefore this is a long explanation, but there are no easy short-cuts to this system of justice. The last section is framed in a question and answer format to deal with some of the more common questions that are asked. The first section, however, is more of an explanation of the fundamental principles that underpin the work of our Marriage Tribunals. The second section is a narrative guide to how the actual process unfolds through its various stages. References will be made both to the Code of Canon Law and some other books that can be consulted for further reading, but these are all definitely optional.

Section One: Basic Principles

In dealing with marriages that have broken down any Christian is immediately aware of the words “Anyone who divorces his wife and marries another is guilty of adultery.” (Matthew 19:9) The teaching of the Lord Jesus in his public ministry was indeed a ‘hard saying’ and even his own disciples thought that he was asking something that was unreasonable. The Lord’s response, however, puts marriage in the context of Grace, which is the Life of God that is given to us. It is God’s power, accepted as a gift through grace, that makes faithful and life-long marriage possible. Without this dimension marriage as a natural and social reality quite often becomes just a practical contract that can be made and broken according to the laws of the State; as so many people think and say “It is just a piece of paper” .

This is very much the current social situation in this country now, and was indeed the same for the Jewish society in which the Lord himself lived. He makes it clear in his own teaching that the laxity of the Law of Moses concerning divorce was a concession to the ‘hardness of your hearts’ and that ‘from the beginning’ this was not so. In other words, we were created perfect and able to live marriage without stress and strain, but something has ‘gone wrong’ . Therefore we understand that marriage too was affected by

the phenomenon of what we call ‘Original Sin’ and that the grace of baptism is needed to enter upon the work of a Christian Marriage. And further, not only is that original input needed, but there needs to be a sustaining recourse to the sources of grace, i.e. the Mass and regular prayer, for that work to succeed. The Catholic Church makes a major presumption in saying that all marriages between people who are baptised are ‘Sacramental’, i.e. grace-based marriages. However, for some people baptism will have been the beginning of a life-long education in faith with regular attendance at church, but for others it may have been a ‘one-off’ visit to church that makes no difference to that person as an adult. The church, however, begins by presuming that anyone who has been baptised intended to enter marriage as the church understands marriage to be. The Code of Canon Law states in the opening canon on marriage that: “This covenant between baptised persons has been raised by Christ the Lord to the dignity of a sacrament.” (c. 1055) So it can be seen that marriage exists initially on a **natural level** and then, between those who are baptised, at the same time on a **super-natural level**. We could also term these two levels **civil** and **religious**, and then a number of issues that surround the Annulment Process can be made clear.

Quite often people will say that they have been through a civil divorce, why then does the Church need ‘to do another one’? This is a question of marriage being viewed at two different levels. Those of you who were married in the Catholic Church will recall that along with the priest there will have been a Registrar or an ‘Authorised Person’ to record the marriage on behalf of the State. This illustrates clearly the two levels that are being distinguished here. Whatever the outcome of the civil law process, for the Church there will always remain the question of the ‘Sacramental Bond’ i.e. the marriage between these two baptised people on the **super-natural level**. That is why the term ‘covenant’ is used in the Code of Canon Law since in the civil law marriage is viewed quite pragmatically as a contract, and by insisting on the term **covenant**, the whole scriptural and theological richness of the covenant between God and His People is evoked.

In practical terms, therefore, the covenant of marriage has a higher specification than the civil contract. In civil terms the rights that the partners have over each other are actually quite basic in terms of rights over each other’s bodies. The Church expects much more, so that in a sacramental marriage that the partners will be able to create a ‘communion of life and love’ between themselves that is open to the prospect of children and seen **by both** as faithful and life-long. The specifications and expectations of marriages between baptised people are higher and have a faith dimension. This means that some level of Christian Faith must help to inform the marital decision, implicitly or explicitly. It is recognised that for many this will be an implicit faith. The next question is to ask how this ideal becomes a reality.

The Church teaches that it is **consent** that makes marriage; the partners saying ‘yes’ to one another and to all that they understand that marriage (as the Church understands it to be) will demand of them. Just as the ‘yes’ of Our Blessed Lady was the foundation of her life’s vocation, so the ‘yes’ of the partners on their wedding day is the foundation of their married vocation. Just as the young Virgin Mary had to ask questions of the Angel

Gabriel and clarify in her own mind and heart what was being asked of her, so both partners have to be aware on the 'mind' (i.e. intellectual) level of what they are saying 'yes' to. As in all legal matters you have to know what you are saying 'yes' to in entering into a contract, if that 'yes' which forms the contract is to be a binding and valid one. Thus the Church seeks to make sure that everyone who is approaching the vocation of marriage has the best possible knowledge of not only what marriage is 'in theory' or ideally, but also what being married to the particular person who is the intended spouse will be like in reality. This is the heart, mind and soul of good marriage preparation. It should ensure that there are solid foundations upon which that act of consent rests. That 'Yes' should be a confident one. The Gospel parable of the building of a house on rock or on sand has a great deal to say to us here.

In examining the consent upon which a marriage was founded, the Tribunal process is focussed far more on the whole development of the relationship that led up to the marriage than on the phase during which the break down occurred. In this it is significantly different to the civil divorce proceedings. Very often people are understandably still trapped in the grief and recrimination of the sundering of a relationship and of a home. Where children are involved, this can also be very much a current issue and, sadly, an open wound. It is especially important therefore that both parties understand that the focus of a nullity case is different, and also that the 'culture of blame' is irrelevant to such an investigation.

Consent given by the two parties can be defective for a variety of reasons, but these fall into three broad sections: Judgement, Capacity and Intention. Judgement relates to the whole way in which a particular decision to marry was reached. If any of these judgements was unduly naïve or rash the total end product might be said to be defective. Capacity relates to the ability of an individual to bring to a marriage those basic human qualities that make a 'Communion of life and love' possible. If, humanly speaking, there is a pathological absence of a significant quality that might reasonably be expected, or the presence of a quality that is directly injurious to marital trust (e.g. alcoholism) it may be concluded that one of the parties was actually incapable of 'producing the goods' of marriage. Intention, then, relates towards the three 'goods' of marriage as taught by the Catholic Church, which are fidelity, permanence and openness to children. If one (or both) of the parties have contracted marriage while not intending to value one or more of these goods (e.g. they reserved the right to have an affair, or had decided **never** to have children). There are some infrequently-used other grounds that have not been explained here, but these are of a more technical nature, not conducive to simple explanations.

The nullity process is in some ways like a crash investigation, in that it seeks to establish whether it was just 'human error' that led to the accident, or whether the vehicle itself was defective in some way that was always present in its design. This is often a slow and painstaking investigation, but to find out the truth is always helpful when coming to terms with the fallout of the crash. In this way, many people have found that the nullity process has helped them to grieve for their broken marriage, and also to look forward with more perception and confidence.

(There is a short Catholic Truth Society pamphlet entitled 'Marriage Annulment in the Catholic Church' by Fr. Stephen Gasche (£1.95) which may be helpful further reading.)

Section Two: How the Process works

By the time you have received this information booklet and introduction form you will have had some contact with the church, if only via the diocesan web-site! It is perhaps important to note that no-one is obliged to deal with the Tribunal **via** their local parish priest or assistant priest or deacon, but that **you can and may approach the Tribunal directly**. In many cases it may well be helpful to have the practical support and encouragement of your local clergy when embarking upon this process, but for some it is understood that anonymity is preferred. The clergy **should not ask** about the progress of a case unless they have been invited so to do, but you are free to confide in them if you so wish. By initiating the process you have become the **petitioner** (some Tribunals use the term 'plaintiff', but these terms effectively mean the same) and your ex-partner thus becomes the **respondent**. You do not need to have **any direct dealings** with your ex-partner, but if you do have a reasonable relationship after the breakdown of the marriage and the divorce settlement, it is usually a good idea to let them know yourself that you are embarking upon this process. We do not allow the process to start until there has been a divorce decree absolute for the marriage to be investigated. This is so that the civil law case and the church law case do not become intertwined or confused. In fact, the church process has no standing or effects in civil law at all. In some rare cases disgruntled respondents have threatened to bring proceedings under recent Human Rights legislation, but no actual cases have ever been introduced.

The Form Filling

This is a necessary evil in any administrative or legal process and it can often be a massive psychological and emotional hurdle to clear. You should not be surprised at yourself if it takes several goes to get over it. This sort of thing is eminently put-offable and we understand the reasons why. If you need someone to sit with you and you would rather not approach your local clergy, the Tribunal does have experienced lay-auditors (evidence takers) who are also prepared to help people start the process off and explain the preliminary steps. If you would like to be put in touch with one of these, then please speak to the Tribunal Administrator on the number given in the contact information at the back of this booklet. Some elements of the information that is asked for may not be available to you (e.g. current whereabouts of your ex-partner), but please do everything that is reasonably possible to obtain such information. At this point it should be noted that it is **a key part of the nullity process for the Tribunal to be able to make contact by letter with your ex-partner**. For many petitioners, this may be possible, but not particularly pleasant to contemplate, for some it isn't a problem at all, but for others it can be a massive stumbling block. This could either be on the practical or on the emotional level. It should be noted that they will not be told of your present whereabouts or address, or of your new married name if this is pertinent for

female petitioners. You **do not need to meet** your ‘ex’ face to face **at any stage** in the process. If the contacting of your ex-partner might have very serious ramifications, then it is advisable to discuss this with a member of the Tribunal Staff as soon as possible. In most cases an agreed way forward can be found, but it is important for all petitioners to know that the respondent must be offered their rights in law for the **validity** of the entire legal process in Church (Canon) Law.

The Documentation Required

We do need to see certain documents but it is usually quite adequate to send a clear photocopy in as long as all the document is copied (please note that Marriage Certificates are too long for an A4 copy!). We also need a copy of the Decree Absolute of Divorce as well as the baptismal certificates of those parties to the marriage who were Roman Catholics. These documents can sometimes reveal anomalies that affect the way that a case is handled. If you send in original documents we will usually copy these and return them to you when you have your deposition interview. If you do not have a copy of the marriage certificate any longer, it **may** be sufficient to have just the Divorce Decree Absolute since this shows details of where the marriage was celebrated. It is also possible, however, to obtain a duplicate copy from the Registration District where the wedding took place. There is a small charge made for this service. If you do not have a baptism certificate, you can obtain a copy of the entry in the baptismal register from the church where you were baptised. The office staff can help with contact details for any church throughout the world.

Competence of the local Tribunal

This does not relate to whether the staff members are any good at their job, but whether they are allowed in Canon Law to hear the case. Under the recent reforms to the Tribunal Process, Pope Francis has much simplified the rules on which Tribunal can hear the case. Whereas before it had to be the Tribunal of the place where you were married or the other party (i.e. the Respondent) was living, it is now just necessary to have a postal address within the diocese, even if it is a temporary one.

The preliminary questionnaire

This may look formidable, and that is probably because it is. The questions are designed so that you can tell the life-story of both yourself and of your ex-partner (insofar as you know it) and the whole history of the relationship. Do not be surprised that this is a hard thing to do, but also please try to understand the reasons we have for asking you to do this. Every relationship that leads to a wedding and then, eventually, to the breakdown of that life together is unique. While there are some common patterns, every case will have its unique characteristics. In order to be able to make reliable judgements about peoples’ lives and their decisions and their actions, the tribunal judges and other officials need to know the entire context within which this life-story was played out. If you would pardon the

expression – the ‘devil is in the detail’ . The more information that is put across in the preliminary statement, the better impression that the Tribunal will have if there are viable grounds to consider a case for nullity. It will also reduce the workload when you have a ‘formal deposition interview’ if the bulk of the ‘spadework’ has been done before. This formal interview should not be as forbidding as it may sound. The practical arrangements surrounding this will be explained later on. Please be as open and frank as you can be in answering the questions. It is often very hard to write some things down on paper, but often people do find that this process can be a cathartic one, i.e. it helps ‘to get things out of your system’ . It is a hard task, but often a helpful one, and sometimes a healing one.

If you use a home computer for word processing then it is always possible to send in your answers on a memory stick (please virus check it first). We use Microsoft Word and can read most other formats. If you really trust the confidentiality of e-mail you can send it in electronically. Please type in the text of the question too (in bold, if you can) before typing your answer; a Word version of the form is available on the Tribunal webpage of the Diocesan website at <http://rcdea.org.uk/marriage-tribunal/>. All this helps to save time.

The ‘Formal Deposition’

Those of a certain age may remember a comedy sketch with the immortal phrase “Nobody expects the Spanish Inquisition…” Etc., and some petitioners approach this part of the process with a deep sense of foreboding, particularly if they are not Catholics and haven’t had much contact with Catholic clergy before. Well, Monty Python’s take on this notwithstanding, it is **not** like the inquisition! It is an informal interview, usually with just the priest interviewer and the petitioner present. It may take two hours or possibly more to complete, but suitable breaks to have a cup of tea or a visit to the loo are offered. It doesn’t have to be a marathon. Inevitably, however, it is likely that some difficult areas may be touched upon when trying to arrive at an understanding of why the marriage relationship proved not to be viable. It may be necessary to ask questions about the intimate aspects of the relationship, and this may not be an area that is easy for you to talk about in front of a Catholic Priest. (In some situations it may be possible for a woman to interview a woman about some areas of the common life, but on the whole it is only the priests that are qualified Canon Lawyers who conduct these interviews. By all means discuss this openly with the Tribunal Staff before you come for your interview).

The Formal Introduction of the Case

Once you have submitted your preliminary statement and had your Formal Deposition interview, the priest/lawyer who sees you should be able to give you an informed opinion about the strength of your case. For some it could be that you may be told that there really is no case (5%-10%), for some that you have a very clear-cut case (10%), but the majority (80%) will be told that there is a potential case and that much will depend on what happens in the further ‘instruction’ of the case.

For this reason we always state that no-one should ever **presume** that the outcome of the case will be positive and come within a certain time-frame. **On no account should (wedding) bookings be made that involve financial risk if they have to be cancelled.** In fact, it is best to make **no bookings at all**, whether mental or actual, until the case is finally decided. While most priest/lawyers want to sound positive about the progress of a case which has merit, this **should not** be interpreted as the final result being in any way ‘guaranteed’ .

Having read and re-read the two documents the priest/lawyer who interviewed you will draft a petition in which the main facts of the case will be stated. This is a summary of, but not a replacement for, these two documents. This is then sent to you (often by e-mail as an attachment) to be checked through for accuracy and appropriateness. There may be some elements or statements that the respondent may find inflammatory or defamatory, and these can be redrafted or omitted as seems sensible. In the last analysis, the respondent **does have the right to read all the documents in the case**, although few actually exercise this right. The petition is used as a way of putting the main thrust of the petitioner’s view of the relationship before the respondent to see whether their view is similar or significantly at variance. The petition, therefore, should contain objective details and verifiable facts. Opinions that are necessarily subjective, or dubiously remembered events, should be avoided. A copy of the petition will be sent with the letter of citation, and, although they are asked to keep the contents confidential it is sometimes the case that they do not respect this and they share the document inappropriately. This should be borne in mind when drafting it. Once the text has been agreed the petition should be signed and returned to the Tribunal Office.

The Citation of the Respondent

As has been explained earlier, the contacting (citation) of the Respondent, is a required and vital element of the justice of the Tribunal. In any system of justice, the natural right of defence must be safeguarded for those who are implicated in any legal process. With the particular situation of a marriage nullity it is the ‘bond of marriage’ that is being tested legally, and only the partners to that bond in an indirect way. It is, nevertheless, a central plank of the Marriage Nullity Investigation that both parties to the marriage have an equal opportunity to be heard, to name and call witnesses and to have legal assistance. If the Tribunal is not even-handed in the way in which both parties are treated, then the credibility of its justice may be called into question. When the citation letter is sent, there is included a similar booklet to this (though somewhat briefer!) that explains to the respondent what their rights are. They may or may not read this, but it has been given to them. **A copy of the Petition is also included with the citation letter.** They are then asked to return a form on which they indicate the level of involvement they will agree to. There are four options which are individually explained and they run thus:

[] **I wish to take part in the proceedings and will come to the Tribunal Offices.**

This would involve a potentially lengthy interview (two to four hours) with a priest who is a fully qualified Canon Lawyer. It is possible for a woman to

be interviewed by a woman if this is preferred, but please specify this preference in your reply.

- [] **I wish to take part in the proceedings but wish to be seen locally.**

To be formally interviewed in your local area at a mutual convenient time and place by either a priest judge or a specially trained ‘lay auditor’ who is a mature Catholic lay person who takes evidence on behalf of the Tribunal. These are located throughout the area of the Diocese.

- [] **I do not wish to take part in the proceedings but would like to be informed of the outcome of the investigation.**

To opt not to be interviewed but to be kept informed of the progress of the case and of its final outcome. By taking this option you can still change your mind and choose to be interviewed at any stage up until the ‘Acts of the Case’ (i.e. all the statements of the parties and the evidence of the witnesses) have been completed. The advantage of being interviewed early on is that your perspectives and opinions will be known when the questions for the witness are formulated and this may not be the case if you are interviewed near the completion of the case.

- [] **I do not wish to be involved in any way with these proceedings and waive all my rights with respect to this case.**

You can opt to waive all your rights with regard to the case and entrust the whole process to the justice of the court. Again, you can change your mind about this at any stage and opt to take part. We do write to you to inform you officially of the grounds as this is a requirement of Canon Law, but if you have opted to waive your rights, this is the last communication you will receive.

A stamped addressed envelope is included (but stamps cannot be provided if the respondent is abroad...) and all that they have to do is tick a box and sign and date the form and return it to us. We always send this letter by recorded delivery, and therefore if there is no reply at all, we do know that it was received. If we get a positive response from the respondent and they wish to attend an interview, this will be arranged, either at the Tribunal Offices or at another Tribunal or at the respondent’s home if they are willing to be seen there. They will then be asked the identical set of questions that the petitioner was asked at their formal deposition interview. At the **end** of the interview **they will be given an opportunity to comment specifically on the petition.** The interviewer will also discuss the question of witnesses to see if the respondent wishes to name any.

The citation of the respondent is necessarily one of the most sensitive phases of the nullity investigation and Tribunal Staff are very experienced in dealing with varying levels of response, from the helpful and co-operative to the uncomprehending and abusive. It is, however, a fundamental requirement of natural justice and an essential part of the process so that **both** parties can defend their rights in Canon Law on an equal footing.

The Nomination and Interviewing of Witnesses

In any system of justice, evidence is required to establish a presumption that is contrary to what may normally be expected. Both in society and in the Church we presume that most marriages work and are valid. The Church teaches that ‘Marriage enjoys the favour of the Law’ , which means that if a person is alleging that their marriage was not a true and valid marriage, then they have to amass evidence that is sufficiently strong to **overturn** the presumption of validity. In the processing of a marriage nullity case the priest/lawyer who accepted the case will be satisfied that there may well be reasons to overturn the presumption of validity. This will come from his understanding of the account given in the Preliminary Statement and Formal Deposition. This may already give a strong picture of an invalid marriage, but it will inevitably have been a subjective account because both parties are or were subjects in the relationship, not objects. What is then required is corroboration from **objective** sources. The vast majority of such corroboration comes from the testimony of witnesses who knew the broad circumstances of the marriage. In this respect there will often a large degree of variation between cases. For some petitioners (and respondents) they will be able to name half a dozen witnesses straight away, who are knowledgeable, articulate and willing to give their evidence. For others finding even one witness can be a real uphill struggle. This does not mean that a case will not proceed, but it may be far more difficult for those who judge the case to arrive at ‘moral certitude’ , i.e. to say that they are confident that they have an **objective** view of all of the circumstances of the case. For each case there is a standard set of questions with two sections where ‘specific questions’ are drafted by the priest/lawyer to clarify areas, particularly in the case where a respondent has participated and there are discrepancies between the accounts given by the two parties.

Witnesses are asked to say what they know, not to speculate about what they do not know. If it becomes evident that a witness is being **heavily** partisan in the giving of their evidence, this will invariably be diminished in its value to the judges. The whole rationale of calling witnesses is to have an objective account of what went on, so if it then becomes evident that they too are being subjective and biased, then what they have said **will not be relied upon** by the judges. Other elements of evidence can also be admitted, and these may be in the form of medical reports that have been released with the full consent of the person to whom they refer (usually the petitioner). These may be just a G.P.’ s notes or possibly a discharge summary if someone has been admitted for treatment of a physical or psychiatric disorder. If this is going to be a significant element in the proofs to be assembled in your case this will be discussed when you have your formal deposition interview.

The most important part of this phase of the process is to make sure that the witnesses have been correctly approached by the petitioner or the respondent. This responsibility **lies completely with the parties themselves**, but you will be assisted by the Tribunal in giving information to the witnesses you have nominated. We do send out an information sheet telling all your witnesses what to expect in the interview as well as practical details about arranging one. For the most part all witnesses can be interviewed in their own homes, or, if preferred, at the local presbytery or church centre. These interviews are usually conducted by a member of our team of lay auditors who are mature Catholic parishioners who are professional people who may have taken early retirement and have the necessary interpersonal skills to conduct interviews. The questions are drafted by the priest/judge who is handling the case, but the interviewer has the freedom to ask additional questions as well.

One aspect that can be a contentious issue is that both parties have the right to know the names of those who have been called as witnesses. This should be made clear to your chosen witnesses from the outset. This can be significant because the evidence that they give is **open evidence** that can be read by **both parties** involved, i.e. the petitioner and the respondent. This is a basic principle of justice, but it can also open a can of worms if some deeper personal issues are commented on in the evidence, or things that are confidences in themselves are revealed. For this reason, we do offer in **exceptional circumstances** the option of confidentiality to witnesses for particular answers to a specific question. We **cannot** say that all a person's evidence can be treated as confidential, that would be a potential denial of the right of defence. We do, however, recognise that there can be very sensitive areas that are entered upon through our questioning, and that some answers should not be revealed to either party. The officers of the Tribunal, particularly the 'Defender of the Bond' will then evaluate whether the disclosure of such information **only to the Court and not to the parties** might constitute a denial of the right of defence. We try very hard to make sure that the Tribunal Process does not do any lasting harm to relationships within families or among friends. Sometimes, however, the truth hurts but the truth must also be told if justice is to be served.

Choosing witnesses can be as easy for some petitioners as it is difficult for others. The ideal witness will be someone who has known both parties since childhood and was a regular and shrewd observer of their courtship, engagement, wedding, married life and final separation and divorce. This, of course, may be asking for the moon, but it may be possible to put together a number of witnesses who can paint a composite picture of this entire period. The following diagram explains this possibility:

Early Life	Meeting	Engagement	Wedding	Life Together	Problems	Divorce
X-----X (Ideal)						
X-----		-----X				
			X-----X			
		X-----X				

As can be seen, a witness who has known parties for the whole of the time frame is ideal, but it is also possible to put together a picture from other witnesses who do not have the whole picture, but can contribute various parts. The main requirement is that these people are able to give some reasonable depth of insight into the parties to the marriage and the dynamics of their relationship. Sometimes petitioners are concerned that the 'front' of normality was so well maintained that very few people actually have realised that there were deep-seated problems. This is a common problem, but it is surprising what tell-tale signs can be picked up. Another difficulty can arise because young married couples are often living quite transitory lives, especially if one or both are in H.M. Forces. In such a situation, the absence of witnesses can actually corroborate this aspect of the marital history. Family members are obviously in a position to know about their sons/daughters or siblings, but can, quite understandably, tend to be biased. This does not necessarily devalue their evidence, but the evidence of colleagues, friends or other peer group members is often valuable corroboration alongside such close family testimony. If in doubt, please have a comprehensive discussion with the priest/lawyer who interviews you about the detailed aspects of witness nomination.

On a practical note, we can arrange to have witnesses interviewed anywhere in the world or even in the depths of Thetford Forest! What does help is having up to date and accurate contact details, particularly having alternative phone numbers e.g. mobiles or work numbers. We do particularly appreciate this when another Tribunal is doing this on our behalf; it is very embarrassing to find that we have passed on inaccurate details and our colleagues have been sent off on a wild goose chase. All of this information facilitates the first contact that will be made by one of our auditors, and the sooner contact is made, the sooner the evidence can be taken, sent in and typed up. It is awkward delays at this stage that can often prolong the total time it takes to process a case. In the case of conducting of interviews by other Dioceses we often have to wait a little longer as not all areas of the country are equally covered by qualified auditors. We always tell witnesses to be honest; just because they are being interviewed by someone from 'The Church' this does not mean that we want to hear only those things that put everyone in a good light. The truth should be told, warts and all. The length of witness interviews can vary but we usually say to allow two hours at least for the interview. Some people are surprised by the thoroughness of the process, but this is a reflection of how seriously we take the search for the truth.

Once your witnesses have been interviewed, their evidence is typed up and returned to the Tribunal where it will be added to your case file. When all of the evidence is back, the whole file will be reviewed to see if the evidence has come up to the standard that was hoped for, i.e. sufficient to overturn the presumption of validity. This is called a 'scrutiny'. While some cases are clear-cut others are not. In such cases we have a variety of options. Quite a few cases can hinge on the presence of a personality disorder or psychiatric illness in one of the parties, and if there is circumstantial evidence about such problems it is helpful to have the opinion of an expert (either a psychiatrist or clinical psychologist). He or she will assess the impact of the disorder on the marriage. This can

take the form of a report on the evidence alone, or, where a petitioner or respondent is willing, also on an interview with them. This is, however, quite rare (under 10% of cases require it). It may be that there are other witnesses that could be interviewed, or occasionally existing witnesses may be re-interviewed if an area has been missed or skimped on in the original interview, but again this is quite rare. What is more common is that we ask an Advocate, someone who is skilled in matrimonial Canon Law, to make the best argument possible for the petitioner. Having said this, the respondent also has the right to appoint an advocate. If the respondent is contesting the case and insists that the marriage should be presumed valid, i.e. that there is **insufficient** evidence to overturn the presumption, then their advocate will argue this in their brief. Once the advocate(s) brief(s) has been received, the case goes forward to judgement.

The Inspection of the Evidence

It is at this point, when the evidence-gathering phase is complete that **both of the parties have the right to read the evidence**. The majority of parties, both petitioners and respondents, do not take up their right to read what has been said in the witness evidence, but some do. This is usually in cases where there is a real contentious difference between the parties on what the common life was like. Most typically it might be that the respondent does not accept that there are any grounds for considering a complaint of nullity, and is therefore going to query the objectivity of any evidence that has been amassed in order to overturn the presumption of validity. This is a right that cannot be withheld because both parties must be given the ‘right of defence’, and a failure to uphold that right would invalidate the whole legal process in Church Law. The parties do not have a right to take away a copy of the evidence, but they may take notes for their own use. They may **not** be accompanied **by any third party** (e.g. their current spouse) when reading the evidence. It remains confidential between the parties and the court. It may well be that a respondent may read the evidence in the presence of their appointed advocate and they can then instruct them accordingly as to their responses to what has been stated or alleged. If you will want to read the evidence when it has been gathered, then please make your wish known when you return the petition to the Tribunal Offices.

The First Instance Court

This means the court in the Diocese that is handling your case, i.e. here it is East Anglia. The ‘court’ consists of three judges, one of whom is known as the ‘ponens’ or presenter of the case, the other two being associate judges. There is also a ‘Defender of the Bond’ as has already been mentioned. It is his or her task to examine the whole case to check that all the rights of **both** parties have been upheld, and to review all of the evidence that has been gathered to see whether the presumption of validity can reasonably be challenged. They are to defend the bond insofar as they are bound to object to any spurious or insubstantial arguments for nullity that are based on flimsy or non-existent evidence. Their objection to a case does not **prove** that the marriage was valid, only that there is insufficient evidence being presented to overturn the presumption of validity.

The court meets approximately every three months and will consider between six and ten cases per session. A case will not usually be presented for judgement unless it has a very good chance of progressing. If a weakness has been identified at the scrutiny stage the priest/lawyer will have contacted you to discuss the various options open to you to obtain stronger evidence if this is possible. It may be that a case was borderline from the outset, but was accepted in the hope that the witness evidence would reveal surer grounds for nullity. Sometimes however, this does not happen and in fact the evidence only strengthens the presumption of validity. Whatever the truth of the situation before God, it may not be possible to establish a clear case for nullity through the Tribunal Process. It does not resolve all cases, and the further response of the Church to an irregular situation that cannot be 'regularised' would have to be discussed with the Tribunal Staff. Sometimes there are no easy answers. However, if a petitioner still wishes their case to continue knowing that the evidence is weak, they can allow this. They should know, however, that if a negative decision is given, then a case cannot be brought again on the same grounds unless there is new and significant evidence that was not previously available. In practical terms this might be the co-operation of the respondent if they had previously refused, or the co-operation of one or more knowledgeable witnesses.

For the majority of cases, however, the case is introduced by the *ponens* who outlines the facts and then indicates the arguments that would be used in the final written judgement (known as 'the Sentence'). Then the associate judges are asked to make their own comments as to which grounds they consider to be proven or unproven. The Defender of the Bond is also at liberty to make any comments or draw the judges' attention to any particular aspect of the evidence that should be carefully scrutinised. The 'first instance' decision given for each case is recorded by the administrator and the parties will be notified accordingly. This is now the final and what is now termed 'the executive decision' of the case.

The Final Outcome

For the great majority of petitioners, the final decision in the case will be made known by phone from the East Anglia Tribunal Office. After the phone call you will receive a letter confirming the fact that the decision has been given. In some cases, what is known as a '*vetitum*' is attached to the final decision, and this means that, in view of the circumstances of the failed marriage, either or both parties are not allowed to marry in the Catholic Church until specified conditions have been met. These very often relate to a requirement for substantial pre-marriage counselling that will attempt to make sure that history is not about to repeat itself. Since statistically second marriages have a higher failure rate than first marriages, the Judges wish to be sure that all reasonable steps have been taken ensure that both parties have reflected well upon their experiences. The Judicial Vicar will explain what the implications are for you if this mandatory counselling has been required and it will simply be a part of your expected marriage preparation. The priest or deacon who

is preparing you will normally liaise with the Tribunal to confirm that this restriction can be lifted if all has gone well in the arranged preparation.

Getting married ‘for the first time’

You might have noticed that the term ‘remarried’ has been studiously avoided. This relates back to the first principles that were outlined at the beginning. If a marriage is declared null and void, then a person is considered free to enter into marriage for the first time. Even though someone may have had many years of experience of trying to live out the married life, they still need to prepare for the unique aspects that a life with their intended spouse will have. We hope that it will be a true affirmation of what the Lord intended marriage to be.

Section Three: Some questions that are often asked

Do I have to tell my parish priest what I am doing? No, not unless you want to. It may be very helpful to do so, however, as he may be able to support and advise you. If you do not have a good rapport with him, however, you may not wish to tell him until the case is resolved.

“A friend of mine went for an annulment and it only took a couple of months to sort out; how come this will take up to two years?” By having been given this booklet it is presumed that your marriage is presumed valid by the Catholic Church. If you are a Catholic who was married in a Register Office, or in a non-Catholic church without the necessary dispensation and marriage preparation, then the Catholic Church does not recognise your marriage as valid. This is still true if you have been married for years and have had children. In some cases a couple may have had a Register Office marriage ‘put right’ in later years, and then the marriage would be recognised. If, however, the marriage was outside the Church because the other party had been married before, then the marriage wouldn’t be recognised for the additional reason that there was what is known as the ‘impediment of ligamen’ i.e. the person was not free to marry because of their previous bond. N.B. this would not apply had that previous spouse died by the time of the second wedding, or if it was, by chance, a Catholic marrying in a Register Office. This type of case which relies on assembling the necessary documents in order to arrive at ‘moral certitude’ can usually be processed in a couple of months and a Decree of Nullity will be issued. This is why some people appear to get their nullity cases resolved in such a short time compared with the formal process.

My partner who has been married before is a non-Catholic; how come they can have their marriage investigated by the Catholic Church when they got married in the Church of England? The church presumes that all those who are baptised enter into a sacramental marriage whether they acknowledge this or not. The Church has the right to administer and to judge the validity of all the sacraments, even those which are contracted outside her

temporal jurisdiction. The Church is given the 'right' to make the investigation by the petitioner who asks to know what their status is. This can often be viewed as irksome by their former partners, particularly if they have little time for the Catholic Church.

We're both divorcees, but I'm the Catholic, how come my non-Catholic partner has to do all the hard work? This situation occurs relatively often and is an understandable dilemma. If two divorcees, one a Catholic and one not, but both having been married in a Register Office, come along to see if their situation can be resolved it is more than likely that it is the non-Catholic who will be faced with the formal process and its thorough questioning whereas the Catholic party will only have to produce evidence of their baptism and their marriage and divorce documentation to be able to establish that they are free to marry. This then leads to a situation where the non-Catholic party embarks upon the formal process out of love for their Catholic intended spouse who may well be their current civil law husband or wife. Please do discuss your feelings about this situation, but if the case is as it has been described, then there is no other way in which it can be resolved.

My marriage was consummated and we had children; how is it that it can be annulled? The consummation of a marriage that was always valid does make it indissoluble, so long as the consent of both parties was sound. Very often the partner who has been abandoned often feels that they have been cheated and that they were sincere about their vows, so how can the marriage bond be said not to have existed? One analogy that can be used to explain this is that of a standard banknote that is taken and cut in half, and then sellotaped back together again, it is still legal tender; but if a counterfeit note is cut in half and taped back together, it is still counterfeit, but if you sellotape half a counterfeit note and half a genuine note together, the end product is still counterfeit, because the validity of one half cannot make up for what is lacking in the other half. This applies to marriage too, and no matter how sincere and capable one party to the marriage may have been, they cannot make up for a fundamental lack or incapacity in 'their other half'.

If our marriage is annulled will that mean that our children are regarded as illegitimate? Once a child has been born legitimate, there is no way to make him or her illegitimate. One might as well suggest that the divorce process also voids all the civil effects of the contract, but it does not. As was explained in the initial section, the Church is enquiring into the sacramental bond and its existence. The same end result would obtain had a Catholic couple married in a Register Office and had children, these would be regarded as legitimate by the State and thus also by the Church. In this regard a declaration of nullity has no civil effects whatsoever.

Is there a charge? Again, Pope Francis has made it clear that he does not expect Marriage Tribunals to charge any fees. Naturally the process does use up resources, both human and material, but any donation to cover these costs is entirely at the discretion of the parties.

The only people who get annulments are Royalty or people with inside connections in the Vatican, so how can I stand a chance? This is a popular and widespread misunderstanding

that refuses to go away. Since the mid 1960' s there has been, sad to say, a vast growth in the number of nullity cases brought before our Church Courts. A tiny percentage of these may involve members of the various royal houses or families with a high media profile, but they are treated all the same. In fact, cases involving royalty are reserved to the Roman Courts, which are the most thorough in their treatment of cases. The most significant factor that gives petitioners any sort of advantage is being able to nominate insightful and articulate witnesses. To this extent the 'Professional' classes could be said to have some advantage, but every case is treated on its merits and according to the highest standards of justice.

Can all this be done without letting my 'ex' know, because he/she is bound to cause trouble? As has been explained, the 'Citation of the Respondent' is a vital part of the natural justice of the nullity process. Unless every avenue of possibility to contact the respondent has been explored, the whole process will be considered **invalid** by its own rules of procedure. There are cases where the mental state of the respondent has been known to be precarious and the threat of retaliatory violence very real, but the highest court in the Catholic Church has not allowed this step to be by-passed. If the person is truly insane, then a 'curator' can be appointed on their behalf, but the proof of the diagnosis will have to be presented before this step can be taken. It is understood that there can be many unresolved issues and on-going problems over custody, visits, maintenance etc. and that a manipulative 'ex' can threaten to cause havoc if they are upset by anything. Nevertheless, this is one bullet that has to be bitten. The Tribunal Staff will always talk over your concerns and will always try and adapt its processes so that the least upset is caused. However, the 'ex' is still a person with rights in Church Law and those rights must be offered to them in full.

All these questions are very personal! How come the Church has the right to ask such intrusive questions? Marriage is a complex human reality, and when there has been a breakdown that has resulted in the failure of a marriage, the reasons for this need to be understood. Just as when a car inexplicably comes off a straight road, the investigators try and discover there was a 'design fault' , so the marriage nullity process tries to establish how the relationship came to be put together, in order to understand why it came apart. This involves detailed and personal questioning, and since the sexual relationship is part of the core of a viable marriage we have to ask whether there were any problems in this area. The questions will always be asked in as sensitive way as possible, but the whole picture must be put together, including the intimate dimension of the marital relationship.

As soon as this annulment comes through can I get married straightaway? This will depend on your situation and that of your intended partner. It may be that a *vetitum* has been applied in your case and therefore some counselling will need to be put in place. All these matters can be discussed with the Tribunal Staff and/or the priest or deacon who is preparing you for marriage.

As a divorced and remarried person I/my partner is not baptised, and we want to be baptised in the Catholic Church; can we go through with all the rest in our RCIA group? The question of whether someone can be baptised into or received into full communion with the

Catholic Church if their marital status is irregular is often a complex one. Furthermore it may not emerge until someone is well on their way through the ‘Journey in Faith’ or RCIA process as it is known. As soon as this question comes up it is advisable to speak with your parish priest straight away. He may consult the Tribunal Staff for their advice, but as a rule you should expect to be put ‘on hold’ until the situation has been clarified.

How come the whole process takes so long? The process is a detailed and thorough one and has to abide by the procedural norms of Church Law. These are constructed to ensure that not only both parties, but also the Church herself are protected from hurried decisions and unfounded allegations. The priest/lawyers who will be dealing with your case will also have parish responsibilities and will do their work for the Tribunal during the week. We also have to rely upon the good will and free time of our lay auditors who gather witness evidence on our behalf. If we have to send away to other Tribunals to collect evidence, then we are reliant upon their staff and have to take our turn in their ‘queue’ . It may be like ordering a Rolls Royce, but we hope that the end result will also be worth the wait.

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