

Owens – Members of Chambers to appear in Supreme Court Divorce case

Tini Owens has been granted permission to appeal to the Supreme Court against the decision of the Court of Appeal given in February this year. Mrs Owens will be represented in the Supreme Court by three members of 1 King’s Bench Walk: Philip Marshall QC (one of our Joint Heads of Chambers), leading Stephen Jarman and Millicent Benson, instructed by Simon Beccle and Charlotte Skea-Strachan of Payne Hicks Beach.

Resolution, an organisation of family lawyers, lodged written submissions with the Supreme Court in support of the grant of permission to appeal to that court, identifying certain arguments on matters of principle that it was suggested should be considered in such an appeal. Those submissions were drafted by James Turner QC and Deepak Nagpal of 1KBW. Resolution will now be applying to be joined to the case as an intervenor in the substantive appeal. Resolution campaigns for the introduction of ‘no fault divorce’ in England and Wales.

The case started in 2015, with Mrs Owens petitioning for a divorce from her husband of 37 years. Mr and Mrs Owens married in 1978 and Mrs Owens moved out of the family home in February 2015.

Mrs Owens asked the Court to grant her a divorce on the ground that the marriage had irretrievably broken down and alleged in support that Mr Owens’s behaviour was such that she could not reasonably be expected to live with him. Mr Owens defended the divorce and the Court listed a trial in the case on the 15th January 2016. By that stage, the parties had been separated for 11 months.

In his judgment, His Honour Judge Tolson QC refused to grant Mrs Owens a divorce and dismissed her petition. The Judge did find that Mrs Owens could not go on living with her husband but said that the facts that Mrs Owens relied on to seek her divorce were ‘minor altercations of a kind to be expected in a marriage.’

On appeal, the Court of Appeal upheld the judgment of HHJ Tolson QC, with the President of the Family Division saying that the Court could not interfere with the decision of the trial judge and remarking:

‘Parliament has decreed that it is not a ground for divorce that you find yourself in a wretchedly unhappy marriage, though some people may say it should be.’

Mr Marshall QC and his team will argue that the Courts’ emphasis on trying to find that a Respondent’s behaviour is in some way ‘unreasonable’ is wrong. It will be argued that this is a ‘linguistic trap’ and that the statute does not require unreasonable behaviour, but simply behaviour such that the petitioner cannot reasonably be expected to live with the respondent.

