

SCOTTISH CATHOLIC INTERDIOCESAN TRIBUNAL

[www.scitribunal.org.uk]



EXPLANATORY NOTES

TO ACCOMPANY THE
MARRIAGE NULLITY PETITION FORM

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IMPORTANT NOTIFICATION

Please carefully read these notes before completing your nullity form and sending it to us. They contain important information about your rights and obligations, and we are always happy to explain anything that you be unsure about [our contact details are on the front cover]. If your case is accepted for investigation you will have a named official managing your case with whom you can discuss anything about the case or our procedures.

1. These notes refer to the Marriage Nullity Petition Form. The Form changes from time to time, and it is important that you use the most up-to-date version, which you can download from our website or ask us to send you. If you use an older version it may contain matters that are no longer relevant or omit important questions, and in that case we may have to return it to you to be redone.
2. You must fully answer all questions on the Form so that we are able to decide whether we can investigate your case and, if so, how we will do so. You can also provide additional information on separate sheets of paper. If your Forms do not disclose enough information we may send you further questions and/or ask you to attend a meeting.
3. If your case is admitted, you will be informed by letter. You will be advised of each subsequent step in the process as it occurs. In some rare cases you may be told that we cannot handle your case because of a legal barrier, eg if neither spouse currently lives in Scotland and the wedding did not take place here, but in those cases we will give you the contact details of the Tribunal that would be competent to handle the case.
4. If, even after we get more information, your case cannot be admitted, we will have to issue a Decree rejecting your Petition. You have the right to appeal against that decision.
5. Cases must be handled in the order in which they are received [unless there is a very good reason to expedite a case, eg if the Petitioner is seriously ill]. Most, but not all, cases are decided **about two years** from when the case is accepted for full investigation, but unfortunately the Coronavirus lockdown has greatly slowed down our work and we do not yet know how quickly we will get back to the normal timescales. If a Petitioner intends to marry again in the Catholic Church, he/she must wait until the case is decided positively by this Tribunal and no-one has appealed to a higher Tribunal against our positive decision. Since the outcome of any case cannot be foreseen, a Petitioner **should not arrange a new wedding until they receive formal notification that they are free to marry in the Church.** Please do not pay attention to anyone, even a Priest, who tells you otherwise. The Tribunal can take no responsibility for any costs incurred or any inconvenience sustained if you arrange a wedding ceremony before being formally told by us that you are free to do so.
6. **It is important to always remember that the fact that a case has been accepted for investigation does not mean that it will inevitably declare you free to marry. Each case is judged on its merits and that means that some marriages will prove not to be null. If you do not get the decision you were hoping for it is not though the end of the road: you have the right to appeal our decision.**
7. Sometimes cases are delayed, perhaps due to a problem on our part, such as staff illness, perhaps due to a problem on your part, such as a failure to respond to letters. We will try to inform you of delays and explain how you can help the case get back on track. If you consistently do not respond, however, we may have to suspend handling of your case, and no more work will be done on it until you engage fully with the process.
8. **Everyone at the Tribunal is here to help, and we recognise that emotions can run high in the difficult business of seeking a nullity, but we will not tolerate abusive language or behaviour. We will treat you with courtesy and respect and we ask that you treat us the same.**

WHAT DO WE MEAN BY A NULL “MARRIAGE”?

9. To approach the Tribunal you must already be divorced. A divorce is a decree from a civil Court declaring that, as far as the Government is concerned, you are no longer married. It is a decision about the state of the husband and wife at the time of the divorce [since nowadays a divorce is granted almost automatically after the couple have been separated for a specific amount of time]. Here at the Tribunal we are not directly concerned by why you split up or how long you have been separated. What we are looking at is what was going on at the time of your wedding.
10. When we say that a marriage is null, we mean that it never really existed because the consent given by one, or both, of the parties to the marriage was invalid at the time it was exchanged. Although there was a ceremony of marriage, no bond of marriage resulted because there was some recognised barrier present [eg a prior marriage bond] or some essential element missing [eg the intention to be faithful].
11. Whenever a marriage ceremony takes place, the Church presumes that it is a true and valid marriage and the parties are presumed to be husband and wife. This presumption holds good for every marriage unless, and until, it is proved to the satisfaction of the Tribunal that a particular marriage was not true and valid.
12. Please note that a Church Decree of Nullity/Dissolution of Marriage does not affect the legitimacy of any children of the marriage and has no civil effects.

WHAT HAPPENS NEXT?

13. **Firstly, it is extremely important to understand that neither you, nor your former spouse, is on trial in a marriage nullity process.** What is on trial is the bond of marriage itself: was it valid at the time you exchanged your vows or not? The marriage nullity trial is not about whether you “deserve” an annulment, rather, it is a sincere, serene, albeit difficult, journey to discover the truth of the validity or invalidity of the marriage bond. Only on the basis of that truth can a just decision be reached.
14. When your Petition has been formally admitted, it will be sent immediately to the other party to your marriage who must, by Law, be given the opportunity to “respond” to your petition [hence the other party is called the “Respondent”]. The Respondent has the right to participate in the entire process on the same footing as yourself, the Petitioner. If the Respondent genuinely cannot be contacted then the case can still proceed but you must do everything you can to discover their contact details, if you do not tell us them when you could have done so the Respondent can later try and get the case set aside.
15. If the Respondent refuses to reply, or replies and says that we should not contact them again, the case can still proceed without them, but we must give them this opportunity to be heard.
16. Your petition will also be sent to the “Defender of the Bond” – this is an official of the Tribunal whose task it is, at the end of the nullity process, but before the final decision of the Judges is taken, to set forth all reasonable arguments against granting the petitioned nullity. The Defender is part of the process – indeed he is called a “party” like the Petitioner and Respondent – because the *presumption* of the Church is always that a marriage is valid. It is precisely this presumption which the Petitioner is challenging. What the Law is saying is: “You say that your marriage was null. The Church presumes every marriage to be valid. So you must now prove that this presumption is not true in your case”.
17. Both the Respondent and the Defender are invited to submit to the Court their responses to your Petition. The Court will then propose the grounds of nullity upon which the case is to be investigated. After responses to the proposed grounds are received, the Court will either modify the grounds or confirm those originally proposed.

18. Once the grounds of nullity have been set, there may well be a period of several months before you are contacted by letter, inviting you to come to the Tribunal Office for an interview. This is called your “Judicial Deposition”. There is no need to be anxious about the interview, since all of our officials are here to help you and are aware that the experience is difficult. The length of interview varies because it depends on each case and each person. In the light of the Coronavirus lockdown we are now experimenting with video interviews, so you may be offered the opportunity to be interviewed via video-link [such as Zoom or Skype] – this will only be done if you are comfortable with it, but it will save you the trouble of travelling to Glasgow.
19. On receipt of the letter just mentioned, it is in your interests to make an appointment **as soon as possible**. Failure to act within six months of receiving any notifications from us may result in your case being considered as abated [as having been abandoned]. This does not mean that it cannot be re-opened, but in this event, it will have to take its place once more at the end of the queue.
20. At the interview you will be asked to give an account of the circumstances of the marriage. This interview is exclusively between you and the Tribunal Official. Anyone you bring with you will have to wait in our waiting room. The exclusive nature of the interview is to allow you complete freedom to respond to the questions put to you; it also allows the interviewer greater freedom in questioning you.
21. When your evidence has been taken, arrangements will be made for the Respondent to give evidence [if they are taking part].
22. The next step is that arrangements will be made for your witnesses and any witnesses cited by the Respondent to give their evidence. In most cases witnesses are interviewed locally, eg in their homes, or in some suitable place, at a time convenient to both the witness and the “Auditor”, ie the person designated by the Tribunal to act on its behalf. Witnesses are asked to maintain confidentiality. All proceedings are held in strict privacy, although all evidence gathered will be made available for inspection by you and the Respondent at the appropriate time should either party wish to read it.
23. Whilst in some rare cases it may be necessary to proceed without witnesses because there are simply none available, it is always better that we get witnesses and any documentary, professional, or other evidence available [eg medical or legal reports, financial records, photographs etc]. This helps us to arrive at the truth of the matter with greater confidence. It is your responsibility to nominate witnesses and to make sure that they are willing to participate. See the separate set of Witness Forms for more details.
24. When certain grounds of nullity are set, the Law requires that a Psychological Expert be asked to provide a written opinion on the written evidence. It is not, however, the Expert who decides the outcome of the case, but the Judges alone. The service of the Expert will not cost you anything.
25. When all the evidence has been gathered, and any other formalities of Law have been duly observed, the case is typed and bound in book form. At this point, you will be contacted by the Tribunal and given the opportunity, if you wish, to inspect all of the evidence.
26. Between that inspection and the submission of the case to the Judges for their decision, an opportunity will be afforded to both parties to present their final “Pleadings” or concluding remarks. Depending on the unfolding of a case, this concluding phase will take different forms. Each side in the case will be given the right to read and, if desired, respond to the Final Pleadings of the other side.
27. Finally, the full case is sent to three Judges designated by the Tribunal to decide the case. In exceptional circumstances a Sole Judge may be appointed. After studying the evidence independently, the Judges then meet to give their verdict. One of the Judges will write a Sentence which explains the reasons for the decision taken. The parties will be sent a copy of the Sentence once it has been completed.

28. Whether the decision is negative or positive, a party who feels aggrieved by a Sentence has the right to appeal to the higher Court within a mandatory period of fifteen usable days [ie days on which someone is not impeded from acting for reasons of ill health, holidays, etc]. This Appeal may be made to the Roman Rota, or to the Birmingham Tribunal, which is our ordinary court of appeal. An Appeal is made by sending us a letter saying that you wish to appeal. We will then forward everything to the appeal court, and they will then get in touch with you directly.
29. If no Appeal is lodged, or the Appeal fails, our decision becomes final, and at that point we will tell you that you are free to marry [if we ruled that the marriage was null] or that you are not free to marry [if we ruled that the marriage was not null]. Sometimes we can rule that a marriage was null but put a condition that must be fulfilled before you can marry again, such as requiring you to seek counselling for a psychological problem.
30. If you intend to marry again and your intended spouse has been married before it is likely that he/she will require his/her marriage to be investigated also.

FORMS, CERTIFICATES AND CORRESPONDENCE

31. All applications must be accompanied by a marriage and divorce certificate. If you do not possess the marriage and/or divorce certificate a copy of your marriage certificate can be obtained from the Registration Office responsible for the district in which the marriage took place. An extract of the divorce certificate can be obtained from the Court which dealt with the divorce. Some certificates can also be ordered online at www.scotlandspeople.gov.uk.
32. If you are not already divorced, then you should consider contacting a Solicitor to start proceedings since we will not normally open proceedings until a civil divorce has been obtained.
33. Information about the status or progress of marriage nullity cases will only be given to the Petitioner or Respondent. Such information cannot be given to partners, parents, other relatives etc due to Data Protection.
34. Experience indicates that it is in the best interest of the Petitioner if he/she takes sole responsibility for the posting/delivery of the marriage nullity petition to the Tribunal. The forms, or other communications, can be posted or hand-delivered to our office or scanned/emailed to us. Our contact details are on the front cover.
35. All correspondence will be acknowledged by the Tribunal. If any correspondence is not acknowledged within two weeks you should contact the Tribunal as it may be that the correspondence has not been received. Once initial contact has been made with the Tribunal a reference name and number will be assigned. This should be quoted on all future correspondence.

OTHER POINTS

36. Upon the submission of your Marriage Nullity Petition to the Tribunal, it may happen that an alternative legal procedure of the Church can or must be followed. In that event, you will be informed immediately and you will be informed as to what you have to do.

CHANGE OF NAME, ADDRESS OR TELEPHONE NUMBER

37. If you **change your name, address or telephone number** while your case is pending before the Tribunal, or if the **Respondent or any of the witnesses changes name, address or telephone number**, you should forward to the Tribunal the new details *as soon as you know them*, as failure to do so may delay your case considerably. Please remember to quote the name and reference number of your case on all correspondence with the Tribunal.