



# **The independent review into the application of sharia law in England and Wales**

Presented to Parliament  
by the Secretary of State for the Home Department  
by Command of Her Majesty

February 2018





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# Panel members



## **Mona Siddiqui OBE (Chair)**

Mona Siddiqui, OBE, Professor of Islamic and Interreligious Studies at the Divinity School, University of Edinburgh. She is a regular commentator in the media and chairs the BBC's Scottish Religious Advisory Committee. She is a fellow of the Royal Society of Edinburgh and an internationally renowned speaker on religion and ethics.



## **Anne-Marie Hutchinson OBE QC (Hon)**

Anne-Marie Hutchinson OBE, QC (Hon) Family Law Solicitor and Partner at Dawson Cornwell. She has particular expertise in Human Rights, all aspects of family law and family law issues in the BME community, stranded spouses, child abduction, forced marriage and honor based violence. Anne-Marie received an OBE for her services to international child abduction and adoption, she has received an honorary doctorate of laws from the University of Leeds and been appointed Queens Counsel honoris causa. She is a member of the National Commission on Forced Marriage at the House of Lords.



## **Sam Momtaz QC**

Sam Momtaz QC was called in 1995 and took silk in 2017. Sam practices exclusively in children law, which mostly involves presenting to local authorities, parents and children in care proceedings. Sam appears in the most difficult, sensitive and challenging cases involving the protection of children. Sam is instructed in the most complex cases involving radicalisation, serious physical and sexual abuse and factitious disorders i.e. deliberately creating or exaggerating symptoms of an illness. Sam's cases involve cross-examination of expert witnesses, from a wide variety of disciplines as well as vulnerable witnesses and children. Many of Sam's cases have an international element and require consideration of the child's habitual residence and potential transfer to or from other jurisdictions.



## **Sir Mark Hedley DL**

Sir Mark Hedley is a retired High Court Judge of the Family Division and Court of Protection. He is now Visiting Professor in Law at Liverpool Hope University.

## Advisers

The panel was advised by two religious and theological experts to ensure a full and thorough understanding of the religious and theological issues relating to specific aspects of sharia law, and the way it is applied.



### **Qari Muhammad Asim MBE**

Qari Muhammad Asim MBE is a senior Imam at Leeds' Makkah mosque and a senior lawyer at a global law firm, DLA Piper. He is an independent member of the Government's Anti-Muslim Hatred working group. Qari is senior editor of ImamsOnline and an executive member of a number of national Muslim and inter-faith organisations including British Muslim Forum, Christian Muslim Forum and Joseph Interfaith Foundation's Imams & Rabbis Council. He is a blogger and community activist who has campaigned against issues such as extremism, domestic violence, forced marriages, honour-killing and child abuse in faith institutions. He is a trustee of a number of charitable organisations including British Future.



### **Imam Sayed Ali Abbas Razawi**

Imam Razawi is a theologian and Director General of the Scottish Ahlul Bayt Society. He is an ambassador for 'Glasgow The Caring City' and partners with the Scottish National Blood Transfusion Service (SNBTS). Internationally he is a member of the global sustainability network with a specific focus on point 8.7 of the UNDP. He is also a member of the network for religious and traditional peacemakers and partners with UN agencies for the prevention of genocide.



# Foreword

Over a year ago I was asked by the then Home Secretary to chair an independent review into sharia law, specifically within sharia councils in England and Wales. The review's terms of reference focused on whether sharia law is being misused or applied in a way that is incompatible with the domestic law in England and Wales, and in particular whether there were discriminatory practices against women who use sharia councils.

Over the last two decades there has been an increasing focus on Islam and British Muslims and concern about some of the cultural practices within certain Muslim communities. While Muslim societies are diverse and vary in their lifestyles and attitudes, the rise of extremism is seen as evidence of a lack of social and political integration within many parts of the UK. The observance of sharia loosely translated as Islamic law, but which incorporates various aspects of Muslim life, has also been regarded by some as keeping many Muslims isolated, entrenched and with little social and psychological stake in wider British citizenship and civic life.

There are undoubtedly many religio-cultural challenges within some Muslim societies which continue to challenge modern ideals of individual freedom and moral agency, especially relating to women. Women and girls are so often the primary bearers of passing on religious traditions and upholding family honour that their own autonomy and freedoms can be overlooked or denied. These factors often leave them in vulnerable situations. During the course of the review, it soon emerged that religion, culture and gender relations are inextricably intertwined especially when it comes to family matters and personal law.

Sharia councils call themselves councils because they deal with aspects of Islamic law. The review was set up because some sharia councils are deemed to be discriminating against women who use their services on matters of marriage and divorce.

My colleagues who formed the review panel come from a variety of backgrounds with a wealth of professional experience in family law. Their collegiality and willingness to ask difficult questions have, I hope, made this report honest and intellectually robust. The two imams who acted as advisors gave significant help on matters relating to sharia and the wider communities. As we went through the process of interviews and evidence gathering, it became clear that many Muslim women were seeking help from a diverse range of women's organisations as well as turning to sharia councils which themselves vary in size and scope. These organisations hold a variety of views about how Muslim women can be helped when facing family and social pressures and given more personal autonomy and agency in their lives.

Our fundamental task was to understand why sharia councils exist in the first place and why Muslim men and women, but mainly women, need and use them. I am grateful to everyone who came forward and shared their personal stories. We hope that our recommendations, which result largely from the evidence we heard, can reduce discrimination and offer possible ways forward to help Muslim women gain greater confidence and agency over their lives.

**Mona Siddiqui, OBE**

Professor of Islamic and Interreligious Studies  
University of Edinburgh

# Executive summary

In May 2016 the independent review into the application of sharia law in England and Wales was tasked with understanding whether, and the extent to which, sharia law is being misused or applied in a way that is incompatible with the law within sharia councils.

Sharia is an all encompassing term which includes not only law in the western sense of the word but religious observances such as fasting and prayer, ritual practices such as halal slaughter, and worship in general. Sharia is written jurisprudence and law developed on the basis of a diversity of opinions among jurists in the classical period of Islam. While many aspects of sharia have been modified or modernised in most Muslim countries, in the area of personal law, especially marriage and divorce, many Muslim societies still observe rulings of classical jurisprudence. The word sharia is used in diverse ways by Muslims and this leads to varying degrees of understanding and application.

This review was set up to focus exclusively on the work of sharia councils in England and Wales and not to look at sharia practices in general. These councils call themselves sharia councils because they deal with aspects of Islamic law. The review has collected written and oral evidence from a wide range of sources. These include a public call for evidence issued by the review Chair Professor Mona Siddiqui, and oral evidence sessions with users of sharia councils, women's rights groups, academics and lawyers, as well as other key stakeholders.

There is no clear definition of what constitutes a sharia council. Sharia councils vary in size and make up. There is also no accurate statistic on the number of sharia councils, with estimates in England and Wales varying from 30 to 85. To the best of our knowledge, there are no sharia councils in Scotland. For the purposes of this review we are defining sharia councils as a voluntary local association of scholars who see themselves or are seen by their communities as authorised to offer advice to Muslims principally in the field of religious marriage and divorce.

Sharia councils have no legal status and no legal binding authority under civil law. Whilst sharia is a source of guidance for many Muslims, sharia councils have no legal jurisdiction in England and Wales. Thus if any decisions or recommendations are made by a sharia council that are inconsistent with domestic law (including equality policies such as the Equality Act 2010) domestic law will prevail. Sharia councils will be acting illegally should they seek to exclude domestic law. Although they claim no binding legal authority, they do in fact act in a decision-making capacity when dealing with Islamic divorce.

Common misconceptions around sharia councils often perpetuate owing to the use of incorrect terms such as referring to them as 'courts' rather than councils or to their members as 'judges'. These terms are used both in media articles but also on occasion by the sharia councils themselves. It is important to note that sharia councils are not courts and they should not refer to their members as judges. It is this misrepresentation of sharia councils as courts that leads to public misconceptions over the primacy of sharia over domestic law and concerns of a parallel legal system. The recommendations included in this report, such as changes to marriage law, are designed to promote equality between religions in ways that should challenge misconceptions of a parallel legal system and encourage integration.

In collecting its evidence the review looked to examine why sharia councils exist, who uses them and for what reasons. The evidence heard by this review indicates that the vast majority, in fact nearly all people using sharia councils, are women. In most of these cases (our evidence indicates over 90%) the women are visiting the council seeking an Islamic divorce. In attempting to understand what motivates women to use sharia councils the review found that there are many reasons why Muslim women seek an Islamic divorce. A key finding was that a significant number of Muslim couples fail to civilly register their religious marriages and therefore some Muslim women have no option of obtaining a civil divorce.

The review sought to understand what occurs at the sharia council and whether and to what extent the practices are discriminatory. The evidence collected by the review indicated a range of practices occurring in the sharia councils. The review found evidence of good practice but also clear evidence of bad practice. Furthermore, there is unanimous agreement among the sharia councils themselves that discriminatory practices do occur in some instances within the councils in England and Wales.

From the very beginning, the review panel established the principle that recommendations would be based collectively on the evidence it received rather than the personal opinions of the panel members. While there was broad and respectful consensus on most issues, this report also reflects the particular area where there was a level of disagreement.

It should also be noted at the outset that those proposing a ban on sharia councils provide no counter proposal or any solution for anyone seeking a religious divorce. It is clear from all the evidence that sharia councils are fulfilling a need in some Muslim communities. There is a demand for religious divorce and this is currently being answered by the sharia councils. This demand will not end if the sharia councils are banned and closed down and could lead to councils going 'underground', making it even harder to ensure good practice and the prospect of discriminatory practices and greater financial costs more likely and harder to detect. It could also result in women needing to travel overseas to obtain divorces, putting themselves at further risk.

We consider the closure of sharia councils is not a viable option. However, given the recommendations also proposed in this report include the registration of all Islamic marriages as well as awareness campaigns it is hoped that the demand for religious divorces from sharia councils will gradually reduce over time. These key recommendations address the issue of current discriminatory practices identified within the sharia councils.

## **Recommendation 1: legislative change**

Amendments to the Marriage Act 1949 and the Matrimonial Causes Act 1973. The changes are to ensure that civil marriages are conducted before or at the same time as the Islamic marriage ceremony, bringing Islamic marriage in line with Christian and Jewish marriage in the eyes of the law.

Such legislative changes would be through amendments to the Marriage Act 1949 offences sections, so that the celebrant of any marriage, including Islamic marriages, would face penalties should they fail to ensure the marriage is also civilly registered. This would make it a legal requirement for Muslim couples to civilly register their marriage before or at the same time as their Islamic ceremony.

It is also proposed that there should be minor amendments to legislation on divorce through changes to the Matrimonial Causes Act 1973. This would be changes under section 10 A to ensure equality amongst all religions. The review recommends a short insertion into the section to bring Islamic divorce in line with that of the Jewish Get. The inclusion of a Muslim marriage by Nikah could be inserted in Section 10 A (1) (a) (ii) through the use of a Statutory Instrument following the provisions of subsection 6.

By linking Islamic marriage to civil marriage it ensures that a greater number of women will have the full protection afforded to them in family law and the right to a civil divorce, lessening the need to attend and simplifying the decision process of sharia councils.

## **Recommendation 2: awareness campaigns**

The panel's opinion is that the evidence shows that cultural change is required within Muslim communities so that communities acknowledge women's rights in civil law, especially in areas of marriage and divorce. Awareness campaigns, educational programmes and other similar measures should be put in place to educate and inform women of their rights and responsibilities, including the need to highlight the legal protection civilly registered marriages provide.

Alongside this is the need to ensure that sharia councils operate within the law and comply with best practice, non-discriminatory processes and existing regulatory structures. In particular, a clear message must be sent that an arbitration that applies sharia law in respect of financial remedies and/or child arrangements would fall foul of the Arbitration Act and its underlying protection.

Finally there is the need to raise public awareness in communities as to the availability of legal aid and the exceptions to the Legal Aid Sentencing and Punishment of Offenders (LASPO) Act (including the domestic violence and child protection exceptions) which mean that public funding is available to applicants.

## **Recommendation 3: regulation**

Recommendations 1 and 2 of this report aim to gradually reduce the use and need for sharia councils. However, in the meantime there needs to be a further recommendation on how to prevent discrimination in the immediate and medium term. The recommendation of regulation is put forward by the majority of the review panel, but is not unanimously supported; one member of the panel is not in agreement and their reasoning is detailed in this report.

Recommendation 3 proposes the creation of a body that would set up the process for councils to regulate themselves. That body would design a code of practice for sharia councils to accept and implement. There would, of course, be a one-off cost to the government of establishing this body but subsequently the system would be self-regulatory. This body would include both sharia council panel members and specialist family law legal expertise. It is to be noted that in speaking with the sharia councils, none were opposed to some form of regulation and some positively welcomed it.

# 1: Introduction

## Context

In October 2015 the government committed to commissioning an independent review to understand whether, and the extent to which, sharia law is being misused or applied in a way that is incompatible with the law within sharia councils.

This review was launched on 26 May 2016 by the former Home Secretary Theresa May with the following terms of reference:

- the ways that sharia may be being used which may cause harm in communities
- the role of particular groups and Islamic authorities in England and Wales
- the role of sharia councils and Muslim Arbitration Tribunals
- the treatment of women (particularly in divorce, domestic violence and child arrangement cases)
- seeking out examples of best practice in relation to governance, transparency, and assuring compliance and compatibility with UK law

## Methodology

The review has collected written and oral evidence from a wide range of sources. These include a public call for evidence, issued by the review chair on 4 July 2016, and oral evidence sessions with users of sharia councils, women's rights groups, academics and lawyers, as well as other interested parties.

The call for evidence targeted those with experience of the application of sharia law, specifically people who have had some involvement with sharia councils in the last five years. The evidence sessions were closed to protect the privacy of the witnesses. Those giving evidence were given the opportunity to speak to the chair and panel without the presence of the review's religious advisors. Those giving evidence were also offered the option to speak only to the chair or specific members of the panel. The review panel also visited a number of sharia councils across England to speak to both council members and men and women who use them.

One of the challenges during the evidence collection was securing large-scale engagement from the men and women who use sharia councils, in particular from women who had negative experiences of the councils. Despite hearing of many women who had negative experiences with sharia councils, it was difficult to find many willing to come forward.

After the review was launched there was also a boycott instigated by a number of women's rights organisations. These groups were opposed to the review's terms of reference and the selection of some of its panel and advisors. The review panel wrote to these organisations on several occasions and sought their engagement in the review but they did not respond. Other women's organisations that were not part of this boycott did provide valuable evidence to the review.

Despite these challenges the review panel feel they have been able to collect valuable first-hand evidence as well as a substantial body of second-hand evidence which supports its findings and recommendations.



## 2: The relationship between state and religion

It is necessary to consider the impact of the European Convention on Human Rights (ECHR) which, pursuant to Section 1 (2) of the Human Rights Act 1998, has become part of our domestic law. Under Section 6 of the Act a public authority has a duty not to act in a way which is incompatible with a Convention right. The state is such an authority but a sharia council is not. The pertinent articles for these purposes are Article 8 (right to respect for private and family life), Article 9 (freedom of thought, conscience and religion), Article 11 (freedom of assembly and association), Article 12 (right to marry) and Article 14 (prohibition of discrimination).

It is important to note that articles 8, 9 and 11 confer qualified rights in that there may be an interference with them "for the protection of the rights and freedoms of others". Although Article 12 confers an unqualified right to marry and found a family, it is a right to be exercised "according to the national laws governing the exercise of this right". Article 14 is not a freestanding right but depends upon the existence of some other convention right.

Article 8 entitles citizens to order their private lives as they think right. That includes decisions as to where to live and with whom to associate. The decision to live in and as part of a particular community is protected by that right. It is arguable that Article 8 also confers a right to alter private arrangements by, for example, having access to a divorce.

Article 9 is critical to this discussion and merits citation in full.

### **ECHR Article 9**

(1) Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

(2) The freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Freedom of religion must include the freedom to practice that religion and therefore the freedom to accept the practices and disciplines of that religion and the authority of those within that religion. Thus a Muslim woman has the right to seek a religious divorce by such means as their religion permits even though she may be already divorced in civil law. No religious law can be enforced in our civil law. There is no legal duty on a citizen to comply with any religious law. The state may (and should) make that clear to all.

Article 11 effectively protects the formation and maintenance of sharia councils, which are voluntary associations of scholars recognised within the Muslim community as having a particular authority. However, all three articles are qualified.

The state is authorised to intervene in the freedoms granted by articles 8, 9 and 11 if the conditions specified in paragraph 2 of those articles is satisfied. Although we have received little direct evidence of bad practice in sharia councils, we have secondary evidence of it and an acknowledgement from every council visited that examples of bad practice exist. Thus, there is evidence that the rights and freedoms of some women are indeed infringed in some proceedings by some councils. These concerns have also been raised by women's rights groups and human rights organisations. The panel is confident from this evidence that bad practices exist which can disadvantage women. Accordingly, the state will be justified in intervening.

Any such intervention will however need to be proportionate. That is to say that there must be proportionality between the extent of the intervention proposed and the harm sought to be addressed or the good to be achieved by that intervention. Intervention could become significant where, for example, councils acknowledge the need for regulation (as they do) and the question as to whether an opportunity to self-regulate should be offered.

It is also important to bear in mind that all these matters apply (and should apply) equally to all religious communities. They all have institutions and their members recognise authority within those institutions. They are all protected by the Convention rights under consideration. However, the way in which they are both exercised and regulated will be different.

For example, the Church of England, as the Established Church, is organised under statutory authority and is subject to Parliamentary scrutiny. That is not the case with other religious groups which are organised less formally. Many, however, will be institutions registered as charities and thus to that extent regulated by the state. In many cases these institutions will contain an internal regulatory framework. Thus the Jewish community have the Beth Din which exercises some authority in relation to marriage and divorce; it cannot compel a divorce but can encourage, persuade or even cajole a man to give a Get. The Roman Catholic Church, while in all respects complying with the Marriage Act 1949, does not formally recognise divorce but does through its Consistory Court adjudicate on the issue of annulment. A Decree of Annulment has no force in civil law but its granting will entitle a person to re-marry in the eyes of the Church.

It is important that all religious communities should, insofar as it is reasonably practicable to do so, be treated alike by the state and also that the state should ensure, so far as it can, that all adherents to faith communities have their convention rights respected. It is in the search for that balance that difficult questions can arise.

# 3: The role of sharia councils

## Sharia councils in England and Wales

Sharia councils have no legal status and no legal binding authority under civil law. Whilst sharia is a source of guidance for many Muslims, sharia councils have no legal jurisdiction in England and Wales. Thus if any decisions or recommendations are made by a sharia council that are inconsistent with domestic law (including equality policies such as the Equality Act 2010) domestic law will prevail. Sharia councils will be acting illegally should they seek to exclude domestic law and although they claim no binding legal authority they do in fact act in a decision making capacity when dealing with Islamic divorce.

Common misconceptions around sharia councils are often perpetuated by the use of incorrect terms such as referring to them as ‘courts’ rather than councils or to their members as ‘judges’. These terms are used both in media articles but also on occasion by the sharia councils themselves. It is important to note that sharia councils are not courts and they should not refer to their members as judges. It is this misrepresentation of sharia councils as courts that leads to public misconceptions over the primacy of sharia over domestic law and concerns of a parallel legal system. The recommendations included in this report, such as changes to marriage law, are designed to promote equality between religions in ways that should challenge misconceptions of a parallel legal system and encourage integration.

Sharia councils are diverse and there is no single authoritative definition of what constitutes a sharia council. Those in England and Wales vary in size, services offered and schools of Islamic thought, but were all established to service the religious needs primarily of Sunni Muslims. For the purposes of this review we are defining sharia councils as a voluntary local association of scholars who see themselves or are seen by their communities as authorised to offer advice to Muslims principally in the field of religious marriage and divorce.

In contrast to the Sunni communities, sharia councils are not prevalent in Shia Muslim communities. The evidence this review heard was that, for decisions on divorce, Shia couples need to consult a Grand Ayatollah or an Ayatollah that has been given authorisation from a Grand Ayatollah. The review panel met with two UK Shia organisations of which only one man had the authority, bestowed on him from foreign Grand Ayatollahs, to pronounce an Islamic divorce.

The exact number of sharia councils operating in England and Wales is unknown. Academic and anecdotal estimates vary from 30 to 85. The review has identified 10 councils operating with an online presence. The sharia councils identified by the review were mostly in urban centres with significant Muslim populations, such as London, Birmingham, Bradford and Dewsbury.

Sharia councils derive their standing and authority from within their own community; outside of their own community individual sharia councils may have no legitimacy. Some sharia councils are registered as charities, some as businesses and some appear to have no specific status at all.

The most well established sharia councils in England and Wales have been in existence since the 1980s. Anecdotal evidence indicates that the numbers of sharia councils in England and Wales has increased in the last 10 years. From the evidence the review heard, one of the reasons appears to be the removal of legal aid for divorce cases, following the LAPS Act, which has increased the cost of seeking a civil divorce.



## Arbitration

Arbitration is a form of private dispute resolution which takes place outside of the formal court room. The parties enter into an agreement under which they appoint an arbitrator to adjudicate on their dispute. In doing so they agree to be bound by the decision of the arbitrator. Under English family law the parties cannot make an agreement that purports to exclude the power of the court to make its own orders. Arbitration in family law disputes does now have a formal and established status in the application of domestic civil law.

## The Muslim Arbitration Tribunal (MAT)

Sharia councils are not the only groups dealing with Muslim divorces. The MAT is a separate entity from sharia councils which has existed since the early 2000s and operates under the Arbitration Act 1996 to provide binding arbitration services for commercial issues. Decisions at the MAT can be enforced through the formal courts on the basis the contract meets certain standards and it does not prescribe any activities which would contravene the law of England and Wales. In order to enforce a decision legally it must be reviewed by a legally qualified judge.

The MAT received media attention when evidence was published that indicated that it may exceed its mandate by arbitrating issues outside of their commercial jurisdiction such as arrangements for children and domestic violence.<sup>1</sup> This review visited the MAT and heard evidence about its practices and the differences between itself and sharia councils.

The MAT indicated that only 10% of its workload was concerned with family matters; of that 70% was the granting of Islamic divorces. The vast majority of their work is commercial arbitration. However, the overwhelming majority of people seeking divorce are going to sharia councils rather than the MAT.

## Mediation

Mediation as understood in family law is a voluntary confidential process where participants seek to make a decision between them to resolve a disagreement with the assistance of outside facilitators – mediators. The mediator is impartial and is there to support all participants equally. The aim of the mediation process is for the participants to find a practical solution to their problems upon which they can both agree.

There is some confusion in referring to sharia councils in their primary work of confirming a divorce as a means of ‘alternative dispute resolution’ when the service provision is not an alternative to anything in the mainstream law. The state has no interest in conferring a religious divorce.

The sharia councils that were visited all had a very loose definition of mediation. In all cases there appeared to be confusion between mediation and what is in effect reconciliation counselling. All councils visited within the context of the review made provision for reconciliation counselling at the commencement of the process. The reconciliation was invariably described as ‘mediation’ when it is clearly not.

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<sup>1</sup> News articles, including 'Sharia Courts interfered to protect domestic abusers, MPs told' Independent, published 31 October 2016.

All of the councils visited professed not to engage in mediating matters relating to civil family law and in particular the financial remedy process and disputes relating to children. However, they all stated that they would offer mediation in assisting the couple to come to an agreement in respect of those issues if that is what the couple want. More evidence is needed about the extent to which sharia councils are 'mediating' within this context and what becomes of the mediation agreements reached.

If those mediated agreements are being converted into consent orders or consent agreements within the civil law process whether by way of financial remedy or child arrangement orders, there would be a concern as to the extent to which those mediated agreements were made in a fair and balanced process in which each of the parties has equal status. There would be a concern if the mediation offered by sharia councils was based on principles of sharia law and if the underlying law applied was anything but the civil law.

The evidence of this review was that many of the councils confirmed that they carry out mediation although the review panel was not provided with exact details of their mediation processes. Save for one individual, the review found that those conducting the mediation at sharia councils have not received mainstream training from the recognised mediation organisations, nor was there any evidence of accreditation. The sharia councils appear to use the term mediation in a much looser sense than that of the highly trained and accredited mediators practicing in family law.

In addition to the lack of mainstream mediation skills there was no evidence of standardised rules or practice as to the mediation process such as intake assessments, safeguarding policies and ongoing checks and balances within the process as to any external outside influences. There are concerns as to whether there are more cultural, familial and community pressures on women in particular to enter into such mediation processes with sharia councils rather than (a) relying on their civil rights through the court process or (b) being offered viable alternative mediation through a family mediation bodies accredited by the Family Mediation Council.

Further evidence gathering is required as to the extent to which mediation within the context of sharia councils divorce work is dealing with issues that arise in the civil law process.

The area where the mediation is most likely to be used is within the context of a 'khula' where the function of the council is to extract the consent of the husband to the divorce by way of negotiation/mediation rather than the council determining the divorce themselves. There is a legitimate concern as to whether there is any imbalance of power between those in the mediation process and whether there are sufficient protections and screening for mediation in cases where there is evidence that women have been subject to forms of violence.

## Who uses sharia councils and why?

The evidence heard by this review and the evidence more widely available indicates that the vast majority (over 90%) of people using sharia councils are women seeking an Islamic divorce. Men do contact the councils but this is rare, mainly because of the way divorces are currently obtained under sharia law.

Men seeking an Islamic divorce have the option of 'talaq', a form of unilateral divorce that they can issue themselves. Women do not have this option, unless inserted as a term in the marriage contract (which varies from school to school) and therefore have to seek a 'khula' or 'faskh' from a sharia council.

Despite some variances between different schools of Islamic thought there are three distinct forms of Islamic divorce or dissolution of marriage.

### Types of Islamic divorce

1. *Talaq*

A unilateral declaration of divorce which can only be made by the husband.

2. *Khula*

This may be granted on the application of a wife provided that the husband consents, is persuaded or even prevailed upon to consent.

3. *Faskh*

This may be granted by a Muslim jurist to the wife against a husband unwilling to agree to a divorce.

The evidence collected by this review indicated that the users of sharia councils belong to all socio-economic groups and do not reflect any particular education or lack of it. They include women who have and have not had a civilly registered marriage. The common factor is the desire for a religious divorce.

The evidence shows there are several different reasons why women may be seeking an Islamic divorce. In each case there may be one or more of the following factors:

- not having a civilly registered marriage and therefore a civil divorce is not available
- their own religious beliefs require them to be religiously divorced in order to move on in their lives
- their family, in-laws or community may require a religious divorce before accepting the relationship is over
- the concern that only a religious divorce, rather than a civil divorce, will be recognised by overseas (Islamic) jurisdictions
- the higher cost of a civil divorce through the courts is prohibitive for some, especially since the removal of legal aid following the LAPS0 Act
- it can be quicker to get an Islamic divorce in some cases
- misconceptions that an Islamic divorce is all that is required

The evidence provided by the sharia councils indicates that when considering divorce applications they do not deal with issues such as arrangements for children and asset distribution. However, the review did hear evidence that in some instances, during khula divorces, women were asked to make some financial concessions to their husband in order to secure the divorce. This included the return of the 'mahr' (dower) and all other gifts received during the relationship. The review is aware of anecdotal evidence of sharia councils issuing arrangements for children that are claimed to be contrary to domestic law, however, the review heard no direct evidence of this during its evidence taking.

## Civil marriage

The early evidence heard by the review indicated that one of the reasons Muslim couples visited sharia councils was because their marriage was not civilly registered and therefore civil divorce was not an option for them. Therefore, the review sought evidence as to why many Muslim couples were choosing to have only Islamic marriages and not also have a civil marriage. The evidence indicated that there were a number of possible reasons why couples failed to have civil marriages. These include:

- a lack of awareness that Islamic marriages need to be registered separately to be legal
- failure to register marriage for financial reasons, the belief that should the couple divorce one partner may lose out financially in civil divorce proceedings
- couples wishing to co-habit who see Islamic marriage as a way of appeasing family but are not 'ready' to marry legally
- couples who intend to register their marriage after the Islamic ceremony but never get round to doing it
- possible confusion caused by the recognition of Islamic marriages conducted overseas as valid, when the same ceremony conducted in England or Wales would not be recognised
- individuals who for religious or cultural reasons do not wish to engage with secular marriage at all and so choose to opt out of the civil society process
- the rare practice of polygamy in some Muslim communities which would be illegal in England and Wales

One question posed by the review panel to the sharia councils was why they set up their councils and what they gain from offering these services. The response from the councils was that they were set up to provide a community service for women seeking an Islamic divorce.

All councils charge fees for the divorces they issue. These fees range from £100 to £900 with an average of £300 to £500. The councils themselves state that on occasion they waive fees for those who cannot afford them. The councils state these fees are to cover the administrative costs and the time taken for the panel members in their decision process. Some men and women who use councils accuse them of being a moneymaking exercise, though this review has found no evidence to support this.

## 4: Practices in sharia councils

Evidence was heard from individuals who had used sharia councils, individuals who have and are working in or with councils, human rights organisations and legal advisers who have supported individuals using councils.

The review panel did not observe first hand either the councils' process for obtaining information from the individuals seeking their assistance or the decision-making process used by the councils. It appears that the information-gathering process is an inquisitorial process led by the sharia council members. The purpose appears to be to hear and test the quality of the evidence.

The majority of the councils visited by the review were set up by South Asian communities and a number of languages were spoken at the councils. All documentation was issued in English and whilst there was some evidence of deliberation in other languages, there was no evidence of individuals being disadvantaged by the use of other languages.

The evidence provided showed a range of practices, both good and bad, sometimes from within the same council.

From those who gave evidence to the review panel, no one disputed that sharia councils engage in practices which are discriminatory to women.

### Evidence of good practice:

- reporting of family violence and child protection issues to the police
- women unable to pay fees have them lowered/no payment taken
- religious divorce granted as formality upon civil divorce
- councils' signposting to civil remedies, such as civil courts for child arrangements
- little evidence of women being asked to reconcile relationships rather than obtain divorce
- councils declining to deal with any ancillary issues and referring users to civil courts
- in practically every case where a woman was seeking divorce, a divorce was granted
- some councils had women panel members
- some councils said they have safeguarding policies in relation to children and domestic violence

## Evidence of bad practice:

Bad practice in the sharia councils may be down to individual bad practice or underlying problems in structure or both in some cases.

- inappropriate and unnecessary questioning in regards to personal relationship matters
- a forced marriage victim was asked to attend the sharia council at the same time as her family
- insistence on any form of mediation as a necessary preliminary
- women being invited to make concessions to their husbands in order to secure a divorce (men are never asked to make these concessions). For example in khula agreements, husbands may demand excessive financial concessions from the wife
- lengthy process so that while divorces are very rarely refused they can be drawn out
- inconsistency across council decisions and processes
- no safeguarding policies and/or the recognition for the need of safeguarding policies
- no clear signposting to the legal options available for civil divorce
- even with a decree absolute a religious divorce is not always a straightforward process and the council will consider all the evidence again
- adopting civil legal terms inappropriately, leading to confusion for applicants over the legality of council decisions
- very few women as panel members
- panel members sitting on sharia councils who have only recently moved to the UK, and who do not have the required language skills and/or wider understanding of UK society
- varying and conflicting interpretations of Islamic law which may lead to inconsistencies

# 5: Recommendations

## Recommendation 1: Legislative changes

Amendments to the Marriage Act 1949 and the Matrimonial Causes Act 1973. The changes are to ensure that civil marriages are conducted, before or at the same time as the Islamic marriage ceremony, bringing Islamic marriage in line with Christian and Jewish marriage in the eyes of the law.

A significant reason many women go to sharia councils is that some Muslim couples are entering into an Islamic marriage but not civilly registering their marriage. This means that they are not entitled to a civil divorce and choose to formally end their marriage through the sharia councils. The evidence heard by the review would indicate that the percentage of Muslim couples failing to have a civil marriage is high and increasing. In making this recommendation we recognise that Muslim couples identify themselves for all intents and purposes as married, and not as co-habitees, despite not being so in the eyes of domestic law.

By linking Islamic marriage to civil marriage it ensures that a greater number of women will have the full protection afforded to them in family law and they will face less discriminatory practices. This will be a positive move aimed at giving women maximum rights should the marriage end in divorce.

Another advantage of the increased registration of marriages is that women who have a civil divorce but also require an Islamic divorce will be able to take their decree absolute to the sharia council. The evidence heard by this review indicated that in the majority of councils, when a decree absolute is produced the Islamic divorce is pronounced as a formality. It is the recommendation of this review that this should be the case for all sharia councils and that this is built into the best practice guide that is used as part of the regulation of sharia councils. Over time, the impact of this will be a reinforcement of the primacy of the law in England and Wales.

Religious marriages that take place in England and Wales which are not accompanied by civil registration are treated as non-marriages.<sup>2</sup> They are not treated as void or voidable marriages as defined by the Matrimonial Causes Act 1973 which would attract the right to financial remedies (in the case of a voidable marriage a Decree of Nullity would be required, and in the case of a void marriage a Declaration that the marriage was void from the time of its inception).

Legislative changes would be required to the offences sections 75 to 77 of the Marriage Act 1949 so that the celebrant of specified marriages, including Islamic marriages, would face penalties should they fail to ensure the marriage is also civilly registered. This would make it a legal requirement for an Islamic marriage to be civilly registered before or at the same time as the Islamic ceremony.

An impact of changing the marriage laws to ensure registration of Muslim marriages would be to prohibit informal polygamy through multiple Islamic marriages. While we have no empirical evidence on the prevalence and community perception of polygamy, the oral evidence the review has heard indicates that it is rare.

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<sup>2</sup> We are talking here about marriages in England and Wales. Marriages which occur abroad will be considered registered if they follow the correct process according to local law.



It is also proposed that there should be minor amendments to legislation on divorce through changes to the Matrimonial Causes Act 1973. This would be changes under section 10 A to ensure equality amongst all religions. The review recommends a short insertion into the section to bring Islamic divorce in line with that of the Jewish Get. The inclusion of a Muslim marriage by Nikah could be inserted in Section 10 A (1) (a) (ii) through the use of a Statutory Instrument following the provisions of subsection 6. If implemented, this would allow the court to refuse to finalise a civil divorce until an Islamic religious divorce has been obtained, if it thinks unfair pressure is being used in the religious proceedings.

## **Recommendation 2: Building understanding**

The panel's opinion is that the evidence shows that change is required within Muslim communities so that communities acknowledge women's rights in civil law, especially in areas of marriage and divorce.

Awareness campaigns, educational programmes and other similar measures should be put in place to educate and inform women of their rights and responsibilities. Women (and men) often face huge cultural barriers when seeking a divorce and for this reason it is imperative that they are aware of their rights under domestic law and are not afraid to come forward. Couples who do not have a civil registration alongside an Islamic marriage do not have the same legal entitlements should the relationship end. A very clear message needs to be communicated about the impact of non-registration of Islamic marriages which would not be limited to consequences on marriage dissolution (financial remedy primarily) to include issues of inheritance and the potential impact on rights to accommodation, transfer of tenancy pensions and other rights.

The legislative changes proposed in Recommendation 1 will be seen by some in Muslim communities as a significant cultural and legal change. Recommendation 1 will be dependent on Recommendation 2 for its practical application. It is considered the best way to raise awareness of these issues would be through wide ranging campaigns and greater use of advice centres, NGOs and other women's groups. It should include measures to assist them in raising awareness of the right of civil redress and the importance of vulnerable groups being given sufficient access to civil redress. This would include the identification of particular practices such as lack of language or a culture in which women are not able to freely move about within or outside communities or freely travel to and from advice centres.

More needs to be done to raise awareness in communities of the availability of legal aid and the exceptions to LASPO, including the domestic violence and child protection exceptions which mean that public funding is available to applicants. This is to address any misconceptions as to the availability of public funding which may deter applicants from using the civil courts.

Finally, consideration should also be given to assist NGOs and support groups to produce a central list of sharia councils which will treat a civil decree of divorce as sufficient evidence for the production of a certificate of religious divorce.



### Recommendation 3: Regulation of sharia councils

Recommendations 1 and 2 of this report aim to gradually reduce the use and need for sharia councils. However, in the meantime there needs to be a further recommendation on how to prevent discrimination in the immediate and medium term. This recommendation – to introduce regulation of sharia councils – is supported by the majority of the review panel, but is not unanimously supported; one member of the panel is not in agreement and their reasoning is detailed below.

The evidence of this review indicates that the practices and standards of service vary between and even within sharia councils, depending on the panel members. The handling of crucial issues, such as safeguarding or referring parties to the civil courts, is inconsistent and in some cases non-existent. It is of course recognised that there are statutory bodies with enforcement powers like the Charity Commission or the Equality Commission but there is no substantial evidence that their activity is addressing the issues highlighted in the evidence that was heard by the review. It is also unclear precisely how many sharia councils, of which there are estimated to be at least 35, are either registered charities and/or would be susceptible to regulation by the Charity Commission.

Since there is evidence that ECHR Article 9 (2) is engaged (the protection of the rights of others) it seems that there is an obligation on the state not only to respond to these issues through imposing and enforcing statutory duties but to do so effectively. In other words, a proportionate response needs to be an effective response.

It is in those circumstances that the panel believes that some degree of regulation is required to achieve that response. This approach is essentially procedural rather than substantive. It is designed to preserve the right of women to seek a religious divorce without risking exposure to discriminatory practices. It is to be noted that in speaking with the sharia councils, none were opposed to some form of regulation and some positively welcomed it.

Such regulation could take one of three forms:

1. It could invite, encourage or even urge sharia councils to adopt a system of uniform self-regulation.
2. The state could provide a system of regulation for sharia councils to adopt and then to self-regulate.
3. It could impose such a system and provide an enforcement agency similar to OFSTED. However, proportionality is not the only issue. Just as the state does not confer legitimacy on the Beth Din or on Catholic tribunals by seeking to regulate them, the state may be reluctant to regulate sharia councils. That raises a dilemma: either the state withholds further intervention or it risks intervention being perceived as conferring legitimacy upon sharia councils and thereby creating a parallel legal system.

Despite the difficulties, we have concluded that intervention/regulation carries more advantage than no intervention. We are supported in this view by all the sharia councils and women's groups we spoke to who all expressed the view that some regulation is both desirable and necessary.

We are inclined to reject the option of an invite to self-regulate as the evidence from the councils themselves is that they would not be able to do so, mainly because of the Sunni tradition that each mosque (and therefore each council) is an independent body not susceptible to the authority of any other mosque or council. Moreover, we have seen and heard nothing in the evidence we have received or in our deliberations that would militate against that view. In 2009 an attempt was made by sharia councils and mosques to establish an umbrella organisation for sharia councils known as the UK Board of Sharia Councils. The review panel heard in evidence that this UK Board of Sharia Councils had met very few times and failed to get off the ground due to financial and time constraints on those seeking to establish it.

We therefore propose the creation of a body by the state with a code of practice for sharia councils to accept and implement. This body would include both sharia council panel members and specialist family lawyers. This body could go on to monitor and audit compliance of the code of practice.

The code of practice should include/require at least the following:

- in matters of family law councils should confine themselves to religious marriage and divorce only
- any matters respecting children and financial remedies must be referred to the family justice system
- a proper understanding of the role of the family justice system and how and when to direct parties to it
- common application forms, marriage certificates and divorce certificates
- the promotion of standard marriage contracts to include a clause giving the wife a right to divorce
- a common approach to fees or at least a range of fees
- the need for safeguarding policies including how to deal with applications for a religious divorce brought by vulnerable women
- clarification of reporting duties for example in relation to domestic violence
- the proper recognition and role of women as panel members of councils
- the issuing of a religious divorce following a Decree Absolute in the family court
- agreed transparent systems of record keeping
- training and accreditation through existing schemes where a council offers mediation or arbitration services
- preventing forum shopping among councils
- consideration of language barriers and the provision of interpreters where required
- there must be appeals, complaints and disciplinary procedures

For those reasons we recommend that the state:

1. create a body to design a system of self-regulation of sharia councils, including a code of practice
2. ensure that such a body includes both specialist family lawyers and sharia council panel members
3. ensure that effective arrangements are in place to monitor the compliance of sharia councils with any such scheme

## Dissenting view on regulation

The sharia councils see themselves as providing a service to the public. Most have a website and produce written information as to their services for the public albeit their audience is restricted to a particular community. Sharia councils operate on the basis of providing a service for a fee and therefore should be subject to all the existing regulatory rules relating to providing services to the public. Sharia councils should be subject to the existing regulatory system that applies to all such entities and held accountable to mainstream civil law. There should be a campaign with the Charity Commission to appropriately register those sharia councils operating on a not-for-profit basis to make sure they would be subject to charity regulation.

The creation of a state facilitated or endorsed regulation or audit scheme will give legitimacy to the existence of alternative dispute resolution entities in the form of sharia councils. The primary and underlying principle of sharia councils is the application of sharia law. It is questionable whether there is any role for the state to act in this way and in effect give a quasi-legal status to the councils. Such regulation will indeed endorse and add legitimacy to the perception of the existence of a parallel legal system whilst the outcomes of the sharia council processes in terms of religious divorces have no standing in civil law. There is a real risk that the more subtle issues are at play once the vulnerable and disadvantaged enter into a sharia council process. The objective is to encourage the use of civil process and to ensure access to civil redress and rights. The creation of state endorsed regulation sends the message that certain groups have separate and distinct needs and further that sharia councils are an appropriate forum for resolution of their family law disputes. In short it would perpetuate the myth of separateness of certain groups. The acceptance of the premise that sharia councils only deal with, engage in or touch upon the dissolution of the religious marriage aspect of the dispute is naïve and unrealistic. In any family law or relationship dispute the issues are multi-faceted. Ancillary outcomes which arise out of the 'mediation and other functions' that sharia councils undoubtedly perform may be given legitimacy. Those functions where they deal with dowry forfeiture (or return) financial remedies, arrangements for children and issues regarding future behaviour and conduct will impact on the civil rights of those to whom they relate.

If such state-related scheme was to be established there would also be a duty on the state to ensure that there were practical and effective provision for access to justice for those who are adversely impacted by any such agreements. Specific provision would have to be made for those who wish to avoid, set aside or dispute such agreements as having been extracted from them through an unfair or discriminatory process or one that did not take sufficient account of their vulnerabilities.

## Additional recommendations

A clear message must be sent that an arbitration that applies sharia law in respect of financial remedies and/or child arrangements would fall foul of the Arbitration Act and its underlying protection. A key concern is that a wife might come under pressure to allow a dispute concerning children and/or their financial remedies to be resolved by an arbitration tribunal connected to a sharia institution. She will believe that she is bound to adopt and abide by the arbitration award (in the case of financial remedies) and determination (in the case of children's issues) and not seek to challenge the provisions before a civil court. The effect would be that the award or determination made by the arbitration tribunal would in practice be upheld because she takes no steps to oppose its implementation. The awareness and dissemination of information must also include reference to the Arbitration Act 2010 with clear guidance that arbitration awards will only be endorsed and upheld if they comply with the civil family law and the Act.

These messages for the sharia councils will be re-enforced with the code of practice described in Recommendation 3.

This review also recommends a meeting with the President of the Family Division to consider a specific practice direction relating to mediation and arbitration by religious institutions (including sharia councils). Furthermore, in order to challenge the award or determination in the civil court the spouse would unlikely be aware of her rights to civil redress. She would be caught by the rules of LASPO in the event that she lacked the means to bring an application to avoid the award.

We also recommend consultation with the Law Society as to the practice of firms which profess to provide advice, advocacy and assistance in matters of sharia law. This is invariably set out alongside their mainstream family civil law service provision. There has been a significant increase in this practice. There is a concern that in so doing firms of solicitors are wrongly perpetuating the belief amongst certain groups (often the most vulnerable) that in addition to civil law remedies in matters relating to relationship and family breakdown, redress to sharia councils is also required. Clearly if the advice is limited to the standing and effect of council decisions in civil law that is fine, however, most firms appear to offer advice and assistance in achieving 'sharia compliant' arrangements and in some cases advocacy at sharia council applications.

## 6: Alternative approaches to sharia councils

### The impact of closing or attempting to ban sharia councils

One argument that is often proposed is that, based on the evidence of discriminatory practices in some sharia councils, they should all be shut down and banned. The main problems with this argument is one cannot implement a ban on organisations which can be set up voluntarily anywhere and which operate only on the basis of the credibility given to them by a certain community.

The evidence the review has heard indicates that women using sharia councils do so almost solely to obtain religious divorces for a number of different reasons:

1. The importance of obtaining a religious divorce for themselves and their own religious conscience. Even for women who are legally married and have the option of a civil divorce many feel that despite having a civil divorce, until they obtain the religious divorce, they are not free to move on with their lives.
2. For community acceptance of the divorce and their own remarriage hopes.
3. An Islamic Nikah without a civil registration means they were never legally married and so have no recourse to a civil divorce. Moreover, the evidence shows many women will not consider their marriage terminated without a religious divorce. The evidence also indicates that without sharia councils these women would have very few avenues for obtaining a religious divorce and will end up being trapped in undesirable and often abusive marriages.

Those proposing a ban on sharia councils provide no counter proposal or any solution for anyone seeking a religious divorce.

In conclusion it is clear from all the evidence that sharia councils are fulfilling a need in some Muslim communities. There is a demand for religious divorce and this is currently being answered by the sharia councils. This demand will not end if the sharia councils are banned and closed down and could lead to councils going 'underground', making it even harder to ensure good practice and the prospect of discriminatory practices and greater financial costs more likely and harder to detect. It could also result in women needing to travel overseas to obtain divorces, putting themselves at further risk.

We consider the closure of sharia councils is not a viable option. However, given the recommendations also proposed in this report include the registration of all Islamic marriages as well as awareness campaigns it is hoped that the demand for religious divorces from sharia councils will gradually reduce over time.

# Annex A

## Comparative groups in other religions

Muslims are not unique in creating groups and organisations that provide guidance and decision making according to religious law. Two similar groups are the Jewish Beth Din and the Roman Catholic tribunals. The review panel have spoken to representatives of these groups to get an understanding of how they function, their processes and any lessons that can be learned, or imparted, when considering the application of sharia law by sharia councils.

### The Jewish Beth Din

The activities of the Beth Din encompass work including court cases (Dinei Torah), divorces (Gittin), conversions (Geirut), Jewish slaughter (Shechita), personal status (Kashrut) and all the trials and tribulations of major communal life. The central authority for the Beth Din in England and Wales is the London Beth Din.

A Get is a Jewish divorce. Jewish divorce requires the consent of both the husband and wife; there is no requirement that either party establishes grounds for divorce such as unreasonable behaviour, separation or adultery. All that has to be shown is that both the husband and the wife agree to the Get taking place.

On receipt of an application for a Get, the Beth Din invites both husband and wife to attend interviews at the Beth Din. The average duration of each interview is approximately 15 minutes. During the course of this interview, the Dayan will seek to check the relevant data relating to the writing of the Get.

At a second session, the husband will attend the Beth Din and instruct the Scribe to write the Get. He will also be asked to confirm that he is giving the Get of his own free will. The Scribe then writes the Get. During this time, the husband and wife may leave the premises but must stay in London. The Get is usually completed, signed and witnessed within a period of around two hours.

Once the document is complete and the Get has been checked by a Dayan, it is ready to be presented to the wife. When the Get is handed over, the wife will be asked if she is willing to receive the Get. If she is, her husband or (in the event that the husband is not present) his Shaliach, will recite a form of words at the request of the Dayan, which indicates that on receipt of this Get, his wife will be free from the marriage.

The wife is then presented with a certificate, in Hebrew and English, stating that the Get has been duly executed and that the parties are free to remarry under Jewish law. The husband receives a similar certificate as well.



## Roman Catholic tribunals

Diocesan tribunals deal with clergy discipline and some other disputes within the Roman Catholic community. Their decisions are binding on the conscience of those who participate but they have no force within civil law. The bulk of their work, however, relates to applications for annulment of marriage. Again, a decree of annulment of marriage has no force within civil law. The Roman Catholic Church does not recognise divorce and accordingly the only route to separation and remarriage in the eyes of the church is through the obtaining of a decree of annulment. Whilst this is usually sought by those wishing to remarry, it can also be sought by those who simply wish to bring closure and to confirm their standing within the Roman Catholic community.

The system of diocesan tribunals is subject to the oversight of the *Signatura Apostolica*, a specific department in the Holy See. The working of the diocesan tribunals is the responsibility of the diocesan bishop and thus there is some flexibility procedurally within independent dioceses but there are no great variations across the UK. The substantive law is the Canon law of the Roman Catholic Church which is of worldwide application. The usual constitution of a tribunal is three judges though local rules in the UK permit matters to be determined by a single judge if necessary. A large diocese may have one full-time judge otherwise both judges and advocates are usually volunteers. Ideally, a judge should have a degree in canon law but that is not always the case as the requirement may be dispensed at the request of the bishop by the *Signatura Apostolica*. In many jurisdictions, lay advocates are significantly involved in the process but this is much less the case in the UK.

There is a procedure for charging fees (believed to be about £450) but there is ample scope for reducing or waiving fees where the Justice of the matter so requires. It is thought that the cost to the system of an application is about £1,500.

The grounds upon which an annulment can be granted are set out in Canon law. Generally, all grounds which would give rise to a decree of nullity in civil proceedings will found a decree in these ecclesiastical proceedings. However in ecclesiastical proceedings some tests are wider in terms, for example, of judging consent and some are more precise as, for example, in dealing with impotence. There is of course a fairly well-developed case law.

# Annex B

## Sources of oral and written evidence

**We received oral and written evidence from the following:**

*Sharia councils:*

Birmingham Shariah Council  
The Islamic Sharia Council (Leyton)  
The Muslim Law (Shariah) Council (Wembley)  
Dewsbury Sharee Council  
Muslim Women Advisory Council (MWAC)  
  
The Nuneaton Muslim Arbitration Tribunal (MAT)  
London Central Mosque Trust and Islamic Cultural Centre  
The Islamic Centre of England

Eight Women who have used sharia councils themselves  
Four academics  
Two members of Policy Muslim think tanks

*Women's groups:*

Muslim Women's Network UK  
Henna Foundation  
Humraaz  
Apna Haq  
Saheli

Numerous individual written responses to the call for evidence

The Law Commission  
The Ministry of Justice  
Two members of the House of Lords  
Equality Human Rights Commission  
The public evidence of the Home Affairs Committee Inquiry into sharia councils

The London Beth Din  
The Roman Catholic Tribunal  
Solicitors and legal advisors



# Annex C

## The letter received from women's rights groups

### Open letter to the Home Secretary

As a group of women's human rights organisations and campaigners, we express our profound concern and disappointment with the terms of reference and recent appointments to the government's 'independent review' on sharia councils and arbitration forums in the UK. We attach previous correspondence on the issue.

For several years, we have been highly critical of the ways in which, in the name of religious tolerance and freedom, the government and state institutions have kow-towed to demands made by leaders and spokespersons of the religious-right. This has resulted in the accommodation of arbitration systems based on minority religious personal laws. We have been alarmed at the growing acceptance of such personal laws to govern private and family matters: areas where, arguably, the greatest human rights violations of minority women in the UK take place.

There is considerable evidence to show how these parallel religious 'legal', mediation and arbitration systems operate in ways that violate the fundamental principles of protection, equality and non-discrimination in respect of women's rights in relation to marriage, divorce, children, property and inheritance. See for example: 'Women and Sharia Law: The Impact of Legal Pluralism in the UK' by Elham Manea published in May 2016, which documents the harmful and even life threatening consequences for vulnerable minority women who are denied the right to equality before the law.

Precisely for these reasons, we had welcomed the 'independent review', believing it to be a genuine attempt to look at the work of sharia councils and Muslim arbitration tribunals in the UK in the context of rising religious extremism and fundamentalism and its impact on the human rights of black and minority women. Nevertheless it is evident from the limited terms of reference and the makeup of the review panel that the review is in danger of becoming seriously compromised and as such, we fear that it will command little or no confidence.

#### **Below we set out five of our major concerns:**

**1. The terms of reference of the review:** The terms have ruled out a full evaluation of the harm caused by the existence of discriminatory religious 'legal', mediation and arbitration systems. Our information suggests that the existence of parallel or informal justice systems in itself creates conflicts in law and gaps in human rights protection. Yet we note that the review is not addressing this vital issue. Instead, the terms of reference suggest that the task of the review is to improve the functioning of systems that are discriminatory in effect and intent. We urge you to remove wording on 'seeking out examples of best practice in relation to governance, transparency, and assuring compliance and compatibility with UK law'. Instead, the review should be free to examine whether the existence of sharia councils, mediation and arbitration systems undermine access to justice, and indeed undermine the Constitution by endorsing the existence of parallel legal systems.

2. The panel: Although some of those appointed to the panel come from judicial and family/children law backgrounds, two Islamic ‘scholars’ have been appointed as advisers to the chair, Mona Siddiqui who is herself a theologian. This is cause for alarm: the government has constituted a panel more suited to a discussion of theology than one which serves the needs of victims and is capable of investigating the full range of harms caused by sharia councils and tribunals, particularly for women.

The inquiry panel should be an impartial Judge-led investigation into the entire spectrum of human rights violations caused by the existence and functioning of sharia councils and tribunals. It should be clearly framed as a human rights investigation not a theological one.

**3a) Competencies of advisers to the panel:** The inquiry should be properly advised by women’s rights advocates and legal experts in British and foreign laws and international human rights covenants. Advisers to the panel need to have a track record of respecting and protecting human rights, particularly those of women. They need to understand the impacts of informal justice and parallel legal systems on women (and indeed on minorities). They need to be conversant with existing laws regarding, for instance, the recognition of civil divorce in many jurisdictions; and be able to find appropriate experts to give evidence to the panel. They also need to be able to assist the panel to investigate transnational fundamentalist networks in promoting sharia law in different countries and their role in Britain. They need to be fearless in looking for evidence even if it implicates powerful interests.

**3b) Imams are not the right advisers:** Theologians and religious scholars simply do not have the requisite skills or knowledge of existing legal practice and constitutional issues. Knowledge of theology is simply not the same as knowledge of the law either in Britain or elsewhere. The government should be wary of replicating the most problematic aspects of multiculturalism in the constitution of the review. Many legal academics in Britain promote legal pluralism, which they see as community-based law. This anthropological and theological approach to law tends to ignore statutory law and evolving case law in countries that have sharia or Muslim personal laws. The Law Society took this approach with its practice note on ‘Sharia Compliant Wills’. It advised solicitors to ‘ask an Imam’ when drawing up a will. As you may recall, the Law Society was forced to withdraw their guidance because it was not only legally discriminatory but dangerously negligent. The government must not repeat the mistakes of the Law Society.

**3c) Imams/scholars cannot investigate themselves:** Both ‘scholars’ advising the panel are on Imams Online. The terms of reference state that ‘the role of particular groups and Islamic authorities in England and Wales’ should be examined. The inquiry should not be deterred from investigating a particular platform because they are advisers to the panel. Nor can the inquiry be seen as impartial if it is charged with investigating itself. We are aware of extremely problematic positions taken by scholars on Imams Online on a range of issues that should certainly concern the inquiry.

**4. Issues before the inquiry:** It is vital for the inquiry to include examinations of whether violations of human rights are condoned or even promoted by sharia bodies. Some examples are: women’s testimony being worth half that of a man’s, marital rape, sexual violence and domestic abuse, the age of consent, guardianship, forced marriage, honour based violence, ritual abuse, child custody and child protection, polygamy, divorce, sexuality, inter-religious relationships, female dress codes and abortion. Broader issues such as the treatment of religious minorities including minority sects in Islam, decisions pertaining to apostasy and blasphemy must also be examined to understand the full range of threats faced by people affected by religious laws, and indeed, by the State promoting these laws.

The reasons why sharia councils and other religious arbitration bodies have operated with impunity need to be carefully examined. The inquiry should be able to summon witnesses who will give evidence of whether local councils, police, or departments of government have developed working relations with sharia councils and whether these relationships have undermined the protection principle laid out in key legislation on discrimination and the rights of women and children and/or shielded them from adequate scrutiny. Has the goal of preventing violent extremism actually led to strengthening relations with fundamentalist networks and individuals?

5. Implications for the scope and impartiality of the inquiry: The terms of reference and composition of the panel amount to an acceptance of a theological basis for laws for citizens from minority communities. Furthermore, they evidence a capitulation to religious and conservative forces who wish to ensure that the needs and identity of minority women are addressed only through the prism of conservative religious values of which they are the sole arbiters. In effect, rather than being treated as independent persons with citizenship and human rights, minority women are regarded as members of their so-called religious communities who are assumed to be subjected to religious codes. As we understand it, the review was meant to be, not about religious or theological issues categorised as either 'moderate' or 'extreme' but an examination of women's access to rights and justice. It is patronising if not racist to fob off minority women with so-called religious experts who are self-serving and who wish to legitimate sharia laws as a form of governance in family and private matters. Even if some women appear to want this, we cannot stand by and watch the State being complicit in underwriting second-rate systems of justice, whereby minority women are treated as unequal before the law.

By making these religious appointments, the government has lost a vital opportunity to examine the discriminatory nature of not only sharia councils but all forms of religious arbitration fora including the Batei Din. Our fear is that in these circumstances, many vulnerable women simply will not want to give their testimony before theologians who legitimate and justify the very idea of sharia laws on the grounds that it is integral to their 'Muslim identity'. Indeed, the panel is set up much like the sharia 'courts' themselves.

The makeup of the review panel betrays a complete absence of representation of the voices of the victims themselves and of women's human rights organisations that have first hand experience of the human rights violations that take place in sharia councils and other religious arbitration fora. We see and applaud the consideration given to victims of injustice in the context of other government reviews and inquiries such as those established to examine historic child abuse cases and the Hillsborough disaster. We would have expected the same care and consideration to be given to the victims of sharia councils.

Black and minority women deserve the right to have a review that is led by a judge and aided by human rights and women's rights experts including those from across the world who have confronted religious personal laws and jurisdictional challenges in the furtherance of human rights.

## **6. Our demands:**

For the above-mentioned reasons, we call on the government to:

1. Ensure that the terms of reference are broad enough to have a thorough inquiry into the full range of human rights concerns raised by sharia councils and tribunals.
2. Appoint a judge to head the inquiry with the powers to compel witnesses to appear before it. The inquiry panel should be an impartial investigation into the entire spectrum of human rights violations caused by the existence and functioning of sharia councils and tribunals.

- Drop the inappropriate theological approach, and appoint experts with knowledge of women's human rights, those who can properly and independently examine how sharia systems of arbitration in family matters contravene key human rights principles of equality before the law, duty of care, due diligence and the rule of law. The inquiry must be clearly framed as a human rights investigation not a theological one.

The law and not religion is the key basis for securing justice for all citizens. We urge you to do the right thing to ensure that the same principles of human rights, equality before the law, duty of care, due diligence and the rule of law are applicable to all British citizens.

### **Signed**

Diana Nammi, Director of Iranian Kurdish Women's Rights Organisation, UK  
Gina Khan, Women's Rights Campaigner, UK  
Gita Sahgal, Director of Centre for Secular Space, UK  
Maryam Namazie, Spokesperson of One Law for All, UK  
Nasreen Rehman, Co-Founder and Chair of British Muslims for Secular Democracy, UK  
Pragna Patel, Director of Southall Black Sisters, UK  
Rayhana Sultan, Spokesperson of Council of Ex-Muslims of Britain, UK  
Yasmin Rehman, Centre for Secular Space Board Member, UK

### **UK**

#### *Organisations*

Andree Duguay, Women in Black (London), UK  
Ashiana Network, UK  
Basira, British Arabs for Universal Women's Rights, UK  
Centre for Secular Space, UK  
Community Women's Blog, UK  
Council of Ex-Muslims of Britain, UK  
Coventry Women's Voices, UK  
Culture Project, UK  
Denise McDowell, Director of Greater Manchester Immigration Aid Unit, UK  
Dianne Whitfield, Chief Officer of Coventry Rape and Sexual Abuse Centre, and Co-Chair of Rape Crisis England and Wales, UK  
EileenRose McFadden, Case Manager of Council of Ex-Muslims of Britain, UK  
End Violence Against Women Coalition, UK  
Equal Rights Now – Organisation against Women's Discrimination in Iran, UK  
European College of Law, UK  
Federation of Iranian Refugees, UK  
Fitnah – Movement for Women's Liberation, UK  
Gona Saed, Director of Kurdish Secular Center, UK  
Houzan Mahmoud, Culture Project, UK  
IC Change  
Iran Solidarity, UK  
Iranian & Kurdish Women's Rights Organisation, UK  
Jeena, UK  
Jo Todd, Chief Executive Officer of Respect, UK  
Karen Ingala Smith, CEO of NIA, UK  
Karma Nirvana, UK  
Kurdish and Middle Eastern Women's Organisation, UK  
Kurdish Secular Center, UK  
Lisa-Marie Taylor, Chair of Feminism in London, UK  
London Black Women's Project, UK  
Manchester Women's Aid, UK

Mersedeh Ghaedi, Former Political Prisoner and London Spokesperson for Iran Tribunal, UK  
 Million Women Rise, UK  
 Nari Diganta: Women in Movement for Equal Rights, Social Justice, and Secularism, UK  
 National Secular Society, UK  
 Nira Yuval-Davis, Professor and Director of the Centre for Research on Migration, Refugees  
 and Belonging The University of east London, UK  
 One Law for All, UK  
 Polly Neate, Chief Executive of Women's Aid, UK  
 Prashanta Bhushon Barua, Director of Studies & Head of Laws of European College of Law, UK  
 Priya Chopra, Chief Executive of Saheli, UK  
 Rani Bilkhu, Founder of Jeena, UK  
 Respect, UK  
 Rumana Hashem, Founder of Community Women's Blog and Advisor to Nari Diganta, UK  
 Safety4Sisters North West, UK  
 Sarah Ager, Interfaith Activist and Curator of Interfaith Ramadan, UK  
 Sarah Green, Co-Director of End Violence Against Women Coalition, UK  
 Sarah Peace, Fireproof Library, UK  
 Sarbjit Ganger, Director of Asian Women's Resource Centre, UK  
 Sawsan Salim, Director of Kurdish and Middle Eastern Women's Organisation, UK  
 Secularism Is A Women's Issue  
 Shakti Women's Aid, UK  
 Shaminder Ubhi, Director of Ashiana Network, UK  
 Sophie Walker, Women's Equality Party, UK  
 Southall Black Sisters, UK  
 Tehmina Kazi, Director of Media, British Muslims for Secular Democracy, UK  
 Umme Imam, Executive Director of The Angelou Centre, UK  
 Welsh Women's Aid, UK  
 Women Asylum Seekers Together, UK  
 Women in Black (London), UK  
 Women's Resource Centre, UK  
 Women's Voices Manchester, UK

### *Individuals*

Adele Wilde-Blavatasky, Writer and Activist, UK  
 Ahlam Akram, Founder Director of Basira, British Arabs for Universal Women's Rights, UK  
 Aisha K. Gill, Professor at University of Roehampton, UK  
 Amanda Sebestyen, Women's Rights Campaigner, UK  
 Beatrix Campbell, Writer, UK  
 Caroline Criardo-Perez, Writer and Campaigner, UK  
 Davina James-Hanman, VAWG Consultant, UK  
 Deeyah Khan, Filmmaker & CEO of Fuuse, UK  
 Geraldine Brady, Women's Rights Campaigner, UK  
 Hana Chelache, Council of Ex-Muslims of Britain Activist, UK  
 Harriet Wistrich, Human Rights Lawyer and Founder of Centre for Women's Justice, UK  
 Heather Harvey, Women's Rights Campaigner, UK  
 Iman Kouchouk, Feminist, UK  
 Iram Ramzan, Journalist, UK  
 Jasvinder Sanghera, CBE and Founder of Karma Nirvana, UK  
 Joan Smith, Writer, UK  
 Joanne Payton, Women's Rights Campaigner, UK  
 Jocelyne A. Scutt, Barrister & Human Rights Lawyer, UK  
 Judy Audaer, Council Member of the National Secular Society, UK



Julia Pascal, Playwright, UK  
Julian Norman, Feminism in London, UK  
Julie Bindel, Justice for Women and the Emma Humphreys Memorial Prize, UK  
Juyel Raaj, Editor of Bricklane, Journalist and Blogger, UK  
Kalwinder Sandhu, Member of Coventry Women's Voices, UK  
Kate Smurthwaite, Comedian and Activist, UK  
Lejla Kuric, Writer and Human Rights Activist, UK  
Mala Sarker, Migrant Women's Rights Activist, UK  
Mandy Sanghera, Human Rights Activist, UK  
Mariz Tadros, Institute of Development Studies at University of Sussex, UK  
Mary-Ann Stephenson, Women's Rights Campaigner, UK  
Muna Adil, Journalist, UK  
Nahla Mahmoud, Human Rights Campaigner, UK  
Nazira Mehmari, Advice Co-ordinator of Iranian & Kurdish Women's Rights Organisation, UK  
Neda Barzegar-Befroei, Junior Doctor and Activist, IKWRO Survivor Ambassador, UK  
Piya Mayenin, Women's Rights Campaigner and Solicitor, UK  
Rahila Gupta, Writer, UK  
Ranjit Kaur, Lawyer and Human Rights Campaigner, UK  
Razia Begum, Vice President of Nari Diganta, UK  
Ritu Mahendru, Anti-fundamentalist and anti-racist Feminist, UK  
Safiya Alfaris, Women's Rights and Muslim Reform Campaigner, UK  
Sara Browne, Campaign Officer of Iranian & Kurdish Women's Rights Organisation, UK  
Shaheen Hashmat, Writer and Activist, UK  
Sukhwant Dhaliwal; anti-racist and women's rights campaigner and founder of Feminst Dissent  
Tahirih Danesh, Human Rights Researcher, UK  
Vivienne Hayes, MBE, CEO of Women's Resource Centre, UK  
Zoe Fairbairns, Writer, UK

### **International**

Afsaneh Vahdat, Spokesperson of Children First Now, Sweden  
Amel Grami, Professor at the University of Tunis, Tunisia  
Anissa Helie, Professor at John Jay College, US  
Anne Flitcraft, MD, Associate Professor Medicine at University of Connecticut (retired), US  
Annie Laurie Gaylor, Co-President of Freedom From Religion Foundation, US  
Annie Sugier, President of Ligue du Droit International des Femmes, France  
Asra Q. Nomani, Cofounder of the Muslim Reform Movement, US  
Association pour la mixité, l'égalité et la laïcité en Algérie  
Association Protagora, Croatia  
Ateizm Dernegi, Turkey  
Ayesha Imam, Executive Director of BAOBAB for Women's Human Rights, Nigeria  
Bader Sayeed, Founder and President of Roshni, India  
Canadian Council of Muslim Women, Canada  
Centro Interculturale delle donne di Trama di Terre, Italy  
Djemila Benhabib, Author, Canada  
Eiyah, Ex Muslim Blogger, Illustrator and Podcaster, Canada  
Euromed Feminist Initiative IFE-EFI, France  
Evelyn Abitbol, Executive Director and Co-founder of Raif Badawi Foundation for Freedom, Canada  
Faizun Zackariya, Researcher and Activist, Sri Lanka  
Farideh Arman, Activist of women's rights organisation Kvinnorättsförbundet, Sweden  
Fatou Sow, Researcher in Sociology, Senegal  
Fauzia Ilyas, Founder/President of Atheist & Agnostic Alliance Pakistan, Pakistan

Femmes solidaires, France  
 Firoozeh Bazrafkan, Image and Performance Artist, Denmark  
 Freedom From Religion Foundation, US  
 Hala Arafa, Egyptian-American Journalist, US  
 Hameeda Hossain, Human Rights Advocate, Bangladesh  
 Hasina Khan, Feminist Activist of Bebaak Collective, India  
 Helen O'Shea, Secretary of Atheist Ireland, Ireland  
 Hilda Saeed, Shirkat Gah Pakistan and Women's Action Forum, Pakistan  
 Homa Arjomand, Coordinator of The International Campaign Against Sharia Court in Canada, Canada  
 Italian Feminist Magazine Marea, Italy  
 Jaleh Tavakoli, Blogger & Free Iran, Denmark  
 Jane Donnelly, Human Rights Officer of Atheist Ireland, Ireland  
 Khushi Kabir, Rights Activist, Bangladesh  
 Kuljit Kaur, Women's Rights Campaigner, India  
 Kumudini Samuel, Women and Media Collective, Sri Lanka  
 Lalia Ducos, Head of Women's Initiative for Citizenship and Universals Rights, France  
 Laura Guidetti, Italian Feminist Magazine Marea, Italy  
 Lila Ghobadi, Writer & Documentary maker, US  
 Lilian Halls-French, Co-President of Euromed Feminist Initiative IFE-EFI, France  
 Linda Weil-Curiel, Lawyer, France  
 Madhu Mehra, Partners for Law in Development, India  
 Maria Hagberg, Author and Member of Femmes Solidaires Secular Network, World Women's Conference and UN Women, Sweden  
 Marieme Helie Lucas, Coordinator of Secularism Is A Women's Issue, Algeria/France  
 Mary Devery, Women's Rights Activist and Member of Terre des Femmes, Germany  
 Meredith Tax, Writer, Centre for Secular Space, US  
 Michèle Vianès, Présidente de Regards de femmes, France  
 Mina Ahadi, Spokesperson of International Committees against Stoning and Execution, Germany/Iran  
 Nada Peratovic, Founder and President of Center for Civil Courage, Croatia  
 Nadia El Fani, Tunisian Filmmaker, France  
 Nawal El Saadawi, Writer, Egypt  
 Nayantara Sahgal, Writer and Campaigner for Secularism, India  
 Nazanin Afshin-Jam MacKay, President and Co Founder of Stop Child Executions and The Nazanin Foundation, Canada  
 Nushin Arbabzadah, Writer, US  
 Ophelia Benson, Writer and Blogger, US  
 Partners for Law in Development, India  
 Raheel Raza, President of Council for Muslims Facing Tomorrow, Canada  
 Rassemblement Algérien des Femmes Démocrates, Algeria  
 Regards de femmes, France  
 Rina Nissim, Espace Femmes International, Switzerland  
 Robyn E. Blumner, President & CEO of Richard Dawkins Foundation for Reason & Science and CEO of Center for Inquiry, US  
 Safia Lebdi, Women's Rights Activist, France  
 Sally Armstrong, Journalist, Canada  
 Sara Huassain, Advocate, Supreme Court, Bangladesh  
 Sara Mohammad, Chairwomen for Never Forget Pela and Fadime Organisation, Sweden  
 Sarah Haider, Co-founder and Director of Outreach and Development, Ex-Muslims of North America, USA  
 Sheba Georg, Director, SAHR WARU: Women's Action and Eesource Unit, Gujarat, India

Shelley Segal, Singer and Songwriter, Australia  
Shirin Bahrami, Chair of Intergration i Malmö, Sweden  
Soad Baba Aissa, Militante Féministe, France  
Soraya L. Chemaly, Writer, US  
South Asia Citizens Web, India  
Stasa Zajovic, Founder of Belgrade Women In Black, Serbia  
Sultana Kamal, Lawyer and Human Rights Activist, Bangladesh  
Susan Saberi, Chair of Iranian Refugee Council's Federation Women's Section, Sweden  
Tahira Abdullah, Human Rights Defender, Women's & Minority Rights Activist, Pakistan  
The International Campaign Against Sharia Court in Canada, Canada  
Vahida Nainar, Founder-Director of Women's Research and Action Group, India  
Women in Black, Belgrade, Serbia  
Zari Asli, Friends of Women in the Middle East Society, Canada  
Zazi Sadou, Co- Founder of Rassemblement Algérien des Femmes Démocrates, France  
Zehra Pala, Editor/President of Ateizm Dernegi, Turkey

**<http://www.southallblacksisters.org.uk/news/open-letter-to-home-secretary>**



# Annex D

## Muslim Women's Network UK - public letter

### F.A.O - Government and the Home Affairs Select Committee

#### Muslim Women's Voices Must be Prioritised in Shariah Inquiries

We welcome both the Independent Government Review and the Home Affairs Select Committee inquiry investigating Muslim women's experiences of Shariah Councils. Muslim women (and those organisations that share their concerns while being mindful of the importance they place on faith), will finally have an opportunity to be heard.

When it comes to matters of faith, Muslim women should be speaking for themselves. However, it appears that the voices of these very women that the investigators should listen to are being marginalised. On one hand, religious conservatives who claim that discrimination does not take place, (by pointing to the positive experiences of women), disregard why some are subjected to unfair practices during the Islamic divorce process. On the other hand, some activists regard all faith practices as discriminatory and also conflate misogyny and patriarchy with extremism. This is unhelpful in the current political climate because this can fuel Islamophobia further; it is Muslim women who tend to be most at risk of racist and xenophobic attacks. The government has not helped matters by holding the review as a part of its counter-extremism strategy. This review could have been held as a part of the government's obligations to women under the Convention on the Elimination of all forms of Discrimination (CEDAW). By accepting this international treaty the UK government is required to enshrine gender equality in its domestic legislation and policies anyway. This must include all matters relating to marriage and divorce which means eliminating discriminatory aspects of family law regimes whether civil code, religious law or ethnic custom.

It seems that various parties, to further their own agendas, are using Muslim women as a political football. It is therefore essential that both investigations prioritise the voices of Muslim women and ensure that the diversity of Muslim women's voices is considered first and foremost. Panelists on both inquiries should also have the opportunity to conduct their investigations thoroughly before reaching conclusions and recommendations. We are dismayed that some activists are already branding the independent government review as a 'white wash' in support of Shariah Councils. Members of these inquiries are highly respected professionals such as a retired High court judge Sir Mark Hedley, Professor Mona Siddiqui, an expert in Islamic law and family law lawyers Ann Marie Hutchinson and Sam Momtaz. The involvement of religious scholars Qari Asim and Syed Abbas Ali, who are regarded as progressive and only acting in an advisory capacity, has also been criticised. Their insights are important given that the issues being considered involve faith.

Islam is neither rigid nor limited to narrow and conservative interpretations. Muslims who view Islam in that manner do not represent Islam in its entirety. Likewise, those secularists who view Islam in a reductionist manner will campaign to limit religion to the private domain and want it eliminated from all public discourse. However, our faith is not like a garment that can be cast aside as soon as we leave our home. To build a cohesive society, we must all move towards mutual understanding and respect. This includes acceptance by all sides that Islam can be compatible with secularism. Human rights do not only have to be discussed in secular terms, they can also be addressed within the framework of religion. Muslim feminists here and abroad have long been promoting enlightened interpretations of Islam that are compatible with democracy, human rights, freedom, and pluralism.

There are many provisions in Islam that allow women to obtain a religious divorce quickly, without duress and discrimination that Shariah councils should be practicing. As these Islamic rulings are not being applied consistently and as there is uncertainty whether they will raise their standards, we urge the government to also provide alternative civil solutions so that Muslim women are not solely dependent on religious institutions for divorce. This could include making a civil marriage compulsory prior to a religious marriage because in most cases a civil divorce can be recognised as an Islamic divorce. Simply abolishing Shariah Councils is not the answer; they are not the only agencies offering divorce services. Muslim women can also face discriminatory practices when accessing divorce services from mosques or individual scholars and imams. In fact, closing down Shariah Councils would drive divorce services underground, leading to even less transparency and more discrimination.

We are proud to be both British and Muslim and want our government and religious representatives (whether they are mosques, Shariah Councils or individual scholars) to take measures to eliminate discrimination against women in all matters relating to marriage and divorce.

### **Signatories (Over 100 Muslim women e.g. 102)**

#### **Leading Signatory**

Shaista Gohir OBE - Chair of Muslim Women's Network UK (Birmingham)

#### **Additional Signatories**

Afaf Ugas - Midwife (London)

Aisha Ali Khan - Administrator (Bradford)

Aneeqa Malik - Chair of The WISE Initiative (London)

Anita Nayyar - Researcher and Activist (Peterborough)

Aysha Iqbal - Director (Birmingham)

Azmat Hussain - Self-Employed (Birmingham)

Chloe Fish - Professional Support Assistant (Wolverhampton)

Denise Ahmed - Midwife (London)

Dr. Fauzia Ahmad - Sociologist/Research Fellow (London)

Dr. Furzana Hameed - Dentist (Derby)

Dr. Hasina Thandar - Medical Doctor (London)

Dr. Iram Sattar - GP (London)

Dr. Nazia Shah - Principal Dentist (Birmingham)

Dr. Sariya Cheruvallil-Contractor - Sociologist (Coventry)

Dr. Zareen Roohi Ahmed - Founder & CEO of Gift Wellness Ltd (Derby)

Dr. Ziba Mir-Hosseini - Academic Researcher (Cambridge)

F.A. Begg - Housewife (London)

Farah Amin - Sales Executive (Southampton)

Fatima Rahman - Stay at home mum / formerly Marketing Manager (London)

Firoza Mohamed - Service Manager, Humraaz (Blackburn)

Fozia Parveen - Optometrist and Editor of Fifteen 21 Muslim Youth Magazine (York)  
 Fozia Uddin - Partnerships Relations Manager (Bolton)  
 Hajra Khote - Ward Councillor (Leicester)  
 Halima Ali - Student (Bolton)  
 Heather Rugg - Senior Lecturer in Nursing (Bury St Edmunds)  
 Hina Nathalia - Local Government Officer (Leicester)  
 Iman Abou Atta - Director of Tell MAMA / Deputy Director of Faith Matters (London)  
 Ishrat Baig - Accounts Manager (Dewsbury)  
 Jusnara Choudhury - Psychological Wellbeing Practitioner (Birmingham)  
 Khaleda Khan - Director (Birmingham)  
 Khudeja Bi - Integrative Counsellor (Birmingham)  
 Kiran Iqbal - Director (Birmingham)  
 Lavita Smith - Homemaker (Ipswich)  
 Mahiyat Chowdhury - Customer Service Advisor (Milton Keynes)  
 Maniza Ahmed - Diagnostic Radiographer (Birmingham)  
 Mariya Safdar - Customer Service Advisor (Bolton)  
 Maryam Batan - Finance Officer (Blackburn)  
 Mayjabeen Hussain - Police Link Worker (Blackburn)  
 Mediah Ahmed - Library Assistant (London)  
 Michele Kately - Medical Secretary (Ipswich)  
 Muneera Ali - Administrator (Ipswich)  
 Mussurut Zia - Charity Trustee/ Lecturer (Blackburn)  
 Nadia Bukhari - Pharmacist (London)  
 Nadia Ilyas - Project Manager in NHS (Birmingham)  
 Nafisa Khanum - Chemical Engineer Graduate (Birmingham)  
 Nargis Osman - Community Worker (Birmingham)  
 Nayyar Janjua - Chair of Al Fajr Trust (Birmingham)  
 Nazia Rashid - Family Law Solicitor (London)  
 Nazmin Akthar - Lawyer (Oxford)  
 Neelam Rose - Campaigner (Birmingham)  
 Neghat Khan - Councillor (Nottingham)  
 Noorjehan Patel - Advocacy Advisor (Preston)  
 Nusrat Zamir - Community Worker (London)  
 Osma Khan - Teaching Assistant (Northampton)  
 Parveen Awan - Carers Advisor (Blackburn)  
 Rahana Khanum - Teacher (Halifax)  
 Razia Hadait - Managing Director (Birmingham)  
 Robina Iqbal - Manager at Community Centre (Birmingham)  
 Ruksana Mahmood - Volunteer at numerous organisations (Skipton)  
 S Amri - Part-time worker (London)  
 Sadia Munshi - Customer Service Advisor (Bolton)  
 Sairish Mahmood - Trainee Biomedical Scientist (Birmingham)  
 Saleha Islam - Director (London)  
 Sameena Jahangir - Midday Supervisor (Skipton)  
 Sameera Waheed - Company Director/ Project Manager (London)  
 Samina Akbar - Loss Adjuster (Birmingham)  
 Samina Araf - Carer (Birmingham)  
 Samya Tahir - Community Worker (London)  
 Shabana Issop - Solicitor (Blackburn)  
 Shabnam Patel - Social Worker (Bolton)  
 Shafqat Ajab - Outreach Worker (Manchester)  
 Shahda Khan MBE - Vice Chair CEDAW North East & N.E Women's Network (Teesside)

Shahida Rahman - Author and Publisher (Cambridge)  
Shahin Ashraf MBE - Chaplain (Birmingham)  
Shamila Majid - Child Sexual Exploitation Specialist Practitioner (Nottingham)  
Shamiza Zia - Solicitor (Nottingham)  
Shazia Bashir - Community Activist (Peterborough)  
Shazia Khan - Executive Director of Nottingham Muslim Women's Network (Nottingham)  
Shumana Begum - Student (Bolton)  
Sirwar Hussain - Carers Support Worker (Rotherham)  
Snouber Sharif - Project Coordinator (Birmingham)  
Sofia Rashid - Homemaker and former Project Manager (Bristol)  
Sofina Razaq - Housewife (Bedford)  
Solma Ahmed - Retired Civil Servant (Colchester)  
Sufia Alam - Maryam Centre Manager (London)  
Sufiya Ahmed - Author of Secrets of the Henna Girl (London)  
Sumayya Lee - Author (London)  
Sumeya Patel - Teacher (Leicester)  
Suniya Qureshi - Trustee of a charity (London)  
Tamsila Tauqir MBE - Trustee of Inclusive Mosque Initiative (London)  
Taslim Hussain - Youth Engagement Worker (Newport)  
Tiffany Joseph - Personal Trainer (Birmingham)  
Yasmin Ahmed - Beauty Therapist (Bradford)  
Yasmin Ishaq - Manager at Islam Rotherham (Rotherham)  
Yasmin Javed - Secretary of the Behno Group (Leeds)  
Yasmin Khan - Director of Halo Project Charity (Middlesbrough)  
Yesmien Bagh Ali - Company Director of Amaali (Skipton)  
Zaheera Nanabawa - Project Manager (Gloucester)  
Zaynah Plummer-Josephs - Counsellor (Birmingham)  
Zlakha Ahmed MBE - Chief Executive of Apna Haq (Rotherham)  
Zohura Akthar - University student (Newcastle upon Tyne)

**Further Signatories (after launch of letter) (13 signatures)**

Akeela Ahmed - Social Entrepreneur (London)  
Alia Waheed - Journalist (London)  
Aqida Abbasi - Justice of Peace and Retired (Essex)  
Iqra Malik - Full-time Carer (London)  
Farida Saleem - Homemaker (London)  
Nafeesa Chishti - Data Analyst (Rochdale)  
Nazia Rasul - Property (London)  
Nazia Mirza - Policy & Engagement Manager (London)  
Rahela Hussain - Office Manager (Birmingham)  
Rida Shaikh - Project Manager (Birmingham)  
Saima Ahmed - Business Owner (London)  
Saima Ahmed - Executive Producer (London)  
Umrana Saleem - Finance (Buckinghamshire)

# Annex E

## Arbitration and mediation

Arbitration in family law matters is now carried out by a number of bodies including Resolution<sup>3</sup>, Chartered Institute of Arbitrators<sup>4</sup> and Institute of Family Law Arbitrators (IFLA)<sup>5</sup>, FLBA<sup>6</sup> and is the subject of practice guidance from President of the Family Division<sup>7</sup>. Practice Guidance issued on 23 November 2015 by Sir James Munby, President of the Family Division.

Previously this practice guidance was restricted to the arbitration of disputes relating to financial remedies but has now been extended to cover certain children's disputes. These include where children should live, times to be spent with each of the parents, arrangements concerning children's upbringing and relocation of children within England and Wales. The scheme does not apply to questions concerning the liberty of individuals, the status of each of the individuals or of their relationship, the international relocation of children or child protection proceedings.<sup>8</sup> The mandatory requirements under the Arbitration Act 1996 are fundamental and immutable and parties cannot agree to exclude, replace or modify them.

The practice direction makes it clear that the guidance does not apply to or sanction any arbitral process based on a different system of law, nor in particular, where there is reason to believe that, whatever system of law is purportedly being applied there may be gender based discrimination.

The basis of arbitral awards is that they can be not only replicated in terms of a civil court order but also upheld in the civil court. The civil procedural rules make provision for the direct enforcement of awards.

In England and Wales the practice of family mediation has become very much part of the established legal process in dealing with the consequences of relationship breakdown. Mediation is not generally used in the resolution of the main suit (whether or not there should be a divorce). In civil law Family Mediation and Implementation and Assessment Meetings (MIAMS) are part of the private law process within the context of financial relief proceedings for relationship breakdown, including proceedings for financial remedy between non-married parties (Schedule 1 of the Children Act 1989) and private law proceedings relating to children.<sup>9</sup>

Save where a MIAMS exemption applies (in situations of domestic violence, urgency, and specifically excluded proceedings) the civil process cannot be initiated without attending at a MIAMS.

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3 <http://www.resolution.org.uk/>

4 <http://www.ciarb.org/>

5 [www.ifla.org.uk](http://www.ifla.org.uk)

6 <http://flba.co.uk/>

7 [https://www.judiciary.gov.uk/wp-content/uploads/2015/11/arbitration\\_pguidance\\_nov\\_15.pdf](https://www.judiciary.gov.uk/wp-content/uploads/2015/11/arbitration_pguidance_nov_15.pdf)

8 [www.ifla.org.uk](http://www.ifla.org.uk)

9 [https://www.justice.gov.uk/courts/procedure-rules/family/practice\\_directions/pd\\_part\\_03a#para12](https://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_03a#para12)

Family mediators have formulated standards with established training and practices. Within the mainstream there are a number of organisations that offer family mediation within the context of family disputes. For example College of Mediators, Family Mediators Association, the Law Society, National Family Mediation and Resolution. Each organisation provides a programme of professional practice, supervision and standards and requires members to maintain compulsory practice development and insurance. Members are required to work within accredited standards. Whilst it is not a profession, family mediation has an extensive set of requirements that must be met in order to obtain and retain membership of one of the accredited family mediation bodies. These organisations now fall under the umbrella of an overarching body: The Family Mediation Council. Members of these organisations are required to register with the council. The MIAMS practice direction provides that those who are authorised to conduct a MIAMS must be registered with and accredited by the Family Mediation Council. Thus family law mediators have accredited and recognised mediation skills, training and follow best practice rules.





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