

INFORMATION AND GUIDANCE ON MUSLIM MARRIAGE AND DIVORCE IN BRITAIN



MUSLIM WOMEN'S NETWORK UK
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Dedication to Cassandra Balchin

Our friend, colleague and former Chair of Muslim Women's Network UK, Cassandra Balchin, lost her battle against cancer in July 2012.

Cassandra was an expert in family laws, marriage, divorce, parallel legal systems / plural legal orders and religious fundamentalisms. She wrote and contributed to many publications. She was also a great women's rights activist and worked tirelessly on advancing the rights of Muslim women.

One woman whom Cassandra helped has made a donation to honour her memory. After producing an information and guidance booklet on marriage, it was always Cassandra's intention to create a resource that could also help Muslim women going through a divorce. Sadly Cassandra passed away before she could embark on this project. The donor has therefore requested we complete this project and has contributed towards the print and design of this report.

This information report has therefore been produced in dedication to Cassandra Balchin. She will be deeply missed by everyone who knew her across the world. It was a great honour and privilege to have her as Chair of Muslim Women's Network UK. She will certainly remain in our memory forever.



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Shaista works tirelessly to improve the social justice and equality for vulnerable Muslim women and girls. Prior to joining the board in 2011, she served as a volunteer before becoming Executive Director in 2007. Shaista was appointed Chair in 2013.



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About Muslim Women's Network UK

Muslim Women's Network UK (MWNUK) is a national Muslim women's organisation in Britain www.mwnuk.co.uk. We are a small national charity (no. 1155092) that works to improve the social justice and equality for Muslim women and girls. Our membership also includes women of other faiths / no faith and men who support our work. We find out about the experiences of Muslim women and girls through research and helpline enquiries. We identify policy and practice gaps and use this information to inform decision makers in government as well as informing our community campaigns.

We also develop resources and train women so they are better aware of their rights. We have a separate website for our national helpline www.mwnhelpline.co.uk that provides advice and support on a range of issues some of which include: domestic violence, forced marriage, sexual abuse and discrimination. We also regularly receive enquiries relating to marriage and divorce.

The impact of our work is particularly felt in reducing the vulnerability of Muslim women and girls, reducing the prejudice they face, and giving them a greater access to rights and services – all of which allow them to contribute to society equally. We are also creating a critical mass of voices to influence change with more women being confident to challenge discriminatory practices within their communities and in society and to influence policy makers.



1 Introduction

This publication is aimed at Muslim women in Britain so they are better informed about their rights and practices relating to marriage and divorce. However, the contents of this report will also be useful to family law professionals, politicians, government officials, academics, students, religious authorities (mosques, Shariah Councils and scholars) and women's rights organisations.

Muslim women are very diverse in terms of their ethnicity, culture, socio-economic status, education, and religiosity. Regardless of their individual background, they often lack knowledge about the status of their marriage or divorce according to civil and Islamic law. It appears that there is much confusion and misunderstandings particularly in relation to divorce.

Some of this misunderstanding arises because women can receive varying advice depending on how rulings in Islam are interpreted which is influenced by culture, tradition and personal prejudices of religious scholars etc. This means that Shariah or Islamic law can be a combination of God's law (as outlined in the Quran), records of Prophet Muhammad's (pbuh) words and actions (as outlined in the hadith) and man derived jurisprudence using various methodologies.

Further confusion arises from the fact that British courts can generally recognise Muslim marriages and divorces that were registered abroad. However, Muslim marriages and divorces conducted in Britain are not recognised under English, Welsh, Scottish law or Northern Irish law. This is because we cannot have parallel legal systems and British Muslims are expected to utilise the legal mechanisms available in this country. In reality this means that those in legally recognised marriages have recourse to UK laws while those in unrecognised marriages do not (discussed in Chapter 4). This is why Muslim Women's Network UK (MWNUK) strongly advocates for registration of Muslim marriages, which means having an additional civil marriage so the union is legally valid under the law.

MWNUK receives enquiries regularly from Muslim women complaining about the difficulties they experience when trying to obtain a divorce. They face multiple barriers when they are trying to leave an unhappy marriage. Pressure from family and community to remain within abusive marriages and to suffer in silence is common because of the perceived stigma of divorce and it being regarded as shameful. Others do not understand the legal status of their marriage and therefore their rights pertaining to divorce.



Once women have the courage to end their marriage they may wish to involve a religious authority to obtain their divorce. Even after obtaining a divorce under civil law (if applicable), Muslim women may also want the reassurance of an Islamically pronounced divorce. In Muslim countries, the religious authority would be the Islamic court but in the West, where Muslims are living as minorities, women must approach institutions or individuals that they recognise as a religious authority (e.g. mosque, Shariah Council, scholar or *imam*). They are usually paid a fee in return for assistance. However, women's experiences show that the service they receive varies according to culture or cultural affiliation, school of thought, religious sect and personal prejudices of the individuals who deal with their cases.

Although some women have positive experiences and are helped swiftly, many others are discriminated against. A number of barriers can be put up to delay or prevent divorce. This can range from blaming women for the marriage breakdown and making women feel guilty for wanting a divorce to pressuring them into mediation, which is usually through family members or *imams* / scholars at the religious institution and not through qualified and accredited mediators. Some women are also made to incorrectly believe that they cannot leave their marriage unless the husband agrees to a divorce; it is clear in Islamic jurisprudence, either a man or woman can initiate a divorce. This sometimes results in women remaining in unhappy and abusive marriages. These experiences often leave women traumatised, and can negatively affect any children involved.

How some men use marriage and divorce as a psychological tool against women:

- Refusing to give or agree to a divorce even though they move forward with their lives and remarry
- Refusing or contesting an Islamic divorce to extract a more favourable financial settlement from the wife
- Threatening women with an instant verbal Islamic divorce (without having to go through a formal procedure)
- Threatening to marry again and commit polygamy

Solicitors who have significant numbers of Muslim female clients have also contacted MWNUK. They have informed us that Muslim women often receive conflicting and bad advice from their families and other community members, which makes them apprehensive to take advantage of civil law to secure their financial rights. By the time these women get legal advice, it can be too late because the husband has disposed of assets that they are legally entitled to. The situation could also be more complex if any property is owned through an Islamic mortgage, shared ownership lease or there is prohibition against assignment of a tenancy. In such cases legal advice should be sought very quickly.

Case Study

Nagina's Story

Nagina came to the UK on a spousal visa. After being married for several years and having children, her husband divorced her. She cannot read or write English and her husband made her sign documents, which she later discovered were divorce documents. Nagina (and her children) have not received any financial support from the husband.

We have therefore produced this resource to help women:

- Understand rulings concerning marriage so they can make informed choices and are able to better protect their rights
- Understand rulings and process for both Muslim and civil divorce so they are better prepared and equipped to navigate their way through them

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This resource covers common questions we receive from women at MWNUK such as whether the permission of parents is required for marriage (guardianship) to polygamy and marrying outside of their faith. We also discuss what makes marriages legally valid or invalid and the consequences of being in a marriage that is not recognised by laws in the UK. We also highlight barriers women can face when they approach Shariah Councils for divorce.

We have shared real life case studies, which have been anonymised so you can learn from the experiences of other women. This publication should not be considered a substitute for religious or legal advice and has been produced for guidance only. Finally we have put forward recommendations, which include good practice for Shariah Councils when handling divorce cases and legislative solutions to prevent discrimination against women in matters of marriage and divorce.

Note: *If the marriage has ended and a divorce is being considered and either you or your spouse is not a British citizen, this could affect the right to stay in the UK. In such circumstances advice should be sought from an immigration advisor or lawyer.*



Farmida's Story

"I found myself a victim of what I can only describe as a completely sexist procedure and one that is completely biased towards men. Despite providing statements, witnesses and evidence that my ex husband was violent, abusive, shirked all marital responsibilities, whose behaviour was damaging to my children, I was repeatedly asked to reconcile.

I also had to divulge personal feelings and accounts to and be interrogated by men who had no understanding of the suffering of women or any sympathy with them. I had to go through this on several occasions and justify my position to them incessantly. Every time I attended the Shariah Council, I had to retell my story because they had not read any of my statements or police reports. This was intimidating and very frustrating as I felt that they were not taking anything that I said into consideration. I felt I was not being heard. The process caused me anxiety and anguish for months. I felt that the process was purposely avoiding granting my Khula or divorce and was quite dismissive.

I eventually got my Islamic divorce only after I provided my 'Decree Absolute' from the English court to them - they had no choice in granting the 'Khula' then. I felt the Islamic procedure had been pointless as all I needed to do was just obtain an English civil divorce and show them the paperwork and they had to listen. How about the women who have only had the Islamic marriage in the UK? It is not recognised by English law so they cannot use an English divorce to apply pressure."

Note: For any Arabic terms used in this report, refer to glossary (page 97).



2 Muslim Marriages

2.1 What is a Muslim Marriage?



Generally Islam encourages marriage. However, in Islamic jurisprudence (*fiqh*), the ruling on marriage can differ according to the state and conditions of each person. For example, it can be highly recommended, obligatory, prohibited or permitted depending on the circumstances e.g. whether they can fulfil their spousal duties or whether they fear falling into sin due to sexual desires etc. For those who do get married the Quran lays out a framework that promotes mutual love, dignity and respect in marriage:

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And among His Signs is this, that He created for you mates from among yourselves, that ye may dwell in tranquility with them, and He has put love and mercy between your (hearts): verily in that are Signs for those who reflect. **(Quran 30:21)**

O mankind! reverence your Guardian Lord, who created you from a single person, created, of like nature, his mate, and from them twain scattered (like seeds) countless men and women; reverence Allah, through whom ye demand your mutual (rights), and (reverence) the wombs (that bore you): for Allah ever watches over you. **(Quran 4:1)**

O ye who believe! Ye are forbidden to inherit women against their will. Nor should ye treat them with harshness, that ye may take away part of the dower ye have given them except where they have been guilty of open lewdness; on the contrary live with them on a footing of kindness and equity. If ye take a dislike to them it may be that ye dislike a thing, and Allah brings about through it a great deal of good. **(Quran 4:19)**



...They are your garments and ye are their garments... (Quran 2:187)



The word *zawaj* is used in the Quran to signify a 'pairing' hence used in religious language to mean marriage. However, South Asian communities commonly use the term *nikah* for marriage or the marriage contract. However, according to some people, the term *nikah* literally means 'sexual intercourse.' Linguistically it is disputed whether the term in origin means sexual intercourse, or actually does mean the contract of marriage. Hence it is used to describe a formal contract that makes the sexual relationship between a man and woman lawful under Muslim law (General Presidency of Scholarly Research and Ifta). Although a Muslim marriage ceremony may have a religious component, it is in fact a civil contract.

The marriage, which should take place in the presence of at least two witnesses, consists of an offer from one party and acceptance from the other. Both parties must consent to enter into the marriage contract and both can define the terms and conditions of this contract including the type and amount of the marriage gift. Consent cannot be obtained by means of coercion, fraud or undue influence. Also consent cannot be obtained from those who are legally unable to give it; for example children, people who are incapacitated, or those with mental impairments, which limit their capacity to understand and consent to a legal contract.

Note: *It is important to note that nikahs or Muslim marriages conducted in Britain are not legally recognised under UK law. It is therefore important for couples to also have a civil registration in addition to their Muslim marriage. Muslim Women's Network UK strongly recommend that Muslim women legally protect themselves by insisting on a civil ceremony before the religious ceremony – see Chapter 4*

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2.2 Marriage Gift (*Mahr*)

An essential part of the marriage contract is the marriage gift (dower) or *mahr* that the groom gives to the bride. **(Quran 4:4 and 4:24)**

The contract will include details of *mahr* such as size and nature of gift (e.g. cash, jewellery, property, or any other valuable asset) and whether this is paid immediately at the time of marriage, deferred to a later date (for example payable in the event of a divorce) or a combination of both. When fixing the size of the *mahr*, the groom's financial situation should be considered.

Yasmeen's Story

When Yasmeen had her Islamic marriage, the *mahr* payment was deferred. However, the imam wrote on the marriage certificate that it was paid even though it had not been.

The imam also did not get Yasmeen to sign the marriage certificate but got the husband to sign it. Now that Yasmeen and her husband are divorcing, the *mahr* is due to her. However, her husband is claiming that he has already paid it and using the marriage certificate as evidence. The husband is also challenging the validity of her claim because the certificate was not signed by Yasmeen. Upon making enquiries Yasmeen has found that it is common practice by the particular mosque that conducted her Islamic marriage, not to always get the bride to sign the marriage certificate. Such bad practice undermines the rights of Muslim women. This makes it harder for women to make a claim for any *mahr* that may be due to them upon divorce, particularly those pursuing civil action using contract law for mahrs with high financial values. This may be a deliberate ploy to prevent women from accessing their rights.



2.3 Marriage Contract Conditions

A marriage contract is an opportunity to clarify expectations during the marriage and negotiate other terms and conditions. For example, the bride could include a condition prohibiting her husband from taking a second wife whilst he remains married to her.

They may also agree that the delegated right to divorce is given by the husband to his wife (*talaq-e-tafwid*). This would give the wife the power to

terminate the marriage unilaterally if she wished to do so without the need for permission from her husband or religious authority - although it is usual to seek advice from the latter. When the wife exercises *talaq-e-tafwid* she does not lose her marriage gift (*mahr*). This is a good solution to a common cause of suffering for many women, where husbands refuse to give the Islamic divorce even after civil divorce has been obtained through British courts. Husbands use their power to divorce as a way of controlling women even after the marriage is over. *Talaq-e-tafwid* gives a greater balance of power in the relationship when it comes to divorce. Given the experiences of Muslim women in Britain, it is surprising that mosques do not have this as a standard condition in Islamic marriage certificates nor encourage its inclusion.

2.4 Witnesses

The Quran is silent on the issues of witnesses for a Muslim marriage. Some scholars consider marriages without any witnesses still valid while others such as in the Hanafi school of thought state that presence of witnesses is essential for a valid marriage. As women are often the more vulnerable partners in a marriage contract, witnesses can play a crucial role in helping to protect their rights which can include checking on her consent, capacity to consent and her age. Muslim marriage law in most Muslim countries therefore requires presence of witnesses. Some scholars insist witnesses can only be male or can only be Muslim. However, the Muslim marriage law in Fiji declares two women as valid witnesses to a Muslim marriage (Muslim Marriage Guide). Marriage laws and procedural laws for Muslims in the following countries do not specify the religion or gender of witnesses for marriage; they just require two adult witnesses: Algeria, Indonesia, Philippines, Tunisia, Senegal and Turkey (Muslim Marriage Contract – a).

2.5 Guardian (*Wali*)

Muslim feminists are contesting the concept of guardianship (*wilayah*) and whether Muslim women require a guardian (*wali*) for any matter. When it comes to marriage a popular belief is that a woman cannot get married unless her *wali* (who has to be a male relative e.g. father, brother, uncle etc.) gives permission. Some scholars will even state that without this consent the marriage contract is void and the marriage invalid. This position is held by the Shafi, Maliki and Hanbali schools of thought and is mainly based on this *hadith*: **“The marriage of a woman who marries without the consent of her guardians is void.”** (Sunan Abu Dawud 2080, Narrated Abu Musa). Where a marriage is dependent on a guardian’s consent means that the woman can be forced into marriage. There is therefore a dispute about the authenticity of this *hadith* because it conflicts with the Quran which gives women the right to marry, and even other *hadiths* and *fatwas* (religious rulings) of companions like Prophet Muhammad’s (pbuh) wife Aisha (r.a.) and the second Caliph Umar as recorded in the Muwatta of Shaybani. The narrations from Malik are disputed with many taking the same position as the Hanafi ruling (as mentioned by the Maliki Judge Ibn Rushd al-Jadd (not the famous philosopher Averroes but his grandfather) in his work Muqadimma.

The Hanafi ruling on this matter is that a woman can enter into a marital contract by herself without consent from a guardian. Examples of some evidences on which the Hanafi ruling is based are given in Appendix 1. This Hanafi opinion appears closer to the spirit of the Quran, which also does not stipulate that a woman requires permission from a guardian to get married and is also against forced marriage. Guardianship (*wilayah*) appears in verses **8:72** and **18:44**, but not in the sense that it endorses men’s authority over women (Mir-Hosseini et al., 2015).

However, the Hanafi school of thought also takes a cautious position on this matter and still recommends that a woman should seek permission from her *wali*. It is for this reason that many mosques in the UK (despite the Hanafi school of thought being the dominant one amongst British Muslims) are often not willing to conduct a marriage ceremony without consent from a guardian. Women who wish to get married to someone of their own choice without permission of their male relatives or who do not have a *wali* will circumvent this rule by getting someone else to act as a proxy guardian. However, the ‘Model Muslim Marriage Contract’ does not require the bride to have a guardian (see Chapter 3). It is important to note that the countries from which many of the UK based religious scholars and *imams* originate take a more progressive stance because requirement for a *wali* in Muslim family law is absent in countries following the Hanafi

school of thought such as Bangladesh, India and Pakistan. Also the current trend in Muslim family law is away from insisting upon a *wali* and treating women as wholly capable of entering into a contract in line with teachings of Islam. For example, the requirement for a *wali* has been removed in Morocco's new Muslim family law (2004) and has been made optional in the 2005 amendments to the Algerian Family Code. (Muslim Marriage Contract – b).

2.6 Who Can Conduct Marriage Ceremonies?

For centuries men have traditionally conducted marriage ceremonies. They have been those considered a religious authority such as a *mufti* (scholar of Islamic law) or *imam* (leader of congregational prayer). However, it can be any person who is considered a trusted Muslim, including women. There is no religious prohibition against Muslim women officiating in marriage ceremonies. In fact, the presence of a religious authority such as an *imam* or scholar is not an essential requirement because the Muslim marriage is a civil contract.

Despite the fact that a person conducting a marriage ceremony purely plays an administrative role, some jurists have tried to put forward arguments to bar women. These have included it being inappropriate for a woman to sit amongst men, that women menstruate, and that the testimony of two women is equivalent to one man. However, according to the Musannaf Abi Shayba Hadith Collection, Ayesha (r.a.), the wife of the Prophet (pbuh) performed a marriage of a woman and did not even consider it necessary to obtain permission from her father and this was considered valid (see Appendix 1 for narration). In 2008, despite opposition, Amal Soliman became the female marriage registrar in Egypt and probably the world (El Alfy, 2008). In the same year United Arab Emirates followed and appointed Fatima Saeed Obeid Al Awani as a marriage registrar (Salama, 2008). In 2015, the first female marriage officiant was licensed to conduct marriages in Palestine (Al Monitor, 2015). Muslim Women's Network UK hopes that one day Muslim women will also conduct Muslim marriage ceremonies in Britain and is willing to facilitate the training and the provision of such a service.

2.7 Age of Marriage

A minimum age for marriage is not stated in the Quran but it specifies that the person must be mature and of sound judgment. **(Quran 4:6)** Unfortunately some scholars use onset of puberty as sufficient indication of maturity and therefore eligibility for marriage. They also use a particular *hadith* narrations that say the Prophet Muhammad (pbuh) married Aisha when she was only 6 years old and consummated the marriage when she was 9-years-old. However, these are considered unreliable and such scholars also ignore numerous other reliable *hadiths* that put her age of marriage at 16-17 years old and consummation at 19 years of age (Maqsood). Children are clearly incapable of giving informed consent and are unable to take crucial decisions or negotiate the terms of a formal contract. However, there are scholars who acknowledge that intellectual maturity should be the basis for deciding age of marriage and not puberty and it is for this reason some Muslim-majority countries have adopted civil codes stipulating the minimum age of marriage is 18 years. Although Muslim marriages conducted in Britain are not legally recognised, the legal minimum age to enter into a marriage, whether it is a religious ceremony or a civil one, is 16 years of age. In England and Wales anyone between 16 and 18 years of age who wants a civil marriage must have parental consent. However, in Scotland, parental consent is not required.

Minimum Legal Age for Marriage in Some Muslim Countries

Country	Female	Male
Bangladesh	18	21
Jordan	18	18
Morocco	18	18
Tunisia	20	20

2.8 Forced Marriage

O ye who believe! Ye are forbidden to inherit women against their will. Nor should ye treat them with harshness... (Quran 4:19)



Forced marriage is not allowed in Islam. Both the bride and groom must provide full, free and informed consent to the marriage. The consent of the woman is essential and must be obtained. As good practice some *imams*, who perform the Muslim marriage ceremony, do not allow immediate family members of the bride e.g. Brothers to act as witnesses. Any marriage without consent or considered forced is regarded as *batil* or void. They stipulate that the witnesses are independent to try and ensure the marriage is not a forced one.

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There are also *hadiths* (traditions based on reports of the sayings and actions of the Prophet Muhammad (pbuh) that provide evidence that forced marriage was not allowed:

Example 1

Narrated Abdullah ibn Abbas: *“A virgin came to the Prophet (pbuh) and mentioned that her father had married her against her will, so the Prophet (pbuh) allowed her to exercise her choice.”* (Translation of Sunan Abu-Dawud, Marriage (Kitab Al-Nikah), Book 11, Number 2091)

Example 2

Khansa Bint Khidam said *“My father married me to his nephew, and I did not like this match, so I complained to the Messenger of Allah (May Allah bless him and grant him peace). He said to me “accept what your father has arranged.” I said “I do not wish to accept what my father has arranged.”*

He said “then this marriage is invalid, go and marry whomever you wish.” I said “I have accepted what my father has arranged, but I wanted women to know that fathers have no right in their daughter’s matters (i.e. they have no right to force a marriage on them).” (Fathul Bari Sharah Al Bukhari 9/194, Ibn Majah Kitabun Nikah 1/602)

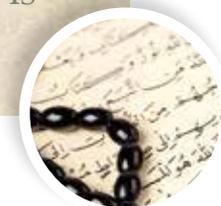
2.9 Polygamy

Prior to Islam, it was common for men to have numerous wives with no upper limit. However, the Quran put a limitation allowing a man to have up to four wives only on the condition that he deals with them equally. This is a condition almost impossible to fulfil, which is also acknowledged in the Quran itself **(4:129)** and therefore the Quran recommends marrying only one wife **(Quran 4:2-3)**.

And you will never be able to be equal [in feeling] between wives, even if you should strive [to do so]. So do not incline completely [toward one] and leave another hanging..... **(Quran 4:129)**

Give orphans their property, do not replace their good things with the bad, and do not consume their property with your own. That is a serious crime. If you fear you will not deal justly by the orphans, marry of the women, who seem good to you, two or three or four; and if you fear that you cannot do justice (to so many) then (marry only) one or the captives that your right hands possess. Thus it is more likely that you will not do injustice. **(Quran 4:2-3)**

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Although the Quran permits polygyny (commonly referred to as polygamy), it does not encourage it. For example, the Quran states that if men cannot treat all wives with justice, then to only marry one wife. In fact Imam al-Ghazali (following Imam al-Shafi) explained in his *'Ihya Ulum ul-Din'* on *nikah*, that marriage even to one wife should be forbidden if men are not going to be fair and just. So there is not blanket permission on polygyny as people misunderstand today. The permission to practice polygyny is not associated with satisfying sexual desires despite it given as a reason by some religious scholars. Another reason commonly cited is that it is a solution for women who cannot find husbands or to tackle the apparent issue of surplus women in society. Some women are even told that polygyny is *sunnah* i.e. recommended by Prophet Muhammad (pbuh) and women who try and prevent their husbands from taking on another wife are not pious or committing a sin. However, the polygyny in Quran verses 4:2-3 has been mentioned in the specific context of caring for orphans (and therefore marrying widows). These verses were revealed shortly after the 'Battle of Uhud,' in which many Muslim men were killed leaving behind many widows and orphans. Therefore the permissibility of polygyny in Islam was presented as a solution to a social problem for caring for widows and orphans who had no one to support them (Badawi – a).

Terminology

Polygamy: Practice of having more than one spouse
(therefore can be a broad term that covers both polygyny and polyandry)

Polygyny: When a man has more than one wife

Polyandry: Where the woman has more than husband

However, polygyny is often practiced very differently in today's societies including in Britain. Men entering polygynous marriages are usually not marrying widows with children and mostly marrying to satisfy their sexual desires. For men who have been forced into an unhappy marriage, it can be their way of keeping themselves happy while ensuring their families are satisfied i.e. by marrying a woman of their choice and by marrying a woman of their family's choice. However, this should not be seen as a solution to forced marriage as it negatively impacts the lives of many people including both the first and second wife and children from those marriages.



Case Study

Amjad's Story

Amjad did not want to marry his cousin in Pakistan. He reluctantly agreed, married her and called her to the UK. However, soon after his first marriage he conducted an Islamic marriage with his girlfriend and moved in with her. Amjad has been married to both of his wives for 10 years and lives mostly with his second wife with whom he has children. His first wife lives with his parents. The first wife is being prevented from leaving the marriage and seeking a divorce due to the shame it would cause the family and is expected to remain in the marriage and look after his parents. Amjad's second wife is unable to have a civil marriage with him to ensure her marriage is legally valid because Amjad is still legally married to his first wife.

Polygynous marriages are on the rise in the UK (Dettmer, 2013). Many women may be unaware that they are in polygynous marriages. MWNUK receive calls from Muslim women (usually the first wife), when they discover their husbands have married again. However, some women are knowingly entering polygynous marriages as second wives. The reasons for this can vary from career women not wanting a full time husband to divorcees not wanting to bring up children alone to older single women who want to have children but have not found anyone.

A few Muslim-majority countries have completely outlawed polygamy, which include Tunisia, Turkey and Uzbekistan while some countries tightly regulate it (Muslim Marriage Contract – c). For example, in Iran and Morocco it is permitted if the first wife gives consent. In Syria a man must get permission from a court and show he can financially support both wives. If someone enters into more than one legally valid marriage in the UK, then the crime of bigamy is committed. Polygyny is therefore illegal in the UK. However, polygynous marriages usually do not constitute bigamy because they are usually unregistered or only one of the marriages will be registered as legally valid. Some men are even calling second wives from abroad on spousal visas. Sometimes the benefits system is also exploited where one wife is declared as a single mother, and therefore entitled to a full range of lone parent payments (Reid, 2011).

Simply recognising Islamic marriages as legally valid under British law would not prevent polygyny as sometimes the religious ceremony is conducted without filling in any formal paper work. One possible solution to combat polygyny and also ensure women are financially protected in the event of divorce could be to require all Islamic (and other religious marriages) are not conducted unless a civil marriage has taken place (discussed in Chapter 13). Punishment for conducting such ceremonies without seeing evidence of a civil marriage could include fines.



2.10 Temporary Marriages

A minority of Muslims in Britain are entering temporary marriages because they feel these types of marriages are more suited to their lifestyle. Some university students (including foreign students attending courses in the UK) are also practicing it (Mahmood, 2013).

A temporary marriage, also known as a *mutah* marriage is a tradition mainly practiced predominantly by Shia Muslims and a minority of Sunni Muslims (although not the mainstream position of the major Sunni schools of thought). A man (who may or may not be married) marries an unmarried woman in which both parties mutually agree to the duration of and terms of the contract in advance. The length of the marriage can vary from an hour to many years. The marriage ends when the contract expires so there is no divorce in *mutah* marriages. It was allowed in the early days of Islam during the time of Prophet Muhammad (pbuh) when Muslims were far away from their homes and wives for extended periods of time. However, according to a *hadith* by Imam Ahmad bin Hanbal, the Prophet (pbuh) forbade the practice. The second Caliph Umar also banned it. Although it is still allowed by Shia Muslims, the majority of jurists agree it is no longer valid.

Sunni Muslims also practice a form of temporary marriage known as *misyar* or traveller's marriage. In these marriages:

- The groom does not have to give a marriage gift (*mahr*) as in traditional marriages
- The husband does not have to financially support his wife
- The couple does not live together, but make nuptial visits to each other
- There is no fixed time in which the marriage must end even though it is a temporary marriage (as is the case of *mutah* marriages) and can be extended to become full marriage

Temporary marriages are not mentioned in the Quran although some Muslims try to manipulate Quran verse 4:24 to try and justify them because they see marriage as something contracted by means of payment ("give them their portions") for a specified time by mutual agreement. Hence, both of the above types of temporary marriages are often criticised and viewed as tactics to circumvent Islamic rules against premarital sex and adultery. In some countries temporary marriages are used to engage in sex tourism (including child sex tourism) and prostitution.

And all married women (are forbidden unto you) save those whom your right hands possess. It is a decree of Allah for you. Lawful unto you are all beyond those mentioned, so that ye seek them with your wealth in honest wedlock, not debauchery. And those of whom ye seek content (by marrying them), give unto them their portions as a duty. Lo! Allah is ever Knower, Wise. **(Quran 4:24)**



2.11 Marriage to Non Muslims

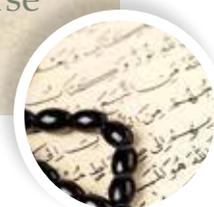
Increasing numbers of Muslim women in the UK are having interfaith marriages (Abbass, 2012). While some men convert because they genuinely accept Islam, others only show they are converting to appease the Muslim woman's family. Sometimes MWNUK receives enquiries from Muslim women who wish to marry a non-Muslim man and ask about *imams* willing to perform such ceremonies. Most religious scholars state that Muslim women are forbidden to marry non-Muslim men unless they convert to Islam. However, in recent years Muslim women are challenging this position. They are questioning whether this is religiously sanctioned or it is male opinion and yet another way of restricting women's freedom.

Although all major Islamic schools of thought state that Muslim women cannot marry non-Muslim men under any circumstances, some scholars such as Shaykh Khaled Abou El Fadl are now beginning to acknowledge that the evidence regarding this prohibition to be weak because the Quran is in fact silent on the issue (Abou El Fadl).

The Quran addresses marriage in two verses in the Quran. **Verse 2:221** states that both Muslim men and women may not marry polytheists (those who believe in multiple deities /associate partners with God). **Verse 5:5** states that Muslim men can marry non-Muslim women who are Jewish or Christian. However, Muslim women are not addressed in this verse. Muslim women have not been given permission to marry non-Muslim men nor are they forbidden to marry them. Most jurists argue that because permission has not been given it implies Muslim women are forbidden to marry Jewish or Christian men. Some jurists will even go as far as telling Muslim women who do so that they are committing a grave sin and becoming an apostate.

And do not marry polytheistic women until they believe. And a believing slave woman is better than a polytheist, even though she might please you. And do not marry polytheistic men [to your women] until they believe. And a believing slave is better than a polytheist, even though he might please you. **(Quran 2:221)**

And [lawful in marriage are] chaste women from among the believers and chaste women from among those who were given the Scripture before you, when you have given them their due compensation, desiring chastity, not unlawful sexual intercourse or taking [secret] lovers. **(Quran 5:5)**





According to Shaykh Khaled Abou El Fadl, the jurists prohibit women from marrying Jewish and Christian men for two reasons:

1. Technically, children are given the religion of their father, and so legally speaking, the offspring of a union between a Muslim male and a Jewish or Christian woman would still be Muslim
2. In Islam, Muslim men are prohibited from forcing their wives to become Muslim. As such prohibitions do not exist in the Jewish and Christian faith, a Muslim woman could be forced to convert.

It is interesting to note that the above reasons are only possibilities and may not actually be the reality of people's lives. Shaykh Khaled Abou El Fadl therefore accepts that although this is a legal legacy Muslims of today have inherited, it is still not convincing evidence for the prohibition. In conclusion for those Muslim women who are considering marrying Jewish or Christian men, it is important for them to know that any prohibitions on this issue are based on male opinion rather than the Quran so they can make an informed decision about their lives. An interesting lecture by an American Professor, Muhammad Khaleel (who is one of the few scholars who conducts interfaith marriages), can be found on Youtube (Muslims for Progressive Values, 2012).



3 The Model Muslim Marriage Contract



Many Muslims in Britain remain unaware of the right and encouragement to use a 'marriage contract.' Even for those that do, unfortunately little, if any, attention is given to the conditions in the marriage contract and many people will use standard ones provided by local mosques. The marriage gift (*mahr*) is also regarded as symbolic and it is common for only small tokenistic amounts to be given on the day of the marriage such as £100. There is a perception that requesting larger amounts may be perceived as being 'greedy'

or may deter the marriage. Some women only request a small *mahr* because they feel that they will achieve financial security themselves or by also having a civil registry. Two witnesses of sound mind are also required to verify the marriage contract. However, scholars disagree on whether these witnesses can be female or not.

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A model Muslim marriage contract (Muslim Marriage Contract – d) has been developed for use in Britain and designed to move Muslim marriages towards greater equality and justice. The Muslim Institute launched the model contract in 2008. The model Muslim marriage contract was developed by Mufti Barkatulla of the Islamic Sharia Council, with assistance from Dr Ghaysuddin Siddiqui of The Muslim Institute; Usama Hasan, imam of Masjid al-Tawhid; and Cassandra Balchin of the Muslim Women's Network UK. The contract was drafted after lengthy consultations with religious leaders, community organisations and women's groups across Britain.

Main features of the model Muslim Marriage Contract include:

- 1. Written Proof of Marriage** - Ensuring there is written proof of the marriage helps prevent future uncertainties. For example, sometimes a husband denies that the marriage has taken place. Also when a woman wants to obtain an Islamic divorce, the process will be quicker if she has evidence that the Islamic marriage took place. There are usually 3 copies of the contract: one given to the bride, one given to the groom, and one kept by the mosque conducting the ceremony.
- 2. Written Commitment of Quranic Vision of Marriage** - The contract emphasises a relationship of mutual love, mercy and kindness and highlights the equal rights and responsibilities of spouses.
- 3. Written Proof of Terms and Conditions of Marriage** - Ensuring there is written proof of the terms and conditions helps prevent future uncertainties. For example, the contract includes a condition that does not allow the husband to commit polygamy. Also during divorce proceedings, any disputes related to the *mahr* are easier to resolve and during mediation, evidence of the mutually agreed conditions can help the mediator resolve differences.

4. **Wali (Guardian)** - The marriage contract does not require that the bride has to have a *wali* or guardian. In classical Muslim jurisprudence (*fiqh*), most scholars stated that a woman could not get married without the consent of her guardian (male relative such as father, brother, son etc.), but there was difference of opinion on whether it was absolutely necessary. However, according to the Hanafi School of Jurisprudence it is permissible for a woman to marry without the consent of a male guardian (Badawi – b).
5. **Delegating Right to Divorce to Wife** - The contract contains a provision in which the right to divorce is delegated to the wife. It is known as *talaq-e-tafwid*. This condition does not reduce the right of the husband to give divorce. It just means that a wife can initiate divorce without requiring any permission or agreement from the husband, and retains all her financial rights including any *mahr*. In case of violence such a condition giving the wife a right to divorce is not even required according to the Maliki school (as mentioned by Sidi Mayyara in his commentary on Tuhfat ul-Hukkam). Shafi scholars also permit a woman who is not being supported financially to also divorce her husband even if he does not grant a divorce and is obstinate even without a Judge (as mentioned in Fat'h u-Mu'in).
6. **Two Adult Witnesses of Good Character** - Two adult witnesses are required to verify the marriage. However, this contract allows women and non-Muslims to be witnesses - the only requirement is that they are of good character and are sane and responsible.

Case Study

Kalsum's Story

“When I was getting married, the mosque and the imam had their own ‘nikah nama’ (marriage contract). So although I did not use the ‘Model Muslim Marriage Contract, I did use it to negotiate better terms and add my own conditions to the nikah nama. My parents were unaware that I could add my own conditions to the standard marriage contracts that were being used and were immediately supportive due to there being a serial polygamist in the family. So I added conditions for no polygamy and those that gave me better financial rights. For example, the marriage gift (mahr) was only initially going to be £2000 and gold. Once we became aware that the ‘mahr’ payment could be deferred and payable upon divorce, we increased it to £25000! I have also had the civil marriage to ensure my financial rights are fully protected.

I wanted to be also be able to initiate divorce without requiring any permission or agreement from my husband (talaq-e-tafwid) but this became a sticking point and my fiancé did not want me to be able to end the marriage unilaterally. So we came to a compromise that neither of us could unilaterally end the marriage (something that men are usually able to do).”

The model Muslim Marriage contract can be found here:

<http://muslimmarriagecontract.org/documents/MuslimMarriageContract.pdf>

4 Legally Valid and Invalid Marriages



4.1 What are Legally Valid Marriages?

To ensure marriages are legally valid, Muslim couples must also ensure they have a civil marriage in addition to their Islamic marriage. Marriage is a devolved issue in the UK with England and Wales, Scotland and Northern Ireland each having their own separate registration service. Please refer to the

government website: www.gov.uk/marriages-civil-partnerships/overview. Religious marriages conducted abroad are also recognised under laws in the UK provided that they were registered in accordance with the laws of that country with the appropriate authority.

Civil Marriages

To ensure they have a legally valid marriage, Muslim couples will have the additional civil registry before or after their '*nikah*.' This can occur on a separate day and venue, for example at the Register Office. Legal words of declaration (as required by the Marriage Act 1949) must be said in the presence of an authorised person or superintendent registrar / registrar and two witnesses. However, some couples want to combine the two and have them on the same day, for example, at the mosque or some other venue. If couples are having their civil marriage at the mosque or another venue at the same time as the religious ceremony, they must ensure that the certain criteria is fulfilled to ensure the marriage is legally valid. The Registry Office can provide guidance on this (see section 4.4)

Marriages Abroad

When someone is married abroad, the basic rule is that if the marriage is valid under the law of that country, it is also valid under laws in the UK.. However, do not assume that a marriage conducted abroad is automatically valid in the UK. It will only be valid if the procedures for registration of marriage in that country were followed. If there is doubt about the legality of the marriage conducted abroad, then a civil marriage can be conducted but further advice should be sought. In most cases where the marriage has been accepted for immigration purposes it will be safe to assume that a foreign marriage is valid under laws in the UK (e.g. where one person has arrived into the UK on a spousal visa).

4.2 What are Legally Invalid Marriages?

Only certain religious marriages are recognised under the Marriage Act 1949 and these are Church of England, Jewish and Quaker marriages. Other religious marriages (e.g. Muslim, Hindu, Sikh marriages etc.) are not recognised under the law. Muslim couples that have their traditional religious ceremony in the UK but then fail to have a civil marriage, have marriages that are not recognised under laws in the UK e.g. the law of England and Wales, Scottish law and Northern Ireland law. Such couples are generally considered to be co-habiting. They therefore do not have the same rights as couples in a civil marriage, or in a marriage that is properly recognised under the law (e.g. marriages conducted abroad). There are no reliable statistics on the proportion of Muslims who have unrecognised marriages. It is evident from the calls received by MWNUK and the unrecognised marriages dealt with by Shariah Councils that significant numbers are not registering their marriages and it is women who are most disadvantaged by this. For example, according to research conducted by Cardiff University over half of the cases dealt with by the Birmingham Central Mosque Shariah Council involved couples who were not married under English civil law (Douglas et al., 2011: Page 39).

Data from the Muslim Women's Network Helpline, which deals with a wide range of issues, shows that 40 enquiries relating to divorce were received over a 10-month period from January to October 2015. Approximately, three quarters of these were primary enquiries specifically on divorce while the rest emerged after dealing with help and support related to domestic violence. Of these 30% of the women were in marriages not recognised legally and 40% were in legally recognised marriages because they had a civil marriage or a foreign marriage. However, the status of the marriage for the other 30% of women was unknown due to insufficient information provided about the marriage. From these figures, it is clear that a significant number of Muslim women are in marriages not recognised by the law. Issues that have also emerged from the helpline enquiries are that some Muslim marriages are being conducted in Islamic bookshops and a number of new converts to Islam were only having the Islamic marriage.

Case Study

Summayah's Story

Summayah, a convert to Islam, was taken to a bookshop (by her husband to be) where an Islamic marriage was performed. He did not pay the *mahr* (marriage gift) and they did not have a civil marriage. Soon after the marriage, Summayah's husband started going on websites to meet other women and eventually divorced her via text. They did reconcile but the marriage was not working and her husband even smashed up contents in the house. She approached the imam who had performed the marriage ceremony at the bookshop, who advised her to try and make the marriage work.

In certain very limited circumstances Islamic marriages may be recognised. In the case of *MA v JA and the Attorney General* (2012) a Muslim couple made a successful application to have their Islamic ceremony declared valid under English law even though they did not have a civil marriage (Bhutta, 2012). Although this case could be cited to legally recognise other Islamic marriages, another judge may not give a similar ruling. In this case both the husband and wife were in agreement in wanting their marriage legally recognised. The judge also took into consideration that some of the requirements for the civil marriage was fulfilled e.g. it was conducted in a 'registered' building and in the presence of an 'authorised' person.

In divorce cases, it is likely that one party will claim that the Islamic marriage is not valid to avoid the financial implications that a legal marriage would bring. For example, in the case of *El Gamal v Al Maktoum* (2011), which featured a member of the ruling family of Dubai, the judge gave the opposite ruling. This Islamic ceremony was done secretly and there was no written evidence to show it had taken place and such a ceremony would unlikely be recognised as valid in some Muslim countries. The court therefore decided it did not amount to a marriage capable of recognition under English law (Procter, 2011). However, it is important to point out that these were unique cases with unique circumstances and similar rulings may not be applicable in other cases.

4.3 Consequences of Legally Invalid Marriages

When Muslim couples in valid marriages divorce, both parties have a legal right to maintenance and their share of assets, including property. The courts will take into account all circumstances and history of the relationship when deciding on how to divide the assets, which could include looking after children and housework. However, when the relationship of a Muslim couple breaks down and they are in an unrecognised marriage, then they are regarded as cohabitants. This means there is very little protection for the weaker partner, which is usually the woman. As a result, many women can find themselves facing real difficulties when their relationship ends, particularly when children are involved.

Case Study

Munirah's Story

Munirah got married in 2009 but only had the *nikah* (Islamic marriage). Munirah and her husband both went into the marriage with their own properties. They decided to have the civil registry later in the marriage. However, just before the civil marriage (and without Munirah's knowledge), her husband transferred his assets to a relative. They are now getting divorced and he is claiming Munirah's property and she only became aware that he had transferred his property when she tried to make a counter claim on it. She wishes she had the civil marriage from the outset.

There is a common misconception across the board that co-habiting couples enter into some kind of ‘common-law’ marriage even if they are not legally married and acquire similar rights to legally married couples. Although Scotland has amended its laws to provide greater protection to co-habitees in the area of maintenance and property, there is no legislation in England and Wales specifically designed to deal with co-habitee rights when the relationship breaks down. To protect themselves, some couples are drawing up ‘Co-habitation Agreements,’ which set out how the couple manages their day-to-day finances while living together and who owns what and in what proportion. It also lets you document how you will split your property and other assets should the relationship break down. It can also cover how you will support your children (Papworth, 2013). A solicitor must put a ‘Co-habiting Agreement’ together. Muslim couples in unrecognised marriages are unlikely to opt for such an agreement because a key motive for often not registering the marriage in the first place is to prevent one spouse (usually the woman) from claiming assets. Refer to Table 1 for a summary of the differences in rights of legally married and co-habitee couples.

Case Study

Nasreen’s Story

Nasreen was educated with a Phd and married a man who was also degree educated. She wanted to have a civil marriage but he said it wasn’t necessary because it’s not as if they were going to ‘split up’ and if they did he would make sure she was ok. They bought a house together but her husband only put his name on the paperwork. Nasreen had put down the deposit on the house and also contributed towards the mortgage payments. After she had her first child, her husband announced he wanted to get married again and he did. She didn’t want to remain in a polygamous marriage and wanted a divorce.

She was told to leave the marital home because it was his house. She had no choice but to move to a flat with her child. She took her husband to court to claim her share of the house, which had gone up in value too. She told the court that they were in a marriage although it was not recognised by English law. Her husband even denied the religious marriage took place and claimed their child was illegitimate. He also denied that she had contributed financially towards the house. Nasreen not only lost the case but found herself in debt to pay for her legal fees.

4.4 Ensuring Marriages Conducted in the UK are Legally Recognised

To ensure that a marriage is legally recognised Muslim couples must comply with one of the following options:

- 1. Have a Civil marriage at the Register Office** - In addition to the Islamic marriage ceremony the couple also has a civil marriage at the Register Office.
- 2. Have a Civil marriage at an Approved Premises** - Local authorities will have a list of 'Approved Premises,' which are licensed (i.e. have received a grant of approval) to hold civil marriages. Examples may include hotels, banqueting suites, historical buildings etc. (however, only certain rooms may be approved for civil marriage). If such venues are hired for the Islamic ceremony, then a civil marriage can also be conducted there. However, the civil marriage and the religious marriage must be completely separate and a formal notice has to be given to the Register Office. A Registrar then attends the 'Approved Premises' and conducts a separate civil marriage and the couple is given a marriage certificate.
- 3. Have a Religious Ceremony Solemnised at a Registered Mosque** - Places of worship such as mosques can be 'Registered' for the solemnisation of marriages *under section 41 of the Marriage Act 1949*. However, an 'Authorised Person' would still need to attend to register the marriage. Your local authority should be able to provide you with a list of these. Some mosques also have an 'Authorised Person' such as the *imam* who has been certified so he can register the marriage. So if an *imam* 'Authorised' to solemnise marriages conducts the Islamic ceremony in a 'Registered' mosque, he can also conduct the civil formalities (without conducting a separate civil ceremony). The couple must ensure they give notice of the civil marriage to the Registry Office. If the registered mosque where the marriage is taking place does not have an authorised person or that person is not available, then a registrar will need to be booked to attend.

Some people refer to this as a 'registered *nikah*.' However, this term is misleading because the two ceremonies (the *nikah* and civil marriage) are separate events (even if separated by a few minutes). The couple will have to say the statutory declaration and contracting words that are required for a civil marriage in front of the Registrar or 'Authorised Person.' It is only this civil marriage that is legally recognised under British law and the couple will be given a marriage certificate.

Case Study

Neelam's Story

Neelam was married at hotel that was registered to have civil marriages conducted at their premises. An imam attended the hotel on the wedding day and performed the Islamic marriage. As Neelam was not given any paperwork after the marriage (as it was given to other family members), she assumed her marriage was legally valid because it had been conducted in an Approved premises for marriage. It was only when she was getting divorced that she realised the he marriage was not legally valid.

Note: Some people wrongly believe that their Islamic ceremony is legally recognised just because it is being performed in a 'registered mosque' or conducted by an 'authorised person.' The marriage will ONLY be legally valid if the authorised person also follows additional civil procedures and issues a civil marriage certificate (also recorded with the Registry Office) and performs it in a registered building. The building and the person must be already authorised at the time of the marriage.

Common Reasons why Muslims do not have the Civil Marriage

- Women promised a civil registry at a later date which does not happen
- Some couples wrongly believe their 'Islamic marriage' is legally recognised in the UK
- Some couples believe their Islamic marriage becomes legally recognised because it is performed by an imam who is also an 'authorised person' to conduct civil marriages (although he does not conduct any civil procedures)
- Some couples believe their Islamic marriage becomes legally recognised because it is performed in a building that is 'registered' to have civil marriages conducted in it (even though no civil marriage is conducted)
- Some deliberately choose not to have a civil marriage because they feel it is sufficient to be married according to Islamic law or feel it may be against their faith
- Commonly (but not always) men or their families oppose having civil marriage to protect finance and property in case the union does not last
- Men committing polygamy who are already in a registered marriage will not want to have another civil marriage because it would amount to bigamy
- Belief that one has a common law marriage which gives you rights

Case Study

Shamim's Story

When Shamim got married in the UK, the imam who performed the Islamic marriage ceremony told her that she did not need to have a civil registry as her marriage was legal. It was only when Shamim and her husband went through a divorce 20 years after their marriage that Shamim discovered that she was not legally married. Her husband sold the house making her and her two children homeless. She was also unable to claim the assets they had built up together as they were all in his name. She was distraught as she had worked all of her married life.

4.5 Civil Marriage Process in England and Wales

For those wishing to marry by a civil ceremony, the following guide shows what steps need to be taken and what to expect:

- **Giving Notice** - You and your partner must give notice of marriage in your local Register Office, whether or not you wish to marry in that district. A fee will be payable. You can only give notice at a Register Office if you have lived in the registration district for at least the past 7 days. Also at least 16 days notice before the marriage is to take place must be given. Your notice will be publicly displayed in the Register Office for 15 days. If either you or your partner is from overseas, special rules may apply when giving notice to marry. If you are in different cities in the UK you need to give notice in each of your own cities and ask the registrars to liaise with each other.
- **Documents Required** - When you go to the Register Office, you need to take proof of your name, age and nationality e.g. passport, birth certificate, immigration status document etc. Something with your address on it will also be required, e.g. your driving licence or one of the following dated within the last 3 months: utility bill, bank statement or council tax bill. If you have been married before, you will need to provide evidence that you can remarry e.g. death certificate of the deceased spouse or final divorce order (decree absolute).
- **Marriage Authority Issued** - Both of you will be issued with the 'marriage authority' which is a legal document allowing your marriage to take place. The authority for marriage is valid for 12 months from the date notice is given.
- **Booking Venue for Marriage** - The civil marriage ceremony can take place in a Register Office or at an "approved venue" or 'registered' religious building authorised by the local authority.
- **Marriage Conducted by Authorised Person** - The marriage must be conducted by a person or in the presence of a person authorised to register marriages in the district.
- **Witnesses** - The marriage must be conducted in front of two witnesses.
- **Marriage Register and Paperwork** - The marriage must be entered in the marriage register and signed by the parties, two witnesses and the authorised person who conducted the ceremony. A marriage certificate is issued.

Getting Married in Scotland

For guidance on marriage procedures in Scotland visit:
www.gro-scotland.gov.uk/regscot/getting-married-in-scotland

Getting Married in Northern Ireland

For guidance on marriage procedures in Northern Ireland visit:
www.nidirect.gov.uk/marriage-and-registration

Question

I married my husband in Pakistan. We are both British citizens but decided to have our 'nikah' ceremony abroad so we could celebrate our marriage with our extended family. I have a 'nikha nama' (marriage certificate) that was given to us by the imam. Is this marriage legally valid in the UK or do I still need to have a civil registry?

Answer

You need to find out whether the imam who performed your marriage / your extended family ensured that your marriage was registered with the appropriate authorities in Pakistan according to local marriage laws. If the marriage is recognised under Pakistani law, then you do not have to have a civil registry in the UK because your marriage is also legally valid here. However, if your marriage was not registered in Pakistan or there is doubt about the legality of your marriage, then you should have a civil marriage. You will need to inform the registry office about your situation and show any marriage documents that were issued.

If a foreign marriage is valid, then doing another civil marriage in Britain is not a good idea as it can cause confusion over which marriage is the legally valid one. Unfortunately Register Offices often allow couples to go ahead with a civil marriage even though they probably have a perfectly valid foreign marriage. Register Office officials feel it is not their responsibility to check the validity of previous marriage ceremonies and do not give a clear warning that the second marriage may create confusion.

The official advice is: "A couple who suspects some irregularity with their marriage ceremony may re-marry each other, as long as they have given notice to the Superintendent Registrar. The 'Authorised Person' should however, point out that the ceremony may have no legal effect and could cast doubt on the validity of any previous marriage and the status of any children. When documenting the marriage, the 'Authorised Person' should use the description "previously went through a form of marriage at (enter place) on (enter date)."

Table 1: Legal Rights of Couples

Issue	Rights Under Legally Valid Marriage (e.g. Civil Marriage or Foreign Recognised Marriage)	Rights Under Legally Invalid Marriage (e.g. Islamic Marriage Only in the UK)
Maintenance	Upon divorce, a court can order the spouse with the higher income to pay maintenance to the spouse with a lower or no income. The amount will depend on length of marriage, recipient's needs, income, other factors such as giving up a career to bring up children etc. The time period over which it is paid depends on circumstances of the case.	The husband has no legal obligation to support the wife (and she has no legal obligation to support him). However, for benefits such as income support and housing benefit etc. living together and being married are usually treated the same and the two incomes are added together. Scotland Only: there are some limited rights for Co-habitees. Provided an application is made to court within one year of the end of the cohabitation, a court may order a capital sum to be paid by one cohabitant to the other. The capital can be paid by instalments.
General Financial Rights	When a married couple divorces, a British court can divide their assets such as property, savings, pensions etc. to meet the needs of each spouse and children (regardless of legal ownership).	When the relationship of a co-habiting couple breaks down, the UK courts have no powers to adjust the ownership of assets. However, the courts may consider their intentions in relation to a limited class of assets in limited circumstances. Scotland Only: Gifts and possessions owned before living together (apart from inherited property), may be regarded as owned equally.
Inheritance	If there is a will, then the spouse inherits according to the will. If there is no will, then the spouse may inherit some or all of the deceased's estate.	If one partner dies without leaving a will, the other partner will not automatically inherit anything (unless jointly owned).
Housing (Tenancy)	No matter whose name is on the tenancy agreement, a married person cannot be thrown out of the marital home.	If the tenancy agreement is not in joint names or not in the woman's name, then she has no right to stay if her partner asks her to leave.

Issue	Rights Under Legally Valid Marriage (e.g. Civil Marriage or Foreign Recognised Marriage)	Rights Under Legally Invalid Marriage (e.g. Islamic Marriage Only in the UK)
Property (Ownership)	Both spouses have a right to remain in the matrimonial home regardless of who bought it or has the mortgage in their name. During a divorce the court will divide assets, which would include the matrimonial home and any other property accordingly.	If one partner is the sole owner, then the other has no rights to remain in the property. If the property was jointly owned but the co-habitee has left and there are children, you may be able to remain at the property until the children finish their schooling. This depends upon the amount of capital tied up in the property and the court may impose certain conditions. If there are no children, it may be very difficult to object to the sale.
Protection from Violence	The court can grant injunctions to prevent abuse or threats of abuse and the abusive partner can be forced to move out of the property.	The court can grant injunctions to prevent abuse or threats of abuse. The abusive partner can be forced to move out of the property even if the partner who remains does not have a share in the ownership of the property. However, such an order will be limited in duration to give the victims of abuse an opportunity to make alternative accommodation arrangements.
Child Custody and Maintenance	A married couple both has parental responsibility for their children. In divorce cases, the court will decide on custody, visitation rights and maintenance based on the best interests of the child.	The father does not have parental responsibility for his children unless: his name was registered on the child's birth certificate or has signed a responsibility agreement which has been properly registered or he had already been granted parental responsibility by the court. Where there is a dispute between two legal parents over child custody and maintenance, then the court can decide on custody and visitation rights (and maintenance) based on the best interests of the child.
Polygamy	If the husband has more than one wife, then the wife in a valid marriage will be legally protected. If the husband has two valid marriages, he can be charged with bigamy which is a criminal offence.	No protection under the law.

5 Shariah Councils



5.1 About Shariah Councils

Shariah Councils are unofficial Islamic bodies that provide advice and assistance on family law matters within Muslim communities and are heavily influenced by the geographical localities of their countries of origin. Most will follow the juristic traditions of the Hanafi school of thought because the overwhelming majority of Muslims in Britain are of Pakistani, Bangladeshi and of Indian origin. However, the practices at each Shariah Council will vary according to its

differing understandings of Islamic law. (Sardar Ali 2013 : Page 13). Most scholars would have received their training from abroad and the quality and the nature of their advice will therefore vary depending on this training, culture and schools of Islamic thought.

Muslim Countries More Progressive than Shariah Councils in the UK

Many Shariah Councils and mosques will pressurise women not to divorce. They will further pressure women using religious texts. For example, some will say 'women seeking a divorce without good cause were (allegedly) called hypocrites by Prophet Muhammad (pbuh). However, in the landmark case of *Khurshid Bibi v Muhammad Amin*, which was as far back as 1967, the Supreme Court of Pakistan declared unequivocally that a woman's right to divorce (*khul*) was established, and that she did not have to give any cause, good or bad, to obtain it.

Although Shariah Councils are sometimes incorrectly referred to as Shariah Courts in the media, these bodies are not legal courts and do not have legal powers. Shariah Councils have three key functions, issuing Muslim divorce certificates, reconciling and mediating between parties and producing expert opinion reports on matters of Muslim family and custom to the Muslim community (Bano, 2012a: Page 84). However, they primarily deal with Muslim divorce, issuing Muslim women with Muslim divorce certificates on occasions where Muslim husbands may fail to issue Muslim women with the unilateral Muslim divorce, *talaq* (Bano, 2012b). For example, 95% of correspondence received by the Islamic Sharia Council to date has related to matrimonial problems faced by Muslims in the UK (Douglas, et al., 2011: Page 29). Also most Shariah Councils do not operate an arbitration service under the Arbitration Act 1996. Instead they offer services through mediation, which is an unofficial form of Alternative Dispute Resolution (ADR). This means their decisions regarding disputes between parties are not and cannot be made legally binding. They rely on the good will of both parties to follow their decisions. In fact the Arbitration Act 1996, which has been commonly associated with Shariah Councils due to Baroness Cox's Arbitration and Mediation Services (Equality) Bill (discussed in Chapter 13), is largely used for commercial purposes because it is cheaper and more flexible than full legal proceedings (Douglas et al., 2011: Page 19).



“What is being applied in Britain by the Sharia Councils is an interpretation which fuses the worst aspects of a Hanafi Muslim tradition (that is no longer the law in Bangladesh, Pakistan or Egypt), with the worst aspects of traditions from non-Hanafi schools (which they counter-balanced with other provisions), to produce something that is uniquely discriminatory, uniquely British and that is unrecognisable in Muslim contexts outside Europe.”

Cassandra Balchin (former MWNUK Chair and Expert in Family Laws, Marriage, Divorce and Parallel Legal Systems)

5.2 Muslim Arbitration Tribunal

The Muslim Arbitration Tribunal (MAT), which established itself in 2007, does operate under the Arbitration Act 1996. This means that the MAT can resolve disputes according to Muslim Personal Law, which can then be enforced by civil courts. Women’s groups have raised concerns that their decisions that discriminate against women can be legally binding. Although both parties must agree that the MAT arbitrate on their dispute, unequal power relations may result in women being coerced into accepting decisions that are less favourable for them, which can then become binding in law. However, civil courts will not enforce agreements made under duress or that are not in line with the principles of the laws in the UK e.g. those that potentially cause injustice. This will provide some safeguarding against religious rulings that discriminate against women.

So although the MAT appears to have more power than unofficial dispute resolution bodies, its power is limited to the civil courts willingness to enforce MAT rulings. The likelihood is that most Muslim women who use the MAT may be unaware of these safeguards and if they have made an agreement, which they later realise is unfair, they may feel they cannot take any action and are bound by their decision. For example, it has dealt with domestic violence cases where they have instructed husbands to have anger management classes and community mentoring, which resulted in the women withdrawing their complaints to the police (Bano, 2012: Page 241). The question that arises is that once the complaints were withdrawn, did the husbands fulfil their requirements and if they did not, what happened next? For example, were women subjected to further domestic violence and if they were, what further decisions did the MAT take? Did they encourage reporting to the police or continued to advice on anger management classes?

Recently District Judge Shamim Qureshi, who sits at Bristol Crown Court, received permission from the Judicial Office to double as a presiding judge at the Muslim Arbitration Tribunal (MAT) in his voluntary time (Gilligan 2016). This is the first case of its kind. This could be an attempt by the MAT to raise its standards to ensure their rulings do not undermine civil law. However, using an expert from the British judicial system does not guarantee that women will not be discriminated against because Mr. Qureshi’s rulings will be based on Islamic interpretations that

he ascribes to, which may not necessarily be egalitarian. His appointment could also cause confusion and women may believe that any decisions they deem unfair cannot be challenged due to Mr. Qureshi's expertise in civil law. Only time will tell whether this appointment will improve the treatment of women and result in fairer decisions.



5.3 Characteristics of Shariah Councils

The legal scholar Samia Bano has conducted research to find out about Shariah Councils in England with respect to family law. She discovered the following key characteristics:

- **Role** - Their main function is to provide help and advice to Muslim women seeking a religious divorce. So, while the decisions of Shariah Councils have no effect in law, they may dissolve marriages for religious purposes.
- **Structure and Operation** - Most tend to be embedded within Muslim communities, either based in mosques or community centres. Prior to their existence, Shariah Councils evolved from mosques because the *imam* (in addition to his other duties such as leading prayers and provide religious advice) was also settling marital disputes and issuing divorce certificates. Over time separate bodies known as Shariah Councils were set up to resolve family disputes. Although Shariah Councils are separate bodies, they are often based within mosques and often the *imam* who leads prayer is also involved in them.
- **Numbers and Size** - They are diverse in size depending on the number of people (usually men) involved in providing advice and making decisions. According to a report by the Ministry of Justice titled 'Study of Shariah Councils in England with respect to Family Law,' there are 30 councils that work on issues of family law and issue divorce certificates (Bano, 2012: Page 85). However, this project did not look at smaller Shariah Councils. The think tank Civitas estimates there are 85 Shariah Councils.
- **Panel Members and Size** - The panel sizes vary and tend to be men (with the odd exceptions) aged 35 to 80 years old and includes religious figures granted positions of power (e.g. *mufti, imam, maulvi, qadi, shaykh*). They tend to be closely affiliated with the mosque committee. Female involvement at some Shariah Councils has been in relation to providing counselling services / mediation services and not being involved in issuing divorce certificates. The scholars on the panel tend to have been trained in Islamic jurisprudence abroad e.g. Saudi Arabia, Pakistan, India etc. while other panel members are individuals from the community such as GPs and teachers.
- **Number of Divorce Cases** - Numbers vary according to size of council, its location and expertise. Those that participated in Dr. Bano's research reported that they dealt with 80 to 200 cases a year. Some Shariah Councils such as the Islamic Shariah Council in Leyton report an average of over 400 cases a year.

5.4 Lack of Transparency and Accountability

Unlike mosques, Shariah Councils may not be registered charities and are therefore not obliged to reveal their organisational structure and financial status (Bano, 2012). The structure of Shariah Councils is therefore usually not transparent. Those that have websites reveal little, if any, information about who is involved in the decision-making of divorce cases. Details about how many people will be involved are not given either. This lack of transparency is problematic. For example, Muslim women have contacted MWNUK and informed us that they had approached a Shariah Council because they wanted a divorce from a violent husband to then find out that the scholar dealing with the case was one who thought domestic violence and 'wife beating' was acceptable. If more information was available, then women could make informed choices about who to approach for help.

Due to the lack of accountability of Shariah Councils and mosques in matters relating to divorce, Muslim women will continue to be discriminated against. Incompetent advice can also put women and children at risk of harm. Whether mosques and Shariah Councils are registered charities or not, they are providing a service to the Muslim public and should be held accountable.

One solution could be to get Shariah Councils to sign up to good practice standards. However, if they are not going to be held accountable, then they are unlikely to bother signing up to them or implementing them if they do. This tactic is therefore likely to have little impact and legislative action is perhaps necessary to address the discrimination faced by Muslim women. Perhaps a test case for unlawful discrimination based on gender, brought under the Equalities Act 2010, could pressure them into improving practice. The Equality Act protects people from discrimination on the basis of certain characteristics. These are known as protected characteristics and include gender (discussed in Chapter 13).

Case Study

Ameera's Story

Ameera wanted a divorce because her husband had married again. He was also regularly watching porn and then raping her. He had also given Ameera sexually transmitted infections. When she contacted the Shariah Council for a divorce, they pressured Ameera into mediation, which she did not want. As the Shariah Council was in another city, they instructed her to visit a religious advisor for the mediation who was in her locality (but working in affiliation with the institution). Ameera was expected to visit this man at his home alone. When she visited him, he asked Ameera very personal questions about her sex life. Despite her testimony of rape etc. he told Ameera that polygamy was allowed and said *'be patient, you have lasted 22 years, why do you want a divorce now?'* This was the extent of her mediation. Ameera went to another Shariah Council and obtained her divorce.

Case Study

Widad's Story

Widad was 23 years old when her marriage broke down. Her husband abandoned her and wanted to neither live with her nor support her. She did not even know where he was. She went to see the imam at her local mosque for help in obtaining her divorce. However, he started to tell Widad how pretty she was and started to make inappropriate comments. She was given the impression that he wanted sexual favours in return for granting a divorce.



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5.5 Treatment of Women and Barriers to Divorce

The men who make decisions about divorce often have conservative attitudes heavily influenced by culture sanctioning inequality between men and women. However, women feel they have little choice but to use Shariah Council divorce services if they want to dissolve their marriages according to their faith and resolve marital disputes.

According to Dr Shahin Sardar Ali, a professor of law, there is little evidence to suggest that Sharia Councils draw upon the basic jurisprudential concepts which relate to Muslims

living in non-Muslim jurisdictions: *darar* ('harm'), *maqasid-al-shariah* (the 'objectives of sharia'), *maslaha* ('public interest') and *darura* ('necessity'). Instead their advice tends to be influenced by culture and custom (Sardar Ali 2013: Page 18).

Some Muslim women do have positive experiences from Shariah Councils (and mosques) and their Islamic divorces are granted quickly without discrimination and barriers. However, such women are unlikely to come forward and tell MWNUK. It is women who have negative experiences and want advice that usually contact us. It is clear from the enquiries we receive incidents of malpractice are common and Muslim women are being discriminated against. The extent and nature of the discrimination varies. Issues of concern are listed in Table 2 with recommendations to improve practice. If Shariah Councils do not raise their standards, they will become redundant because women will no longer want to use their services for their religious divorce particularly if civil law starts offering effective alternative solutions (as discussed in Chapter 13).



Case Study

Nighats' Story

Nighat married her cousin and moved in with her in laws. She had three children with her husband. One day her husband married a second wife who lived elsewhere. Her husband and her in laws regularly subjected to Nighat to domestic violence. She eventually moved out with her children and obtained her civil divorce. However, when Nighat approached one Shariah Council to get her Islamic divorce, she was told that she had to produce two male witnesses who could verify that her marriage had broken down. They were required to give written statements. Nighat was also pressurised into having mediation through the family and the imam, which she did not want. Eventually she approached another Shariah Council in a different city. It took into account that Nighat had been subjected to abuse and had obtained a civil divorce. It therefore accepted that the marriage had broken down and granted her Islamic divorce speedily without pressure of mediation or male witnesses.



Table 2: Barriers Faced by Women Obtaining Divorce from Shariah Councils

BARRIER 1 - MALE SERVICE PROVIDERS

Concern

In most cases the initial person who the woman must speak to about the divorce is male. This at times involves revealing and being questioned about very personal details such as marital rape, anal rape and sexually transmitted infections etc. If women have suffered abuse, they are less likely to reveal the full extent of their ordeal to other men, especially those who are known for their patriarchy and misogyny.

The panel that decide whether to grant a divorce are generally also all male. For a service primarily aimed at women, it is concerning that men are taking decisions about the lives of women and women's voices are not reflected in the decision making process. When women are involved in divorce services, their role tends to be limited to counselling and mediation.

Recommendation

1. The case worker who collects the information should be a woman.
2. The decision making panel should include women who should not be related to the other male panel members.
3. The panels do not need to be unnecessarily large and three members (as in tribunals) should be sufficient. One could be a person with religious knowledge and the other two panelists can be volunteers from the community of good character, integrity and capable of being impartial. It could be useful to have at least one solicitor or barrister on the panel.

BARRIER 2 - LACK OF TRANSPARENCY

Concern

Mosques and Shariah Councils that have websites, only state that they have a divorce service and sometimes provide details about the application process and forms. They do not give details of the people who sit on divorce panels and make decisions. This could mean people are sitting on such panels who are known to condone domestic violence or have even been involved in violence themselves. They could be related or connected to perpetrator of abuse or spouse in some way.

Many do not have a complaints procedure and the few that may be operating under the Arbitration Act may be misleading women into thinking the decision is legally binding and cannot be appealed.

Recommendation

4. Criteria should be drawn for selection of divorce panelists, which should be displayed on the website.
5. All panelists should be listed on the website or details made available upon request. This can allow the public to challenge the service if there are panelists who should not be acting due to a lack of credibility or conflict of interest.
6. Have a complaints policy and procedure and clients should be made aware of this and highlighted on the website.
7. Those that operate under the Arbitration Act, ensure that they inform their clients (verbally and in writing) about their rights under civil law and their right to approach the civil courts and have the decision set aside by the courts if deemed unfair.



BARRIER 3 - RELIGIOUS BLACKMAIL BY RELIGIOUS AUTHORITIES

Concern

Sometimes women are emotionally blackmailed through questionable secondary religious texts to prevent them from pursuing a divorce. They are made to feel guilty for wanting a divorce. The texts are quoted selectively without stating their strength or quality. Texts which state divorce is permissible are rarely quoted. Incidentally religious texts are not used against men in a similar manner. Sometimes these are quoted on Shariah Council / mosques websites. So it is then not surprising when these are quoted to the women in person.

1. *“The most hateful permissible thing in the sight of Allah is divorce.”* (Abu Dawud, Hadith 1863, Ibn Majah, Hadith 2008)
2. *“Marry and do not divorce, for verily divorce causes Allah’s Throne to shake.”* – this is regarded by some as a fabricated and *da’eef* (weak) narration (recorded by Ibn ‘Adee in Al-Kaamil)
3. *“A woman who seeks a divorce unnecessarily will not smell the scent of paradise”* (Abu Dawud book 12, 2218 and Tirmidhi 3 /485)

Recommendation

8. Religious texts should not be used to emotionally blackmail women into staying in a marriage they do not want to be in. This principle could be included in a code of practice – although concerns remain whether they would be adhered to.

BARRIER 4 – GREATER WEIGHT GIVEN TO HUSBAND’S TESTIMONY

Concern

Sometimes women have been questioned about why their marriage has broken down, with their accounts given little attention or not even read. Most of the conversations and questions revolve around the husband’s grievances, downplaying the woman’s grievances. Even when men make unreasonable demands for financial compensation in return for releasing the woman from a marriage, they are accepted at face value.

Recommendation

9. Equal attention and consideration should be given to testimonies from the husband and wife. Evidence of grievances should also be taken into account. For example, in cases of domestic violence, medical records, police reports and legal notices banning harassment must be included in the decision.

BARRIER 5 – BLAMING WOMEN FOR MARRIAGE BREAKDOWNS

Concern

Women are sometimes questioned in an accusatory manner to make them feel that they are to blame for the marriage breakdown. Women have been blamed even when there is overwhelming evidence against the husband. For example, women who have been beaten have been questioned about what they did to provoke such a reaction. Women have also been questioned on trivial matters such as ‘why she had not put enough salt in the food.’ Some women feel that some scholars make excuses for men’s bad behaviour.

Recommendation

10. Shariah Councils should implement a policy where case workers and panelists do not victimise the woman by directly or indirectly blaming her for the marriage breakdown. Opinions should not be based on stereotypes, assumptions and prejudices but facts, which should include considering emotional abuse as physical abuse may not be a feature in the case. They should not give opinions and seek to guide and give options rather than judge. As good practice, they should give detailed reasons, in writing, for their decisions, which mean they would have to explain their decisions, which in turn may forced them to treat women more equitably.

BARRIER 6 – PRESSURISING WOMEN INTO MEDIATION

Concern

Even when it is clear the marriage has broken down including when domestic violence is involved, where the civil divorce is also underway, women can still be pressurised into mediation even when they do not want it. The same pressure is not applied to men. Even in cases where women have stated very clearly and strongly they want a divorce, there has been pressure to reconcile.

Recommendation

11. Although Shariah Councils can offer mediation, women should not be forced or pressured into accepting it. It should only be offered if it is necessary in their procedures but should not even be recommended in cases of violence.

BARRIER 7 – MEDIATORS NOT IMPARTIAL

Concern

When women do agree to mediation, the mediator (with a few exceptions) is often a male panel member who is also involved in making a decision on the divorce. Their bias against the woman can be apparent from the outset when they first come into contact with her when questioning her about why she wants a divorce and unfair under UK equality laws.

Recommendation

12. The mediators should not be panelists and all care should be taken to ensure they are impartial. Ideally there should be both male and female mediators on some sort of rota system. The Quran recommends that mediators should be from both parties (to maintain distance and fairness) so that both perspectives are considered (rather than one side).

BARRIER 8 – REQUIRMENT OF TWO MALE WITNESSES

Concern

Some religious scholars ask woman to provide two male witnesses to verify that domestic abuse has occurred or that the marriage has irretrievably broken down. Demanding two male witnesses for this purpose is not a religious requirement.

Recommendation

13. A women’s testimony should be sufficient that she no longer wants to stay in the marriage or has been abused. Traditionally many scholars accepted her statement as evidence for her rights and in the case of violence the Maliki school of thought does allow her to divorce herself immediately. For domestic abuse cases, medical evidence and police reports should also be used as evidence.

BARRIER 9 - REQUIRING WIFE TO BRING HUSBAND WITH HER TO DIVORCE APPLICATION / HEARING

Concern

Some religious bodies require that women bring their husbands with them if they want a divorce. This can be a requirement even when the husband has given the wife a civil divorce (which counts as a divorce under Islamic law anyway). This is an unnecessary barrier if the husband is trying to prevent the wife to remain married to him while he moves on with his life. He is unlikely to cooperate. It is also puts the wife at risk if she is at risk of abuse.

Recommendation

14. The wife should not be required to attend any application, interview or hearing in the presence of her husband if she does not want to.

BARRIER 10 – DEALING WITH ISSUES OUTSIDE ITS JURISDICTION

Concern

Many religious bodies do state on their websites that they do not deal with issues such as child custody or criminal matters and it appears that the vast majority do not as there is no credible evidence to suggest otherwise. However, there is anecdotal evidence to suggest that occasionally women may have been pressurised by some panelists on child custody and access / visitation rights issues.

Recommendation

15. The panelists should be made to sign a code of practice that they adhere to on not only what they can or cannot say or do but also speaking to all applicants with the same respect and dignity regardless of gender. If such rules are not followed then such panelists should be removed.

BARRIER 11 – LACK OF REGARD FOR SAFEGUARDING

Concern

Despite reporting years of domestic violence, some women are encouraged to remain patient and stay in the marriage and even advised not to inform police. Some domestic violence sufferers have also been pressurised into mediation. This can also involve breach of legal injunctions. Sometimes addresses of women have been revealed in correspondence with the husband when they are supposed to remain confidential. These practices are putting women and their children at risk.

Victims of forced marriage can also be put at risk. For example, when the family of the victim and the woman are invited to panel hearings either at the same time or on the same day but at different times. Even having them at different times e.g. as far apart as the morning and afternoon puts women and girls at risk. If the woman is in hiding, the family could use this as an opportunity to monitor all appointments on that day to be able to track down the woman.

Recommendation

- 16.** Safeguarding policy and procedures should be put in place:
- That identify whether women are at further risk of abuse and advise them to report abuse and threats.
 - That identify which cases are not suitable for mediation due to risk of violence or injunctions. The religious bodies should also not require women in these circumstances to attend joint interviews or divorce hearings with their husbands.
 - To check whether the woman's address is supposed to be confidential e.g. she is at a refuge or other secret location. All shelter addresses are not to be shared and often they are actually in secret locations only known to staff.
 - That ensure panel hearing meetings or other meetings are on different days to those for husbands or other family members who may pose a risk to victims of domestic violence (or those at risk) and forced marriage and that these dates are kept confidential.
 - To alert police or social services if children are at risk of or have been abused.
 - So that women are never expected to go to the homes of religious scholars / imams alone for mediation and advice.

BARRIER 12 – PRESSURE TO COMPLY WITH HUSBAND’S DEMANDS FOR COMPENSATION

Concern

When men contest the religious divorce, they may refute allegations made against them even if they are true. This can be a tactic to try to pressure the woman to pay compensation to set her free from the marriage. This can also be used as a bargaining tool if the civil divorce is also being pursued at the same time; such as, more favourable financial outcome for the husband in civil courts in return for the Islamic divorce. Women have complained about the undue pressure that some scholars have put on women to comply with financial demands from the husband. Some women have even wondered whether the scholars were promised a ‘cut’ of the proceeds. Lawyers acting in such matters need to be alert; if a woman has all of sudden decided to accept less money then question why. All barristers and solicitors have a duty to assist the court to come to a just decision so all lawyers involved need to ensure they have been vigilant.

Recommendation

17. More scrutiny should be given to demands by husbands to determine whether they are reasonable and justified. A code of practice should be in place which states that no incentives in the form of payments or fees are taken from any compensation that a wife pays to the husband. In fact the Maliki school of thought explicitly does not allow financial payment by wife to the husband where she has grounds for divorce.

The code of practice should also prevent the religious body from getting involved in (even indirectly) in financial negotiations and settlement relating to the civil divorce. However, they should protect women from being pressurised by husbands for a more favourable civil divorce settlement in exchange for a religious divorce. Perhaps they could also only proceed with religious divorce once the civil one (if applicable) is complete.

BARRIER 13 – DIVORCE FEES

Concern

Fees for a religious divorce varies. Some charge women more than men. They justify this on the grounds that the process is longer when a woman initiates a divorce, despite the fact that the procedure they follow should be the same irrespective of whether a man or a woman has approached them i.e. if they want to suggest mediation or pursue a case review meeting this should be done irrespective of who has approached them. However, in cases where the civil divorce has been obtained which the husband has initiated or agreed to, the Islamic divorce is technically not needed therefore has to be granted anyway. As the process should be quick and straightforward, charging higher fees is unjustified. Also women on low income and benefit or living in refuges sometimes cannot afford to pay the fees. As the divorce service is not free, there is certain criteria that need to be complied with for registered charities with regards generating income.

Recommendation

18. Have a tiered fee system and charge women who have obtained a civil divorce first or are on benefits / low income, a lower fee and waiving fees for those escaping abuse (including forced marriages) who are in refuges.

Registered charities should also consider how income / profit generated from divorce services fulfil primary charitable purposes and are not disadvantaging beneficiaries in any way. Waiving fees for the poor and vulnerable in could be help fulfill duties in relation to operating for the public benefit.

6 Grounds for Divorce

6.1 Grounds for Divorce in Islam

Divorce is permissible in Islam because there is recognition that differences can be irreconcilable and remaining in the marriage can harm physical and mental health. As a man can divorce his wife without the involvement of religious authorities, he is not questioned nor challenged about his grounds for divorce. He does not even have to prove his reasons for divorce. However, because women have to involve a religious authority in obtaining their divorce, they will be questioned about their reasons. The grounds that entitle a wife to end her marriage will vary depending on the school of thought with the Hanafi school being the most restrictive.

Generally reasons valid under Shariah Law include (Badawi – c):

- 1. Unreasonable Behaviour** - This could have a wide range of interpretations and is the most commonly used grounds for divorce. This could include:
 - Physical, mental, or emotional abuse. Inflicting or receiving of harm or *Zhulm* (injustice) is not tolerated in Islam.
 - Refusing to have children,
 - Bad habits (e.g. gambling, drug taking),
 - Financial irresponsibility,
 - Unreasonable sexual behaviour (e.g. sodomy, rape, demanding too much sex or refusal to have sex etc)
 - Cohabiting with another spouse
- 2. Adultery** - having sexual relationship outside of marriage
- 3. Failure of the husband to provide** - this could include desertion or abandonment
- 4. Incompatibility** - which results in irreconcilable differences
- 5. Impotence**
- 6. Long imprisonment of husband**
- 7. Insanity or Incurable Disease**



A woman does not even need severe grounds to justify wanting a divorce in Islam as illustrated by the *hadith* below, yet religious authorities will try and prevent women from obtaining their divorce by wrongly saying they do not have valid reasons.

Take the case of the wife of Thabit ibn Qays, who came to the Prophet Muhammad (Peace and blessings be upon him) and said “O Messenger of Allah, I do not reproach Thabit ibn Qays in respect of character and religion, but I do not want to be guilty of showing anger to him.” In other words, although she had no complaints against her husband’s conduct towards her, she simply could not get along with him. The Prophet (pbuh) responded that she had a right to end the marriage but should return her dowry since it was essentially a “no-fault” situation (Sahih Bukhari – Volume 7, Book 63, Number 197).

Case Study

Ayesha’s Story

Ayesha had been married for just over a year to her husband. Since being married she had discovered that her husband has been taking drugs and has drained her of her financial resources. She would like to leave him as he has also been abusive towards her. Her family visited a *peer* (spiritual healer) and Ayesha was told that she must continuously read Quran, do *namaz* (pray), and do other prayers for 50 days continuously. She has been told her husband will change but if she stops praying, he will revert back to his bad behaviour.

6.2 Grounds for Divorce in Civil Law

Divorce is allowed in England and Wales and technically there is only one ground for divorce and that is showing the marriage has irretrievably broken down. However, a divorce cannot be applied for until a couple has been married for at least one year. A good reason has to be provided for ending the marriage. One of the following five facts (commonly referred to as grounds for divorce) needs to be shown for a divorce to be allowed.

a. Adultery

A divorce can be obtained on the basis that a spouse has committed adultery:

- When the husband or wife has had a sexual relationship with someone else of the opposite sex. If the sexual relationship is with a member of the same sex or if the relationship is not sexual then it is not regarded as adultery.
- The person with whom the adultery has been committed with does not need to be named. If the person is named then the petition also needs to be served on that person which can delay the case.
- Only the innocent party can use adultery as grounds for divorce. The person who has committed the adultery cannot use this ground for a divorce unless the other spouse has also committed adultery.
- A person who wants to petition a divorce on grounds of adultery must do so within 6 months of finding out.

Same Sex Couples

Same-sex couples that marry under the Marriage (Same Sex Couples) Act 2013 can seek a divorce for adultery, but the infidelity must still be with the opposite sex. For same-sex couples that have civil partnerships, there is no ground for adultery. Campaigners want a change in the law on adultery because it does not reflect sexual relationships in today's society.

b. Unreasonable Behaviour

This is the most common ground for divorce in UK divorce law. It is when the husband or wife has behaved in such a way that you can no longer live with them. The allegations do not need to be severe. A few mild ones are usually sufficient and sometimes more beneficial in trying to get cooperation and agreement during the divorce proceedings.

This is not an exhaustive list and can include:

- Making threats
- Verbal or physical abuse
- Financial irresponsibility
- Not wanting to engage in physical or sexual relations
- Drinking excessively or taking drugs
- Gambling
- Not wanting to resolve problems
- Devoting too much time to their career
- No common interests and leading separate social lives

c. Desertion

This ground for divorce can be used when the husband or wife leaves without the agreement of the other spouse, without good reason, ending the relationship and has lived apart for more than 2 years. However, this is very rarely used in practice because it is difficult to prove.

d. Two Years Separation

If a husband and wife have been living apart continuously for more than 2 years and both give consent to a divorce, then this can be used as a ground for divorce. This is known as the 'amicable divorce' because no allegations of behaviour are made. However, before issuing proceedings based on 2 years' separation, it is a good idea to write to the other person to obtain their written consent. Otherwise, the person could give a verbal consent before the proceedings but then refuse to comply after the proceedings have been issued.

e. Five Years Separation

This can be used as a reason for divorce providing the husband and wife have been living apart continuously for at least five years. However, the husband or wife does not have to agree to the divorce.



Grounds for Divorce in Scotland

There are 4 grounds for divorce in Scotland which are:

1. Adultery - when husband or wife has had sexual relations with someone of the opposite sex
2. Unreasonable behaviour where you can no longer live with the other person
3. Living apart for one year continuously but consent of other spouse is required
4. Living apart for two years continuously but consent of other spouse is not required

7 Divorce in Islam

7.1 Permissibility of Divorce

Divorce or ending the marriage contract is allowed in Islam. In Islamic law, the word *talaq* is used for divorce and it means to set free (raza). According to the Quran both the husband and wife have the right to initiate a divorce.

So if a husband divorces his wife (irrevocably), he cannot after that remarry her until she has married another husband and he has divorced her... (Quran 2:230)

Once a husband and wife are divorced and they change their mind, they cannot remarry unless the woman has married another man and she is then divorced or is widowed. Remarrying the wife after she has married another man is known as *halalah* and must happen naturally and cannot be pre-planned. When this occurs advice should be sought from a scholar. Unfortunately some Muslims do pre-plan such marriages where the woman is married to another man who then divorces her without consummating the marriage just so she can marry her previous husband.



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Narrated Aisha: A man divorced his wife thrice (by expressing his decision to divorce her thrice), then she married another man who also divorced her. The Prophet (pbuh) was asked if she could legally marry the first husband (or not). The Prophet (pbuh) replied, "No, she cannot marry the first husband unless the second husband consummates his marriage with her, just as the first husband had done"

(Sahih Bukhari – Volume 7, Book 63, Number 187).

7.2 Who Can Preside Over Divorce Cases?

The religious bodies that deal with divorce cases have all male panels that comprise of scholars and other volunteers from the community such as professionals. In her research Dr. Bano found no evidence of Muslim women acting as religious scholars or forming a part of the council panels. However, she found that women did form part of the counselling and mediation services (Bano, 2012: Page 107). There is no religious barrier for women to preside over divorce and take decisions. **Verse 4:58** in the Quran emphasises the need for justice without stating whether judges should be male or female.

Indeed, Allah commands you to render trusts to whom they are due and when you judge between people to judge with justice.
(Quran 4:58)



Disillusioned with being discriminated against by 'all male Shariah Courts,' women in India have set up their own 'all women Shariah Courts' to deal with various family issues including divorce (Times of India, 2013). We hope that one day Muslim Women in Britain are able to follow suit and have women led Shariah Councils.

7.3 Waiting Period (*Iddah*)

Whether a husband divorces his wife or the wife divorces her husband, the woman has to observe an obligatory waiting period known as *iddah* before she can get married again. This waiting period is also applicable on the death of a husband but not when a divorce occurs before the marriage has been consummated (see table below).

Situation	Waiting Time
Divorced woman (with regular periods)	3 menstrual cycles
Divorced woman (with irregular periods)	3 months
Woman whose husband has died	4 months & 10 days
Pregnant woman	Until she gives birth
Where marriage was not consummated	No waiting period

This 3-month *iddat* waiting period is to determine whether the wife is pregnant and also gives time for reconciliation. This cooling off period can prevent hasty decisions especially those made in anger. If the woman is pregnant, then the waiting period is extended to after the baby has been born. The husband must continue to financially support his wife during this waiting period. If intimate relations are resumed during the waiting period even if two *talaqs* have been pronounced, the couple can continue living together as husband and wife and are not considered as divorced. It is also important to note that according to verse **2:228**, if the wife is pregnant she should not hide this from her husband. All minor children remain the financial responsibility of the husband after divorce.

Iddah in the Quran - for Divorced Women

Divorced women remain in waiting for three periods....
(Quran 2:228)



Iddah in the Quran - for Widows

And those who are taken in death among you and leave wives behind - they, (the wives, shall) wait four months and ten (days). And when they have fulfilled their term, then there is no blame upon you for what they do with themselves in an acceptable manner.... (Quran 2:234)

Iddah in the Quran - for Non-consummated Marriages

O You who have believed, when you marry believing women and then divorce them before you have touched them, then there is not for you any waiting period to count concerning them.... (Quran 33:49)

7.4 Different Methods for Dissolving Marriage in Islam

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a. TALAQ

This is when the husband initiates the divorce. The husband must pronounce that he is divorcing his wife three times. This can be done verbally or in writing and does not need to be done in front of witnesses. The divorce only becomes irrevocable (and known as *talaq al bain*) once it has been pronounced a total of three times. If husband initiates the divorce he has to pay the woman any marriage gift or *mahr* that remains unpaid.

Some men will pronounce divorce or *talaq* three times all on one occasion while others will pronounce it in stages within a three month waiting period known as *iddat* or *iddah*. When they are pronounced in stages, the first two are regarded as a revocable divorce (*talaq ar raji*) as during this period the couple may reconcile.

When you divorce and they fulfill the terms of their (Iddah), either take them back on equitable terms or set them free on equitable terms. But do not take them back to injure them (or) to take undue advantage. If anyone does that, he wrongs his own soul... (Quran 2:231)

Divorced women remain in waiting for three periods, and it is not lawful for them to conceal what Allah has created in their wombs if they believe in Allah and the Last Day.... (Quran 2:228)

Some scholars regard instant or 'triple talaq' divorce (where *talaq* has been pronounced three times all at once) as not Islamically valid because it does not allow time to reconsider and reconcile. Many religious authorities will therefore treat 'triple talaq' as only 'one talaq.' The following *hadith* is used to justify this stance:

Narrated Abdullah ibn Abbas: *Tawus said: Abu Sahba' said to Ibn Abbas: Do you know that a divorce by three pronouncements was made a single one during the time of the Prophet (PBUH), and of Abu Bakr and in the early days of the caliphate of Umar? He replied: Yes.* (Sunan Abu Dawood 2194)

Although regarding *triple talaq* as one *talaq* is logical, opinions do vary and some scholars regard *triple talaq* as a valid Islamic divorce. It is therefore best to seek further advice on this matter. All three *talaqs* do not need to be pronounced - a single *talaq* can be binding if it is not revoked after the waiting *iddat* period. Divorce is also considered invalid by some scholars if the person issuing it was drunk, very angry, or forced into it. Also in modern times some husbands are declaring *talaq* using a variety of methods such as: leaving message on an answering phone, sending an email, via a mobile phone text message, on social media etc. Religious advice should be sought on these matters.

In this method of divorce where the husband unilaterally divorces his wife, she is allowed to keep her marriage gifts including the *mahr*. If the *mahr* had been deferred and not paid on the day of marriage, it becomes due.

Note: *The right to divorce can be delegated to a judge as specifically mentioned by the Hanafi school of Islamic thought and mentioned by the European Council for Fatwa and Research and Sheikh 'Abdullah bin Bayyah in Sina'at-ul-Fatwa.*

b. KHULA (Divorce by mutual consent or non fault divorce)

This is when the couple comes to an agreement that the husband will divorce the wife in return for her repayment of the marriage gift or *mahr*. This is done without attributing blame to one another for the marriage breakdown. However, the wife initiates this type of divorce. If he wishes to, the husband can choose to give the divorce without any payment of the *mahr*. Unfortunately many Shariah Council confuse this type of Islamic divorce with another one called *faskh* where the wife wants a divorce and the husband unreasonably refuses.

A divorce is only permissible twice, after that the parties should either hold together on equitable terms or separate with kindness. It is not lawful for you (men) to take back any of your gifts except when both parties fear that they would be unable to keep the limits ordained by Allah. There is not blame on either of them if she gives something for her freedom. These are the limits ordained by Allah; so do not transgress them. If any do transgress the limits ordained by Allah such persons wrong (themselves as well as others) (Quran 2:229)



c. FASKH (Annulment or Fault Divorce)

This is when the wife seeks permission to get divorced because he is at fault but the husband does not consent to the divorce. However, the religious authority (e.g. religious scholar, *imam*, Shariah Council, mosque etc) may substitute their own permission for that of the husband. Religious authorities in the UK sometimes often refer to this type of divorce (incorrectly) as *khula*. With a *faskh* divorce, the wife does not have to repay her husband the marriage gift. In fact if it is still owed to her, then the husband must pay it to her. In forced marriage cases, the marriage is dissolved under *faskh* and the certificate usually states that it was a forced marriage – if not, this should be requested.

d. TALAQ-E-TAFWID (Delegated Right to Divorce)

This is when the delegated right to divorce is given by the husband to his wife (*Talaq-e-tafwid*). This means the wife has the power to terminate the marriage unilaterally if she wished to do so without the need for permission from her husband or religious authority – although it is usual to seek advice from the latter. When the wife exercises *Talaq-e-tafwid* she does not lose her marriage gift.

e. MUBARAT (Divorce By Mutual Consent)

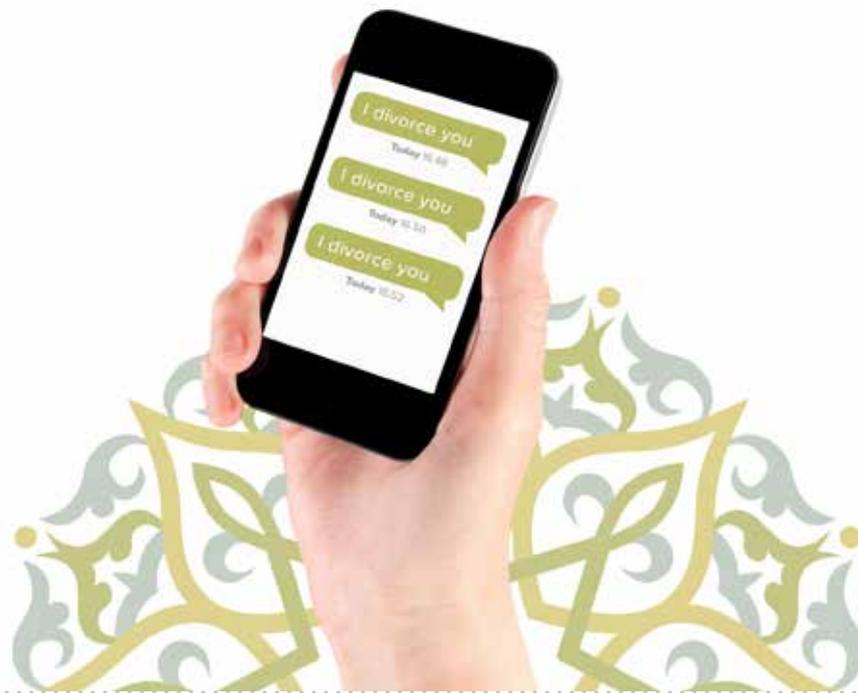
This is when the husband and wife agree to divorce on mutually agreed terms and the wife may or may not repay the marriage gift depending on what they have agreed. *Mubarat* is similar to a *khula* divorce, but the key difference is that either party can initiate this type of divorce whereas in *khula* the wife initiates the divorce. While options such as this exist in Islam, most men and women are unaware of them and most religious authorities do not make people aware of them nor necessarily utilise appropriate routes available.

f. OTHER FORMS OF DIVORCE (e.g. Ila, Zihar, and Lian)

Other forms of divorce include: Ila, Zihar and Lian but are rarely used. In all three types, the wife can request the religious authority to dissolve the marriage.

- **Ila** - when a husband abstains from sexual intercourse with his wife for at least 4 months because of a vow.
- **Zihar** - when the husband compares his wife to his mother or another female relative with whom he may not lawfully contract a marriage.
- **Lian** - when the husband accuses his wife of adultery through a sworn testimony, where the only evidence is his own testimony and the wife through an identical sworn testimony denies the charge.





7.5 Divorce By Social Media

Cases are being reported around the world of Muslim men sending divorce notification to their wives via mobile phone texts, Facebook messages and via emails. Women are unsure of the status of these practices and therefore do not know whether they are divorced or not according to Islamic law. Opinions amongst religious authorities vary on this issue with some endorsing the practice and others suggesting these are not valid divorces, which may depend on whether they believe pronouncing *talaq* three times all at once is permissible or not. Advice on this matter should therefore be sought and a divorce completed via a religious authority to ensure divorce is complete.

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7.6 Does Conversion of Faith Dissolve a Marriage?

If the husband converts to Islam while his wife remains a Jew or a Christian, then scholars agree that the marriage remains valid. However, there is disagreement of opinion when the wife converts to Islam while the husband remains a Jew or Christian. Most say that it is forbidden for the wife to remain with her husband, or indeed to allow him conjugal rights. However, according to the European Council for Fatwa and Research, it is acceptable for her to remain with him if he does not prevent her from exercising her religion and she has hope in him to convert to Islam. These rulings are based on authentic *hadiths* by companions of the Prophet (pbuh), Umar and Ali, who were the second and fourth caliphs respectively as cited by Juday in his book *Islam Ahad al-Zawjayn* where women who converted to Islam were allowed to remain with their Christian or Jewish husbands (European Council for Fatwa & Research). Some scholars question whether it is fair to expect the woman to leave her husband if they have children, he is financially supporting his family, he is a good husband and father etc. creating hardship for her.

8 Procedure for Islamic Divorce



8.1 Completing Civil Divorce before Islamic Divorce

Determine whether your marriage is valid under the law in the UK e.g. had a civil marriage or your religious ceremony was conducted abroad and registered in accordance with the laws of that country (see Chapter 4). If your marriage is legally valid under the law, then it is strongly advisable to obtain your civil divorce first before applying for your Islamic divorce for the following reasons:

1. Some Shariah Councils and mosques prefer this and will not issue the Islamic divorce unless the civil one has been finalised.
2. Some Shariah Councils and mosques can spend a long time trying to reconcile the husband and wife and / or put pressure on women to stay in marriages even if they do not want to. This can drag the divorce process on for several months and be stressful. So by providing evidence of the civil divorce (i.e. the decree absolute), it will show that the marriage has broken down irretrievably. The institution will then have little choice but to issue the Islamic divorce more quickly.
3. The civil divorce can be used by the Shariah Councils or Mosque to determine the type of Islamic divorce and whether any financial compensation is applicable:
 - If the woman initiates the Islamic divorce (*Khula*) because the husband is at fault, then she does not have to repay any *mahr* (marriage gift) that was paid to her upon marriage. If the *mahr* was deferred, then she is entitled to have it paid to her by the husband. However, sometimes the husband may dispute this and claim that the marriage break down was not his fault to avoid paying the *mahr* or demand back any gift he has paid. If the Shariah Council or mosque believes the husband (which does happen even when there is overwhelming evidence against him), they will stipulate that the wife must compensate the husband by returning the *mahr* before they issue her with a divorce certificate.
 - If the husband initiated the civil divorce, and the wife provides evidence of this through her paperwork, then the husband cannot dispute the Islamic divorce and the Shariah Council or mosque will deem him at fault which means no compensation is due.
4. The civil divorce can be used to determine whether an Islamic divorce is actually needed because some types of civil divorce are valid under Islamic law. This can save additional fees and unnecessary stress. (see next section).

8.2 Can a Civil Divorce be a Valid Islamic Divorce?

Many Islamic scholars and *imams* in Britain routinely state that a civil divorce is not a valid Islamic divorce and that a woman who has had a civil divorce is still Islamically married until she is issued with an Islamic divorce certificate by a religious authority. However, this position is questionable because a Muslim majority country such as Pakistan will recognise a civil divorce obtained in a British court as Islamically and legally valid. However, an Islamic divorce obtained in a UK Shariah Council or mosque will not be legally recognised. The position taken on this issue by British religious scholars may be a cultural decision to maintain authority and therefore a need for their services.

However, some religious scholars have stated that Muslims living as minorities in a country can have their marriages dissolved by a non-Muslim judge and therefore civil divorces can be regarded as valid Islamic divorces. Some specify that only certain types of civil divorces are valid in Islam. For example Mufti Muhammad Ibn Adam of Darul Iftaa, Leicester (Ibn Adam) states that:

- If the husband initiated the legal divorce, in that he appointed the court as an agent on his behalf to divorce his wife, then on the day the court issues the divorce, his wife will be also Islamically divorced. The reason being that the husband appointed the court as an agent on his behalf to divorce his wife, and appointing a non-Muslim as an agent is considered to be valid in Shariah and there is no need to involve an Islamic religious body.
- If the wife initiated the legal divorce and the court sent the divorce papers to the husband, and he willingly, understanding the contents of the writing, signed it, then his wife will be considered to be divorced from the time he signs the divorce papers from an Islamic perspective. This means there is there is no need to involve an Islamic religious body.
- However, if he did not sign on any written document, neither did he initiate the divorce, but the court divorced him on behalf of his wife against his will, then this, according to Shariah, will not be classed as a valid divorce and the involvement of a mosque or Shariah Council will be required.

Mufti Muhammad Yusuf Danka, Croydon Masjid & Islamic Centre, is also in agreement of these rulings (Danka).

8.3 Procedure for Husband Initiating Divorce (*Talaq*)

The divorce initiated by the husband is known as *talaq*. The husband must pronounce that he is divorcing his wife three times. This can be done verbally or in writing and does not need to be done in front of witnesses. Although this is Islamically valid, it is advisable that he is asked to put it in writing and sign his declaration preferably in front of witnesses. This can be used as evidence should any dispute arise on whether the divorce took place or not. *Talaq* forms can also be obtained from Shariah Councils and some mosques. Although this process can vary, a typical one could include:

- The husband completes *talaq* form and returns it with the required fee. He may need to provide contact address for the wife, and a copy of the Islamic marriage certificate (and if applicable civil marriage certificate and decree nisi / absolute).
- A divorce deed (which is typically referred to as the *talaq nama* by Muslims from the South Asian subcontinent) is sent to the husband that he must sign in front of two witnesses and return it.

- The letter is sent to notify the wife and she may be given a period of time in which to respond.
- A request is made for payment of any *mahr* (marriage gift) that may be due to the wife.
- Copies of Islamic divorce will be sent - one will be sent, with the dower amount, by post to the woman, and one copy will be forwarded to the applicant.
- The wife will have to go through her waiting period before she can remarry.

If the husband divorces his wife verbally but refuses to put it in writing and she is concerned that in the future he may dispute he has divorced her to prevent her from remarrying, then she could approach the Shariah Council or mosque and ask them for advice.

8.4 Procedure for Wife Initiating Divorce (*Khula / Faskh*)

When a woman requests a divorce; it is known as *khula* or *faskh* – although some religious bodies refer to both as *khula*. Unless her marriage contract (*nikah nama*) included a delegated right to divorce where she can automatically divorce her husband, she will have to approach a religious authority to help her obtain the Islamic divorce. The process for divorce may vary with each Shariah Council or mosque. Below is a guide on what a typical process may look like.

- 1. Obtain Civil Divorce First** - It is strongly advisable to obtain the civil divorce (if applicable) first before approaching the religious authority for divorce. Some religious bodies will ask you to do this before starting the Islamic divorce process.
- 2. Submit Divorce Application Form** - The wife must make the divorce application herself. A copy should be made of the application form. A case reference should be given when it is submitted. Individuals requesting divorce on behalf of third parties is usually not allowed. The information requested in the application form can vary but is usually:
 - Wife's contact details.
 - Husband's contact details (in the absence of his contact details, then contact details of one of his relatives should be provided).
 - Reasons for divorce / grievances.
 - Details of children (names and ages).
 - Date and place of Islamic marriage.
 - Amount of '*mahr*' agreed at time of marriage and whether this had been paid or deferred.
 - Date of civil marriage (if applicable).
 - Whether an application has been made for civil divorce and whether a divorce certificate has been issued. They will also want to know who initiated it and whether it was contested.
- 3. Submit Relevant Documents** - Other information and relevant documents will also need to be submitted with the divorce application form. The following are usually requested:
 - Photographic proof of identification e.g. copy of passport, driving license, other registrations documents containing photograph.
 - Copy of Islamic marriage certificate (*nikah nama*).
 - If there is no marriage certificate then evidence of marriage e.g. wedding photos etc.
 - Copy of Decree Nisi or Absolute if you have also applied for civil divorce.

- If applicable, documents that provide evidence of violence and / or abuse e.g. dates police contacted and incident numbers, legal injunctions preventing contact, medical reports and photographs.
- Some require names and contact details of two independent witnesses (not close relatives) who can be contacted if required to verify information.

4. Pay a Fee for the Divorce Service - A one-off fee will also be payable with the divorce application. This can vary from £125 to £400. The fee is the same for men and women at some Shariah Councils and mosques while others charge women a higher fee. The fees are usually paid in advance. However, some may take the fee once the divorce certificate has been issued. A receipt should be given for the fee.

5. Husband is Contacted - The Shariah Council or mosque will send a letter to the husband setting out the reasons for the wife wanting a divorce. He is then given an opportunity to respond. Usually the address of the wife is also included in the notice sent to the husband. If you want this kept confidential, you must ensure you tell the institution handling your divorce case not to disclose it.

Domestic Violence Cases

If you have suffered abuse and your address is confidential e.g. you have moved to a location unknown to your husband, you must inform the Shariah Council or mosque handling your divorce case not to reveal these details to your husband in any paperwork. If you are in a refuge, you should not disclose this address to the Shariah Council or mosque.

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6. No Response from Husband - If the husband does not respond to the letter, another opportunity is given to him to and a second letter is sent. If he does not respond again some institutions send a third and final notice. If there is still no response, one, two or all of the following actions will be taken depending on the institution:

- A divorce certificate is issued.
- A reconciliation meeting is set up and if the husband does not attend, then the wife is asked to take an oath that the information provided about reasons for divorce are true and then a divorce certificate is issued.
- The case is referred to the panel members of the institution involved in issuing the divorce. They discuss the case at the next panel meeting and then issue a divorce certificate. The frequency of panel meetings can vary from once a month to once every 3 months.

7. Husband Agrees to Divorce - If the husband agrees to divorce his wife, he will be sent the necessary form to sign and return after which a divorce certificate is issued and sent to both parties. However, the husband may only agree to divorce the wife with certain conditions e.g. demands the return of money or jewellery given to the applicant at the time of the marriage. The institution will judge whether these demands are reasonable or not.

8. Husband Disagrees with Divorce (Mediation) - If the husband responds stating that he wished to reconcile, then the Shariah Council or mosque will inform the wife and arrange for them to meet to try and resolve their issues and reconcile. Sometimes a period deemed reasonable (up to the discretion of each institution) may be allowed to the husband to make an effort to reconcile with the wife e.g. through the help of relatives. However, reconciliation

can only take place if both parties agree and the wife should not be pressurised to have mediation. If an injunction has been taken out against the husband that specifies that he must keep away from the wife and have no contact with her, then it is important to inform the religious authority. If they are pressuring her to meet with the husband when the injunction is in place they would be putting her in danger and facilitating breach of this order. Regardless of the fact that the husband wishes to reconcile or not, he may also deny the grievances made against him. If he is deemed at fault, regardless of whether he agrees to the divorce or not, the religious body have the power and should allow the divorce. In these circumstances where the husband is at fault she does not have to pay any compensation e.g. return of *mahr* to the husband. In fact, if it is still owed to her then the husband becomes liable for it.

- 9. Reconciliation** - If the wife reconciles and the case is closed but at a later date she wishes to apply for a divorce again, a new application usually has to be made with the required fee again. If the woman does not agree to reconcile with her husband, then eventually the religious body will have to dissolve the marriage and issue a divorce certificate.
- 10. Case Goes to Panel** - Once the evidence has been collected, responses received, the case file is sent to panel members who meet to make a decision to issue a divorce certificate.
- 11. Completion of Divorce** - Some Shariah Councils will ask if there has been a civil marriage. In this scenario, some will not issue an Islamic divorce certificate until she has received her Decree Absolute (Civil Divorce). If the proceedings for the Islamic divorce are concluded before the Civil Divorce is finalised, then a letter of entitlement for Islamic Divorce is issued. The Islamic Divorce Certificate is issued when the copy of the Decree Absolute is received.
- 12. Waiting Period** - The woman has to undergo a waiting period during which she is not allowed to remarry. This is three menstrual cycles. However, some scholars say one menstrual cycle is sufficient in divorce cases where the woman has initiated the divorce. If a woman has irregular periods, then the common ruling is that waiting three months is sufficient.
- 13. Time Taken for Process** - The total process should take about 4-6 months but often it can take much longer depending on the institution that is contacted.
- 14. Child Custody and Finances** - The religious institutions should not deal with child custody or financial / property issues (except the *mahr*). Such matters should be referred to the British courts for decisions regardless of whether the marriage is legally valid or not under civil law.
- 15. Retaining Case Files** - The institutions usually keep case files for several years after which they are destroyed. They should be asked how long they are kept for and how they are destroyed safely. Sensitive information needs to be properly stored and any concerns be reported to the Information Commissioner.

Aaliyah's Story

"My husband walked out on me with no explanation. I had no choice but to ensure I was divorced according to Islam. I contacted a Shariah Council and filled in all the necessary paperwork. They wrote to my husband and he said he would only agree to the divorce if I returned all the dowry gifts he gave me worth £25000, something which wasn't even true.

When I went in to see the scholar at the Shariah Council I was told that he had not read my case notes and that he had only read those of my husband. He said that if I want a khula (divorce), I should return all 'dowry gifts' that were being demanded. I told him I would have done so if I had been given anything. However, he didn't believe me. In fact, I was further questioned on a number of ridiculous accusations my ex-husband had made including why I put too much salt in his husband's food! I was stunned. It felt like he'd already made his mind up.

I then received the notice of my civil divorce proceedings from my husband. As I wasn't getting anywhere with the Shariah Council, I approached another one. Again my husband demanded this phantom dowry of £25000 worth of gifts. The Shariah Council even urged me to give in to the demands even though I told them it was all lies. I even told them that my husband had initiated civil divorce proceedings against me. The scholar failed to recognise that this made my husband's demands invalid because it amounted to him giving me a divorce Islamically. However, I didn't realise this at the time.

It felt like a form of blackmail. His refusal to cooperate would mean being stuck in a marriage while he moved on with his life and that I had to pay a ransom to be set free. It didn't seem fair, even my civil divorce had come through. I decided to approach a mosque and told the imam what had happened. He immediately informed me that because my husband was the petitioner in the civil divorce, it was tantamount to a talaq (divorce) and that he had no right to ask me for anything. However he said that for him to finalise the divorce, I had to visit him with my husband. Although I was relieved to find out that I could get my religious divorce, I felt stuck again.

It was then I contacted Cassandra Balchin of Muslim Women's Network UK, who put me in touch with a scholar who wrote a letter to my ex-husband telling him that the Islamic divorce was in place as soon as the decree absolute was finalised and that this was irrevocable. I had it in writing that I was free to marry again; this was two years after the whole process started!"

9 Procedure for Civil Divorce



Applying for a Civil Divorce

You can apply for a civil divorce if:

- You have had a civil marriage in the UK.
- You were married overseas and had a valid wedding ceremony under the legal system of the other country e.g. a valid religious marriage carried out abroad.
- You have been married for at least one year prior to starting the divorce process.
- You are domiciled in England and Wales, or have been resident in England and Wales during the previous year.

A useful guide to English divorce can be found here: www.divorce-guide.co.uk

9.1 Overview

The following steps have been taken from the divorce section of the government website: www.gov.uk/divorce.

You can apply for a divorce if you have been married at least a year and your relationship has permanently broken down. You must have a marriage that is legally recognised in the UK and you are domiciled in England and Wales, or have been resident in England and Wales during the previous year. Domicile is a complex legal term and advice should be taken about this issue if there is any doubt.

You can involve a solicitor to help you with obtaining your divorce and you may be entitled to legal aid if you have suffered domestic abuse (which depends on your income). Alternatively if you agree on: reasons for divorce; how the children will be cared for; and how money, possessions and property will be split, then you could arrange your own divorce without involving solicitors. Prior to April 2014, mediation was optional to help to think through such matters. Although mediation is not necessary before divorce proceedings, attending mediation is now a legal requirement before commencing with proceedings involving children and finances. This approach can be less stressful and can save considerable legal costs and it means you do not have to go to court. The paperwork for this is usually straightforward and the agreements made in mediation can be made legally binding through a court order. It is important to note there are exemptions to mediation. For example, you do not have to attend mediation if there is evidence of domestic violence, risk to physical safety, risk of harm to a child etc.

Length of Divorce Proceedings

An undefended divorce can take up to six months to finalise if there are no children or money issues involved. However, this period can be considerably lengthened if children are involved and the court is not satisfied with the arrangements that you and your partner are making for them. It is possible that the court will want to discuss childcare arrangements and meet the children.

Useful Links

Find a Mediation Service	www.familymediationhelpline.co.uk/find-service.php
Find a Solicitor	www.solicitors.lawsociety.org.uk
Find a Legal Aid Solicitor	http://find-legal-advice.justice.gov.uk
Find the nearest Court	https://courtribunalfinder.service.gov.uk/search/
Child Maintenance Calculator	https://www.gov.uk/calculate-your-child-maintenance

Legal Aid

Under current rules, legal aid is only available in limited circumstances. You should obtain advice from a family law solicitor to assess whether you meet the criteria which is that:

- You must be in receipt of certain state benefits or be on a low income and
- You must not have more than £8000 in savings (always check the current figures) and
- You must have proof that you are a victim of domestic violence and the evidence must be dated within the last 2 years. For example, a police caution against the other person relating to domestic violence, an injunction (non-molestation order), or a letter from a GP stating that you have injuries consistent with domestic violence.

9.2 Arrangements for Children

A court will not let you divorce until you can show where the children will live, when they will spend time with each parent and who will pay child maintenance. If you cannot reach agreement with your spouse then you can apply for the following court orders:

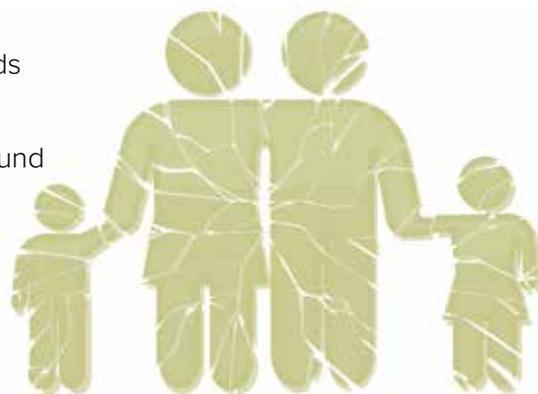
- **Child Arrangement Order** - is used to decide where your child will live, and which parent they will live with. It will also decide when parents can see the child e.g. weekends, school holidays etc.
- **Specific Issue Order** - is used to look at a specific question about how the child is being brought up e.g. what school they should go to and if they should have a religious education.
- **Prohibited Steps Order** - is used to stop a child from being removed from the care of one parent, or from England and Wales to another part of the UK or another country.

At the time publishing this report it costs £215 to apply for a court order. However, fees are usually changed in April of each year. It may be possible to get help with court fees if you are on benefits, or on a low income and do not have capital which exceeds certain limits. For a court order and more guidance can be found here: <https://www.gov.uk/looking-after-children-divorce/apply-for-court-order>

The court will arrange a 'directions hearing' with both parents if you apply for a court order. There will usually be a family court adviser from the 'Children and Family Court Advisory and Support Service' (Cafcass) at the hearing.

The first meeting is the 'First Hearing Dispute Resolution Appointment' (FHDRA). This is a hearing to assist parties in trying to reach an agreement or to recommend what further work may be required, e.g. a full welfare report regarding what is in the best interests of the children. The judge or magistrates will put the welfare of children first and make an order in the best interests of the child. In doing so will consider the following:

- child's wishes and feelings
- child's physical, emotional and educational needs
- effects any changes may have on the child
- child's age, gender, characteristics and background
- possible risk of harm to the child
- ability of parents to meet the child's needs
- orders the court has the power to make



9.3 Arrangements for Money and Property

You must usually meet with a mediator before you can go to court to help you come to an agreement about splitting money and property.

1. Apply for a consent order

You need to get a solicitor to draft a 'consent order' if you want to make an agreement legally binding that confirms how you are going to divide up your assets such as money, property, savings and investments. It can also include maintenance payments including child maintenance payments. At the time of publishing this report, a 'consent order' costs £50. You and your spouse will need to sign the draft consent order and fill in the following two more forms and send them all to the court:

- a notice of an application for a financial order
- a statement of information form

All forms can be found here:

<https://www.gov.uk/money-property-when-relationship-ends/apply-for-consent-order>

A judge will approve the agreement to make it legally binding if they think it's fair and reasonable.

2. Apply for a financial order

You can ask a court to make a 'financial order' if you can not reach an agreement. This used to be called an 'Ancillary Relief Order'.

You can apply for a financial order if you want, for example:

- Lump sum payment
- Ownership of a property
- Regular maintenance payments to help with children or living expenses
- A share of your partner's pension payments

Applying for a financial order costs £255 (always check updated fees). The process is separate from the divorce, and usually takes longer - often 6 to 12 months. You may have to attend a court appointment and go to a number of court hearings. To apply for a financial order, fill in a Financial Order Application Form.

3. How the Court Splits Assets

The judge will decide on the division of assets based on:

- a. Age of each of the party to the marriage / civil partnership
- b. Duration of the marriage / civil partnership
- c. Earning capacity of each party
- d. Income, property and other financial resources of each party has or is likely to have in the foreseeable future
- e. Earning capacity of each party including any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire
- f. Standard of living enjoyed before the breakdown of the marriage or civil partnership
- g. Financial needs, obligations and responsibilities each party has or is likely to have in the foreseeable future
- h. Contributions which each party has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family (e.g. breadwinner or primary carer etc.)
- i. Value to each party of any benefits which by reason of the dissolution or annulment of the marriage / civil partnership, the party will lose the chance of acquiring.
- j. Any physical or mental disability of either party
- k. Conduct of each party - if that conduct is such that it would in the opinion of the court be inequitable to disregard it

The judge will decide on the fairest way to divide the assets if there are enough assets to meet everyone's needs. If there are insufficient assets, then the judge will make arrangements for any children first, especially their housing arrangements and child maintenance. The judge will usually try to arrange a 'clean break', so everything is shared out, and you no longer have any financial ties to one another.

4. Maintenance Payments

The court sometimes tells the person with the higher income to make regular maintenance payments to help with the other person's living costs. This is called a 'maintenance order'. A maintenance payment can be set for a limited period of time or until one of you dies, marries or enters into a new civil partnership. The payment can also be changed if one of you loses your job or gets much better paid work. The court can also decide on child maintenance, but it is often arranged by the Child Support Agency.

9.4 The Divorce Process

Step 1 - Filing For a Divorce

To initiate a divorce, you will need to fill in a Divorce Petition Form. You will need to include the following: your name and address; spouse's name and address; original marriage certificate or copy from the Register Office; and names and dates of birth of children no matter how old they are. You will need to send two copies to the court (or three if you have named someone that your spouse had an affair with). You will have to pay a £410 court fee to start a divorce but you may be able to get help with court fees if you are on low income or benefits and do not have capital which exceeds certain limits. For example, for divorce cases at the moment, you cannot have savings of more than £3000. If you do, then the court will ask you to pay the full £410 petition fee. (Always check the latest fees).

Step 2 - Responding to a Divorce Petition

If your spouse has started divorce proceedings against you, the court will send you a 'divorce petition'. You will also get:

- **A notice of proceedings form** - this tells you the case number and what to do next.
- **An acknowledgment of service form** - you need to respond to this and there are officially 8 days to file a response. However, people will usually wait around 14 to 21 days to see whether the acknowledgement is received at the court. If the other person is living overseas then they will be provided with a longer timeframe to send the acknowledgement. If there is no response within 21 days, the husband or wife can continue with the divorce as if you have agreed but it is necessary to prove that the petition has been received by the other spouse before a person can proceed to apply for Decree Nisi. This may involve bailiff service, or serving through a process server.
 - a. **Agreeing with the Divorce** - To agree with the divorce petition, fill in and return the acknowledgment of service form to the court within 8 days, and the divorce will go ahead.
 - b. **Disagreeing with the Divorce** - To disagree with the divorce petition fill in the 'acknowledgment of service' form and return it within 8 days. Fill in the part that says you're defending the divorce. The court will send copies to your husband or wife. After you return the form, you have up to 21 days to say why you are defending the divorce. This is called 'giving an answer'. You may have to pay a £245 court fee.
 - c. **Starting Your Own Divorce Proceedings** - After receiving a divorce petition you may then decide to start your own divorce against your husband or wife - eg if you have evidence of their adultery or unreasonable behaviour. You may have to pay a £410 court fee.

d. Court Hearing - When both parties agree to divorce each other based on their respective petitions - this is called a divorce based on cross-decrees. The court will usually hold a hearing to discuss the case. You and your husband or wife will usually have to attend give oral evidence to the judge as to why your petition should be accepted, or alternatively to try and see whether an agreement can be reached over the divorce.

Step 3 - Apply for Decree Nisi

You can apply for a decree nisi if your spouse does not defend your divorce petition or fails to send an acknowledgement of service to court and you can prove that he or she has received the petition. A decree nisi is a document that says that the court doesn't see any reason why you can not divorce. If your spouse does not agree to the divorce, you can still apply for a decree nisi. However, you will have to go to a hearing at the court to discuss the case, where a judge will decide whether to grant you a decree nisi or not.

To get a decree nisi, you have to fill in the application for a decree nisi. If your husband or wife is defending the case, fill in section B of the form, saying you want a 'case management hearing' before the judge.

You must also fill in a statement confirming that what you said in your divorce petition is true. Also attach a copy of your husband or wife's response to the divorce. There are 5 statement forms - use the one that covers the facts you have given for your divorce:

- adultery statement
- unreasonable behaviour statement
- desertion statement
- 2 years' separation statement
- 5 years' separation statement

All of the above application forms can be found here: www.gov.uk/divorce/apply-for-decree-nisi

If the judge agrees - the court will send you and your spouse :

- A certificate of entitlement to a decree and the date that the decree nisi will be made
- A decree nisi

After 6 weeks and 1 day you can apply for a 'decree absolute' to end the marriage.

If the judge disagrees - the court will reject your application then the judge will issue a 'notice of refusal form', saying why you cannot divorce. One example why this may be issued is because a person has not proved that the other spouse had received the petition. The form will tell you what to do next. The judge may want more information in writing, or you may have to go to a court hearing.

Step 4 - Applying for a Decree Absolute

The decree absolute is the legal document that ends your marriage. You need to wait at least 6 weeks and 1 day after the date of the decree nisi before you can apply for a decree absolute. The delay gives you a chance to discuss finances and other issues with your husband or wife before the marriage comes to an end. Apply within 12 months of getting the decree nisi - otherwise you will have to explain the delay to the court. It is important to be careful about applying for a decree absolute before finances have been agreed or settled by the court because a decree absolute ends certain claims, e.g. a claim against the other person's private pension.

To apply for a decree absolute, fill in the 'notice of application for decree nisi to be made absolute' form. If your husband or wife started the divorce, but they haven't applied for a decree absolute, you can apply.

You'll have to wait an extra 3 months, on top of the standard 6-weeks and 1 day delay, before you can do this. You'll have to pay a £80 fee and go to a court hearing with your husband or wife.

The court will check that:

- Arrangements for children are not a reason to delay the divorce
- Time limits have been met
- There are no other reasons not to grant the divorce

The court will then send you both a decree absolute. Once you get the decree absolute, you are divorced, no longer married and free to marry again if you wish. Keep the decree absolute safe - you will need to show it if you remarry or to prove your marital status. However, replacement copies can be obtained from the court that issued the divorce or through online paid services. Also please note that the divorce may affect inheritance under a will so you may need to make a new will.



Divorce Decree

Defended Divorce Procedure

- Defended divorces are rare. They result in increased legal costs and delay.
- If the other person opposes or defends the divorce, they have 28 days from the date they received the divorce papers (longer if they live overseas) to send an “Answer” or defence to the court, stating why the divorce should not be granted.
- The court will then set down a timetable to deal with the case. A final court hearing will be listed which both parties will need to attend in order to give evidence in the witness box. If a divorce is defended, then it is no longer treated as a confidential matter and it is heard in “open court” which means members of the public can attend to hear the evidence.
- If it becomes necessary to have a final hearing to decide whether the divorce is granted, then the person who succeeds can make a claim against the other person for any legal costs that they have had to pay out.

Uncontested Divorce Procedure

- A divorce document (petition) will be prepared and sent to the court. When you are relying on the other person’s unreasonable behaviour, it is common to include a claim that the other person pays the divorce costs.
- The court will stamp the paperwork and post a copy of the divorce petition to the other person. You will be notified that this has been done.
- The other person is given 8 days to respond to the petition and send a document called an Acknowledgement of Service form to the Court. They must confirm if they agree with the divorce or, alternatively, if they are going to oppose (“defend”) it. They must also confirm if they dispute any claim for the divorce costs.
- If the Acknowledgement is received by the court, it will be posted to you. You will now be able to apply for the Decree Nisi (this is not a final divorce document; it only confirms that you have proved one of the 5 facts that you have relied on in your petition).
- Once you have obtained a Decree Nisi, you must wait 6 weeks and 1 day before applying for the final divorce document (Decree Absolute). Obtaining a Decree Absolute means that you are able to re-marry, should you wish to do so.
- If the person who has started the divorce proceedings does not apply for the Decree Absolute, then the other person can make an application. However, they will have to wait 3 months after the first date on which the Decree Absolute could have been obtained.

Note: Before an application is made for Decree Absolute, you must consider if there are any financial matters to be resolved. There can be serious implications if you obtain the Decree Absolute and there are financial claims which are outstanding, for example, you could lose a claim against the other person’s private pension. In cases where the divorce is based on 2 or 5 years’ separation, and a person can show that they will suffer financial hardship if the Decree Absolute is granted, the court has the power to delay the Decree Absolute until financial matters have been dealt with.

10 Recognising Foreign Divorce

A divorce granted within the European Union, in accordance with the laws of another member state of the European Union, will almost always be automatically recognised in the UK. A certificate of divorce, properly translated and certified, is valid across the whole of the European Union.

Recognition of divorces in the UK that have taken place outside of European Union, is more complicated and depends upon whether there has been a form of official involvement or court proceedings. For example, the relevant English law is set out in Section 46 of the Family Law Act 1986. To be recognised, they need to meet the following criteria:

- The divorce must be legally valid in the country in which it was obtained
- Both spouses must have had notice of the proceedings
- Neither spouse was habitually resident in the UK during a period of one year immediately preceding the date of the divorce
- At the time the divorce was obtained: both spouses were resident or domiciled or a national of the country where it was obtained; one spouse was domiciled in the country where the divorce was obtained and the other spouse domiciled in a country where the divorce is to be recognised as valid.

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The divorce should have started, and finished in the same country. A foreign divorce will not be recognised in which any part of the divorce took place in say England and was completed abroad e.g. if a *talaq* was pronounced in England and sent to a wife in Pakistan – this would not be recognised in England (The International Family Law Group 2013).

Sometimes women are at the receiving end of an unfair divorce where the husband tries to bring surprise divorce proceedings overseas. Women who fear this may happen should seek legal advice on how to best protect themselves from being subjected to such divorces and prevent them from being recognised here in the UK. Cases are not always straightforward. For example, in the case of *K v K* (2007) the High Court upheld the validity of a *talaq* divorce pronounced by the husband in Pakistan even though the wife was not made aware of it. Under Pakistani law the *talaq* divorce was valid as it complied with procedural requirements, and it was irrelevant that notice was not given to the wife (Cambridge Family Law Practice 2013).



11 Annulment of a Marriage

11.1 Annulment Under Civil Law

Annulment is another way of ending a marriage. A divorce ends a legal marriage. There are two types of annulment, which can be granted for a number of reasons.

a. Void Marriages - these marriages were never valid in the first place because:

- The parties are within the prohibited degrees of relationship
- Either party is under the age of sixteen
- The parties have intermarried in disregard of certain requirements as to the formation of marriage
- That at the time of the marriage either party was already lawfully married
- That the parties are not respectively male and female
- In the case of a polygamous marriage entered into outside England and Wales, that either party was at the time of the marriage domiciled in England and Wales

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b. Voidable marriages - these are marriages which were legally valid up until the point where they are annulled but:

- The marriage has not been consummated owing to the incapacity of either party to consummate it
- The marriage has not been consummated owing to the wilful refusal of the respondent to consummate it
- Either party to the marriage did not validly consent to it, whether in consequence of duress, mistake, unsoundness of mind or otherwise
- At the time of the marriage either party, though capable of giving a valid consent, was suffering (whether continuously or intermittently) from mental disorder within the meaning of the Mental Health Act 1983 of such a kind or to such an extent as to be unfit for marriage
- At the time of the marriage the other person was suffering from a sexually transmitted disease
- At the time of the marriage the woman was pregnant by some person other than the petitioner
- An interim gender recognition certificate under the Gender Recognition Act 2004 has, after the time of the marriage, been issued to either party to the marriage
- The respondent is a person whose gender at the time of the marriage had become the acquired gender under the Gender Recognition Act 2004.

In an uncontested case where both parties consent to the annulment, the process can take 6-8 months. If the annulment is opposed then the court may request further evidence and the case can be long and involved thus increasing court costs. A person may apply to get a marriage annulled anytime after it has taken place (unlike divorce where you have to wait at least one year). However, an application must be made to the court within a reasonable period of time, which must usually be within three years of the marriage.

Victims of Forced Marriage

Victims of forced marriage especially those who have had their Muslim marriage registered abroad, will sometimes return to the UK and then escape their situations without making any effort to dissolve the marriage. They sometimes only obtain the Islamic divorce and assume their marriage is void under UK law. If it is registered with registered authorities of that country then the marriage will also need to be legally ended under UK law. It is important that the victim contacts a lawyer immediately especially if they want an annulment which needs to be done within 3 years of the marriage. However, discretion may be available for some circumstances such as mental health etc. Judges need to show better awareness of circumstances that can lead to a delay such as emotional blackmail and threats from the family.



11.2 Annulment Under Islamic Law

Forced marriages are considered 'void' marriages in Islam i.e. not legally valid marriage according to Islamic law. In such cases, the woman has to approach a religious authority and ask them to dissolve the marriage. It is usually dissolved under the *faskh* method (see Chapter 7). The certificate usually states that it was a forced marriage – if not, this should be requested.

12 Cost of Divorce

12.1 Consequences of Not Seeking Advice Early

When getting divorced, often it is not a straightforward and simple process because children, property and finances are involved; it can therefore be a costly process. It is important to seek legal advice at the earliest opportunity even if you do not need to obtain a civil divorce (and only require Islamic divorce). When children are involved you may want financial protection and may wish to claim child maintenance payments or even a claim to reside in a property.

Many women will seek advice from families and friends. Although they may mean well, often they can give the wrong advice, which may not be in their best interests. By the time some women get legal advice, it is too late and the husband has disposed of assets that she is legally entitled to. Cost is a common factor prevents women from accessing legal advice early. However, it is important to be aware of the following:

- You may be eligible to legal aid if for example if you have suffered domestic violence. To find out if you qualify for legal aid, you can use the legal aid checker by answering some questions: <https://www.gov.uk/check-legal-aid>
- You can find legal aid solicitors here: <http://find-legal-advice.justice.gov.uk/>
- If you are not entitled to legal aid, you can apply for bridging loan and pay your divorce fees after the settlement.
- To keep costs down you could also use mediators and agree on a settlement.
- Some husbands may try and initiate divorces abroad.
- Once you start legal proceedings, there may be a danger your husband may try to sell the marital home. Regardless of whose name is on the title deeds and mortgage, you both have entitlement if your marriage is legally recognised under English law. To prevent him from selling the property, you can place a 'register of interest on property'. Your solicitor will advise you on such matters; please ensure to provide them with as much information as possible. i.e. whose name the property is in, freehold or leasehold, whether it is under a shared ownership lease scheme etc.
- You may need specialist advice if the property has an Islamic mortgage. For example, with such mortgages, the bank is the legal owner and the client is the tenant. If the property is sold and it has gone up in value, the bank will return the deposit to the client together with a share of the profits. The husband may try and sell the property before any divorce proceedings are concluded and believe he can do this without being stopped because he technically does not own the property. It is therefore important to write to the bank and inform them that the property is likely to be disputed in divorce proceedings and not to allow it's sale to go through. Also ask a solicitor for advice on how to apply for an injunction and register interest to make it difficult to sell the property.

12.2 Cost of a Civil Divorce

Basic Costs

The paperwork to end a marriage is relatively inexpensive. A court fee is paid to the court to issue the divorce petition, which is (currently) £410. An affidavit needs to be sworn during the proceedings and costs between £5 to £7. Another court fee (currently £45) is paid to the court to obtain the decree absolute (final decree of divorce). If you want a solicitor to do the paperwork for you, then you will also have to pay them a fee, which is usually fixed. Although this can vary, it can be approximately £500. So the total cost should be in the region of £900. However, if the respondent fails to respond to the divorce petition it may become necessary to serve the papers through a process server, which usually costs around £150 to £200 (plus VAT). Service via a process server is quicker than through a bailiff. Some offer fixed fees, which may be lower than this and vary around the UK.

Additional Costs

If the divorce case is not straightforward and disputes over children and assets need to be resolved, then additional charges will need to be paid, For example, mediation can cost between £1,000 and £2,000 and if you need to go to court, then costs could be £3000 to £10000. These are only average figures and costs can vary substantially depending on the case. It is therefore advisable to get your solicitor to tell you in writing how they will charge you and to keep you up to date with the fees. Some may agree a fixed fee in advance.

12.3 Divorce Online

It is possible to manage a divorce without involving solicitors by using an online divorce service. This can save hundreds or even thousands of pounds. However, this service is only appropriate if you agree on:

- Reasons for a divorce
- How you will look after any children
- How you will split up money, property and possessions

An example of an online divorce service: <http://www.divorce-online.co.uk/>

12.4 Cost of Islamic Divorce

The cost for an Islamic divorce service varies and some mosques and Shariah Councils put their fees on their websites. They can vary from around £150 to £400. Men are usually charged less if they choose to use the divorce service although they do not need to involve a religious authority to issue a divorce. Occasionally some waive the fees for women who are in a refuge because they have had to escape a forced marriage or domestic violence.

13 Preventing Discrimination Against Muslim Women in Marriage and Divorce - Potential Solutions



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13.1 UK Obligations Under CEDAW

Although practices vary when settling Islamic divorces, Muslim Women's Network UK is concerned that mosques and Shariah Councils treat significant numbers of women less favourably. It is time that British law provides alternative solutions so Muslim women are no longer solely dependent on these religious institutions thus making them redundant in the future. In fact the UK has an obligation under an international agreement that it has signed to prevent discrimination against women in marriage and divorce.

The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) is an international treaty adopted in 1979 by the United Nations. States ratifying the Convention are required to enshrine gender equality into their domestic legislation and enact new provisions to guard against discrimination against women. It is also known as an international bill of rights for women and consists of 30 articles. Article 16 requires measures to eliminate discrimination against women in all matters relating to marriage and divorce. In 2013, the CEDAW committee went further and issued a recommendation that all member states adopt legislation to eliminate the discriminatory aspects of family law regimes, whether civil code, religious law, ethnic custom, or any combination of laws and practices that regulates them.

One recommendation (no. 28) says that state parties should take all legislative and policy measures to abolish polygamous marriages. Another recommendation (no.26), says that state parties should establish a legal requirement of marriage registration and conduct effective awareness-raising activities to that effect (OHCHR 2013). By accepting CEDAW, the UK has committed itself to undertake measures to end discrimination against women and must submit a national report to the Committee at least every four years indicating the measures that have been adopted to give effect to the provisions of the Convention.

It is clear that Muslim women are extremely vulnerable to discrimination on matters of marriage and divorce and the UK government should intervene and provide mechanisms to safeguard them. A number of solutions, if implemented collectively, could help end the discrimination faced by Muslim women over the long term when trying to obtain their religious divorce. These include:

- Enforcing Equality Act 2010 on gender discrimination
- Amending the Divorce (Religious Marriages) Act in 2002
- Using Tort Law for Corrective Justice
- Making Civil Marriages Compulsory
- Using Contract Law
- Supporting a 'Marriage and Divorce Educational Campaign' aimed at Muslim women

13.2 Baroness Cox's Proposed Arbitration and Mediation Services (Equality) Bill

Baroness Cox, a cross bench member of the House of Lords has been trying to get her Arbitration and Mediation Services (Equality) Bill to become law. She first introduced her private Peer's bill in 2012 and the House of Lords gave it a second reading on 19th October 2015 (Parliament, 2015). Although the bill does not specifically mention Shariah Councils, it is clear that they are the primary focus. While it is commendable that Baroness Cox wants to address the inequality faced by Muslim women when they use the services of Shariah Councils, her measures do not sufficiently address the concerns she raises. Sufficient redress is available under existing legislation and any law reform should be on marriage and divorce (as discussed in the following sections).

The proposed Bill will have very little (if any) effect on Shariah Councils because the vast majority do not operate under the Arbitration Act 1996 because they do not provide official arbitration / mediation services as such (Douglas G, et al., 2011). An exception to the rule such as the Muslim Arbitration Tribunal, which does operate under the Arbitration Act, admits even most of its work falls outside the remit of the Act (Cranmer 2012). The odd religious body that may be providing an alternative dispute resolution service under the Arbitration Act and in accordance with religious law, can have their decisions reviewed and over ruled by the civil courts anyway (as discussed in Chapter 5). For the vast majority of the Shariah Councils, which do not operate under the Act, their decisions are not legally binding. However, as they are providing a divorce service (even though it is to a section of the public), they should be complying with discrimination legislation such as the Equality Act, which probably needs better clarification as discussed in the next section.

The underlying problem that makes Muslim women heavily reliant on Shariah Councils is that too many are in unregistered marriages where they have had the religious ceremony by not a civil marriage, making the marriage invalid under UK law. Baroness Cox's bill will not help these women. She also alleges that some Shariah Councils are acting outside their legal remit, including criminal matters and wants those claiming legal jurisdiction falsely to be held to account by ensuring it is a criminal offence. She has not provided sufficient evidence that this is common practice. Since 2008, Muslim Women's Network UK has been receiving complaints from women about their treatment by Shariah Councils and none have made allegations on such matters. We therefore do not think that new legislation will prevent a tiny minority of rogue religious scholars from getting involved with matters outside of their remit. A detailed analysis of the bill has been given in Table 3 highlighting the proposal, our concerns and an alternative solution.

In her speech in the House of Lords Baroness Cox made a point of listing a number of case studies of the treatment of Muslim to garner sympathy and support for her bill. However, her examples were misleading because her bill does not address the issues she raised. For example, she cites story of Roma who was unilaterally divorced by her husband just by sending her a piece of paper with the words “I divorce you” on it three times. What practical difference will the bill make to women like Roma? In another examples she said a 63-year-old man wanted his 23-year-old wife to undergo a hymen repair surgery. The extremism card was also used during her speech and an unsubstantiated claim made that men in polygamous marriages are having up to 20 children who are then vulnerable to extremism. She then went on to provide examples of gender discrimination by tribunals that operate under the Arbitration Act that she wants addressed such as men being able to marry four wives and women’s unequal access to divorce. How will the bill address any of these concerns? She also talked about inheritance – however, according to UK law, all citizens are free to divide their assets according to their own wishes and people including non Muslims do not always leave equal shares to their children so this cannot be enforced on Muslims only.

Finally, it is interesting to note that Baroness Cox does not have the support of many key respected Muslim women’s organisations which are also concerned by the way women are treated by Shariah Councils because they regularly have to support such women. Like others, we at Muslim Women’s Network UK were supportive, in principle, of Baroness Cox’s ideas to address the inequality faced by Muslim women when she first started discussing her bill in 2011. However, since seeing the details of her bill in 2012, we (like many others) have withdrawn our support for it.

Table 3: Key Proposals and Concerns with Baroness Cox’s Arbitration and Mediation Services (Equality) Bill

AMENDMENTS TO THE EQUALITY ACT 2010		
Proposal	Concern	Alternative Solution
Amending Act to include bodies that provide arbitration services		
<p>General discrimination There must not be any discrimination, harassment or victimisation on grounds of sex when providing a service in relation to Arbitration.</p>	<p>General discrimination This clause seems to specifically only apply to bodies that operate under the Arbitration Act. However, most Shariah Councils do not operate under this Act and offer informal mediation services, which are non-binding. The odd few that do operate an Arbitration service can have their decisions over ruled in civil courts if they were deemed to be discriminatory anyway.</p>	<p>General discrimination Make it clear that religious bodies (regardless of whether they operate under the Arbitration Act) are required to comply with the Equality Act (apart from a few exemptions under the Act) and that their informal mediation / divorce services are not included in the exemptions. Perhaps the Equality Act could be amended to reflect this.</p>

Proposal	Concern	Alternative Solution
<p>Discrimination & Inheritance</p> <p>The proposal states division of an estate between male and female children on intestacy must not be unequal</p>	<p>Discrimination & Inheritance</p> <p>Under laws in the UK, individuals are given complete freedom on making a will, which means they can disinherit heirs or favour one over another or even leave their wealth to charities and animals. This means Muslims and also Jews can make a will according to their own religious laws if they wish to do so which could include discriminating between heirs and favouring sons over daughters. This may seem unfair but how can British courts intervene to stop these practices when laws in the UK allow individuals to also discriminate amongst heirs.</p>	<p>Discrimination & Inheritance</p> <p>With regards to inheritance a debate is needed with Muslim communities rather than interference from the state. Popular patriarchal interpretations need to be challenged and alternative gender-equitable interpretations should be promoted. For example, Quran verses 2: 180 and 4: 7-14, establish the right to inherit but the value of the share depends on the circumstances and is discretionary. The very same verse, which mentions a male receiving twice the share of the female, also mentions that such distributions are only to be made after any betrothed legacies and debts have been settled. In other words, any unaccounted for wealth. Therefore, not only is a woman's right to inherit wealth established but the proportions are at the discretion of the testator; men and women can inherit equal amounts and women can even inherit more, should the testator so wish.</p>
<p>Discrimination & Property Rights</p> <p>Proceedings must not assume that a woman has fewer property rights than a man (vice versa)</p>	<p>Discrimination & Property Rights</p> <p>The Arbitration Act already contains robust protection from discrimination and civil courts can overrule unfair decisions. Also individuals also have the option of taking matters concerning property rights directly to a civil court if they are concerned about gender discrimination. If women willingly accept discriminatory rulings based on their gender, then unfortunately it is their right to do so.</p>	<p>Discrimination & Property Rights</p> <p>Educate women about their property and financial rights, especially in relation to divorce and inheritance and under both Islamic and civil law so they can make informed choices.</p>

Proposal	Concern	Alternative Solution
Extending Public Sector Equality Duty		
<p>Public authorities which interact with Muslim women are obligated to inform them about the importance of being in officially recognised marriages so they are legally protected and inform them that by being in a polygamous household they may not be legally protected and that polygamous household may be illegal.</p>	<p>These measures are impractical, do not treat all women equally and unlikely to reduce the numbers of Muslim women in unregistered or polygamous marriages:</p> <ol style="list-style-type: none"> a. They could be counterproductive, stigmatising the women that the proposal is supposed to help. This also ignores the plight of non-Muslim women who are in similar situations in terms of having little or no financial rights because they are co-habiting instead of getting married. b. Public servants are unlikely to be aware about the status of Muslim women's marriages and they would not have to point out to co-habiting women about their lack of legal rights. c. After informing warning Muslim women, would they have the power to do anything about their situation anyway? 	<p>One way of increasing the number of registered marriages can be through an educational campaign highlighting the consequences of not being in a legally valid marriage. However, such a campaign will have limited impact because it will only speak to those who want to be in legally recognised marriages. Instead a better solution would be to reform marriage law such as making it illegal for anyone to conduct a religious wedding ceremony without a prior civil marriage. However, this should also be combined with the law reform in England and Wales to provide greater protection to cohabittees in the areas of maintenance and property (as Scotland has already done) because when unions break down whether Muslim or not, it is women that face financial hardship.</p>



AMENDMENTS TO THE ARBITRATION ACT 1996

Proposal	Concern	Alternative Solution
<p>There should be no discrimination during arbitration in terms of gender such as: evidence of a man should not be given more weight than that of a woman; division of an estate between male and female children on intestacy must not be unequal; and women should not be assumed to have fewer property rights.</p>	<p>This will have little, if any, impact because most Shariah Councils do not operate under the Arbitration Act and the odd ones that do cannot discriminate on gender anyway. The Arbitration Act is mostly used for commercial purposes (Douglas et al., 2011). A specific clause prohibiting evidence of a man being given more weight than a woman's should not be necessary. If discrimination took place, civil courts would not enforce their agreements. For example, agreements can be over ruled if they have been made under duress or are not in line with the principles of UK law.</p> <p>However, civil courts can only take action if they are made aware of any perceived injustices through an appeal. The actual problem is women are unlikely to appeal due to lack of awareness of the legal processes and their rights. So Baroness Cox's proposal would make no difference to these women.</p> <p>The problems with the proposals concerning inheritance and property rights have already been discussed in the previous sections.</p>	<p>During any Marriage and Divorce awareness campaign, inform women who use the services of Shariah Councils that operate under the Arbitration Act about their rights and the appeal process if they feel the decision made was unfair.</p> <p>As a part of the awareness raising campaign, also identify if there are any Shariah Councils in addition to the Muslim Arbitration Tribunal that operate under the Arbitration Act. They can be contacted and reminded about good practice regarding provision of information about appealing decisions and rights of clients.</p> <p>Alternative solutions on inheritance and property rights have already been discussed in the previous sections.</p>

AMENDMENTS TO THE FAMILY ACT 1996

Proposal	Concern	Alternative Solution
A court may issue a declaration setting aside any order based on a mediation settlement agreement or other negotiated agreement if it considers on evidence that one party's consent was not genuine.	It is important anyone involved in mediation do so of his or her own free will and any agreements are not made under duress and their decisions are fully informed. There are no problems to this proposal and agreements should be set aside if consent was not genuine.	Not applicable as we are in agreement with this proposal.

AMENDMENTS OF THE CRIMINAL JUSTICE AND PUBLIC ORDER ACT 1994

Explicitly stating in the legislation that if a victim of domestic abuse is a witness to an offence, they should be expressly protected from witness intimidation.	Under existing legislation the victim of domestic violence is protected from intimidation anyway. However, if the amendments make this clearer, then there are no objections to this proposal in principle. If this is aimed at Shariah Councils because in some instances they may not be adequately protecting domestic violence victims by pressuring them to mediate or be present at meetings at the same time as husbands, will this proposal make a difference to practices at Shariah Councils, which vary widely anyway?	Shariah Councils should be encouraged to develop good practice, which should include a policy on protecting vulnerable women such as domestic violence victims, women with mental health issues etc. Women should also be made aware that they should not have to attend meetings with the husband or enter into mediation with him and made aware of her rights in relation to domestic violence.
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AMENDMENTS TO THE COURTS AND LEGAL SERVICES ACT 1990

A person who falsely purports to exercise any of the powers or duties of a court or to make legally binding rulings shall be guilty of an offence and liable on conviction on indictment to imprisonment for a term not exceeding 7 years.	Sufficient evidence has not been provided that this is common practice. This should only be considered if existing legislation does not cover such conduct. New legislation will not prevent a tiny minority of rogue religious scholars from getting involved with matters outside of their remit. Also the sentencing of 7 years seems excessive when shorter sentences are given for more serious crimes.	Legislation is not needed the limitations and restrictions concerning operations of Shariah Councils can be highlighted in any Muslim marriage and divorce information campaigns.
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13.3 Enforcing the Equality Act 2010

The Equality Act 2010 protects people from discrimination on the basis of certain characteristics. These are known as 'protected characteristics' and there are nine in total and include gender. The Equality Act applies to public, private and voluntary sectors in the workplace and in delivering services. Despite some exemptions, the Act also applies to religious and belief organisations. As Shariah Councils deliver a service to the Muslim public and their practices do not fall under the exemption criteria, they should be held accountable under this legislation if they are discriminating against women due to their gender.

Religious acts of worship are not covered by the Act, which gives some limited exemptions to religious and belief organisations. These exemptions permit them to act in a way that would normally be prohibited which means being able to discriminate because of some protected characteristics in the way they operate (Equality and Human Rights Commission). So they could provide (or even refuse to provide) all or some of their services to people based on a protected characteristic. However, these limited exceptions only apply if the organisation meets the strict criteria. For example, religious organisations may not employ women in certain roles or have separate services for men and women to comply with the doctrines of their religion to avoid offending a significant number of its followers. However, gender discrimination does not apply to all services provided by religious organisations. The mediation and divorce service, which generates an income, should be considered such a service where the exclusion is not applicable. This means that Shariah Councils should not treat women less favourably because of their gender regardless of whether they operate under the Arbitration Act or not.

From the experiences of women, it is clear the following gender discriminatory practices by some Shariah Councils are incompatible with the Equality Act 2010:

- Men and women being charged different fees for the divorce service e.g. one Shariah Council charges men £200 while women are charged £400
- Greater weight given to the man's witness statement about the marriage and grievances
- Requiring a woman to bring two men to corroborate her testimony with regards to the breakdown of the marriage and even domestic violence
- Women pressurised to remain in marriages while men are not

The above discriminatory practices cannot even be justified through Islamic law given the substantial rights given in Islam to women in matters of divorce. Perhaps a test case for unlawful discrimination should be brought against a religious institution. If successful, such a case could act as a deterrent to gender discrimination. However, when seeking clarity on this matter, even some legal experts have been unsure whether Shariah Councils can be taken to court on this matter because the Equality Act may not apply. We therefore recommend that an amendment is made to the Equality Act clarifying that religious mediation and divorce services are not exempt from the Act.

13.4 Compliance with Charity Law

Under the Charity Act 2011, for an organisation to be a charity each of its purposes must be for the public benefit. This means registered charities must ensure that the public (or section of it) they serve must benefit from their purpose and any detriment or harm from the purpose does not outweigh the benefit. This means charities should be identifying risks of harm to their beneficiaries and minimising the risks (Gov UK). Shariah Councils and the mosques that are registered charities and are providing a mediation and divorce service should therefore ensure they are not putting Muslim women at risk with their practices. Unfortunately, we have come across examples when Muslim women have been put in danger because they have been pressured to mediate with their husbands or be present at divorce panel hearings at the same time as their husbands despite serious domestic violence being a factor in the marriage breakdown. Currently the Charity Commission only requires a brief summary of how the charity purpose has been carried out and its public benefit. A detailed report is only required if the charity's gross income exceeds £500,000. It is unlikely that Shariah Councils and mosques are reporting on how their actions are putting some of their beneficiaries, the Muslim women, at risk of harm and what they are doing to address this risk.

Registered charities must also comply with the Equality Act 2010 when carrying out their charitable purposes (except under certain circumstances where they are allowed to restrict their services to people who may have specific needs or be disadvantaged in some way). It is therefore important that the Charity Commission reviews how it can ensure Shariah Councils and mosques that provide a divorce service are not discriminating against or causing harm to Muslim women.

13.5 Amending Divorce (Religious Marriages) Act 2002



Within *Halakha* (Jewish law) only the husband has the power to grant a 'get' (Jewish divorce) and not the Jewish religious bodies such as the *Beth Din*. If the husband refuses, his wife becomes an *agunah*, or 'chained wife.' This has resulted in Jewish women being trapped in marriages they could not get out of and therefore being pressured by their husbands to agree to unfair custodial and financial demands during the civil divorce in return for them to give the religious divorce. To remedy the unbalanced bargaining power of the husband, the UK passed the Divorce (Religious Marriages) Act in 2002. This means that the judge can withhold finalising the civil divorce until the woman receives her religious divorce.

The Divorce Act has been successful within the Jewish community and the Muslim community could also utilise this mechanism but is not doing so. Unlike Jewish women, Muslim women can obtain a divorce without the husband's consent. For example, Muslim women can go to Shariah Councils (or mosques or individual scholars) to obtain a divorce even if their husbands refuse to grant them one. However, they can face similar pressures to Jewish women in that they can

also be pressured by their husbands to agree to unreasonable and unfair financial demands during the civil divorce. Husbands can do this by falsely blaming women for the breakdown of the marriage during religious divorce and then deliberately inflating the marriage gift (*mahr*) they say is owed to them before even the Shariah Council can release the woman from the marriage. Although some religious bodies do see through such charades and grant the religious divorce without making financial demands on the woman, unfortunately others do not. MWNUK has had cases where Shariah Councils will only grant the religious divorce once the wife has made payment to her husband. As the procedures and standards of practice vary from one religious body to another, an amendment to the Divorce Act could help some Muslim women who are in these situations and who are in legally recognised marriages which also require a civil divorce. The judge could withhold finalising the civil divorce and deciding upon any financial settlement until the woman receives her religious divorce, thus preventing the husband from using the civil divorce as a bargaining tool for a religious divorce.

The 2002 Act explicitly mentions the “usages of the Jews,” and “any other prescribed religious usages.” Any other religious group may also subject itself to the Act by asking the Lord Chancellor to prescribe the religious group for that purpose. However, no Muslim organisation has made an application requesting such recognition (Zee 2014). Muslim Women’s Network UK will be making a formal application because utilising the Divorce Act can be one of the solutions in a multipronged approach to eliminate discrimination against Muslim women in all matters relating to marriage and divorce.

13.6 Using Tort Law for Corrective Justice

In 2010, Femmes for Freedom’s founder, Dutch-Pakistani activist Shireen Musa, became the first Muslim woman to obtain a religious divorce through the assistance of a Dutch court. Following successful completion of the civil divorce, her husband refused to grant a religious divorce. She finally turned to the Dutch civil court for help. It ruled that her predicament constituted a ‘tort,’ that is, an unlawful act incurring injury. Consequently, the judge imposed financial penalties on her husband for every day he refused to provide Shireen Musa with a religious divorce. This strategy was successful because the husband divorced his wife immediately. If English Civil Courts follow the example of Dutch Civil Courts, they could help Muslim women obtain a religious divorce thus reducing their reliance on Shariah Councils (Kuric 2014).

Tort law enables civil courts to award damages not only for past events but also for each day, month, or year during which the tort continues after the judgment. Tort cases have not yet been tested in the UK to help Muslim women obtain a religious divorce but will be a good way to challenge and eradicate harmful practices against women by providing damages. Although UK law of torts is quite restrictive, we hope the UK courts will take a pragmatic approach should such cases come forward. Religious institutions may feel that these actions infringe upon their jurisdiction and may consider that the divorce is coerced. However, if women do not receive justice from religious family law, then civil interventions will be required.



13.7 Compulsory Civil Marriage v Recognising Muslim Marriages

Without a valid marriage, many Muslim men are able to evade any responsibility for maintaining their wives and are able to expel them from the matrimonial home at will. They are also able to avoid the financial obligations of divorce, leaving divorced wives with little financial security despite their financial and non-financial contributions towards the marriage. Unregistered marriages also facilitate an increase in polygamy, which impacts negatively on the rights of women and children.

Having educational campaigns (discussed in Section 13.9) encouraging Muslim couples to have civil marriages (in addition to their religious ones so their marriages are legally recognised), is not a sufficient solution to address this problem; some people purposefully do not want to enter into a legally valid marriage in order to protect their assets. Legislative reform is therefore required.

Some campaigners in the Muslim community are advocating for a reform of the Marriage Act 1949, which at present only recognises Church of England, Jewish and Quaker marriages. They want Muslim marriages recognised under the law so an additional civil marriage is no longer required. However, this strategy would still leave many Muslim women vulnerable and could create other problems.

As Islam allows polygamy, having more than one legally recognised marriage would conflict with laws in the UK because bigamy is illegal. In cases of polygamy, which Muslim marriage would be recognised under the law? Even if the husband's first marriage was recognised, how about his second wife? Her marriage would not be recognised, but it would be her only marriage and she may have been unaware that she had entered into a polygamous union. Also this does not prevent Muslim men from entering into one officially recognised Muslim marriage and then going through additional secret marriages without even having any paper work attached to them to avoid being prosecuted for bigamy. Those who wish to safeguard their financial interests and also have the Islamic blessing (to comply with religious obligations), may also find ways to have unofficial religious ceremonies to avoid them being recognised by the law.

Perhaps the best solution is to follow France and make it illegal for anyone to conduct a religious wedding ceremony without a prior civil marriage (Anglo Info). In France, a religious ceremony may be performed after (never before) the civil ceremony. The person conducting the religious marriage will require the certificate of civil marriage as proof that the civil ceremony has taken place. This solution would address a lot of problems and also help the UK meet its obligation under CEDAW because recommendation 26 suggests that states parties should establish a legal requirement of marriage registration. This solution would also make it much harder for Muslim men to enter into polygamous marriages and would help the UK meet its obligations under CEDAW because recommendation 28 says legislative and policy measures should be taken to abolish polygamous marriages. This would also make women less reliant on Shariah Councils. Having a civil marriage means having to go through a civil divorce. When civil divorce papers are presented to Shariah Councils, in most instances they have no choice but to grant the Islamic divorce. Over the longer term an educational campaign could then be launched to highlight that in most cases civil divorce is also recognised as an Islamic divorce, which means involvement of Shariah Councils would not be required, eventually making most of them redundant for matters concerning divorce (see Chapter 8).

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13.8 Using Contract Law

Where substantial amounts of *mahr* is due to women after the breakdown of a marriage, most rely on Shariah Councils for help even though they have no legal powers to enforce payment. Women seem to be largely unaware that they can make a claim through the civil courts.

Some Muslim women who had a substantial marriage gift or *mahr* stipulated in their Islamic marriage or *nikah* contract (that was still owed) have been successful in enforcing payment using civil contract law. To avoid paying the *mahr*, husbands have tried to argue that it is a religious agreement and thus should not be enforceable by civil secular courts or have stated that they only considered it as symbolic and not binding. On the other hand wives have claimed that *mahr* is due despite initiating the divorce and the husband not being at fault. Examples of cases (Spencer, 2011) where women have been able to claim back some of all or part of the *mahr* include: *Shahnaz v Rizwan* (1965), *Qureshi v Qureshi* (1971), *Ali v Ali* (2000), *Uddin v. Choudhury*, (2009).

Civil action can involve costly legal fees. Instead of upfront fees, some solicitors may request a percentage of the marriage gift if they think the case is winnable. Success is not always guaranteed - the outcome will depend on the quality and wording of the Muslim marriage contract. Other factors may also be considered such as whether the agreement was fair and reasonable when it was agreed, whether anyone was placed under pressure when signing agreement, whether there had been an opportunity to seek legal advice before signing etc.

Shahnaz v Rizwan (1965)

A couple who had married in India under Islamic law but were residing in England. The husband filed for divorce and the wife claimed £1,400 in deferred mahr. The judge ruled that the mahr payment was due.

Qureshi v Qureshi (1971)

A Pakistani husband and Indian wife married in England. They underwent an English civil marriage and an additional Muslim ceremony. After the parties were divorced, the wife claimed mahr of £78 833, which was awarded.

Ali v Ali (2000)

A Bangladeshi couple residing in London had married civilly and religiously. The mahr had been set at £30, 001. A few months later Mr Ali sought to divorce his wife civilly and Mrs Ali sought the mahr. As the marriage was short, according to civil law the wife was entitled to nothing. The judge considered that by refusing the mahr the wife would have no choice but to go to a Shariah Council for help, he therefore awarded the wife £30000 exactly less £1. It appears that the judge did not award the exact amount stipulated in the Islamic marriage contract to assert the supremacy of civil law over religious law.

Uddin v. Choudhury (2009)

In 2003 a Bangladeshi couple only had the Islamic marriage but did not register their marriage. The marriage contract or 'nikah nama' stated that the bride was due £15,000 as her 'mahr' (gift) and this was unpaid at the time of the Islamic marriage. The bride requested that the Islamic Shariah Council in Leyton dissolve the nikah. The husband agreed to this procedure on condition that his wife return both the jewellery that had been given to her and the portion of the mahr that had already been paid to her. She denied having received any mahr. In December 2004, the Council dissolved the marriage; the Council's records show that their decision contained no stipulations concerning jewellery or mahr.

The groom's father made a claim against the bride. He wanted her to return the gifts given to her and to return jewellery worth £25,000. The bride made a counter claim and stated that her mahr of £15,000 was due when the Shariah Council dissolved her marriage. The judge ruled that the items the wife had taken were legally hers as they had been given as outright gifts and did not constitute a part of the 'mahr.' He also ruled that the mahr of £15,000 was due to the wife and enforceable by the court (Bowen 2010).

Some Western countries do not interpret the Islamic marriage contract as a civil contract and instead determine that it is a prenuptial agreement. It is important to note that pre-nuptial agreements are not legally binding in England and Wales, which means that the court in divorce proceedings will not necessarily uphold them, although they can be considered. However, in Scotland, properly prepared prenuptial agreements are enforceable and legally binding (Family Law Matters Scotland).



13.9 Campaign to Increase Registration of Muslim Marriages

There is extensive anecdotal evidence from Muslim women's groups, community groups, and Sharia Councils and academic studies that indicate that significant numbers of Muslim couples in Britain are not entering into registered marriages. Although it is difficult to quantify the extent of the problem, it is however significant enough (as highlighted in section 4.2) to warrant action due to the consequences

women face when the marriage breaks down such as homelessness, loss of assets and not being able to claim financial support from the spouse. This is especially traumatic when children are involved.

To address the issue, a national information campaign to get more Muslims to register their marriages would be useful, particularly one which highlights the consequences of not having a legally recognised marriage. Family solicitor Aina Khan has launched such a campaign (Francois-Cerrah, 2015). Although this will encourage some Muslims to get their marriages registered whether they are already married or thinking of getting married, it is unlikely to solve

the problem. Although there are many reasons (as discussed in Chapter 4) for not registering marriages, a key motive is to prevent women from claiming assets should the marriage end. It boils down to Muslims opting to live as cohabitantes (but with the Islamic blessing) so they can safeguard their assets.

Case Study

Saima's Story

Saima escaped a forced marriage so she could marry her boyfriend. Her boyfriend's family accepted her. However, her boyfriend (and his family) would only agree to an Islamic marriage. When she questioned him and asked why they could not also have a civil marriage, he replied: *"We do not do those types of marriages in our family because women run away and take everything."* When she said that the same could happen to her and he could leave her in the future, leaving her vulnerable, he would not accept this argument. Saima became worried that he would call off the wedding and decided to go ahead with only the religious marriage.

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To address the inequality faced by Muslim women over the longer term, legislative reform is required (as discussed in previous sections). Until that happens, Muslim couples should be encouraged to have civil marriages. Case studies showing the consequences of not having a legally valid marriage can be disseminated. Other actions that could also help and be incorporated into such educational campaigns include:

- Getting more buildings (such as mosques, hotels, function halls) that have the religious ceremonies performed at their venues to become 'registered' or 'authorised for the purposes of civil marriage.
- Getting more *imams* or other persons registering to be an 'Authorised' person to register the marriages.
- Getting more Register Offices to make lists available of 'Approved Premises' and mosques that have been 'Registered' as well a list of local *imams* who have been 'Authorised' to register marriages.
- Getting more *imams*, who perform Islamic marriages, to insist the couple have the civil marriage first and request evidence in the form of the original marriage certificate.

Note: *Previous campaigns have focused on mosque registration. However, for many Muslims it is not cultural practice to marry in a mosque. Thus, encouraging more mosques to become registered may not necessarily be the best path to ensuring an increase in Muslim couples undergoing a civil ceremony.*

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14 Conclusion and Key Recommendations

To address the gender inequality faced by Muslim women in Britain in matters related to marriage and divorce, a multi-pronged approach is required that encompasses a range of solutions to ensure as many Muslim women as possible are protected from gender discrimination. The report has highlighted that on issues of marriage and divorce Muslim women are subjected to discriminatory practices, often unaware of their Islamic rights or rights under the laws in the UK and are not being made aware of these rights. To overcome these challenges, a series of recommendations have been made throughout the report. The key recommendations have been summarised and listed below and are aimed at government, mosques / Shariah Councils, community organisations and law professionals.



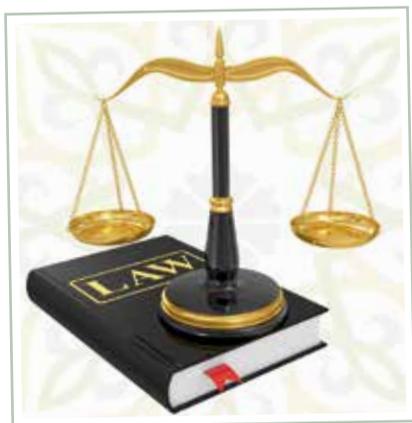
Recommendations for Government

- Review its obligations under CEDAW and report on how they will eliminate discrimination faced by Muslim women on matters of marriage and divorce.
 - The Charity Commission should ensure Shariah Councils and mosques which are registered as charities and are delivering religious divorce services, are complying with the Equality Act 2010 and also ensuring their beneficiaries (who will be mostly Muslim women) are not being put at risk by their practices.
 - Reform marriage law and make civil marriages compulsory, prior to any religious marriages.
 - Amend the Divorce (Religious Marriages) Act 2002 so to include Muslims so that Muslim women can use this mechanism where the judge can withhold finalising the civil divorce until the woman receives her religious divorce.
 - Amend the Equality Act 2010 to clarify that despite some exemptions for religious and belief organisations, religious divorce services are not exempt from the Act and discrimination during the divorce service is against the law.
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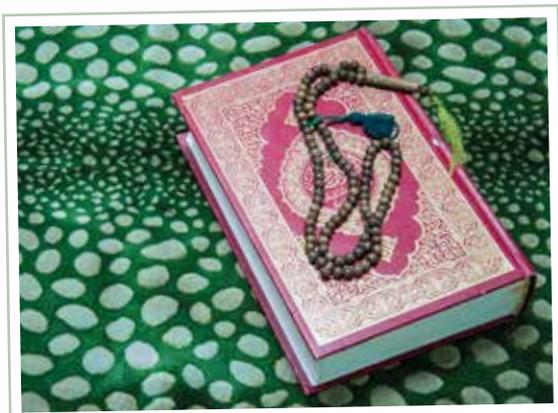
Recommendations for Community Organisations

- Set up a Muslim women led Islamic divorce service that also involves men which follows the good practice recommended for Shariah Councils in this report
- Arrange training for Muslim women to conduct Islamic marriage ceremonies.
- Promote use of the Model Muslim Marriage Contract.
- Inform women they have the Islamic right to include conditions in their marriage contract such as giving them the 'delegated right to divorce' (*talaq-e-tafwid*) and not to allow the husband to commit polygamy.
- Inform women that the marriage gift (*mahr*) upon marriage does not have to be symbolic and should be set according to the groom's financial situation and that is the woman's Islamic right to stipulate a fair and reasonable *mahr* and not settle for a symbolic tokenistic amount.
- Have an awareness campaign about the importance of having civil marriages in addition to religious ones and the consequences of not having legally valid marriages. The campaign should include criteria that must be met to ensure the civil marriage is legally recognised e.g. it is conducted in an 'Approved' or 'Registered' building and by a person who has been certified as 'Authorised' to solemnise marriages.
- Inform women that civil divorces (in most cases) are also valid Islamic divorces.
- Have an educational campaign making women aware of their Islamic and rights under UK law in matters of marriage and divorce.



Recommendations for Law Professionals

- Be aware that Muslim women who are going through both a religious and civil divorce could be pressured to agree to less favourable civil divorce terms in exchange for a religious divorce.
- Organise meetings with family law professionals (e.g. judges, barristers and solicitors) to debate and discuss whether Shariah Councils / mosques could be breaching the Equality Act 2010 with regards to gender discrimination and whether a test case could be taken on a pro bono basis to test the application of the Act.
- Organise meetings with family law professionals (e.g. judges, barristers and solicitors) to debate and discuss whether tort law could be applied to religious divorce cases in the UK where refusal to give a religious divorce could constitute a 'tort' and whether a husband could be fined for not granting a religious divorce to his wife (where she is unable to also obtain one from the Shariah Council). Discussion could also include taking on a potential test case in the future on a pro bono basis.
- Partner with women's organisations to arrange awareness raising sessions about rights during divorce, the divorce process and non court based solutions.



Recommendations for Mosques / Shariah Councils

a. Marriage

- 'Register' mosques for the solemnisation of marriages.
- Have an 'Authorised' person at the mosque e.g. *imam* who has been certified to 'register' marriages.
- Train Muslim women to conduct Islamic marriage ceremonies and also have them certified as an "Authorised" person to solemnise marriages.
- Use the 'Model Muslim Marriage Contract' for Islamic marriages or at least incorporate the condition on exiting marriage contracts used by mosques that gives women the delegated right to divorce (*talaq-e-tafwid*).
- Ensure the two witnesses to marriage are independent and not related to the bride or groom (to safeguard against forced marriages)
- Remove the requirement that the woman has to have a male guardian at the marriage (to safeguard against forced marriage)
- Highlight to women (and their families) that the marriage gift (*mahr*) is a woman's Islamic right and does not have to be symbolic and should be set fairly and reasonably according to the groom's financial situation.

b. Divorce

- Inform women that civil divorce can count as an Islamic divorce when the husband initiates the divorce or the wife does but the husband agrees to it and make this position clear on organisational websites.
- For religious bodies that operate under the Arbitration Act, ensure that they inform their clients (verbally and in writing) about their rights under civil law and their right to approach the civil courts and have the decision set aside by the courts if they deem it to be unfair.
- Ensure the divorce panels are small (e.g. panel of three as in tribunals) and have panelists who are independent, properly vetted and include women who are involved in decision making and not just used for mediation and counselling.
- Draw up code of conduct is drawn up and followed to ensure panelists do not step outside their remit and only ask questions impartially without being accusatory in tone.
- Ensure there is transparency by: explaining decisions in writing; making clients aware of the complaints procedure (including copy on the website) and providing details of panelists on the website.
- Have a Code of Practice in place to ensure that women are not treated less favourably than men, directly or indirectly, and that practices comply with the Equality Act 2010. This should include: not requiring the presence of the husband to make a divorce application; not blaming women and speaking to them impartially (without being judgmental); not pressuring women to meditate if they do not want to; giving equal weight to a woman's testimony (and not requiring her to provide male witnesses); not pressurising her into staying in a marriage she does not want to be in (which should also include avoiding usage of religious texts to emotionally blackmail them and to make them feel guilty); considering



all the evidence (impartially) that women provide; without bias scrutinising whether the husband's financial demands are justified; and ensuring women are not pressurised by husbands for a more favourable civil divorce settlement in exchange for a religious divorce.

- Have robust safeguarding procedures in place that ensure safety of women and children is considered at all times, especially those who at risk of domestic violence or are victims of domestic violence and are victims of forced marriage. This should include: identifying women and children who may at risk of abuse; not disclosing addresses of women to their husband's or other family members if they are in safe accommodation; meetings for victims of domestic violence or forced marriage do not take place at the same time or even on the same day as meetings for husbands or other family members who may pose a risk; not requiring mediation for women who are victims of abuse; not requiring women to visit homes of religious scholars or mediators alone; providing details of help and support available to women suffering from domestic violence including advice about reporting to the police; and alerting the police or social services if children are at risk of or have been abused.
- Ensuring that the mediators are properly vetted, impartial and are independent to the divorce panel and meetings take place in a safe environment.
- Setting divorce fees that are fair and that do not discriminate against women e.g. equal divorce fees for men and women. Also as good practice consider having tiered fees to take into account women who may be on low income or on benefits and those who may have already obtained a civil divorce (which in most cases would count for an Islamic divorce anyway).

Appendix 1

Evidences for Non Requirement of Guardian's Consent For Marriage

The *hadith* “the marriage of a woman who marries without the consent of her guardians is void.” (Abu Daud 2080, Narrated Abu Musa),” which is used to justify that permission from a guardian is necessary has been debated amongst scholars with many questioning its strength. Some do not accept it as strong evidence because there is a contradiction in its ‘reporting and connection.’

According to a narration from the Musannaf Abi Shayba Hadith Collection Ayesha performed a nikah of a woman and did not consider it necessary to obtain permission from her father: “Qasim bin Muhammad says that ‘Ayesha (raa) did the nikah of the daughter of ‘Abdur Rahman bin Abi Bakr with Mundhir bin al-Zubair. At that time ‘Abdur Rahman was not present. When he came, he became angry and said, ‘O slaves of Allah! Is it done to a person like me that his daughter is married without his consultation? ‘Ayesha got angry and asked, ‘do you dislike Mundhir?’ A variant of this *hadith* is also recorded in Sharh Ma’ani al-Athar (famous Hanafi *fiqh* manual by Imam at-Tahawi)

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According to another narration Prophet gives women rights to their own ‘nikah.’ Sayyidina Ibn Abaas RA relates: the Prophet SAW stated: ‘A mature woman has more right over her affair in regards to Nikah than her own guardian.’ (Sahih Muslim, Sunan Nasai, Sunan Abu Dawood, Tirmidhi)

The Prophet performed marriage of woman without her guardian being present: A woman presented herself to the Prophet with the intention of being married to him . On this the Prophet remained silent. A companion of the Prophet who was present stated: ‘O Prophet of Allah, if you do not desire to marry her, I would like to do so.’ On the request of this companion and the acceptance of the woman, the Prophet performed their Nikah. The guardian of the woman was not present at this occasion. (Sahih Bukhari, Muwatta Imam Malik, Sunan Nasai)

The Prophet gave permission to woman without permission from her guardian: Sayyidah Umme Salama RA related that after the death of the husband of Subai’ah Aslami RA, two weeks after his passing away she gave birth to a baby (therefore her *Iddah* was complete). Following this, she was sent proposals for marriage from two men, a mature individual and an elderly man. The elderly man, seeing this situation advised her: ‘it is not Halal for you to accept a proposal yet as your guardians/housefolk are not present (they were travelling).’ To understand the truth of this man’s advice, Sayyidah Subai’ah Aslami RA presented her case to the Prophet SAW. The Prophet SAW stated to her: ‘Verily, it is Halal for you! Which ever of them you wish to do Nikah with, you may.’ (Muwatta Imam Malik, Sunan Nasai)

Source (Zakir)

Appendix 2

Glossary

Batil: Nullified or invalid act

Darar: Harm

Darura: Necessity

Fasakh: Annulment or fault marriage

Fatwa: Religious ruling

Fiqh: Jurisprudence

Hadith: Recorded actions or statements of Prophet Muhammad (pbuh)

Hanafi: One of the 4 schools of Islamic law in Sunni Islam founded by the 8th century scholar Abu Hanifa

Hanbali: One of the 4 schools of Islamic law in Sunni Islam founded by the 9th century Iraqi scholar Ibn Hanbal

Iddah / Iddat: Period of waiting a woman must observe after the death of her spouse or after a divorce, during which she may not marry another man.

Ihya Ulum Ul Din: A major work called 'The Revival of Religious Sciences' by the 12th century scholar Al Ghazali

Imam: Leader of congregational prayer

Khul / Khula: A form of divorce initiated by the wife, which is effected by the return of her husband's wedding gift.

Mahr: Dower / wedding gift

Maliki: One of the 4 schools of Islamic law in Sunni Islam founded by the Arab scholar Malik ibn Anas in the early 8th century

Maqasid Al Shariah: Objectives of Shariah

Masannaf Abi Shayba: Well known hadith collection compiled by Ibn Abi Shaybah

Maslaha: Public interest

Mubarat: Divorce by mutual consent

Mufti: Muslim legal expert

Mutah: Temporary marriage in Shia Islam

Nikah: Marriage contract

Pbuh: Peace be upon him

R.a.: May Allah be pleased (with him or her)

Sahih Bukhari: One of the 6 major hadith collections in Sunni Islam and compiled by Imam Bukhari

Shafi: One of the 4 schools of Islamic law in Sunni Islam founded by 9th century scholar Al Shafi

Shariah: Islamic law

Sunnah: Prophet Muhammad's (pbuh) practices

Sunan Abu Dawud: One of the major 6 major hadith collections in Sunni Islam and compiled by Abu Dawud

Talaq: A pronouncement of divorce by the husband

Talaq-e-tafwid: Delegated right to divorce

Wali: Male guardian

Waliyah: Guardianship

Zawaj: Pairing (to mean marriage)

Zhulm: Injustice

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Muslim Women's Network UK

Our Aims

A UK network of women and men to share knowledge, connect the voices, and promote the needs of diverse Muslim women.

Our Vision

A society where Muslim women can have an effective voice and the opportunity to exercise their rights to contribute equally.

Our Aim

To gather evidence about the experiences of Muslim women and girls on key issues affecting them and use the information to improve their rights through advocacy and campaigning.

Our Principles

Principle 1

We are an Islamic feminist movement that uses the Quran's spirit of equality and justice to challenge human interpretations (based on culture and tradition) that discriminate against women and girls, to achieve equal rights and opportunities for all.

Principle 2

We uncover and tackle uncomfortable truths fearlessly, honestly and independently by taking action, which is always in the interests of Muslim women and girls.

Principle 3

We are informed by the voices of Muslim women and girls by gathering evidence of their lived experiences.

Principle 4

We bring about real change through innovative thinking and doing, which positively affects the treatment of Muslim women and girls, resulting in a better society for all.

Principle 5

We demonstrate our inclusivity and non-judgmental stance throughout our policies, procedures and our work.





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