



BRIEFING PAPER

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Islamic marriage and divorce in England and Wales

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Summary

This briefing paper deals with the position in England and Wales.

Recognition of religious marriage

To be legally valid, a religious marriage (other than marriage according to the rites and ceremonies of the Church of England and the Church in Wales, and Jewish and Quaker marriage) must generally take place in a registered building. Those who wish to celebrate their marriage in a place of worship, or elsewhere, that has not been registered for marriage must go through an additional civil ceremony in order to be legally married.

Marriages which take place overseas will be recognised in the UK in specified circumstances.

Islamic marriage and divorce in England and Wales

Many Muslims in the UK have an Islamic religious marriage ceremony – a Nikah – in an unregistered building and do not have an additional civil ceremony. This means that their marriage will not be recognised as being legally valid.

The husband can end a Nikah marriage by using the “Talaq” procedure, which is not court based, whereas the wife will use a different procedure which usually involves an application to a Sharia Council.

The 2018 [Independent Review into the application of Sharia Law in England and Wales](#) found that a significant number of Muslim couples do not register their religious marriage as a civil marriage and that, therefore, some Muslim women have no option of obtaining a civil divorce.

Legal consequences of unregistered religious marriage

The law generally regards parties to a marriage which is not legally recognised as cohabitants, and their marriage as a “non-marriage”, rather than as a void marriage. Although it is not always strictly necessary to do so, the parties to a void marriage may seek a decree of nullity. One advantage of doing so is that, when granting the decree, the court has the same powers to make orders for financial provision as on divorce. This contrasts with the position for “non-marriages” where the parties cannot petition in an English court for a decree of divorce or nullity, and consequent financial provision, if their relationship breaks down, and the court has no power to override the strict legal ownership of property.

In 2018, the Family Court ruled that a Nikah marriage of a specific couple was a void marriage and not a “non-marriage”. The Government appealed. In a judgment published in February 2020, the [Court of Appeal](#) allowed the appeal and held that there had been no ceremony in respect of which a decree of nullity could be granted.

Sharia councils

Sharia Councils deal with aspects of Islamic law and offer advice relating principally to marriage and divorce. Sharia Councils have no legal status and no legal binding authority under civil law. The Government’s position is that people should be free to practice individual religious freedom but that national law will always prevail if it conflicts with religious practices.

Although many people benefit from guidance from faith leaders, there is also some evidence which suggests that some religious bodies might be operating in ways that are

discriminatory against women, including, for example, women being invited to make concessions to their husbands in order to secure a divorce.

Calls for the law to be changed

Independent Review into the application of Sharia Law in England and Wales

The [Independent Review into the application of Sharia Law in England and Wales](#), published in February 2018, found evidence of a range of good and bad practice across Sharia councils and made a series of recommendations to Government including:

- that the law should be changed to ensure that civil marriages are conducted before or at the same time as the Islamic marriage ceremony to ensure that a greater number of women would have the right to a civil divorce and consequent financial provision;
- that cultural change within Muslim communities was necessary so that communities acknowledge women's rights in civil law, especially in areas of marriage and divorce;
- the creation of a body by the State that would set up the process for councils to regulate themselves and design a code of practice for Sharia councils to accept and implement. This recommendation was not unanimous and was rejected by the Government on the basis that regulation could add legitimacy to the perception of the existence of a parallel legal system even though the outcomes of Sharia Councils have no standing in civil law.

In March 2018, the Government published its [Integrated Communities Strategy green paper](#) in which it welcomed the Review. The Government said that it shared the concerns about the lack of legal protections available following an unregistered marriage and about the allegations of discrimination, and that it would consider limited law reform. The Government also stated that it would support awareness campaigns.

In October 2019, the Government indicated that it was still considering the matter of law reform.

Council of Europe resolution

In January 2019, the Parliamentary Assembly of the Council of Europe passed a [resolution](#) which raised concerns about the operation of Sharia councils in the UK, highlighting marital issues and Islamic divorce proceedings. The resolution called on the UK to make it a legal requirement for Muslim couples to register their marriages civilly before or at the same time as their religious ceremony, and to ensure that Sharia councils operate within the law.

Other calls for law reform

- [The Casey Review A review into opportunity and integration](#), published in 2016, also called for the registration of all marriages taking place in the UK;
- the [Register Our Marriage](#) campaign, founded in 2014, is calling for it to be compulsory for all UK religious marriages to be registered.
- Baroness Cox (Crossbench) has introduced Private Member's Bills on related issues for eight consecutive years.

1. Recognition of religious marriage in England and Wales

1.1 Recognition of religious marriages which take place in England and Wales

In order to be recognised as valid, all marriages which take place in England and Wales must be monogamous and must be carried out in accordance with the requirements of the relevant legislation.

Religious marriage in a registered building

To be legally valid, a religious marriage (other than marriage according to the rites and ceremonies of the Church of England and the Church in Wales, and Jewish and Quaker marriage) must generally take place in a registered building. This means that the building must have been certified for religious worship and registered for the purposes of marriage.

The Places of Worship Registration Act 1855 provides for places of religious worship, except those of the Established Church, to be certified by the Registrar General. A building has to be certified as a place of religious worship before it can be registered for marriages by the Registrar General under the Marriage Act 1949.

One year after a building has been registered for the solemnisation of marriages, the trustees or governing body can appoint an “authorised person” to register marriages in the building’s own set of marriage registers. Authorised persons are usually members of the religious community. Further information is provided on the [Gov.UK website](#).¹

Marriage not in a registered building

Those who wish to celebrate their marriage in a place of worship, or elsewhere, that has not been registered for marriage must go through an additional civil ceremony in order to be legally married.

1.2 Recognition of marriages which take place outside of England and Wales

In a 2014 case, Mrs Justice Roberts considered whether a specific marriage which had taken place abroad should be recognised in England and Wales. The judge quoted as authority on this subject a 1930 case where the Privy Council held:

'If there is one question better settled than any other in international law, it is that as regards marriage – putting aside the question of capacity – ... If a marriage is good by the laws of the country where it is effected, it is good all over the world... If the

¹ Gov.UK, [Places of religious worship and the solemnisation of marriages](#), [accessed 18 February 2020]

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so-called marriage is no marriage in the place where it is celebrated, there is no marriage anywhere ...'.²

The document [Family Policy: Partners, divorce and dissolution](#), part of the guidance used by immigration staff when handling visa applications, sets out when a marriage or civil partnership which has taken place overseas is recognised in the UK:

- the type of marriage or civil partnership is recognised in the country in which it took place
- the marriage or civil partnership was properly conducted to satisfy the requirements of the law of the country in which it took place
- there is nothing in the laws of either person's country of domicile at the time of the marriage or civil partnership which prevents the marriage or civil partnership being recognised
- any previous marriages or civil partnerships of the couple have broken down permanently.³

² [K v A \[2014\] EWHC 3850 \(Fam\)](#), paragraph 44, quoting from *Berthiaume v Dastous* [1930] AC 79,

³ Home Office, [Family Policy: Partners, divorce and dissolution](#), 29 May 2019, p8

2. Islamic marriage and divorce in England and Wales

2.1 Islamic marriage in England and Wales

While the exact number is unknown, many Muslims in the UK have an Islamic religious marriage ceremony – a Nikah – in an unregistered building and do not have an additional civil ceremony. This means that their marriage will not be recognised as being legally valid.

In December 2014, the Coalition Government asked the Law Commission to conduct a review of the law governing how and where people can marry in England and Wales.⁴ The Law Commission's subsequent [Scoping Paper](#),⁵ published in December 2015, drew attention to the variety of practices of Muslim couples:

1.34 The practice of religious-only marriage has been highlighted particularly in respect of Muslim couples,⁶ although the variety of practices across Muslim communities should be noted. Some Muslim couples will have separate religious and civil ceremonies; some will regard the civil contract as containing all that is important in religious terms and will not have a separate religious ceremony; and some will go through a legal religious ceremony of marriage in a mosque that has been registered for marriage. Others, however, will only undertake the religious ceremony and will not be married in the eyes of the law.

The 2018 [Independent Review into the application of Sharia Law in England and Wales](#) (the Review) received evidence which indicated that there were a number of possible reasons why some Muslim couples did not have civil marriages, including:

- a lack of awareness that Islamic marriages need to be registered separately to be legal
- failure to register marriage for financial reasons, the belief that should the couple divorce one partner may lose out financially in civil divorce proceedings
- couples wishing to co-habit who see Islamic marriage as a way of appeasing family but are not 'ready' to marry legally
- couples who intend to register their marriage after the Islamic ceremony but never get round to doing it
- possible confusion caused by the recognition of Islamic marriages conducted overseas as valid, when the same ceremony conducted in England or Wales would not be recognised

⁴ Law Commission, [Weddings](#)

⁵ [Law Commission, Getting Married A Scoping Paper, 17 December 2015](#)

⁶ Footnote to text: "R Grillo, Muslim Families, Politics and the Law: A Legal Industry in Multicultural Britain (2015) Ch 3; R Akhtar, "Unregistered Muslim Marriages: An Emerging Culture of Celebrating Rites and Conceding Rights" in J Miles, P Mody and R Probert (eds), Marriage Rites and Rights (2015)"

- individuals who for religious or cultural reasons do not wish to engage with secular marriage at all and so choose to opt out of the civil society process
- the rare practice of polygamy in some Muslim communities which would be illegal in England and Wales.⁷

2.2 Number of unregistered Islamic marriages in England and Wales

In 2015, the Law Commission commented on the number of religious-only marriages:

1.35 The precise number of religious-only marriages is unknown, since by definition they do not appear in any state record. Some of the higher estimates⁸ are based on anecdotal evidence rather than systematic surveys and have been questioned.⁹ Nonetheless, it is telling that only 200 legal marriages in Muslim places of worship were recorded in 2010,¹⁰ against a background population of 2,706,066 Muslims in the 2011 census.¹¹ This of course does not include those Muslim couples who had a civil ceremony before, after, or instead of an Islamic ceremony. But even if there are fewer unregistered marriages than supposed, it is still a serious issue as a religious-only marriage will usually be classified as a “non-marriage” in English law. The result is that the parties to it have no legal status, are not counted as married, and have no protection in the event of the relationship breaking down and no automatic rights if the other party dies.¹²

In 2014, a study of 50 Muslim women in the West Midlands found that while 46 were in an Islamic 'Nikah' marriage, only five were in a legally-recognised civil marriage. Over half were unaware that they lacked the full legal rights and protections of civil marriage.¹³

⁷ [Independent Review into the application of Sharia Law in England and Wales](#), February 2018, p14. Section 5.1 of this briefing paper provides further information about the Review

⁸ Footnote to text: “See eg the “Register Our Marriage (ROM)” campaign, which states that 80% of marriages among Muslims are not legally recognised, <https://www.facebook.com/ainakhanlawyer/posts/629555683843429> (last visited 4 December 2015)”

⁹ Footnote to text: “G Douglas, N Doe, S Gilliat-Ray, R Sandberg and A Khan, *Social Cohesion and Civil Law: Marriage, Divorce and Religious Courts* (Cardiff University, 2011) studied the Shariah Council of the Birmingham Central Mosque and found that half of the cases it dealt with “involved couples who were not married under English civil law” (p 39). Given that such couples have no other forum for their dispute, it cannot be inferred from that that half of all Muslim marriages are not legally recognised”

¹⁰ Footnote to text: “Office for National Statistics, FOI request: Number of Muslim weddings, <http://www.ons.gov.uk/ons/about-ons/business-transparency/freedom-of-information/what-can-i-request/previous-foi-requests/population/number-of-muslim-weddings/index.html> (last visited 4 December 2015)”

¹¹ Footnote to text: “Office for National Statistics, “Religion detailed Table QS210EW” in 2011 Census, Key Statistics for Local Authorities in England and Wales Release, Religion Data from the 2011 Census (2014), <http://www.ons.gov.uk> (last visited 4 December 2015)”

¹² [Law Commission, Getting Married A Scoping Paper, 17 December 2015](#), p18

¹³ National Secular Society, [Data and statistics](#), Source: [Habiba Jaan, Aurat: Supporting Women, Equal and Free? 50 Muslim Women's Experiences of Marriage in Britain Today, December 2014](#) [accessed 18 February 2020]

2.3 Islamic divorce

To be divorced for religious purposes, a couple in a legally recognised Islamic marriage may need to get an Islamic divorce, in addition to any divorce granted by the courts of England and Wales. The HM Courts and Tribunals Service divorce application form draws attention to this:

If you entered into a religious marriage as well as a civil marriage, these divorce proceedings may not dissolve the religious part of your marriage. It is important that you contact the relevant religious authority and seek further guidance if you are unsure.¹⁴

If the marriage is not legally recognised, the religious divorce will be the only divorce available.

The husband can end a Nikah marriage by using the “Talaq” procedure which is not court based, whereas the wife will use a different procedure which usually involves an application to a Sharia Council.¹⁵ The Muslim Arbitration Tribunal (MAT) has indicated that 10% of its workload is concerned with family matters; of that 70% is the granting of Islamic divorces.¹⁶ The Review found that the overwhelming majority of people seeking divorce go to Sharia Councils rather than the MAT.¹⁷

The Review provides further information about Islamic divorce procedure:

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

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

Types of Islamic divorce

1. Talaq

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

2. Khula

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

3. Faskh

This may be granted by a Muslim jurist to the wife against a husband unwilling to agree to a divorce.¹⁸

¹⁴ HM Courts & Tribunals Service, [D8 Application for a divorce, dissolution or to apply for a \(judicial\) separation order](#), May 2019, p1

¹⁵ Section 4.2 of this briefing paper provides information about Sharia Councils

¹⁶ The Muslim Arbitration Tribunal states, “The Muslim Arbitration Tribunal was established in 2007 to provide a viable alternative for the Muslim community seeking to resolve disputes in accordance with Islamic Sacred Law”, [Muslim Arbitration Council. History](#) [accessed 18 February 2020]

¹⁷ [Independent Review into the application of Sharia Law in England and Wales](#), February 2018, p11

¹⁸ Ibid, pp12-13

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The Review pointed to evidence which indicated that the vast majority (over 90%) of people using Sharia Councils are women seeking an Islamic divorce.¹⁹ It found that a significant number of Muslim couples do not register their religious marriage as a civil marriage and that, therefore, some Muslim women have no option of obtaining a civil divorce.²⁰

The [Casey Review, A review into opportunity and integration](#), published in December 2016, considered the imbalance of power in unregistered marriages:

8.44. The imbalance of power in such relationships has been raised a number of times throughout this review. We heard that some men had refused to give or agree to a divorce even though they had moved forward with their lives and remarried; refused or contested an Islamic divorce to extract a more favourable financial settlement from their wife; threatened women with an instant verbal divorce (without having to go through a formal procedure); or threatened to marry again and commit polygamy.²¹

¹⁹ Ibid, p12

²⁰ Ibid, p11

²¹ Footnotes omitted

3. Legal consequences of unregistered religious marriage

3.1 Non-marriage or void marriage?

The law in England and Wales distinguishes between “non-marriages” and “void or voidable marriages” as defined by the Matrimonial Causes Act 1973. The difference is important because it affects the consequences of the ending of the relationship.

Unregistered religious marriages are generally regarded as non-marriages. Although the Family Court ruled in 2018 that a Nikah marriage of **a specific couple** was, instead, a void marriage, the Court of Appeal has now reversed this decision.²² Further information about this case and about the relevance of a marriage being regarded as void rather than as a non-marriage is provided below.

3.2 Non-marriage

Parties to unregistered marriage regarded as cohabitants

The law generally regards parties to a marriage which is not legally recognised as cohabitants. Although cohabitants do have some legal protection in several areas, cohabitation gives no general legal status to a couple, unlike marriage and civil partnership from which many legal rights and responsibilities flow. Another Library briefing paper provides further information: "[Common law marriage" and cohabitation](#)".²³

The consequences of being in an unregistered marriage, and treated as a cohabitant, may be felt particularly when the relationship ends, whether on death or because it breaks down.

Relationship ends on death

When one cohabitant dies without leaving a will, the survivor has no automatic right under the intestacy rules to inherit any part of his or her partner's estate.²⁴ This is the case no matter how long they lived together and even if they had children together.²⁵

It is sometimes possible, under family provision legislation, for a surviving cohabitant to make a claim at court against the estate of their partner,²⁶ if no provision (or inadequate provision) has been made for

²² It should be noted that the case in question is subject to an appeal. In any event, the circumstances of any specific case will be relevant in determining how a particular relationship might be treated

²³ Number 03372

²⁴ The intestacy rules specify who should inherit the property of a deceased person who did not leave a valid will

²⁵ Law Commission, [Intestacy and Family Provision Claims on Death Executive Summary](#), Consultation Paper No 191 (Summary), 29 October 2009, paragraph 15

²⁶ In this context, a cohabitant means a person who lived in the same household as the deceased, as if he or she were the spouse or civil partner of the deceased, for a period of two years ending immediately before the date when the deceased died

them either by will or by operation of the intestacy rules. However, a cohabitant is not treated in exactly the same way as a legal spouse. A surviving spouse or civil partner is entitled to seek such financial provision as it would be reasonable in all the circumstances of the case for a spouse/civil partner to receive, whether or not that provision is required for maintenance. A cohabitant may only seek reasonable provision for their own maintenance.²⁷

Relationship breakdown

Couples who are not legally married, including couples married only in an unregistered and unrecognised religious marriage ceremony in the UK, cannot petition in an English court for divorce, and consequent financial provision. They are also unable to have the marriage annulled because they do not have a marriage that is considered to be void under English law. If their relationship breaks down, the courts have no power to override the strict legal ownership of property and divide it as they may do on divorce, dissolution of a civil partnership or nullity.

3.3 Void marriage

Legislation provides that a marriage is void if (among other things) the parties have “knowingly and wilfully” disregarded certain requirements as to the formation of marriage.²⁸

Although it is not always strictly necessary to do so, the parties to a void marriage may seek a decree of nullity. One advantage of doing so is that, when granting the decree, the court has the same powers to make orders for financial provision as on divorce.²⁹ This contrasts with the position for “non-marriages”.

3.4 Court case

In 2018, the Family Court delivered its decision in the case [Akhter v Khan and The Attorney General](#) and held that the union in question was a void marriage and that the wife was therefore entitled to a decree of nullity.³⁰

The Government appealed. In a judgment published in February 2020, the [Court of Appeal](#) allowed the appeal and held that, in this case, there was no ceremony in respect of which a decree of nullity could be granted.³¹

The facts

The couple had entered into a Nikah marriage in 1998 at a restaurant in London. The wife said that they intended to have a civil marriage as well, although the husband denied this. The judge in the Family Court

²⁷ [Inheritance \(Provision for Family and Dependants\) Act 1975](#)

²⁸ Marriage Act 1949 section 25 (Anglican marriages) and section 49 (marriage under certificate) [Matrimonial Causes Act 1973 section 11\(a\)\(iii\)](#)

²⁹ Another Library briefing paper provides information about financial provision on divorce, [Financial provision when a relationship ends](#) (Number 05655)

³⁰ [Akhter v Khan and Another \[2018\] EWFC 54](#)

³¹ [Her Majesty's Attorney General v Akhter and Khan \[2020\] EWCA Civ 122](#)

expressed himself to be satisfied that the wife asked for a civil registration on various occasions.

In 2016, the wife issued a petition for divorce which the husband defended on the basis that the parties had not entered a valid marriage according to English law. In her reply, the wife claimed that the presumption of marriage arising out of cohabitation and reputation applied so as to validate the marriage. In the alternative, she averred that the marriage was a void marriage within section 11(a)(iii) of the Matrimonial Causes Act 1973.

Family Court decision

Mr Justice Williams began by stating that the case was **not** about considering whether an Islamic Nikah marriage could be valid under English law:

In fact, the main issue as it has emerged is almost diametrically the opposite of that question; namely whether a Nikah marriage ceremony creates an invalid or void marriage in English law. To the average non-lawyer in 2018, it may appear an easy question to answer. Surely a marriage which is not a valid marriage is a void marriage and thus can be annulled? Regrettably it is not that simple.³²

The judge concluded that, on the facts of the case, there was no presumption of a valid marriage under English law. He identified the main issue to be considered as being whether the marriage was void, rather than a “non-marriage”:

So the main issue in this case is whether this marriage – which lasted for 18 years (longer than the average ‘marriage’) and which produced 4 children and where all accepted them as husband and wife in fact is to be treated in English law as not a marriage at all? Not even one which can be declared void for failing to comply with the formalities of marriage?³³

Mr Justice Williams had invited the Attorney General to intervene after a hearing where it became clear that the issues raised were of wider public interest. The Attorney General contended that the ceremony was of no legal effect and so the wife was not entitled to a decree of nullity.

Having considered previous relevant cases, Mr Justice Williams said that they required the court to consider, on the specific facts of the case, whether what the parties did could “properly be evaluated as an attempt to comply with the formalities required in English law to create a valid marriage”.³⁴ He concluded:

a. Unless a marriage purports to be of the kind contemplated by the Marriage Act 1949 it will not be within section 11. What brings a ceremony within the scope of the Act or at what stage the cumulative effect of the failures is to take the ceremony wholly outside the scope of the 1949 Act has to be approached on a case by case basis. When considering the question of a

³² Ibid, paragraph 5

³³ Ibid, paragraph 10

³⁴ Ibid, paragraph 56

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marriage the court should be able to take a holistic view of a process rather than a single ceremony

b. The court should take account of the various factors and features mentioned above including particularly, but not exhaustively: (a) whether the ceremony or event set out or purported to be a lawful marriage including whether the parties had agreed that the necessary legal formalities would be undertaken; (b) whether it bore all or enough of the hallmarks of marriage including whether it was in public, whether it was witnessed whether promises were made; (c) whether the three key participants (most especially the officiating official) believed, intended and understood the ceremony as giving rise to the status of lawful marriage (d) whether the failure to complete all the legal formalities was a joint decision or due to the failure of one party to complete them.³⁵

The wife's arguments included that, in undertaking the evaluation, and in interpreting section 11 of the Matrimonial Causes Act 1973, the court should take into account fundamental rights under the European Convention on Human Rights (ECHR) as brought into effect by the Human Rights Act 1998.

The judge considered that Article 8 of the ECHR (right to respect for private and family life) supported "an approach to interpretation and application which the finding of a decree of a void marriage rather than a wholly invalid marriage".

The judge concluded, on the basis of a "slightly more flexible interpretation of section 11 of the Matrimonial Causes Act 1973 informed by fundamental rights arguments" that, on the facts, the marriage in question fell within the scope of section 11 and was a marriage entered into in disregard of certain requirements as to the formation of marriage:

- a. It was understood by both the husband and wife that they were embarking on a process which was intended to include a civil ceremony in which the marriage would be registered,
- b. The wife's understanding and the husband's expressed position was that this civil ceremony was to follow shortly after the Nikah ceremony
- c. The failure to complete the marriage process was entirely down to the husband's refusal after the Nikah ceremony had been undertaken to take action to complete the marriage process by arranging the civil ceremony.
- d. The wife thereafter frequently sought to complete the marriage process by seeking to persuade the husband to undergo a civil ceremony.
- e. The nature of the ceremony which was in fact undertaken bore all the hallmarks of a marriage in that it was held in public, witnessed, officiated by an Imam, involved the making of promises and confirmation that both the husband and wife were eligible to marry
- f. thereafter the parties lived as a married couple for all purposes
- g. the couple were treated as validly married in the UAE.

³⁵ Ibid, paragraph 94

Mr Justice Williams therefore declared that the marriage was void and that the wife was entitled to a decree of nullity.

3.5 Court of Appeal decision

The Court of Appeal allowed the Government's appeal. It found that the case raised only two issues:

- Whether there are ceremonies or other acts which do not create a marriage, even a void marriage, within the scope of section 11 of the Matrimonial Causes Act 1973; and
- If there are, whether the December 1998 ceremony was such a ceremony, currently described as a non-marriage, or whether, as Williams J decided, it created a void marriage.³⁶

The Court held that there was no breach of Article 8:

(i) Whilst the Petitioner's Article 8 right to respect to family life is undoubtedly engaged, the failure of the state to recognise the Nikah as a legal marriage is not in breach of those rights;

(ii) The right or otherwise to the grant of a decree of nullity does not in itself engage Article 8.

The fact that at the time of the Nikah ceremony both parties knew that in order to contract a legal marriage they had to go through a civil ceremony, and intended to do so, does not undermine either of those conclusions or permit reliance on Article 8 as a means to allow a flexible interpretation of s. 11 of the 1973 Act.³⁷

The Court concluded:

- on the first issue, "that there can be ceremonies which do not create a marriage, or even a void marriage, within the scope of the [Marriage Act 1949] and the [Matrimonial Causes Act 1973] and which do not, therefore, entitle the parties to a decree of nullity".³⁸
- on the second issue, that the December 1998 ceremony did not create a void marriage because it was a non-qualifying ceremony:

The parties were not marrying "under the provisions" of Part II of the 1949 Act. The ceremony itself would have been permitted under s. 44 if it had been performed in a registered building, but it was not. In addition, no notice had been given to the superintendent registrar, no certificates had been issued, and no registrar or authorised person was present at the ceremony. It was not, therefore, a marriage within the scope of, in particular, the provisions of s. 26 of the 1949 Act. We would also add that the parties knew that the ceremony had no legal effect and that they would need to undertake another ceremony which complied with the requirements of the 1949 Act if they were to be validly married.³⁹

³⁶ [Her Majesty's Attorney General v Akhter and Khan \[2020\] EWCA Civ 122](#), paragraph 5

³⁷ *Ibid*, paragraph 106

³⁸ *Ibid*, paragraph 65

³⁹ *Ibid*, paragraph 123

The Court of Appeal considered that the question of whether a marriage is void must depend on the facts as they were at the date of the alleged marriage:

It would make no sense for its legal effect to fluctuate depending ... on future events such as whether the parties did or did not have children. There is no support for this approach to the determination of the legal effect of a ceremony either in our domestic legislation or in the ECHR or in any case to which we were referred. Further, to adopt this approach would also fundamentally undermine the need for the parties and the state to know, as from the date of the ceremony, whether the parties are or are not validly married.

Contrary to the judge's decision, we also reject Mr Hale's submission that, by adopting a holistic approach, the legal effect of the December 1998 ceremony can be changed because the parties intended to marry and intended to undertake a civil ceremony which would have created a valid marriage. We repeat that, in our view, the effect of a ceremony of marriage must be determined as at the date it was performed. To use the language of the 1949 Act, the issue of whether a marriage has been validly "solemnized" depends on what has in fact happened when it was allegedly "solemnized".

We would agree... that the formalities of marriage could be described as a "process". This does not justify, however, treating the civil ceremony which the parties intended to undertake as having in fact taking place. It did not. The effect of what happened cannot, in our view, depend on whether the parties might have agreed to undertake a further step or steps. This might result in a party being married even when they had changed their mind part way through the process. This proposed development of the law would also fundamentally undermine the manner in which the status of marriage is created and the necessary degree of certainty which underpins the required formalities. ...⁴⁰

The Court rejected the submission that the parties' intentions could change what would otherwise be a non-qualifying ceremony into one within the scope of the 1949 Act: "Their intentions provide no legal justification for changing the effect of the only ceremony which in fact took place".⁴¹

⁴⁰ Ibid, paragraphs 124-126

⁴¹ Ibid, paragraph 127

4. The role of Sharia councils

4.1 What is “Sharia”?

The 2018 [Independent Review into the application of Sharia Law in England and Wales](#), (the Review) stated that the term “Sharia” is used in a variety of ways:

Sharia is an all encompassing term which includes not only law in the western sense of the word but religious observances such as fasting and prayer, ritual practices such as halal slaughter, and worship in general. Sharia is written jurisprudence and law developed on the basis of a diversity of opinions among jurists in the classical period of Islam. While many aspects of sharia have been modified or modernised in most Muslim countries, in the area of personal law, especially marriage and divorce, many Muslim societies still observe rulings of classical jurisprudence. The word sharia is used in diverse ways by Muslims and this leads to varying degrees of understanding and application.⁴²

4.2 Sharia Councils

Sharia Councils deal with aspects of Islamic law. The Review stated that there is no clear definition of what constitutes a Sharia Council, but that they offer advice relating principally to marriage and divorce:

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

In contrast to the Sunni communities, Sharia councils are not prevalent in Shia Muslim communities, as stated in the Review:

The evidence this review heard was that, for decisions on divorce, Shia couples need to consult a Grand Ayatollah or an Ayatollah that has been given authorisation from a Grand Ayatollah. The review panel met with two UK Shia organisations of which only one man had the authority, bestowed on him from foreign Grand Ayatollahs, to pronounce an Islamic divorce.⁴³

Sharia Councils have no legal status and no legal binding authority under civil law:

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

⁴² [Independent Review into the application of Sharia Law in England and Wales](#), February 2018, Executive Summary. Section 5.1 of this briefing paper provides further information about the Review

⁴³ Ibid, p10

they do in fact act in a decision-making capacity when dealing with Islamic divorce.⁴⁴

Having heard evidence that Sharia councils fulfil a need, the Review did not consider that the closure of Sharia councils was a viable option:

It is clear from all the evidence that sharia councils are fulfilling a need in some Muslim communities. There is a demand for religious divorce and this is currently being answered by the sharia councils. This demand will not end if the sharia councils are banned and closed down and could lead to councils going 'underground', making it even harder to ensure good practice and the prospect of discriminatory practices and greater financial costs more likely and harder to detect. It could also result in women needing to travel overseas to obtain divorces, putting themselves at further risk.⁴⁵

4.3 Government position

On 2 May 2019, in a Westminster Hall debate on "[Sharia Law Courts](#)",⁴⁶ Edward Argar, who was then a junior Justice Minister, set out the Government's position, affirming that people should be free to practice individual religious freedom within the framework of national law:

Our vision for our communities is that all British citizens, whatever their religious background, should be free to practise individual religious freedom. Many British people of different faiths and none benefit a great deal from the guidance that religious codes and other practices offer. Those values allow us to enjoy our individual freedoms and to lead varied lives in diverse communities. That is one of the great strengths of this great country; however, it has to be within a framework in which citizens share and respect common rights and responsibilities, with unfettered access to national law and our legal institutions to enforce those rights when necessary. Equal access to the law is a key benefit of living in a democratic society. ...

Edward Argar stressed that, in the case of any conflict between religious practices and national law, "national law must, and will, always prevail".

4.4 The practice of some Sharia councils

[The Casey Review: A review into opportunity and integration](#), which was commissioned in 2015 by the then Prime Minister and Home Secretary and published in December 2016, considered the role of Sharia councils. It found that many people benefit from guidance from faith leaders:

Many people in this country of all different majority and minority faiths follow religious codes and practices, seek guidance from faith leaders in dealing with a wide range of life issues and matters of conscience, and benefit from the guidance they receive. Religious communities also operate counselling and mediation services, arbitration councils and boards to resolve

⁴⁴ Ibid

⁴⁵ Ibid, p11

⁴⁶ [HC Deb 2 May 2019 cc195-216WH](#)

disputes. Under British civil laws, a third party can be used to resolve a dispute as long as both sides agree to the arbitration. They cannot, however, replace civil law. The overriding principle is that these rules, practices and bodies must operate within the laws of the UK.⁴⁷

However, the Casey Review had also received evidence that suggested that some religious bodies might be operating in ways that are discriminatory, causing harm and subverting individuals' legal rights:

Functions [of Sharia councils] generally include mediation, issuing religious divorce certificates and occasionally guidance on how to conduct day-to-day activities such as which mortgages or insurance products are consistent with sharia law. How they operate varies considerably depending on factors such as ethnicity, culture, sect and school of thought.

However, we heard about discriminatory practices against women which, in some cases, are causing serious harm. Some women's rights groups have accused Sharia Councils and other parallel legal systems of denying vulnerable women and children access to equality and human rights. There have been claims that some Sharia Councils have been supporting the values of extremists, condoning wife-beating, ignoring marital rape and allowing forced marriage. It has also been claimed that their influence is growing.

We heard about women being charged higher fees than men for using the same service (sometimes up to four times as much) and women facing lengthier processes for divorce than men. Most concerning of all, we were told that some women were unaware of their legal rights to leave violent husbands and were being pressurised to return to abusive partners or attend reconciliation sessions with their husbands despite legal injunctions in place to protect them from violence.

We also heard evidence that some Muslim Arbitration Tribunals in the UK exceeded their mandate in arbitrating on issues outside of their jurisdiction, such as child custody and domestic violence. It was claimed that lack of oversight and an absence of consistent standards meant individuals with little or no training were found dispensing life-changing advice. These experiences often left the women and children feeling traumatised. We have heard reports that there are now up to 100,000 sharia marriages in the UK, many of which are not recognised under UK laws and leave women without full legal rights upon divorce. It has been claimed that 70 to 75% of Muslim marriages in the UK have not been registered under the Marriage Act. The Muslim Women's Network publication, 'Information and Guidance on Muslim Marriage and Divorce in Britain', cites research that found that over half of the cases dealt with by Birmingham Central Mosque Sharia Council involved couples who were not married under English civil law; and references data from their own helpline in which 30% of enquiries about divorce were from women in marriages not recognised legally.⁴⁸

⁴⁷ Dame Louise Casey, [The Casey Review A review into opportunity and integration](#), December 2016, p132, paragraph 8.36

⁴⁸ Ibid, pp132-3, paragraphs 8.39-8.42

5. Calls for the law to be changed

5.1 The Independent Review into the application of Sharia law in England and Wales

The Review

In May 2016, the then Home Secretary launched an independent review into the application of Sharia law in England and Wales. It was tasked with understanding whether, and the extent to which, Sharia law is being misused or applied within Sharia councils in a way that is incompatible with the law.⁴⁹

The [Independent Review into the application of Sharia Law in England and Wales](#), (the Review) published in February 2018, sets out the findings of that review.⁵⁰ It found evidence of a range of practices across Sharia councils, both positive and negative:

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

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

Evidence of good practice:

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

Evidence of bad practice:

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

⁴⁹ A boycott of the Review was instigated by a number of women's rights organisations. These groups were opposed to the review's terms of reference and the selection of some of its panel and advisors

⁵⁰ Cm 9560

- inappropriate and unnecessary questioning in regards to personal relationship matters
- a forced marriage victim was asked to attend the sharia council at the same time as her family
- insistence on any form of mediation as a necessary preliminary
- women being invited to make concessions to their husbands in order to secure a divorce (men are never asked to make these concessions). For example in khula agreements, husbands may demand excessive financial concessions from the wife
- lengthy process so that while divorces are very rarely refused they can be drawn out
- inconsistency across council decisions and processes
- no safeguarding policies and/or the recognition for the need of safeguarding policies
- no clear signposting to the legal options available for civil divorce
- even with a decree absolute a religious divorce is not always a straightforward process and the council will consider all the evidence again
- adopting civil legal terms inappropriately, leading to confusion for applicants over the legality of council decisions
- very few women as panel members
- panel members sitting on sharia councils who have only recently moved to the UK, and who do not have the required language skills and/or wider understanding of UK society
- varying and conflicting interpretations of Islamic law which may lead to inconsistencies.⁵¹

Recommendations

The Review made a series of recommendations to Government.

Amendment of marriage law

The Review recommended legislative change to ensure that civil marriages are conducted before or at the same time as the Islamic marriage ceremony:

Such legislative changes would be through amendments to the Marriage Act 1949 offences sections, so that the celebrant of any marriage, including Islamic marriages, would face penalties should they fail to ensure the marriage is also civilly registered. This would make it a legal requirement for Muslim couples to civilly register their marriage before or at the same time as their Islamic ceremony.⁵²

⁵¹ The [Independent Review into the application of Sharia Law in England and Wales](#), Cm 9560, February 2018, pp15-16

⁵² [Independent Review into the application of Sharia Law in England and Wales, Cm 9560](#), February 2018, p5

The Review considered that linking Islamic marriage to civil marriage would ensure that a greater number of women would have “the full protection afforded to them in family law and the right to a civil divorce, lessening the need to attend and simplifying the decision process of sharia councils”.⁵³

In addition, the Review panel received evidence that, in the majority of councils, when a (civil) decree absolute is produced, the Islamic divorce is pronounced as a formality. The Review recommended that this should be the case for all Sharia councils and that this should be built into the best practice guide to be used as part of the regulation of Sharia councils.⁵⁴

The Review also recommended that further legislative amendments should bring Islamic divorce in line with that of the Jewish Get (divorce document). This would allow the court to refuse to finalise a civil divorce until an Islamic religious divorce has been obtained, if it thinks unfair pressure is being used in the religious proceedings.

Building awareness

The Review panel considered that cultural change within Muslim communities was necessary so that communities acknowledge women’s rights in civil law, especially in areas of marriage and divorce:

Awareness campaigns, educational programmes and other similar measures should be put in place to educate and inform women of their rights and responsibilities, including the need to highlight the legal protection civilly registered marriages provide.

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

Regulation

The panel proposed (not unanimously) the creation of a body by the State that would set up the process for councils to regulate themselves. That body would design a code of practice for Sharia councils to accept and implement and could go on to monitor and audit compliance. The code of practice should include/require at least the following:

- in matters of family law councils should confine themselves to religious marriage and divorce only
- any matters respecting children and financial remedies must be referred to the family justice system
- a proper understanding of the role of the family justice system and how and when to direct parties to it
- common application forms, marriage certificates and divorce certificates
- the promotion of standard marriage contracts to include a clause giving the wife a right to divorce

⁵³ Ibid, p6

⁵⁴ Ibid, p23

- a common approach to fees or at least a range of fees
- the need for safeguarding policies including how to deal with applications for a religious divorce brought by vulnerable women
- clarification of reporting duties for example in relation to domestic violence
- the proper recognition and role of women as panel members of councils
- the issuing of a religious divorce following a Decree Absolute in the family court
- agreed transparent systems of record keeping
- training and accreditation through existing schemes where a council offers mediation or arbitration services
- preventing forum shopping among councils
- consideration of language barriers and the provision of interpreters where required
- there must be appeals, complaints and disciplinary procedures.⁵⁵

The dissenting view was also set out. It doubted that the State should have any role, and that this might reinforce the “myth of separateness of certain groups”.⁵⁶

Government response

The Government responded to the Review’s recommendations in a [Written Ministerial Statement on 1 February 2018](#),⁵⁷ and in the [Integrated Communities Strategy green paper](#).⁵⁸

Written Ministerial statement

On 1 February 2018, the then Home Secretary, Amber Rudd, made a written Ministerial statement announcing publication of the Review. She said that the Government would carefully consider the review’s findings, but rejected recommendation 3 (regulation of Sharia councils):

The Government considers that the proposal to create a State-facilitated or endorsed regulation scheme for Sharia councils would confer upon them legitimacy as alternative forms of dispute resolution. The Government does not consider there to be a role for the State to act in this way. Britain has a long tradition of freedom of worship and religious tolerance and regulation could add legitimacy to the perception of the existence of a parallel legal system even though the outcomes of Sharia Councils have no standing in civil law, as the independent review has made clear. Many people of different faiths follow religious codes and practices and benefit from their guidance. The Government has no intention of changing this position and for this reason cannot accept recommendation three.

⁵⁵ Ibid, p20

⁵⁶ Ibid, p27

⁵⁷ [HCWS442 \[on Faith Practices\], 1 February 2018](#)

⁵⁸ 14 March 2018

Amber Rudd reiterated that Sharia councils must abide by the law:

The review found some evidence of Sharia councils forcing women to make concessions to gain a divorce, of inadequate safeguarding policies, and a failure to signpost applicants to legal remedies. This is not acceptable. Where Sharia councils exist, they must abide by the law. Legislation is in place to protect the rights of women and prevent discriminatory practice. The Government will work with the appropriate regulatory authorities to ensure that this legislation and the protections it establishes are being enforced fully and effectively.⁵⁹

Integrated Communities Strategy Green Paper

In March 2018, the Government published its [Integrated Communities Strategy green paper](#) in which it welcomed the Review.⁶⁰ The Government said that it shared the concerns about the lack of legal protections available following an unregistered marriage and about the allegations of discrimination:

Other relationships, such as unregistered religious marriages, are also not recognised under marriage law in England and Wales, leaving individuals without full legal rights upon divorce should the marriage break down. This can particularly leave women vulnerable both to financial hardship upon divorce and to unfair treatment by some religious councils.

As identified by the recently-published independent review into the application of sharia law in England and Wales, this can be a particular problem for Muslim women. There is some evidence that some sharia councils may be working in a discriminatory and unacceptable way – for example by seeking to legitimise forced marriage and making arrangements on divorce that are unfair to women.⁶¹

The Government said that it would consider limited law reform:

The government is supportive in principle of the requirement that civil marriages are conducted before or at the same time as religious ceremonies. Therefore, the government will explore the legal and practical challenges of limited reform relating to the law on marriage and religious weddings.⁶²

The Government also stated that it would support awareness campaigns:

Government will also support awareness campaigns in partnership with voluntary sector organisations, such as advice centres, non-government organisations and women's groups, to educate and inform couples and their children of the consequences of not having a civilly-registered marriage. This will include the signposting of advice and information to address misconceptions.⁶³

⁵⁹ [HCWS442 \[on Faith Practices\], 1 February 2018](#)

⁶⁰ 14 March 2018

⁶¹ [Integrated Communities Strategy green paper](#), 14 March 2018, p56

⁶² [Integrated Communities Strategy green paper](#), 14 March 2018, p58

⁶³ Ibid

The Integrated Communities Action Plan

On 9 February 2019, the Government published [The Integrated Communities Action Plan](#) which included the following actions related to marriage:

Action plan	Lead Department	Delivery date
We will continue to engage with key stakeholders, including faith groups, academics and lawyers, to test views on the policy and legal challenges of limited reform relating to the law on marriage and religious ceremonies. We will then take forward, from April 2019, the detailed work to give best effect to the policy objective.	MoJ	April 2019
We will support awareness campaigns to educate and inform couples and their children of the benefits of having a civilly registered marriage, including funding for voluntary organisations led by Register Our Marriage to roll out local targeted awareness campaigns in three areas.	HO / MHCLG	Early 2019
We will support training of faith leaders to ensure they understand the English legal system, including equalities and marriage legislation, British culture and our shared values, and that they are well versed in their rights and responsibilities to better support their congregations.	MHCLG	Spring 2019

Government update: October 2019

On 23 October 2019, Baroness Cox (Crossbench) asked the Government for an update on progress towards implementing the first recommendation of the Review (amendment of marriage law).⁶⁴

Lord Keen of Elie, Advocate-General for Scotland, indicated that the Government was still exploring options:

My Lords, the review recommended creating an offence that would apply to celebrants of religious marriages that do not confer legal rights. We continue to explore across government the practicality of such an offence among other potential options and whether it would achieve the change of practice intended.

⁶⁴ [HL Deb 23 October 2019 cc601-3](#)

Lord Keen reiterated that he considered the issue to be as much social as legal:

My Lords, one is clearly concerned where equality of treatment is not available as it should be under our law, but I repeat a point that I made on a previous occasion, albeit the noble Baroness, Lady Cox, may take issue with it: this is as much a social issue as it is a legal issue. Many people in this country choose to cohabit rather than go through any form of marriage but, within the Muslim community, cohabitation is severely frowned upon. It is for that reason that we find that many go through this informal form of marriage, which is not recognised under our law.

5.2 Council of Europe resolution

The resolution

In January 2019, the Parliamentary Assembly of the Council of Europe passed a [resolution](#) which raised concerns about the discriminatory nature of some Sharia rules, including those on divorce and inheritance, which, it said, are incompatible with the European Convention on Human Rights.⁶⁵

The resolution raised concerns about the operation of Sharia councils in the UK, highlighting marital issues and Islamic divorce proceedings:

The Assembly is also concerned about the “judicial” activities of “Sharia councils” in the United Kingdom. Although they are not considered part of the British legal system, Sharia councils attempt to provide a form of alternative dispute resolution, whereby members of the Muslim community, sometimes voluntarily, often under considerable social pressure, accept their religious jurisdiction mainly in marital issues and Islamic divorce proceedings but also in matters relating to inheritance and Islamic commercial contracts. The Assembly is concerned that the rulings of the Sharia councils clearly discriminate against women in divorce and inheritance cases. The Assembly is aware that informal Islamic courts may also exist in other Council of Europe member States.

The Assembly called on the Member States of the Council of Europe to protect human rights “regardless of religious or cultural practices or traditions on the principle that, where human rights are concerned, there is no room for religious or cultural exceptions”.

The resolution called on the UK to make it a legal requirement for Muslim couples to register their marriages civilly before or at the same time as their religious ceremony, and to ensure that Sharia councils operate within the law:

14. The Assembly, while welcoming the recommendations put forward in the conclusions of the Home Office independent review into the application of Sharia law in England and Wales as a major step towards a solution, calls on the authorities of the United Kingdom to:

⁶⁵ Parliamentary Assembly of the Council of Europe, [Resolution 2253 \(2019\), Sharia, the Cairo Declaration and the European Convention on Human Rights](#)

- 14.1. ensure that Sharia councils operate within the law, especially as it relates to the prohibition of discrimination against women, and respect all procedural rights;
- 14.2. review the Marriage Act to make it a legal requirement for Muslim couples to civilly register their marriage before or at the same time as their Islamic ceremony, as is already stipulated by law for Christian and Jewish marriages;
- 14.3. take appropriate enforcement measures to oblige the celebrant of any marriage, including Islamic marriages, to ensure that the marriage is also civilly registered before or at the same time as celebrating the religious marriage;
- 14.4. remove the barriers to Muslim women's access to justice and step up measures to provide protection and assistance to those who are in a situation of vulnerability;
- 14.5. put in place awareness-raising campaigns to promote knowledge of their rights among Muslim women, especially in the areas of marriage, divorce, custody of children and inheritance, and work with Muslim communities, women's organisations and other non-governmental organisations to promote gender equality and women's empowerment;
- 14.6. conduct further research on the "judicial" practice of Sharia councils and on the extent to which such councils are used voluntarily, particularly by women, many of whom would be subject to intense community pressure in this respect.

The Assembly called on the UK to report back, by June 2020, on the actions taken as a follow-up to the Resolution.

Government response

On 28 February 2019, Baroness Cox asked the Government, following the Resolution, what plans it had to review the Marriage Act 1949 to make it a legal requirement for Muslim couples to civilly register their marriage before, or at the same time as, their Islamic ceremony.⁶⁶

Lord Keen of Elie, Advocate-General for Scotland, replied:

We are aware of Resolution 2253 from the Parliamentary Assembly of the Council of Europe. We remain committed to exploring the legal and practical challenges of limited reform relating to the law on marriage and religious weddings, as outlined in the Government's recently published Integrated Communities Action Plan.

Baroness Cox pressed the Minister for an assurance that legislation would be introduced as a matter of great urgency.

Lord Keen acknowledged Baroness Cox's concern but spoke of the complexity of the law. He stressed that Sharia councils must abide by the law:

My Lords, we share the noble Baroness's concern that some may feel compelled to accept decisions made informally, such as those made by religious councils. But marriage is a complex area of law and the issues will require careful consideration. We intend to

⁶⁶ [HL Deb 28 February 2019 cc298-300](#)

explore those, as I indicated. Where sharia councils exist, for example, they must abide by the law. Where there is a conflict with national law and the court is asked to adjudicate, national law will always prevail.

On 4 July 2019, Baroness Cox asked again for a progress report on implementing the recommendations of the Review and on what assessment the Government had made of the Council of Europe resolution that all Islamic marriages should also be registered as civil marriages.

Lord Keen of Elie gave the following update:

My Lords, further work on the issues raised began in the spring, as announced in the Integrated Communities Action Plan. This work will explore reform possibilities in relation to the issue that some people may marry in a way that does not create a legally recognised marriage.⁶⁷

Lord Keen spoke specifically of the Council of Europe resolution:

My Lords, with great respect, some of what has been said by the Council of Europe in its Resolution 2253 does not reflect the true position of marriage law in England and Wales. In particular, the reference to civilly registering a marriage is inept. It does not reflect the true position of our law in England and Wales. Civil registration per se is not a route to a lawful marriage.

5.3 Casey Review

[The Casey Review: A review into opportunity and integration](#) also called for the registration of all marriages taking place in the UK:

All marriages, regardless of faith, should be registered so that the union is legally valid under British laws. We have heard strong arguments that the Marriage Act should be reformed to apply to all faiths and that faith institutions must ensure they are properly registered and operate within existing legislation. Faith groups and leaders, with the support of Government, must ensure anybody advising couples is appropriately vetted and adequately trained, not simply theologically but also in matters pertaining to domestic abuse.

We need to ensure that women in 21st century Britain are better informed about their rights and, in particular, practices relating to marriage and divorce. We must put a stop to cases where, in the name of religion, women and children are given short shrift, discriminated against and denied the rights that this country provides for everyone.⁶⁸

5.4 Register our marriage campaign

The [Register Our Marriage](#) campaign, founded in 2014, is also pressing for changes to the law. It describes itself as follows:

Register Our Marriage is a campaign aimed at reform of the Marriage Act 1949 to make it compulsory for all UK religious marriages to be registered. We want to raise awareness of the

⁶⁷ [HL Deb 4 July 2019 cc1515-17](#)

⁶⁸ Dame Louise Casey, [The Casey Review A review into opportunity and integration](#), December 2016, paragraphs 8.50-51

fact that spouses are not protected by English law in unregistered religious marriages which have been conducted in the UK.

We are a dedicated group of people spread all over England and Wales, comprising of lawyers, academics, parliamentarians and other stakeholders working together. We are a diverse bunch representing a cross-section of British society, both men and women, young and old, religious and secular.⁶⁹

5.5 Private Member's Bills

Baroness Cox has introduced related Private Member's Bills for eight consecutive years.⁷⁰

For example, Baroness Cox introduced her [Marriage Act 1949 \(Amendment\) Bill \[HL\] 2017-19](#) in the House of Lords on 10 July 2017. This aimed to "make amendments to the Marriage Act 1949 to make provision for all religious marriages to be solemnized on the authority of a superintendent registrar".

In July 2019, Baroness Cox spoke of the suffering of some Muslim women caused by the application of Sharia law:

Many come to me desperate, destitute and even suicidal, with no rights following asymmetrical divorce inflicted by their husbands, or trapped in unhappy polygamous marriages. The recommendations of the sharia law review and the message from the Parliamentary Assembly of the Council of Europe are totally consistent with the objectives of my Private Member's Bill, which requires all religious marriages to be registered, thereby giving women the rights they so urgently need.⁷¹

Lord Keen of Elie did not agree that Baroness Cox's Private Member's Bill was the appropriate way forward:

My Lords, we understand and recognise that there is a very real issue here, but it is more of a social issue than a legal one. I cannot accept that the proposed way forward set out by the noble Baroness in her Private Member's Bill is appropriate. Her proposals would effectively deregulate marriage ceremony law and undermine the safeguards in it, including those relating to sham and forced marriages.

(...)

Let us be clear on what the position is, because some of this proceeds on a misapprehension. It is perfectly possible to perform a lawful marriage in England and Wales under sharia law provided that the relevant mosque has been identified and registered by the registrars as a place for the performance of that ceremony, and a person has been identified by the registrars as suitable to be present for that ceremony. The law of England and Wales has then to be adhered to. Sharia law is not the law of England and Wales; it has no standing. Our national marriage law prevails in these matters. I reiterate: we understand and appreciate that there is a social issue here, because many are not aware of the true position of our law in respect of marriage. Indeed, many are not prepared to adhere to that in circumstances where one or

⁶⁹ [Register our marriage. Who we are](#) [accessed 18 February 2020]

⁷⁰ [HL Deb 28 February 2019 c298](#)

⁷¹ [HL Deb 4 July 2019 cc1515-17](#)

other party may be ignorant of their true position and its consequences.

This Bill did not make any further progress and fell when Parliament was prorogued.

Other Bills introduced by Baroness Cox similarly did not become law. For example, the [Arbitration and Mediation Services \(Equality\) Bill \[HL 2016-17\]](#), had its Second Reading on 27 January 2017,⁷² but did not proceed any further. Among other things, this Bill would have placed an obligation on public authorities to ensure that those who had a religious but not a legally recognised marriage, were made aware that they might be without legal protection.

⁷² [HL Deb 27 January 2017 cc891-925](#)

6. Other consideration of Islamic marriage and divorce

6.1 Home Affairs Select Committee inquiry

In June 2016, the Home Affairs Committee launched an inquiry into Sharia councils operating in the UK. The Committee said that it would examine how Sharia councils operate in practice, their work resolving family and divorce disputes and their relationship with the British legal system.⁷³

Due to the general election on 8 June 2017, the Committee closed this inquiry. Evidence given to the Committee before the inquiry was closed is available on the [Parliament website](#).⁷⁴

6.2 Law Commission weddings project

On 28 June 2019, the Government launched a Law Commission review of the law governing how and where marriages can take place in England and Wales.⁷⁵ The Law Commission's [full terms of reference](#) are available on the Law Commission website.

The Law Commission has stated that the Government will ensure that it considers the work and recommendations of the Law Commission as it takes forward its separate work on the recommendation of the Independent Sharia Review (exploring the legal and practical challenges of limited reform relating to the law on marriage and religious weddings).⁷⁶

6.3 Research report

A [report published by Cardiff University](#) in 2011 explored how religious law functions alongside civil law in England and Wales and looked at the operation of three religious courts in relation to marriage and divorce.⁷⁷

⁷³ Home Affairs Committee, [Sharia councils inquiry](#) [accessed 18 February 2020]

⁷⁴ Ibid

⁷⁵ Gov.UK, [First ever marriage review to free-up dream wedding venues](#), 28 June 2019 [accessed 18 February 2020]

⁷⁶ Law Commission, [Weddings](#) [accessed 18 February 2020]

⁷⁷ Gillian Douglas, Norman Doe, Sophie Gilliat-Ray, Russell Sandberg and Asma Khan, ["Social Cohesion and Civil Law: Marriage, Divorce and Religious Courts Report of a Research Study funded by the AHRC"](#), June 2011

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