An exploratory study of Shariah councils in England with respect to family law

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Acknowledgements

Policy briefing

There is no single authoritative definition of the term 'Shariah council'. Therefore, care should be taken when using this term. The majority of organizations to which this term can be applied appear to have a primary role of helping Muslim women to obtain a religious divorce[1]. This work appears to form part of the various services that have developed within Muslim communities to meet local needs.

Most of the organisations which undertake this work are closely linked to mosques. Panels of individuals examine cases and work with the different parties before deciding whether to issue a Muslim divorce certificate. These panels may or may not identify themselves as Shariah councils.

The panels vary in size and in the approach taken. Ethnic diversity and a variety of different Muslim schools of thought lead to different interpretations of Sharia family law.

The organisations surveyed sought to avoid conflict with the state and did not appear to have any desire to replace civil law mechanisms. Fears that councils are forming a parallel legal system appear to be unfounded.

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[1] Men do not need to approach a Shariah Council to obtain a Muslim divorce certificate as they can pronounce a talaq divorce. Muslim women can divorce their husbands without their husbands permission but must involve a religious scholar, hence the use of Shariah Councils.

Summary

Context

There is no single and authoritative definition of the term 'Shariah council'. In the UK, the main function of organisations to which this term could be applied is the provision of advice and help to Muslim women seeking a religious divorce. These bodies also provide advice in matters of law including issues of inheritance, probate and wills, Islamic commercial law contracts and issuing fatwas (see Shah Kazemi 2000). However, little is known about their work, despite much public debate. The aim of this project was to learn more about the nature and scope of Shariah councils in England, with a particular focus on their administration. The project also looked more generally at the feasibility of further research in this sensitive area.

Approach

Organisations that appeared to undertake Shariah council work were identified using Muslim directories, online searches and researcher contacts. A process of 'snowball' sampling, in which respondents were asked to nominate additional contacts, was also used. These methods identified thirty groups involved in this type of activity. Henceforth these will be referred to as 'Sharia councils', regardless of their self-identification, unless otherwise stated. It became apparent at a later stage that some smaller councils closely associated with mosques had not been included.

A telephone survey of the thirty councils was undertaken. Respondents included religious scholars and other key individuals within the organisations. Respondents from 22 of the 30 councils took part. No contact was achieved with 5 councils and 3 refused to take part. There were no major differences between participating and non-participating councils in terms of size of council and affiliation to a mosque.

Interviews were based on a semi-structured questionnaire exploring the structure, administration and funding of councils, council membership, and processes employed.

Research challenges

Councils were generally run on a volunteer basis, were short staffed and very busy. This led to practical difficulties in speaking with respondents. There was also reluctance to discuss the private work of the councils and concerns that the research might contribute to surveillance of Muslim communities. Respondents were also wary of the stereotypical ways in which their organisations were represented in the media. A further major challenge for the research was the

difficulty building up trust with respondents using the telephone survey approach. This has implications for future research.

This study was intended to be a small exploratory study and as such the methodology was based on the telephone method. Given the findings do not provide a complete picture of Shariah council activity in England and can only present the information offered by respondents. However the research does give an insight into the range of work of Shariah councils in the UK and suggests characteristics that are likely to be common to many councils.

Findings

Council characteristics

All the councils expressed the desire to support Muslims with family problems who sought to resolve conflict within an Islamic framework. Of the 22 councils that took part, only 3 operated outside the auspices of a mosque. The councils generally formed part of a wider range of community services, rather than being distinct and separate bodies.

Administration of the councils was generally overseen by a panel of religious scholars and volunteers. This tended to be closely affiliated to a mosque committee. Councils varied in size, structure and the type of advice given. All respondents cited 'user demand' as the reason for their council's existence. However, constraints on resources (including people, space and funds) limited the services that could be offered.

Panel members

Shariah council panels included religious scholars. These individuals were all male and aged 35-80 years old. The involvement of women at some shariah councils included providing counseling for Muslim women but these women did not form part of the panels that are permitted to issue divorce certificates. Scholars also acted as fully trained Imams and had received formal Islamic jurisprudential training in India, Pakistan, Egypt, Saudi Arabia and Yemen. Other panel members included individuals from the local community, such as GPs and Islamic school teachers.

Process and cases

The organisations in this study dealt primarily with Muslim divorce.

As documented by Shah-Kazemi (2000) and Bano (2007) Shariah Councils have been set up specifically to issue Muslim women with Muslim divorce certificates on occasions where Muslim husbands may fail to issue Muslim women with the unilateral Muslim divorce, *talaq*. The intervention of religious scholars at Shariah Councils allows Muslim women to remarry and to prevent a limping marriage scenario (see Pearl and Menski 1998) whereby they may be divorced via civil law but remain married according to Islamic Law.

Fifteen councils followed some type of formal process prior to issuing a divorce certificate. In these councils two or three primary advisors dealt with each applicant on a personal basis. They met with the applicant, her husband, and usually with other people from the families of both parties. Several meetings were undertaken to obtain information, and to attempt reconciliation and mediation. Counselling and mediation services were specifically mentioned by 10 respondents.

Meetings of the larger panel of between 12 and 15 people took place around once a month, to discuss cases and collectively decide whether a divorce certificate would be issued. All the councils required the parties who had a English civil law marriage to have completed a civil divorce prior to obtaining a Muslim divorce. Respondents reported councils seeing between 80 and 200 cases a year. Approximately half of the respondents reported seeing a rise in demand for their council's work. Offering these services generated a large workload for those involved. However the work was described as part of an Islamic 'duty' to help Muslims resolve their disputes within an Islamic spirit of community, based on Islamic values.

The panels varied in size and in the approach taken. Ethnic diversity and a variety of different Muslim schools of thought lead to different interpretations of Sharia family law.

Relationship to civil law and reluctance for state intervention

The councils in this study sought to avoid conflict with civil law. Respondents defined their role as that of a community framework for resolving matrimonial disputes within Muslim communities. There were no community mechanisms or sanctions in place to enforce the terms of divorce. This was left to the goodwill of the parties concerned. Most respondents did not seek any replacement of state civil law systems with Islamic law.

The majority of respondents also stated that they would be reluctant to see state intervention to facilitate or fund their work. They felt that this would result in a loss of trust and credibility within the Muslim communities.

Knowledge of the processes followed and of the views of women who use these services remains limited. Due to the exploratory nature of this work, the views of women users were not sought and considered in this report.

1 Introduction

Aims of the project

This project represents early work into mapping Shariah councils in England and Wales. It had three objectives:

1. To identify as accurately as possible the number and location of Shariah councils in England.
2. To describe the administrative structure, funding and membership of Shariah councils in England.
3. To describe the range and quantity of family related work carried out by Shariah councils.

It also aimed to make some preliminary recommendations regarding future research.

The scope of the study was limited to providing preliminary insight into the workings of Shariah councils. In particular, an analysis of the experience of Shariah council users and of records of cases kept within Shariah councils could not be conducted.

Due to limitations in method, time-frame and resources the study was not able to identify all the number and location of Shariah councils in England. It cannot therefore produce a definitive list of all the Shariah Councils in England.

Islam in the UK

The 2001 Census[2] indicated that there were about 1.6 million Muslims in the UK. Muslim communities are diverse, with migration and settlement of individuals from Europe, South Asia, South East Asia, the Middle East and Africa. Today the largest groups of Muslims are migrants and their descendents from Pakistan, Bangladesh and India. According to the 2001 Census, Pakistanis and their descendants constitute 43% of the Muslim population, by far the largest group of Muslims in Britain today.

The diverse backgrounds of British Muslims are reflected in the cultural and religious aspects of their lives, including family relationships, marriage and divorce. Understanding the nature of Shariah councils requires an appreciation of this complexity.

Muslim law

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[2] Details on Census data can be obtained at http://www.ons.gov.uk/census/index.html

Muslim law, or 'the Shariah[3]', provides an overarching framework of values and rules relating to all aspects of life for Muslims. Subjects covered range from religious observance to the norms of family life. Within the application of the Shariah, there is great diversity depending on ethnicity, sect and school of thought.

Muslim law derives from two principal sources, the Qu'ran (Koran) and the Sunna. The Qu'ran is believed by Muslims to be the word of God, as revealed to the Prophet Muhammad. The Sunna is a body of work, formed out of traditional stories transmitted from the Prophet Muhammad, called Hadiths. The Hadiths provide guidance to Muslims on the words and deeds of the Prophet. For Muslim scholars the Hadiths set out in the Sunna provide a guide to understanding the Qu'ran, from which are derived the principles of Islamic jurisprudence.

Muslim law includes extensive guidance on family issues, including marriage, divorce, maintenance, custody of children and succession (Pearl and Menski 1998, Ali 2000, An-Na'im 2002). Muslim family law is subject to different interpretations by different religious leaders, individuals and communities.[4] A great diversity of Islamic legal thought and practice has evolved over time in different Muslim countries. The practice of Shariah is not fixed, but is dynamic and evolving.

There is some evidence to suggest that in some Muslim communities, family law may be practiced at a local level. For example, studies by Shah Kazemi (2001) and Bano (2007, 2008) indicate that Muslim marriage and divorce can take place within the private spheres of family, home and local community, sometimes without registration in English law. Such religious and cultural practices may be very different to the practice of marriage according to the principles of English law. Writers such as Menski (in Pearl and Menski 1998) and Shah (2005), have explored possible conflicts between such practices and state law.

Marriage and divorce in the UK

For a UK marriage to be recognized under English law, a number of requirements must be met. These include the ceremony taking place in a registered building and being performed by a registered individual. While most Anglican marriages meet these requirements, this is not the case for many religious minority weddings. As a result many couples who are members of

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[3] Shariah literally means 'a path to a watering place' (Doi 1984: 3).
[4] The two major sects within Islam – the Sunni and the Shia – are represented in Britain. The practice of Islam within these groups varies in accordance with the different Shariah schools of thought. The four major schools within the Sunni tradition are Hanafi, Maliki, Shafi and Hanbali. The wider Shia group also includes some sub-divisions (for example, Ismaili Muslims) which practice distinct laws applicable only to them. It is therefore difficult to speak of 'Muslim family law' in Britain, because of substantial variation with ethnicity and sect.

ethnic minority communities have both a civil marriage and their traditionally recognized wedding.

For many Muslims, and those from other religious minorities, their religious marriage is important to them as it confers social and religious recognition of their relationship. Appropriate dissolution of the religious marriage, should it fail, may be central to an individual's self identity and position in the community. This may be the case regardless of whether they have obtained a civil divorce under English law.

Those who obtain a civil divorce but not a religious divorce may find it difficult to remarry. This position is sometimes referred to as a 'limping marriage', and it is found in several traditions where religious law sanctions both marriage and divorce. For example, Orthodox Jewish women may be unable to remarry in a religious ceremony without first obtaining a religious divorce from their husband. This problem was partially addressed by the Divorce (Religious Marriages) Act 2002.

In addition, it is thought that some Muslim women, for a multitude of reasons, may contract a religious marriage but not undertake a civil marriage registration (see Shah Kazemi 2001, Bano 2007). While such women may consider themselves fully married, their position under English law *is similar to that of cohabitees*, because their relationship does not have the status of a legally recognised marriage. This may leave them vulnerable should their relationship end.

Muslim marriage and divorce

Under Muslim law, marriage is based on a contract, the nikah, which can be likened in some ways to a pre-nuptial agreement. The nikah outlines the rights, duties and responsibilities of the parties (Menski and Pearl 1998). It includes a sum of money called the mahr (dower) agreed between the parties and given to the bride by the groom. The essential elements of the formal marriage ceremony are an offer of marriage by the husband and its acceptance by the wife, in the presence of two witnesses.

There are several types of Muslim divorce and a great diversity of approaches to these amongst the different schools of Islamic thought. Muslim men have the right to unilaterally terminate their marriage. Such a divorce is known as talaq. Divorce may also be granted by mutual consent, where parties have included a term in their nikah (marriage contract) that permits the wife to divorce if she wishes. A further type of divorce, the khul divorce, can be instigated by a wife with her husband's agreement, on the condition that she forgoes her right to the mahr (excluding instances of neglect and abuse). Faskh permits the marriage to be annulled if the wife can prove her husband as acted unreasonably.

Each type of divorce above requires the intervention of a religious scholar and must fulfill certain criteria (e.g. the husband deserting the wife). Further research is needed to establish precisely how Shariah councils justify their issuing of divorces under these various categories.

Shariah councils as part of Muslim community services

Shariah councils in Britain appear to have arisen to meet the particular needs of Muslim communities in this country. There is no common definition of what constitutes a Shariah council, making discussion and research into their attributes necessarily tentative. A very general description would be that of Muslim organisations that offer advice and help to Muslims in resolving problems involving the application of Shariah, and in particular to, women seeking a religious divorce. Not all organisations which offer these services define themselves as Shariah councils[5].

Shariah councils seek to resolve disputes according to the principles of Muslim family law. Underpinning this approach is the ideal of dispute resolution - an attempt to reconcile and mediate between the parties.

Shariah councils are part of the community structures, such as mosques, that have emerged to facilitate Muslim settlement in Britain (see Anwar 2002). There are thought to be around 2,000 mosques and Islamic centers in the UK. These are spread out geographically and ethnically, as well as according to the different Islamic schools of thought. They operate both at a local and national level to meet the spiritual, practical, educational and social needs of the community. In this way they function both to encourage the positive integration of Muslims into British society and to foster close links amongst local Muslim communities.

Mosques are normally managed by a local independent mosque committee that takes responsibility for appointment of the Imam and other paid and volunteer staff. The title 'Imam' is applied to individuals who lead prayer in the mosque, to scholars of Muslim jurisprudence, and to appointed prayer leaders in mosques (MCB 2006).

Mosque committees themselves are volunteers who donate their time out of a sense of civic responsibility (BMG, 2009). A number of umbrella organisations such as the Muslim Council of Britain and the Muslim Association of Britain claim to represent British Muslims in national and international fora.

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[5] This relates to the question identified in this study namely of what constitutes as a Shariah Council. We are aware that some bodies specifically identify as a 'Shariah Council' but others may offer to issue religious divorces but do not identify as a Shariah Council but offer such services as part of wider pastoral and religious services and instruction based in community local mosques

In this report the terms 'religious scholar' and 'religious leader' refer to appointed persons in Shariah councils (who may be Imams) who offer advice and assistance.

The variety of community organisations offering religious support to Muslims and the lack of clear networks and structures has made research in this area difficult. Empirical research has generally been limited to small, in-depth studies. Research by Shah-Kazemi (2001) and Bano (2007) has provided a window on the workings of a small numbers of councils. Their reports include the experiences of users and give context to this research. In addition to difficulties in identifying councils, engaging respondents to discuss a potentially sensitive subject is a great challenge for this type of work.

2 Method

Creation of a sampling frame and mapping of Shariah councils

There is no single, authoritative definition of precisely what constitutes a Shariah council. In drawing up a list of possible organisations, the researchers considered both the services offered by various groups, and whether these groups defined themselves as Shariah councils.

Bodies which might fall within the category of 'Shariah councils' were identified using a variety of sources. These included on-line searches, Muslim directories, and an array of personal networks and contacts. From their wider research on Islam in Britain, the researchers had numerous contacts within local Muslim organisations and umbrella organisations, such as the Muslim Council of Britain (MCB), the Al-Khoei Foundation and British Muslim Forum (BMF). A snowballing approach was taken with informal contacts. People were asked if they knew of other individuals who might offer further information, these new contacts were then followed up and the process continued.

The different sources were used to identify organisations where some kind of Shariah related advice on family law matters was available to local Muslim communities. Organisations were included if they dealt specifically with issues concerning marriage breakdown, and had the capacity to issue Muslim divorce certificates. It was found that many organisations did not undertake Shariah council work themselves, but instead offered general advice or signposting for women and couples looking for support[6]. Due to the limitations of time and resources the telephone method allowed an excellent overview of the number of Shariah councils operating in England and was therefore useful in a short preliminary project providing the basis for future work.

The final sample

The final sample included established Shariah Councils and mosques, and some new Islamic centres where preliminary enquiries suggested that advice on matrimonial matters was being offered to local Muslim communities. It therefore included a range of different types of organisation. It was hoped that this spectrum of organisations could provide an insight into the type of advice being offered in different organisations and regions.

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[6] This study only looked at organisations that offered the service of issuing Muslim divorce certificates and if they did this they were included in the sample. Muslim organisations that did not provide this service but offered other general advice were not included (e.g. domestic violence, housing etc) as this would then not have been a study on Shariah councils - but of Muslim community organisations more generally.

A final list of 30 councils was identified. The researchers are confident the final sample included the major large Shariah councils operating in England. However, during fieldwork, through discussions with contacts and respondents, it became apparent that certain small Shariah councils based in local community mosques or local organisations had been missed. Due to the scope of the study only those councils that were publicly well known, or well known in the local community, and those councils that dealt with family law related matters were included in the sample. The list should not be seen as definitive. However, the findings do shed light upon a number of the major councils in Britain and are likely to highlight issues common to many councils.

Contact was attempted with all of these. In five cases no contact was achieved, while three respondents refused to take part. Respondents from 22 councils took part in the research. Councils where a respondent took part were located as follows:

London   6 councils

Midlands   10 councils

North   6 councils.

Participating and non-participating councils were compared, using information obtained from the mapping exercise to examine contrasts between size of council, affiliation to a local mosque and whether the council had a public profile. No major differences were found, but other factors unknown to the researchers may have played a part.

Data collection

Once the thirty groups which would be included in the study had been identified, telephone interviews took place with key contacts identified within the organisation. The contacts included religious scholars and key individuals who had in-depth knowledge of the organisation and its services. In each case the researchers spoke to individuals who were directly involved in the organisation(s).

Data were collected through semi-structured telephone interviews. These used clear and direct questions, the sequence of which could be altered to allow interviewers to probe for more information. As discussed below, in practice, engagement with respondents was sometimes difficult and probing was not always successful.

The interview questions focused on the structure, administration and funding of the Shariah councils. There were also questions on the membership of councils and the process of dispute resolution which they used (see Appendix for full set of questions).

This project was conducted between early July and early September 2009 (no fieldwork took place between for a month between mid August to September 2009 during the month of Ramadan).[7]

Ethical considerations

The research raised a number of ethical considerations. All organisations that agreed to take part in the study were afforded complete anonymity. This was to ensure that any confidential issues being discussed in the interviews would not jeopardize the work of the councils and their clients. Understandably there was also a high expectation of confidentiality, which was granted. All participants were cautious about their involvement with the project due to the adverse publicity generated by media representations of 'Shariah courts' and 'Shariah law'.

Data security was a high priority. Telephone interviews were recorded by hand. Once this data was collected and anonymised it was transferred with due care to the project manager who stored the data in accordance with University guidelines on ethics and storage. At no point was data held on laptops. All personal and other data, (both electronic and paper copies), were destroyed at the end of the project. This included the deletion of electronic 'temporary files'.

Data Analysis

Analysis of the data comprised a thematic review of the key issues that arose in the interview data. This was structured around the questions in the interview schedule. The data analysis began with a general overview of all the key themes that emerged in the data. These themes were then categorised; for example, council size and administration, types of advice given and the process of issuing divorce certificates. This also brought to the fore any commonalities and differences between the councils found in the data. Due to the limited number of interviews computer programmes for data analysis were not considered appropriate. Due to issues of confidentiality it was agreed with respondents that no direct quotations from the interviews would be included in the final report.

Limitations and research challenges

As noted above, within practical time and resource constraints it was not possible to provide a definitive list of *all* of the organizations undertaking Shariah Council work in England. Nevertheless, the final list can be said to have included all of the major large Councils as well as at least a reasonable number of the smaller ones, and to provide useful information about the operation of Shariah councils in general.

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[7] In 2009 the month of Ramadan took place from 22nd August until 19th September 2009.

There were a number of practical difficulties in contacting organizations by using the telephone method. These led to some limitations in the data, but at the same time consideration of these problems provides useful information for planning future research and also tells us something about the nature of these organisations. Problems making contact included difficulties in obtaining accurate contact details of organisations, inaccurate information over which *individuals* to contact within an organisation, lack of staff within councils to deal with telephone enquires, and prearranged telephone interview calls being unanswered or interrupted. It was found that organisations were run on a volunteer basis, and tended to be very busy and short staffed.

In addition to these practical difficulties, there was a general reluctance to engage with the research for the reasons outlined below.

Matters concerning marriage and divorce within Muslim communities are largely confined to the private sphere of family and home, and sometimes the local community. The work of Shariah councils is often understood as an extension of such familial relations. There was a general reluctance on the part of respondents to discuss such private or personal issues in the public forum represented by this government funded research. It was argued that such matters should remain private in order to protect client confidentiality and anonymity.

A number of council respondents were suspicious that the data collected would be used by the government to undermine the work of local community organisations and mosques. They therefore refused to take part or limited their responses to 'yes' and 'no'. Some were concerned that participation might contribute to the stereotype that Shariah councils seek to replace civil law mechanisms for resolving matrimonial disputes and/or seek the wholesale introduction of Shariah law into English law. Another reason for not taking part was the concern that this project would contribute to surveillance on Muslim communities in order to 'manage' their presence in British society.

A small number of respondents specifically pointed to the report by Civitas[8] published in June 2009. This report claimed that 'Sharia law has already become quite entrenched in Britain' (p2) and suggested that its implementation could contravene English legal principles of equality, non-discrimination and justice. The timing of the report, just prior to the start of fieldwork for this project, influenced a small number of respondents who subsequently refused to take part citing concern about media projection of Shariah councils. Some councils also reported an increase in the volume of enquiries received from the media after the publication of the Civitas report and were again more reluctant to take part.

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[8] Denis MacEoin, Sharia Law or One Law for All? Civitas, London June 2009

Some difficulties in persuading respondents to take part had been expected. The use of a telephone survey adopted made it difficult to develop relationships between interviewers and respondents and therefore limited the data collected. However, this was an early exploratory study across a wide geographical area using simple and non-contentious questions and therefore the views of council users were outside the remit of this study and not sought. Obtaining more in-depth data would require researchers and respondents to build up relationships and trust over a longer time period (see later section on suggestions for further research).

3 Results

Councils as part of other community services

As noted above, there is neither a shared nor an authoritative definition of the term 'Shariah council'. The criteria used to identify councils in this research led to the inclusion of organisations that specifically dealt with issues concerning matrimonial breakdown. Each organisation had the capacity to issue Muslim divorce certificates to Muslim women. They all expressed the desire to support Muslims experiencing family problems who were seeking to resolve conflicts within an Islamic framework of dispute resolution. This appears to be the common aim of Shariah councils, whatever their actual structure may be. Some councils also issued scholarly opinions (*fatwas*) on a wide range of issues and performed the conversion of new members to the Islamic faith

Thirty councils were identified that dealt with family law issues. Of the 22 councils surveyed, only 3 councils operated outside the auspices of a mosque and had little connection to a mosque committee. Only 1 council pointed out its independence and autonomy from the mosque committee. In the Midlands, 9 of the 10 councils in the sample operated as part of the local mosques in which the councils were based. In the sample of six councils in the North, only one cited no relationship to a larger mosque and/or community organisation. In London, out of six councils, again only one council cited no direct connection or relationship to a mosque.

There was little interaction between councils. Only 5 councils reported that they found it useful to approach other councils for advice and/or assistance.

No regional differences between the councils were found. However it was noticeable that in each region one Shariah council had been established for over 30 years. In each region this council identified itself most strongly as a Shariah council with clear procedures and guidance for users.

Eleven councils described themselves as following the Sunni tradition[9], while two councils were identified as Shia. The remaining seven did not overtly identify with either sect. The services are generally open to all Muslims irrespective of ethnic, class and caste backgrounds. The project found that, in practice, none of the councils turned away a Muslim who was in need and sought to accommodate his or her needs.

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[9] The two great main traditions among Muslims – the Sunni and the Shia – are represented in Britain. The practice of Islam within these groups varies in accordance with the different Shariah schools of thought.

Sixteen councils dealt with clients from outside the town or city in which the council was based. However, they made up only a small number of cases, with the majority of clients coming from the local Muslim communities.

English was the primary language used when resolving disputes. This was to ensure that all clients were adequately represented. On occasions where there was a need to provide additional translation services. For example, if clients spoke only Arabic, the councils reported the use of mosque volunteers. In this sense the mosque and mosque committee acted as a resource.

The Shariah councils surveyed here can therefore be viewed simply as part of the wider set of services offered by mosques, specifically offering advice on Muslim family issues to local Muslim communities. This finding is significant because it challenges the idea that Shariah councils operate as distinct and unofficial legal bodies that seek to introduce Islamic law into English law. Instead the data points to a picture of a wide range of family services available within local Muslim communities.

Council size and administration

The councils varied according to size, structure and the type of advice given. Their size depended on a number of factors such as the number of religious scholars available, the council's affiliation, the size of the related mosque, the availability of space to set up the service, and the number of divorce applicants. All councils reported 'user demand' as key and the primary reason for their existence. However, services were limited due to the availability and expertise of religious scholars, donations and volunteers.

Types of advice given

The councils all offered reconciliation and mediation services, although further details of what this entailed were not explored. The advice given to applicants was reported to be based upon 'Islamic interpretations' of family and marriage rules and guidance based on the two key sources in Islam, the Qu'ran and the Sunna.

Due to the preliminary nature of this work, issues such as ancillary relief, contact and custody of children, sale of homes and domestic violence concerns were outside the scope of this research. Therefore it is *not* possible to report on whether or not these are discussed by the councils.

Ten councils explicitly referred to offering some type of counselling and mediation services prior to the issue of a divorce certificate.

More general matrimonial advice can also be given at local mosques by an Imam (religious scholar). Advice can also be given by Muslim counsellors based in local cultural or religious organisations although they do not issue Muslim divorce certificates.

Each council relies on community and family networks to advertise services, often by word of mouth. Respondents reported that all services were funded by charitable donations, often via local mosque donations or funding appeals to the local Muslim communities.

Council panel members

The administration of the council was generally overseen by a council panel comprised of religious scholars and volunteers. In this project 20 councils reported that they used a council panel, which was closely affiliated to the mosque committee and which facilitated the process of resolving disputes. Of this group of councils 15 reported that the council panel was headed by a 'chairman' who after discussions with other panel members had the final say as to whether a divorce certificate would be issued to the applicant or not.

The respondents in this study identified themselves using terms such as Imam, Qadi, Mufti, Sheikh and Maulvi. It is recognised that these terms   have all be translated into the term 'religious scholar'

All the scholars were male and aged between 35-80 years old.

The data found no evidence of Muslim women acting as religious scholars or forming part of the council panels. However there is evidence that Muslim women can form part of the counselling and mediation services offered by some Shariah Councils (see Bano 2007).

Council panels could also include individuals from within Muslim communities, including professionals such as GPs and Islamic school teachers. Panel members were closely involved in the local mosque and chosen to represent the diversity of experiences within Muslim communities. Only four councils reported the involvement of women and in each case this was to facilitate and manage the process but did not involve giving advice.

Little variation was found regarding the types of religious training the religious scholars had received prior to taking on their roles as advisors in the councils. The councils reported that all the scholars also act as fully trained Imams. They had received formal Islamic jurisprudential training in India, Pakistan, Egypt, Saudi Arabia or Yemen. The nature of this training was not

explored. Although belonging to different schools of thought, the scholars emphasised that advice and guidance based on all schools of Islamic jurisprudence was available.

The councils were set up within mosque premises occupying a room in the mosque with weekly drop-in sessions for clients and panel meetings taking place on average once a month. All the respondents considered Shariah council work as a part of the more general services offered by mosques. Eight councils permitted scholars to take home files but all final decisions as to whether a divorce certificate could be issued were taken by the council panel rather than an individual scholar. In 15 councils it was reported that religious scholars spent an average of 10-15 hours per week on dealing with divorce applications.

There was general agreement that offering such services generated a considerable workload for all those involved. However the work was described as part of an Islamic 'duty' to help all Muslims resolve disputes within an Islamic spirit of community and in an environment based on Islamic rather than secular values.

Processes

A key aim of this research was to explore how the process of resolving disputes actually occurs and how Muslim divorce certificates are issued.

The data revealed two broad ways in which the councils administer the issuing of Muslim divorce certificates. These have been categorised as the formal and informal process.

Formal process

The project found that 15 councils adopted some kind of a formal process prior to a divorce certificate being issued. In each of these councils there were 2 or 3 primary advisors and a council panel comprising of between 5-12 religious scholars who met on a monthly basis to discuss cases and issue divorce certificates. The two religious scholars (the primary advisors) dealt with each applicant on a personal basis, meeting regularly with the applicant, her husband and usually both sides of the family. This is done in order to ensure that the facts of the case are collated from the applicants and their families. All 22 councils required the parties who had a English civil law marriage to have completed a civil divorce prior to obtaining a Muslim divorce. Three meetings typically took place before the Muslim divorce certificate was issued or withheld.

The data revealed that when an administrative process was in place there was very little variation in this process between the councils. This process was described as follows:
- Applicant makes contact with the Shariah council to obtain a Muslim divorce certificate.

- A meeting takes place between the applicant and the religious scholar.
- The applicant is asked to fill in an application form citing the grounds for divorce and pays an administrative fee.
- A divorce notice is sent to the husband asking for his version of events
- If there is no response from the husband a further notice is sent out.
- Once contact has been made with all parties a meeting is arranged to consider reconciliation. The research did not explore what process was followed if contact was not made with the husband and his family.
- If reconciliation fails then a process of mediation begins.
- The religious scholar considers what type of divorce certificate can be issued.
- Once all meetings are completed and evidence has been collected, a copy of the file is passed to all members of the council panel.
- A date is set for a meeting of the panel to discuss all cases, where all panel members make a collective decision as to whether a divorce certificate can be issued.
- If so, a divorce certificate is sent to the applicant *or* she is asked to collect it.

The informal/no process

This study also found that a small of number of councils follow no council administered procedure. No details were obtained as to how they operated in the absence of this.

Enforceability of divorce certificates

The issue of enforceability of Muslim divorce certificates in English law was not addressed. However councils described how they actively sought to avoid any conflict with civil law or procedure in matters of family law and the respondents stated that certificates were issued for the personal use of applicants and not viewed as legal documents to be recognised under English law. The scholars did report that there were no community mechanisms or sanctions in place to enforce the terms of the divorce and this was left to the goodwill of the parties concerned.

Cases

The project found that Shariah councils appear to deal primarily with Muslim divorce, each reporting of between 80 and 200 cases each year. These figures vary according to the size of the council, its location, expertise and the number of volunteers. However, as to the precise nature of these cases was not explored. For example, we do not know whether the figures included general enquiries, or only cases of Muslim women seeking to obtain a Muslim divorce certificate.

Case files were kept on the premises (most often the local mosque) and filed according to the applicants name and/or a file reference number. All materials are deemed confidential but the interviews did not explore the process as to how materials are gathered and filed.

When asked if there had been a growth in demand for their work, approximately half the councils reported a rise. The other councils reported little if any rise and explained variations in the numbers of divorce applications as the result of increased knowledge within Muslim communities about the existence of Shariah councils.

Contact with solicitors and state bodies

Of the sample, 12 Shariah councils reported contact with local solicitors. Contact was made for two reasons. First, if civil registration of the marriage had taken place then confirmation of a civil divorce according to English law was required (as noted above, this was a condition for the issue of a Muslim divorce). Second, where the immigration status of the applicant was uncertain (although no further details were obtained). In general each council reported a willingness to work with solicitors or government agencies should the need arise. This was expressed mainly in terms of support in gathering information.

The councils in this study sought to avoid any conflict with civil law, and indeed required civil divorces where applicable. Councils defined their primary role as community frameworks for resolving matrimonial disputes within Muslim communities. It is interesting to note that, contrary to some media reports, the councils in this study did not seek the replacement of the state's civil law system with Islamic law in matters of marriage and divorce for British Muslims.

Views on state intervention

Nineteen of the councils in this study reported that they would be reluctant to see state intervention to facilitate or fund Shariah council services. The two councils that did seek a closer working relationship with government did so on the basis of opening up a dialogue. This, it was hoped, would result in a formal recognition of the councils, although how and why this should take place was not explored.

In the majority of interviews, scholars indicated that they felt state intervention would result in a loss of trust and credibility within the Muslim communities. The influence of government would mean that such services would no longer be regarded as 'Islamic'. Five respondents reported a concern about the rise of government surveillance on Muslim communities following the 7/7 terrorist attacks and urged caution in allowing secular bodies to scrutinise the work of religious

organisations. As previously discussed, the data also revealed some concern over the public representation of Shariah councils in the media.

4 Conclusion

This exploratory project provides information about the nature and scope of Shariah councils in England that deal with family issues. Its focus was on organisations that are involved in helping Muslim women obtain a religious divorce and is able to tell us little about the other work they undertake. The main conclusions are:

Thirty councils were identified that worked in this area and issued divorce certificates. The study covered a range of organisations but provides fuller coverage of the larger organisations. It suggests a relatively small number of key councils. The project found much diversity in the size of the councils, the number of religious scholars providing advice and assistance, and in the composition of council members.

Most councils were embedded within Muslim communities, forming part of a mosques and community centres. They appear to have evolved according the needs of the communities in which they are located.

A similar process was followed across the councils studied, which involved applicants applying for a divorce, attempts at reconciliation, review of cases by the panel and decisions as to whether to issue a divorce certificate. These certificates were for personal use of the applicant and not enforceable. This highlights the individual nature of people's decision to go to a council.

Finally, the project found that Shariah councils did not seek formal recognition as alternative mechanisms of dispute resolution, and did not seek to replace civil law in matters of family law. Indeed, applicants were requested to have obtained a divorce from the English courts if they had a civil marriage before a religious divorce could be issued. These organisations sought to remain part of Muslim communities, providing practical and spiritual guidance in matters of Muslim family law. They sought to complement the existing legal system rather than replace civil law in matters of marriage and divorce.

The research did not look at processes in detail, and, importantly, did not study the experiences of users of councils. There is much scope for further research in this area.

5 The need for further research

Conducting research within community type organisations such as these is recognised as difficult. Many potential respondents wish their work to remain private, without any form of public, media or state intervention. There are specific difficulties for the researcher, particularly in terms of accessing and negotiating participation. There are also issues around whether or not to match researchers and respondents in terms of background and gender. This raises questions on the nature of data collated and the role of the researcher as an insider/outsider. This preliminary project highlighted some of the challenges involved and the following recommendations suggest ways these obstacles may be overcome.

1) More comprehensive mapping of Shariah councils

While this project has begun to draw a picture of the range and scope of Shariah councils, much remains unknown. This study was unable to explore their work in detail and did not involve council users. To develop our understanding of this area a fuller, more in-depth mapping exercise could be carried out. This could take into account the wide range of organisations that may be involved in providing assistance to Muslim women seeking a religious divorce and possibly providing other dispute resolution services. It could also analyse how such bodies reach their decisions and the nature of the 'legal reasoning' that such decisions are based upon. A closer analysis on the 'process' of issuing Muslim divorce certificates could include some evaluation of how such bodies self-assess and their portrayal within local Muslim communities in which they operate.

2) An in-depth study of council processes

Qualitative semi-structured interviews conducted on a face-to-face basis with key respondents could provide more detailed knowledge of the workings of Shariah councils. This method would allow the interviewer to adapt the research questions depending upon the responses obtained. By allowing the in-depth exploration of specific topics, the interviews could obtain more detailed data, and chart key similarities and differences between different types of Shariah councils. This approach could allow a rapport to be built up between the interviewer and respondent. It might also allow a more protected space for discussion; in the study reported here, even successful telephone calls were often interrupted.

This approach could also include some, ethnographic observation research, with researchers spending time within councils, which could provide further insight into how the councils actually work in practice. This has the potential to allow for better understanding of any possible conflicts or overlap with civil law mechanisms and contacts and trust could develop over time. The data

produced could then enable a detailed analysis of the administration and dispute resolution processes used by the councils.

3) User Perceptions

Further research could include in-depth qualitative face-to-face interviews with Muslim women, as the primary users of Shariah councils, and with men also. Such an approach would be critical to understanding why some Muslim women choose to use Shariah council services and others do not. It could also explore the rise perceived by some in the use of Shariah councils.

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Glossary

fatwa	legal opinion from a religious scholar/jurist
hadith	saying, traditions of the Prophet and his companions
Hanabali	one of the four classical fiqh schools of Sunni Muslim law, founded by Imam Ahmad Ibn Hanbal
Hanafi	one of the four classical fiqh schools of Sunni Muslim law, founded by Imam-I-Azam Abu Hanifa
imam	mosque /prayer leader
khul or khula	release from marriage in return of mahr (dower)
qadi	Muslim religious judge
Qur'an	holy book of Islam
mahr	gift, mandatory in Islam, promised by the groom to the bride upon marriage
Maliki	one of the four classical fiqh schools of Sunni Muslim law. Founded by Imam Malik
Mosque	a Muslim place of worship
mufti	religious scholar
Muslim	a believer or follower of Islam
maulvi	mosque/prayer leader
nikah	Muslim marriage
Ramadan	Islamic month of fasting
shariah or shari'a	A legal framework for Muslims regulating public and private aspects of life.
Shia	An Islamic sect that regards Ali (the fourth caliph of Islam) and his descendants as the rightful successors of the prophet
sunna	exemplary behaviour in the life of the Prophet Muhammad
Sunni	literally, 'one on the path'. The largest sect of Muslims who unlike Shias, acknowledge the first 4 caliphs as the rightful successors of

the prophet. They generally follow one of the four classical schools of jurisprudence, Hanafi, Shafi'i, Maliki, and Hanbali.

talaq the unilateral pronouncement of divorce by a husband

Appendix

Research questions

1. The structure, administration and funding of Shariah councils
- How many councils are affiliated to this one, if it all?
- Where are they located?
- Are they related to a mosque and/or a worship centre and/or a charity?
- What kind of community are they based in, by size, national origin, cultural background and ethnicity and school of Islam?
- How are they funded; [are there any external sources of funding or does it solely emerge from the community]?
- Do they have a full time or part time administrative staff?
- Are they paid or voluntary?
 - How many of them are male/female?
 - Do they have full time or part time volunteers?
 - How many of them are male/female?
 - Do they have full time or part time employees?
 - How many of them are male/female?

2. Council members
- How many council members are there in each council, locally individuated?
- Are council members full or part time?
- Are they male or female?
- What is their age range?
- What if any training do they receive?
 - In which country did they receive training?
- What additional skills do they bring to their work (i.e. as professionals or otherwise [What are their occupations outside council work, if at all?])
- What school of Islam do they follow?
- How many hours/sessions do they offer for council work?
- Are council members volunteers or are they paid to undertake this work?

3. Processes
- Do council members work from home or council premises?
- Do they work individually or in groups?
- How do clients approach the council, directly or through another agency?
 - Which is the procedure to be followed to have a case issued by the Shariah council?
- How are cases recorded?
- What is the catchment area?
- What kinds of matters come before the council?
- Do they offer mediation and/or arbitration and/or family counselling services?
- Do they refer to other agencies? Which ones?
- How is the advice given recorded?
- Which is/are the language used?
- Does the council review its work?
- Does the council work with or liaise with other councils and/or ADR institutions?
- Does the council prepare reports for lawyers and/or judges and/or other bodies?
- is there a growing demand in the work of the council – if so, what is causing it [i.e. awareness, interest, speculative?]