Exclusive Report: ‘Sharia Courts’ in Britain

Women are at risk -- but there’s no such thing as ‘Sharia courts’

Pickthall investigates ‘Sharia courts’ and finds a lack of transparency and safeguarding, but also no evidence that these councils operate as legal authorities

Worries about the growing number of so-called ‘Sharia courts’ in Britain are widespread, as are prominent calls for the abolition of these institutions for oppressing women and children. Pickthall has investigated the issue, and found that women and children are indeed often made extremely vulnerable by a lack of transparency, safeguarding and professionalism in Britain’s Sharia councils. However, claims of a ‘parallel legal system’ misunderstand the nature of British law and its commitment to religious freedom and individual liberty. Sharia councils and other religious councils need serious reform, but not abolition.

Summary of Findings

- Sharia councils in Britain have **no legal authority** (paragraph 982), and operate as voluntary tribunals for solving disputes under the 1996 Arbitration Act.
- Nearly all cases dealt with by these councils relate to religious marriage or divorce, with most of the rest being financial disputes. Sharia councils **cannot address criminal cases** so are not a parallel legal system.
- Despite this, there is evidence that these councils sometimes **fail to respond appropriately to crimes** they are aware of, like domestic violence.
- There is also evidence of a widespread **lack of awareness** among some Muslim women of their legal rights under British law.
- Some Sharia councils may be **exceeding their proper role** by resolving disputes over child custody.

Summary of Recommendations

- Sharia councils, and other voluntary religious councils such as Catholic tribunals and Jewish Beth Din, should be required by legislation to **register as charities and record their decisions publicly.** This legislation should also require councils to:
    - Make all parties using their services (especially vulnerable people) aware that, as voluntary arbitration facilities, their **decisions are not legally binding;**
    - Follow a **safeguarding duty** to, whenever they are aware of or reasonably suspect crimes such as domestic abuse or credible threats of violence issued by family members, **report these to relevant legal authorities**;
    - Refer any **matters involving children** to the family justice system;
    - Ensure that any mediation or counseling services for marital reconciliation that they offer are delivered by **trained and accredited professionals.**

- Pickthall **rejects proposals to ban Sharia councils** from offering voluntary arbitration (so long as the above measures are taken to ensure use of the councils is genuinely voluntary) as conflicting with the traditional British commitment to religious freedom.

What Are ‘Sharia Courts’?

So-called Sharia courts in the UK are councils of imams and specialists scholars of *Sharia*, the set of ethical guidelines derived from Muslim religious texts. Around 85 of these councils are believed to operate in the UK, but as many of them are not registered as charities or businesses, this number is an estimate. These councils offer legally non-binding recommendations to persons who choose to seek their opinion and advice on matters relating to their religious beliefs. It is important to note that these councils are not, in fact, courts, because British law does not recognise them as having any authority to enforce their decisions.

In theory, under British law, choosing to seek and to follow the opinion of a Sharia council is strictly voluntary (but as we will shortly discuss, this is not always the case in practice). Councils of religious specialists in other faiths, including Catholic diocesan

tribunals and Jewish Beth Din, have the same non-authoritative legal standing as providers of voluntary arbitration services.

The right to seek arbitration of private disputes from persons or councils of one's choice is a longstanding principle of British law, confirmed in the 1996 Arbitration Act. All British citizens are free to resolve their disputes in line with whatever set of values they personally affirm, and, if they wish to, to appoint trusted specialists to conduct this resolution. In this sense, the right to use Catholic tribunals, Beth Din, or Sharia councils is a fundamental British value.

However, there are presently serious problems with the operation of Sharia councils in practice. To deflect attention from these problems with accusations that those who raise them are 'Islamophobic' is deeply irresponsible and wrong. These problems often relate to **failures in safeguarding** and **lack of transparency**.

Cases Addressed by Sharia Councils

Religious Marriage and Divorce

A government investigation into Sharia councils, published in 2018, found that over 90% of the cases dealt with by Sharia councils concern religious marriage and divorce (p. 5). A large proportion of Muslim religious marriages (around 66% by some estimates) in the UK are not legally registered as civil marriages. This means that around two thirds of Muslim couples who are religiously married are not legally recognised as married at all.

Because of this situation, some public figures, such as the authors of the 2018 government report (p. 5) have called for changes in marital law to require celebrants of Muslim religious marriages to ensure the marriages are also legally registered as civil marriages. Supporters of this policy believe it will protect women and children from abuse or mistreatment they might be exposed to in religious marriages by providing them with a legal means to divorce.

However, Pickthall believes this policy is not the right solution, because it would involve a disproportionate infringement of liberty that will potentially affect all British citizens of any faith or none. British law, rightly, does not criminalise non-marital relationships, including long-term cohabitation and the raising of children out of wedlock. If a couple who are not legally married wish to hold a religious or non-religious ceremony of any kind to celebrate their relationship, or to privately use the term 'marriage', or any other

term, to refer to their relationship, the default position should be that they have the right to do so. Moreover, the very real vulnerabilities faced by many Muslim women in non-registered marriages can be solved through the guiding principles of **safeguarding** and **transparency** (see 'Problems with Sharia Councils', below).

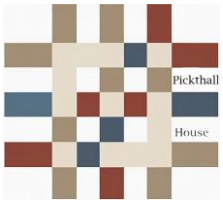
Commercial Contracts

Other than marital issues, most of the remaining small minority of cases dealt with by Sharia councils relate to commercial agreements (see p. 11). Here, Sharia councils such as the Muslim Arbitration Tribunal act as voluntary forums for resolving business disputes. Their decisions, while not legally binding in themselves, are treated as voluntarily agreed commercial contracts, so can be enforced by British courts on the same terms as any other private commercial contract. This means, of course, that decisions can only be enforced if this is agreed by a qualified judge in a British court and if the contract in question contains nothing that contravenes ordinary British law. Pickthall does not believe this situation poses any obvious problems: Sharia councils' commercial decisions simply constitute private contracts and can be enforced (or not enforced) on the same terms as any other private contract.

Problems with Sharia Councils

Inappropriate terminology

Although in theory Sharia councils are simply forums for voluntary arbitration, there are a number of problems with their operation in practice. First, some Sharia councils wrongly give the impression that they are 'courts' with legal authority, and the media wrongly reinforce this by referring to the councils as 'courts'. Since many Sharia councils are not registered and do not publicly document their activities, it is hard to assess exactly how widespread this problem is, but the Government's 2018 review found significant evidence of councils "adopting civil legal terms inappropriately", confusing users about "the legality of council decisions" (p. 16). It should be illegal for any voluntary arbitration service to use terminology that might falsely imply legal standing.



Lack of safeguarding

The best available evidence (p. 19) suggests that, while some Sharia councils have safeguarding policies to protect children and know exactly how many cases of domestic violence come to light during proceedings, and what proportion of these are not reported to appropriate authorities. However, even one such case is too many. Domestic violence is illegal under British law and no minority cultural or religious practice can override this.

Just as counsellors and therapists have a safeguarding duty to recognise and report signs of domestic abuse under the 2014 Care Act, the same principles must apply to religious providers of voluntary arbitration services, including Sharia councils. For this duty to be enforced, Sharia councils must first be required to register as charities and to publicly publish the identities of their arbitration personnel and their decisions in arbitration cases. Arbitrators must be trained in appropriate safeguarding policies. women from domestic violence, many do not. Due to the informal and unregistered nature of Sharia councils, it is impossible to

Jurisdictional over-reach

Since children cannot consent to follow the decisions of a voluntary religious arbitrator, child custody or other matters pertaining to the rights and interests of children should not be dealt with via Sharia councils. For the most part, Sharia councils recognise this (paragraph 996), but there is a lack of consistency in this (as in other) matters due to the lack of transparency and the informality of many Sharia councils. There must be an enforceable statutory duty for Sharia councils, and other religious voluntary arbitration services, to refer individuals to civil courts where children's interests are at issue.

Lack of transparency and risk of coercion

There are also legitimate concerns that some individuals using Sharia councils, especially women, might be unaware of their legal rights under British law and therefore vulnerable to pressure to follow the rulings of Sharia councils against their will. Surveys suggest that, of the approximately two third of religiously married Muslim women whose marriages are not legally registered, nearly a third of these wrongly believe themselves to be legally married. Muslim leaders conducting religious marital ceremonies must inform prospective spouses of the fact that these weddings do not constitute legal

marriage, and the implications of this for their legal rights and protections, to ensure that free and informed consent can be given.

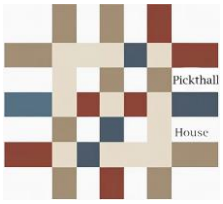
There is also anecdotal evidence of some Sharia councils failing to make individuals aware of their legal rights, notably by not providing "signposting" (p. 16) to the appropriate legal guidance on marriage and divorce. To ensure all users of Sharia councils are freely agreeing to their arbitration in full knowledge of the implications, councils should be required to advise users of their legal rights before they agree to arbitration.'

Recommendations

Pickthall House believes the principle of British citizens' right to voluntarily use religious arbitration services should be defended, but that it must be **absolutely clear that there is only one legal system and that Sharia councils are not 'courts' and have no legal authority.** As such, we believe the government should remedy the existing confusing legal situation in which informal and unregistered Sharia tribunals often operate without transparency or professionalism.

A variety of possible frameworks (p. 6-8) for regulation of so-called "minority legal orders", like Sharia councils, exist. The extreme options of prohibition and non-interference are unworkable. Banning voluntary religious arbitration would be an unacceptable intrusion on traditional British liberties, while doing nothing about the problems that obviously exist with Sharia councils would betray vulnerable women and children and sacrifice their interests for the sake of a specious form of multiculturalism. Britain must also avoid models that grant rigidly defined "group rights" (p. 6) to minority communities, since in practice this accords authority to the individuals holding the most social power within these groups; and must equally avoid allowing religious communities' norms to change the overall legal system, which must be fair and equal to citizens of all faiths and none. The correct middle way is a model of "cultural voluntarism" (p. 7), whereby the right to use voluntary arbitration services in line with a particular set of religious values is a right belonging to every individual British citizen – but where the state has an interest in ensuring this choice is genuinely voluntary.

Assessing claims of 'pressure' placed on vulnerable persons to agree to religious arbitration, where this falls short of direct threats of violence, should follow existing guidelines for identifying "undue influence". It is wrong to assume that Muslim women



are incapable of making their own choices because of vague notions of community 'pressure'. Some level of influence from others on one's choices is a fact of life; learning to contend with the risk that others may disapprove of one's decisions is both a burden and a blessing of liberty. Equally, however, we must avoid assuming that the absence of threats of physical violence always indicates free and informed consent. The existing tools of British law should, unless proven otherwise, be viewed as sufficient to navigate this dilemma.

There is some debate as to how this should be done. While the majority of the committee conducting the government's review of Sharia tribunals supported recognition and regulation of Sharia courts by the "creation of a body by the state" to develop a "code of practice" (p. 20), one member argued that creating a new regulatory system risked giving "quasi-legal status" to the councils (p. 21), and supported regulation under existing laws governing charities that offer services to the public.

Pickthall believes that whether Sharia councils are regulated through existing frameworks or new legislation is a technical question that does not turn on an issue of principle. Regulating councils will not legitimise them as "quasi-legal" institutions, provided the regulation is combined with clear communication of the councils' non-legal and voluntary status. Whatever overall framework is used to regulate Sharia councils, therefore, the following substantive aims must be achieved:

Registration and formalisation

Sharia councils must be **required to register**, either under existing charities legislation or new legislation for religious voluntary arbitration services, and to retain publicly accessible records of their personal, policies, and decisions. As part of the registration process, arbitrators should be required to undergo **safeguarding training**.

Signposting and transparency about legal rights

Sharia councils should **not be permitted to use terminology that implies they are courts** with legal standing or that their decisions constitute civil law. Before agreeing to arbitrate a dispute, they must **provide parties requesting arbitration with full information about their legal rights under British law** so that the decision to agree to arbitration is genuinely voluntary. Sharia councils must **never rule on cases pertaining to the status of children**, but must refer these to the relevant authorities.

Similarly, celebrants of non-legally-binding Muslim marriages must **inform couples of the legal implications** of entering such a marriage before conducting ceremonies.

Safeguarding

Finally, it must be made absolutely clear to all providers and users of religious arbitration services like Sharia councils that **domestic abuse and violence are never acceptable, and the state will never turn a blind eye to their occurrence** in the name of 'diversity'.

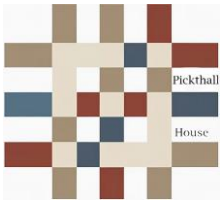
Any person working for a Sharia council (or other religious arbitration body) who is aware of signs of abuse and fails to report them to the appropriate authorities must be subject to the same sanctions that a secular counsellor or therapist would face in these circumstances. The 2014 Care Act provides an appropriate framework which can be adapted to religious arbitrators.

Conclusion

Britain has a long and proud tradition of protecting religious liberty as well as other personal freedoms. Pickthall firmly believes there is no contradiction between these two values.

Sharia councils in Britain do not comprise a 'parallel legal system'. There is only one legal framework, which is the same for citizens of all faiths and one. Within this framework, citizens may choose to refer to voluntary arbitration services, which may sometimes be religious in ethos, provided this is based in free and informed consent.

Despite this, Pickthall is aware of a disturbing pattern in which basic norms of transparency and safeguarding are often not followed by Sharia councils. Exactly how common these failings are cannot be ascertained with certainty due to the informal nature of many Sharia councils. What can be said with certainty is that even one case of abuse or violence that is ignored, not to say legitimated, by a Sharia council is entirely unacceptable.



Pickthall supports transparent, even-handed and proportionate regulation of Sharia councils on the same terms as other religious arbitration services. This regulation must be guided neither by hostility to faith, nor by blind respect for ‘diverse’ cultural practices, but by commitment to the liberties of British citizens and to protecting the rights and interests of vulnerable women and children.