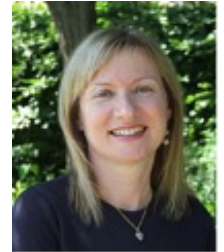


## Religious courts provide a useful service for those whose faith they represent but they are in no way replacing civil law in the area of marriage and divorce

*Following the Archbishop of Canterbury's lecture on Religious and Civil Law in 2008, the existence and status of religious courts has proved controversial in the UK. These concerns have come to the fore more recently as a result of the [Arbitration and Mediation Services \(Equality\) Bill](#) (HL Bill 72), introduced into the House of Lords by Baroness Cox, which seeks to regulate the operation of religious arbitration, prohibiting it from matters which lie within the jurisdiction of the criminal or family courts. However, [Gillian Douglas](#) and [Russell Sandberg](#) report here on their research at Cardiff University, which suggests that much of the debate to date, and the content of this Private Members Bill, are based on several misunderstandings.*



Our research explored how religious law already functions alongside civil law in the area of marriage and divorce by examining the workings of three religious tribunals in detail: the Catholic National Tribunal for Wales, the [London Beth Din](#) and the Shariah Council of the [Birmingham Central Mosque](#). Although we make no claim that these are 'typical' or 'representative' of Christian, Jewish or Islamic tribunals in general, these case studies provide an understanding of how religious courts operate in practice across the three faiths.



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None of the institutions we studied operates under the [Arbitration Act 1996](#) in relation to its divorce jurisdiction. Their authority to rule on the validity/termination of a marriage does not derive from the parties' agreement to submit their 'dispute' to them (indeed, there may be no dispute). The role of the Beth Din, for instance, is supervisory: it witnesses the Jewish divorce to ensure the parties divorce each other correctly and that the *get* document itself is properly drawn up. Although the Beth Din operates under the Arbitration Act 1996 in order to settle civil cases between private individuals or institutions in accordance with Jewish laws, it does not arbitrate on family law matters. The same is true of other religious tribunals in the UK. We are only aware of one Muslim tribunal, the [Muslim Arbitration Tribunal](#), which makes use of the Arbitration Act 1996. The provisions in [Baroness Cox's Bill](#) which seeks to regulate religious arbitrations would therefore not apply to most religious tribunals in the UK.



The tribunals we studied derive their authority from their religious affiliation, not from the State, and this authority extends only to those who choose to submit to them. Adherents to the particular faith make use of the religious tribunal in order to obtain sanction to remarry within their faith. For believers, being able to remarry within the faith serves both to enable them to remain within their faith community and to regularise their position with the religious authorities. This is particularly crucial in the Jewish religion, because the failure to obtain a *get* will jeopardise the legitimate status of the parties' future children and descendants.

In most cases, those who approach the religious tribunal are simply seeking a termination of their religious marriage. They will have already sought a termination of their civil marriage through the civil law of divorce. All three institutions encourage the parties to obtain a civil divorce, if applicable, before seeking a religious termination. Indeed, the Catholic Tribunal does not deal with an application for annulment until this has been done, and the Beth Din will not provide the certificate that a *get* has been given until it has proof of the civil divorce.

The Shariah Council, however, deals with a significant number (over half in our study) of litigants who do not

have a marriage recognised under English law. It is clearly a matter of concern that these people have little redress under English civil law. However, again, Baroness Cox's Bill seems to miss the point. It proposes extending the public sector equality duty to place an obligation upon public authorities to inform individuals of the need to obtain an officially recognised marriage in order to have legal protection under civil law and that a polygamous household may be both unlawful and without legal protection. Although this provision has laudable intentions, it is impractical. It also risks causing offence to those who it seeks to protect by stressing the 'unofficial' nature of their marriages and confusing the problem of non-registration with that of that polygamous marriages.

Popular understandings of religious tribunals often stress their coercive nature. Baroness Cox's Bill would make it a criminal offence to falsely purport to exercise a judicial function (that is, exercisable by the courts of the State) or to be able to make legally binding rulings. However, our research showed that each of the institutions firmly recognises and supports the ultimate authority of civil law processes when it comes to marriage and divorce and none seeks greater 'recognition' by the State. They all advise the parties that only the civil courts may give binding rulings in relation to the consequences of the divorce. And both the Beth Din and the Shariah Council regard the obtaining of a civil divorce as clear evidence of the parties' view that the marriage is over.

Our research also pointed to an element of consumer choice. 'Forum shopping' exists to some extent within the Jewish and Muslim communities, as there is no 'hierarchy' or system of appeal for Shariah Councils or the Beth Din. Litigants can choose which tribunal they go to according to the way in which (they think) the law will be applied to them or by what they perceive will be the extent of recognition of the tribunal's decision across their community. All of the institutions we studied clearly see their work as a religious duty. They regard themselves as providing important mechanisms for the organisation of community affairs and the fulfilment of community need.

Although there are clearly areas of concern (particularly the problem of non-registration), we hope that our research will help to broaden the debate to recognise the many positive effects religious tribunals can have – especially in a political context where the State does less. Britain's religious tribunals provide an illustration of the 'big society' in practice.

*The [full report is available here](#). The multi-disciplinary research team's year-long study (funded by the [AHRC/ESRC Religion and Society Programme](#)) was led by [Professor Gillian Douglas](#) (Cardiff Law School) and also included [Professor Norman Doe](#), [Dr Russell Sandberg](#) and [Asma Khan](#) (Cardiff Law School and [Centre for the Study of Islam in the UK](#)) and [Dr Sophie Gilliat-Ray](#) (School of Archaeology, History and Religion, Cardiff University).*