

How do you solve a problem like Sharia? The real issues raised by the Sharia law debate

*Two official enquires and one Private Members Bill are currently grappling with the ever-controversial topic of the operation of Sharia tribunals in England and Wales. Here **Russell Sandberg** argues that the focus on Sharia misses the point and that a wider reappraisal of family law matters is required.*



Image: The Muslim Law Sharia Council UK

The title of this blog post is taken from Jeremy Paxman's tongue in cheek comment on Newsnight in the aftermath of the lecture by the then Archbishop of Canterbury, Dr Rowan Williams, on '[Civil Law and Religious Law in England](#)'. Paxman's question highlights the two major ways in which the debate about religious tribunals has been seen ever since the lecture: it has been regarded as a 'problem' concerning mainly, if not solely, Sharia law.

These assumptions underline the two enquiries currently taking place – the Home Office's [Independent Review into Sharia](#) and the [Commons Home Affairs Committee Inquiry](#) – as well as in the private members [Arbitration and Mediation Services \(Equality\) Bill](#), which has been repeatedly introduced into the House of Lords by Baroness Cox.

Yet, the academic literature clearly shows that religious tribunals have existed in this country for a considerable time and have done so mostly non-contentiously. Furthermore, the issue of religious tribunals is not confined to Islam.

A few years ago, I was involved with colleagues at [Cardiff University](#) in [research](#) that compared the marriage and divorce jurisdiction of the Shariah Council of the Birmingham Central Mosque with the London Beth Din of the United Synagogue and the Roman Catholic National Tribunal for Wales. We found a great deal of similar ground between the operations of the three tribunals. And we discovered that many of the perceptions about religious tribunals are incorrect.

As our [report](#) explained, religious tribunals derive their authority from their religious affiliation, not from the State, and this authority extends only to those who chose to submit to them. Religious bodies other than the Church of England are regarded under English law as [voluntary](#)

associations. Their rules and structures are binding on assenting members as if they had been bound by contract; the courts of the State will only exceptionally intervene to enforce the laws of a religious group, or the decision of a body within it, where there is a financial interest and in relation to the disposal and administration of property, or where a civil right is involved.

The Cardiff **research** found that Muslims, Jews and Christians all made use of religious tribunals in order to obtain licence to remarry within their faith. Typically, those who approached the religious tribunals were seeking a termination of their religious marriage. Those who were married under English civil law usually had already sought a termination of their civil marriage through the civil law of divorce. All three institutions expected the parties to obtain a civil divorce, if applicable, before seeking a religious termination.

From what we saw and from our interviews with tribunal personnel, it appeared that religious tribunals we studied were carrying out a mediation role. At the Sharia Council, the focus was on determining whether the marriage was no longer workable and there was a mandatory mediation stage prior to a ruling being given to see if the marriage could be saved, conducted by a Family Support Service.

Given the similarities between religious tribunals and other forms of mediation and alternative dispute resolution, it is strange that the only type of private mediation that appears to be controversial is that offered by religious tribunals. Provided that both parties have the capacity to freely enter into such mediation, why should religious tribunals be singled out for particular attack?

The debate concerning religious tribunals has focused on the 'minorities within minorities' issue: the concern that deference to the religious group may reduce the rights and obligations that a member of the group would ordinarily enjoy by virtue of their citizenship of the State. The debate has focused particularly on where the polity of the group differs from that of the State as regards gender roles. A question that has emerged is whether and if so when the State should intervene in the decision of a religious tribunal in order to ensure that there is no discrimination or other unlawful treatment on grounds of sex.

This question needs to be addressed in relation to religious tribunals. We need further research and information about the extent and nature of sex discrimination and it is to be hoped that the two inquiries will add to our knowledge base on this. However, concerns about gender equality are likely to apply not only to religious forms of mediation. The gender biases across different legal and quasi-legal systems needs attention. The issue is not confined to Sharia.

The severe cuts to legal aid for family law disputes as a result of the **Legal Aid, Sentencing and Punishment of Offenders Act 2012** has reduced the legal assistance available to couples and has meant that fewer people are aware of mediation and are so likely to make ill-informed deals or rely on even more informal modes of dispute resolution. The issue is therefore far larger than dealing with Sharia. Further research is desperately needed into the legal, quasi-legal and non-legal means of solving family disputes. This research needs to take place before we can have a proper enquiry into Sharia councils or before we can legislate to deal with the matter.

However, this is not to say that there is nothing that can be done now. The Cardiff **research** found that over half of the cases at the Sharia Council involved couples who had either not married under English civil law or had married abroad and whose marital status in English law was unclear. Such litigants have very limited remedies under English civil law.

This is the real 'problem' that we can begin to solve now. The Cardiff **research** called for greater awareness and education concerning the requirements of marriage law, explaining the procedural requirements for a civil law marriage and the rights that are accrued as a result of marriage.

Again, this is an issue of wider application. Those who have a religious marriage but are not married under civil law have the same legal status as other cohabiting couples. And like **unmarried** cohabitants, they often assume that they have more legal rights than they do. The problem of the

non-registration of Islamic marriages is related to the problem of the prevalence of the myth of 'common law marriage'.

Again, any solution here should not only apply to the religious context. Recent work by the [Law Commission](#) underlines the need to revisit the current law on the formalities required for marriage. There has also been a long-standing but so far unsuccessful drive to improve the legal protection of unmarried cohabitants. Reform in this area is urgently required.

In recent years, a number of very useful studies have taught us a great deal about how particular tribunals operate and the common experiences of tribunals across different faiths. However, we still lack an understanding of the overall picture.

We have no working definition of what we mean by the term 'religious tribunal' and so unsurprisingly we do not know how many of them exist. We know nothing about the more informal tribunals and know very little about how other religions, ethnic and cultural groups resolve their disputes. Until further research is completed we cannot say that we have a Sharia problem.

What we can say, however – and this has been almost entirely ignored in the debate so far – is that the operation of religious tribunals underlines a number of general trends in family law where research and / or reform are desperately needed. The consequences of the reduction of legal aid need attention. Current laws concerning the formalities of marriage and the lack of legal protection for unmarried cohabitants are woefully inadequate in the twenty-first century.

The current official enquires are to be welcomed but their narrow ambit should be questioned. Eight years on from the Rowan Williams lecture we need to remember that the question is *not* simply 'How do you solve a problem like Sharia?'

About the author



Dr Russell Sandberg is Head of Law and Reader in Law at the School of Law and Politics at Cardiff University where he specialises in Law and Religion and Legal History. Researching at Cardiff's [Centre for Law and Religion](#), he is the author of *Law and Religion* (Cambridge University Press, 2011) and *Religion, Law and Society* (Cambridge University Press, 2014). He is the Managing Editor of the [ICLARS Series on Law and Religion](#), published by Routledge. His most recent work on religious courts is his edited book *Religion and Legal Pluralism* (Ashgate, 2015).

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