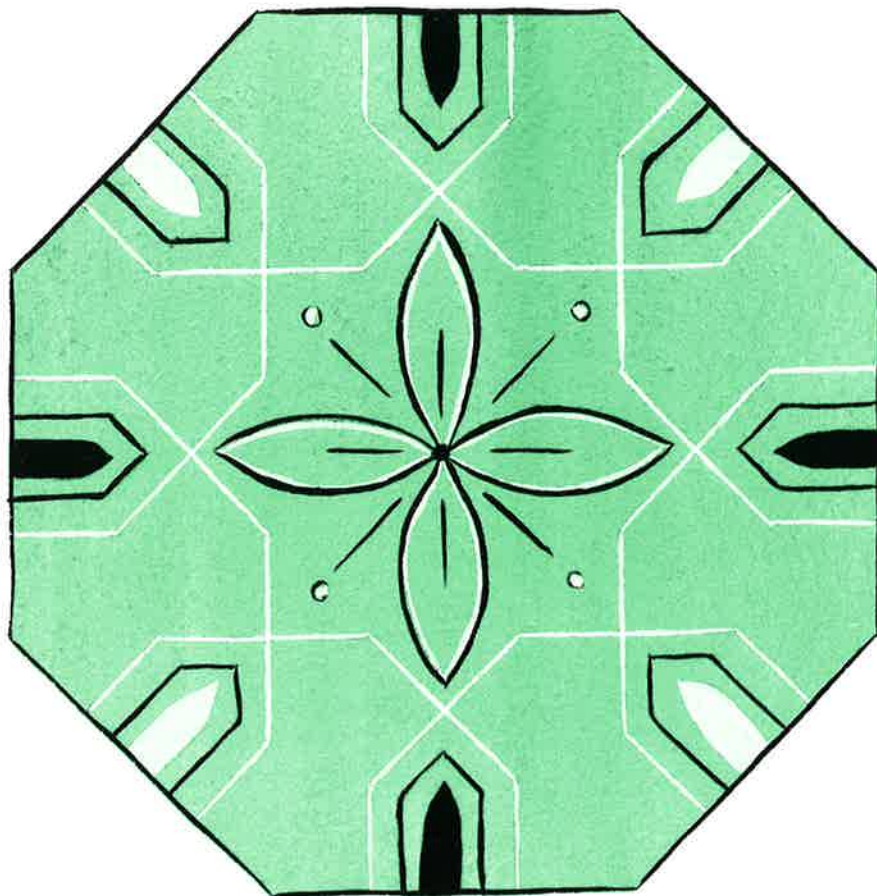


Untying the Knot

Muslim Women, Divorce and the Shariah



Sonia Nûrîn Shah-Kazemi



The Nuffield Foundation is a charitable trust established by Lord Nuffield.

Its widest charitable object is "the advancement of social well-being."

The Foundation has a special programme of grant making in Child Protection and Family Law. The Foundation has supported this project to stimulate public discussion and the development of practice and policy. The views expressed in this report are, however, those of the author and not necessarily those of the Foundation.

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Cover illustration by Amina Ahmed

Book design by Brooke Calverley

Printed by The Signal Press

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ACKNOWLEDGEMENTS

First of all, in one and the same breath, I extend my heartfelt gratitude to Professor Zaki Badawi OBE and M. Shahid Raza at the MLSC; and to Sharon Witherspoon, and all at the Nuffield Foundation: without the assistance of both parties I would not have been able to complete this project, their unflinching support and enthusiasm were constant, and their courage in endorsing research in such a field, commendable.

A consultative panel was convened comprising Professor Gwynn Davis from Bristol University, Dr. Werner Menski from SOAS, University of London, and Ms. Marian Roberts, an independent family mediation consultant, each of whom made important contributions, alongside Professor Simon Roberts from the LSE whom I must thank for the benefit of his views, enthusiasm and time; their guidance in this project was most valuable. I also thank all colleagues at the University of Westminster. Lord Nazir Ahmed's encouragement and support are also gratefully acknowledged. I thank the An-Nisa Society and the Muslim Women's Helpline who were most generous with their time, for their authoritative insights founded on years of experience and dedicated hard work.

As always, I owe an enormous debt of gratitude to my precious family and loving friends, all of whom were steadfast, loyal and patient – without them, this report and its author would not have emerged from the winter of 2000!

Finally, I am bound to thank and salute the women who are the subject of this report: the interviewees for their willingness to participate, and to each and every one of the women for the honour of letting me be witness to their strength and bravery; their fearless battles to claim what was rightfully theirs, and their inspiring and unwavering faith in what they believed to be true.

The Context

Introduction: The Aims and Objectives of this Report

This report is a study of what Muslim women in the UK experience whilst trying to divorce their husbands according to Muslim Law. All the women examined applied to the Muslim Law (Shariah) Council, UK,¹ an independent organisation based in Ealing, West London, and chaired by Professor Zaki Badawi OBE. The MLSC was requested by the women to intervene in their family disputes in order to help them dissolve their Islamic marriages. This report is not intended to be a critical evaluation of how the MLSC works, although the report describes briefly what services the organisation offers and, where appropriate, the rationale behind its actions. It is about the women: their experiences, their motivations, their perceptions and their needs – paying particular attention to why it is that they perceive their needs to be distinct from the wider community.

Another central objective of this research was to ascertain what measures need to be taken to ensure full access to the divorce facilitation process for the Muslim community in the UK. Such an evaluation requires a clear understanding of the difficulties encountered by Muslim women as a result of a general ignorance regarding the fact that a distinct system of Muslim family law exists and that these women feel compelled to abide by it. In other words, the imperatives of religious conscience need to be acknowledged by, and accommodated within, existing institutions and agencies dealing with the process of marriage breakdown. A subsidiary aim was to consider the role of existing Muslim organisations which provide divorce facilitation services and whether it is possible to extend their remit to provide mediation and other services; this, in turn, raises the question of whether mediators and other professionals should be from Muslim backgrounds when facilitating the divorce process amongst Muslims.

The Muslim Community in the UK

The presence of Muslims in the UK is long-standing, the first mosque being established in 1870 in Woking, Surrey. Precise figures about the size of the community are not available because there is no such information in any of the population census data; estimates range between 1 million² to 1.6 million;³ it is clear that Muslims are an expanding group comprising at least one third of all minority communities in the UK. The Muslims comprise a wide spectrum of cultural and ethnic groups ranging from European to South East Asian. By 'European', is meant not only those people of ethnic UK descent⁴ who have

converted to Islam, but also those from the Balkans. The majority of Muslims in the UK, whether first or second generation migrants, are from the Indian sub-continent (approximately 700,000), and the remainder (in decreasing numerical proportions) from the Middle East (including North Africa) and Africa.⁵ A large and expanding network of Muslim institutions and organisations now serve the British Muslim community.⁶

I – The Shariah, Marriage and Divorce

The Shariah

The Shariah, or body of Islamic laws, governs in principle both the actions of the individual and the whole Muslim community. These rules are derived from the Qur'an and the *Sunnah* – the normative practice established by the Prophet Muhammad* – which are the two principal sources of the Shariah; there are other, secondary sources of the Shariah which can be utilised within the framework defined by the two primary sources. The set of rules governing the individual's relationship with God, defined in terms of religious practices,⁷ are non-negotiable. On the other hand, the body of rules which govern all corporate relations⁸ (political, social, economic) are open to change and evaluation according to certain criteria. These criteria, which are derived from the Qur'an and *Sunnah*, comprise the principles of consensus, necessity, custom and public interest; the result is a highly elaborate and well-defined system of jurisprudence, known as *fiqh*, with a high degree of in-built flexibility and adaptability. The body of Islamic laws has developed on the basis of this system over the centuries from the time of the establishment of the first Islamic state. Its purview has ranged from the individual, to small, isolated communities to the entire Islamic empire, which, during its most widespread dominion, encompassed the entire region now known as the Middle East, Central Asia, and the Near East, extending from the Balkans and Spain in the west to China and the Far East, and from the Volga in the north to Sub-Saharan Africa. The rules are thus necessarily of a vast scale, and have had to incorporate innumerable contingencies and variables, in accordance with the fundamental guiding principle of legislation in Islamic law, which is to '...secure the welfare of the people by promoting their benefit or by protecting them against harm'.¹⁰ There are two aspects to the principles of public interest: seeking what is the best *per se* (*istihsan*), and what is in the best interests of society (*maslahah*). The latter is defined in terms of protecting, upholding and promoting the five core values of religion, life, intellect, lineage and property.

Marriage and Divorce according to the Shariah

In Islam, marriage¹¹ is regarded as a contract; consequently, divorce has always been permissible in the Shariah, which, however, advocates conciliation (mediation) prior to, and as an alternative to, litigation. In the case of a marriage contract, if efforts at reconciliation fail, then the divorce ensues, but it is envisaged that the dissolution of the marriage takes place in as amicable a

manner as possible, with the parties negotiating an agreement guided by Qur'anic principles, as opposed to adversarial litigation. Divorce is not an entirely unilateral prerogative of the husband, but can also be initiated by the wife on application to a *Qadi* (religious judge). The existence of this legal framework for the dissolution of marriages has had a fundamental impact on the attitudes towards divorce held by Muslims. It is said in a well-known *hadith* (a saying of the Prophet Muhammad), "Among all the things that God has made legal, divorce is the most hateful". This *hadith* encapsulates the complex attitude towards divorce; on the one hand, it is permissible to end a marriage, that is to say that the hardships of an intolerable life-long union need not be endured. On the other hand, divorce is a final resort, and to be avoided if at all possible.

A Muslim marriage is known as a *nikah* or '*aqd* (literally, a 'knot' or 'tie'). The marriage is a contract between the bride and groom which they, or their proxies, must *freely* enter into. It is referred to as a solemn covenant in the Qur'an. The groom has to provide some money for the marriage contract to be valid, and this can be any sum agreed between the parties. This sum is known as the *mahr* (erroneously and confusingly sometimes referred to as the 'dowry' in certain texts), and this sum belongs to the wife who can demand it at any time; alternatively, the parties can both agree to defer payment, even indefinitely. The marriage contract should be witnessed by two competent witnesses. Under certain conditions a Muslim man is permitted to enter into polygynous marriages, with a maximum of four wives at any one time. Upon marriage both parties have the right to conjugal relations, and the wife is entitled to maintenance regardless of her own income. The refusal or incapacity to fulfil these obligations by either party can form the basis of grounds for terminating the marriage.

A *nikah* contract can be terminated by the husband, and this divorce is known as a *talaq*. All the five schools of law declare that the husband has the unilateral right to pronounce *talaq*, and thereby divorce his wife. No-one else has the 'right' to pronounce *talaq* as such. Different forms of *talaq* are permissible in Islamic law. The variation between each school lies in the number of times the declaration is made. There are a maximum of three divorces that can be pronounced; the first two are revocable and the parties can under certain circumstances be reunited after each one; however the third pronouncement of *talaq* is irrevocable and the parties can only remarry after the wife has contracted, consummated and been released from a marriage with another man. The schools of law also vary in their opinions about the period of time that may elapse between each declaration of *talaq*, and in regard to the need for witnesses to the pronouncements of *talaq*. Both parties can agree to end the marriage, and this is then effected by the declaration of the intention to divorce by the husband. After the divorce, the wife is obliged to refrain from remarriage for a period of time, known as the '*iddah*', commonly held to be a period of four months and ten days. This is to determine clearly the paternity of any child from that marriage.

There are four other ways of dissolving the *nikah* contract:

1. The parties can both agree that the wife release herself from the marriage contract. This is known as a *khulla* agreement, and is based on the verse in the Qur'an: "If you fear that they may not be able to keep within the limits of Allah, in that case it is no sin for them if the woman ransom herself" (2:29). The *khulla* refers to those cases where the wife is the one who wants to dissolve the marriage. This therefore involves the payment of a sum of money by the wife. In most cases, the husband is asked to accept the return of the money/goods that he gave as the *mahr*. This is why it is important to investigate what the husband has given the wife at the time of the marriage, rather than vice versa.¹² The wife also forfeits her rights of maintenance and housing upon an agreement to dissolve the *nikah* contract by way of *khulla*.
2. If the marriage has not been consummated, both parties can agree that the wife release herself from the *nikah* contract, without payment, if the non-consummation is the fault of the husband, and this is known as *mubara'ah*.

The other two ways of terminating the *nikah* contract require the judicial intervention of the *Qadi*, and the wife is not obliged to pay any money:

1. The parties can agree at the outset, in the marriage contract, that the wife will have the right to divorce should she want to; in other words the husband agrees to allow his wife this possibility. If she wants to take advantage of this term in her contract, she must inform the *Qadi*, although he is not required to evaluate the case.
2. The *Qadi* dissolves the *nikah* contract, this is called a *faskh* or *tanseekh*¹³ of *nikah*. This is possible on the following grounds (the exact details of which vary amongst the different schools of law) which must be found proven to exist by the *Qadi*:
 - The husband's renunciation of Islam
 - The husband's apostasy and return to his former religion
 - The husband has a sexual defect, or is impotent
 - The husband has made a vow to abstain from sexual relations (*ila*)
 - There has been corruption (known as *fasad*) of the marriage, for example if the husband is imprisoned for a specified period
 - The husband has not provided maintenance (known as *nafaqah*) during the marriage for the wife as he is required to do
 - The husband has deserted the wife (the schools of law vary as to how much time elapses before a person is declared missing)
 - The husband has harmed the wife (known as *dhirar*)
 - Both parties have engaged in mutual cursing, known as *li'an*; this takes place when, for example, adultery has been alleged by one party against the other

As stated above, these grounds have to be proven to exist by the *Qadi*; he must take the necessary steps to ensure that he is satisfied of the existence of these grounds. In all circumstances the *Qadi* is obliged to attempt to inform the husband of the wife's request for the *Qadi*'s intervention, in order to allow him the opportunity to make any representations. This is why the MLSC insist on trying to communicate with the husband.

II – The Establishment of the Muslim Law (Shariah) Council (UK)

The foundation of the MLSC issued from the religious needs attendant upon a large and fast-growing community of Muslims in the UK. According to the Shariah, every Muslim community, however small its size, must be regulated, as far as possible, by Islamic legal norms, appropriately interpreted and applied by the most knowledgeable scholars residing in the community. The phenomenon of Muslim minority communities living in a non-Muslim land has its earliest precedent in the migration to Abyssinia of a group of Muslims at the behest of the Prophet himself. Thus, one finds the Imam Abu Hanifah (d.798 C.E.) specifying that in non-Muslim lands, Muslims are obliged to appoint a person to act as a guide in respect of religious issues, legal questions and social disputes.¹⁴

The establishment of the MLSC falls under the category of 'public interest' (*maslahah*), its aim being to protect the five essential values stated above: religion, life, intellect, lineage, property. The MLSC can be seen to carry out these functions in the following manner: the principle of 'protecting religion' is upheld through promoting the observance of its social and familial tenets, as opposed to transgressing them, for example, through facilitating the capacity to divorce and remarry after a separation between husband and wife; the principle of 'protecting life' is upheld by enabling and promoting safe relationships, ones that are free from harm and abuse; the protection of the intellect, is according to Kamali, the promotion of learning and the prevention of "calamities that corrupt the individual"¹⁵ – this, the MLSC does by proffering professional, scholarly advice based on the principles of the Shariah; protection of lineage, by definition, implies the protection of the family, and the safeguarding of the welfare of children; finally, the protection of property can mean also the protection of the home, and in this instance, assisting a vulnerable individual in the household, and safeguarding the physical and moral environment of the home. For the implementation of these principles to be valid in Islamic terms, they must be applicable to all, and not just a particular group of persons (the principle of *kulliyah*); and the manner of their implementation must not contradict either the Qur'an and *Sunnah*, or the consensus (*ijma'*) – all conditions which the MLSC evidently fulfil.

On this basis the MLSC is able not only to act as a *Qadi* would in resolving disputes regarding the dissolution of marriage contracts, but it is also

able to perform the advisory role that the *Qadi* offers by mediating in intra-familial and intra-community conflicts, as well as give opinions about formal rules governing the validity of such legal procedures as marriages and divorces.

The principal focus of the MLSC is the Muslim community in the UK, although the Council does assist Muslims residing in other European countries as well.¹⁶ The organisation appears to be one of the first¹⁷ of its kind in this country, and the most widely used that intervenes in matters pertaining to family law as well as other spheres. Muslims from all over the country use the services that it provides. One central aspect of the MLSC's work is the ability to facilitate a divorce according to Islamic Law, and to act in the capacity of a *Qadi* and function as he would do in an Islamic court of law. The aim of the MLSC, then, is "to keep the identity of our community, to keep its laws, to keep it whole, while at the same time not breaking the law of the state, having ... our own private language, while speaking the common language."¹⁸

The MLSC Process – an Outline of the Procedure

The process of dispute resolution which the MLSC facilitates has developed with time, and the procedures implemented at the inception of the organisation differ from those currently in existence. Nevertheless, the principles of engagement have remained constant. The organisation consists of approximately twenty individuals who come from all over the UK. These individuals are knowledgeable in matters of the Shariah, and it is a matter of policy that the members of the MLSC represent all the five different schools of law: Hanafi, Maliki, Shafi'i, Hanbali, Shi'i/Imamiyya. Most often they have received formal training in Islamic jurisprudence from recognised institutes of Islamic learning. The full quorum of members meet at least quarterly per annum, and during this meeting formal decisions are taken regarding individual cases.

The vast majority of cases that come to the attention of the MLSC concern marital disputes. These arise most frequently from women seeking the dissolution of their marriage contracts, because for a variety of reasons, their husbands have not granted them a *talaq* divorce according to the Shariah. Almost all¹⁹ of the women who apply to the MLSC are unable to obtain a *talaq* divorce from their husbands; they choose to contact the MLSC because they are unable to dissolve their *nikah* contracts. Generally there are two types of women who are married in accordance with the Shariah, and who approach the MLSC:

- Women who are not married according to English civil law and whose Muslim marriages are not valid in the UK; these women have no option but to approach organisations like the MLSC, in order to dissolve their marriages formally in accordance with the Shariah, because their husbands are not providing them with a *talaq* divorce.
- The other category of women do have married status according to UK civil law, and they choose to dissolve their *nikah* contracts either before, after, or simultaneously with civil divorce proceedings. In some cases, the women did not state whether they intended to pursue civil divorce proceedings, or

plainly stated that they were not going to pursue civil divorce procedures thereby indicating that for them the civil divorce did not assume the same importance as the *talaq* divorce.

It is important to note that whilst jurists (*fuqaha'*) do not recognise the civil divorce as ending the *nikah* contract, some do consider the husband's consent to the civil divorce as a significant indicator of his negative attitude towards the marriage; if the husband initiates the civil divorce proceedings many *fuqaha'*, and certainly the MLSC, consider that act as indicating that the husband wants to end the marriage.

There are a few instances, however, of men initiating an approach to the MLSC, often to resolve post-separation disputes regarding children or financial matters. Individuals also seek the MLSC's advice about formal procedural rules governing the validity of a marriage or a divorce. Not all the cases put to the MLSC are to do with the dissolution of marriages; for example, the MLSC can intervene in a less formal way in marital disputes at the request of the parties, over such matters as maintenance. They have also mediated in intra-family disputes concerning the treatment of individuals within the family; for example, some adolescent children have asked for mediation between themselves and their parents. Members of the MLSC may intervene in an individual capacity to comply with such requests, as well as mediating in intra-community disputes.

At present, there is only one Secretary of the MLSC who manages the daily work of the organisation, with no other office support.²⁰ The Secretary maintains the written records and enters into correspondence with the applicants. The records are very detailed; each case-file contains the correspondence from the applicant, and concerned parties, as well the replies sent on behalf of the MLSC. Currently, upon application to the MLSC, either by telephone, or in writing, a case is formally registered, and a case-file opened. The applicant is then sent four documents:

- A request for a small registration fee, currently £75. This was not in force during the period 1985-1995, and only introduced some time in 1996 as a result of the growing number of applicants and the resultant administrative costs. This fee is waived if applicants are unable to pay.
- A form requesting the agreement of the applicant to abide by any decision of the MLSC. The applicant's signature consenting to this agreement has to be witnessed by two individuals, one of whom should be an *Imam* or other formal representative from a religious organisation, such as a mosque or community centre.²¹ This form has been in use from about 1996 onwards.
- A letter of acknowledgement of the application, indicating that the case will be registered upon receipt of the fee and the consent form.
- A request for certain basic information about the dispute, together with copies of certain documents, such as marriage certificates and any civil divorce proceedings documentation.

Upon receipt of the letter of authority and the fee, the MLSC write to the other party in the case, which is usually the husband, informing them that they are apprised of the dispute and have been asked to intervene. Under the rules of the Shariah, the husband must be consulted. Ideally, if it is a question of dissolving the *nikah* contract, the husband himself should pronounce *talaq* and end the marriage, unless there is some chance of reconciliation. The MLSC procedure now involves giving the husband at least three opportunities to respond, before considering taking any action. If the process of dispute resolution demands a decision from the MLSC, the outcome of the case is decided at a formal MLSC meeting. Thereafter, it may be that the MLSC is in a position to issue a written document which declares the dissolution of the *nikah* contract on the basis of any one of a number of legitimate reasons determined by the Shariah. From a strictly jurisprudential point of view the MLSC do not grant the woman a *talaq*, as this is only the husband's prerogative. What the MLSC can do is dissolve the marriage contract (*faskh* or *tanseekh* of *nikah*) on the basis of well-established and stipulated grounds of the Shariah, which can include a breach of a specific term of the *nikah* contract as agreed between the couple. The Shariah envisages the possibility of it being an agreed term of the *nikah* contract that the woman herself be granted the right to divorce her husband for any reason and without payment of any sum. This right can only be exercised in conjunction with judicial intervention: this has always entailed the necessity of a judicial pronouncement to terminate the marriage, as opposed to a judgement evaluating the merits of a case, which is necessary for a *faskh* of *nikah*.

The parties are then notified of the decision of the MLSC and the case is documented as finally resolved. The length of time this process can take varies very much from case to case; if the parties choose to enter into negotiations, with the mediation of the MLSC, the dispute resolution can take as long as two to three years.

Box 1:
An example of a
faskh of nikah
certificate issued
by the MLSC
where the
husband's petition
is taken into
account

In this case, the marriage was not consummated, and the husband petitioned for nullity proceedings to dissolve the civil marriage. The woman applied to the MLSC complaining that her husband would not grant her a *talaq* divorce. The MLSC corresponded with the husband, and negotiations took place. Eventually, the MLSC issued a certificate dissolving the *nikah* contract:

"This is to certify that the *Nikah* (Islamic Marriage) carried out in [x location] [on x day] in July 1989 between Mrs.x of ... and Mr.x of ... is hereby dissolved according to Islamic Law on the following grounds

- 1 Mrs.x had separated from her husband Mr.x in October 1989. Since then she has had no marital relationship with him and during this period Mr.x did not support or maintain her at all.
- 2 Mr.x has himself divorced his wife according to British Law and obtained a Decree Absolute on [date] 1991.

3 The Shariah Council considers this civil divorce as evidence of Mr.x's clear intention to release his wife from the marriage tie (*Aqd*²²) and to dissolve the marriage in both a civil as well as an Islamic way.

4 Mr.x has also remarried in [date] 1992.

Therefore in order to safeguard the religious and social interests of Mrs.x the *Nikah* is hereby dissolved with immediate effect. She is eligible for remarriage according to Islamic Law." (Case 8161)

During the period of time the case-files were examined (1985-1995), the documentation issued by the MLSC varied substantially. This was mostly in response to the steady growth in demand from the time the organisation's services became available.

III – Methodology

The two-year project comprised three stages

1. **Content analysis of the case files of the MLSC**
2. **In-depth interviews of applicants to the MLSC**
3. **Interviews of relevant figures in the wider Muslim community**

1. **Content analysis of the case files of the MLSC**

During 1998-1999, two hundred and eighty-seven case-files from the period 1985-1995 were examined. Significantly, around mid 1996, a special form was given to applicants explaining the MLSC procedure, including the following promise of confidentiality;

“(14) All the documents and correspondence are treated as strictly confidential and are not released to a third party unless written consent is first obtained”.

Consequently, files from that time on were not examined so as to avoid any breach of duty to the applicant. All the files examined concerned applications for the dissolution of *nikah* contracts. The written records for mediation in intra-familial disputes are not very detailed, because the MLSC considers that type of intervention as informal, in contrast to the formal judicial intervention required to dissolve *nikah* contracts.

Each file usually consisted of correspondence containing the following details:

- who made the initial approach to the MLSC: the wife, her family, and, occasionally, the husband

- some details about the ethnic origin, nationality and residence (domicile) of the parties
- details of the *nikah* contract
- whether the marriage was also registered according to UK civil law, and whether there had been any civil divorce proceedings
- the reasons for the marriage breakdown, and why MLSC intervention was required
- some details about whether any disputes regarding children/property/*mahr*/marriage gifts were mediated by the MLSC
- any result of the MLSC intervention

This information was entered into a Word (Microsoft computer programme) document in relation to each case file, and any correspondence of significance was recorded verbatim, for instance letters from the applicants. All the Word documents were then entered into a qualitative analysis software programme, called NUD*IST 4 (Non-numerical Unstructured Data Indexing). This programme allowed the searching of documents, according to categories coded by the researcher, with a speed and accuracy that went far beyond any manual capacity, given the high number of case-files. All the 'statistical/demographic' variables were coded at the outset: the dates of the *nikah* ceremonies, whether the marriages were registered according to civil law, whether the couple had children, the location of the *nikah* ceremonies, etc. All those variables could then be retrieved automatically. It was also possible to conduct text searches retrieving all the files where the applicants mentioned, for example, 'prejudice' in their correspondence. In addition, complex searches could be conducted of those variables and the text of the correspondence, such as the letters, so that it was possible, for example, to collate all the marriages which involved domestic violence, solicitors, children, and prejudice. These searches were carried out to test apparent patterns that emerged. Some documents in the case-files were also photocopied in an anonymised manner²³ for the sake of completeness of records, and wherever the visual appearance of documents was important – for example, if the handwriting differed from one letter to another, or even within the same letter. All excerpts from the case-files are followed by the changed case number in parenthesis: (Case 0000).

2. In-depth interviews of applicants to the MLSC

From 1999-2000, twenty-one in-depth interviews were conducted. Each interview was between one and two hours long, and duly tape-recorded. Transcripts were prepared in Word documents by the researcher, and then also entered in to the NUD*IST 4 programme in order to carry out searches, a number of which were in conjunction with the case-file data. There were two stages to the interview process.

- In April 1999, the MLSC wrote to eighty women whose applications were registered in 1999, informing them that they could choose to contact the researcher with a view to being interviewed. The letter was also translated into Urdu. Twenty-two women replied, and eventually nine interviews took place. Eight of these interviewees lived in regions other than the South-East of England.
- In March 2000, the MLSC wrote to fifty-eight women whose applications had been registered by that time, informing them that they could choose to contact the researcher with a view to being interviewed. The letter was also translated into Urdu. Twenty-five women replied and twelve interviews were conducted. All the women lived in the South-East of England.

The MLSC stressed in each letter that the decision to contact the researcher was entirely voluntary and would not affect the progress of the applications, and the women were asked to send a reply slip with their contact details directly to the researcher. The MLSC have not been informed of the identity of the women who replied to the researcher. The interviewees themselves informed the researcher about their personal details and their case histories: the MLSC did not reveal anything about the interviewees to the researcher, either before or after the research. Very few women finally agreed to be interviewed. Of the 21 women who did, 18 were of Pakistani parentage, 2 of Bangladeshi, and 1 of mixed ethnic UK/European parentage. In all the interviews Arabic terms were used, and 4 of the interviews were conducted almost entirely in Urdu and translated by the researcher. All excerpts from the interviews are followed by the allocated interview number in parenthesis: (Interview 00A/B)

As the MLSC were insistent about anonymity, all the women's details are anonymised. Throughout this report no mention is made of the country of origin of the women, when quoting directly from the interviews or correspondence in the case-files (apart from the section on ethnic UK women). Similarly whenever the excerpt quoted makes reference to a particular location, it has been referred to simply as [x country]. The names of women, and any other details which could lead to the identification of women, such as the dates of civil court proceedings, or the location of court houses or solicitors etc., are never mentioned.

3. Interviews of relevant figures in the wider Muslim community

Interviews were conducted with individuals from two organisations: the Muslim Women's Helpline, and the An-Nisa Society. The organisations were chosen because they have both been established for a number of years and because the women in the case-files and the interviewees had mentioned them to the researcher.

- The An-Nisa is a voluntary organisation established in 1985, and based in north-west London. It strives to disseminate information on a national basis and initiate projects in a community context concerning Muslim women and Muslim families. It also deals with women who seek its advice on an individual basis.
- The Muslim Women's Helpline is a voluntary organisation first established in 1987. Women (and men) can call the Helpline and are offered telephone advice, and, where possible, face to face counselling. The organisation also disseminates information on Muslim women's needs, and liaises with local and statutory bodies.

Both organisations were presented with interim findings and asked to provide their comments. Members of the organisation were then interviewed and their comments transcribed.

Notes

- ¹ Hereinafter referred to as the MLSC, or the 'Shariah Council' which is how the women refer to the MLSC, and how the organisation often refers to itself.
- ² C. Peach, *Estimates of the 1991 Muslim Population of Great Britain*, OPOSUM Working Papers No.1., St. Catherine's College, Oxford, 1997.
- ³ M. Anwar, "Muslims in Britain: demographic and socio-economic position", in A. Sheikh and A. R. Gatrads (eds), *Caring for Muslim Patients*, Oxford: Radcliffe Medical Press, 2000.
- ⁴ The term 'Ethnic English', was coined by Fatima Hussain and Margaret O'Brien, and is useful because it signifies that 'white' British people have an ethnicity; and it also avoids the notion of racial origin as a determinant of cultural identity. See their valuable report, *Muslim Families in Europe: Social Existence and Social Care*, University of London Press, 1999. In their glossary of terms they state: "[this term] is used to emphasise that every individual has an ethnicity and that the ethnic majority should not be labelled 'white'." The term has been adapted here as 'ethnic UK', in order to include women from Wales, Scotland and Ireland who would most often be classified 'white'.
- ⁵ See Anwar, op. cit., p.6.
- ⁶ For further discussion about the growth of institutionalisation amongst the Muslim community see J. S. Nielsen, *Muslims in Western Europe*, Edinburgh: Edinburgh University Press, 1992. pp 43-51. For discussions about the Muslim community in the UK see generally, P. Lewis, *Islamic Britain*, London: I.B.Tauris, 1994.
- * It is customary to invoke blessings and peace after every mention of the Prophet's name; failure to do so can cause offence to devout Muslims.
- ⁷ Known as *'ibadat*. For a comprehensive exposition of the principles touched upon in this section of the report, see M. H. Kamali, *Principles of Islamic Jurisprudence*, Cambridge: Islamic Texts Society, 1991. For further introductory texts on these principles of Islamic Law, see N. J.

- Coulson, *A History of Islamic Law*, Edinburgh: Edinburgh University Press, 1964. Also J. Schacht, *The Origins Of Muhammadan Jurisprudence*, Oxford: Clarendon Press, 1950.
- ⁸ Known as *ahkam al-mu'amalat*. See further Kamali, op. cit., p.275 et passim.
- ⁹ In Arabic texts the terms are: consensus = *ijma'*; necessity = *darurah*; custom = *'urf*; public interest = *maslahah* / *'maslahah mursalah*
- ¹⁰ Kamali, op. cit., p.268.
- ¹¹ Throughout this report, the term '*nikah* ceremony/contract' and 'Islamic marriage' are used interchangeably. In addition, the term 'Islamic marriage' is often juxtaposed with the term 'civil marriage'. This is despite the fact that from a certain legalistic point of view the only marriage that is legally valid is the one that has been registered according to civil law, since it is clear that an Islamic marriage ceremony performed in the UK does not confer the status of married person upon the participants. The terminology has been adopted to avoid differentiating between the civil marriage registration and the Islamic marriage ceremony in a qualitative way; to consider the former a legal marriage and the other only a union would be considered as unacceptably discriminatory by the women concerned even if it conformed to a more legally accurate terminology.
- ¹² In the interviews with the women, it emerged that many of them were ignorant about the function and significance of the *mahr*.
- ¹³ The two terms, *faskh* and *tanseekh*, are interchangeable and mean the 'dissolution' of the *nikah* contract.
- ¹⁴ Professor Zaki Badawi, private interview, 10th November 2000. Abu Hanifah was a leading jurist and founder of one of the four main Sunni schools of law (*madhhab*). The other schools of law are the Maliki school (founded by Imam Malik d.796), the Shafi'i school (founded by Imam Shafi'i d.820) and the Hanbali school (founded by Imam ibn Hanbal d.855). The school of law to which the majority of Shi'i Muslims subscribe was founded by Ja'far as-Sadiq (d.756), and is known as the Ja'fari / Imamiyyah school. For a summary refer to the relevant articles in *The Concise Encyclopaedia of Islam*, Cyril Glasse, London: Stacey International, 1989. For further discussion see Coulson, op. cit., chapters 3-7.
- ¹⁵ Kamali, op. cit., p.274.
- ¹⁶ For further details, see Z. Badawi, 'Muslim Justice in a Secular State', in M. King, (ed.), *God's Law versus State Law*, London: Grey Seal, 1995.
- ¹⁷ This organisation is independent, and must be distinguished from other 'Shariah Councils' established in the UK, such as the 'Islamic Shariah Council' subject of the article by L. Carroll, "Muslim Women and 'Islamic Divorce' in England", *Journal of Muslim Minority Affairs*, Vol. 17, No.1, 1997.
- ¹⁸ Badawi, op. cit., p.80.
- ¹⁹ This excludes those women who merely seek a formal opinion from the MLSC regarding some aspect of the Shariah, and those women who request MLSC intervention to mediate in some intra-family dispute unconnected with an existing marriage.
- ²⁰ This fact was not known by nearly all of the respondents interviewed, who incorrectly assumed at least some office support, and as a result became very frustrated at the rate of progress of their cases. The switchboard at the MLSC also deals with another organisation, the Muslim College, which is housed in the same building.
- ²¹ If there is no local mosque or Muslim organisation, the MLSC indicate that they will accept the witness signature of a Doctor or Solicitor.
- ²² '*Aqd*' an Arabic term which can also be used to mean the marriage contract, meaning literally, as stated, 'the tie' of marriage.
- ²³ The documents were photocopied after personal details had been covered over, so that it would not be possible to discover the identity of the correspondents upon sight of the photocopy.

The Women

I – Who Are These Women?

The majority of applicants are women who approach the MLSC with a view to securing their intervention in marital disputes. There were only two instances in the case-files examined where men initiated MLSC procedures, but there were some cases where the woman's male relatives took an active role in the MLSC process and in negotiating with the husband's family once the MLSC had become involved.

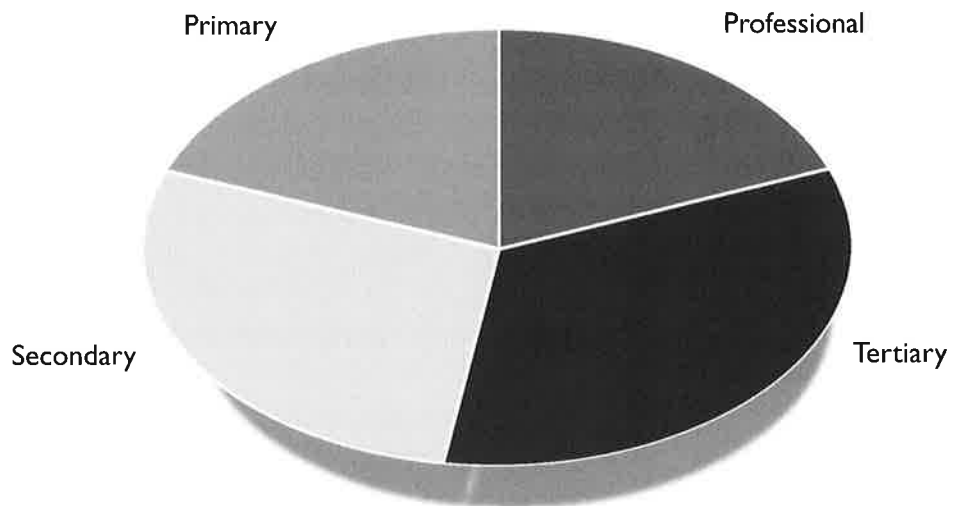
Even though the organisation is located in West London, because applicants are able to conduct their cases entirely through written correspondence, many of the women who apply are from different areas in the UK and there are also a considerable number of enquiries from Europe. The organisation thus serves a very diverse and wide range of clients.

The case-files demonstrate that the ages of the women range from the very young (16-18 years old) to women in their forties and fifties. The women come from a variety of socio-economic backgrounds, ranging from qualified professional women such as doctors, trainee lawyers and university lecturers, to those with minimal formal education. Most of this information was available in the case files either because the women wrote about their backgrounds in their personal correspondence to the MLSC, or the information was available from documentation pertaining to their marriages, such as marriage certificates or divorce petitions. It was in large part readily apparent when the women were unable to correspond directly with the MLSC because their signatures would be in stark contrast to the handwriting of the main letter, or the scribe would be very clearly identified as writing the letter on behalf of the particular woman. The form which the woman is required to sign and the communications thereafter demonstrate that the MLSC endeavour to ensure that the applicant is informed of all the proceedings even if she is not able to read or write the correspondence herself.

Focussing on the women who were interviewed,¹ Figure 1 demonstrates that the greatest proportion of women who applied are either professional or have completed tertiary education, that is, either a degree or an HND/BTEC diploma. This level of education implies that these women possess a certain degree of autonomy – that degree of autonomous decision-making that is normally implicit in the acquisition of a formal, modern education, so that it

The women come from a variety of socio-economic backgrounds, ranging from qualified professional women such as doctors, trainee lawyers and university lecturers, to those with minimal formal education

Figure 1 Profile of the Educational Achievement of Interviewees



cannot be assumed that there was any undue family or peer pressure exerted upon these women to apply to the MLSC, or, *a fortiori*, to comply with the precepts of the Shariah. The actions taken by these women illustrate the voluntary aspect of the process, because they choose to apply to the MLSC: this clearly refutes a wide-spread secular assumption that educated and socially mobile women would be uninterested in asserting their rights within the framework of the Shariah.

At the other end of the spectrum the women with the least social mobility were also able to access the organisation because 19%, that is almost a fifth of the women who were interviewed, had either only completed their primary school education, or were able to attend secondary school only for a limited number of years, leaving school without any qualifications. The figures demonstrate that a genuine cross section of Muslim women contact the organisation; and access to it is not limited in such a way as to discriminate against or in favour of any particular socio-economic group.

Similarly, the women's cultural backgrounds are diverse, with applicants from South Asia, the Middle East, Africa, migrant refugees from the Balkans and ethnic UK women who have entered Islam, reflecting the Muslim population in the UK.² In addition, there are also a number of ethnic UK women who marry Muslim men, but do not become Muslim. They are aware that their Muslim marriages may have no legal status in this country, but nonetheless they felt personally compelled to obtain Islamic divorces in order to sever their marriage ties. In some cases this was in addition to obtaining civil divorces where these women were also married according to civil law.

BOX I • Ethnic-UK Women: Muslim and Non-Muslim

3.5% of the applicants to the MLSC were ethnic UK women, of whom 72% were Muslim.

Ethnic UK Muslim women find themselves particularly isolated as often they do not have the support of their family, and face hostility from the ethnic UK community. These women are not acknowledged by the social services, nor by general voluntary sector support-networks, as a distinct group of women with particular needs. For example, the provision by some Black or 'Asian' women's refuges of facilities such as prayer rooms – in an attempt to be sensitive to the needs of different faith communities – would not benefit ethnic UK Muslim women as they are not recognised as a category within the ethnic minorities, and a separate category of women identified by faith-based needs does not exist.

■

A young ethnic UK mother wrote to the MLSC, after obtaining their address from the Muslim Women's Helpline:

"I became Muslim just after I married... I just feel so alone because I haven't seen my family for 3 years because they don't want me to practise Islam. I think it would be better if my husband would just divorce me – I don't ask him to, because he may not, and we will have problems with our son... I am constantly thinking how to solve this problem, I hope Insha Allah³ you can help." (Case 9247)

■

An ethnic UK woman had married a Muslim abroad after a holiday romance in his native country. She had waited in England for five months, during which time her husband did not come to the UK as he had promised. After some negotiations with his family, and the intervention of the *Imam* in her local UK mosque who corresponded with the husband's family on her behalf, she wrote to the MLSC:

"I now feel I have done all that I can and that he does not want to know me any more so I want to divorce him. Please can you advise me what to do? I do not know how to go about divorcing him because he is in [country x] and I am here. I no longer want him to come to me as I feel that he has let me down and would do so again. I am Muslim now and realise he has done things which are not Islamic..." (Case 7794)

In addition these women (and all others who have English/Welsh domicile) can face quite complicated issues regarding conflicts of laws in their marriage disputes:

An ethnic UK woman had a *nikah* ceremony in the UK with a man who (unbeknownst to her) was not divorced from his first wife whom he had married in his country of origin. In this case the ethnic UK woman assumed incorrectly that her *nikah* ceremony granted both husband and wife married status according to UK civil law.⁴ His first marriage would have been recognised according to UK civil law, but the *nikah* ceremony carried out in the UK would not have been so recognised. She wrote to the MLSC: ***"Finally I find myself, now, unwittingly in a position that according to English law we have committed bigamy."*** (Case 9263)

As regards ethnic UK women who did not convert to Islam, but married Muslim men, many were similarly confused about the validity of their *nikah* ceremonies performed abroad.

In the following case, the applicant had been married both according to UK civil law and had also had a Muslim *nikah*. She was not sure whether she had formally entered Islam, but stated that she certainly did not practise the religion. Two years after obtaining her decree absolute she contacted the MLSC because she was anxious that she ***"...was still married under Islamic law. I therefore request an annulment [sic] of the Islamic marriage..."*** (Case 9239)

In this case the MLSC facilitated negotiations with her husband who eventually granted the applicant a *talaq* divorce, although her *nikah* ceremony was not recognised by UK civil law.

Figure 2

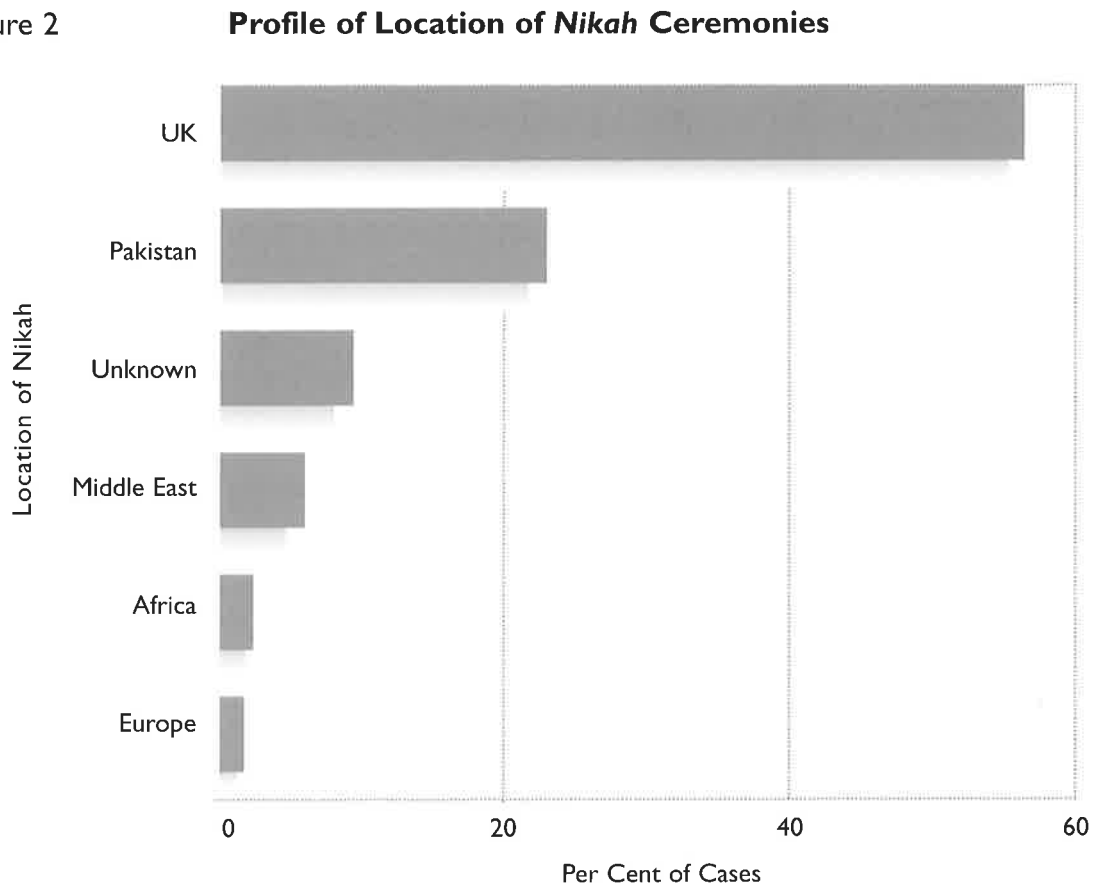


Figure 2 shows the different locations of the *nikah* ceremonies. The greatest proportion take place in the UK (57%) but from other documentation in the case files it was clear that the majority of these women were of South Asian origin, thus reflecting the makeup of the UK Muslim population, the majority of which is South Asian.⁵ The fact that quite a high proportion of *nikah* ceremonies have taken place in the Middle East demonstrates that the MLSC is not an organisation that is culturally bound to South Asians, or any other particular cultural community. The findings also show how widespread the problems related to marriage dissolution are between the different cultural communities of Muslims in the UK (and Europe). However, it is worth mentioning that the applicants who had their *nikah* ceremonies in Africa include those people from Arabic-speaking West Africa and those people of Indian descent based in East Africa. Likewise, those who married in Europe include individuals from the Indian Subcontinent, the Middle East and Africa.

Language and communication

The ability to apply to the MLSC in writing, and complete the procedures devised by the MLSC solely through written correspondence, enables women from as far afield as Denmark and Spain to resolve their marital disputes with the help of the MLSC. Some of the women who apply from Europe overcome any potential language difficulties by communicating with the MLSC in Arabic or Urdu, although the MLSC make a point of corresponding in English, and producing all their official documentation in English.

Length and the Types of Marriages that Break Down

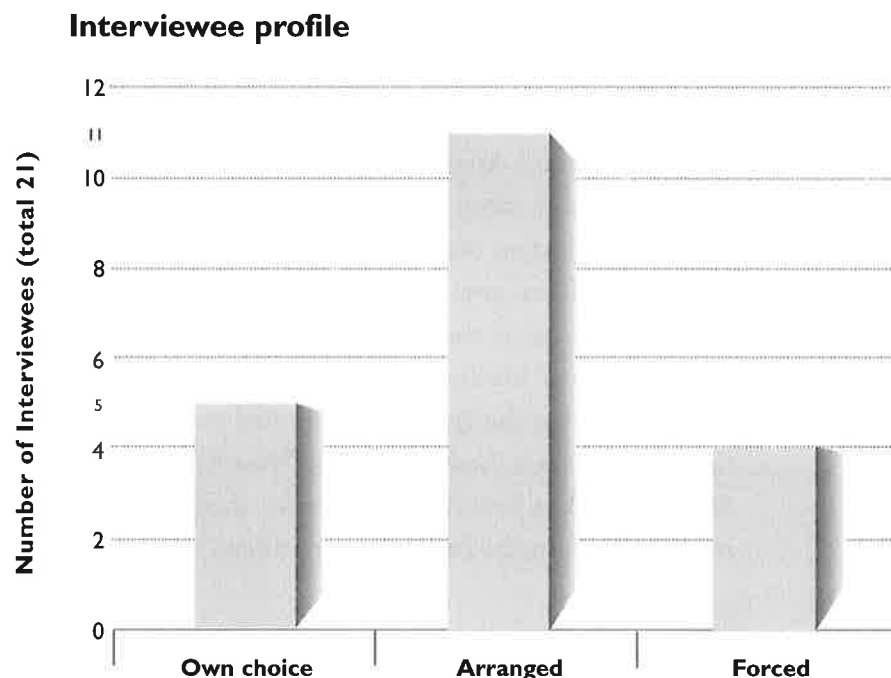
The average length of the marriages of the women who approach the MLSC cannot be considered apart from the type of marriage that broke down. As will be explained, the findings reveal that divorce is to be found in a wide cross-section of marriages that vary from those which were very brief to those that lasted nearly twenty years. However, what also comes to light is that the marriages can be put into certain categories.⁶

The findings (both in the case-files and from the interview data) reveal that the applicants' marriages can be categorised into three types;

- arranged marriages⁷
- forced marriages
- 'own choice' marriages

By way of illustration, Figure 3 shows the types of marriages of interviewees. As can be seen, most of the women had arranged marriages, but lamentably the proportion of forced marriages (4 out of 21) is high and not that distant from the number of own choice marriages (5 out of 21). However, out of the total 308 cases, there were 28 forced marriages (9% of the total).

Figure 3



A recent report produced by the Home Office on the subject of forced marriages⁸ has outlined the nature of the problem of forced marriage in England and Wales. The Home Office Working Group was keen to distinguish forced marriages from arranged marriages. The report defined a '*forced marriage*' as a '*marriage conducted without the valid consent of both parties, where duress is a factor*'. The legal test for duress in these circumstances was laid down by the Court of Appeal in the case of *Hinari v Hinari* (1984) 4FLR 232 CA: '*whether the mind of the applicant (the victim) has in fact been overborne, howsoever that was caused*'. The Working Group found that no major world faith condones forced marriages, and that the freely given consent of both parties is a prerequisite of Christian, Hindu, Jewish, Sikh and Muslim marriages. It is universally accepted that according to the Shariah a *nikah* contract is not valid if the parties do not consent, although there are differences in juristic opinion about exactly how that consent can be manifested. The approach of the MLSC has not been to make judgements about the validity of the consent where this was in dispute between the parties, but to focus instead upon the invalidity of maintaining the *nikah* contract in those circumstances. In cases where there is a dispute between the parties as to whether the consent of one of them was freely given, rather than declare the *nikah* contract invalid, the MLSC choose to dissolve the *nikah* contract on the basis that it would be a harmful act to the wife to maintain the marriage tie in those circumstances.

BOX 2 • Forced Marriages

"My dad thinks we'll go wild if he's not strict with us."

"Would you?"

"No, I don't want to be wild, I don't hate my parents, most girls don't hate their parents – they just don't want to be forced into marriages." (Interview 2A)

This young woman's statement typifies the attitude of the majority of women who applied to the MLSC for their intervention after being forced into marriages against their wishes. This particular interviewee was in her twenties and eventually left her husband and returned to her parents' home; she was upset at her parents' attitude, but was also determined to take all the measures necessary to extricate herself from her marriage:

"I had the English one [civil marriage] when my husband came, I stayed there for two or three days at his [the husband's] house, my brothers helped him get a house. I didn't like it there, so my mum said 'at least cook for him and clean for him' so I used to go and do that, but I didn't live there."

"How long did you do that for?"

"Six months and then I got fed up, and said 'I am not going to do that no more'... I applied for the English divorce... I am waiting now for the petition."

"How did you find out about the MLSC?"

"I kept telling my family that I didn't want to live with my husband; 'I don't want to live with him, I didn't want to be married in the first place'. I told my parents, 'Get me divorced'. My husband didn't want to give me a divorce, and only the man can give divorce. My family tried to sort it out

[negotiations with the husband were unsuccessful]. My brother gave me the MLSC address. He didn't want me to tell anyone that he gave it to me as they'd all shout at him. So nobody knows it was him." (Interview 2A)

It is interesting that this interviewee, who had not completed her secondary school education, was able to utilise the facilities of the MLSC with the critically important information from her brother. In this case, the fact that it was her brother who gave her the number is an important example of the type of surreptitious support that can be available from male family members: but the fact that this interviewee was obliged to keep secret that it was her brother who gave her the number demonstrates that she was able to proceed with the MLSC process independently, which is important, because she could have been given the number by anyone.

The young woman in interview 8B was forced into a marriage whilst abroad; she managed to persuade her mother to bring her back to England on the pretext that she was happy with the marriage. Once here, she attempted to persuade her family to allow her to divorce her husband abroad and asserted the desire to marry the man of her choice in the UK.

"The person I want to marry – his family know this Imam, so he got in contact with my parents, and told them, 'look just cancel the whole thing; she didn't want to get married in the first place' so my parents said 'no', they started swearing, so I ran out of the house... So the person I want to marry [and the Imam] went round [to the MLSC and they] advised him to do that [start the MLSC process]."

"So you've left home then?"

"Yes I left in January, I didn't want to leave, but I had no choice."

"Can I ask you how old you were then?"

"Eighteen, and I am twenty now, I have been living without my family for a whole year, it's been really difficult." (Interview 8B)

For many women, relations with the family are often very complex: whilst often the family may be the source of the problem, it is also a vital source of support, from whom she may have been parted for the first time in any significant way, as in this interviewee's case. The interviewee went on to explain this, in terms of her views about forced marriages:

"Parents are not supposed to force their children into marriage. If you go to any police station and tell them that 'my dad is forcing me into marriage with such and such a person who is abroad' they'd come down straight away and arrest him, and take him away. Anything is possible nowadays."

"And you couldn't do that?"

"No I couldn't do that, no, couldn't do that. No matter how bad my dad is, because I have respect for him as a father. My other relatives have, kind of, forced my cousins into marriage as well. And they're all like really, persuading the parents that they're not ready. It happens a lot though, you know. But one thing I wouldn't have done is left home, you know, run away from home, my mum gave birth to me, I would have stayed at home for the rest of my life. And if she didn't want me to marry him [the man whom she is now hoping to marry], I wouldn't, but the only reason why I left is because they forced me to, and I didn't want to leave. Marriage is a big thing, it's a big commitment... My marriage was just forced, it wasn't really arranged, that's just it, it was forced. And my dad, my parents, think that's part of our religion, 'they forced her, they did the right thing'. And it states clearly that parents cannot force their children into marriage."

"Where does it state that?"

"In the Qur'an." (Interview 8B)

Whilst awaiting the completion of MLSC procedures, although living away from home she did not live/cohabit with her fiancé in accordance with her religious views:

“So he comes to see me every day after work, brings food for me from home, makes sure I don’t feel lonely. He’s trying his best, he’s suffering with me. My sisters, my brother, no-one is in contact with me.” (Interview 8B)

These excerpts afford an insight into the importance of the family for many of the women, despite the fact that their families may have been the cause of their problems. It is interesting that this interviewee stressed how she was suffering loneliness without her family, and that her loyalty to her family was such that she only left her family home because her parents would not allow her to divorce the man she had been forced to marry, not because she was unable to marry the man of her choice. In other words, had she been allowed to dissolve that *nikah* contract with her parents’ consent, she would not have left home, because of her fidelity to her family and the support that she felt she needed from them. Evidently, the issue of maintaining family relations is a sensitive and complex question which requires close consultation with the women concerned.⁹

When asked about whether she is going to obtain a civil divorce, she replied:

“I am, yes, I am going to have to get a civil divorce as well after all of this.”

“Have you tried to apply for that?”

“No, I am going to wait, I just can’t handle anything else now. I am going to get married as soon as this comes through, this divorce [from the MLSC]. Get married, settle down and then apply [for her civil divorce].”

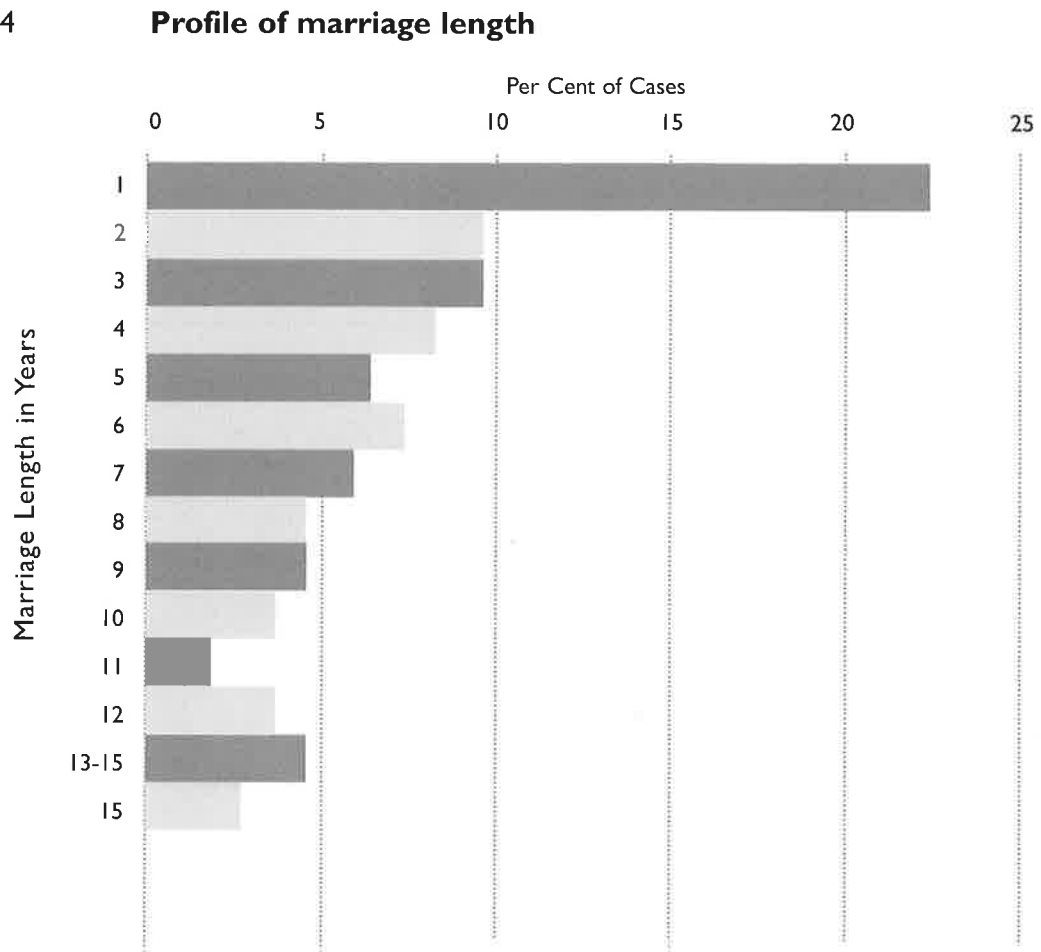
“If I were to ask you which is more important, your civil divorce, or Islamic divorce, what would you say?”

“I’d say the Islamic divorce, because that’s why I am living all alone. Because of this divorce [that] I’ve left my family. Otherwise I would just get married.” (Interview 8B)

Her final statement is more revealing than appears at first sight. It is often the case that these women are obliged to proceed with civil divorce procedures on the bases of their consciences. In this case, whilst it may be that her *nikah* marriage overseas is recognised here, there could have been the possibility of putting forward the argument that because she was forced into it, the marriage did not conform to the essential requirements of the place of celebration of the marriage.¹⁰ But that would require incurring the costs of legal advice and proceedings. On the other hand, to accept that the marriage was valid would not involve legal argument, but that would nonetheless also necessitate the legal cost of terminating, or in this case, annulling the marriage because it was not consummated. Either way, this interviewee was keen to observe the Shariah and wait for a dissolution of the *nikah* contract, before proceeding to marry the man of her choice in accordance with the Shariah.

In this study, the definition of an arranged marriage that has been adopted is a marriage where both parties have the choice to halt proceedings at any time, and where the family have played a leading role in introducing the couple and making all the marriage arrangements. Concerning the arranged marriages of those women interviewed, 7 out of the 12 arranged marriages were very brief, lasting less than two years. This pattern corresponds broadly with the wider picture illustrated in Figure 4, ‘Marriage Length Profile’.

Figure 4



The Figure shows that as the length of marriage increases, fewer and fewer marriage breakdowns require the intervention of the MLSC. There seems to be a strong correlation here, that can be explained by the fact that longer marriages do not break down as frequently, or else because the husband and wife were able to negotiate *talaq* divorces successfully without the intervention of the MLSC.¹¹ Nonetheless after 10 years of marriage, there remains a significant proportion of women (13%) who approach the MLSC, thus demonstrating the very wide variety of marriage breakdowns that the organisation deals with. In the cases where the women had chosen their partners, or where the arranged marriage (sometimes even forced marriage) had lasted longer than a year, and particularly where there were children involved, the women found the marriage breakdown traumatic, and the decision to divorce was not taken lightly. In most of these cases the reason for the marriage breakdown was often the husband's intolerance of the wife's religious practice, the husband's alcohol abuse, or mental/physical abuse, rather than incompatibility between spouses.¹²

However, the greatest proportion of women (23%) who approached the MLSC were married for one year or less.¹³ The case-file and interview data reveal that the phenomenon of the brief arranged marriage is one very prevalent outcome of the arranged marriage system in the current setting. The women were often keen to accept their parents' involvement in arranging their

marriages, but they also, often with the support of their families, did not hesitate to take steps to dissolve the marriages if necessary. The complexity of the arrangements that precede such marriages, such as the negotiations that take place between the two families, makes the breakdown all the more apparent when it occurs. The fact that the family is most often heavily involved in precipitating the union means that, concomitantly, it is also a significant element in any negotiations prior to the complete breakdown of the marriage.

Many of the women expressed a preference for arranged marriages: ***“I recognise the distinctions between religion and culture... I was very much aware that if I step over the mark... I mean there are some things that can be negotiated over tradition and other things that can't. Things like not dating, and I wanted my parents to arrange my marriage because I felt that I didn't have the social wherewithal to find someone myself. So I felt much more comfortable about my parents being in control. When I say control it was much more of a mutual family joint decision. I wanted my parents to feel there was one thing they could do for me... And if I had dated him I would lost my some of my own self-respect, especially now that the marriage is over ... tradition is primarily cultural.”*** (Interview 1A)

The following excerpt from interview 6A demonstrates how the women view their parents as having certain family rights over them, and subsequently view the marriage as joining together the two families; as such, the women do not regard themselves as part of an independent couple, but as members of a family who have been joined together:

“[I] got married straight after my HND; met him once, [he was a] visitor from [country x]; [I thought] ‘whatever my parents think, I'll go ahead with it’... As soon as I got married, the next day I knew it wasn't right; he didn't like my driving, [I was] looking for work ... didn't like it, didn't like me wearing my glasses, didn't like me talking to friends, really, really picking on me. ... I have got quite a lot of family here ... my cousin knew him ... my parents trusted him ... that's their fault really ... so [when] he went to visit his cousin, that's when I told my mum ‘I don't want to be married to him’... I don't know where I got the strength from, I told my mum ‘if you don't want to divorce him I'll do it myself.’” [emphasis added] (Interview 6A)

The negotiations that precede the marriage can be intricate and may establish a pattern of inter-family communication:

“The tension on the day of marriage affected our married life... Mum was in hospital and the elders were negotiating as the wedding was put off ... they said that Dad had demanded their family house as haqq mahr⁴... He [Dad] then said write down whatever is in the Shariah; they wrote down 300 grams of gold; they wrote down that it had already been given when it had not.” (Interview 10B)

The pattern of inter-family negotiations once having been established then continues to be the means of communication in the event of a marriage breakdown. All the data regarding these marriages show that there were a series of family negotiations prior to the complete breakdown of the marriage, so that even though the marriage may have been very short, the attempts to save it may have been numerous, as in the following case, for example:

The documentation and interview data reveal that the phenomenon of the brief arranged marriage is one very prevalent outcome of the arranged marriage system in the current setting

“...with virtually no communication between us, and after numerous threats to inform my family, Mr.X finally revealed the secret to my family with a very harsh blow ... my family intervened immediately, trying to mediate and reconcile, not realising the extent of the situation, and myself I was reluctant to discuss the unfortunate circumstances of my communion [sic. what is meant is ‘union’, i.e. her marriage]” (Case 7753)

The desire then for a speedy end to the marriage is easy to comprehend; **“He lied every step of the way... They came in August to reconcile... Dad threw them out ... I started divorce proceedings that November, because we had only lived together 8 months so I couldn’t start before that, so I started the day we had had the marriage registered.” (Interview 6B)**

In a document addressed to the MLSC, the applicant stated: **“I XX being firmly of the opinion that I cannot live within the ‘limits of God’¹⁵ in the state of matrimony with Mr.X hereby request the termination/ikhulla of the Nikah... There has been various meetings between the family elders with a view to obtaining for both of us an honourable exit from the marriage... [But the husband] has failed to discharge his Islamic marital obligations... Upon advice/guidance from an Islamic scholar... I implore the MLSC to facilitate assistance to me by releasing me from the marriage bond at the earliest opportunity.” (Case 8133).**

From this perspective, the length of current civil divorce procedures¹⁶ seems inappropriate and inhibits the possibility of a swift remarriage. In Muslim families it is desirable for remarriage to follow the breakdown of such a brief marriage as quickly as possible, so as to give the individuals another opportunity to enjoy stable family life before any inhibitions about married life become entrenched. For example, in the following case, the applicant alleged that her husband was impotent;

“The first night of our marriage my husband said ‘sorry’ but he was ‘medically unfit’ and could not ‘consummate’ [sic] the marriage. To date this still holds true. I wish to separate from this man and think about making a future for myself. Surely there is some part of Muslim law to look after womens rights and general and personal needs? A man in his position should at least declare his position to the go-between who acted for him in the first place.” (Case 7715)

This approach is to be contrasted with modern Northern European conventions¹⁷ where many women remain single, or in temporary relationships prior to [re]marriage or single parenthood, whereas Muslim family structures tend to promote remarriage and discourage remaining single as an option, because sexual relationships are sanctioned only within marriage:

“I come from a family which although is professional we still value our traditions, and I didn’t want my parents to have to fend off criticisms about me going out as boyfriend/girlfriend and I didn’t want that reputation either.” (Interview 1A)

As customs regarding the *mahr*, and communications between the two families, have such a significant impact in these types of marriages, any abuse of customs causes considerable hardship. The instances where a brief arranged marriage had broken down and the wife had had difficulty in recovering both

her *mahr* and dowry were frequent. Often these women were not able to pursue civil legal proceedings to recover the goods, and attempts at family negotiations had not been very fruitful:

“I informed my parents in England about this. My father immediately reached [country x] and contacted my husband and my in-laws about this new situation. But my husband and his parents totally refused to come to any reconciliation. They not only refused to provide me with the subsistence money and the jewellery they had promised me through the [marriage/nikah] contract, but also confiscated the golden ornaments my parents had given me. We then asked for divorce.” (Case 7724)

In some instances the MLSC were able to negotiate successfully between the parties, arranging the return of goods and the provision of maintenance, but in most cases if there was no co-operation from one side regarding this aspect of the dispute, the MLSC would clearly take a step back and remind parties that they were not able to mediate in property or civil disputes without the co-operation of both parties.

Successful civil legal proceedings to recover the goods given in dowry or the *mahr* itself, would most probably involve the imaginative use of remedies in tort (such as the restitution of goods) or contract law (regarding the non-payment of *mahr*/dower payment as a breach of the marriage contract), as it is difficult to conceive of these matters being dealt with adequately in conventional ancillary relief proceedings. The legal advice required would necessarily need to be creative and committed; it would be extremely difficult to conduct such proceedings by litigants in person, unassisted by legal advice. When questioned about this, the women in the interviews were extremely frustrated by the difficulties encountered in trying to receive legal redress through the civil court process: the two issues of costs and lawyer competence/expertise were repeatedly emphasised. See Box 3 which explores some of these issues.¹⁸

BOX 3 • Attempts to Recover the *Mahr* and Dowry

Interviewee IA had an arranged marriage, which broke down after 4 weeks. She had also registered her marriage according to civil law, so it was necessary for her to dissolve the marriage according to both civil law and the Shariah. She decided to pursue nullity proceedings in the English courts, because the marriage had not been consummated. In addition, she attempted to recover her dower (which she calls ‘*haqq mahr*’) through ‘costs hearings’;

“I was at an English law firm and so I was having to instruct them in terms of the religious aspects as well... Had a very helpful and sympathetic woman solicitor advocate; although I had to explain the whole process of the Islamic marriage to her and the procedure.”

“Would it have been better if you had had Muslim solicitors?”

“I don’t know ... other solicitors said, ‘ok, we’ll deal with that [Shariah] later, it’s not English law – it’s not important’. ... I sought a second opinion from a Muslim law firm, their reaction to my views on the haqq mahr were ‘well you’ve got no chance really, it’s not worth pursuing, it’s not worth getting the law to accept Islamic marriages, because it’s not a Muslim country.’ The response from the Muslim

solicitors was more depressing; the English ones were prepared to explore it, maybe because they knew there would be more money the more it dragged on, maybe because they thought this is a more interesting case for our firm."

"Did they, the Muslim lawyers, present themselves as experts?"

"[No they] didn't present as experts, [but I] sensed a lack of enthusiasm ... [they did not say to me] 'this is your right as a British citizen to expect your religion to be recognised' they didn't have any of that. My solicitors, well, they had to be sympathetic, I am their client... I am increasingly irritated [about having to explain to] English law firms – they need to be aware of the needs of ethnic minorities, religious minorities – they need to have those resources to hand, they should have told me about the Shariah Council, they should have been the ones, 'we can put them in touch with you', but they knew nothing. But they had to be sympathetic, [but] their lack of knowledge is a source of concern." (Interview 1A)

This applicant's views about her rights as a British citizen are commensurate with her high expectations about the quality of the legal service that she should be able to access. Her frustration at not being able to receive advice from her legal adviser and instead having to inform her legal adviser about the dimensions of her particular case was echoed by another interviewee (11B). When asked whether it would have made any difference if her ethnic UK non-Muslim solicitor had been Muslim instead, she replied:

"[With] some things yes, because there were some things about the Shariah Council that I didn't really understand ... she advised about some technical bits of advice ... would have helped if she knew how Shariah Council operated but she didn't. It would have benefited [me] if she [the solicitor] had been Muslim, [either] white or Asian." (Interview 11B)

In the case of interview 1B, the applicant had an arranged marriage in the UK, the marriage was not registered according to civil law, and after about 18 months she left the man. The facts in this case give an example of someone who did not have a civil ceremony of marriage and who did not consider the civil ceremony a point of reference from which to gauge her married status. Nonetheless because of the complexity of the conflict of laws situations where a *nikah* ceremony performed abroad may be recognised in the UK, but not *nikah* ceremonies performed in the UK, the women can be confused about their marital status. In this way, although their status may be equivalent in legal terms to co-habitees, unlike those individuals, many Muslim women may have made the decision not to register on the basis of an ignorance of the available options. This was compounded in this case by the prohibitive costs of initiating proceedings to recover her goods:

"I was told I have got to spend £5000 on my case by my solicitors ... they are just round the corner, I applied in April 1998, it's been rejected [the claim to recover goods from the marriage]... it's not like 'no win, no fee', it's not like that, because even though you pay so much, you may not get as much; it's not worth it, but why did I have to go through that? [because the marriage was not registered] ... you're not known as a married couple, the CAB said 'you've got to be married'. Why have I lost out on so much? Why? they've got to help me, my legal aid was rejected, saying that the case is going to cost more than you're going to get back, but that's not the point, I actually needed my things, I lost out on everything."

"Why didn't you think of getting a civil marriage?"

"Before we actually got married, my dad said 'we need a court marriage first', they said after[wards] 'then we'll get her married'... They delayed it... They decided that the court marriage would happen after the marriage [nikah ceremony]... I didn't tell him [husband] my rights, it was like a nightmare... I lived with him for 1 year and 3 months. I became depressed, I totally lost it, so I never asked for my civil marriage." (Interview 1B)

This interviewee described how, although negotiations took place, attempts to resolve the dispute failed.

Her father and relatives attempted to recover her belongings, but because the husband refused to co-operate, it also became difficult for the father to put any pressure on the husband to end the marriage:

“Basically they didn’t know the meaning of Islam, how to treat a wife ... so I thought ‘ok I have got to do something about it’, so that’s when I started the case ... the case to gain my property back from him, all the things I had got when I got married, the gold, the clothes, my documents; my driving license, passport, birth certificate... We did ask him for it all and his excuse was ‘I am going to get my wife back’ ... We got people in to talk to him, my dad’s relatives ... then my father-in-law said ‘no, he hasn’t divorced her, he’s going to take her back’, and then we thought we’d wait and then we sent someone else... That was his security that ‘she’s got to come back because of the gold’, but that was worthless to me, ... no, all I needed was my life back, but what I thought to myself was ‘why should he get it?’... Nothing was working, so we went to the solicitor... In the end I was told there was no win to the situation ... [so]I applied for a divorce from the Shariah council [I got the address from a]lady who lives here, her daughter went to them, to the Shariah Council.” (Interview 1B)

The data reveal that there are no discernible patterns as to which types of marriage are registered according to civil law or conducted as solely Islamic marriages; that is to say that some arranged marriages are not registered according to civil law and some are, with the same permutations for the other two types of marriages.

Out of the total 287 case files examined a significant 57% of women did not register their marriages in the UK according to civil law at all, but did have an Islamic *nikah* ceremony. Not all of those *nikah* ceremonies took place in the UK, so some of those Islamic marriages would have been recognised according to civil law as valid overseas marriages, and it would not have been necessary to register their marriages according to civil law in order to acquire married status in the UK. However, in 27% of those cases where the *nikah* ceremonies did take place in the UK, the women did not go on to register their marriages; hence these women did not acquire valid marriage status according to UK civil law. This finding is reflected in similar proportions with regard to the women interviewed, as 5 out of 21 did not have a valid marriage according to UK civil law. Out of the minority of women who did register their marriages according to civil law, only 37% had their civil marriages before the *nikah* ceremony. The others had their civil registration ceremonies on the same day as their *nikah* ceremonies, or thereafter. 55% of the women who approached the MLSC to facilitate divorces according to Islamic law, had done so *after* obtaining their civil divorces. Only a very small minority of cases (1.2% of the total case-files and interviews) concerned polygynous unions.¹⁹

In Box 4 below some of the attitudes that women have about the necessity for civil procedures regarding marriage and divorce are explored. The women do not appear to perceive any conflict between the two systems, but are sometimes confused about the anomaly between the conflicts of laws policy whereby some *nikah* ceremonies conducted abroad are recognised as valid in the UK. Difficulties arose for the women when confronted with misinformation and

The data reveal that there are no discernible patterns as to which types of marriage are registered according to civil law or conducted as solely Islamic marriages

ignorance about the Shariah, because compliance with the Shariah rarely, if ever, involved the flouting of English law. Where there is any slight contradiction between the two, the vast majority of Muslim jurists would advocate observance of the law of the land, as do the MLSC.²⁰

BOX 4 • Attitudes towards Civil Procedures for Marriage and Divorce

In interview 7A, the young woman, in her mid-twenties, was born and brought up here, and had been sponsored by her employers in the public sector to obtain a tertiary qualification, and now continues to work for them. She explained that she had been married twice, although the first marriage was never consummated, and she left her second husband because of **'serious violence'**. She is now looking forward to marriage to someone she hopes will be her true partner.

"I have been divorced twice, and a civil marriage never took place [on either occasion]. I married [second husband] two years ago ... he didn't want to marry me in English law ... [a] blessing in disguise because I would have had to pay thousands to get the decree nisi... I met this man [current fiancé] in the smoking room at work, I said to him 'I know I am divorced, but that doesn't mean I am an easy woman... [This time] I will definitely have the civil [marriage], because I have never had the civil."

"Which marriage will you have first?"

"The nikah, that's under Islamic law isn't it?! Definitely will always [do that], it will always be the nikah, because I am a Muslim; the Muslim way first, and then the other... Muslim means to me: I believe in God, that I pray five times a day and that I fast, and that it is a religion." (Interview 7A)



In interview 10B, the woman, also in her mid-twenties, was born and brought up here. After completing her tertiary education she now works in the public sector. She got married abroad to a distant relative, and she has one child from that marriage.

"I really wanted to stay there [in husband's country of residence – there was no question of the husband migrating to UK]... Our marriage didn't break up because of him, it broke up because of his family."

She then received erroneous legal advice:

" [I wanted] advice from some solicitors about getting a divorce from my husband ... they said because I had had a nikah in [country x] there was nothing that they could do."

"Do you know whether your talaq is valid in this country?"

"I don't know, I have [now] been told that the law in this country recognises my nikah, because my brother who had a nikah was told that. ... [If] I go for a khulla, or my husband gives me a talaq from [country x], the Government should recognise it as a valid divorce."

"Do you think it does?"

"No"

"So what are you going to do, if you think it is not recognised?"

"As far as I am concerned because my nikah was in [country x] and my talaq is from [country x] I am satisfied with that, and as far as I'm concerned my marriage is over – I don't need to go through anything else."

"If you got married here, would you have a civil marriage as well as a *nikah*?"

"I would have a civil marriage; I don't know it is more sort of a tradition thing that happens now; you have your *nikah*, and then you have your civil marriage as well."

"Is there any other reason apart from the fact that it is what everyone else does?"

"No"

"Can you think of any reasons why you would want a civil marriage?"

"No"

"If you were told that you can't have a civil marriage until you have a civil divorce, would you have a civil marriage?"

"No, I feel I don't need a civil divorce; if there is no civil marriage there doesn't need to be a civil divorce."

"What if you were told 'you can't get married until you get a civil divorce'?"

"I would contest that; if the *nikahnama*²¹ proves that I am married ... they should also accept that my *talaqnama* is proof of divorce."

"What if they don't accept it?"

"Then I have got no choice, I would have to... If the law places a restriction on me – I would be quite content with the *nikah*."

"Why?"

"At the end of the day I am a Muslim and for us Muslims a *nikah* is the most important thing, for us the civil marriage means, well, it is not until you have had the *nikah* that your marriage is acceptable, we can have a civil marriage but they're not going to accept that until we have the *nikah* done. For a Muslim a *nikah* is more important than a civil marriage... I'd be quite happy just to have a *nikah*, that's what I had before; there are reasons why people go through a civil marriage ... people coming from abroad... if it was the case that I was marrying someone from abroad ... then, yes, I would go through a civil marriage... If I was going to marry someone from here, with British or European citizenship then no, I wouldn't go through a civil marriage ... there is no need for me to go through that."

(Interview 10B)

The immigration factor

Immigration regulations featured in some way or other in nearly a third of the cases involving all the different types of marriages; arranged, forced and 'own choice' marriages. This figure is calculated on the basis of either the husband or wife not having secure immigration status in the UK, and not on the basis of immigration regulations causing the break up of the marriage. To a certain extent, measuring the presence of insecure immigration status reflects the multinational dimensions of the Muslim community in the UK. When immigration regulations were cited as a factor causing difficulties in the marriage, it is likely that the marriages would have turned out completely differently if the dynamic of immigration could have been entirely removed from the 'equation'. If immigration regulations were not in existence, and unrelated to marriage, men would not be interested in exploiting women solely

for the purpose of immigration, women would not be vulnerable to the pressure to allow the marriages to continue, nor indeed would the women go through the hardship of having to wait for their husbands, and occasionally suffer the tragedy of their husbands' being refused entry clearance altogether. In some instances where the women were unhappy with the marriage, and their husbands were still abroad, they were able to refuse to endorse their husband's applications, but often this step was extraneous to other measures taken to terminate the marriage: ***"I feel I am a fairly intelligent woman, and I felt it wasn't enough [there was a] lack of respect... [I] stayed there for about a month ... came back ... wasn't pregnant... I've worked really hard [at my job], got this house, and all he [husband] had to do, is tell the truth at the interview... We got the summary reports from the Home Office... They told us he was 'very expedient with the truth'... I told him [husband] – but he was very arrogant – I believe he didn't want to come here but he wanted to force me to go over there... The immigration [process] takes so long, months after you fill in the form, you wait for the application, for their decisions... [We] got into this circle of appeals. If our minds had met, anything that I could build on, then I would have grabbed it. My father asked 'are you going to appeal again?' I thought this is the time I have got to say it... I said, 'do I have to go through with it?'... I am pretty good at gauging when the time was right, nobody could have said I backed out too early."*** (Interview 3B)

II – Why Do These Women Approach the MLSC?

The Reasons Why the Women Cannot Obtain *Talaq*

Proof of the husband's desertion or his imprisonment are clear examples of the instances when judicial intervention is required to dissolve the nikah contract. In other cases, women approach the MLSC in order to set into motion Islamic and/or civil divorce proceedings, because they have not taken any other formal steps prior to approaching the organisation. The MLSC are direct about their avowed aim of supporting families and encouraging reconciliation; for example, in the following case the MLSC write to the wife:

"The primary objective of the Shariah Council is to assist the reconciliation of a Muslim family, which is also the vital social teaching of Islam. The Council dissolves a *Nikah*, only when there is no hope of understanding left and it has become the only alternative to resolve a family dispute." (Case 8128)

However, the organisation has demonstrated flexibility in this regard. In case 9213, the husband was mentally ill and an alcoholic. The wife had obtained a decree absolute three years before applying to the MLSC for their assistance, but she expressed anxiety regarding the possibility of reconciliation; the MLSC replied to her:

“[We] do fully understand that reconciliation will be out of the question. And reconciliation is certainly not something to be forced upon anyone by the Shariah Council. Reconciliation always emerges through mutual agreement. However [we] must make it clear to you that cases are decided on the basis of evidence provided to us by both the parties... [we are] unable to guarantee one particular verdict...” (Case 9213)

Unsurprisingly the majority of women had thought about the issue of divorce very carefully and only approached the MLSC after much deliberation; **“...I understand that reconciliation should be sought, but for the last year I had sought to reconcile... I feel like things went too far, you have a limit to what you can personally take.”** (Interview 2B)

Similarly, when interviewee 3B was asked about reconciliation she replied: **“[The situation was] too far gone; if there had been any doubt in my mind I would not have started the procedure... I did think hard about it, ‘is there any hope in this?’”** (Interview 3B)

There were a number of women who had attempted to reconcile, and whose families had been involved in attempts to save the marriage. Eventually, they had come to the conclusion that they wanted to end their marriages but were unable to approach their husbands directly, and their husbands had not taken the initiative to pronounce *talaq*:

“Why couldn’t you go to your husband and tell him to give you *talaq*?”
“No I couldn’t do that, I couldn’t face him ever again... I thought it would be simple; pay a small fee and get it done, it’s all written, their [the MLSC] form of written divorce.” (Interview 1B)

In interview 3B the woman tried to speak to her husband, who was abroad, over the telephone in the hope of resolving the situation:

“I phoned him and tried to talk to him about it [I said]; [there is] no love, [nor] respect for each other, we should call it a day’, he said ‘what shall I do about it?’, I said ‘you know exactly what to do’: he was not going to hear the word [divorce/talaq] out of my mouth... If he’d been giving me sensible answers, and not been sarcastic I might have asked him... His reaction made me not ask him outright.” (Interview 3B)

In the above cases, the women had the support of their families, who had already tried to resolve the disputes but had failed, and so they asked the MLSC to intervene to help them negotiate a divorce with their husbands. That is a role that is comparable to approaching the family solicitor upon the breakdown of a marriage, but it is much more akin to mediation facilitation inasmuch as the woman maintains a high degree of participation in the process, thereby differing from the act of ‘handing over’ matters to the solicitor. The MLSC consider that one successful outcome of their intervention is to re-direct the disputants upon the negotiation track so as not to need the MLSC’s mediatory support. For example, in the following case this was achieved and the applicant wrote;

“Dear Sir/Madam,
In reference to my application for an Islamic divorce I would like to cancel any

proceedings as it appears that both families have come to an agreement regarding the English and Islamic divorces.

However, should we experience any difficulties in this matter we will write to you again for further advice. Finally, I would like to thank you for the time you have given me in my case.

Yours faithfully,” (Case 8273A)

The fact that the MLSC insist in all cases on communicating directly with the woman, even if she is not the one who first approaches the organisation, is distinctly to the advantage of these women. It allows her to be independent from her family, and to a certain extent also saves her family from the difficulties associated with unsuccessful negotiations: **“I didn’t want my family to be involved... I kept them informed, but not involved.”** (Interview 4B)

Of course, there are a number of women whose families are determinedly hostile to them and their needs, and for these women independent access to the MLSC processes is of critical importance, such access empowering them within the framework of their faith.

“Sir, I am requesting the Muslim community body in full faith so that I may still have my rights as a Muslim woman in Islam. I want to keep my dignity of having the rights of choice in marriage which was denied to me by my parents.” (Case 9262)

In other cases, the women secure MLSC involvement in the hope of precipitating the support of their families. It is as if the intervention of support from the MLSC, which is perceived to have a higher moral authority, precludes the wife’s family from continuing to hesitate in supporting her. For example, in case 7770, the parents had forced their daughter to marry; the marriage was never consummated, and then the husband went abroad to study. The wife was unable to persuade her husband to terminate the marriage, and so she asked the MLSC to intervene. Eventually some months after the MLSC process had begun, the wife’s father wrote to the MLSC:

“Dear Brothers-in-Islam,

As-salaamu Alaikum Wa Rahmatullah Wa Barakatuh

In trying to fulfil my duties as a parent, I did what I thought was in the best interests of my daughter. I admit that I didn't know X's character and disposition personally but I knew his family well. I was aware that W[wife] did not want to go ahead with the nikah but I believed that she was too young and innocent to decide what was best for her future security and happiness. As a father, you only want what is best for your daughter but I realise that I made a mistake. W pleaded with me but I admit that I pressured her into accepting the proposal against her wishes. My only reasons for doing this was only with the best intentions that a father has for his eldest child.

Al-hamdulillah²⁴ that the marriage was in name only. May Allah forgive me for my mistakes. Jazakallahu Khairan²⁵

Wa Salaam²⁶

Brother.xx” (Case 7770)

The MLSC’s intervention can result in the husband being persuaded by them to divorce his wife, so that in effect the MLSC has successfully facilitated

*MLSC process –
Faskh of Nikah*

divorce negotiations. As far as the MLSC are concerned, it is preferable by far that the man acts to terminate his marriage, rather than the organisation having to make a judicial intervention to dissolve the *nikah*. The extract below from a letter written to a husband is typical of the final stages of correspondence that the MLSC have entered into with recalcitrant husbands:

“Now the Council has no option except to ask you to observe the teachings of Islam and to free your wife by pronouncing an Islamic Divorce without further delay. The Qur’an says: ‘Either retain them (your wives) in a fair manner or let them go in a fair manner. But do not retain them against their will in order to hurt (them): for he who does so sins indeed against himself.’ (2:231)

The Council sincerely hopes to receive a positive response from you within 15 days (within 30 days if you are living overseas). We feel sad at not being able to save your marriage. However, we pray to Allah Almighty to bless you with courage and understanding at this time of crisis. Finally we must advise you that if the circumstances remain unchanged, and you do not respond to the laws of the Shariah ... [we] may consider issuing a document with the effect of pronouncing your *Nikah* dissolved (*Tanseekh*) on the basis of valid grounds according to the Divorce Laws of Islam.” (Case 9450)

However, in the vast majority of cases the husband’s intransigence in withholding the *talaq* propels the MLSC to terminate the *nikah* contract for the wife. The MLSC can dissolve the *nikah* contract by declaring a *faskh* of *nikah* (dissolution of the *nikah* contract). The MLSC consider the husband’s refusal to pronounce a *talaq* a deliberate act intended to harm the interests of the wife and therefore a valid ground upon which to dissolve the *nikah* contract. In so doing the MLSC act in the capacity of an Islamic judge who has the authority to dissolve the marriage contract upon certain grounds. Such a dissolution is not equivalent to another procedure whereby the wife can release herself from the marriage contract, known as a *khulla* agreement, by paying an agreed sum of money (usually returning the amount of money received as the *mahr*, without which the marriage contract is not valid). In interview, it became apparent that many of the women were unaware of the difference between the two procedures, and this may have been partly compounded by the fact that in certain cases the negotiations between the parties began as *khulla* negotiations, but concluded as *faskhs* of the *nikah* contract on the basis of the husband’s unreasonable intransigence. Whilst their ignorance may not have had any particular detrimental consequences, it did lead the women to the false conclusion that they had ‘got their *khulla*’, as opposed to understanding that what had actually happened was that their marriages had been dissolved by the MLSC because of their husband’s unjustifiable persistence in withholding the *talaq* from them, which amounted to harm (*dhirar*), and was thus a basis upon which to declare a *faskh* of *nikah*.²⁷ It was only in a very small minority of cases that the MLSC negotiated a *khulla* agreement whereby the wife released herself from her marriage. In only 12 out of a total of 308 cases did the husband attempt *khulla* negotiations with the help of the MLSC; in 3 of those cases the parties came to

It was only in a very small minority of cases that the MLSC negotiated a khulla agreement whereby the wife released herself from her marriage

khulla agreements with the intervention of the MLSC; in 6 cases the MLSC went on to grant a *faskh* of *nikah*, and in the remaining 3, the families dealt with matters without continued intervention from the MLSC. The negotiations often revolved around the sum of money to be paid by the wife. From the point of view of the Shariah, it is generally agreed, and certainly this is the view of the MLSC,²⁸ that the most preferred course of action is for the wife to return the money she received as *mahr* (the sum agreed at the time the marriage contract was drawn up). The rationale for this is that the *khulla* is a device for the wife to end the marriage, regardless of any blameworthy actions on the husband's part, so the wife should not make a financial 'profit' from the marriage. The husband is not obliged to take any money at all, and may agree to accept the wife's demand to end the marriage without any sum exchanging hands. The following is an example of a written *khulla* agreement:

"[The Basmalah²⁹ in full]

Divorce Certificate (by way of Khulla)

I xx of xx, hereby of my own free will divorce three times by way of Khulla, according to Islamic Law (Shariah) my wife Mrs.xx of xx.

This divorce paper is signed by me in the presence of the undersigned witnesses and becomes absolute and irrevocable immediately.

Signature

Name

Date

Witnesses details". (Case 8186.)

How the MLSC functions as an Islamic court in action

"The Muslim Law (Shariah) Council is operating here as an alternative Qadi Court in order to deal with the various family problems of Muslims living in this non-Muslim country. We assure you that our verdicts are totally based on the Laws of the Shariah and we are guided by eminent *Ulema* [knowledgeable and learned Muslims] and Muslim solicitors in the UK." (Case 7739)

This excerpt from correspondence written to a husband, resident in a Muslim country abroad, summarises how the MLSC view their role in the UK, and how they are perceived by the vast majority of individuals who apply for their intervention in family disputes.

In an Islamic court of law the primary aim is to discover the truth. To that extent, it is certainly more akin to an inquisitorial as opposed to an adversarial system, and the most preferred means of establishing evidence is to hear and test the quality of the oral testimony of witnesses, and thereby arrive at the truth of the matter.³⁰ Whilst the MLSC endeavours to ensure that their nominated individual has at least one opportunity to meet with the applicant and/or her husband, it is by no means possible for this to take place in all cases. Anyone involved in an application can arrange a meeting at the MLSC premises in London, and the MLSC can arrange for meetings to take place elsewhere in the country. However, the majority of cases proceed by way of written

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correspondence with the MLSC and consequently the organisation is obliged to make strenuous efforts to ensure the veracity, as perceived by Islamic law, of the correspondents. Hence one of the documents³¹ requested by the organisation stipulates that the applicant agree to abide by the decision of the MLSC and accept the “supremacy of the Shariah” (not the MLSC). The applicant’s signature to this agreement must be witnessed by two individuals, one of whom must be the *Imam* of a local mosque, or head of a local Muslim organisation. In this way the MLSC ensure that they have recourse to someone, should the need arise, who can provide evidence on the character of the applicant. The MLSC has formal links with the ‘Imams and Mosques Council’ which is a national organisation whose membership comprises *Imams* of many of the mosques in the UK and is open to all; consequently, the MLSC may be familiar with many of the people who are most likely to act as signatories for the women.

Some of the interviewees were relieved that they were not obliged to see any members of the MLSC personally, and that their cases were dealt with by way of written correspondence:

“To tell you the truth if I had had to go through an interview, I would never have gone to them... I don’t know [why], I feel comfortable speaking to you, but speaking to an Imam about private things: I don’t think I could do that – the fact that it would be a man would make it very difficult... I prefer the fact that it is written correspondence.” (Interview 6A)

Thus, most cases are conducted by way of written correspondence with the opportunity to meet a member of the organisation remaining open to those who make such a request. Applicants are discouraged from making telephone calls to the MLSC, primarily because of the organisation’s insistence upon maintaining an accurate record of all statements in a case, and also, because the Secretary of the MLSC has no permanent administrative support, it is not feasible for him to encourage telephone calls. Moreover, the MLSC has adopted cautious safeguards in other aspects of their procedures because of their insistence upon ensuring the veracity of all the evidence upon which they might have to rely. For example, they insist upon the supply of all relevant documents (photocopies are accepted); and the delay that this produces has, on occasion, caused hardship to the applicants.³² In the adversarial common-law system, there is an implicit understanding that civil society requires those seeking justice to be truthful; this condition is deemed fulfilled if individuals are seen to comply with its forms and regulations, and judges are not held accountable for the veracity of witnesses who appear in their courts. In contrast, in the Islamic judicial system, the *Qadi* has, *a priori*, a duty before God to ensure that he has come to decisions on the basis of all his endeavours to arrive at the truth.³³ This insistence upon the primacy of the truth of the matter can be demonstrated, in the following case, where the applicant alleged the husband’s desertion. The MLSC insisted that they could not pursue her case unless the applicant complied with their recommendations:

In the adversarial common-law system, there is an implicit understanding that civil society requires those seeking justice to be truthful; this condition is deemed fulfilled if individuals are seen to comply with its forms and regulations, and judges are not held accountable for the veracity of witnesses who appear in their courts. In contrast, in the Islamic judicial system, the Qadi has, a priori, a duty before God to ensure that he has come to decisions on the basis of all his endeavours to arrive at the truth

“The Shariah Council discussed your case at its last meeting. All the members have decided to inform you that we are unable to proceed with your case because you cannot provide your husband's address. It is your duty to give us his current and correct address, simply because he may not be considered a disappeared/missing person in this country, where the law and order situation is organised and developed. If you are serious about your case, firstly you have to report to the police about your husband's disappearance. The police will certainly help you in this respect.” (Case 7052)

However, in another case of alleged desertion where appropriate steps had been taken, the MLSC were able to grant a *faskh of nikah*, and the certificate was worded as follows:

“This is to certify that Mrs.X of [address] who married Mr.X of [address] according to Islamic Law on [date] 1981 in [country x] is now divorced according to Islamic Law (Shariah) on the following grounds and with 2 conditions listed overleaf.

1. Mrs.X separated from her husband on [date] 1985. Since then she has had no marital relationship with him and during this period Mr.X did not support or maintain her at all.
2. Mrs.X obtained a civil divorce (Decree Absolute) on [date]1995 at XCounty Court.
3. Mr.X is reported to have disappeared since [date]1985. The Shariah Council has tried through several available sources to trace him. Repeated enquiries were made on the basis of all information concerning his last known whereabouts. The Shariah Council knows of no other method of enquiry/investigation/search that can be made which might lead to his being traced.

Therefore in order to safeguard the religious, moral and social interests of Mrs.X the *Nikah* is dissolved with immediate effect on the basis of Desertion (*mafquod al-khabar*). She is eligible for remarriage according to Islamic Law as per the conditions overleaf: [Overleaf it is stated that:]

1. This certificate is issued based on the information provided by the applicant, if this information was not given in the best of good faith and any relevant information was withheld or concealed, the verdict of the Shariah Council and this Certificate shall become null and void as and when the Council receives full and accurate information regarding this case.
2. The *Iddah* (the waiting period) which began on [date]1996 is to be observed for four months and ten days.” (Case 9343)

To ensure that the husband is able to put forward his case in all cases of *faskh of nikah*, the MLSC have devised a standard procedure whereby they make at least three successive attempts to correspond with the husband upon receiving an application for intervention from a wife.

According to the principles of the Shariah, the husband's intentions must be evaluated in the light of an opportunity to present his case: the commission of certain acts cannot necessarily imply particular intentions. The following excerpts of correspondence illustrate the principle that the intention cannot be assumed in Islamic law, but must somehow be verified:

“Dear Brother in Islam

Assalam-o-Alaikum.

Thank you for your letter dated x. My father wrote to the Imam of the Islamic Cultural Centre for advice only. The position you explain in your letter is fully understood and appreciated. I do not however intend to file for a decree at this stage which might leave me in an even worse and ridiculous situation than I find myself in at present. For the time being, while I cannot take any steps on my own, I would be grateful if you could help me finding out answers to three specific questions arising from the situation I find myself in now. I am sure, before offering any advice, both the British as well as the Muslim laws and the complications arising from their independent enforcements and the effect those complications/enforcements have on the lives of Muslim wives and families residing in non-Muslim countries would be kept in view. I would like to mention here that my husband’s solicitor did ask me at our last hearing, (I am presently presenting my own case in the Court at the moment) whether I would give my consent if my husband applied to the Court for a divorce on the basis of two years’ separation. Naturally I said that I would if he first agreed to give me the talaq but my husband refused. I believe he has married a girl in [country x] and is anxious to bring her here. He wants to end our civil marriage while leaving me in limbo by refusing to give me talaq. This is the situation that has prompted me to seek advice and find out how far the Shariah Council can go to provide protection and safeguard women’s interests. I have been told about cases where women have remarried after decrees absolute but I am not convinced one way or the other and am therefore seeking authoritative advice. My questions, therefore, for the time being are:

QUESTION NO.1 After a separation of two years if a husband applies to the Court for the dissolution of marriage and the wife consents – a condition under the British rules – would the Shariah Council consider it a sufficient ground, on wife’s application, for the dissolution of the religious marriage?

QUESTION NO.2 After a separation of five years the husband exercises his right (that is, that he does no longer need his wife’s consent) applies to the Court and is granted a decree nisi, would his application for dissolution of marriage and the grant of the decree nisi by the Court be considered as tantamount to a talaq in the Shariah Council’s view, or a sufficient ground for the dissolution of religious marriage?

QUESTION NO.3 If a husband disappears from the scene or goes abroad to work/live, or has failed to maintain his family for a considerable period, say two or more years, the wife exercises her right to apply to the Court for the dissolution of her civil marriage and the Court grants her decree nisi, whether this would be a sufficient ground for the Shariah Council to dissolve her religious marriage and not leave her in limbo?...

Yours, [Name] Sister in Islam.” (Case 7767)

In the reply to this applicant the MLSC state that a definitive answer cannot be given but that

“...in all the three situations mentioned by you in your questions, the Shariah

Council may consider it a sufficient ground to dissolve the *Nikah*, but the final decision rests upon the following

1. The accounts provided by you and your husband

2. The majority view of the Shariah Council...” (Case 7767)

This case demonstrates that the Shariah does not operate on the basis of a dialectic with the civil law: the husband's actions in civil proceedings do not constitute acts from which certain conclusions can be drawn, but rather amount to the corroboration of evidence of certain attitudes which must then be evaluated. The decisive criterion is the capacity to examine the accounts put forward by the husband and wife

This case demonstrates that the Shariah does not operate on the basis of a dialectic with the civil law: the husband's actions in civil proceedings do not constitute acts from which certain conclusions can be drawn, but rather amount to the corroboration of evidence of certain attitudes which must then be evaluated. The decisive criterion is the capacity to examine the accounts put forward by the husband and wife. According to the Shariah, the husband must have an opportunity to present his case, from which his intention and attitude towards his wife and to the granting of *talaq* can be evaluated. Thus, in answer to all three questions, the important evaluation is not as in civil law a formulaic and procedural analysis 'that the commission of x action means that the husband intended y result'; rather that if, upon being asked whether he is prepared to divorce his wife according to the Shariah, the husband replies that he is not because he is happily married (for example), then the commission of those earlier actions in issuing civil proceedings are taken to be evidence of him contradicting himself, demonstrating that the husband is a liar, or at the very least unreliable, and so it would be unjust not to dissolve the *nikah* contract.

Upon establishing contact with the husband the MLSC do not hide their preference for the husband to pronounce *talaq* rather than them having to declare a *faskh* of *nikah*. This is again in order to avoid the consequences of making a decision which may not have been based on the truth. It is preferable, as far as the MLSC is concerned, that the individuals who apply to them regulate their own conduct in keeping with the Shariah, as opposed to the MLSC enforcing their compliance. One such typical letter to a husband: **“Your wife has informed us that the separation already took place about 15 months ago, and since that time you have not maintained her nor had any marital relationship with her.**

If her statement is correct, I would like to draw your attention to the laws of Shariah which do not allow this matter to be left like this forever. We have been directed by Almighty Allah either to live as a married couple in harmony with mutual respect, or to become separated by means of a divorce (TALAQ) in an amicable way. It is very important to realise that we are not allowed to hold forcibly a woman against her wishes. Therefore we hereby request that you grant her *Talaq* and make her free from the religious bond of *Nikah* in due course.

Please note that if, after a reasonable period of time, the situation remains unchanged, and you do not respond to the divine laws of the Shariah, the members of the Shariah Council ... representing all schools of Muslim law (*fiqh*) existing in Britain ... may consider issuing your wife with a document to the effect of pronouncing your marriage dissolved (*Tanseekh* of *Nikah*) on the basis

of certain valid grounds pertaining to the laws of divorce in Islam.

If you wish we can treat your wife's application as a case of *Khulla*. According to this provision she will have to pay a negotiated amount of money in return for a divorce.

We look forward to hearing from you soon. I trust that as a responsible member of the Muslim community, you will co-operate with us and oblige in resolving this delicate family dispute." (Case 8139)

The MLSC's desire to promote self-regulation amongst those who apply to it also extends to encouraging their compliance with the UK civil laws, and to avoid any conflict with such laws

The MLSC's desire to promote self-regulation amongst those who apply to it also extends to encouraging their compliance with the UK civil laws, and to avoid any conflict with such laws. The organisation is reluctant to become involved in marital disputes pertaining to property or other financial matters, other than to write letters urging 'frankness and fairness' on the part of the disputants; and they have a similar attitude to any disputes involving children. This is also in keeping with a general prescription of the Shariah to observe the laws of the land in which one is resident. The MLSC do not hesitate in this regard and maintain a note of moral compulsion. In one such letter to a husband:

"You are well aware that in the eyes of the British System you are no longer married to your wife. Your divorce therefore, is not a legal requirement for her to remarry. According to the Shariah, you are still married to her and our concern in the matter is to help resolve issues of conflict of laws which would preserve the Shariah within the limits imposed by the Law of the Land. Our Council is established in the light of the dictate of the Shariah which enjoins Muslims to establish institutions to help guide their life according to Islam if they happened to live in a non-Muslim country. In matters of dispute, we seek to reconcile the parties and help [sic] the wounds arising from their conflict. Failing that, we attempt to arrive at an agreed solution. If this also fails, we pronounce the judgement which in our opinion, offers the best solution to the dispute. I hope this has answered your queries and that you will co-operate fully with us." (Case 7755). Of course, the 'co-operation' that the MLSC require is the husband's agreement to grant *talaq* to the wife, because the MLSC do not condone forcing the wife to remain within the *nikah* contract.

The MLSC is not, to quote one of its correspondences, a 'divorce issuing office',³⁴ but an organisation that strives to act flexibly and sensitively in the manner that would behove the office of a *Qadi*. The MLSC is constrained both by a lack of resources and to a certain extent by the self-imposed parameters of its current role in the Muslim community because it cannot function as a fully equipped court of law. The activities of the MLSC have been constrained by the exigencies of operating within a different 'host' system. The organisation refrains from becoming involved in any dispute that might possibly involve a conflict with the 'laws of the land', although they might urge the disputants to observe the duty to be fair and honest Muslims. Both the applicants and the MLSC

itself invest the organisation with a morally prescriptive role regarding the welfare of the Muslim community. However, it is apparent that the disputants attribute to the organisation a wider remit than it defines for itself. In case 9389, for example, the husband had already divorced his wife according to the civil law, but had refused to grant her a *talaq* divorce, complaining to the MLSC that she had committed adultery. In this case the MLSC were eventually forced to decide a *faskh* of *nikah*, but before doing so they had attempted to negotiate with the husband:

“Dear MrX,

Assalamu alaykum

The members of the Shariah Council, after having discussed your wife’s application for an Islamic divorce and after looking into your submission of [dates] have unanimously agreed to inform you that:

- 1. Adultery is one of the most heinous crimes in Islamic law, the punishment for which is death by stoning. But as Britain is not an Muslim state such a punishment may not be carried out here. This punishment can only be administered in a Muslim state after due process.**
- 2. The laws of marriage and divorce for their application do not need the authority of a Muslim state hence a Muslim can marry and divorce in Britain according to Islamic law.**
- 3. On the basis of your letters which allege adultery against your wife we can assure you that she will be punished by Allah almighty for her immorality but we regret that you are not entitled to withhold divorce from her as a measure of punishment in this respect. In Islamic law, divorce is the provision for permanent separation of a couple. It must not be used as a penal instrument. Hence the Shariah Council acting according to Islamic law regrets that it must reject your submission in this regard.**
- 4. The Council does not accept your view that as a Muslim you need not recognise an English civil divorce. Muslims are required by the Shariah to observe the laws of the country wherein they reside.**
- 5. According to the rules of Shariah once you have become separated from your wife you have only two options**
 - a) secure a reconciliation.**
 - b) if this cannot be achieved or is not desirable then you must divorce your wife according to Islamic law. There is no option of a suspended state between marriage and divorce available to a Muslim couple at all.**
- 6. Finally the Council has decided to request you to pronounce an Islamic divorce against your wife within 15 day of this letter’s postmark so that you can end a merely paper relationship between you and your wife.**

Yours sincerely...” (Case 9389)

The MLSC also encourage applicants whose marriages are recognised according to UK civil law to obtain their civil divorces first and then re-commence the MLSC process.

“When I approached the Shariah Court [the MLSC] they told me I must get my civil divorce first. I have my civil divorce, but in the country where I married my husband they don’t count this marriage nor do they count the divorce ... my application [to the MLSC] was made straight after I had got my civil divorce which was last summer ... I mean obviously the first thing I did as soon as I had the civil papers was I got my solicitor to send them to them and go for the Islamic divorce, but he [husband] would not talk to them, so I have been waiting, waiting and that is actually very frustrating.” (Interview 2B)

This exhortation can particularly frustrate women who are keen to have matters resolved according to the Shariah first, and for whom the advantage of a written certificate declaring a *faskh* of *nikah* is fundamental to their motive for applying to the MLSC. Recently, the MLSC has become more willing to accommodate these women by issuing certificates that are suitably worded along the lines that the granting of such certificates do not permit the women to remarry under British law until they have obtained civil divorces:

“This is an Islamic Divorce only; the holder of this certificate may not be entitled to a civil marriage in the United Kingdom unless she first obtains a Decree Absolute (Civil Divorce).”

The production of written certificates declaring the dissolution of the *nikah* contract is fundamental to the rationale of the MLSC – in order thereby to provide women with certainty regarding their marital status. The MLSC considers it necessary to provide a certificate of divorce when there is any doubt about the fact that the husband has pronounced *talaq*.

Many of the women who were interviewed also explained their need for a written document of their *talaq* divorces. The woman in interview 6A remarked:

“These days you need everything in writing.”

“Is the Shariah Council certificate as important as the English divorce?”

“Obviously the Muslim one is more important to me because if that’s over I can get married to whoever I want. [But] because I live in England the English one is important... I don’t think I would have had paper work in [country of parents’ birth], but because I have been brought up here, I understand the meaning of having things in writing – it means a bit more to me... I am a Muslim, and I am going to marry another Muslim, so if I have it in writing – he’ll know I have been married before: some people won’t be bothered about it, but some, they’ll say ‘he walked away – you didn’t do it properly’. So, if I have it in writing, I can say ‘look the Shariah Council have given me this’, so obviously I am [divorced.]” (Interview 6A)

In this regard it is interesting to note the contrasting views of the woman in interview 2B, who had converted to Islam, and for whom the religious aspect of the divorce process was very important:

“When he speaks to you on the telephone [to pronounce *talaq*] is it important to you that there is proof, like a certificate?”

“No, when he’s speaking to me – he’s speaking in front of God, when we have this understanding... You know in Islam there’s three things that you cannot joke about;

Written certificates declaring the dissolution of the nikah contract are fundamental to the rationale of the MLSC – to provide women with certainty regarding their marital status

one is divorce, one is marriage, one is the taking back [of a wife]... So we take it seriously, because we're all going to die – we are all going to be judged ... and besides which if he tells them that he didn't [pronounce *talaq*] I fear for him more than myself, because what he would have just done – it's not just perjury – it's perjury in front of God. It's something very serious. I am assuming that once he's done that on the phone that I can just tell them [the MLSC] that he's said that on the phone, 'this is the third time, you can clarify it.'" (Interview 2B)

In cases where there are no witnesses to the pronouncement of *talaq*, the MLSC encourage the wife to pursue the MLSC process, and if possible persuade the husband to sign a divorce certificate, and sometimes when there are witnesses, the MLSC name them in the certificates that they issue. In case 8162 the applicant urges the MLSC to become involved in negotiations to obtain a *talaq* divorce from her husband:

"Please do not say that my parents should go and get the divorce papers has[sic] this is very degrading to my parents, they [meaning her in-laws] can easily send the divorce papers through the post. But they prefer to mess us around for another few years... I will be grateful for any advice or help you can give me." Eventually, after further negotiations, the husband pronounced a *talaq* divorce and put this in writing to the wife. Owing to the difficult circumstances of the case, the MLSC also produced a certificate in this case:

"This is to certify that the *Nikah* (Islamic Marriage) carried out in ... on [date] 1987 between Mrs.X of ... and Mr.X of ... is hereby dissolved according to Islamic Law on the following grounds.

1. Mrs.X separated from her husband in April 1989. Since then she has had no marital relationship with him and during this period Mr.X did not support or maintain her at all.
2. Mr.X himself divorced his wife according to British Law and obtained a Decree Absolute on [date] 1990.
3. At the request of the Shariah Council, Mr.X has now divorced his wife according to Islamic Law also on [date] 1992.

This divorce is hereby ratified by the Muslim Law (Shariah) Council, and the holder of this Certificate is eligible for remarriage according to Islamic Law upon the expiry of the period of *iddah* [the waiting period] which began in this case on [date] 1992" (Case 8162)

The MLSC insistence upon clarity and caution in the production of written documentation can again be understood from the perspective of wanting to avoid any conflict with the civil legal system, and to keep the door of possible recriminations firmly shut. However, this is largely irrelevant to a category of women who are not married according to English civil law and whose Muslim marriages are not valid in the UK. These women have no option but to approach organisations like the MLSC in order to dissolve their marriages. Often these women can be very isolated as for some reason or another, their families are unable or unwilling to provide the appropriate support, and so these women, in addition, often seek a supportive counselling role from the MLSC as well as their intervention to facilitate a divorce.

BOX 5 • Solely Islamic Marriages

In the following case it is interesting to reproduce the letter written to the MLSC in full, because it demonstrates a number of points made above.

“Dear Brother X [Secretary of the MLSC] :

Aslam-o-alaikum [sic],

Further to my recent visit to your office I would like to confirm our conversation about asking you to act on my behalf regarding my divorce. My marriage has been unacceptable to me since the day I got married. The marriage was a forceable [sic] one where parental pressure and force was used against my wishes. I have never looked to X [Husband] as a husband and the marriage was never consummated for this reason. Five days after the marriage X [Husband] left the country and went back to [country x], where he has remained ever since, because his visa for stay had terminated. I consider my marriage as a contract where my parents bargained my life for his wealth and power. Before I was married, I loved someone else and have always done so but I have never looked at X [Husband] as my husband even after my marriage and I consider it wrong for anyone to be kept to a marriage where they do not have any feelings for each other. It must be against Islam’s teachings to force someone to live with someone who they do not consider as a partner in life. My feelings in this particular case are very strong and I therefore need your assistance to help me break free of this bondage. I was born and brought up in England and therefore I could say that because I do not consider this marriage as valid, I could just forget everything and start fresh elsewhere, but I do respect my religion and its teachings and I need your guidance so that I do not lead a life of sin. My marriage was not registered in the Registry office so by English Law I am not considered married. I feel as if I have suffered a great deal during the last two and a half years since I have been married and I cannot take a lot more pain like this. This is why I approached the London mosque about six months ago and asked for guidance. X [from the Regents Park Mosque] gave me your name and address and assured me you would help me. I look to you to resolve my life for me and give me the strength to live my life because if I cannot get divorced then I would destroy myself because life has become unbearable to me and money and wealth is not a good enough reason for me to remain married. I enclose my marriage certificate (copy) and a copy of the registered letter sent to X [husband] asking for divorce and I hope that you will give me full support. If you need to contact me please ring this number Mon-Fri...” (Case 7744)

The fact that this applicant was aware that her Islamic marriage was not recognised as valid in the UK, but she nonetheless insisted upon dissolving it according to the Shariah before proceeding to marry the man of her choice, echoes the point made earlier that often it is the women’s consciences which propel them to abide by the Shariah. As shall be explored later, this is also a dimension of their faith in the religion: **“It must be against Islam’s teachings to force someone to live with someone who they do not consider as a partner in life.”** And compulsion to abide by its tenets: **“But I do respect my religion and its teachings and I need your guidance so that I do not lead a life of sin.”**

Her phrase, **“I look to you to resolve my life for me”** indicates a need to seek answers and redress from within the religious framework. It is interesting that this applicant wanted to negotiate a remarriage within the framework of Islam, independently from her family, and with the support of the MLSC. Her ability to achieve this may have been made easier by the fact that she was a working woman, with a relative degree of independence, but, as data findings discussed earlier indicate, these factors are not necessarily the sole determinants of such an outcome.

Intervention from the MLSC is sought on the basis of faith in the capacity of the organisation to resolve the dispute, which in turn is predicated upon faith in the religion to impart justice:

“I trust that my wish will be quickly fulfilled by you through the Islamic justice system.” (Case 7799)

This religious idealism may not be matched by knowledge of the Shariah, but that does not seem to detract from the women’s certainty about the possibility of religious redress:

“In view of these circumstances do I deserve a divorce according to Shariah? If I do deserve it then please help me to get what I deserve according to the Shariah.”
(Case 7787)

Religious identity and perceptions of the *talaq* divorce

For the majority of the women, religious idealism also incorporates the notion that the *talaq* divorce is superior to the civil divorce. Faith, unhappily contrasted with the husband’s faithlessness, is often a more central factor causing the breakdown of the marriage.³⁵ For these women the importance that the *talaq* divorce assumed was a logical concomitant of the strength of their religious identity and practice. Their marriages had ended typically because their husbands did not practise the teachings of the religion, and the women found it very difficult to persist with the marriage. Although this cannot be explored in depth here,³⁶ it is valuable to outline the manner in which perceived religious identity motivates the women to seek redress within the framework of the Shariah, and to adhere to its guidelines. This is evident in many cases of strongly motivated religious women where, despite obtaining the decree absolute, the women appeal in emotional terms to the MLSC, in contrast to the rather perfunctory manner in which details are given in their civil divorce petitions:

“To the Shariah Council

Aslam Alaikum. [sic]

I sincerely hope that once you have read my account on the total uncivilised and barbaric way that I have been treated throughout the two years of my marriage, a sympathetic approach will be taken... My husband and his family have behaved in such a despicable way that I cannot possibly be expected to live with him as a wife.”
(Case 9266)

It is valuable to quote quite extensively from another case; the woman described how an initial incompatibility became intolerable as she developed her religious practice, and her husband did not. She appealed to the MLSC to intervene on the basis of the ‘cruelty’ and ‘detriment’ she would suffer were she to remain in the marriage.

“After the Nikkah [sic] I found that I could not accept him as a husband, I became aware of various things which I found unacceptable. I told my parents and it was verbally agreed between myself, X [husband], and my parents that if I still felt the same way a year later, X [husband] would give me a divorce. In November 1986, he went back to [country x] to work. There was little correspondence for two years. In September 1988 he went to [country x] to do research for his doctorate, he was

supposed to come to England to settle the situation between us. He never came. He is still in [country x] until June/July 1990. In August 1988 I wrote to him asking him for a divorce. By that time I had become aware of my Islam, Al-hamdulillah³⁷, and was consciously learning and conforming to Islamic law. I told him of the change in myself and the reasons why and that this was another factor which influenced my request for a divorce... I have changed a great deal during the past year and a half. I have become aware of my diin³⁸, Al-Hamdulillah, and am fulfilling the requirements expected of a Muslim woman. I have been praying and wearing hijab for the past year. As you can understand my whole outlook in life has altered. My values and principles have totally changed. I want to be committed to Islam but how can I when X is not a practising Muslim? As far as I know he does not pray and has little interest in his religion. The combination of myself and X who have two opposing sets of values would be cruel and so detrimental to both of us.” (Case 7770)

Like the other women who are married only according to Islamic law, this particular woman was also quite explicit about her feelings, and sought a personally supportive role from the MLSC. The MLSC eventually dissolved this *nikah* contract on the basis of the harm caused by the husband in not releasing the wife from the marriage tie by pronouncing *talaq*.

In some cases women think that the Islamic divorce may prohibit their husbands from harassing them, despite already having obtained a civil divorce and having access to all the civil remedies for protection against harassment: **“Please, dear brother do help me. My husband is constantly harassing me, phoning, coming around. The situation is unbearable. I am praying you will be able to take my case before the Shariah Council in April.”** (Case 8148).

The woman’s insistence on the aid that a *talaq* divorce would give her in this case indicates, in turn, that her husband would regard the *talaq* divorce as more definitely binding in terms of ending the marriage. This was also something that the following interviewee noted when describing a distinct change in her husband’s behaviour after the *nikah* had been dissolved by the MLSC:

“...I have been issued with a divorce certificate, they [the MLSC] have probably given him one [i.e. posted one to the husband]; this time in court – he didn’t look at me; like I was a stranger.” (Interview 5B)

However, in a significant minority of cases, the women’s view of the super-eminence of the *talaq* divorce was not accompanied by a strict observance of the Shariah:

“I haven’t yet applied for a civil divorce... I do have to... I haven’t gone for the civil divorce because to me that is quite irrelevant, but I will have to do it, it’s just going to be a procedure ... for me to go through this process [the MLSC process]... I am not quite calling it spiritual, but it is important that I go through this [MLSC process] first, it really is, because I am a Muslim at the end of the day, I want it done the right way according to Islam, and I know I have the right to live with someone that I have love for.”

“Do you consider yourself religious?”

In a significant minority of cases, the women’s view of the super-eminence of the talaq divorce was not accompanied by a strict observance of the Shariah

“I think I am deeply spiritual in terms of my religion – I have strong beliefs I really do – there are things I definitely need to tighten up on like the prayers and so on.”

(Interview 3b)

In a similar vein, another interviewee (11B) spoke about the difference between the *talaq* divorce and the formal civil procedures, whilst herself not observing the religious duty of performing the prayers:

“To me there is a difference – the talaq is what matters to me, I won’t consider myself divorced when I get the decree absolute.”

“Why?”

“I have a strong faith, my faith is Islam, I suppose I would see it that in the eyes of God I would be separated, whereas in the other civil marriage, it’s not something, it’s a formality for this law, even when you get married here it’s a formality... It [the talaq divorce] is a statement that you have made that then you are actually Islamically, you are freed from the marriage.”

“How important is religion to you?”

“It’s quite important, but I would like to make it more important.”

“Do you make a distinction between a practising Muslim and a Muslim?”

“No, I don’t.”

“Do you pray 5 times a day?”

“No, I pray once a day... I can read the Qur’an in Arabic, I pray the Jum’a” regularly, whenever it’s convenient for us [the family] we pray.”

Analogously, in the correspondence contained in the case-files, the lack of Islamic/Arabic phrases and mention of religious practice appeared to categorise a certain type of applicant to the MLSC, one who chose to try and obtain an Islamic divorce, despite not being motivated solely by religious concerns. In many of these cases the women did not provide the MLSC with details about their emotions and the reasons for marital breakdown. Often, concomitantly, their civil divorce documentation revealed a more intimate relationship with their solicitors (in contrast with the impersonal relationships between solicitors and more religiously inclined women). These women often approached the MLSC after having approached civil lawyers, or at about the same time, but rarely before doing so. For example, in the following case, the applicant referred rather tersely to the statement prepared by her solicitor for the civil proceedings in her correspondence to the MLSC:

“I have enclosed my reasons which I gave to the courts for why I wanted a divorce.”

In contrast, in her civil divorce statement, she described her feelings in some detail:

“Now that I have left him I know that I would not have been able to put up with it for very long, and now that I have left him I know I could never go back to him, I know that I wanted a friend, companion and lover for a husband not a dictator.”

(Case 7766)

Those women who did not profess to a high degree of adherence to Islamic religious tenets, but nonetheless considered themselves Muslim, proclaimed allegiances which demanded compliance with the Shariah by

obtaining a Muslim divorce, despite an outward rejection of the Shariah regulations hitherto:

“I am married now and neither I nor my [present] husband really need trouble or problems. We can live the rest of our lives here in the Mediterranean or in the UK legally and respectfully, however, because we are good Muslims we need the Council’s blessing for my divorce and then to have an Islamic marriage”. (Case 8131)

This excerpt of correspondence also illustrates an aspect of the moral complexity of the situation faced by the MLSC where the organisation refrains from censuring women who have flouted the rules of the Shariah, but continues to deal with their cases on the basis of an interpretation of the rule concerning what is in the best interests of the community. And like the examples quoted above, this excerpt demonstrates the wide-ranging perceptions of Muslim identity – what it means to be a ‘Muslim’.

Islam: Perceptions and Prejudices

The women’s self-perceptions in terms of Muslim identity comprise a very broad spectrum, ranging from those who were very observant in their religious practice to those who insisted upon a Muslim identity, and who made the effort to contact the MLSC, but whose adherence to the practice of Islam was not very strict. Interestingly, the data findings reveal that all the different types of women expressed views about their Muslim identity, and in interview, it was possible to explore this further. When asked about whether it had made any difference to them that the researcher carrying out the interviews had been a Muslim woman, all said that it had made the interview easier, although some did say they would also have spoken to a non-Muslim.

For example, the interviewee in interview 8B:

“Would you have agreed to speak to somebody else today – did it matter to you that I was Muslim?”

“Yes, it did. I don’t think I would have spoken to anyone else.”

“What about a Hindu or a Sikh?”

“No.”

“Why not?”

“Because this is, I think it’s an Islamic issue, so I have got to talk about it to a Muslim person.”

“Would you have spoken to a man?”

“No.”

“Would you have spoken to an English woman?”

“Only if she was Muslim, because I don’t think otherwise they would know what I am going on about.” (Interview 8B)

And similarly in the following interview;

“Does it make any difference that I am Muslim?”

“Yes because you understand what I’m saying... I wouldn’t have felt at ease [with a non-Muslim] you would have just sat there getting information from me and it

wouldn't have meant anything to you.” (Interview 4B)

It is interesting to note that the following interviewee, unlike the two women quoted above, stated that she was happy to talk to non-Muslims, yet she then went on to say: **“A white person interviewing me would scratch the surface in terms of comprehension ... but the real deep down understanding like seeing the whole thing as a whole, wouldn't happen they would see snapshots imagining what it would be like not having experienced it.”** (Interview 3B)

The fact that non-Muslims may not have experienced another, different way of living was also emphasised by other interviewees. They criticised the shallow way that non-Muslims expressed sympathy, as if they understood the issues, without really having done so. In the following excerpt the interviewee expresses in full the frustration mentioned by many: on the one hand having sympathy expressed to her in the form of a supposed comprehension of the issues, and on the other, being criticised, albeit implicitly, for adhering to 'outmoded' and 'oppressive' values:

“If I was talking to a non-Muslim about it I would probably get one or two responses... For example, colleagues would be sympathetic; ‘oh yes it's your culture or religion' which itself can be quite derogatory, because they are not really understanding the reason why, they are just giving lip service, pretending to empathise when they don't understand the ins and outs of why I would want to do a certain thing. And they think that it is all oppressive... ‘Islam is oppressive to women' but they don't have the guts to say that to your face, they're being very liberal. The other response is the reactionary view, ‘why should you do this, why should you listen to him, you're in this country, you were born and brought up here', you know, I could get that kind of response and neither of them would be very satisfactory. And neither of those would be a true reflection of someone understanding [my position].”

(Interview 1A)

Another example of the same sentiments:

“...English people, they can't understand can they? They don't understand our culture, not all of them... When I speak to them they say; ‘how come you had an arranged marriage? why didn't you just leave home and go, you don't have to put up with this – you're living in England' and all this ... you have to tell them that we're brought up different because of our religion.” (Interview 2A)

Unfortunately for many of the women the sense of being 'different' and not being understood had consequences which demanded very difficult compromises of the customs and practices of Muslims. For example, the woman in interview 8A described in detail her difficulties in maintaining the practice of wearing a headscarf (or *hijab*) in an area of Britain where there were not many Muslims or people from minority communities:

“When I came to X [region of UK without many minority communities], I felt so isolated, I tried to help these girls of different ages [in the refuge]. At some point I thought I was doing really well, but sometimes I used to weaken as well, it was like a nightmare, and then I slipped back and back. And then there was all this racism as well while I was in X, due to the fact that I was wearing my hijab, I didn't know

anyone else wearing hijab, and I just suffered... I just have not made any friends since I came here, just got on with my life – I started getting all this hassle on the buses.”
 “What kind of hassle?”

“People would all turn round and look at me, they would snigger and then they would keep looking at me – I was wearing hijab, in the end I took it off, and then I put it back on after a while. And then I moved to this district [where there are no Muslims] ... I said ‘I am not going to wear it, it doesn’t stop me from being Muslim’. I told my mum when I went back to visit them, I told them I am not wearing my hijab although I do cover my head when I go into Asian shops; I’ll wear my scarf, out of respect and to protect me as well; but I won’t around here, there’s no point really ... when I came back from my mum’s I had made a resolution [to start wearing the hijab again], but it was a hot day, I was stood on the road and everyone was giving me funny looks, and I thought that’s it, I can’t do it!” (Interview 8A)

Similarly, the following interviewee felt obliged not to wear her headscarf at work:

“I still wear a scarf, I just don’t wear it to work...”

“Is it too difficult at work?”

“It is, because it is a white person’s environment. Because you know I want to become something senior, you know – get into management. I don’t know – I just noticed that no-one wears a scarf there. So I thought, ‘OK, I’ll take it off’ but I wear it to and from work.” (Interview 8B)

These types of experience of prejudice were often encountered again in the lawyer’s office or in contacts with the social services.

Inadequate legal advice

“My solicitor doesn’t understand what’s happening to me, they criticise something or other most of the time, they ask ‘is that what Islam is supposed to be?’, but it’s not is it? Or else they’ll say ‘they have these arranged marriages’, but they really haven’t a clue they’re just saying it.” (Interview 8A)

This statement demonstrates how negative attitudes can transfer to the realm of client-lawyer relations. It is difficult to explore in depth the extent to which this type of negative attitude directly affected the quality of service offered by these lawyers. It certainly led to the women feeling that instead of receiving sympathy they were patronised and misunderstood:

“Would you have preferred a Muslim solicitor?”

“Yes I think so, because they’d know the problem. English people, you know they say; ‘how can you have an arranged marriage?’”

“Did she say that?”

“Yes she said ‘come on pull yourself together you’re living in England, you don’t have to live with your parents’.”

“What did you think about that?”

“It’s just the way English people are, aren’t they? They’re really different, you know some of the English girls ask ‘Do you go out?’, we say ‘no’ that’s a big shock for them, ‘don’t you go out to parties?’ – they think it’s awful to stay at home... I want Muslim

solicitors to change the situation.” (Interview 2A)

One interviewee described how she had tried to instruct a Muslim solicitor from a firm that had a very familiar Muslim name in the company title, but then felt as if she had been somewhat misled by the solicitor whom she had spoken to on the telephone earlier:

“When I saw him I was a bit disappointed, but I felt guilty, because if I turned away – that would have been discrimination against him, but anyway I just went ahead with it.” (Interview 6B)

It is possible that some solicitors may be in a position to give advice to their clients about aspects of the MLSC process, and about the conflict of laws. However, women in at least four of the case-files, and two of the interviews, had been given erroneous legal advice about the validity of their Islamic marriages according to English civil law, most often on the basis that their *nikah* abroad was not valid in England. However, in some cases, solicitors had, inexcusably, misunderstood the principle that if the civil law does not recognise a particular ceremony as conferring a particular status in law, the consequences that flow from that act do not contravene the law. So, for example, in case 7738, the wife was erroneously threatened with charges of bigamy by her husband’s solicitor for wanting to pursue a *nikah* ceremony with another man whilst in the process of finalising civil divorce procedures. Of course, because *nikah* ceremonies performed in this country are not recognised as valid, the fact that more than one ceremony is performed does not then amount to committing the offence of bigamy, any more than the simultaneous commission of two ceremonies of engagement to be married amount to bigamy. In at least another five instances, the legal advisers had completely misunderstood the Shariah, yet had gone on to give legal advice, or had asked the MLSC for clarification, *after* having given initial inappropriate advice to their clients.

For example, in case 8126, the non-Muslim, ethnic-UK solicitors drew up a ‘Talak Nama’ (sic), which of course they were not entitled to do, and in addition, the advice given by the solicitor in this case had been doubly erroneous because although the applicant’s *nikah* ceremony had been performed abroad, and therefore was recognised as valid in the UK, the applicant was also obliged to obtain a civil divorce, yet the solicitor did not advise her to do that:

“TALAK NAMA

I XX [wife’s name] of [address] make the following declaration of my own free will and without any compulsion being placed upon me.

I was married to Mr.XX on [date] at [address], but I now pronounce the following declaration in respect of both our civil and our Muslim marriages:

I TALAK YOU

I TALAK YOU

I TALAK YOU

I confirm that the above Declaration severs all ties both of a civil and religious nature between us and that my said husband is now divorced from me and is free to remarry.

Legal advisers had completely misunderstood the Shariah, yet had gone on to give legal advice

**DATED & SIGNED by the wife in the presence of two different solicitors
We the above named Witnesses [witnessed by two solicitors, one of whom had been instructed by the wife] declare that Ms.XX pronounced the talak in our presence and that the [husband] is now divorced from her.”**

It is impossible to tell how much the applicant may have been charged for this advice. The response from the MLSC was unambiguous:

“Dear Sister,

I refer to your letter of [date]. Please find enclosed a copy of our guidelines.

They would help you in obtaining a divorce from the Shariah Council.

You, yourself cannot divorce your husband according to Islamic law. Hence the paper you sent us is not worthwhile.

Your brother:

XX

Secretary of the MLSC” (Case 8126)

Mediation and Children

One of the underlying aims of this research was to explore the value and possibilities for mediation within the Muslim community. Whilst the MLSC performs a mediation function through the manner in which they intervene in marital and intra-family disputes, they do not often mediate in matters that are now becoming more formally associated with mediation in England, as the organisation has a deliberate policy of not conflicting with civil law mechanisms when it comes to decisions regarding children and property. However the MLSC will assist couples and provide mediatory intervention in such disputes if requested by both parties. All the interviewees were asked their views about mediation, and in particular, about whether they had any views about the type of mediator. All expressed their opinions about the positive aspect of mediators coming from the same backgrounds as themselves,⁴⁰ although the women who came from small, close-knit communities (from different regions in the UK) did express their concerns about the issue of confidentiality from within the community:

“If I had an English person, I would prefer him because of the confidentiality ... [but] then I wouldn’t prefer them because they wouldn’t understand the religion... Through experience we could trust the Shariah Council, neither my sisters nor I had any problem with them.” (Interview 7A)

However, only one interviewee had actually gone through the mediation process, and only a few could consider the prospect of mediatory intervention from the point of view of their own children. The woman in interview 6B had experienced mediation regarding contact with her child:

“[At the mediation session] there was this woman, but the woman instigated the conversation... He suggested twice a week ... that would not be convenient ... so they decided twice a month, which was fine.”

“You say ‘they’, what do you mean?”

“It was decided, we all decided, she [the mediator] said that she was there to help us come to a reasonable compromise... I was quite happy with the way she played her role... Having said that, he was not happy, we received a letter saying that he felt she was biased and that he felt obligated to agree with me... He wanted another session... He has got a female solicitor.”

“Do you think it would have made any difference if the mediator had been Muslim?”

“I don’t think it would have made that much difference in this particular instance, because we were solely there to agree contact for the child; it would have made much more difference to me personally, even if it did not affect the outcome, but I would have felt more satisfied personally if I had had a Pakistani Muslim woman.”

(Interview 6B)

The following interviewee, a mother of three, who was also in the midst of civil divorce proceedings explained her views in the same vein:

“Do you think there is value in having Muslim mediators?”

“It depends on their role... Perhaps it would help, if you hear things from a Islamic perspective you look on things quite differently. If you are willing to trust that person and you like the way they interpret Islam ... if you brought in an Islamic perspective on a lot of these issues things would be looked upon differently and I think it would help you make rational choices.” (Interview 11B)

The insistence upon the mediator having the same cultural identity can be best understood from the point of view of sharing a similar understanding. As mentioned above, the need for the intermediary to share the same normative framework was repeatedly expressed. In interview 1A, the interviewee was asked in the same manner as the other interviewees:

“If you were offered mediation, would it matter if the mediator were Muslim?”

“[It] would matter primarily because of the issues that would have been discussed... The ‘strict’ view is that there isn’t something such as Muslim culture, but there is something that we all identify with as a Muslim way of life, someone with a Muslim background would understand that. Similarly someone with a Jewish background would understand a Jewish person’s discussions about their faith. Even if the marriage is nothing to do with religion, just the whole of issue of way of life would be something that they would be familiar with. [It is] important to have a mediator of the same religious background, someone who can understand the terminologies, someone who has got an understanding.” (Interview 1A)

The following interviewee expressed the same idea differently, but also mentioned an important dimension to the success of mediatory intervention which is the familiarity with the defining normative characteristics of that community:

“Yes, it would make a lot of difference what culture they came from ... [whether] they have lived in that culture [and they] knew all the intricacies, [and they] could pick up all the cues.” (Interview 3B)

When asked about the importance of Muslim mediators, all the interviewees emphasised that such mediators would only inspire respect; ***“If [they were] more knowledgeable in Islamic issues, then I would prefer that.”*** (Interview 1A)

Thus, the women’s demands for Muslim mediatory intervention were on the basis, not only of a shared understanding, but also that individuals carrying out the mediatory role should be competent to deal with matters of Islamic law. Intervention was acceptable from the point of view of the intermediary enunciating shared norms, as opposed to mediation from someone who was Muslim in name only. As stated by the following interviewee:

“The Council is there for me to say that ‘this is what’s right and this what’s wrong’; or ‘you went wrong – you should have gone back to him’.” (Interview 1B)

This unique dimension to the MLSC process, where the woman is seeking an external arbiter who will intervene according to the accepted normative values of her community and/or faith, evidently differs from the practice of appointing a legal adviser who will simply champion their client’s case.⁴¹ This difference in attitude was summed up by the woman in interview 1A. She was recommended a particular lawyer by a friend, because ***“this particular one gets quite upset for his clients.”*** (Interview 1A)

The following interviewee had thought carefully about the difference between the MLSC and the role of a lawyer:

“I was thinking about why my case took so long. In Islam, the Shariah Council is not fighting for me, he is like the middle man, and he’s got to find out both sides of the story, that’s why it’s taken so long hasn’t it?” (Interview 8B)

The women, in general, had understood and come to expect that the MLSC was obliged to take a more evaluative role as an adjudicator within the Shariah:

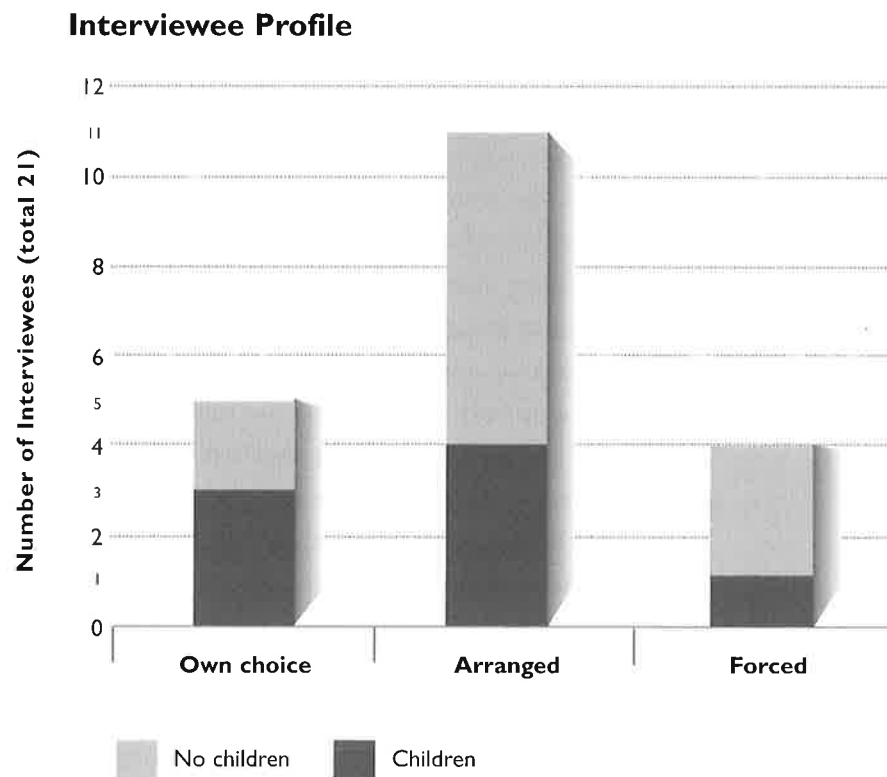
“Is there a difference between the MLSC judgement and the civil court?”

“Yes, I am assuming that it [the MLSC judgement] will be based on the laws of the Islam and the haqq⁴² of man and the haqq of the woman.” (Interview 6B)

Children As mediation is envisaged within the current legislative framework as of prime importance in cases where there are children, it is interesting to note that in approximately two thirds of all the cases, the marriage breakdowns involved children.

If we consider Figure 3 profiling the interviewees, it can be seen that there were only very slightly fewer marriage breakdowns that involved children, indicating that the presence of children did not affect the decision to separate to a great degree. When the question of the presence of children was considered more closely by examining the case-files, it became apparent that when women had children, the reasons for marriage breakdown were more to do with domestic violence and other types of abuse; whereas in some of those marriages without children, the reasons for marriage breakdown included factors such as

Figure 3



incompatibility. Even in those cases where women who had children had also survived domestic violence, the decision to leave was never taken lightly:

“I was very unsure whether to proceed with talaq ... [I] did have feelings for him, he was the father of my child ... it’s really hard.” (Interview 5A)

In many cases the women felt they had to leave their husbands in order to protect their children from abuse, and also as a response to their husband’s lack of religious practice:

“Their [sic] is a limit to what one can bear. As a Muslim woman, I ask the Shriya [sic] Council to help me with this matter, I no longer wish to associate myself with him and feel only a complete break from him will ease the pain that he has caused me and the children.” (Case 7030)

As stated earlier, the MLSC have a deliberate policy of not interfering in disputes regarding children:

“We must inform you that the matter of the children’s custody is beyond our jurisdiction, and a decision by a [UK civil] court has to be respected by all the parties.” (Case 8177)

However, where the MLSC are asked by both parties to mediate in a dispute regarding children, they do so in order to try and assist the parties to achieve a compromise. On occasion, the MLSC have also provided Islamic legal opinions (singular: *fatwa*, plural: *fatawa*) about the preferred choice of parent for the upbringing of children. Each time, in the manner of the *Qadi*, they cited traditional *fatawa* to support their view that the first choice for raising the child is the mother, thereafter the maternal grandmother, then the paternal grandmother, then any sisters of the mother (for instance case-file 8151). The

cases where the husbands challenged the mothers' capacity to raise the child were often the ones where the most heated correspondence took place between the MLSC and the husbands.

In case 8177 the husband was angry (amongst other things) about the civil court's decision to award the mother residence, care and control of the children, and protested to the MLSC, who had become involved in the case at the behest of the wife in order to help her obtain an Islamic divorce. After extensive correspondence between all the parties (MLSC and husband, MLSC and wife), the MLSC finally wrote to the husband:

"[The MLSC] are sorry to inform you that the Shariah Council is not able to adjudicate in cases of financial disputes and custody of the children. Such matters are only decided in this country according to the law of the land by the civil courts. If such decisions pronounced by the civil courts do not reflect our religious aspirations, it is one of the disadvantages of living in a non-Muslim or secular country, and everyone has to swallow such unpleasant verdicts.

The Shariah Council cannot overrule the powers given to the Judges in this country by this Government.

Therefore you are now finally asked by the Council to divorce your wife."

(Case 8177)

For some women, even such a supportive stance could not resolve the difficulties they found themselves in, primarily because of the conflicts of laws situation which is often a consequence of trans-national marriages. In interview 2B, the woman explained her situation:

"Now it's a cross war between laws – lawyers in this country will give me custody... But that custody doesn't have jurisdiction there [in husband's country of residence] ... so then I am stuck in the situation [that] I cannot afford to take [the child] there [country where husband is] in case I don't get him back. That's not what I want to do because I didn't want to restrict him [husband] access to him [child]."

This particular interviewee went on to explain how she had sought the opinion of Muslim jurists, in the country where her husband was resident, regarding her divorce and custody of the child:

"No religious scholar is going to say to me, 'Yes, keep your son in England' and I don't expect them to. I understand the importance of religion, I understand the significance of bringing up a child up in an Islamic country, but sometimes this is not possible. This does not mean the child will suffer, 'God guides whom he will'.⁴³ Maybe that is an excuse or a way out, but I believe in it because I wasn't a Muslim for 24 years and then I became a Muslim – my faith is on that line." (Interview 2B)

This excerpt also demonstrates how the women's faith can comprise an important dimension of their views with regard to their family responsibilities, and how that could be significant in terms of the legal and other support they may require.

Social Care Needs: Domestic Violence and Counselling

The findings in this study are deliberately focussed on the process of divorce as experienced by the women who approached the MLSC, and so it is not possible to examine the vast range of distinct social care needs that Muslim families have.⁴⁴ However, in the circumstances that ensued as a result of marriage breakdown, women often required the support of social care agencies, and it is the quality of that limited crisis-oriented provision only that can be considered here. The most common situation was where women required the intervention of advice and support agencies as a result of escaping from a situation of domestic violence, and this was found in 15.5% of the total number of cases examined. It is important to view these findings in light of the following statistics: one in four women experience domestic violence in the UK generally,⁴⁵ and that every week two women are killed by their current or former partners.⁴⁶

All three interviewees who had had any experience of the police and domestic violence units were impressed with the professionalism of the service they had encountered. As told by the following interviewee:

“He used to lock me up. One day, I saw a key and that day the phone was installed, so I rang the police and threw the key out the window for them to open the door, she [the police officer] saw the money that my husband had left, and she said ‘take this and go to your parents’, they took me to the station, I went back to [the town where parents live].” (Interview 1B)

In interview 5B the police officers made rather more elaborate arrangements for the interviewee’s escape, involving the imposition of secret codes to identify her file at the police station and taking her in an unmarked police vehicle to a women’s refuge. The police officer assigned to her case had even managed to sell her car for her so that the interviewee could use the money, ***“[they told me] the money will come in handy for you”*** (Interviewee 5B)

The following interviewee had also benefited from a thoughtful police escape:

“[The police] arranged that they would pick the children up; the headmistress knew I was taking the children... The policemen came in casual clothes, they drove me in an unmarked car [to the train station]... It was a really frightening experience, as I told the children on the train, my elder son started crying, I was praying all the way. [I thought] ‘I don’t know what I have let myself in for, I’ve got three children on my hands’. When we got to the train station, this woman [from the refuge] came out of nowhere.” (Interview 8A)

All the women were also appreciative of the help received at the hands of the Women’s Aid Federation, without which their escapes would not have been possible. However, all the women criticised the lack of a faith-sensitive supportive environment, as well as the open prejudice:

“The women inside were racist – all cold, never smiled or anything... The white women were swearing at their children, their faces pierced... The atmosphere was not right for me.” (Interview 5B)

Similarly, the woman in interview 5A complained that:

“We shared a kitchen, I didn’t cook because of the smell of bacon, it made me sick, I went upstairs and made sandwiches in me room, and the drinking as well, I was really scared, because there I was trying to get away from that, and there she was ‘laddled’ (one of the women) every night, it was not good for me daughter.” (Interview 5A)

Interviewee 8A spoke in great detail about her time at the refuge, as it was a traumatic experience from which she was still recovering at the time of the interview. Having escaped from her home town quite some distance from the refuge, she arrived with her three children:

“The refuge was so dirty, it was a mixed refuge, there were no English women – it was a refuge for Black and Asian women – there was so much chaos, there was so much fighting going on, bitchiness. I was praying all the time, ‘Oh my God where have I come?’”

Not surprisingly, it was again the question of the kitchens which led to tension:

“It was the kitchens; there was one meat kitchen, and one vegetarian, and there was so much clashing going on. I didn’t want to cook there; they were cooking pork and stuff and then they were drinking [alcohol], it was totally different from what I was used to, there were smoking as well... It was really upsetting for me; they weren’t bothered about the place, because it wasn’t theirs, it was really like a rubbish tip, it was terrible... They had a rota to clean the house up but none of us stuck to it. This was another thing, [they would all] really argue and fight, I think it was just the circumstances, because we were all stuck... They had been taking cannabis in the refuge and they didn’t like me interfering; I was too religious just telling everybody ‘do this, do that’, and they didn’t like it. I was always cleaning; [once] I scrubbed down the kitchen, the laundry room, threw away pots that were too filthy, they were cooking haram¹⁷ and halal stuff in the same pots – The social workers came on Monday morning – they were amazed, they sat all the women down, and said that it [cleaning] had to be done... I started buying meat and a sack of flour and cooking for the kids, and all the other kids started asking ‘please can I have a chapatty’, they’d all been fed on tin cans of spaghetti and fried eggs, to the point where everyone started treating me like a door mat, they just took advantage of it, you know?”

Eventually, this interviewee was ‘evicted’ from the refuge, after her son had been beaten up by the children of the other women, and after her brothers had come to visit her. It was alleged that she had let her brothers in to the refuge, but she denied this. From the refuge, the interviewee and her children were placed in a flat in a hostel, where there was,

“...this drunk couple, [who shouted] racist abuse and who also were doing domestic violence [inflicting it on each other], and they were threatening to smash [our] door down. My elder son flipped – he was sent back to his dad. He’s been here to stay once, but he’s still the same, he’s been to see a family therapist but [that] hasn’t helped him at all.” (Interview 8A)

Finally, she was re-housed to her current home. This interviewee, like the others who had left home as a result of domestic violence, had eventually re-established a relationship with her family. This interviewee, in addition to re-establishing relations with her family, had also asked for help from the social care support agencies for herself, and her two younger children, who were suffering from stress-related behavioural problems such as bed-wetting and soiling. Eventually, she received counselling from a family therapist who was a Buddhist: ***“I wanted to carry on doing my prayers. You know, I had found that way, and it was peaceful and I wanted to find out more... The therapist was a Buddhist, [he] asked me to explain my prayers, [and he] encouraged me with them [prayers]... After two years of counselling... I have got it all out of my system.”*** (Interview 8A)

Such a positive experience of essentially faith-sensitive counselling is to be contrasted with the other interviewees' experiences. A number of them had also undergone counselling as a result of their difficulties. In interview 1B the woman described her negative experience, within the context of questioning about whether it mattered to her that the researcher was Muslim.

“Would you have been happy talking to someone non-Muslim?”

“No, to be honest, no matter how modernised I am, my belief is that no-one else can understand unless they were the same”

“Even if they were Hindu or Sikh?”

“No, no way, their beliefs are different. We give our husbands respect, many, I wouldn't say the majority, of girls and women of our religion, believe that their husband comes after Allah. We give him that respect, which I don't think these women do. So I couldn't speak to these women and say 'this is my problem', when I know that this person hasn't got that kind of thing in their heart... I had a counsellor, appointed by the GP's surgery, she was a Hindu, because I was taking anti-depression tablets [after returning to her parents]. I thought 'ok – speaking to someone – let's see how it goes'. Basically, she told me, this counselling lady, 'you've got to sit there, you've got to write down what you feel, you've got to build a wall in front of you'; and I thought no, this is not what I believe.”

The completely different moral attitude to dealing with difficulties, and the different framework within which negative experiences were understood was explained by this interviewee:

“Without any understanding of the beauty of Islam it would just be a 'them and me' – I am a Muslim – this is a system I believe in, the circumstances are unfortunate and at the same time God gives us these circumstances, you know at the end of the day, it's like, al-Hamduli'Llah for the test, I hope I pass!” (Interview 2B)

III – Conclusion

The women's experiences of marriage breakdown are diverse, like the women themselves. Their self-perceptions about their Muslim identities are complex, and comprise, at times, contradictory elements, but one critically important common factor is that they do perceive themselves to be Muslim, not just 'Asian', Black, Arab, European: sometimes in conjunction with these national identities, but always Muslim. The problem of contending with a negative attitude towards Islam was a recurrent theme in many of the interviews, and many women explained that it is for this reason that they did not wear the head scarf, or challenge negative comments about their religion.

The extent to which the religion was practised varied amongst the women, and there did seem to be a relationship between increased practice of the religion and a more detailed understanding of the way the Shariah operates as a system of law. It became evident that those women who clearly practised their religion, for example, those who wanted to end their marriages because their husbands were not practising Muslims, would use Islamic greetings in their correspondence with the MLSC and they would be confident in the use of Arabic terms. For example, in the following case, the applicant referred to the *hadith*⁴⁸ which is foundational in establishing the law of the Shariah governing the woman's capacity to have the *nikah* contract dissolved :

"I shall be grateful if the Islamic Shariah Council will consider my case and, accordingly dissolve my marriage in accordance with the principles laid down in the case of Thabit ibn Qais which is related in the Hadith. I feel that I am now in a trap which only the mercy of Allah through the institution of divorce will release me. As-Salam-alaikum." (Case 9263)

This applicant to the MLSC also happened to be an ethnic UK Muslim woman, again demonstrating the importance of understanding and recognising a faith-determined identity. This woman would not immediately have been perceived as having distinct requirements in terms of the many aspects of the divorce process, such as legal advice and social care support, but the different dimensions to her needs as a 'client' and 'citizen' are evident.

As the women in this research study primarily comprise those who face difficulty in obtaining a *talaq* divorce from their husbands, it must not be forgotten that the vast majority of Muslims living in this country who probably conduct their affairs according to the principles of the Shariah have not been subject to scrutiny. The Muslims observed are those who are having difficulties. Whilst this group comprises a significant proportion of the whole community, it is nonetheless a minority grouping: the fact, then, that these women are significantly disadvantaged is thrown into greater relief when viewed in terms of the 'empowerment' achieved by applying to the MLSC. As outlined earlier, the women who applied to the MLSC ranged from professional women to those with very sparse formal education; they ranged from the young, eighteen years of age, to women in their fifties. The marriages that broke down also ranged from

the very brief non-consummated *nikah* contracts to long standing marriages of nineteen years.⁴⁹ Many of the women were able to achieve the dissolution of their marriage contracts, others were able to negotiate *talaq* divorces from their husbands, both with or without the intervention of the MLSC. Other women either reconciled with their husbands, or withdrew from the MLSC process. The process for the dissolution of *nikah* contracts that the MLSC offers women who apply to it, is voluntary: the women are not compelled to apply.

The circumstances the women find themselves in might be as a result of the cruelty of their husbands or their families, but the women are able to apply to the MLSC to help resolve their difficulties. In the vast majority of cases examined, if the women chose to persist with the process as devised by the MLSC, they would either be granted a *faskh* of *nikah*, or their husbands would grant them *talaq* divorces, or they were able to negotiate *khulla* agreements with their husbands. The MLSC is predicated on achieving a moral consensus amongst members of the Muslim community. The interaction between the MLSC and the larger social matrix within which they are situated calls for a continuous process of refining the nature and operation of this organisation. The function and role of the MLSC has also evolved over the years responding to the continually changing needs and perceptions of those who apply to them. One aspect of this dynamic process is the manner in which the organisation responds to the women's increasing perception of their agency in their choice to negotiate their lives according to the Shariah. The inter-relationship between these processes and their impact within the community, and in the wider context of the UK, certainly merit further research.

It is evident from the range of ideas, emotions and demands expressed by the women in this study that such organisations as the MLSC can serve to empower those Muslim women who make their demands within the framework of the Shariah; *a priori*, the sample cannot include those women who choose to ignore the precepts of the Shariah, and for whom a civil divorce suffices. However, for those women who choose to approach the MLSC, and those women whose marriages are only recognised by the Shariah and for whom the MLSC is the final recourse, the organisation fulfils a need:

“As I was told by a friend that in Islam a woman has the right to demand and get talaq could you please help on this matter. My husband has told all his family that I am of bad character and that I have left him. He has also been telling everybody that he doesn't want me back and also he will not divorce me especially he will not give talaq. I have no parents and only younger brothers and sisters in [country x]. I want talaq from my husband so I could go back to [country x] to live with my family. Please help me, I have no one to turn to.” (Case 7786)

Notes

- ¹ Whilst most of the documentation in the case-files revealed the educational backgrounds of the women, this was easier to explore in detail with the smaller group of women interviewed.
- ² See Introduction; and Anwar, op. cit., p.5, and Peach, op. cit., pp.7-10.
- ³ An Arabic saying which means 'God willing'.
- ⁴ See Appendix for a summary of the UK civil law.
- ⁵ See Introduction; and Anwar, op. cit., p.5, and Peach op. cit., pp.7-10.
- ⁶ For a parallel discussion of the types of marriage that take place within a distinct community – the Hindu Gujarati community in Leicester – see Goodwin, Adatia, et al, *Social support and marital well being in an Asian community*, Joseph Rowntree Foundation, 1997, pp.14-15.
- ⁷ The categorisations used in this report are not as elaborate as those defined in the Goodwin, Adatia study op. cit.
- ⁸ *A Choice By Right; The Report of the Working Group on Forced Marriages*, Home Office Communications Directorate, 2000.
- ⁹ See recommendations in the concluding chapter.
- ¹⁰ See Appendix for summary of the relevant law.
- ¹¹ For a comparison with the ethnic UK majority community, see further L. Clarke & A. Berrington, 'Socio-Demographic Predictors of Divorce', in *High Divorce Rates: The State of the Evidence on Reasons and Remedies*, One Plus One Marriage and Partnership Research, Lord Chancellor's Department Research Series No.2 , 1999, vol. 1. Lord Chancellor's Department, England.
- ¹² Again, this is in contrast to findings regarding the ethnic UK majority community.
- ¹³ This includes some *nikah* contracts that were not consummated.
- ¹⁴ The '*haqq mahr*' or simply '*mahr*' is the term denoting the amount of money that the groom promises to give to the bride, without which the marriage contract is not valid.
- ¹⁵ 'The limits of God' is a translation of an Arabic phrase which denotes remaining within the prescribed legal limits of the religion, the Shariah. In this case it clearly means living within the bounds of matrimony, as the words after the phrase indicate. That is to say this particular woman cannot imagine remaining happily married to this man. She is indicating that it is only sensible that she divorce him and seek to marry someone else, and that if she is prevented from getting divorced she is bound to fall in love with someone else because she is so unhappy in her marriage.
- ¹⁶ The most favourable estimates conclude that an average period of 11 months elapse between first contact with a solicitor and the grant of the Decree Absolute, and that if there are property disputes, and the clients are legally aided, this can extend to 14-15 months. J. Eekelaar, M. Maclean, and S. Beinart, *Family Lawyers – The Divorce Work of Solicitors*. Oxford and Oregon: Hart Publishing, 2000.
- ¹⁷ See R. Berthoud, 'Family formation in multi-cultural Britain: three patterns of diversity', in Thomson, Saggat, Heath (eds.) *Social Change and Minority Ethnic Groups*, OUP, 2000.
- ¹⁸ These are also discussed later at pp.53-55.
- ¹⁹ These findings demonstrate trends that highlight the need to reconsider some of the assumptions that underpin the notion of 'angrezi shariat' ('English-style shariah', 'angrezi' being the Urdu word for English) as a description of the practices of the Muslim community in the UK. The term is used by D. Pearl, and W. Menski, in *Muslim Family Law*, London: Sweet and Maxwell, 1998.
- ²⁰ See B. Johansen, *Contingency in a Sacred Law – Legal and Ethical Norms in the Muslim Fiqh*, Brill & Leiden Studies in Islamic Law and Society, Volume 7, edited by Rudd Peters and Bernard Weiss, Brill & Leiden, 1999, p.36, for the principles which support this assertion.
- ²¹ The word '*nama*' is of Persian origin, and in this context can be translated as certificate. '*Nama*' is often appended to both the words '*nikah*' and '*talaq*' in the Indian subcontinent: '*nikahnama*' (*nikah* certificate) and '*talaqnama*' (*talaq* certificate).

- ²² See section on marriage and divorce according to the Shariah, pp.6-9.
- ²³ An Arabic greeting with which one begins and closes discourse, invoking peace, mercy and the blessings of God upon one's interlocuter.
- ²⁴ An Arabic phrase meaning 'Praise be to God'.
- ²⁵ An Arabic phrase meaning 'May God reward you well'.
- ²⁶ A shortened version of the first greeting, 'and peace'.
- ²⁷ Confusion between the two types of marriage dissolution, *khulla* and *faskh*, is all too possible given the paucity of information about this subject, alongside another parallel misconception, namely, that the *khulla* agreement is very widespread in the Muslim community. The findings of this research suggest that these assumptions should be reconsidered. The following statement, made in the House of Lords, contains just such a confusion between the two types of dissolution, and also appears based on the assumption of the prevalence of the *khulla* agreement:
- "...a Muslim woman in a 'limping marriage' can obtain a valid religious divorce against the wishes of her husband, though there may still be some real abuse where it involves the wife in having to return any dower or mehr given to her on marriage." *Hansard*, 30th June 2000 column 1247.
- ²⁸ Private interview with Professor Zaki Badawi, 10th November 2000.
- ²⁹ The appellation given to the formula which commences and consecrates all actions: 'in the Name of God the Compassionate, the Merciful.'
- ³⁰ See further M. H. Kamali, *Principles of Islamic Jurisprudenc*, op. cit.; and A. Yate, *Al-Ahkam As-Sultaniyyah: The Laws of Governance by Abu'l-Hasan al Mawardi*, London: Ta Ha, 1996, chapters 6-8, particularly pp 106-144.
- ³¹ See p.11 for a description of the documents sent out to applicants.
- ³² This hardship might have been attenuated if more information had been given to the applicants about why this documentation is necessary.
- ³³ See further chapter 6, *Al-Ahkam As-Sultaniyyah*, op. cit.
- ³⁴ Case number 7746.
- ³⁵ For a comparison with attitudes in the ethnic UK majority see further: J. Reynolds & P. Mansfield, 'The Effect of Changing Attitudes to Marriage on Its Stability', in *High Divorce Rates: The State of the Evidence on Reasons and Remedies*, One Plus One Marriage and Partnership Research, Lord Chancellor's Department Research Series No.2, vol. 1, 1999. Lord Chancellor's Department, England.
- ³⁶ It is hoped that the issue will be treated more extensively in a later paper devoted to the subject of faith and gender identity.
- ³⁷ An Arabic phrase meaning 'Praise be to God'.
- ³⁸ An Arabic term meaning 'religion'.
- ³⁹ 'Jum'a', an Arabic term, refers to the weekly congregational prayers that take place on Fridays.
- ⁴⁰ This issue has been addressed by the researcher in 'Cross-Cultural Mediation: A Critical View of the Dynamics of Culture in Family Disputes', *International Journal of Law, Policy and the Family*, Vol.14, no.3, 2000.
- ⁴¹ For further discussions about lawyers' representation of clients see J. White, 'Machiavelli and the Bar: Ethical Limitations on Lying in Negotiation', *American Bar Foundation Research Journal*, 1980, pp. 921-939.
- ⁴² The primary meaning of '*haqq*' in Arabic is 'truth', but it is a polyvalent word which also means 'right', as in 'human rights'.
- ⁴³ A recurrent theme of the Qur'an. See, for instance, 2:272, 28:52, *et passim*.
- ⁴⁴ For a path-breaking and important study outlining the distinct needs of Muslims see, *Muslim Families in Europe: Social Existence and Social Care*, F. Hussein and M. O'Brien, University of North London Press, 1999.

⁴⁵ British Crime Survey 1998.

⁴⁶ Homicide Statistics 1998.

⁴⁷ Two legal terms in jurisprudence: '*haram*', prohibited, and '*halal*', lawful.

⁴⁸ A saying attributed to the Prophet Muhammad; together with the Qur'an, these sayings and actions of the Prophet are the bases of the Shariah, as mentioned earlier.

⁴⁹ For a comparison with the trends in the majority ethnic UK community see further, L. Clarke, & A. Berrington, *Socio-Demographic Predictors of Divorce*, op. cit.

Conclusions and Recommendations

Whilst the self-perception of their Muslim identity has variable dimensions, all of the women are profoundly affected by the operation of the Shariah

This research has focussed on women who have chosen to apply to the MLSC for assistance in obtaining a Muslim divorce from their husbands. Although these women consider themselves Muslims, the degree to which they practise their religious obligations and the extent to which they are aware of their rights within the religion vary considerably. They comprise a diverse group, and to a large extent reflect the Muslim community in the UK in terms of their cultural backgrounds.¹

What is evident, however, is that whilst the self-perception of their Muslim identity has variable dimensions, all of the women are profoundly affected by the operation of the Shariah. Their choice to try and comply with the Shariah has been explored in this research within the context of the divorce process; and it is evident that the existence, the perceptions, the interpretations and the applications of the Shariah have far-reaching ramifications for the women in their experiences of marriage breakdown. It is important to reiterate that the women did not complain about the Shariah as such, nor about the fact that they felt compelled to abide by its rulings; rather, it is the widespread ignorance² of this inalienable dimension of their lives that compounded the trauma of marriage breakdown for them.

All the women interviewed, and many women in the case-files, wanted to know more about their rights within the Shariah. All interviewees stated that they wanted the MLSC and any offshoots of the Imams and Mosques Councils to have a more advice-giving and information-dissemination role. The Muslim Women's Helpline and the An-Nisa Society³ endorsed this need, and both organisations suggested ways in which they could contribute to the dissemination of the information, for example, by distributing literature produced by the MLSC, or by preparing 'marriage and divorce packs' with the help of the MLSC. All stated how keen they were to know the correct procedures according to the Shariah. Whilst many women were aware of their ignorance in these matters, others had little idea of their basic misunderstandings, but all said they wanted to know more. For example, many women had misunderstood the nature of the *khulla* agreement, and were bewildered by the fact that they had been asked details about what their husbands had given them, and they resented the fact that they had not been

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asked what they had given to their husbands, as this was often a source of tension in the marital dispute; had the women been aware that these questions were asked with a view to a possible *khulla* settlement, their resentment could have been dissipated.⁴

A number of women suggested that some kind of 'pre-marital Islamic counselling' be made available upon parties expressing a desire to be married. These women thought it would be appropriate for an *Imam* or a person learned in Islamic family law principles (not necessarily a jurist) to have the responsibility of explaining to couples their mutual obligations within Islamic marriage and the rights of the spouses:

"I would have benefited from a chance to sit down with the Imam. Just for a half an hour to discuss what marriage means." (Interview 1A)

In addition, pre-marital counselling was viewed as one way of preventing the unnecessary breakdown of marriages. Both An-Nisa and the Helpline cited examples of positive pre-marital discussions and the manner in which this could help the needless breakdown of marriages. An example of good practice in this connection is to be found in Malaysia, where prospective spouses are required to attend a course outlining mutual obligations at the time of registering the date for a *nikah* ceremony.⁵ This is in stark contrast to the findings made in the study on the Hindu-Gujerati community in Leicester, where the respondents stressed they did not want individuals from religious organisations to have any marriage-counselling role,⁶ primarily because of fears about gossip spreading in the community. However, the experience of the Helpline staff was that women only called the Helpline after first having tried to find a local *Imam* who would be willing to speak to them. All the women interviewed were insistent about the vital importance of confidentiality (and this was specifically mentioned also by some of the applicants in the case-files); and all likewise stressed the fact that the intermediary involved in any way in the dispute be not only Muslim, but also knowledgeable in matters of the Shariah. All the women's experiences of the MLSC were very positive in terms of confidentiality:

"This is a council set up for women. I think I do trust them ... my reasons [for divorce] are practical reasons... If they were not to grant me a divorce then I think that would make a mockery [of] Islam which I don't believe that God wants you to be in a situation a minute longer than you have to be... If you are able to get out of it that's what it [the means] exists for." (Interview 11B)

All the women were enthusiastic about the training of Muslim women to act as counsellors alongside the men. Face to face contact was considered very important and yet difficult to access. In this study, the respondents were not demanding that female officials decide their cases, but that there be women to act as a point of first contact and support for the women who call the MLSC, in the manner of 'intake'-workers who provide initial information about the organisation and its procedures and then direct calls to the appropriate people. They nearly all felt that an official male voice answering their calls added to the trauma of their situation. In a paper given by Sarah Sheriff of the Muslim

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Women's Helpline,⁷ she mentioned that male callers had also demanded the support of Muslim male counsellors, although many men were able to access the support of local *Imams* and members of the MLSC with much more ease than the women. The Malaysian system once again provides an example of good practice. There, the women counsellors known as *ustazahs*, (male teacher: *ustaz*, female: *ustazah*) work in the local religious office alongside the *Qadis*, and the superior Shariah court judges. Any party wanting the intervention of the *ustazah* can make an appointment for a session with her.

In interview 12B the respondent wanted a 'one-stop' divorce centre, "**The Shariah Council should have recognition from the British government, so that women can have everything done under one roof; like a centre with lawyers able to deal with civil divorce as well.**" (Interview 12B) The Helpline also advocated a "**partnership between the statutory legal services and the Muslim community.**"

Both An-Nisa and the Helpline were aware of the MLSC insistence on receiving funds only from sources within the Muslim community,⁸ but stressed that the support could be directed away from the main functions of the MLSC, and directed towards administrative and in-take work. The MLSC insists upon maintaining financial independence in order to avoid the possibility of controversy amongst the Muslim community: "There is a danger ... in financial reward for any organisation there will be a problem within the Muslim community. We are not one community but several, and I think that to leave the communities to compete individually and to establish their authorities individually is a much better and healthier one for us."⁹

The fact that the MLSC and any other such Muslim organisation currently in existence is able to apply the laws of the Shariah and declare a *faskh* of *nikah* clearly indicates that legislative intervention is not necessary to resolve the problem of marriage dissolution for Muslim women in the UK. Unlike the legal situation of women in the Jewish community, civil law mechanisms are not necessary for Muslim women to dissolve their *nikah* contracts.

It is generally agreed that formal recognition of the Shariah system of laws in the UK would be problematic, and such recognition is not sought by members of the MLSC nor by the majority of Muslim community organisations. As An-Nisa stated, "**Muslims are not even recognised as a separate community, let alone recognising the Shariah!**", but they indicated that ideally this situation should change in the course of time. The co-existence of the Shariah alongside the civil law is currently preferable to the imposition of encumbrances upon its operation, but not at the cost of lawyers and the judiciary remaining ignorant of the different needs of Muslims in the UK. While all agree on the need for wider dissemination of the impact that the Shariah has upon the family lives of these women, the empirical evidence of this research demonstrates that the demand for any official recognition of the Shariah is a minority one, because the general consensus is to continue to act independently, in the same way that a semi-autonomous legal field co-exists amidst the presence of an over-arching legal superstructure.¹⁰ It is not recognition of the Shariah that is deemed the

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necessary means of alleviating the difficulties that Muslim women are facing, rather, it is argued that rectification of the widespread ignorance of the Shariah in the broader social context will lead to an improvement in legal and social-care service provision for Muslim women in the UK. An-Nisa indicated the need for a central dissemination resource provision enabling agencies to access information about the Muslim community in the UK.

The findings indicate the ways in which ignorance of the Shariah adversely affects these women's family lives, and in particular the divorce process. The principal problem stemming from this ignorance is the lack of recognition that Muslim women have distinct needs and comprise a separate category in and of themselves, that is, a category *sui generis*, one that is not reducible to any other – racial, cultural, or ethnic. Many of these women do not fall under the heading of ethnic minority women, since there are ethnic UK Muslims, and there are other women born and brought up in the UK who do not have special language needs. All Muslim women can suffer from inappropriate advice about how to contend with their family problems ranging from patronising advice about their acceptance of arranged marriages, to being placed in living conditions unsuitable to their faith, to incompetent advice from their lawyers. It was clearly to these women's advantage that their ability to undertake legal proceedings to terminate their civil marriages was not dependent on their negotiations to secure the dissolution of their *nikah* contracts; although many women considered it unfair that they were bound to comply with two legal systems, and many were frustrated by the additional burden of having to undertake the cost¹¹ and difficulty of civil legal proceedings.

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The state of the law with regard to the recognition of marriages and divorces conducted outside of the UK¹² was confusing to many of the women, and also, inexcusably, to some of their legal advisers, and a number of women had been given erroneous legal advice¹³. Because many of the women considered the Shariah universally applicable to all Muslims regardless of their location, they viewed the *nikah* marriage also as a uniform ceremony that was either valid or not according to the UK civil law regardless of location. They did not consider the *nikah* marriage contract a legal proceeding bound up with other local civil systems, and therefore they could not understand the seemingly anomalous position whereby most *nikah* ceremonies conducted abroad were recognised as valid, whereas those performed in the UK were not.¹⁴ This appeared to be an unfair discrepancy to most women, who were unaware that this is the result of an entanglement of conflict of laws and policy. Needless to say, this anomaly has caused particular hardship to women who had been forced into marriages abroad:

“At that time ... I did not realise or fully understand what my mother and relations were committing me to... Now my mother has realised that she made a big mistake.”
(Case 7779)

As a matter of policy, the MLSC advise women who have conducted *nikah* ceremonies abroad that their marriages are recognised here, and that they

Those in a position to support these women, whether state agencies or members of the legal profession, are often not aware of the complexities of the conflict of laws

Any ignorance is further compounded by the fact that these service providers do not recognise the distinct needs of Muslim women; their difficulties remain hidden and only emerge, if at all, as ethnic or cultural differences

are therefore obliged to divorce according to civil law, consequently the women who approach the MLSC are eventually adequately informed.

In other cases, women themselves may not have known that their Muslim marriages did not accord them the status of married women in this country. The existence of this anomaly acts to curtail the freedom of choice that women feel they are exercising when choosing not to register their marriages according to civil law. In this way, the unfairness that can arise is not always equivalent to the problems encountered when cohabiting couples split up: “If you got married again..”

“I would get the registry one done first.”

“Why?”

“That’s the way it should be because if you do have difficulties at least the law will be on your side. The law wasn’t on my side. When I went to the solicitor they said you can’t really do anything, can’t claim his property; he has got 2 properties, but now I can’t give her [child] anything, we’re living here [in wife’s family home] with nowhere to go... I couldn’t claim anything.” (Interview 7B)

Those in a position to support these women, whether state agencies or members of the legal profession, are often not aware of the complexities of the conflict of laws. These service providers are often not aware of all the consequences of separation for these women in both legal and religious terms. Any ignorance is further compounded by the fact that these service providers do not recognise the distinct needs of Muslim women; their difficulties remain hidden and only emerge, *if at all*, as ethnic or cultural differences.¹⁵ This serious shortcoming in lawyer competence could be remedied by ensuring that the essential principles of this subject comprise a part of all family-law courses.

Many women choose not to marry according to civil law; this situation arises out of a variety of reasons,¹⁶ but principally because for many of these women (and presumably for a similar proportion of other Muslims), civil procedures do not form the reference point against which the principles of the Shariah are counter-poised, but these procedures are complied with, as and when desired or necessary, in much the same manner that the ethnic UK population complies with civil procedures according to its needs. However, some women were clear about costs being an important consideration in the matter,¹⁷ others sadly did not pursue civil divorce proceedings, even when their marriages were recognised by civil law. One such woman, who had no intention of remarriage, stated openly that she had not started civil divorce proceedings because she **“cannot manage to pay solicitors and court fees.”** (Case 8127)

The issue of costs was also an important factor in the women’s capacity to recover the *mahr* (or dower), where appropriate, and also the restitution of the goods exchanged as gifts in the marriage – the dowry – particularly in brief arranged marriages.

At present, the women can only attempt to recover such property in a circuitous fashion under general civil law procedures and the results are very unsatisfactory, principally because of the difficulty of having to formulate the

The issue of costs was also an important factor in trying to recover the mahr (or dowry) and any dowry, particularly in brief arranged marriages

The assumption upon which much current divorce law is based – that a significant period of time ‘for reflection’ is necessary prior to enabling divorce – does not take into account the fact that arranged marriages, by definition, do not break down in the early stages without several prior attempts... to save the marriage

It was evident that even if the relationship with their families had been problematic, the family was very important to the women, and for many provided an invaluable source of support

complexities of the Islamic marriage contract agreements in terms of conventional civil remedies. The difficulties have been compounded by the costs of instituting such proceedings and by the problem posed by starting such claims as unrepresented parties without legal advice. Where parties have been unwilling to negotiate with the mediation of the MLSC, the MLSC approach has been to consider matters pertaining to property as falling under the final provenance of the civil law.

The institution of a formal mechanism through the civil court process, such as the recognition by the Court of joint proposals made by both parties to the marriage, could be valuable. For instance, parties could request that their *nikah* contract be recognised as a joint agreement by the Court, in order to facilitate civil settlements regarding property. The bars to the enforceability of pre-nuptial contracts currently in place could equally apply to those instances where both parties sought recognition of religious procedures.¹⁸ For this to be a genuinely facilitatory initiative, information about pre-nuptial contracts would have to be widely disseminated amongst the Muslim community so as to ensure a genuine freedom of choice to enter into such agreements.

Measures to facilitate the smooth passage of other existing court procedures, such as complying with the service of documents because of one party being abroad, or the fact that one party may need the assistance of interpreters and so on, are important to pursue as ‘equal treatment’ objectives in court processes.

The assumption upon which much current divorce law is based – that a significant period of time ‘for reflection’ is necessary prior to enabling divorce¹⁹ – does not take into account the fact that arranged marriages, by definition, do not break down *in the early stages* without several prior attempts by all those involved from both families, and family appointed ‘mediators’, to save the marriage. The dissolution of such brief arranged marriages usually indicates that attempts to reconcile have failed. Thus, it is erroneous to conclude that the breakdown is as a result of a lack of commitment to marriage as perceived in Western terms. The length of current procedures²⁰ inhibit the possibility of a swift remarriage for these younger couples. Following this type of brief arranged marriage breakdown, Muslim families consider it desirable for the parties to remarry, to provide the (usually young) individuals another opportunity to enjoy stable family life before inhibitions about married life become entrenched. This approach is to be contrasted with the modern Western convention,²¹ as Muslim family ethics tend to promote remarriage and discourage remaining single as an option for young persons, given that sexual relationships are only sanctioned within marriage.

It was evident that even if the relationship with their families had been problematic, the family was very important to the women, and for many provided an invaluable source of support. For example, of the women whose interviews were conducted mostly in Urdu (4 out of 21), only one interviewee was estranged from her father and three of her brothers, and she was the most

A pattern seemed to emerge between recovering from their traumas and moving forward in their new situations and re-establishing relations with the family. The complex relationships that women had with their families requires further close consultation with the women themselves, but what is evident is that such possibilities as negotiations with families, and re-establishing relations with them cannot be adequately dealt with in terms of blanket policies

Both women's organisations interviewed echoed the findings made in this report about the unsuitability of current provision for Muslim women who were forced to leave their homes and the lack of faith-sensitive support during, and as importantly, after the crisis had subsided

vulnerable inasmuch as her situation had not been resolved, and she did not seem to be anywhere near completing the MLSC process. The need to keep open the possibility of negotiations with the husband and sometimes the woman's family was also mentioned by many of the women, particularly in the context of domestic violence. In a number of cases, the women emphasised the importance of either gaining the support of male relatives or trying to resolve issues with their husbands. As stated earlier, the MLSC have a policy to keep open the door of reconciliation wherever possible. The MLSC also endeavour to support the women by directing all correspondence to them, even if their applications have been initiated by male relatives. In this way the organisation can also encourage negotiations between the wife and her own family if necessary.

This option to negotiate with their own families and possibly the husband is an important dimension of intervention in Muslim family disputes, and one that goes against the grain of the policies pursued by many refuges and safe houses for women. Both An-Nisa and the Helpline cited examples of cases where women had been denied the opportunity to negotiate with their own families (and like interviewee 8A were evicted from the refuge for attempting those negotiations²²). Both organisations also spoke about the importance of maintaining family support networks for the women after the crisis was over, in order for the women to rebuild their lives. Out of all the women interviewed, 19 had maintained or regained the support of their families. All bar one²³ of the women interviewed under the age of 34 (14 out of 21) had returned to live in their family homes or with relatives. The remaining women over 35 lived independently, but all had maintained relationships with their families. All the women interviewed who had survived domestic violence (5 out of 21) had, at the time of interview, the support of their families; three of them had had to re-negotiate such relationships. A pattern seemed to emerge between recovering from their traumas and moving forward in their new situations and re-establishing relations with the family. The complex relationships that women had with their families requires further close consultation with the women themselves, but what is evident is that such possibilities as negotiations with families, and re-establishing relations with them cannot be adequately dealt with in terms of blanket policies.

Both women's organisations interviewed echoed the findings made in this report about the unsuitability of current provision for Muslim women who were forced to leave their homes and the lack of faith-sensitive support during, and as importantly, *after* the crisis had subsided. This insensitivity ranged from explicitly opposing the practices of faith to ignoring, if not implicitly criticising, Muslim values, including such practical matters as hygiene and dietary regulations. Both An-Nisa and the Helpline stressed the need for separate safe houses for Muslim women. The Helpline suggested temporary housing being made available to Muslim women, because often the women wanted some time and space away from their families to think matters through, and often they

Where the aim of re-establishing relationships was a long-term objective, many Muslim women could benefit from the supportive networks of Muslim communities different from the ones they were forced to leave, in order to recover from the traumas they had experienced, and to allow any children to benefit from the support of those Muslim communities

In nearly all the interviews, the women believed that where mediation was appropriate, only Muslim mediators would have the sufficient understanding to grasp the issues at stake

hoped to return. An-Nisa also stressed the importance of consulting the women and ensuring that their views were paramount, and the imperative of support systems and networks being in place for Muslim women who had left their homes. In their experience, where it was important for the women to heal the rift and be resettled with their families, particularly for safety reasons, support was necessary to enable this to take place, particularly for the benefit of any children of the family. Where the aim of re-establishing relationships was a long-term objective, many Muslim women could benefit from the supportive networks of Muslim communities different from the ones they were forced to leave, in order to recover from the traumas they had experienced, and to allow any children to benefit from the support of those Muslim communities.

The possibility of mediation was discussed with all the interviewees, and the data from the case-files demonstrated how with third party intervention in family disputes, women were often empowered in their capacity to resolve their difficulties.²⁴ The stated policy objective that mediation ‘promotes harmony and reduces acrimony’²⁵ is predicated upon the assumption that there has been no prior attempt at third party involvement to resolve the issues in dispute, and that the only alternative to mediation is the acrimonious lawyer. In nearly all the interviews, the women believed that where mediation was appropriate, only Muslim mediators would have the sufficient understanding to grasp the issues at stake, because of the distinctive dynamics of family life in the Muslim social context. Many interviewees went further and stated the importance of the Muslim mediator being knowledgeable in matters of the Shariah: it was not simply a question of religious identity, but knowledge of Muslim family law: **“[It would be] very positive if it was someone from the Shariah Council [could intervene] ... because a lot of people seem to be ignorant about what Islam says, if they could back up their reasoning with what Islamic law says that would be brilliant.”** (Interview 3B)

The call for mediators with some kind of recognised pastoral authority within the community echoes one of the conclusions of Taylor and Sanchez in their study of the Hispanic community in America; they argued that mediation training should be made accessible to the ‘natural helpers’ within the community; “...those who already command respect because of their personal attributes or their position within the community, such as the priest, the formal godparent (*compadre*)...”²⁶

The possibility of an extensive course concerning the practice of mediation in family disputes involving Muslims, running along parallel lines to a course on Islamic counselling,²⁷ was suggested by both the Helpline and An-Nisa, who warned against the pitfalls of a simplistic course on rudimentary Islamic principles.

The possibility of third-party intervention, more in the manner of some form of Islamic marriage guidance counselling, was also proposed by many women in the findings as a means both of supporting women during the period

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in which the marriage was breaking down, and of shoring up the marriage, thus preventing divorce. This was most often in cases of long-standing marriages where the couple were encountering difficulties. Once again, what the women were calling for was intervention from a figure with 'authority', someone who is perceived as capable of evaluating behaviour and providing guidance, within the context of a shared normative framework, in the manner of the traditional *Qadi*:²⁸

"Rather than go to a Marriage Guidance Counsellor, I feel it much more appropriate to put my case before a Muslim Authority, like yourself, since I feel that my husband, being a Muslim, would be more likely compelled to listen to another Muslim authority rather than a British authority... I think it is necessary that X [husband] is being told by someone that his attitude and behaviour and actions are simply not right – I feel the best thing would be if X [husband] and I could be brought together in the presence of an Imam, to sort out our problems and for the Imam to judge who is right and who is wrong and give advice where needed." (Case 8123)

It is apparent that basic divergences in attitudes to life, religion and society cannot but have a major impact upon the quality of service these women receive. Whilst it is possible to retort that all social interaction between people of varied backgrounds necessarily involves differences of opinion, in the realm of dispensing advice about such fundamentally intimate matters as marriage and divorce, the impact of such divergences can be critical, particularly given the power dynamic between adviser and client. The following excerpt from interview 2B explains in detail how prejudice can manifest itself in even the subtle questioning of the normative/legal framework that the client chooses to abide by. Without sharing the same normative framework, the conviction with which the advice and support is given is open to question, particularly when the recipient perceives prejudice: **"You see, if you're not a Muslim and you look at Muslim law – I mean I am in the middle of conflicting of laws marriages and everything – but I am a Muslim and so I don't look at it and go 'that's stupid'; I look at it and I see there is a perfect logic for all of this, everything makes sense, I believe in it, God wrote this, this is it. Somebody who is not a Muslim cannot help but have the prejudice of 'how ridiculous the situation is'; that's the difference. Like if I am talking to someone who is not a Muslim, I will find myself trying to explain and supporting the laws because I believe in them. But when someone is already a Muslim it's done and we accept it, even if we ridicule it, we know that there is a higher intelligence than us where it makes sense, but we know it's all fair, and it will all work out, but somebody who is not Muslim could not help but have a prejudice."**

"Could the prejudice get in the way?"

"Possibly: in order to win, you must support. It's very difficult to appeal on somebody's behalf if you don't actually believe in what you're appealing, but if you are thorough in your knowledge, and you understand it and why these laws are put, I believe you feel more comfortable with them, not just that – somebody who is not a Muslim wouldn't have an understanding of those laws anyway."

The two statements above, from case 8123 and interview 2B, were made

ten years apart in time, by women who span two different generations. A final point, which should be carefully considered, is that these articulations of key concomitants of Muslim belief and identity were made by two women who would not even be recognised as having distinct viewpoints or needs, as they were both of ethnic UK origin: not 'ethnic minority', or Black, or 'Asian' – simply Muslim.



Notes

- ¹ See Introduction; and Anwar, op. cit., p.5, and Peach, op. cit., pp.7-10.
- ² See further: Runnymede Trust, *Islamophobia – A Challenge For Us All*, Report of the Runnymede Trust Commission on British Muslims and Islamophobia. The Runnymede Trust, 1997.
- ³ The Muslim Women's Helpline will hereinafter be referred to as simply 'the Helpline': the An-Nisa Society will hereinafter be referred to as simply 'An-Nisa'.
- ⁴ As stated earlier, virtually all the respondents were ignorant about the resource constraints of the organisation. In general, the women complained about the way they remained uninformed about details of the MLSC process, for example: the length of time all the different procedures took; the reasons for delay in correspondence; the reasons for contacting the husbands; the difference between the *faskh* of *nikah* and the *khulla* agreement.
- ⁵ See further, S. Hassan and S. Cederroth, *Managing Marital Disputes in Malaysia*, London: Curzon Press, 1997.
- ⁶ A. Goodwin et al, *Social Support and Marital Well Being in an Asian Community*. Joseph Rowntree Foundation, 1997, op. cit. p.35.
- ⁷ S. Sheriff, 'The Muslim Women's Helpline', Paper Delivered at the 2nd Annual AMSS Conference: Social Responsibility: Challenges for the Future, University of Westminster, 21-22 October 2000.
- ⁸ For further details see Z. Badawi, 'Muslim Justice in a Secular State', in M. King (ed.), *God's Law versus State Law*. London: Grey Seal, 1995, p.80.
- ⁹ Ibid., p.80.
- ¹⁰ For further discussion about the semi-autonomous social field see Sally Falk Moore, who coined the term in her seminal work *Law as Process: An Anthropological Approach*, London: Routledge and Kegan Paul, 1978; J. Griffiths, "What is Legal Pluralism?" – *Journal of Legal Pluralism and Unofficial Law*, vol. 24, 1986, pp.1-55. B. Dupret, M. Berger, L. Al-Zwaini, *Legal Pluralism in the Arab World*, The Netherlands: Kluwer Law International, 1999.
- ¹¹ The average cost of a matrimonial case paid out of the Legal Aid fund in 1993 was £1,565, with privately paying spouses most likely to have paid more, quoted at page 17 of J. Eekelaar, M. Maclean, and S. Beinart, *Family Lawyers – The Divorce Work of Solicitors*. Oxford and Oregon: Hart Publishing, 2000. See also earlier section about the prohibitive effect of the cost of legal proceedings in the women chapter.
- ¹² See Appendix for a summary of the current law
- ¹³ See earlier p.53 women chapter.
- ¹⁴ See box 4 women chapter, p.33.
- ¹⁵ The fact that many Muslim women are ethnic UK or European means that service provision agencies will not immediately be alerted to the possibility of any potential difficulties in problems regarding the conflict of laws, and thus not be aware of the need for a faith sensitive approach.
- ¹⁶ See earlier section in the women chapter, pp.31-34.
- ¹⁷ See extract from interview 7A p.32.
- ¹⁸ Presently, pre-nuptial contracts are not legally binding:
 - where the contract is unenforceable under the general law of contract
 - where enforcement would cause considerable injustice
 - if the couple have a child
 - where one/neither party had not received legal advice beforehand
 - where one or both parties failed to disclose assets beforehand
 - where agreements were made less than 21 days before marriage.See Eekelaar and Maclean, op. cit., p.27.
- ¹⁹ Para.7.4, *Looking to the Future: Mediation and the Ground for Divorce: White Paper*, 1995, quoted in J. Eekelaar, et al, op. cit., p.3.

- ²⁰ The most favourable estimates conclude that an average period of 11 months elapses between first contact with a solicitor and the grant of the Decree Absolute, and that if there are property disputes, and the clients are legally aided this can extend to 14-15 months. *Ibid.*, p.154.
- ²¹ See further R. Berthoud, 'Family formation in multi-cultural Britain: three patterns of diversity', in Thomson, Saggar, Heath, (eds.) *Social Change and Minority Ethnic Groups*, OUP, 2000.
- ²² See pp.60-63 in earlier section on domestic violence in women chapter.
- ²³ Interviewee 8B who had left home and was waiting to get re-married upon receipt of her *faskh* of *nikah*.
- ²⁴ See pp.36-37 in women chapter, and mediation/children pp.55-60.
- ²⁵ Speech by Lord Irvine of Lairg, the Lord Chancellor, to the UK Family Law Conference, Inner Temple, London, 25 June 1999.
- ²⁶ 'Out of the White Box: Adapting Mediation to the Needs of Hispanic and Other Minorities within American Society', *Family and Conciliation Court Review*, Vol. 29, No. 2, April 1991, pp. 119-120.
- ²⁷ A part-time 4 year course run jointly by the An-Nisa Society and Brent Adult Community and Educational Services, is now into its fourth year, and it leads to a vocational qualification enabling the practice of Islamic counselling.
- ²⁸ For an interesting description of the traditional role played by a *Qadi* in the realm of family laws within a concrete historical context, that of the Ottoman Empire, see Judith E. Tucker, *In the House of the Law; Gender and Islamic Law in Ottoman Syria and Palestine*, California: University of California Press, 1998, in particular pp. 1-11 that bear directly on the arguments put forward here.

Appendix Summary of the Law regarding the Recognition of Overseas Muslim Marriages and Divorces

■ Marriages Performed According to the Shariah Outside the UK

A *nikah* contract performed in the UK is not recognised as legally valid. The law is more complex if the marriage is performed elsewhere, as under certain conditions the marriage may be recognised as valid according to UK law.

According to the Private International Law (Miscellaneous Provisions) Act 1995: a marriage conducted abroad, in an Islamic and therefore potentially polygamous manner, is not void if at its inception neither party has any spouse additional to the other. In particular, s.5(1) of the 1995 Act reads: “*A marriage entered into outside England and Wales between parties neither of whom is already married is not void under the law of England and Wales on the ground that it is entered into under a law which permits polygamy and that either party is domiciled in England and Wales.*” This is so provided that the marriage conducted abroad conforms to the essential requirements of the place of celebration of the marriage; s 5(2) 1995 Act: “*This section does not affect the determination of the validity of a marriage by reference to the law of another country to the extent that it falls to be determined in accordance with the rules of private international law*”.

Therefore, generally speaking, a Muslim marriage conducted outside of the UK will be recognised as conferring valid married status to the spouses in the UK, provided that marriage was valid according to the laws of the country in which it took place.

■ Divorces According to the Shariah Outside the UK

The relevant statute is s.46 of the Family Law Act 1986. Divorce proceedings abroad are recognised. The crucial term is “*proceedings*” that take place where “*either party is habitually resident*”, or “*domiciled*” or a “*national*” in that country.

According to the facts of *Quazi v Quazi* [1980] AC 744, the House of Lords recognised an Islamic divorce as obtained by *proceedings*, where it had been obtained according to the Muslim Family Laws Ordinance 1961 of Pakistan. The procedure in that case involved the husband pronouncing ‘*talaq*’, and giving notice to the Council, and to the wife.

This procedure must be distinguished from the “*bare talaq*” that the jurisprudence in this country has been keen to classify as “*other than proceedings*”, and therefore contrary to public policy considerations to prevent divorces taking place without adequate notice and an opportunity to respond.

Therefore, generally speaking, a divorce according to Islamic law that takes place outside of the UK may be recognised as valid in the UK, provided that there were some “*proceedings*” giving spouses adequate notice and an opportunity to respond.

Clarkson, C., and Hill, J., 1997, *Jaffey on the Conflict of Laws*, London: Butterworths.

Hamilton, C., 1995, *Family, Law and Religion*, London: Sweet and Maxwell.

North, P., and Fawcett, J., 1992, *Cheshire and North's Private International Law*, London: Butterworths

GLOSSARY

<i>Ahkam al-mu'amalat:</i>	body of rules governing social relations.
<i>'Aqd:</i>	marriage tie.
<i>Darurah:</i>	necessity.
<i>Dhirar:</i>	harm.
<i>Fasad:</i>	corruption.
<i>Faskh:</i>	dissolution of the marriage/ <i>nikah</i> (also called <i>tanseekh</i>).
<i>Fiqh:</i>	Islamic jurisprudence.
<i>Fuqaha':</i>	Muslim Jurists (singular – <i>faqih</i>).
<i>Hadith:</i>	saying of the Prophet Muhammad (pl. <i>ahadith</i>).
<i>Haqq:</i>	Primary meaning is truth, in legal discourse meaning a right.
<i>Hijab:</i>	Headscarf.
<i>'Ibadat:</i>	religious/devotional practices.
<i>'Iddah:</i>	waiting period after the termination of the marriage by death, divorce or dissolution of the marriage contract. It is normally taken to be a period of four months and ten days.
<i>Ijma':</i>	consensus.
<i>Ila:</i>	husband's vow to abstain from sexual relations.
<i>Imam:</i>	religious leader.
<i>Istihsan:</i>	the best <i>per se</i> .
<i>Kulliyah:</i>	applicable generally not just to a set of particular individuals.
<i>Khulla:</i>	agreement between the spouses for the wife to be released from the marriage contract.
<i>Li'an:</i>	mutual cursing.
<i>Madhhab:</i>	school of Islamic law (pl. <i>madhahib</i>).
<i>Mahr:</i>	(dower) money paid by the groom to the wife without which the <i>nikah</i> is invalid.
<i>Maslahah (mursalah):</i>	public interest.
<i>Mubara'ah:</i>	dissolution of marriage contract by mutual agreement when husband does not consummate the marriage.
<i>Nafaqah:</i>	maintenance.
<i>Nikah:</i>	marriage contract, also called <i>'aqd</i> .
<i>Qadi:</i>	Islamic judge.
<i>Shariah:</i>	Islamic law.
<i>Sunnah:</i>	the normative practice established by the Prophet Muhammad.
<i>Talaq:</i>	the pronouncement of divorce by the husband.
<i>Tanseekh:</i>	dissolution of the marriage/ <i>nikah</i> (also called <i>faskh</i>).
<i>'Urf:</i>	custom.

One of the first independent studies of what Muslim women in the UK experience whilst trying to divorce their husbands. This report considers the women's needs in depth by examining relevant case-files and conducting interviews with women who contacted the Muslim Law (Shariah) Council, UK, an independent organisation based in London.

The report will be of interest to policy makers, lawyers, social services and advice provision agencies, academics, and all who are concerned with the position of Muslim women and minority communities in general.



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