Amin Al-Astewani

Lecturer in Law

Lancaster Law School

Tel: +44 (0)1524 593293

a.al-astewani@lancaster.ac.uk October 2016

Home Affairs Committee Shariah Councils Inquiry:

Submission of Written Evidence by Amin Al-Astewani

**Executive Summary**

* Very little research has been conducted on the legal status of Shariah councils in the UK
* The default position of the law is that the decisions of Shariah councils have no legal force
* The English legal system does however provide two exceptional avenues for Shariah councils to accrue legal force. One has been established by case-law, and the other has been established by the Arbitration Act 1996
* Shariah councils seem to be well aware of their legal status

**Written Evidence**

1. This written evidence is based upon my doctoral research conducted between 2013 and 2016 at the University of Manchester Law School titled “Shariah Tribunals in Britain: A Critical Socio-Legal of their Role in Serving the Religious Needs of the British Muslim Community”. This research has not yet been published.

2. Very little research has been undertaken on the legal status of Shariah councils and their relationship with the English legal system. Academic literature has instead focused on the incompatibility of Islamic law with Western liberal ideals and the consequent impact this may have on members of the community who use Shariah councils. This written evidence will focus solely on the legal status of Shariah councils, with the hope that the legal analysis provided will be of benefit to the inquiry.

3. Religious tribunals have existed in Britain for hundreds of years. These tribunals function on a non-statutory basis and are not considered part of the civil court system.[[1]](#footnote-1) This includes Roman Catholic Church tribunals, whose decisions are not recognized at civil law. The only exception to this rule is the ecclesiastical courts belonging to the Church of England, which function on a statutory basis and are considered a formal part of the English judicial system.

4. The default legal position is that the decisions of Shariah councils have no legal force or jurisdiction.[[2]](#footnote-2) Members of the community who approach them for a religious divorce do so completely voluntarily and cannot be summoned to do so. If a Muslim woman for example did not want to resolve her divorce according to Islamic law as per the wish of her husband, she is completely free to file a claim in the English courts where English divorce law will trump Islamic divorce law regardless of the husband’s desires, as occurred in the unreported case of *Al–Saffar v Al–Saffar*.[[3]](#footnote-3) In this respect the jurisdiction of Shariah councils relies completely on the members of the Muslim community themselves, who voluntarily decide to accept the religious jurisdiction of such institutions by virtue of the services they are able to provide.

5. Although the default legal position is that the decisions of Shariah councils have no legal force, English law does provide two exceptional avenues for such decisions to accrue legal status. The first avenue is provided by contract law and stems from the case of *Shahnaz v Rizwan*.[[4]](#footnote-4) If a decision issued by a Shariah council relates to financial matters, it will be given legal effect for the purposes of contract law. Both parties must however have consented to the decision of the Shariah council, a qualification established by Rix J in *Al-Midani v Al-*

*Midani*,[[5]](#footnote-5) the first ever reported case to consider the legal status of a British Shariah council. It is useful to quote a part of Rix J’s assessment of the Islamic Shariah Council in London, as it represents the first account from an English judge of the nature and function of a Shariah council:

The bench of the Shari'a Council would seem to provide a welcome facility to the Muslim community of the UK to render decisions on Islamic law, particularly in the matrimonial and family sphere. Its authority appears to rest largely on consent, in as much as it responds to the needs of the community it serves, but it may be that under Shari'a law it has autonomous power, as a religious court, to promulgate decisions in favour of a claimant even against the will of a respondent.[[6]](#footnote-6)

In the subsequent case of *Uddin v Choudhury*,[[7]](#footnote-7) Mummery LJ also confirmed that English judges are willing to treat an Islamic decree of divorce issued by a Shariah council as having legal effect for the purposes of contract law.

6. The second avenue is provided by Arbitration law. The Arbitration Act 1996 allows citizens to refer their disputes to private arbitrators and choose which law the arbitrator will use to resolve the dispute. This choice extends to religious laws such as Jewish or Islamic law. Recent cases such as *Kohn v Wagschal & Ors*[[8]](#footnote-8)and *AI v MT*[[9]](#footnote-9) affirm that the civil courts will enforce arbitration decisions made by religious tribunals. The act does however place limitations on arbitration. Criminal and divorce proceedings are completely beyond its jurisdiction. If a Shariah council claimed legal jurisdiction over such proceedings, it would be breaking the law. Arbitration decisions which do not comply with minimal standards of fairness can also be quashed by the courts via section 68 of the Arbitration Act or via the Human Rights Act 1998.

7. A third avenue may be activated by the Muslim community for the decisions of Shariah councils to accrue legal status, via the Divorce (Religious Marriages) Act 2002. This Act allows a court to order that a decree nisi cannot become absolute until both parties dissolve the marriage according to “the usages of the Jews” or “any other prescribed religious usages”.[[10]](#footnote-10) The London Beth Din has stated that section 10A has reduced the number of Jewish women in limping marriages, by pressurizing Jewish husbands to approach the Beth Din and agree to

give their wives a divorce before the decree absolute is issued.[[11]](#footnote-11) Other religious groups may also benefit from section 10A under the term “other prescribed religious usages”, however they must first apply to the government for such an extension to be officially granted. No such application has of yet been made by the Muslim community.

8. Shariah councils appear to be well aware of their legal status. During my doctoral research, I visited four of the most prominent Shariah councils in the country and conducted interviews with their case-workers: the Islamic Shariah Council in Leyton, the Central Shariah Council in Birmingham, the Muslim Arbitration Tribunal in Nuneaton and the Islamic Shariah Department in Manchester. All the case-workers I interviewed understood that their decisions had no legal force and that their services were based on a voluntary jurisdiction.

1. See HC Deb April 2013 c291WH. [↑](#footnote-ref-1)
2. See ibid. [↑](#footnote-ref-2)
3. *Al–Saffar v Al–Saffar* [2012] EWCA Civ. [↑](#footnote-ref-3)
4. *Shahnaz v Rizwan* [1965] 1 Q.B. 390. [↑](#footnote-ref-4)
5. *Al-Midani and another v Al-Midani and others* [1999] CLC 904. [↑](#footnote-ref-5)
6. Ibid, 912. [↑](#footnote-ref-6)
7. *Uddin v Choudhury* [2009] EWCA Civ 11. The reasoning used in this case has been criticised, see John Bowen, ‘How could English Courts recognise Shariah?’ (2011) 7(3) University of St.Thomas Law Journal. [↑](#footnote-ref-7)
8. *Kohn v Wagschal & Ors* [2007] EWCA Civ 1022. [↑](#footnote-ref-8)
9. *AI v MT [2013] EWHC 100 (Fam).* [↑](#footnote-ref-9)
10. Matrimonial Causes Act 1973 s 10A, as inserted by the Divorce (Religious Marriages) Act 2002. [↑](#footnote-ref-10)
11. Gillian Douglas et al, *Social Cohesion and Civil Law: Marriage, Divorce and Religious Courts*

(Report of a Research Study funded by the AHRC, Cardiff Law School 2011) 48. [↑](#footnote-ref-11)