



# Unregistered religious marriages

by Russell Sandberg

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- *The Court of Appeal has ruled that couples who undergo an Islamic marriage ceremony cannot seek financial remedy orders from the courts if their relationship breaks down. Couples must also go through a civil ceremony to gain rights under law if they divorce. The ruling emerged in the case of Nasreen Akhter and Mohammed Shabaz Khan, who wished to divorce 18 years after their Islamic marriage.*

## RELIGION AND MARRIAGE LAW

- Religious groups may conduct marriage ceremonies but, for the marriage to be valid, it needs to comply with the requirements laid out in marriage law.
- The Marriage Act of 1949, regulating marriages in England and Wales, differentiates between marriages solemnised according to the rites of the Church of England / Church in Wales and marriages otherwise solemnised.
- This second category includes opposite-sex marriages “according to the usages of the Society of Friends” and a “marriage between a man and a woman professing the Jewish religion according to the usages of the Jews”. It also includes opposite-sex marriages in any place of worship registered under the Places of Worship Registration Act 1855 and section 41 of the 1949 Marriage Act.
- All faiths (other than those named in the Act) can therefore conduct lawful marriages provided that their buildings are registered and there is a registrar or authorised person present.
- Where a religious marriage ceremony takes place, but the requirements laid out in marriage law are not followed, there is no marriage in the eyes of the law. Such relationships have been referred to as “unregistered religious marriages”.

- The issue here is that if the relationship breaks down then the parties cannot go to the state courts for assistance. They cannot use the state law on divorce and cannot apply for financial orders. Their only option to resolve any dispute is to determine the matter themselves or to use a religious form of authority such as a sharia council.
- In 2011, I co-led a [study](#) into religious tribunals in the United Kingdom. It compared the activities of a Jewish beth din (rabbinical court), a Roman Catholic marriage tribunal and a sharia council.
- We found that over half of the cases dealt with by the Islamic Sharia Council in our study involved couples who had either not married under English civil law or had married abroad and whose marital status in English law was unclear. The parties in our study often assumed that their religious marriage had legal effect under state law.

#### THE ORIGINAL DECISION IN *AKHTER v KHAN*

- The case of *Akhter v Khan* concerned a typical unregistered religious marriage. In 1998, Nasreen Akhter and Mohammed Shabaz Khan had an Islamic marriage ceremony–‘nikah’. They intended to register the marriage under civil law, but never got around to it.
- They had four children together and while they lived in Dubai between 2005 and 2011 they were considered by the authorities there to be validly married. After 18 years and back in the UK, the relationship broke down in 2016 and Akhter issued a petition for divorce from Khan.
- The case was not about whether the Islamic marriage ceremony should be treated as creating a valid marriage in English law. The nikah had not complied with marriage law.
- However, the judge at the first hearing, Mr Justice Williams, held that there had been a void marriage. A marriage can be annulled as being void or voidable where “the parties have intermarried in disregard of certain requirements as to the formation of marriage” (Matrimonial

Causes Act 1973, s11((a)(iii)) . If a court annulled a marriage as void, then the parties would be able to go to the state courts for assistance dividing their assets.

- The judge held that the marriage was void because there was an intention to follow up the nikah with a ceremony that complied with marriage law.

## THE COURT OF APPEAL

- The Attorney- General appealed against the decision to the Court of Appeal, arguing that it had made the law on marriage uncertain. He won.
- The Court of Appeal set aside the order of nullity and insisted that there needed to be a ceremony under the Marriage Act which suffered from a defect for there to be a void marriage.
- The Court of Appeal held that the parties had a “non-qualifying ceremony” which was completely outside the scope of marriage law. Their decision means that the parties are in the same legal position as a cohabiting couple.

## THE SIGNIFICANCE OF THE CASE

- The previous legal situation has been restored. An intention to follow up a ceremony outside the Marriage Acts with a ceremony that complies with the acts does not constitute a void marriage let alone a valid marriage.
- Those in unregistered religious marriages will continue to have the same legal status as cohabiting couples. Unlike many countries, England and Wales currently have no legislative provision that specifically provides unmarried cohabitants with financial relief in the event

of the ending of a relationship that has generated economic disadvantage, and so couples dividing assets in this situation must instead navigate complex trust law principles.

- It is possible that legislative change will deal with the issue of unregistered religious marriage. The Law Commission is carrying out a review of the law on weddings. The independent review into the application of sharia in England and Wales recommended amendments to the Marriage Act of 1949 so that the celebrant of any marriage, including Islamic marriages, would face penalties should they fail to ensure the marriage was also civilly registered. A Private Member's Bill before Parliament – the Marriage Act 1949 (Amendment) Bill – would make this reform.
- In a [blog post](#), I have argued that this focus on celebrants misses the point and would not afford rights to those within unregistered religious marriages. In an [article](#) co-written with Dr Sharon Thompson, we have argued that general reform to marriage law is needed, specifically in relation to rules determining how people marry and also providing rights to cohabiting couples.
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