

Diversity? No, the Law Society's Sharia guidance has created division

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Charlie Klendjian, secretary of the Lawyers Secular Society, argues that the Law Society, a secular organisation representing solicitors in a secular legal system, has gone beyond its remit and created division with its Practice Note on sharia wills.

A couple of weeks ago, on the front page of the *Law Society Gazette*, the Society's former president and current chair of its equality and diversity committee Lucy Scott-Moncrief called attention to the "woeful underuse" of women's talent in the legal profession (['Brain drain' fear as diversity stagnates, Gazette 10 March 2014](#)).

Seventy two hours later, on 13 March, the Law Society issued a [practice note](#) on "Sharia succession rules".

These following provisions of that guidance, at section 3.6, ought to give any equality and diversity campaigner worth their salt some pretty serious food for thought:

"The male heirs in most cases receive double the amount inherited by a female heir of the same class. Non-Muslims may not inherit at all, and only Muslim marriages are recognised."

"...illegitimate and adopted children are not Sharia heirs."

It's not exactly girl power, interfaith cohesion and happy families, is it?

On 18 March my LSS colleague Sadikur Rahman [condemned the Law Society for issuing its practice note](#).

The national media picked up the story and by 23 March the *Sunday Telegraph* went so far as to lead with the headline ["Islamic law is adopted by British legal chiefs"](#). That same day the LSS issued a [statement](#) strongly condemning the Law Society and calling on it to withdraw its guidance, and we launched an online [petition](#). For a round-up of the key media coverage, including my lively radio debates, see [here](#).

There has been much debate since the practice note was published about what, if anything, has changed in legal terms.

The Law Society has said its practice note has not changed the law. The LSS agrees with this. At no point has the LSS said that the law has changed.

So what's the problem?

Well let's try and understand what the Law Society is actually giving guidance on. It is giving guidance on Sharia law. Sounds reasonable, surely? Well not really, because this is no ordinary law. As the practice note states at section 1.5 when defining the terminology it uses:

"Sharia – the code of law derived from the Quran and from the teachings and example of Mohammed.[...]"

This is an important point in itself: the Law Society is giving guidance on *theology*, and this is simply not appropriate. The Law Society represents all solicitors in England and Wales, which means it represents solicitors of all faiths and none. It is beyond the Law Society's remit to give guidance on theology. It is akin to the Guild of French Polishers outlining best practice on teeth whitening.

The Law Society is a secular organisation representing solicitors in a secular legal system. It would not and should not give guidance on the Torah, the book of Revelations, the Bhagavad Gita, or the Guru Granth Sahib, and nor should it give guidance on Islamic theology. For this reason, if nothing else, the decision to issue the practice note is utterly absurd.

By issuing the practice note the Law Society has created an assumption, whether it intended to or not, that Sharia law is a credible and respectable legal discipline just like any other within the English legal system. Furthermore, the detailed technical provisions at the beginning of the practice note concerning domicile potentially create a misleading impression that the focus of the guidance is perhaps foreign jurisdictional issues, but this is not its focus. The focus is the application of Sharia law within the jurisdiction of England and Wales. It's not for the Law Society to generously give Sharia law – which has the status of theology in this country – the credibility of a legal discipline within our jurisdiction.

It gets much worse. As you can see from the wording I have reproduced at the beginning of this piece, the Law Society's guidance (on the subject that is beyond its remit) is *guidance on how to utilise an ancient religious code which is fundamentally discriminatory as far as English law is concerned*. It is fundamentally discriminatory to women, it is fundamentally discriminatory to non-Muslims, it is fundamentally discriminatory to "illegitimate" children (how nice to see that phrase make a long-awaited comeback, incidentally), and it is fundamentally discriminatory to adopted children and children who are considered to be of a different faith.

Subject to noble statutory protections which safeguard the rights of a deceased's dependants, under English law if a testator wants to incorporate into a will ancient religious rules which specifically deem men more worthy than women, and Muslims more worthy than non-Muslims, then he or she is free to do so. Testators had that freedom before this practice note and they continue to have that freedom now. Nothing has changed. And whilst it would clearly be inappropriate for the testator's advising solicitor to be so frank, external observers are free to call out this harsh testamentary behaviour for precisely what it is: sexism, misogyny and religious bigotry.

I fail to understand why the Law Society should go out of its way to give its blessing to such discriminatory practices, for that is precisely how the Law Society's practice note will be perceived inside and outside of our profession – regardless of [**the assertion by its president Nicholas Fluck that the Society is not promoting Sharia and that any suggestions it is are "inaccurate and ill informed"**](#).

The president also said:

"Our practice note focuses on how to do that [distribute assets in accordance with Sharia], where it is allowed under English law. The law of England and Wales will give effect to wishes clearly expressed in a valid will in so far as those wishes are compliant with the law of England. The issue is no more complicated than that."

Move on, nothing to see then? No, not yet. The Law Society is legitimising, normalising and sanitising – or at the very least being seen to legitimise, normalise and sanitise – the distribution of an estate in accordance with the fundamentally discriminatory provisions of Sharia law. By extension, the Law Society is legitimising, normalising and sanitising Sharia law more generally, with all the toxic side effects this generates for women, for non-Muslims, for apostates, for homosexuals and indeed for Muslims themselves. This is wholly unacceptable, and I urge members of the Law Society to resist it.

Would the Law Society give its members guidance on other ways to achieve discriminatory objectives in their will? This point is rather eloquently covered by "Rob", who commented on [*The Lawyer's coverage of this story*](#) as follows:

"I don't think (please correct me if I'm wrong) that the LSS have denied the existence of freedom of disposition under English law. That is not the issue here. The issue is whether it is appropriate for a regulatory body in a supposedly secular society that respects diversity to issue guidance on how to comply with a body of rules/beliefs which many argue, and which at least objectively appear to be, fundamentally discriminatory.

"No one would argue that if a Muslim instructed his solicitor to draft a sharia compatible will that the solicitor shouldn't do so, of course he should. Equally, if a racist EDL member wanted a will under which any grandchildren who weren't white, or a homophobic client (who belonged to an anti-gay group of some kind) a will under which any grandchildren who grew up to be homosexual, received no inheritance, then of course the solicitor should again draft the will in accordance with the client's wishes. However, it would be entirely inappropriate for the Law Society to issue guidance on how to draft wills so as to be acceptable to a racist or homophobic group. As such is it appropriate for it to issue guidance on drafting wills in compliance with another set of (arguably discriminatory) beliefs simply because the beliefs stem from a religion? The LSS suggest not and I would suggest that's not an unreasonable stance to take."

Ignore Rob's reference to the Law Society as a "regulatory body" and ignore his assumption that a solicitor would necessarily be competent to advise on Sharia law, because he makes a very worthwhile contribution to our debate: it would be unthinkable for the Law Society to issue guidance on how to facilitate the discrimination Rob describes in his comment. The fact that the discrimination described in the Law Society's guidance "stems from" religion does not stop it being discrimination. Discrimination is discrimination. It's really as simple as that.

The Law Society has argued that it is merely responding to "demand" for Sharia wills. Don't be deceived by this apparently innocuous argument because it is a frightening one. It suggests our cherished and hard-won legal protections against discrimination, which are thankfully an established feature of our magnificent legal system, can be thrown to the wild dogs of supply and demand. Would the Law Society respond to "demand" for guidance on incorporating homophobic and racist provisions in a will? Would it respond to "demand" for provisions specifically enabling non-Muslims to discriminate against Muslims?

The Law Society concedes at section 1.2 of its practice note that:

"There are specific differences between Sunni and Shia rules on succession. These differences are not covered in this practice note..."

Coolly and bureaucratically remarking that there are "differences" between Sunni and Shia Islam earns the Law Society the gold medal for Understatement of the Year 2014. Yes, there are indeed "differences", as anyone who occasionally thumbs through a newspaper will confirm.

Will the Law Society in time produce different practice notes for different branches of Islam? By the Law Society's own standard, presumably all that is necessary is the requisite "demand"? Surely if "diversity" – as that term is so creatively interpreted by the Law Society – is such a good thing, then we need as much of it as possible?

By issuing this practice note the Law Society has enshrined into its official guidance documents a damaging assumption: it has created the assumption that Muslims are a monolithic block who are clamouring for Sharia law. It has created the assumption Muslims seek to live under inferior rules to the rest of us. As my LSS colleague Sadikur Rahman notes, this is the *"racism of lower expectations"*.

Many liberal and secular Muslims, within these shores and beyond, are fighting a daily battle, often quite literally, to escape the clutches of Sharia law, and this guidance sells them out in an instant. Muslims who *do* want to live in accordance with what they consider Sharia law are free to do so but only insofar as this is compatible with English law, be it in the area of wills and succession or elsewhere. And it's worth recording that Muslims have far greater freedom to practice their faith as they individually choose to in the United Kingdom than perhaps anywhere else in the world, including – or especially – in Islamic states. This sobering fact ought to be an effective antidote to the constant and shameful accusations of racism or Islamophobia that are instantly generated when one dares to criticise Sharia law.

Having stumbled into the theology debate, by section 5.2 the Law Society folds its cards and realises it must now outsource further guidance to the experts. It calmly informs its by now bemused members that:

"Local Sharia scholars are a useful source of information and may be contactable via the client's mosque."

And with this the Law Society gives a ringing endorsement to Islamic scholars, some of whom will be progressive and some of whom will be anything but. When exactly did it become the Law Society's business to bestow upon theologians some kind of quasi-legal status? Answer: on 13 March 2014.

In constructing the defence of their practice note on the fact that the law has not changed, the Law Society fails to understand the wider social and cultural significance not only of its guidance, but of its own special place within our legal establishment. The Law Society is an important body. Its practice notes are not binding but (section 1.4) *"They represent the Law Society's view of good practice... You are not required to follow them, but doing so will make it easier to account to oversight bodies for your actions"*.

In responding to its critics the Law Society fails with flying colours to understand that its practice note will be *perceived* as an endorsement not only of Sharia law wills, but of Sharia law more generally, and this is a misjudgement of monumental proportions. English law has – and crucially it must be seen to have – primacy over Sharia law. In its breathtaking naivety the Society fails to understand just how quickly "guidance" on Sharia wills becomes for some an assumption, or an expectation, or community pressure, to have a Sharia will. In short, the Law Society's response to its critics has been to display precisely the type of behaviour many ordinary punters might expect from the representative body for solicitors: technical, academic, dismissive, aloof, and missing the bigger picture in quite spectacular fashion.

In the space of just seventy two hours the Law Society highlighted the unequal treatment of women in its profession, and then it gave guidance on how to use English law to use a medieval religious

code which is fundamentally contradictory to English law. What a thoroughly modern interpretation of "equality", and how very "diverse" indeed. Or perhaps the term should be *divisive*.

The Law Society's practice note on Sharia succession rules demeans liberal and secular Muslims, it demeans women, it demeans children, it demeans non-Muslims, it demeans the very term "diversity", it demeans [the equality and diversity provisions of the Solicitors Code of Conduct](#), it demeans solicitors, it demeans the Law Society, and it demeans the English legal system – and so it demeans every single one of us.

As a lowly member of the Law Society I ask its president – I urge him – to draw a line under this fiasco and withdraw this disturbing practice note without a moment's delay.

Charlie Klendjian is the secretary of the LSS. The views expressed are those of the author and do not necessarily represent the views of the LSS or NSS.

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