



## **One Law for All campaign against Sharia courts and tribunals.**

### **Brief:**

The aim of the campaign is the protection of the rights of women, children and minority groups. The campaign states that Sharia law does not accord with the principles of equality enshrined in UK law. The use of religious law in family proceedings would deprive women of rights that are available to them in the civil courts. There is a serious issue as to whether a woman's consent to such arbitration is freely given. Whilst religious freedom is a private affair and should be protected, such protection must be subject to the fundamental human rights principles in UK law.

Tolerance and accommodation of minority groups who seek to engage in alternative dispute resolution must be balanced against a firm commitment to individual autonomy and principles of justice, fairness and equality for all. The fundamental tension that must be addressed is between respect for a minority group and protection of a person's individual rights within that minority. If the state allows cultural and religious groups complete freedom to define family and inheritance matters those groups may trample on the rights of individuals within the group and may discriminate in ways that are unacceptable to British society. Cultural or religious groups must not be permitted to stop people from having access to laws and processes that are available to all.

### **The objectives of the One Law for All campaign:**

The objective of the legal campaign is two-fold: first to lobby for legislation outlawing the use of religious courts to determine family law and inheritance matters, secondly to undertake an information campaign informing Muslim women of their family law rights under UK law.

### **Muslim Arbitration Tribunals:**

There is a lot of mis-information in the press about the issue of Islamic courts in the UK. In the UK Muslim Arbitration Tribunals (MATs) have been established since 1997 and are holding themselves out as providing arbitration services in family law matters such as divorce and residence of children ([www.matribunal.com](http://www.matribunal.com)). The public find the concept of courts and tribunals hard to grasp. MATs are not statutory tribunals and have no legal status. They are not therefore like employment tribunals or land tribunals.

Whilst it is accepted that parties can agree to arbitrate civil disputes using religious principles under the Arbitration Act 1996, family law matters cannot be the subject of contractually binding arbitration agreements. The jurisdiction of the family courts cannot be ousted by contractual agreement (*Edgar v Edgar* (1980) 1 WLR 1410). This point was confirmed by the Minister of Justice Jack Straw speaking in Parliament on 24th November 2008 when he said in response to a question about Sharia law courts in the UK: "arbitration is not a system of dispute resolution that may be used in family cases. Therefore no draft consent orders embodying the terms of an agreement reached by the use of a Sharia council have been enforced within the meaning of the Arbitration Act 1996 in matrimonial proceedings". Therefore the decisions of MATs are not legally binding in that they are not enforceable in the UK courts. Even if they were enforceable, the UK courts cannot enforce any arbitration decision that is contrary to UK law or public policy (Section 81 of the Arbitration Act 1996). At present inheritance disputes

could in principle be the subject of a binding arbitration decision. However such a decision would only be enforced if compatible with UK law and public policy. Therefore the unequal division of an estate between male and female children on an intestacy would not be enforceable in the UK courts.

The One Law for All Campaign believes that religious tribunals are holding themselves out as offering arbitration or conducting arbitrations and that many women believe that such arbitration decisions are in fact legally binding on them. The existence of the MATs create pressure on women from within their communities to submit to the MAT for determination of family or inheritance disputes rather than using UK courts. It is thought that many women would be reluctant to challenge the decision of a MAT in a UK court, therefore even though the decision of the MAT is in fact unenforceable, women would still be deprived of their right to equality unless the law is changed.

It is thought that MATs are providing a wide range of sharia law dispute resolution within the family law field. Sharia law is a personal law that regulates all aspects of an individual's life. An example of some of the areas where there is a conflict with UK law are:

1. unequal division of estates between male and female children. The argument may be made that the practice of awarding a larger share to the men is that the men have to share their portion with the family whereas the women get to keep theirs. This would be arguable if the requirement to share were written into the agreement, however this is not the case.
2. custody of children. There are different schools of sharia on this point. They all use preset rules to determine the issue which is contrary to UK law which recognises individual circumstances. One of the commonly used doctrines removes boy children from their mother and gives them to their father at the age of 7 in the event of divorce. Girl children are

removed at puberty. In some cases the mother loses residence in the event of remarriage.

3. maintenance. The Nikah or marriage contract contains pre-set rules for the amount of payment on divorce. Again this does not reflect individual requirements or circumstances.
4. The evidence of women before the religious court is worth half that of a man.
5. bigamy.

### **Sharia Councils:**

Sharia Councils also exist and have done so for a long time in the UK. These councils give religious rulings (fatwas) on all aspects of Islamic law and also deal with religious divorces ([www.islamic-sharia.org](http://www.islamic-sharia.org)). The legal campaign acknowledges that these bodies are not public bodies and so are not caught by the Human Rights Act. Although the advice given to applicants is openly homophobic and sexist there is nothing to stop them giving this advice. They also support the Muslim World League which is a banned organisation in the UK. There is also no scope for preventing Sharia Councils deciding on religious divorce. The problem in terms of protection of women's rights is that many women believe that they are divorced or not divorced according to the decisions of the councils and are unaware of their legal rights. An information campaign will be used to inform women of their rights. The proposed legislative amendment would catch Sharia Councils if they purported to make binding decisions in family law or inheritance law cases.

One of the objectives of the campaign is to gather evidence via case studies to see what alternatives exist to stop these councils discriminating against women and defend women's rights.

### **Mediation in family law cases:**

There is a separate issue which is that it is currently government policy to promote mediation in family law cases. This includes only granting legal aid once the parties have submitted to mediation. This policy is applied even in cases where there are allegations of domestic violence. At present organisations such as Sharia Councils are offering these mediations. The problem here is that the mediation is carried out on sharia principles, which involves keeping the marriage together at all costs. There are examples of cases where the woman has agreed to drop criminal charges and the man is sent on an anger management course. With this issue the solutions appears to lie in changing government policy to exclude the requirement to mediate where there are allegations of violence.

### **Other religious courts:**

The issue of other religious courts may arise such as the Jewish Beth Din courts which provide ADR in family law proceedings and other civil disputes. The same principles apply to the arbitration as are set out above. The difference is that the Beth Din recognise UK law as supreme. The Beth Din accept that decisions will only be binding to the extent that they are compatible with UK law.

### **The Canadian experience in Ontario:**

In Canada there was an arbitration law that permitting binding religious arbitration. It was used by Christian religious courts. In 2003 the Ontario Islamic Institute of Civil Justice announced its intention to establish a sharia court that would offer binding family arbitration to Ontario Muslims. There was a government proposal to allow this. However after much campaigning by women's

rights groups, in 2005 the government of Ontario decided to ban all religious courts/tribunals from deciding family and inheritance law matters on the basis that there was a serious risk to the rights of individuals within minority groups. As part of the process a public education programme was launched to make vulnerable women aware of their rights under Canadian family law.

### **Conclusions:**

The One Law for All legal campaign aims to protect the rights of vulnerable women. Whilst it is the case that existing UK law would not permit religious family law decisions to be enforced through the courts, many women do not know this fact, believe the decisions to be binding or are reluctant to challenge the decisions.

There is a real issue as to whether genuine consent is given in a case where a woman is clearly acting against her own interests.

An information campaign is needed to reach out to women and inform them of their rights at law. In conjunction with that campaign legislative reform is needed to prohibit religious organisations from purporting to exclude the jurisdiction of the courts in family and inheritance law matters. The details of the proposed legislation will be drafted during the campaign after consultation with experts in the field.

The main point to emphasise is that at present no religious arbitration decisions in family law are binding. Therefore it is not the case, as has been portrayed by some in the press that UK courts could ratify sharia decisions. In all family cases for a decision to be binding proceedings would have to be issued in a family court. Any consent order would then be subject to the scrutiny of the court. The court would not endorse any consent order that was contrary to the principles of UK family law or public policy.

If MATs are holding themselves out as offering binding arbitration in family law they should be made aware that they are misleading the parties to their cases and that they should not be offering these services.

The campaign will carry out research and take expert legal opinion on the legal implications of the decisions of the Muslim councils and tribunals in order to evaluate all available options.