

The Law Society should stay out of the theology business

Posted: Tue, 13 May 2014 by [Sadikur Rahman](#)

Sadikur Rahman, of the *Lawyers' Secular Society*, argues that the Law Society's response to criticism of its sharia guidance misses the point that the society has gone beyond its mandate and given credibility to discriminatory practices.

The Law Society's response of [8 May 2014](#) to the LSS's open letter of [24 April 2014](#) concerning the [practice note on "Sharia succession rules"](#) is, it seems, to simply ignore the criticism and protests and to bury its head in the sand about the misogynistic and discriminatory nature of its guidance. The Law Society has also chosen to ignore virtually all the questions the LSS had asked, including key questions about the Public Sector Equality Duty.

The LSS (and many other campaigners) have always made it clear we are not challenging the English law concept of testamentary freedom, and so the repeated (correct) argument by the Law Society that people are free to do what they want in their wills is really a moot point. Frankly, it's getting boring now. The LSS has always focused on the fact that the Law Society's guidance gives legitimacy and credibility to discriminatory practices and to sharia law more generally, because this guidance comes from a respectable organisation which the legal profession, and the wider public, are entitled to trust.

The Law Society believes that in publishing this guidance it is not promoting or endorsing sharia law, or Mohammed Al Jibaly for that matter. The Law Society claims it is simply explaining the law on wills and sharia law. In fact it does even state in its response that *"there is no such thing as 'Sharia Law'"*, and so it does encouragingly acknowledge, at least, that sharia law has no basis in English law. But as the [LSS statement of yesterday](#) said, this begs the question even more: why give guidance on it?

Given the Law Society's response I think it's important to direct people to the actual guidance rather than all the numerous articles since its publication. People can then see for themselves the reason this guidance has caused so much public outrage.

Section 3 is titled *"Drafting a Sharia compliant will"*. It states:

"In order to prepare a Sharia compliant will, you need to understand how the estate is applied under Sharia succession rules.

- *First, the cost of the burial and any debts are paid.*
- *Secondly, a third of the estate may be given to charities or individuals who are not obligatory heirs.*
- *Finally, the remainder is given to a defined set of 'primary' and then 'residual' heirs".*

Section 3.6 is titled *"Drafting techniques and amending precedent clauses"*. It states:

"Certain principles of Sharia are different to English succession laws. For example, it is not possible to inherit under Sharia rules via a deceased relative. No distinction is made between children of different marriages, but illegitimate and adopted children are not Sharia heirs.

"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. Similarly, a divorced spouse is no longer a Sharia heir, as the entitlement depends on a valid Muslim marriage existing at the date of death.

"This means you should amend or delete some standard will clauses. For example, you should consider excluding the provisions of s33 of the Wills Act 1837 because these operate to pass a gift to the children of a deceased 'descendent'. Under Sharia rules, the children of a deceased heir have no entitlement, although they can benefit from the freely disposable third.

"Similarly, you should amend clauses which define the term 'children' or 'issue' to exclude those who are illegitimate or adopted. The burial clause should also specify whether the deceased wishes to be buried in accordance with Sharia rules".

It is quite clear from the headings and the text that this is more than simply an explanation. The guidance is specifically advising solicitors how to draft a document in accordance with a specific interpretation of sharia law. Furthermore, given the above, consider whether the following statements from the Law Society's letter make any sense whatsoever:

"We have been transparent about the source material because we recognise that there is no such thing as "Sharia Law". The law of Saudi Arabia or Kuwait or any other country whose law reflects Islamic values is based on different interpretations of Sharia principles.

"Naturally we would be happy to consider other available guidance on Sharia succession rules.

"Our approach to the guidance does not seek to offer opinions on faith based systems of law or secular based systems. We simply seek to assist our members in properly advising on this aspect of the law of England and Wales."

If the Law Society acknowledges there is no such thing as sharia law (I'm sure many Islamic scholars might beg to differ) then why exactly is it giving guidance on something that doesn't even exist as a legal concept? Perhaps the Law Society means there is no uniform "sharia law". In that case why is the guidance it has chosen to publish one that is based on the most discriminatory and patriarchal interpretation, supported by reference to the work of a writer, Mohammed Al Jibaly, who holds disturbing views (see paragraph 9 of the LSS letter of 24 April 2014)? The Law Society says it is not endorsing Al Jibaly's book, but what is the reasonable reader supposed to conclude when he or she sees this book specifically referenced in the practice note? Whatever the Law Society says, its judgment in referencing this book in the first place, and then subsequently defending its inclusion after the LSS had pointed out Al Jibaly's disturbing views, is highly questionable.

The Law Society states that its guidance *"does not offer an opinion on faith based systems of law"*, when it has clearly done so. Indeed it is a Sunni interpretation. This is stated in the guidance itself and is also reflected in the fact that some sharia law experts say you can use the freely disposable third to equalise the shares for women, whereas this guidance specifically states that this is not possible. So perhaps it is not only secularists who should be outraged, but Muslim groups as well, on the basis their own alternative interpretations haven't been catered for.

Since there are a multitude of interpretations, why bother to focus on only one interpretation? Perhaps it would be interesting to know who lobbied for this guidance. Unfortunately the Law Society has chosen not to tell the LSS who the "sharia law experts" who produced this guidance were, even though the LSS specifically asked this question.

The Law Society seems to be suggesting in its letter that it would be open to producing further sharia guidance in the future (*"Naturally we would be happy to consider other available guidance on Sharia succession rules"*). This "keep everyone happy" approach is a dangerous game to play. The Law Society might decide to issue what it perceives as non-discriminatory sharia guidance. In some ways this would be even more harmful than the discriminatory guidance it has produced because it would create a wholly misleading impression that sharia law is benign and that it treats men and women equally. We know this is not the case. The only acceptable thing for the Law Society to do is to leave the business of theology to theologians. As my LSS colleague Charlie Klendjian noted in his [protest speech](#), to the extent the Law Society has any role to play in sharia law it is to call attention to the legal harm it creates. If the Law Society is not willing to do this, is it too much to ask that it just stays out of the theology business completely?

The only sensible thing in their response is that the Law Society acknowledges sharia law has no legal basis. We already knew that, though. It's a simple statement of fact. The LSS's complaint was always that the decision to issue this guidance gives sharia law the credibility of a legal discipline, and legitimises and endorses it. For the Law Society to say it is not endorsing sharia law ignores the influence practice notes have, and the influence the Law Society has. The LSS's concern is that although sharia law may not at present have any basis in English law, this guidance helps it to become an acceptable part of the legal and wider social landscape, because it helps it achieve crucial respectability. It enables it to become a *de facto* legal discipline.

The Law Society's analogy in its letter to gay/lesbian rights is particularly poor. There is a massive difference in simply stating that there was discrimination against gays and lesbians before civil partnerships, and actually advising people on how to discriminate. I'd be interested to see any historic guidance from the Law Society that advised lawyers specifically how to discriminate against gay and lesbian people. The analogy is also poor because there was previously in fact unequal legal treatment of gays and lesbians, whereas the sharia guidance the Law Society has produced effectively turns the clock back on a legal battle that has more or less been won in legal terms in this jurisdiction: equal legal treatment for women, for people of all faiths and none, for adopted children and for "illegitimate" children.

I am thoroughly disappointed and saddened that the Law Society has decided to keep its guidance. It is a slap in the face to all those organisations and individuals, Muslim and non-Muslim, who have protested so vociferously. The Law Society has chosen to enter a theological debate, which by definition is not within its remit, and it has produced blatantly discriminatory advice.

I recognise that guidance is only guidance, but in that case why give guidance that doesn't cater for people who might want, say, a Sharia compliant will? This is not to suggest that the Law Society should offer guidance on Sharia wills, or Jewish wills, or Protestant wills, or Mormon wills, or Scientology wills, but to hit home the point of how ridiculous it is for the Law Society to enter the business of theology at all, and how this completely undermines the idea of a secular legal system. It certainly is not one law for all.

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Sadikur Rahman is a member of the National Secular Society's Council and the coordinator of the Secular Legal Forum. The views expressed in our blogs are those of the author and may not represent the views of the NSS.

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