

Birmingham Central Mosque
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Part of the Birmingham Mosque Trust Limited

About Us

Birmingham Shariah Council (BSC) was established by Birmingham Central Mosque (BCM) as a voluntary service to address a sorely felt need and an urgent and a real problem; that women suffering in dysfunctional or abusive relationships had no means of terminating their marriages that would satisfy them or their families or the wider Muslim community and allow them to seek a wholesome and fulfilling family life with a new partner. In the terms of the Islamic sciences it was set up to fulfil a collective responsibility (*Fard Kifiyah*) of the Muslim community that is essential for the protection of women's rights under the juristic concept of *Durrura* (a need). The Shariah Council was never intended to provide a 'parallel system of justice' as has been alleged but to fulfil a dire need that through their secular nature the civil courts will never be able to address.

The Birmingham Shariah Council was the first one in the UK to appoint woman to its adjudicating panel and other councils have since followed their lead. This has come as a surprise to many who believed *Shari'ah* to be inherently archaic and discriminatory towards women, a view formerly fed by the presence of all male panels up until that time. In doing this Shariah Council has made a bold statement showing that women are not merely victims to be judged and adjudicated upon but that they have the same rights to be a part of the judicial process both in theory and in practice. In fact there is a gender mix in the entire organisation of the Shariah Council. American Academic Professor John Bowen visited BCM as a part of his research in the UK and in the book he subsequently published; *Blaming Islam* (Bowen, 2012) he highlights the dominant role that women play in the BSC.

Aims & Objectives

A civil marriage in Britain requires a man and a woman to accept each other in the presence of two witnesses in the Registrar's Office, whether they have conducted an Islamic marriage (*Nikah*) is immaterial. Similarly, a civil

divorce requires the petitioner (husband or wife) to file a divorce petition at court with the Judge finalising the divorce with a decree absolute.

The Scholars have recommended the establishment of Shariah Councils to consider the fate of unhappy marriages in which the couple can't agree an Islamic divorce, and to declare them dissolved if necessary after careful consideration in the light of Islamic *Shari'ah*.

In the event of the rights of the woman being abused, she is being subjected to both physical and psychological abuse, domestic life becomes unbearable, (i.e. she is neither able to continue as a wife happily, nor is she able to break away and remarry), then a *Qadhi* (Islamic Judge), can decide according to the *Shari'ah* upon separation. However, in Non-Muslim countries, the judgement of a Non-Muslim judge is often not binding according to Islamic Shariah law and the woman still requires the judgement of an Islamic Council to declare her marriage annulled, clearing the way for her to legally remarry and continue with her life.

British Law & Islamic Law

The Shariah Council deals with marriage and divorce and work within the law of the land.

Civil divorce procedure is separate to the Shariah law, and all clients are expected to abide by the civil divorce procedure and consult a legal practitioner.

Terminology

In Islam the term "divorce" constitutes many different types of ways a couple's marriage is ended. Men can divorce their wives unilaterally by pronouncing *Talaq* three times either consecutively or on three separate occasions depending on the Islamic school of thought by which the married couple abide. Once *Talaq* has been pronounced, the wife enters what is known as the *Iddah* period which lasts for three menstrual cycles (three months). If the husband and wife reconcile within the *Iddah* period, the marriage continues. In the event that they have not reconciled within the *Iddah* period, the marriage comes to an end. If the wife is pregnant, she will have to wait until the child is born before the *iddah* period commences. Although the husband is able to divorce his wife unilaterally without involving a Shariah Council, the husband and/or the wife may apply to the Sharia Council for an Islamic *Talaq* certificate, which can be used as evidence that the couple are now divorced.

Unlike men, women cannot unilaterally divorce their husbands. There are three types of *Shari'ah* divorce following a wife's petition: *Khula*, *Faskh* and *Tafreeq*. Below is an explanation of some of the terms associated with Islamic divorce.

PLEASE NOTE – A vast majority of cases are dealt with by way of *Tafreeq* at the Shariah Council and NOT *Khula* which is commonly mistaken by the husband.

Talaq: This form of divorce is the sole right of the husband whereby he pronounces the word divorce, *Talaq* or any other similar word (in any language) to establish a divorce. No one may deprive him of this right given that he

has been awarded such a right by God. This right belongs only to the husband and moreover, he does not need the consent or approval of any one, including his wife. Therefore, a woman divorcing her husband is Islamically incorrect and is invalid as a female has no such recourse to such a right, although she may request the conclusion of the marriage through other means. Similarly, an Islamic judge cannot issue a divorce but he can (once being recognised as an Islamic judge) issue a *Faskh* (marriage dissolution).

Khula: It is a divorce issued by the husband in exchange of money. It happens when the wife requests her husband to divorce her, but he refuses unless she returns her dowry. Again, it is the right of the husband and is conditional to his approval.

Faskh (annulment): It is a marriage dissolution issued by a judge in response to a request by the wife and normally takes place against the will of the husband. However, the judge has to be appointed either by the leader of the Muslims, or by the Muslim community. *Faskh* is pronounced by the Shariah Council when a marriage is fundamentally flawed (e.g. forced marriage) and the marriage has not been consummated.

Tafreeq (dissolution): Is granted when the husband and wife have consummated the marriage and the wife wants a divorce but the husband refuses to give his wife a divorce. Once the arbitrators agree that a *Tafreeq* should be pronounced and the *Iddah* period has come to an end, the marriage is dissolved.

Iddah: It is the waiting period after the divorce has been given or issued, regardless of any period of separation before it. The period of *iddah* is three menses or three months if one does not experience menses and one has not conceived.

Civil Divorce: For civil divorce, a solicitor must be consulted. The Shariah Council does not deal with legal matters.

Marriage (Nikah) abroad: Marriages which take place abroad and are recognised by the relevant law of the land, are recognised by the English law as a legal marriage.

Grounds for Divorce/Separation

Wherever possible, the Council seeks to effect reconciliation between an applicant and respondent. The following are some grounds outside of reconciliation, where the Council can consider issuing a divorce, for the Islamic principle states, "There shall be no inflicting or receiving of harm." (*La darar wa la dirar*) *Zhulm* (injustice) is not tolerated in Islam, regardless of who the perpetrator is. Examples include, but are not limited to:

1. Physical, mental, or emotional abuse. When one of the spouses becomes abusive and inflicts physical, mental, or emotional abuse, and is not willing to change by taking practical measures through therapy or counselling.
2. Failure to fulfil the objectives and purposes for which marriage was initiated. This can be utter incompatibility between the partners, which may be expressed by their irreconcilable differences in temperaments, likes, and dislikes.

3. Marital infidelity. This can be a major cause for dissolution of marriage, for marriage is built on trust and confidence. Its main purpose is to preserve the chastity and modesty of those involved. Once this foundation is eroded and undermined and there is no chance to restore the same, then divorce is the way to go.
4. Failure of the husband to provide. When the man, who is considered the provider and maintainer of the family, fails to shoulder his responsibilities and the wife decides that she cannot continue tolerating his shirking of responsibility, this is grounds for divorce.
5. Where the husband suffers certain physical defects, which are well-known in the *Shari'ah* and are considered to be legal grounds for dissolution of the marriage.
6. Where the husband accuses the wife of unchastity: in such cases, the process of *li'aan* is to be applied.
7. Where the husband/wife is untraceable.
8. Where an applicant embraces Islam but the husband refuses to do so.
9. Where the husband ill-treats the applicant or fails to fulfil his marital obligations or does not maintain her, despite having the means to do so.
10. Where the husband does not divorce his wife for one of the reasons mentioned, when so ordered by a judge.
11. A woman marries a man and he is impotent, and she finds out after marriage.
12. Cruelty.
13. Where the applicant feels they can no longer live with the respondent.
14. If one of the spouses is unable to have conjugal relations.
15. One spouse feels repulsion towards the other.
16. Extra conditions of the marriage contract cannot be met.

Procedure

1. Once all the information has been received, the applicant will be acknowledged with a reference number.
2. The husband (respondent) will be sent a letter with a copy of his wife's reasons for wanting a divorce requesting him to clarify his position in the matter.
3. If the respondent writes to the Shariah Council and asks for reconciliation.
 - a) The applicant will be contacted again and instructed accordingly by the Shariah Council.
 - b) The Shariah Council will invite both parties to the Shariah Council in an effort to resolve the case by attempting to reconcile both parties or by issuing a divorce. **The immediate petitioner (wife) filing for divorce MUST attend – if she does not, a judgement cannot be passed.**
 - c) The Shariah Council may allow a reasonable period of time for reconciliation efforts to be made by the husband through his own resources

and family contacts.

d) Reconciliation can only be attempted if both parties are willing:

And if you fear dissension between the two, send an arbitrator from his people and an arbitrator from her people. If they both desire reconciliation, Allah will cause it between them. Indeed, Allah is ever Knowing and Acquainted [with all things]. Qur'an (4:35)

4. If the respondent does not reply within 28 days then a second letter will be sent giving them another opportunity and if there is still no reply then a final third letter is sent to them. After this, the case is referred to the Shariah Council for a hearing. If a response is received from the respondent, we will contact the applicant automatically to give an update. The applicant will not be contacted if a response has not been received and so the applicant should assume that the procedure is continuing.

5. Once the Council has decided to dissolve the *Nikah*, a divorce certificate will be issued to both parties.

6. The Shariah panel will consider the case after formal proceedings and deliver their final verdict on whether to grant *talaq*, *khula*, *faskh*, postpone or abstain (the Shariah panel will decide which type of divorce will be granted).

7. The final decision to issue a divorce is made during a monthly meeting; the applicant is interviewed before or during the meeting and the applicant is required to attend.

8. There is a fee for the certificate and the whole proceeding of **£300** which must be paid in full at the onset with the application (in cases where a civil divorce has already been issued the fee payable is £200).

9. If a civil divorce has been issued, the procedure will take up to two weeks.

10. In cases where a civil divorce has not been issued, the procedure may take between 6-9 months.

How to Apply

Forms are available online to download and complete from www.centralmosque.org under "Services" then "Personal" – The form must then be sent to the address on the form with all the required documentation set out below.

If you need a physical copy sent to you to complete, please provide your name and postal address to: - familysupport@centralmosque.org.uk

Required Documentation

Please note that we will require the following documents from you in order to process your application – IF ANYTHING IS MISSING THE APPLICATION WILL BE RETURNED

Particulars of Divorce

(Your grievances against your spouse/reasons for petitioning divorce/dissolution) Please set out your statement on a separate piece of paper.

1. If possible write your statement in English.
2. Be precise and provide full details of the problems occurred.

3. If possible type/print your statement; otherwise be sure it is clearly written.

4. At the end of your statement:

- Print your full name
- Sign (all the pages of the statement)
- Write the date

If you have used more than one piece of paper for your statement please sign and number each page.

Forward the original statement with the completed application form (keep copies of all documents for your own records. A copy of your statement will be sent to the respondent.

1. Proof of Identification (PLEASE DO NOT SEND ORIGINALS)

We require **ONE** form of photographic proof confirming your identity. This may be:

- A valid Passport
- A current Full UK Driving license
- Residence Permit issued by Home Office
- EEA member state ID card
- National Identity Card containing your photograph

2. Marriage Certificate

Please send a copy of your Islamic marriage certificate or a copy of registration. IF YOU DO NOT HAVE A COPY OF THIS YOU WILL NEED TO PROVIDE A SWORN STATEMENT WHICH IS STAMPED BY A SOLICITOR. (A template of this is available)

3. Copy of Divorce Absolute

If applicable.

4. Documents Confirming Legal Injunction

If you have an injunction against your spouse preventing him from contacting you, please notify us and provide copies of any documents confirming this. (Copies of NMO/Restraining order)

5. Copy of any previous *Talaq/Khula*

If applicable.

The Panel

The Birmingham Shariah Council is made up of Scholars and elders who are well versed in the science of Islamic jurisprudence and Islamic matters and rulings. Birmingham Central Mosque is the only Islamic institution in Britain in which a woman has been elected as a high official of a Shariah court second to a judge.

Additional Information

Issues Relating to Children

- The Birmingham Shariah Council **does not** deal with issues regarding access to children and the parties are strongly advised to refer the matter to the civil courts.

Financial Issues

- Any financial issues that might be mentioned for the clarity of the case are outside the scope of the Birmingham Shariah Council and are **not dealt** with by the panel. All parties would be strongly advised to refer the matter to the civil courts.

Complaints/Comments/Suggestions

Sometimes there may be a situation in which you are unhappy with the service and we aim to deal with any problems, complaints or issues. The Birmingham Shariah Council will aim to provide a quality service and in cases where you are dissatisfied our complaints procedure is as follows :

All complaints must be in writing by postal letter or email with a reference number from the case, a clear and comprehensive nature of complaint and contact details (Full postal address and number included) and a photocopy ID within **FOUR** weeks of a decision being made. (Please note after this time complaints will only be responded to where there are exceptional circumstances which will be determined by the administrators).

Complaints are to be sent to the address on the form and marked "FAO the Shariah Panel".

Once a complaint is received we will send a letter or email acknowledgement within 2 weeks. It will then be put to the panel at the next Shariah council meeting (which usually takes place every 4-6 weeks). A response will then be sent to you in writing within two weeks of the panel meeting.

If the complaint relates to a specific person, they should be informed and given a fair opportunity to respond.

Whether the complaint is justified or not, the reply to the complainant should describe the action taken to investigate the complaint, the conclusions from the investigation, and any action taken as a result of the complaint.

Complaints are reviewed periodically to identify any trends, which may indicate a need to take further action. We will do this by monitoring all complaints and suggestions to help us identify what is going wrong and how we can improve our service.

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