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Dear Mr Heaton

### **Sharia law and Civil Divorce matters**

We are writing to request a meeting with you to discuss how the current law on marriage and divorce, together with contradictory state policies that entrench Sharia laws, impact negatively on BME women's rights and puts them at risk of harm.

We welcome the High Court decision in *Akhter v Khan* [2018] EWFC 54 to declare that a Muslim marriage contract (nikkah) was 'void', rather than a 'non-marriage', as some earlier cases involving religious only marriages had concluded.

Shabaz Khan had refused to divorce Nasreen Akhter on the grounds that they did not have a valid marriage registered under English law. This had the effect of keeping Nasreen Akhter in marital captivity and denying her legal rights under English family law.

This vital outcome means that Nasreen Akthar is entitled to seek a decree of nullity, and hopefully, to obtain financial relief against Shabaz Khan. Even though the decision turned on the specific facts of the case, it is nevertheless significant for women trapped in unregistered marriages, and should be examined for its relevance to marital captivity, forced and child marriage.

The judgment does not recognise 'Sharia' laws as some in the media have misleadingly stated. It deals with the knotty problem of women who believe that they are married but find that they have an unrecognised religious marriage only. This case shows that they can turn to the formal legal system. In fact, the judgment deals a blow to those who justify the sharia 'courts' as the only recourse for women who have not registered their marriages.

Our research shows that the power and control of religious fundamentalist networks over Muslims has grown enormously over the last thirty years. This has led to a widespread belief that a civil marriage is not necessary, that women must have a divorce certificate issued by a sharia 'court' in an apparent judicial procedure; and that they must get this 'certificate' *even if* they already have a civil divorce. We would refer you to the numerous submissions we have made to the Home Affairs Select Committee Sharia Councils Inquiry on this issue.

More recently, in our response to the recent Ministry of Communities and Local Government consultation on integration, some of us argued that being able to end a marriage through the family courts is a women's rights issue. We suggested that a nikkah-only marriage which does not comply with the Marriage Act 1949 should be regarded as 'void' under the Matrimonial Causes Act 1973, thus giving women to the right to a decree of nullity and to seek financial remedies including a share of the marital assets, rather than view it as a non-marriage which reduces their status to that of cohabitant. That being said, we would argue that wider reform of law and policy is needed.

While the judgment is a step in the right direction, the government urgently needs to examine its own complicity in keeping religious fundamentalists in business through other contradictory policies. Sharia 'courts', have been actively tolerated in Britain by being given charitable status and treated as partners by the police and local councils. While the government rejected the recommendation of the sharia review headed by Mona Siddiqui for regulation of the sharia councils; it has quietly ensured the continuing power of religious courts by allowing them to continue their 'work' unhindered.

A potent example concerns the application form D8 for divorce, dissolution or judicial separation. The wording actively encourages women to turn to religious bodies. It states *'If you entered into a religious marriage as well as a civil marriage, these divorce proceedings may not dissolve the religious part of your marriage. It is important that you contact the relevant religious authority and seek further guidance if you are unsure.'* We are unsure as to who was consulted when this guidance was drafted since many of us who work on women's rights would not have approved it.

If the government is serious about gender equality, and ending violence against women, why is it undermining the validity of a civil divorce under English law? Why is it pushing women towards religious courts? For decades, the civil divorce has been the valid certificate demanded by courts abroad, regardless of whether there is also a religious marriage such as a Sikh, Hindu or Muslim ceremony. This guidance undermines women's rights and the recognition of divorces awarded by English courts. We call on the government to immediately withdraw this guidance from Form D8 and to take active measures to end religious courts and their control over women's lives.

We also call the government to address the lack of access to justice that many women continue to face in the legal system due to cuts in legal aid, which leave abused and vulnerable women unprotected and unrepresented in often complex family and children proceedings. Antiquated laws on divorce that ironically institutionalise marital captivity, as the recent case of *Owens v Owens* [2018] UKSC 41 highlighted, are in dire need of overhaul. As the Law Commission review (Law Commission, *Getting Married – A Scoping Paper*, 17 December 2015) pointed out in 2015, the law is 'incoherent...unnecessarily complex' and fails to protect 'the legitimate interests of the state and society'.

We urge you to meet with us to discuss the above matters in more detail and to find a way forward to ensure that all women are treated as equal subjects before the law.

Yours sincerely,

**Pragna Patel**  
**Southall Black Sisters**