

# Comparisons between Sharia courts and the Beth Din

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## INTRODUCTION

In June 2015 Britain's oldest Sharia council – the Islamic Sharia Council (ISC) – posted an online article entitled 'A Comparison between Islamic and Jewish Personal Laws and Their Application – a response to Baroness Cox'.

The ISC indicated it was responding to claims by the Crossbench Peer Baroness Cox that Sharia councils operate a parallel legal system and also inflict discrimination and intimidation on Muslim women.

The purpose of the Council's article was to "clarify the position, status and procedure of the Islamic Sharia Council" and also draw comparisons with Beth Din (Jewish) laws and practices.

The article can be found at: <http://blog.islamic-sharia.org/?p=73>.

Barrister Yisroel Greenberg examines here the ISC's understanding of Jewish law and Beth Din practice as portrayed in the article and, line-by-line, identifies and corrects a significant number of errors and misconceptions.

## BACKGROUND

For many years, religious courts have operated in the United Kingdom. They perform ritual functions in relation to their respective religions, particularly in relation to family laws and customs. They also resolve disputes referred to them in accordance with such religious law as the parties have agreed should apply, and they serve for that purpose as arbitrators in accordance with civil law. Canon law is used in ecclesiastical courts (which have specific statutory recognition, and extensive functions, as courts of the Established Church). Sharia law (Islamic law) is used in Sharia courts serving the Muslim community. Jewish law is used in Batei Din<sup>1</sup> serving the Jewish community.

People who refer disputes to religious courts generally want determinations that are binding and enforceable at civil law. Two principal mechanisms are used to achieve this. The religious court can sit as an arbitral tribunal and make an arbitral award, in which case civil law upholds their awards as with any other body carrying out arbitration. They can also act as a mediator, in which case no outcome is imposed on the parties but an agreement is reached which becomes binding on the parties when they sign it.

The Arbitration and Mediation Services (Equality) Bill, currently before the House of Lords, aims to address certain practices of religious courts. This report aims generally to provide background information relevant to consideration of that Bill, by clarifying the practice and procedure of the Beth Din.

### Comparison between Jewish and Sharia law

The ISC's article purports to compare and contrast Sharia, Jewish and civil law. However, it contains a number of omissions, errors and misconceptions about Jewish law and Beth Din practice. The specific purpose of this report is to identify and correct these. This report does not purport to comment on the ISC's statements on civil or Sharia law.

This report begins by identifying some salient features of Beth Din process which the article overlooks. It then goes through the article's references to the Beth Din line-by-line.

Unless otherwise stated, this report refers to normative Jewish practice which are identical in all Batei Din operating in the United Kingdom within the knowledge of the authors of this report.

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<sup>1</sup> Plural form of Beth Din.

## GENERAL POINTS

The areas of law on which the ISC's article touches are largely drawn from family law. The following three points do not appear to have been appreciated by the ISC, but are critical to placing the practice of the Beth Din in context.

### Point 1: Family proceedings not ruled on by the Beth Din

As the article correctly states, Batei Din sit as arbitral tribunals (in the same way as any other arbitrator). This means that only disputes which are arbitrable within the meaning of the Arbitration Act can be heard by a Beth Din. Family proceedings are not arbitrable, and a Beth Din would not hear them.

The article refers to Jewish law on a number of areas, such as custody of children and maintenance, without seeming to realise that the Jewish law is irrelevant on these matters. Batei Din do not assert or accept jurisdiction in relation to them and do not entertain proceedings in relation to them.<sup>2</sup>

### Point 2: Insistence on concurrent family proceedings in the civil courts

A Beth Din will oversee Jewish family law ceremonies for consenting parties. Couples who wish to complement a civil marriage with a Jewish one, or couples undergoing a civil divorce who wish to complement this with a Jewish-law divorce, can ask the Beth Din to oversee this. Batei Din do not act on behalf of couples who want a religious procedure alone.

The article fails to appreciate that where Batei Din are involved in family proceedings, they do not replace the civil courts or play any part in the civil legal process.

### Point 3: Divorce by consent only, and not on grounds

The ISC's article describes the right of divorce under Sharia, Jewish and civil law. A significant omission from the article is that a Jewish divorce can never be imposed on an unwilling partner. Neither the other partner nor the Beth Din can force someone to become divorced against their will. A Beth Din can only entertain Jewish divorce proceedings when approached by two consenting people. (The article's statement that

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<sup>2</sup> A Beth Din might encourage parties to mediate on any issue before or instead of pursuing civil litigation, for the same reasons as civil courts do. Any such mediation would not "apply" or "use" Jewish law, but would be a full non-normative and non-determinative mediation process. The Beth Din's approach to ritual matters within their jurisdiction would not be conditional on mediation.

“In Jewish law, divorce is vested in the hands of the man only as well” is false, as the woman must consent to receive the divorce.)

In addition, at a divorce hearing the Beth Din will neither hear nor be interested in the reasons for the divorce. Neither party is required to satisfy the Beth Din that conditions for a divorce have arisen, and the Beth Din will not exercise any discretion as to whether or not to proceed. The one and only condition for the divorce is that both parties ask the Beth Din for it.

The article does not reflect either of these points.

## THE ARTICLE LINE-BY-LINE

What follows is a table containing direct quotes from the ISC's article on the left side and responses on the right.

A general point about sources may be made at the beginning. It is unclear in many cases where the article derives its information on Jewish law from. The only reference to a specific Beth Din is to "a recognised Beth Din of the Federation of Synagogues." The Federation of Synagogues is one of the United Kingdom's synagogue bodies, but it is unclear whether they are being used as an example or whether they are mistakenly taken as representing all Batei Din.

In either event, it is also unclear where the information concerning Federation practice is taken from. Some items are referenced to web pages from the website [www.chabad.org](http://www.chabad.org). This is part of the Chabad Hassidic movement, and although their website aims to provide general educational information about Jewish law there may be differences of detail with other Orthodox groups. (In at least one case, the ISC's article contains a statement directly contradicted by the Chabad webpage cited a few lines earlier. See Point 3 above.)

The largest UK synagogue body is the United Synagogue, headed by Chief Rabbi Ephraim Mirvis, whose Beth Din is the London Beth Din. The London Beth Din is the most central orthodox Beth Din in the United Kingdom, and their approach and rulings are accepted by other Batei Din.

The following responses (below) describe aspects of practice on which all United Kingdom Batei Din would agree.

<b>Direct quotes from the ISC’s article (Reference to Jewish law or practice)</b>	<b>Response</b>
<b>1</b> On the other hand, a recognised Beth Din of the Federation of Synagogues...	See the note above as to whether this is an appropriate source to use.
<b>2</b> ...does operate under the Arbitration Act 1996 and offers arbitration services for people who wish to solve personal and commercial disputes under Jewish law (Halachah).	This is unclear. A Beth Din may hear both personal and commercial cases as those terms would be understood at civil law: disputes between either individuals or businesses which are capable of being settled by arbitration if so agreed by the parties. However, as stated in Point 1 above, it would not hear cases which are personal in the colloquial sense, i.e. family law matters. It is true that a Beth Din would generally provide its services by way of arbitration.
<b>3</b> A Deed of Arbitration may be signed to make a decision from the Beth Din binding on the parties under English law.	The correct legal term is “arbitration agreement”. The document does not have the legal status of a deed.
<b>4</b> Although it makes clear that its rulings are wholly religious, the procedure of the Beth Din is similar to a civil court procedure in both its language and method.	A Beth Din’s ruling is religious only in the sense that parties to an arbitration can decide for themselves which law will govern the arbitration, and can choose for this to be Jewish law. The ruling is therefore only a religious ruling to the extent that it sits within the arbitration framework allowed by civil law. As for similarities between a Beth Din and a civil court, see below.
<b>5</b> The terms used by the Beth Din are identical to the terms used by a civil court, for example, the person who brings a claim to the Beth Din is known as the Claimant and the person who responds to the claim is known as the Respondent.	This is true, save that a Beth Din would commonly use Hebrew equivalent words for Claimant and Respondent.
<b>6</b> Similarly, the terms ‘hearings’, ‘pre-trial procedure’, ‘summons’ and ‘Appeals’ are used.	This is untrue. Only the term “hearing” would be used by a Beth Din (commonly as a Hebrew equivalent word). There is no such thing as pre-trial procedure or appeal in the Beth Din. There is also no power to summon a person. These terms are therefore not used.
<b>7</b> When an agreement is reached, this is referred to as a ‘Consent Award’ and as mentioned before, parties may also have the option to sign a ‘Deed of Arbitration’ so as to make the ‘Award’ binding on them under English law.	This sentence confuses mediation and arbitration. In mediation, parties negotiate with the assistance of a mediator. They reach an agreement by consent, and sign it so as to make it binding. It is therefore not an award in the normal sense of the word. In arbitration, where parties have signed an arbitration agreement the tribunal can make an award. The award will be upheld by the civil courts so long as the tribunal have complied with the

	provisions of arbitration law (and subject to statutory rights of appeal and challenge). As stated above, Batei Din generally use arbitration and not mediation.
<b>8</b>	<p>The concept of a dower amount is found in both Islamic and Jewish laws where the groom is required to give an amount of money or something of monetary value to the bride. In both Islam and Judaism, the dower amount is central to the formation of the marriage contracts. In Jewish law it is known as the Mohar, where it is traditionally paid in the event of divorce or death.</p> <p>This is seriously misleading. There is a formal mention of a notional amount of dowry in certain Jewish religious documents; and the groom gives the bride a ring of monetary value as part of the marriage ceremony. But payment of sums of money in either direction does not play any part in contemporary Jewish marriage law or practice.</p>
<b>9</b>	<p>In both Islam and Judaism, a woman can re-marry following certain conditions... A woman must wait for a period of 90 days before she is able to remarry. The condition that re-marriage only takes place after the waiting period is to ascertain whether the woman is pregnant or not.</p> <p>This is true.</p>
<b>10</b>	<p>In Jewish law, a Get is required to validate a divorce.</p> <p>A Get does not “validate” the divorce. As a matter of Jewish law, it effects the divorce.</p>
<b>11</b>	<p>It is a document which is dated and witnessed and contains the husband’s intention to divorce the wife. The Get is usually written in Aramaic and the procedure is overseen by a Beth Din consisting of three Rabbis.</p> <p>This is true, save that, as was stressed in Point 3 above, the Beth Din’s oversight is limited to making sure that the Jewish law procedure is carried out correctly.</p>
<b>12</b>	<p>In Jewish law, divorce is vested in the hands of the man only as well.</p> <p>This is untrue, as stated in Point 3 above. Jewish divorce requires the consent of both partners.</p>
<b>13</b>	<p>In both Islam and Judaism, the father plays the role of the Guardian in the event that a minor girl is to be wed. However, since minors are unable to marry within English law (with the exception of having the consent of parents if aged 16 or over), this rule does not apply within the context of the British Muslim and Jewish communities.</p> <p>This is true.</p>
<b>14</b>	<p>In both Islam and Judaism, the laws on custody of children are similar where the daughter usually stays with the mother until she reaches the age of majority and the boy stays with the mother until the ages of six and seven, for Judaism and Islam respectively.</p> <p>This is immaterial, as stressed in Point 1 above. A Beth Din does not rule on custody matters, as they are not within the scope of what an arbitral tribunal may rule on. This line is also incomplete as a statement of Jewish law, but in view of the preceding comment the omissions are not material.</p>

<p><b>15</b> In both Islamic and Jewish law, maintenance is provided for the wife:</p> <ol style="list-style-type: none"> <li>1. During the Iddat/waiting period, and;</li> <li>2. For children until they reach the age of majority and are able to financially support themselves.</li> </ol>	<p>This is immaterial. A Beth Din does not rule on maintenance matters, as stressed in Point 1 above. They would be a matter for the civil courts in the civil divorce proceedings (and Point 3 above stresses that the Beth Din would require such proceedings). This line is also difficult to understand and incomplete as a statement of Jewish law, but in view of the preceding comment the omissions are not material.</p>
<p><b>16</b> Traditionally in Jewish law, females do not inherit and the first born takes the double share.</p>	<p>This is true as a statement of Jewish law. However, a Beth Din does not give decisions on the law of succession (although it might agree to entertain an arbitration about an inheritance issue where the parties wanted to go to arbitration and the Arbitration Act 1996 applied).</p>
<p><b>17</b> Duration of a [divorce] case ... Jewish Law</p> <ul style="list-style-type: none"> <li>• There is no time limit to apply</li> </ul>	<p>This is true, in that a divorce could be held immediately after the wedding.</p>
<p><b>18</b></p> <ul style="list-style-type: none"> <li>• Quick if both agree to the divorce – conditional on husband giving the Get</li> </ul>	<p>This is misleading. In addition to being conditional on the husband giving the Get, divorce is also conditional on the wife agreeing to accept it. This was stressed in Point 3 above.</p>
<p><b>19</b></p> <ul style="list-style-type: none"> <li>• Husband may be persuaded to divorce</li> </ul>	<p>This is misleading. Where a marriage has been or is being dissolved in the civil courts, a Beth Din may encourage both parties to ensure that the necessary steps are taken to achieve a religious divorce alongside the dissolution of the civil marriage. But a Beth Din has no power – at either civil or Jewish law – to persuade either party to participate in a religious divorce.</p>
<p><b>20</b> [Civil divorce] does not meet the Jewish requirements as a Get is needed to complete the religious aspect of the divorce.</p>	<p>This is true in the sense that civil divorce alone does not effect religious divorce. It would, of course, be recognised as completing the civil aspect of the divorce.</p>
<p><b>21</b> The Beth Din charges its clients around £450 as an initial fee with the cost divided equally among both parties. This may be increased to £800 if members of the bench is increased and the proceedings become more complicated and drawn out.</p>	<p>Each Beth Din sets its own pricing for a divorce and there is no standard fee. (The present pricing of the London Beth Din is given as an example in an appendix.) Further, as stressed in Point 3 above, a Beth Din in a divorce case does not hear grounds for divorce. The concepts of “increasing the bench” or “complicated and drawn out proceedings” are foreign. It follows that so is raising the cost on those grounds.</p>
<p><b>22</b> Both the Islamic Sharia Council and Beth Din offer independent divorce routes that do not depend on the civil proceedings.</p>	<p>This is untrue. A Beth Din would only assist with a religious divorce if there were concurrent civil divorce proceedings. (The article continues to make precisely this claim about Sharia divorces, and it is unclear why it does not make the same point about Jewish ones.)</p>

<p><b>23</b> The procedures for both the Islamic Sharia Council and the Beth Din are similar in that they both require the party to apply for the religious divorce and there [sic] case would then be reviewed.</p>	<p>This is untrue. The Beth Din would not “review” the case. It is not interested in the grounds for or circumstances of the divorce, as stressed in Point 3 above. The only procedure it will take is that of confirming the consent of both parties.</p>
<p><b>24</b> Both procedures allow for three letters/summons to be sent to the opposing party before the case is continued without that opposing party.</p>	<p>This is untrue. Batei Din do not have a “three letters” procedure. There is no mechanism – at either civil or Jewish law – by which a Beth Din can summon a party to appear. As stressed in Point 3 above, there is also no way of continuing a divorce without the opposing party, as the divorce can only take place where both parties consent. (The same applies to any civil proceedings referred to a Beth Din for arbitration, as this too can only take place where both parties consent.)</p>
<p><b>25</b> ...both the Islamic Sharia Council and the Beth Din follow civil legal procedures relating to divorce, custody and other personal matters such as inheritance.</p>	<p>A Beth Din takes no part in custody or other personal matters, as explained above.</p>

## CONCLUSION

The ISC’s article concludes that:

“...there is little difference between the practices of the Islamic Sharia Council and the Beth Din, specifically to policies regarding women and procedure... It is hoped that this article has demonstrated that the practices and procedures of the Islamic Sharia Council are similar to that of the Beth Din’s.”

We do not pretend to have any expertise in the practices of the Islamic Sharia Council or any other Sharia court. We are therefore not able to comment meaningfully on their conclusion. Nevertheless, in light of the omissions, errors and misconceptions in the article, the ISC’s conclusion should be treated with caution. Batei Din do not hear family proceedings. When they are asked to oversee Jewish marriages and divorces, they will only participate as a complement to civil marriages and divorces and will not act in isolation. Civil proceedings are heard in the manner and to the extent permitted by the Arbitration Act 1996.

## APPENDIX – PRICING OF THE LONDON BETH DIN

Set out below is the amount which the London Beth Din charges for overseeing a Jewish law divorce (including the writing and presenting of a Get). It is not intended to represent all Batei Din, and is included as an example only. However, as the London Beth Din's parent body is the United Synagogue, the largest synagogue body in the United Kingdom, it is an example of considerable practical relevance.

As will be obvious, the pricing is different from that set out in the Islamic Sharia Council's article. It remains unclear where they derived their figures from.

<b>Type of applicant</b>	<b>Fee</b>
Standard cost	£695.00
Members of the United Synagogue Couples married under the auspices of the United Synagogue	£495.00
Overseeing the presentation of a Get written by another Beth Din	£100.00

The parties are responsible for the fee jointly. It is a matter for them how to divide it. The civil courts may, in appropriate circumstances, choose to treat it as part of the costs of the divorce and deal with it in any order they make.

The London Beth Din does not turn away parties who are unable to pay for the Get which they require.