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When is a wedding not a marriage? Exploring non-legally binding ceremonies

Final Report



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About this report

This report presents the findings from a Nuffield Foundation funded project on non-legally binding wedding ceremonies in England and Wales, exploring who conducts them and why, and who opts for them and why, and assesses the likely impact of current weddings law reform proposals.

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About the Nuffield Foundation

The Nuffield Foundation is an independent charitable trust with a mission to advance social well-being. It funds research that informs social policy, primarily in Education, Welfare, and Justice. It also funds student programmes that provide opportunities for young people to develop skills in quantitative and scientific methods. The Nuffield Foundation is the founder and co-founder of the Nuffield Council on Bioethics, the Ada Lovelace Institute and the Nuffield Family Justice Observatory. The Foundation has funded this project, but the views expressed are those of the authors and not necessarily the Foundation.

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Summary and Key Messages

In England and Wales, a legally-binding marriage remains the gateway to obtaining certain legal protections for families and enforceable rights between spouses. Yet there is evidence to suggest that a growing number of couples are going through 'wedding' ceremonies that do not comply with the law's requirements for a valid marriage and will not be legally binding. Investigating who goes through such ceremonies, and who conducts them, is necessary to understanding the limitations of the existing weddings laws and how reform proposals might work.

The study specifically looked at why these ceremonies are taking place, the nature of such ceremonies, and the beliefs, practices, and preferences of those involved. Using focus groups, and group and individual interview methods, 170 participants were engaged. Of these, 82 were involved in conducting non-legally binding ceremonies and 88 had gone through such a ceremony. These ceremonies varied in form and content, reflecting the varying faiths, beliefs, and choices of participants.

Most of the 88 had also had a legal wedding. However, 16 participants had not done so at the time of the interview, of whom 14 were Muslims who had entered into a *nikah*.

Overall, the data presented in this report adds significantly to existing knowledge of different types of non-legally binding marriage ceremonies in England and Wales.

Types of ceremonies

Non-legally binding ceremonies tend to be associated with Muslim communities, resulting in policy discussions and proposals focussed on Muslim marriage practices to the exclusion of other types of ceremonies. Our report shows that:

- Non-legally binding ceremonies included both religious and non-faith-based weddings: Christian, Jewish, Muslim, Hindu, Jain, Sikh, Pagan, interfaith, Humanist, and ones led by an independent celebrant.
- While most non-legally binding ceremonies were accompanied by a legal wedding, there was no clear pattern in the order of the ceremonies or the gap between them. The majority, however, were conducted within the same week.
- The order of the ceremonies was not always of the couple's choosing and sometimes reflected advice from and/or conditions imposed by those conducting the ceremonies, the limited availability of appointments for a legal wedding, and costs.
- The meaning attached to the different ceremonies also varied. Most participants viewed the non-legally binding ceremony as the more meaningful and the point at which they felt 'married'. A significant minority viewed both ceremonies as meaningful but in different ways, with the importance of the legal wedding usually being linked to its consequences rather than to the ceremony itself.

Knowledge and process

Policy concerns have tended to focus on those in religious-only marriages who are unaware that their ceremony lacks legal recognition and on those who conduct such ceremonies without advising couples of the need for a legal wedding. By contrast, among our participants:

- Most of those who were/had been in a religious-only marriage had been aware at the time of the ceremony that it was not legally recognised. Only one participant had not been aware.
- Most of those who were in a religious-only marriage at the time of the interview planned, with varying degrees of certitude, to have a legal wedding at some point, having prioritised the religious wedding in order to begin their married life. Their reasons for not yet having had a legal wedding varied, including past relationship experiences, beliefs, and the impact of Covid in impeding access to a legal ceremony.
- Motivations and practices varied among those who were willing to conduct non-legally binding ceremonies without a prior legal ceremony. While most emphasised that they did make it clear that the ceremony they conducted had no legal status, there were a small number of imams who did not always engage with the bride before the ceremony and/or did not see it as their responsibility to advise couples to 'register' their marriage.

Views on the current law

A number of participants viewed the current law as being too prescriptive and indicated that they would prefer a legal option which allowed the two ceremonies to be combined or, alternatively, for their chosen ceremony to be given legal effect.

- Many of the participants viewed the current law as restricting their choice of ceremony and preventing them from marrying in a form that was meaningful to them, whether religious or non-religious.
- The two-stage process of the current buildings-based system — being certified as a place of worship under the Places of Worship Registration Act 1855 and then registering that place of worship for weddings, requiring the support of 20 householders who use the building as their usual place of public religious worship — presented problems for smaller/dispersed religious groups.
- Even where a place of worship can be registered for weddings, in some communities they tend not to be. This was particularly the case for mosques across England and Wales, resulting in limited options being available to Muslims wishing to get married in their normal place of worship.
- The lack of an option of getting legally married outdoors was particularly important, with 17 of the participants having had a non-legally binding ceremony outdoors. All four of the Pagan ceremonies occurred outdoors as this was linked to their beliefs in being 'connected to the earth'. Other couples preferred an outdoor ceremony for a range of personally meaningful reasons.
- The prescribed words (necessary in legal weddings in register offices, approved premises, and registered places of worship) are modelled on the Anglican service and more easily integrated into Christian wedding services than into non-Christian ones. As a result, how the legal ceremony was experienced by Christians and non-Christians was quite different.
- There were also barriers to couples having two ceremonies on the same day. These included the higher costs of having a legal wedding on a Saturday and prohibitions on the content of ceremonies on approved premises being extended to the content of non-legally binding ceremonies.

Muslim marriages

Particular trends were observed among Muslim participants.

- There was a tendency among Muslim couples to have the religious ceremony first and for there to be a longer delay before the legal wedding took place.
- Intimacy and marriage were strongly linked within this group.
- Reasons for avoiding a legally binding marriage included financial considerations where one party wished to ring-fence their assets; avoiding the process of legally divorcing (for those with previous experience of this) and the perceived flexibility in obtaining a religious divorce; not being able to get married legally; a lack of awareness that the religious ceremony was not legally recognised; or a simple lack of desire to be legally married.
- Delays in legally marrying were attributed by some to 'life getting in the way', there being no perceived rush following the religious wedding.

Conclusion

The current law is too limited and restrictive for the pluralistic needs of contemporary society. Reform is needed to reflect the diversity of beliefs and practices in modern society.

Participants took the view that the Law Commission's proposals for reform¹ would make it easier, more inclusive, and cheaper for couples to have a legal wedding that was meaningful to them. Key elements of its proposed scheme were:

- the removal of the need for prescribed words, enabling couples to consent to be married in a way that is in accordance with their beliefs;
- the shift from the current buildings-based system to regulating an 'officiant', enabling weddings to take place in a wider range of locations and potentially (depending on the decisions made by Government) accommodating Humanist and independent celebrants;
- the greater ease of giving notice, reducing the need to have the non-legally binding ceremony first;

However, some couples will still want to have a non-legally binding ceremony:

- if they have different faiths or beliefs and want separate ceremonies to reflect these;
- to test their relationship before making a legal commitment;
- because they do not want to be legally married.

The Commission's proposals offer protection against individuals being duped into a ceremony that has no legal effects while leaving a space for those who wish to have a such a ceremony.

¹ Law Commission, *Getting Married: A Consultation Paper on Weddings Law* (CP No 247, 2020). For a full discussion of the implications of our findings for the Commission's provisional proposals see R Probert, RC Akhtar and S Blake, *When is a wedding not a marriage? A Briefing Paper to the Law Commission* (2021) (hereafter *Briefing Paper*).

1. Introduction

In England and Wales, a legally-binding marriage remains the gateway to obtaining certain legal protections for families and enforceable rights between spouses. Yet each year, many couples go through ceremonies that follow certain conventions of a wedding – in the making of promises, or compliance with certain rites and rituals – but which do not count as a valid marriage in the eyes of the law. Understanding what types of ceremonies are taking place, why they are taking place and what the demand for them is, and who conducts them, is vital to inform current policy debates about marriage and cohabitation. Couples may be entering into these non-legally binding ceremonies because they do not want the rights and responsibilities that go with a legal marriage, because the law does not offer them a way of marrying in the way they want, or because they simply do not realise what is required for a legal marriage. A policy response aimed at just one of these scenarios will inevitably fail to provide a solution that meets the needs of the others.

Much has been written about the concept of a non-legally binding ceremony from a doctrinal perspective.² By contrast, existing knowledge of different types of ceremonies is somewhat uneven. The existing empirical research has tended to focus on the Muslim wedding ceremony, or *nikah*. The perception that non-legally binding ceremonies are particularly common within Muslim communities has also resulted in a series of reports expressing concern about Muslim marriage practices.³ Less attention has been paid to non-legally binding ceremonies taking place within other religious groups.⁴ The lack of any option for Humanist couples to have a legal wedding that reflects their beliefs has attracted considerable policy attention⁵ but to date there has been limited academic research into such ceremonies.⁶ The increasing number of ceremonies led by independent celebrants is beginning to attract academic and policy attention, but empirical research into such ceremonies also remains limited.⁷

Our project is therefore the first empirical study to investigate a wider range of non-legally binding ceremonies.⁸ It includes ceremonies that take place alongside or after a legal wedding, as well as those that take place before or in the absence of a legal wedding. Some of these ceremonies were conducted according to prescribed religious rites, others were

² See eg WK Leong, 'Formation of Marriage in England and Singapore: void marriage and non-marriage' (2000) 14 *International Journal of Law, Policy and the Family* 256; R Probert, 'When are we married? Void, non-existent and presumed marriages' (2002) 22 *Legal Studies* 398; R Gaffney-Rhys, 'Am I married? Three recent case studies on the effect of non-compliant marriage ceremonies' [2013] *International Family Law* 53; C Bevan, 'The role of intention in non-marriage cases post *Hudson v Leigh*' [2013] 25 *Child and Family Law Quarterly* 80; R Probert, 'The evolving concept of non-marriage' [2013] 25 *Child and Family Law Quarterly* 314; V Le Grice, 'A Critique of Non-marriage' [2013] 43 *Family Law* 1278; C Barton and R Probert, '*Akhter v Khan* and the status of a religious-only marriage: valid, void or 'non'? [2018] 48 *Family Law* 1540; T Cummings, 'Gendered dimensions and missed opportunities in *Akhter v Khan* (*Attorney-General and others intervening*)' [2020] 32 *Child and Family Law Quarterly* 239; R Probert, 'Determining the boundaries between valid, void and "non" marriages: past, present and future?' in R Akhtar, P Nash and R Probert (eds) *Cohabitation and Religious Marriage: Status, Similarities and Solutions* (Bristol University Press, 2020).

³ See L Casey, *The Casey Review: A Review into Opportunity and Integration* (Department for Communities and Local Government, 2016); Home Office, *The Independent Review into the Application of Sharia Law in England and Wales*, Cm 9560 (Home Office, 2018); Ministry of Housing, Communities and Local Government (MHCLG), *Integrated Communities Strategy Green Paper* (14 March 2018), and see further below.

⁴ For a brief discussion of the intersection between religious and legal requirements see eg SS Thandi, 'What is Sikh in a "Sikh Wedding"? Text, Ritual and Performance in Diaspora Marriage Practices' (2016) 23 *Journal of Punjab Studies* 131.

⁵ See '*Any Lawful Impediment?*': A report of the All-Party Parliamentary Humanist Group's inquiry into the legal recognition of humanist marriage in England and Wales (2018): <https://humanists.uk/wp-content/uploads/APPHG-report-on-humanist-marriage.pdf>.

⁶ See further below.

⁷ See further below.

⁸ As we explain in chapter 2, our recruitment of participants reflected the specific policy interest in Muslim marriage practices and the larger size of the Muslim population relative to other non-Christian faiths.

explicitly non-religious, and many drew on a range of different traditions. Our project includes those who are involved in conducting non-legally binding ceremonies as well as those who have had such a ceremony, providing new qualitative evidence about who conducts these different types of ceremonies, who opts for them, and what couples believe their status to be. Looking at the issues from these multiple perspectives provides important evidence to assess the potential impact of different reform proposals.

In this introductory chapter we begin with a brief explanation of our terminology. We then set out the current policy debates that our project seeks to inform, highlighting how our project adds to the existing literature on different types of non-legally binding ceremonies. We conclude by explaining how the remaining chapters of the report are organised.

Explanation of terminology

This is a subject area in which the terminology used is both important and contested. In particular, the very question of who gets to define what ‘marriage’ means has been subject to much controversy in recent years.⁹

Since our focus is on the process of getting married, rather than the ‘marriage’ in the sense of the married life which follows, we have tended to use the term ‘wedding’ to denote a ceremony that confers the legal status of being married upon a couple.¹⁰ However, since many of the couples in our study saw their non-legally binding ceremony as their ‘real’ wedding, we have ensured that we always use the term ‘legal wedding’, or otherwise clarify what particular form it took (eg ‘civil wedding’¹¹ or ‘register office wedding’¹²), in order to make our meaning clear.

Our terminology of ‘non-legally binding ceremony’ also needs some explanation. We have avoided the more usual terminology of ‘unregistered marriages’, partly because of its potential to mislead readers about what is in fact necessary for a wedding to be legally recognised¹³ and partly because it is not applicable to the many ceremonies that take place in addition to a legal wedding. We have also avoided using the term ‘unrecognised marriage’ as equally misleading and unhelpful, since many of the ceremonies in our sample were recognised as a marriage by those involved and those who shared their beliefs, even if not by the law.

That said, the terminology of ‘non-legally binding’ is not without its problems. During the recruitment stage, in some instances we needed to provide reassurance to participants that a non-legally binding ceremony was not the same as an ‘illegal’ ceremony.¹⁴ On occasion an initial refusal to participate was reversed when individuals realised that the concept encompassed ceremonies that took place after a legal wedding. During the focus groups, too, a minority of participants who were involved in conducting non-legally binding ceremonies were clearly unsure of whether they were acting legally or what they could and

⁹ For discussion see G Douglas, ‘Who Regulates Marriage? The Case of Religious Marriage and Divorce’ in R Sandberg (ed) *Religion and Legal Pluralism* (Ashgate, 2015).

¹⁰ In this we have followed the practice of the Law Commission’s Weddings project.

¹¹ We use the term ‘civil wedding’ to denote a wedding that is conducted in a register office or on approved premises and from which religious content is largely excluded: for a discussion of the different usages of the term see chapter 3.

¹² For the purposes of this report we have followed the usage of our participants, who tended to use the term ‘register office’ (or more usually ‘registry office’) to denote any wedding in a council-owned venue. For a discussion of how many former register offices are now approved premises, see R Probert, S Pywell, R Akhtar, S Blake, T Barton and V Vora, ‘Trying to get a piece of paper from City Hall? The availability, accessibility, and administration of the register office wedding’ (2022) 44 *Journal of Social Welfare and Family Law* (forthcoming).

¹³ See further below.

¹⁴ On the narrowly defined circumstances in which conducting a non-legally binding ceremony of marriage may constitute an offence, see further chapter 3.

could not do. Such concerns were often heightened by concurrent Covid restrictions. Others, by contrast, were more confident that the non-legally binding ceremonies they conducted were not illegal.¹⁵

Such concerns reflect the policy background against which non-legally binding ceremonies take place. As the next section will show, there have been calls for it to be made a criminal offence to conduct a non-legally binding ceremony.

Brief overview of policy context and proposals for reform

The issues raised in this report are of significance to a range of stakeholders for differing reasons. As noted above, non-legally binding ceremonies can occur alongside or after a legal wedding, or as a stand-alone ceremony with no legal effect. The policy considerations differ according to which of these categories the couples occupy.

Religious-only marriages

A marriage will be classified as ‘religious-only’ if the ceremony that took place was conducted in accordance with religious rites but did not comply with any of the requirements for a legally recognised marriage¹⁶ and if the parties have not gone through a subsequent legal wedding.

Religious-only marriages have been identified as a source of concern by scholars,¹⁷ practitioners,¹⁸ politicians,¹⁹ and women’s rights groups.²⁰ The key reason for such concern is that the parties to a religious-only marriage do not have access to the same rights as those in a legally recognised marriage, and the more economically vulnerable partner – which in the vast majority of cases will be the woman²¹ – will be financially disadvantaged if the relationship comes to an end. The focus has primarily been on Muslim communities, the perception being that religious-only marriages are particularly common in such communities.²²

In the absence of legal entitlements, in the event of a dispute the parties to a religious-only marriage will need to turn to religious tribunals or other alternative dispute resolution mechanisms.²³ In this context, particular concern has focused on the role of Sharia Councils

¹⁵ See further chapter 4.

¹⁶ The legal requirements, and the differing circumstances in which a marriage might be classified as valid, void, or non-qualifying, are set out in chapter 3.

¹⁷ V Vora, ‘Unregistered Muslim Marriages in England and Wales: The Issue of Discrimination through “Non-Marriage” Declarations’ in Y Suleiman and P Anderson (eds) *Muslims in the UK and Europe II* (Cambridge University Press, 2016); K O’Sullivan and L Jackson, ‘Muslim Marriage (Non) Recognition: Implications and Possible Solutions’ (2017) 39 *Journal of Social Welfare and Family Law* 22; R Probert and S Saleem, ‘The Legal Treatment of Islamic Marriage Ceremonies’ (2018) 7 *Oxford Journal of Law and Religion* 376.

¹⁸ <http://registerourmarriage.org>.

¹⁹ For a recent debate on the issues see *Hansard*, HL Deb, vol 804, col 557, 30 June 2020.

²⁰ S Gohir, *Information and Guidance on Muslim Marriage and Divorce in Britain* (Muslim Women’s Network UK, January 2016), 13.7.

²¹ For the discrepancy between employment levels of mothers and fathers with dependent children, with mothers more likely to be in part-time work than fathers, see ONS, ‘The Families and the Labour Market, UK: 2019’ (<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/articles/familiesandthelabourmarketengland/2019#employment-rates-for-parents-in-the-uk>).

²² On this perception, and its implications, see R Parveen, ‘From regulating marriage ceremonies to recognising marriage ceremonies’ in Akhtar et al, *Cohabitation and Religious Marriage*.

²³ On the role of religious tribunals see G Douglas et al, *Social Cohesion and Civil Law: Marriage, Divorce and Religious Courts* (Cardiff University, 2011); G Douglas et al, ‘The Role of Religious Tribunals in Regulating Marriage and Divorce’ [2012] 24 *Child and Family Law Quarterly* 139; J Bowen, *On British Islam: religion, law, and everyday practice in Sharia Councils* (Princeton University Press, 2016). On the use of other alternative dispute resolution mechanisms in the context of religious-only marriages see S Bano (ed) *Gender and justice in*

within Muslim communities, with empirical research suggesting that the outcomes for women are less favourable than under the civil law.²⁴ In 2018 *The Independent Review into the Application of Sharia Law in England and Wales*, chaired by theologian Professor Mona Siddiqui, proposed that such Councils should be subject to legal regulation.²⁵ This, however, did not meet with a positive response from the government in its subsequent *Integrated Communities Strategy Green Paper*, which took the view that creating 'a state-facilitated or endorsed regulation scheme for sharia councils would confer upon them legitimacy as alternative forms of dispute resolution'.²⁶

However, the *Independent Review* also put forward two further proposals. One was to raise awareness of the fact that religious-only marriages are not legally recognised, and the other was that 'the celebrant of specified marriages, including Islamic marriage, would face penalties should they fail to ensure the marriage is also civilly registered'.²⁷ This was an approach that had previously been advocated by the cross-bench peer Baroness Cox.²⁸ The subsequent *Integrated Communities Strategy Green Paper* welcomed the review and highlighted the need for awareness-raising²⁹ but was somewhat ambiguous as to whether it endorsed the idea of criminalization, simply noting that it was 'supportive in principle of the requirement that civil marriages are conducted before or at the same time as religious ceremonies'.³⁰

The recommendations of the *Independent Review* reflect a number of common problems found within much of the discussion of religious-only marriages.

First, there is the problematic focus on 'civil registration'. The risk of foregrounding 'registration' is that it gives a misleading impression of the relationship between the legal wedding and the non-legally binding ceremony. Put simply, a non-legally binding ceremony cannot be validated by 'registration' in the sense of a subsequent formal acknowledgement of the ceremony's having happened, (though some advocate such a system).³¹ A couple who have gone through a non-legally binding ceremony will only be validly married if they also go through a legal wedding.³² Using the term 'registration' to refer to the totality of the steps that a couple need to take in order to be legally married is unhelpful and confusing.

family law disputes: Women, mediation, and religious arbitration (Brandeis University Press, 2017); A Al-Astewani, 'Arbitration as a Legal Solution for Relationship Breakdown in the Muslim Community: the Case of the Muslim Arbitration Tribunal' in Akhtar et al, *Cohabitation and Religious Marriage*.

²⁴ S Bano, *Muslim Women and Shariah Councils, Transcending the Boundaries of Community and Law* (Palgrave MacMillan, 2012); SS Ali, 'Authority and authenticity: Sharia Councils, Muslim women's rights, and the English courts' [2013] 25 *Child and Family Law Quarterly* 113; F Ahmed and J Calderwood Norton, 'Religious tribunals, religious freedom, and concern for vulnerable women' [2013] 25 *Child and Family Law Quarterly* 363; R Parveen, 'Do Sharia Councils meet the needs of Muslim women?' in S Bano (ed) *Gender and justice in family law disputes: Women, mediation, and religious arbitration* (Brandeis University Press, 2017).

²⁵ On the relationship between religious tribunals and the state see M Malik, *Minority Legal Orders in the UK: minorities, pluralism and the law* (British Academy Policy Centre, 2012).

²⁶ MHCLG, *Integrated Communities Strategy Green Paper*, 58.

²⁷ *The Independent Review into the Application of Sharia Law in England and Wales* (Home Office, February 2018), 17.

²⁸ See her proposed amendments to the Anti-Social Behaviour, Crime and Policing Bill 2013 (*Hansard*, HL Deb, vol 749, col 676, 12 November 2013) and the Policing and Crime Bill 2016 (*Hansard*, HL Deb, vol 776, col 1475), her Marriage Act 1949 (Amendment) Bill 2017; see also her subsequent Marriage Act 1949 (Amendment) Bill 2020. On these proposals see further R Probert, 'Criminalising non-compliance with marriage formalities?' [2018] *Family Law* 702 and *Tying the Knot: The Formation of Marriage, 1836-2020* (Cambridge University Press, 2021), ch 9.

²⁹ See also MHCLG, *Integrated Communities Action Plan* (February 2019).

³⁰ MHCLG, *Integrated Communities Strategy Green Paper*, 58.

³¹ R Parveen, 'From regulating marriage ceremonies to recognising marriage ceremonies' in Akhtar et al, *Cohabitation and Religious Marriage*.

³² See further chapter 3 for an explanation of the legal requirements.

Second, there is the ambiguous use of the term 'civil marriage'. Some use this term as a synonym for a legal marriage, including one that is conducted according to religious rites. This seems to have been the meaning intended by the government in its *Integrated Communities Strategy Green Paper*, since it prefaced its comments about the need for a 'civil marriage' by commenting that '[c]ouples from faith communities have long been able to enter a legally recognised marriage through a religious ceremony if the requirements of the law are met'. Others, however, use the term 'civil marriage' to denote a purely secular ceremony conducted by registration officers. Unless the term is defined, highlighting the need for couples to have a 'civil marriage' (in the first sense) is likely to be just as misleading as suggesting that couples need to 'register' their marriage.

Third, and perhaps most fundamentally, there is the positioning of a religious-only marriage as inherently problematic and something to be deterred. However, it should be noted that there is a growing body of empirical research emphasising the diversity of reasons why individuals might enter into such a marriage.³³

Our project builds on that body of empirical work into religious-only marriages in a number of ways: first, by focusing on the point of entry into such marriages rather than their breakdown; second, by engaging participants from a wider range of faith traditions, including Bahá'í, Buddhist, Christian, Hindu, interfaith,³⁴ Pagan, Sikh, and Zoroastrian; and third, by engaging those involved in conducting such ceremonies.

The lack of an option for Humanist weddings

Weddings law in England and Wales does not currently provide any avenue for Humanist weddings to be legally recognised.³⁵ This stands in sharp contrast to the position in other parts of the British Isles, although the mechanisms by which Humanist weddings have been recognised elsewhere vary. Scotland³⁶ and Ireland³⁷ have both legislated to allow weddings

³³ RC Akhtar, 'Unregistered Muslim Marriages: An Emerging Culture of Celebrating Rites and Compromising Rights', in J Miles, P Mody and R Probert (eds) *Marriage Rites and Rights* (Hart Publishing, 2015); RC Akhtar, 'Modern Traditions in Muslim Marriage Practices, Exploring English Narratives' (2018) 7 *Oxford Journal of Law and Religion* 427; I Uddin, 'Nikah-only marriages: Causes, motivations, and their impact on dispute resolution and Islamic divorce proceedings in England and Wales' (2018) 7 *Oxford Journal of Law and Religion* 401; R Parveen, 'Religious-only marriages in the UK; Legal positionings and Muslim women's experiences' (2018) 6 *Sociology of Islam* 316.

³⁴ This is a challenging term to define: it may be used to express a distinct belief about the essential commonality of all religions or to denote the bringing together of two distinct faiths. See further *Briefing Paper*, para 1.30-36, and chapter 6.

³⁵ See further chapter 3 for an explanation of the legal requirements and the barriers to the recognition of Humanist weddings.

³⁶ Humanist weddings have taken place in Scotland since 2005, initially by issuing temporary authorisations to Humanist celebrants. The category of 'belief' marriages was formally recognised in 2014, with amendments to the Marriage (Scotland) Act 1977 being made by the Marriage and Civil Partnership (Scotland) Act 2014. For discussion of these developments see J Mair, 'Belief in Marriage' (2015) 5 *International Journal of the Jurisprudence of the Family* 63; M McLean, 'Beyond belief: the law and practice of marriage formation in contemporary Scotland' [2018] 30 *Child and Family Law Quarterly* 237.

³⁷ The Civil Registration Act 2004, as amended by the Civil Registration (Amendment) Act 2012, allowed for weddings to be conducted by celebrants nominated by organisations that are 'secular, ethical and humanist'. The Humanist Association of Ireland is one of the bodies to be recognised. For discussion see S Leahy and K O'Sullivan, 'Changing Conceptions of Marriage in Ireland: Law and Practice' [2018] 20 *Child and Family Law Quarterly* 279; K O'Sullivan, 'Location, Location, Location: The Future of Weddings Law in Ireland and England' (2021) 43 *Journal of Social Welfare and Family Law* 307.

to be conducted by non-religious belief celebrants. Jersey³⁸ and Guernsey³⁹ have also recently amended their marriage laws and expanded the category of those who can conduct civil weddings; they do not, however, recognise a specific category of non-religious belief celebrants. In Northern Ireland, meanwhile, Humanist celebrants have been authorised to conduct civil weddings as a result of judicial interpretation of the existing law rather than as a result of legislative change.⁴⁰

The lack of an option for Humanist weddings in England and Wales has been criticised,⁴¹ and there have been various attempts to reform the law over the past decade. A number of private members' bills have been presented to Parliament, including two in the 2019-21 session.⁴² An amendment to the Marriage (Same Sex Couples) Act 2013 conferred the power on the Secretary of State to make an order 'to make provision for and in connection with permitting marriages according to the usages of belief organisations'.⁴³ It also required a review to be carried out as to whether such an order *should* be made. The ensuing review found that there was widespread support for non-religious belief organisations to be able to conduct legally recognised weddings. However, it also highlighted the difficulties in devising a scheme to achieve this within the framework of the existing law,⁴⁴ and referred the issue of reform to the Law Commission.⁴⁵ Upon a subsequent application for judicial review it was held that it was legitimate for the lack of an option for Humanist weddings to be addressed as part of a wholesale reform of the law.⁴⁶

These developments have been the subject of discussion in the academic literature.⁴⁷ However, while there is an emerging body of work on the growth of Humanism as a belief

³⁸ The Marriage and Civil Status (Jersey) Law 2001, as amended by the Marriage and Civil Status (Jersey) Order 2018, provides for civil weddings to be conducted by 'authorised civil celebrants'. The role description issued by Jersey's Superintendent Registrar explains that such a celebrant may be affiliated to a 'recognised non-religious belief organisation such as Humanism': <https://www.gov.je/SiteCollectionDocuments/Life%20events/Job%20description%20of%20Authorised%20Civil%20Celebrant.pdf>.

³⁹ The Marriage (Bailiwick of Guernsey) Law 2020 similarly provides for civil weddings to be conducted by 'civil celebrants', who may conduct Humanist ceremonies: for discussion see D Pocklington, 'Marriage (Bailiwick of Guernsey) Law 2020', *Law & Religion UK*, 7 December 2020, <https://lawandreligionuk.com/2020/12/07/marriage-bailiwick-of-guernsey-law-2020/>.

⁴⁰ Marriages in Northern Ireland are governed by the Marriage (Northern Ireland) Order 2003, which only provides for civil and religious marriages. The non-availability of Humanist weddings was challenged as contravening the European Convention on Human Rights, and the Court of Appeal in Northern Ireland held that 'the conduct of a humanist wedding ceremony by a humanist wedding officiant for a person holding humanist views' was within the ambit of Article 9 and that a person holding such views who wanted to be married in a humanist ceremony was in an analogous or relatively similar position to a person holding religious beliefs under Article 14: *Re Smyth's Application for Judicial Review* [2018] NICA 25, [42] and [45]. However, it avoided finding the law to be in breach of the Convention by holding that the power conferred on local registration authorities to appoint 'additional persons' to conduct civil weddings could encompass Humanist celebrants and that the Registrar General should accommodate a couple's request for a humanist celebrant in order to express their humanist beliefs 'if content that the proposed celebrant will carry out the solemnisation of the marriage according to law' (ibid, [59]). For discussion of the law in Northern Ireland and the limitations of this solution see F Cranmer and S Thompson, 'Marriage and civil partnership in Northern Ireland: a changing legal landscape' [2018] 30 *Child and Family Law Quarterly* 301; S Thompson and F Cranmer, 'Humanist weddings in Northern Ireland: a missed opportunity for reform?' (2019) 41 *Journal of Social Welfare and Family Law* 229.

⁴¹ 'Any Lawful Impediment?'; *A report of the All-Party Parliamentary Humanist Group's inquiry into the legal recognition of humanist marriage in England and Wales* (2018): <https://humanists.uk/wp-content/uploads/APPHG-report-on-humanist-marriage.pdf>.

⁴² Marriage (Approved Organisations) Bill 2012-13; Marriage (Approved Organisations) Bill 2020; Marriage (Approved Belief Organisations) Bill 2020.

⁴³ Marriage (Same Sex Couples) Act 2013, s 14(4).

⁴⁴ Ministry of Justice, *Marriages by non-religious belief organizations* (26 June 2014); *Marriages by non-religious belief organizations: Summary of Written Responses to the Consultation and Government Response* (18 December 2014).

⁴⁵ See further below.

⁴⁶ *R (On the application of Harrison) v Secretary of State for Justice* [2020] EWHC 2096 (Admin).

⁴⁷ See eg R Sandberg, *Religion and Marriage Law; the Need for Reform* (Bristol University Press, 2021).

system, there is limited empirical research into the uptake of Humanist ceremonies in England and Wales. Our project provides new qualitative data into the work of Humanist celebrants and into the motivations of those who have opted for a Humanist ceremony.

The lack of an option for ceremonies led by an independent celebrant

A significant number of non-legally binding ceremonies are also being performed by independent celebrants. Despite the popularity of such ceremonies, this particular group has tended to attract less attention from policy makers, and in 2020 a number of celebrants set up the Give Couples Choice Movement to raise their profile and campaign for any reforms to weddings law to include independent celebrants.⁴⁸ Independent celebrants have long been authorised to conduct legal weddings in Australia and New Zealand, and the recent reforms in Jersey and Guernsey allow individuals to apply to be recognised as civil celebrants.

Existing research on the work of independent celebrants is sparse, with the only significant work being that carried out by Stephanie Pywell. In early 2020, Pywell conducted a survey of celebrants and found that both the number of independent celebrants and the number of ceremonies led by an independent celebrant have increased significantly in recent years.⁴⁹ Reviewing celebrants' answers about where the ceremonies they conducted took place, and what they included, she concluded that '[c]elebrants clearly increase the choice of ceremonies for couples, and meet a social need'.⁵⁰ In a follow-up article she argued that independent celebrants should be authorised to conduct legal weddings.⁵¹ Our project builds on Pywell's quantitative data by providing new qualitative data into the work of independent celebrants and into those who have opted for a celebrant-led ceremony.

Weddings law reform

These different concerns are all reflected in the Law Commission's current project on weddings law.⁵² Its initial scoping review, carried out in 2015, identified three factors that made reform a priority: the growing demand for an alternative to the existing civil and religious options, in particular from interfaith or Humanist couples; the demand for weddings to be conducted in a wider range of locations; and the perceived rise in religious-only marriages.⁵³ The terms of reference for its current project, which began in 2019, required it 'to consider, and make recommendations on, all aspects of weddings law',⁵⁴ including '[h]ow the law should be reformed in relation to who can solemnise a marriage and how it could be reformed to enable a wider range of persons to solemnise a marriage'.⁵⁵

In 2020 it published a consultation paper setting out its provisional proposals for reform. These were, as it explained, underpinned by five principles: 'certainty and simplicity; fairness and equality; protecting the state's interest; respecting individuals' wishes and beliefs; and

⁴⁸ https://gccmovement.org/?fbclid=IwAR3cKrsovAlhXLNcAt2EvBZo1iootetQ7WBrtwHErR8tBZ5aGD_QFXIRkgE.

⁴⁹ S Pywell, 'The day of their dreams: celebrant-led wedding celebration ceremonies' [2020] 32 *Child and Family Law Quarterly* 177.

⁵⁰ *Ibid.*, 199.

⁵¹ S Pywell, 'Beyond beliefs: a proposal to give couples in England and Wales a real choice of marriage officiants' [2020] 32 *Child and Family Law Quarterly* 215.

⁵² N Hopkins, E Welch and S Hussaini, 'The Law Commission's Project on Weddings Law Reform' (2021) 23(3) *Ecclesiastical Law Journal* 267.

⁵³ Law Commission, *Getting Married: A Scoping Paper* (2015), 17-18.

⁵⁴ Law Commission, *Getting Married: A Consultation Paper on Weddings Law* (3 September 2020), para 1.70.

⁵⁵ The 'could' here is important: the Law Commission was tasked with considering 'how marriage by humanist and other non-religious belief organisations could be incorporated into a revised or new scheme, and how provision could be made for the use of independent celebrants', but not with making recommendations as to whether the groups who can conduct weddings *should* be expanded.

removing any unnecessary regulation, so as to increase the choice and lower the cost of wedding venues for couples'.⁵⁶

For those involved in conducting weddings, the key elements of the Law Commission's proposed scheme were as follows:

- Religious groups would be able to nominate 'officiants' to officiate at weddings. The group making the nomination could be either an overarching organisation or a local group (the minimum proposed in the consultation paper being 20 members). The names of all nominated officiants would be on a publicly accessible list held by the General Register Office (GRO).
- If enabled by government, non-religious belief organisations would also be able to nominate officiants on the same terms as religious groups. Individuals would also be able to apply to the GRO to be authorised to conduct civil weddings as independent officiants.
- The main duties of an officiant would be to ensure that both parties freely exchanged consent to the marriage in the presence of two witnesses and that the 'schedule' (see below) was signed. The officiant could also lead the ceremony. However, this would not be a requirement of the role, and it would be possible for a different person to take responsibility for leading the ceremony, as long as the officiant was present.
- It would also be for the officiant to decide whether the location proposed by the couple was safe and dignified (and, in the case of nominated officiants, whether it satisfied any requirements of their nominating organisation).
- It would be an offence to pretend to be an officiant and deliberately and recklessly mislead a couple about the effect of a ceremony (or for an officiant to deliberately and recklessly mislead a couple about the effect of a ceremony). However, a failure to comply with the duties of an officiant would not be an offence, although it might lead to deauthorisation.

For those getting married, the Commission proposed that the process would be as follows:

- Each of the couple would give notice of their intention to marry to the registration services. The initial notice could be given online, by post, or in person. There would then be a 28-day waiting period before they would be issued with the document authorising the marriage to go ahead. If they had not given notice in person there would need to be an in-person interview during this 28-day period.
- At the time of giving notice, the couple would inform the registration services who would be officiating at their wedding, and the document authorising the marriage (the 'schedule') would name that person.
- The couple would take the schedule to their wedding. There would be no legal restrictions on the types of places in which marriages could be legally celebrated.
- There would be no requirement to include prescribed words in the ceremony. The parties would be able to manifest their consent by words or actions.
- The schedule would be signed by both of the couple, the officiant, and two witnesses once the wedding had taken place. It would then be returned to the registration services in order for the marriage to be registered.

⁵⁶ *Getting Married: A Consultation Paper on Weddings Law*, para 1.70.

The Commission's provisional proposals have already been subject to academic scrutiny and analysis.⁵⁷ Our project provides a more in-depth analysis of how – and whether – the Law Commission's proposed scheme would work for different groups and individuals, investigating each of its proposals in the light of the evidence from those involved in conducting non-legally binding ceremonies and those who have gone through such ceremonies. This analysis takes the form of a separate briefing paper, published in November 2021. This has been shared with the Commission, whose final recommendations for reform are expected to be published in July 2022.⁵⁸

Cohabitation law reform

Reforms to weddings law will not necessarily assist those who do not realise that their ceremony is not binding; after all, as long as the law requires some formalities for a valid marriage there will always be some ceremonies that will fall outside the legal framework. Nor will they assist those in 'uneven' relationships whose partners refuse to enter into a legal marriage. And there will also be couples who were content not to be legally married but who are surprised by their lack of rights when the relationship comes to an end.

There are obvious parallels with the debates about the motivations of those who cohabit without any ceremony at all.⁵⁹ In this context there has similarly been much discussion of whether couples are opting out of legal rights and responsibilities, whether one or both mistakenly believe that they have the same rights as if they were in a formal relationship,⁶⁰ or whether they have different expectations and wishes about whether to formalise their relationship.⁶¹

The question of what rights should be accorded to cohabitants falls outside the scope of the current project. For present purposes, the key point is that any reform should be framed with the particular circumstances of those in religious-only marriages in mind, for example in considering what criteria might need to be fulfilled in order to be eligible for rights and whether those in religious-only marriages face particular disadvantages above and beyond those who are cohabiting. While our project was not designed to assess what rights should be afforded to cohabitants, it does provide further evidence of the need for such reform.

The impact of Covid-19

A final important context for our project was the Covid-19 pandemic. At the time that we formulated our research questions we had no inkling that we would be carrying out the project against the backdrop of a global pandemic and at a time when significant limitations were placed on weddings taking place. Covid obviously affected the way that we conducted the research, as we discuss in Chapter 2. It also had a significant impact both on weddings and on non-legally binding ceremonies. The restrictions that were imposed on legal

⁵⁷ See K O'Sullivan, 'Location, Location, Location: The Future of Weddings Law in Ireland and England' (2021) 43 *Journal of Social Welfare and Family Law* 307; T Cummings, 'Equality as a Central Principle? - The Law Commission's Solution to the Religious-Only Marriage Problem' [2021] 33 *Child and Family Law Quarterly* 63; R Sandberg, *Religion and Marriage Law; the Need for Reform* (Bristol University Press, 2021).

⁵⁸ Updates can be found at: <https://www.lawcom.gov.uk/project/weddings/>.

⁵⁹ For discussion of those parallels see RC Akhtar, 'Modern Traditions in Muslim Marriage Practices, Exploring English Narratives' (2018) 7 *Oxford Journal of Law and Religion* 427; Akhtar et al, *Cohabitation and Religious Marriage*; R Sandberg, *Religion and Marriage Law; the Need for Reform* (Bristol University Press, 2021).

⁶⁰ For discussion of the common misconception that cohabiting couples have legal rights and protections arising from a 'common law marriage' see M Albakri, S Hill, N Kelley and N Rahim, 'Relationships and Gender Identity' in J Curtice, E Clery, J Perry, M Phillips and N Rahim (eds) *British Social Attitudes: The 36th Report* (NatCen, 2019); A Barlow, 'Modern Marriage Myths: the Dichotomy Between Expectations of Legal Rationality and Lived Law' in Akhtar et al, *Cohabitation and Religious Marriage*.

⁶¹ See eg A Barlow and J Smithson, 'Legal Assumptions, Cohabitants' Talk and the Rocky Road to Reform' [2010] 22 *Child and Family Law Quarterly* 143.

weddings did not prevent non-legally binding ceremonies from taking place, with many individuals conducting non-legally binding ceremonies who would usually not do so in the absence of a legal wedding. While our project was not designed to assess the impact of Covid, the data it generated is important and forms the subject of a separate paper produced as part of this project.⁶²

The report

The remainder of this report is structured as follows. Chapter 2 sets out the research methods employed in the study, detailing the design of the study and describing who participated. Chapter 3 provides an overview of the historic and modern legal framework in which non-legally binding marriages are situated in England and Wales. It summarises the statutory requirements for a legal wedding; when a marriage will be classified as valid, void, or non-qualifying; the offences that may, in certain narrowly defined circumstances, be committed by someone conducting a non-legally binding ceremony; and the history of the opaque provision of the Marriage Act 1949 that gives the impression that a non-legally binding ceremony cannot take place before a legal wedding.

Chapter 4 then focusses on those cases in which there was both a legal wedding and a non-legally binding ceremony, exploring the order of these different ceremonies and the meaning that they held for the parties. Chapter 5 highlights why relatively few of those who had the two ceremonies close together in time had chosen to hold them on the same day and in the same place, and highlights the constraints of the existing legal options. Chapter 6 then turns to those who did not have the option of having a legal wedding in the form of their choosing in order to assess how far the desire to marry outdoors, or in an interfaith, Pagan, Humanist or independent-led ceremony is motivating couples to have a non-legally binding ceremony.

In chapter 7, the reasons for having a religious-only marriage are explored, with a focus on those who conducted or entered into a non-legally binding religious marriage without formal arrangements having been made for a legal wedding. It adds further nuance to the debates about the number of religious-only marriages by showing how many of these couples went on to have a legal wedding, while others were planning to do so. Finally, chapter 8 summarises our key research findings and the implications for policy.

⁶² R Probert, R Akhtar, S Blake and S Pywell, *The impact of Covid-19 on legal weddings and non-legally binding ceremonies* (forthcoming 2022).

2. Methods

This research study set out to explore the reasons people have for going through non-legally binding wedding ceremonies in England and Wales and the role of those who conduct them. As discussed in the previous chapter, a better understanding of why couples choose such ceremonies and why they are conducted will enable the potential impact of proposed marriage law reforms to be assessed. In this chapter, we describe the methods used in this study, how they worked in practice, and who we engaged as participants.

Research Questions

The research questions we sought to explore were:

- **Why did individuals have non-legally binding wedding ceremonies?**

Do they reflect a way of marrying which is not currently available within existing legal frameworks, or did individuals choose them because either they or their partner did not want to be legally married?

If they had a legally binding ceremony as well as a non-legally binding ceremony, which came first and how meaningful were the different ceremonies? Would they have preferred to have combined the legal and non-legally binding ceremonies?

If they did not have a legally binding ceremony, what were their reasons for this and were they aware of the outcomes upon relationship breakdown?

- **Why were individuals conducting non-legally binding wedding ceremonies?**

Who conducted these ceremonies, why, and what form did they take?

Did these individuals understand and advise couples about the requirements for a legally binding ceremony?

- **What would be the potential impact of the Law Commission's proposed reforms for where weddings can take place and who can solemnise a wedding?**

How might the proposals work for different individuals and communities?

What might the potential consequences be for couples who do not comply with the proposed requirements?

What is the likely impact on the rate of couples entering a legally binding marriage?

Study Design

In order to reflect the exploratory nature of the research questions, a two-part qualitative research design was adopted. Including both individuals who have had non-legally binding ceremonies and those who have conducted such ceremonies enabled us to assess and analyse their beliefs, views, and practices to better understand the reasons for such ceremonies taking place and the potential impact of proposed law reforms. For a timeline, see Figure 1. We chose a combination of focus groups, as well as group and individual interviews as our methods of data collection. Due to the mandatory social distancing requirements of the Covid-19 pandemic, which was ongoing between September 2020 and May 2021, all methods were undertaken remotely, largely using Zoom video-conferencing software. For details regarding our ethical approach and how we worked with our Advisory Group to ensure that our research was conducted with rigour, please see Appendix 1.

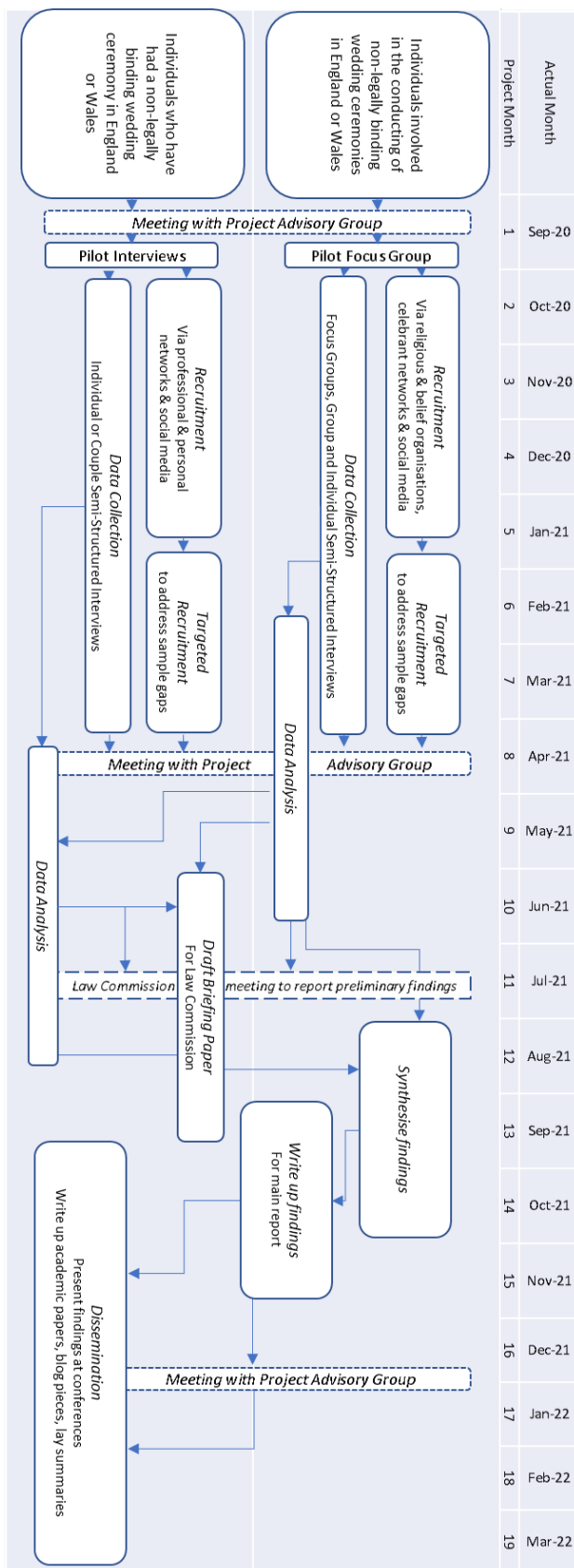


Figure 1: Study Protocol

Individuals who had a non-legally binding ceremony

Semi-Structured Interviews

To explore why individuals had gone through non-legally binding ceremonies, we used the semi-structured interview method interviewing one member of the couple who married (except for five interviews with both members of the couples as outlined further below). Asking each participant the same questions was intended to support consistency and comparison across interviews. At the same time, we envisaged that participants would be able to expand upon their answers in line with their own areas of interest and experiences and thereby potentially extend our learning beyond the frame of the questions we asked.⁶³ In addition, a semi-structured approach allowed for follow-up questions where issues emerged from interviewees' initial answers.

Six pilot interviews were conducted to assess and test the schedule of interview questions and to provide the team with an opportunity to refresh interview skills prior to 'going live'. The interviews lasted on average 40 minutes. The same initial questions were asked of all interviewees. Different questions were then asked to probe the reasons for having or not having a dual ceremony depending on whether participants had also had a legal wedding. All interviewees were then asked for their views on the proposed reforms to weddings law. If participants who were willing to share their wedding experience preferred a different mode to Zoom (e.g., Teams, telephone) this was facilitated to support participation. For the areas covered in the interview, see Figure 2.

1. Description of relationship prior to getting married and the decision-making process related to the form of wedding, including influences upon this decision
2. Description of the wedding ceremony/ies - what was involved, where it was held, who attended
3. If they had only a non-legally binding ceremony, their reasons for not having a legal ceremony and awareness and satisfaction with lack of legal status
4. If they had both legal and non-legally binding ceremonies, their reasons for the order and gap between the ceremonies, which was more meaningful, and preferences regarding combining ceremonies
5. Experience of the current legal process of getting married
6. Views on the proposed marriage law reforms and potential impact within their communities

Figure 2: Summary of questions asked to individuals who had had a non-legally binding wedding ceremony

Recruitment

Recognising that those who have had non-legally binding wedding ceremonies can be a 'hidden population' where no sample frame exists,⁶⁴ a purposive recruitment strategy with snowballing was utilised for both sample groups.⁶⁵ A call for participants was placed on the project webpage and a link with an accompanying description of the study was circulated to professional and personal networks of the research team and the advisory group to raise awareness of the study (via social media, email newsletters, and WhatsApp groups). We

⁶³ SE Kelly, 'Qualitative Interviewing Techniques and Styles' in I Bourgeault, R Dingwall and R De Vries (eds) *The SAGE Handbook of Qualitative Methods in Health Research* (Sage Publications, 2010); HJ Rubin and IS Rubin, *Qualitative Interviewing: The Art of Hearing Data* (Sage Publications, 2005).

⁶⁴ A Ellard-Gray, NK Jeffrey, M Choubak and SE Crann, 'Finding the Hidden Participant: Solutions for Recruiting Hidden, Hard-to-Reach and Vulnerable Populations' (2015) *International Journal of Qualitative Methods* 1.

⁶⁵ J Kirchherr and K Charles, 'Enhancing the sample diversity of snowball samples: Recommendations from a research project on anti-dam movements in Southeast Asia' (2018) 13 (8) *PLoS ONE*: e0201710.

also wrote two blog pieces⁶⁶ and circulated links to these articles on social media. Those who agreed to participate were asked to pass on information about the study to others they might know who might similarly wish to take part. Those involved in conducting non-legally binding ceremonies who had participated in a focus group or seen our calls for both sample groups helpfully referred on individuals whose ceremonies they had conducted. Several organisations (such as LGBT+ member groups, single-parent or mixed-faith networks, and professional wedding celebrant companies) also supported the study by circulating our call for participants. Many other organisations did not respond to similar requests to help, which likely reflects the pressing demands on services during the pandemic.

Based on our prior qualitative research experience, we predefined target numbers of participants which we felt would provide a large-enough breadth of data whilst also being manageable within our study timeframe and stopped recruiting after these targets were met. The research team regularly reflected on the range of experiences being captured and the characteristics of the sample being recruited, including gender, sexuality, religious and belief affiliations, ethnicity, and regional area of residence. Where we identified gaps, we focused recruitment efforts by contacting further networks and organisations associated with the communities we had yet to engage or who might reach a wide audience. For example, when specifically looking for individuals who had had a non-legally binding ceremony, we paid to post adverts on the social network platform Mumsnet and on a Sikh online network.

Sampling

We aimed to interview 80 individuals who had had a non-legally binding wedding ceremony in England or Wales between 2015 and the time of the interview (up to May 2021). Within that 80, we set out to interview approximately 20 who did not have an additional legal ceremony. Whilst there is limited existing data from which to draw, one study has suggested that most couples who have a non-legally binding ceremony also have a legally binding ceremony.⁶⁷ Based on this, we felt that an 60/20 split would provide us with sufficient data to explore both the reasons for dual ceremonies and the reasons for not having a legally binding ceremony.

Reflecting an understanding that the 'legal' part of a wedding might be seen as separate from a religious ceremony even if the current law would recognise them as a single ceremony,⁶⁸ our definition of a non-legally binding ceremony echoed that of the participants. For example, if a participant had had a Hindu wedding in a registered place of worship with an authorised person but viewed the declaratory and contracting words as detached from their Hindu ceremony, we took an inclusionary approach and accepted their definition of having had a non-legally binding ceremony and a separate legal wedding.

Our study was not intended to be representative of couples who go through a non-legally binding ceremony, for the simple reason that the unofficial status of such ceremonies means that there is no data against which a sample could be compared. Nor was it intended to be representative of couples who have a legal wedding, since the characteristics of the two groups may be very different. Given the specific policy interest in Muslim marriage practices, we aimed to recruit a larger sample of Muslims, but to obtain a more nuanced picture of the range of pathways to getting married we also sought to ensure that a range of different faiths and beliefs (as well as lack of beliefs) were included. To this end, we used national faith and

⁶⁶ January 2021: <https://lawandreligionuk.com/2021/01/12/when-is-a-wedding-not-a-marriage-exploring-non-legally-binding-ceremonies/>; March 2021: <https://theconversation.com/why-meghan-and-harry-and-many-others-choose-to-have-two-wedding-ceremonies-156893>.

⁶⁷ S Pywell, 'The day of their dreams: celebrant-led wedding celebration ceremonies' [2020] 32 *Child and Family Law Quarterly* 177.

⁶⁸ See further chapter 3.

belief statistics as a guide to determine the approximate cohort of each ceremony type.⁶⁹ We did not have a sampling criterion beyond type of ceremony, but we did purposively seek to include same-sex couples so that we could explore any differences in their experiences of the process of getting married.

Our sampling criteria for this sample were:

- 60 participants who have had a non-legally binding ceremony in addition to a legally binding ceremony, with both ceremonies held in England or Wales between 2015 and 2021
- 20 participants who have had a non-legally binding ceremony in England or Wales between 2015 and 2021 in the absence of a legally binding ceremony
- Based on the ONS statistics on population size within each faith community, we aimed for this sample of 80 to include approximately:

30 Muslim participants who had had a *nikah* ceremony;

15 participants who had had a Hindu ceremony;

20 participants from other faith groups, including Sikh, Buddhist, and Pagan communities;

15 participants who had had a non-religious ceremony.

Changes to Study Design

In five cases, both parties of a couple were interviewed together. The decision to do so was made at the discretion of the interviewer if they felt that there were good reasons for making an exception (for example, if, due to social anxiety, one partner would find it difficult to participate alone). Having a spouse present may have restricted what was said within the interview to what each felt comfortable saying in front of the other. For example, critical views of in-law involvement in wedding decisions may have been left out. Yet we found, as per existing research,⁷⁰ that having both spouses present also supported discussion, as one could prompt the other for details they may have forgotten.

Secondly, during recruitment, interest was received from several individuals who were keen to participate in the individual interviews but whose non-legally binding wedding had been held before 2015. In February 2021, we were receiving fewer expressions of interest and so, to support completion of the project within the timeframe, we extended the sample criteria to include those whose weddings had been held as early as 2010. This meant that those who had already expressed interest were able to participate. Extending the timeframe in this way may have had some impact on memory recall, although in the few cases in which participants explicitly stated that they could not recall details about the legal process of getting married, their wedding had taken place within the past five years as per the first sample criterion. In fact, we found that the richness of descriptions of non-legally binding wedding ceremonies depended more on interviewer style and the time the participant had available for the interview, rather than the time that had passed since the events being described. As we moved into targeted recruitment and paid for two online adverts calling for

⁶⁹ At the time of the 2011 census, 59.3% of the population of England and Wales described themselves as being Christian, 25% as having no religion, 4.8% as Muslim, 1.5% as Hindu, 0.8% as Sikh, 0.5% as Jewish and 0.4% as Buddhist: see Office of National Statistics, 'Religion in England and Wales 2011' (11 December 2012), at <https://www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/religion/articles/religioninenglandandwales2011/2012-12-11>.

⁷⁰ S Blake, A Janssens, J Ewing and A Barlow, 'Reflections on Joint and Individual interviews with Couples: A Multi-level Interview Mode' (2021) 20 *International Journal of Qualitative Methods* 1.

participants, as referred to above, we also offered a £10 shopping voucher to help extend our reach. One of these adverts (Mumsnet) recruited a participant with Humanist beliefs who had had a Humanist non-legally binding ceremony. This was an important addition to the sample as those we had interviewed up to this point who had had a Humanist ceremony did not define their beliefs as Humanist. None of the participants appeared to be motivated to take part because of the incentive, so we do not feel it skewed our sample. Third, we had originally envisaged that the wedding ceremonies of those who took part in the interviews would all be based in England and Wales. However, five Hindu or Jain participants who had either had their legal or non-legally binding ceremony overseas were also recruited to the study. Whilst this did not meet our sample criteria, their experiences were a useful addition to the study in providing us with reasons as to why couples may choose to marry overseas.

Who took part

Eighty-eight individuals shared their wedding experiences in 83 interviews.⁷¹ There were more individuals than interviews as five of the interviews were with the couple rather than an individual. Where the spouse joined in the interview, we obtained consent to include their answers, but as they were describing the same weddings they are not included in this sample description.

As Table 1 shows, our sample had a variety of different non-legally binding ceremonies. In line with our sample criteria, we interviewed a higher number of individuals who had had a *nikah*, a Hindu wedding, or a largely non-religious ceremony led by an independent celebrant.⁷² Despite targeted recruitment efforts, we struggled to recruit participants who identified as Humanist and had had a Humanist ceremony.⁷³ We interviewed 4 same-sex couples who had all had religious non-legally binding ceremonies. Again, despite targeted recruitment, we did not recruit any same-sex couples who had had a Humanist ceremony or one led by an independent celebrant.⁷⁴

Of our 83 interviews, 16 individuals had not had a legal wedding at the time of the interview; within this group, 14 were Muslim, one was Sikh, and one was spiritual (having had an interfaith ceremony). While our initial target was approximately 20 in non-legally binding marriages only, the 16 interviews provided a wealth of data and the high number of *nikah*-only marriages in this cohort also led us to stop recruiting before reaching 20. As the key criterion for the study was to have had a non-legally binding ceremony, individuals for either sample were not recruited according to demographic characteristics such as age, gender, ethnicity, or socio-economic status. As per Table 2, however, we do set out such characteristics in order both to describe who took part in these interviews and, as the first study to explore non-legally binding ceremonies across communities, to help to start building a picture of who is having or conducting ceremonies in addition to, or in the absence of, legal ceremonies.

⁷¹ A further 18 expressed interest in participating. Five did not meet the study inclusion criteria and so were not eligible. Three declined due to finding it difficult to schedule an interview time around work and family commitments. Ten did not respond further once the study information was sent to them.

⁷² As we discuss further in chapter 6, while some of these ceremonies included religious elements they were distinct from those conducted by religious celebrants in line with particular scriptural requirements.

⁷³ As we explain in chapter 6, only one participant who had had a Humanist wedding defined herself as Humanist.

⁷⁴ However, in the sample of individuals who had conducted non-legally binding ceremonies we did hear further about the experiences of same-sex couples.

Table 1: Form of Non-Legally Binding Ceremony for Individuals who took part in Semi-Structured Interviews

Form of Non-Legally Binding Wedding Ceremony	Number
Christian Blessing	9
Hindu or Jain	13
Humanist	4
Independent	12
<i>Nikah</i>	35
Pagan (including Wiccan, Druid, Animist)	4
Bahá'í, Buddhist, Interfaith, Jewish, Sikh, Zoroastrian*	9
Total	86**

*To support anonymity, where we had fewer than 4 participants we have grouped them together. **The total is higher than 83 interviews, as 3 participants had 2 separate non-legally binding ceremonies.

The median average age of participants in this sample was 35 years (range 24 – 61). This is in keeping with national statistics for the median age of marriage.⁷⁵ The majority of participants were female (72%), which is in line with an earlier study in this area,⁷⁶ and perhaps reflects the role females take as relationship gatekeepers.⁷⁷ However, we did capture male experiences across a range of different ceremony forms. Based on current residence, participants were distributed across the regions of England and Wales, although we had greater numbers of participants from London, the East Midlands, and the Southwest and fewer from the North of England or Wales. A small number of participants were living overseas at the time of the interview, but their weddings were held in England or Wales. Reflecting national statistics and our particular interest in Muslim weddings, we interviewed a larger number of White British and Asian participants. Eighteen per cent of participants were born overseas but only three participants did not have English as their primary language; in each case the primary language was European (French, Italian, Hungarian). Common additional languages spoken were Bengali, Gujarati, and Urdu. Whilst we had translators on standby, language may have acted as a barrier to participation by impacting understandings of legal status and marriage processes.

⁷⁵ In 2018 the median age at marriage was 34 years for men and 32 for women in opposite-sex relationships and 38 for men and 34 for women in same-sex relationships: ONS, 'Marriages in England and Wales', Table 5, <https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/marriagecohabitationandcivilpartnerships/datasets/marriagesinenglandandwales2013>.

⁷⁶ R Akhtar, *British Muslims and transformative processes of the Islamic legal traditions: negotiating law, culture and religion with specific reference to Islamic family law and faith-based alternative dispute resolution* (PhD thesis, 2013, University of Warwick).

⁷⁷ RM Mellor, E Slaymaker and J Cleland, 'Recognising and overcoming challenges of couple interview research' (2013) 23 *Qualitative Health Research* 1399.

Table 2: Demographic Characteristics of Sample of Individuals who have had Non-Legally Binding Ceremony

	Number of Participants Total n:83
Marital Status	
Married following legal and non-legally binding ceremony	65
Cohabiting following non-legally binding ceremony	13
Single (Separated, Divorced, or Widowed)	5
Have dependents	42
Ethnicity	
Asian Bangladeshi	5
Asian British	5
Asian Indian	9
Asian Pakistani	5
White British	24
White Other*	10
Mixed	19
Other Ethnic Group or Not Provided	6
Beliefs	
Agnostic or No Belief	11
Atheist or Humanist	4
Christian	8
Hindu or Jain	10
Muslim	33
Pagan (including Wiccan, Druid, Animist)	4
Bahá'í, Buddhist, Jewish, Sikh, Spiritual, Zoroastrian, Unclear	13
Mixed Faith or Belief Couple	19
Same-sex Couple	4
Previously Married (prior to current relationship)	13**
Highest level of Education	
Postgraduate	39

Undergraduate	37
School	7
Main employment type	
Administrative	10
Professional	49
Self-employed	9
Semi-skilled	6
Not working (home-maker, unemployed, student, retired)	5
Not provided	4
Employment Hours	
Full-time	53
Part-time	24
Not applicable/not provided	6

The presented categories closely follow Census groupings. *This includes participants who described their ethnicity as White European or Caucasian without another identifier. **Two did not provide this information, so this is 13 out of 81 rather than 83.

A large proportion of the sample had professional occupations and at least an undergraduate degree. Whilst this may have reflected the recruitment approaches and snowball sampling, it could also reflect the observed ‘marriage-gap’ trend and the impact of a couple’s socio-economic status in determining the likelihood that they will marry.⁷⁸ Just under a sixth had been previously married, with 6% single at the time of the interview. Of this latter group of participants who were single, one had previously had both a legally binding and a non-legally binding ceremony and three had had a non-legally binding ceremony only.

Nearly a quarter of our sample were in a relationship with a partner who did not share their faith or belief. In most of these cases, one had a faith or belief and the other had no beliefs, while in a smaller number each partner had different faiths or beliefs. Data on mixed-faith marriages is not directly collected in England and Wales, where marriage certificates only record the nature of the ceremony and not the parties’ beliefs. A previous study analysed marital status and declared religious beliefs in the 2011 census data and suggested that just 1.5% of existing marriages involved spouses of different faiths, but that the percentage was higher among younger generations.⁷⁹ This earlier study’s definition of religiously mixed marriages excluded spouses where one partner did not have a belief, except where their partner was non-Christian and of different ethnicity, to include couples of mixed religious heritage. Clearly there are different definitions of what constitutes a ‘mixed’ marriage; however, our sample included a sizeable number and range of mixed marriages, which is perhaps unsurprising due to the disproportionate likelihood of non-legally binding

⁷⁸ M Bertrand, P Cortes, C Olivetti and J Pan, ‘Social Norms, Labour Market Opportunities, and the Marriage Gap Between Skilled and Unskilled Women’ (July 2021) 88 *The Review of Economic Studies* 1936.

⁷⁹ See D Voas, ‘Religiously Mixed Marriages in England & Wales’: <https://dam.ukdataservice.ac.uk/media/604843/voas.pdf>.

ceremonies occurring given that there is no formally recognised option for a legal wedding to be conducted according to two different faiths.⁸⁰

Overall, participants in our sample group tended to be working in professional roles, highly educated, and over the age of 30. Whilst, as discussed, this meant that our sample reflects the average demographic of those marrying, our data perhaps misses the relationship practices of individuals who marry young (late teens/early twenties) who may have been more likely to have a non-legally binding ceremony in the absence of a legal wedding to test the relationship or to prioritise other life areas such as career or travel. It also means that our findings are limited in respect of lower socio-economic groups, although a few participants did describe how a particular combination of ceremonies had been chosen in order to save costs. It has been suggested that a privileged class is reflected in the ability to choose lifestyles, including the way in which individuals marry.⁸¹

Individuals who conduct non-legally binding ceremonies

Focus Groups

To explore why individuals conduct non-legally binding wedding ceremonies, we chose to use focus groups. This choice reflected an understanding that interaction within a group of people who have a common role would spark discussion and encourage participants to expand on their expressed views as compared to single interviews.⁸² The composition of each focus group was determined by a range of different considerations. Our aim was to ensure that participants would feel able to share their views and experiences with the rest of the group and that there would be sufficient common ground between them to promote discussion. In some cases that meant having separate groups for different faiths or distinguishing between celebrants who conducted ceremonies in line with their beliefs and those who did not. As discussed later in this chapter, some focus groups brought together members of different faiths where we judged that this would be appropriate.

The online focus group process was tested with a pilot session held with some members of the study's advisory group. The focus group sessions lasted around an hour and a half, and each was facilitated by one of the research team, with at least two other members of the team attending to audio-record, observe, and attend to any technical difficulties that might arise. The questions asked were slightly adapted for each focus group depending on their current ability to conduct legal weddings but covered the areas set out in Figure 3:

1. Description of the last non-legally binding wedding each had conducted in England or Wales
2. Perceived role in conducting weddings and the process of meeting with the couple prior to the ceremony
3. How the ceremony conducted fits with the legal process of getting married and the role of the celebrant in advising couples on legal status
4. Views on current wedding trends, including whether demand for non-legally binding ceremonies has changed, types of wedding venues and differences in form of ceremony
5. Experience of the process to becoming authorised to conduct legal weddings
6. Potential impact of the proposed marriage law reforms, strengths and limitations of the proposals for the community they serve

Figure 3: Summary of questions asked to individuals involved in conducting non-legally binding weddings

⁸⁰ See further chapter 6.

⁸¹ J Carter and S Duncan, *Reinventing Couples: Tradition, Agency and Bricolage* (Palgrave Macmillan, 2018).

⁸² S Wilkinson, 'Focus Groups: A Feminist Method' in SN Hesse-Biber and ML Yaiser (eds) *Feminist Perspectives on Social Research* (Oxford University Press, 2004).

Recruitment and Sampling

As discussed above, we followed the same purposive and snowballing strategy for both sample groups. For imams in particular, a range of mailing groups for mosques and WhatsApp groups of imams were used. Our recruitment strategy proved to work differently for different population groups. We received a great deal of interest from imams, Hindu priests, and independent celebrants, but, as with the other sample group, we struggled to recruit Sikh participants. As our advisory group helped to raise awareness of the study within the communities they represented, a Sikh representative in this group or as a member of the research team might have better supported engagement. We did however engage with other communities, such as Pagans, who were similarly unrepresented in the advisory group or research team, suggesting that there were additional barriers to accessing the Sikh community for this study. While potential participants were informed that translators were available, both Sikh and Hindu individuals involved in conducting weddings were hesitant to participate because of language barriers.

We aimed to hold a minimum of 12 focus groups, each of four to eight individuals conducting non-legally binding wedding ceremonies (including individuals unaffiliated to organisations or specific places of worship). If oversubscribed, participation was offered on a first-come basis. In accordance with overall population sizes,⁸³ we aimed to conduct:

- 5 focus groups for imams, as Muslims are the second-largest religious group in England and Wales and a lot of policy focus on this area has been on Muslim marriages
- 2 focus groups with Hindu priests, as Hindus constitute the third-largest religious group in England and Wales
- 1 focus group with independent celebrants
- 4 focus groups with representatives of other religious or belief groups.

Changes to Study Design

As will be set out in the next section, we ended up undertaking three focus groups, rather than one with independent celebrants. This decision reflected our learning from a published study which found that considerably more ceremonies are led by independent rather than Humanist celebrants.⁸⁴ It also reflected a high level of interest from independent celebrants who wished to participate and a pragmatic decision that, with a larger cohort, it would be possible to further examine differences between independent celebrants according to the beliefs they held and the form of ceremonies they conducted.

During the focus groups with imams, a concern arose within the research team that generational differences in views were potentially not being uncovered on account of the respect held by younger imams for those elder imams present. This was also a concern as regards imams deemed more or less knowledgeable being present in the same group. As a result, it was decided that further engagement with imams should use the individual interview method. These interviews were all conducted by one member of the research team, who found that individual interviews allowed for more frank disclosures without the peer pressure of focus group settings, meaning that in-depth experiences and opinions could be gathered. By contrast, the focus groups, as originally designed, helped us to

⁸³ Office of National Statistics, 'Religion in England and Wales 2011' (11 December 2012), at <https://www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/religion/articles/religioninenglandandwales2011/2012-12-11>.

⁸⁴ S Pywell, 'The day of their dreams: celebrant-led wedding celebration ceremonies' [2020] 32 *Child and Family Law Quarterly* 177.

understand the discussions that are happening within and across different communities. As three focus groups were held with 16 imams and a further 14 individual interviews were conducted, this enabled the best of both focus group and interview methods to be incorporated in the study when engaging a larger and more diverse participant group. Both discussion and a depth of responses were collated, and the approach to analysis was applied consistently across all of the data.

We also chose to conduct group interviews rather than focus groups with two Buddhists and two Pagans respectively,⁸⁵ and individual interviews with one Sikh priest and two Catholic priests. There were a range of reasons for these choices. One was the timing: these individuals were all recruited at a slightly later stage from the earlier focus groups. A second was that these individuals had such different experiences that little would have been gained from bringing them together in a single group. The two Buddhists were both authorised persons rather than celebrants, whereas the two Pagans had conducted only non-legally binding ceremonies. The Catholic priests both had experience of conducting legal weddings, but as the non-legally binding ceremonies that they had conducted had been for same-sex couples, an issue of some controversy within the Catholic church, we judged that individual interviews would enable them to be more open in their views. Finally, while we had hoped to recruit a larger number of Sikh priests, having a single in-depth interview ensured that we had more information about Sikh weddings than would have been generated within a mixed focus group.

Who took part

As explained above, we adapted our original intention to hold 12 focus groups. We did however still recruit in line with our expectations for the number of participants in this sample group.⁸⁶ Table 3 details the membership of each group and the nature of their engagement in this study.

Table 3: Focus Group, Individual or Group Interview Membership

Form & Identifier	Composition	Number of Attendees
Focus Group A	Imams	7
Focus Group B	Imams	5
Focus Group C	Imams	4
Individual Interviews D	Imams	14
Focus Group E	Bahá'í, Zoroastrian, Christian & Muslim Celebrants	4
Focus Group F	Independent Celebrants with a religious belief but who conduct a range of ceremonies	8

⁸⁵ Where a group interview was undertaken, another member of the research team would again attend to observe and support where necessary.

⁸⁶ Two Humanist celebrants, four Independent celebrants, five imams and one Pagan priestess expressed interest in participating but did not respond to follow-up correspondence. Two Independent celebrants declined to participate because of personal bereavement and attendance at a funeral. One Humanist celebrant expressed interest after the focus groups had been arranged. Two Rabbis who were directly approached did not respond. Two potential participants (one Christian faith leader, one Hindu priest) did not return their consent forms.

Focus Group G	Humanist and Independent Celebrants who conducted ceremonies in accordance with their own beliefs	8
Focus Group H	Independent Celebrants without religious beliefs who conduct a range of ceremonies	8
Focus Group I	Independent Celebrants who conduct different forms of ceremonies including themed weddings	4
Focus Group J	Hindu Priests	3
Focus Group K	Hindu Priests	5
Focus Group L	Christian and Jewish Priests	5
Group Interview M	Buddhist Celebrants	2
Group Interview N	Pagan Celebrants	2
Individual Interviews O	Catholic Priests	2
Individual Interview P	Sikh Priest	1
Total Number of Individuals who Conduct Non-Legally Binding Ceremonies		82

Reflecting our research questions, our sample predominantly, although not exclusively, comprised either individuals who were currently unable to conduct legally binding ceremonies or imams, the latter being the focus of much policy discussion in relation to non-legally binding ceremonies. However, the sample also included participants for whom conducting non-legally binding ceremonies was very much an exception. For example, focus group L brought together three Christian ministers (two of whom were Anglican) and two rabbis: for them, conducting legal weddings was the norm. Focus group E was probably the most diverse, bringing together a Baptist minister who was an authorised person, a representative of the Bahá'í faith who had acted as an MC, a Zoroastrian priest, and a Muslim woman who conducted *nikahs*. What united them all was their commitment to conducting ceremonies according to their particular beliefs in the face of obstacles: the Baptist minister had conducted a wedding via YouTube during lockdown, Bahá'í and Zoroastrian ceremonies were almost invariably non-legally binding because of their lack of buildings, while one participant conducted *nikahs* for those who would probably have been unable to marry in a mosque.

In this sample group, there were more male participants (63%) than female (37%) and a mean average age of 52 years (range 27 – 73). In all but three instances, the religious faith leaders who participated were male, whilst more of the independent and Humanist celebrants were female (24/28) with a slightly older average age (55 years). Participation based on current residence was similarly distributed across the regions of England as per the individuals who had had non-legally binding ceremonies, with fewer participants based in the North of England and Wales and more based in the Midlands, London, or the Southwest. Table 4 sets out the ethnic breakdown of participants in this sample. The majority of

independent and Humanist celebrants in this sample were White. The Muslim population in England and Wales is recognised as ethnically diverse,⁸⁷ and our imam sample also reflected this diversity. Of the 54 religious celebrants, 31 (58%) were born overseas compared to three of the 28 (11%) independent and Humanist celebrants. Whilst 34% of this sample did not speak a language other than English, common additional languages included Bengali, Gujarati, Hindi, Punjabi, and Urdu.

Table 4: Ethnic Breakdown of the Sample of Individuals who had Conducted Non-legally Binding Ceremonies

Ethnicity	Number
Asian Bangladeshi or Asian Other	6
Asian British	4
Asian Indian	8
Asian Pakistani	6
Black African	4
British*	8
White British	23
White Other**	7
Mixed	9
Other Ethnic Group or Not Provided	7

*These participants did not provide any further information as to ethnicity. **This includes participants who described their ethnicity as White European or Caucasian without another identifier.

We would typically expect religious faith leaders to be male, and those engaging in our study seem to corroborate this. However, we do not know if there are younger cohorts of Humanist or independent celebrants whom we did not engage, and for whom there might be different reasons for conducting non-legally binding ceremonies. We did not recruit enough Sikh individuals to hold a focus group as originally planned, and our findings are particularly restricted in their application to this community. We found that limited English language abilities did inhibit participation for this group. That said, we did engage with individuals across religious or belief communities, including minority groups who might not typically be included. We met our target for two focus groups with Hindu priests, and heard from a diverse range of imams. There is a very limited evidence base in relation to the work of independent celebrants, and our large sample in this study will support understanding of this growing trend.⁸⁸

Further description of our samples, such as the order and nature of both the legal weddings and non-legally binding ceremonies, the language in which ceremonies were conducted, and the training and experience of those involved in conducting weddings is set out and discussed in relevant chapters to come.

⁸⁷ The census data from 2011 showed that 7.8% were White, 3.8% mixed race, 67.6% Asian (7.3% Indian, 38% Pakistani, 14.9% Bangladeshi, 0.3% Chinese and 7.2% other Asian), 10.1% Black, 6.6% Arab, and 4.1% other. See further Muslim Council of Britain, *British Muslims in Numbers; A Demographic, Socio-economic and Health Profile of Muslims in Britain Drawing on the 2011 Census* (2015) https://www.mcb.org.uk/wp-content/uploads/2015/02/MCBCensusReport_2015.pdf.

⁸⁸ S Pywell, 'The day of their dreams: celebrant-led wedding celebration ceremonies' [2020] 32 *Child and Family Law Quarterly* 177.

Data Analysis

The study collected a high volume of rich text-based data. In line with principles of systematic thematic analysis,⁸⁹ a four-step analytical process was followed to organise, manage, and explore the data. Four of the five research team members were involved in the first two steps, and three undertook the final two steps. First, each team member familiarised themselves with a subset of the focus group transcripts and 'open coded' (selected and named emerging insights in relation to the research questions) using the comment function within the anonymised transcript files. These open codes were then discussed as a group and a codebook developed to set out agreed labels (nodes) for the areas of interest. As can be seen in the coding tree provided in Appendix 2, the nodes were a mix of descriptive and theoretical labels. In the second step, all transcripts were coded in line with the codebook using NVivo 12 software.⁹⁰ This provided an auditable trail and meant that the data could be extracted both by assigned node and participant characteristics. In the third step, substantial themes arising from the extracted data were grouped by node: moving between micro and macro sensemaking⁹¹ and carefully paying attention to experiences or views which did not seem to fit with others, as well as to crossovers with data within other nodes. Emerging findings were then shared and discussed with the study advisory group to further highlight important areas to consider. These three steps were then repeated with the transcripts from individual interviews, with the nodes developed from the focus group analysis informing the development of this second codebook.

In the final step, comparisons were made between the themes from the separate analysis of the two participating samples (those who had had a non-legally binding ceremony and those who conduct non-legally binding ceremonies) to build a picture of the data as a whole. While the uncertainty accompanying the Covid-19 pandemic was ongoing, careful attention was paid to any possible impact of the pandemic context and to how the emerging findings could be valid and generalisable to a post-pandemic world. The research team worked closely on this analysis, sharing summaries of the themes as they were written, so that each could act as a check as to whether the themes reliably reflected the data; verifying accuracy through a process of constant comparison with the transcript data;⁹² and adding in perspectives if they were felt to be missing. Verbatim quotations and examples from the data collected are used throughout the report to illustrate the findings. Each quotation has been assigned a code to indicate the sample group. Those who conduct non-legally binding ceremonies have a letter prior to the assigned number to indicate which focus group they were a member of (e.g., A-101), and those individuals who have had a non-legally binding ceremony are identified by number alone (e.g., 001). Where an interview participant identifier includes an A or B following the number, this indicates that this was one of the five interviews with both partners present. Finally, each participant code is followed by sex, age and belief in brackets within this report, however, it should be emphasised that the ceremony type did not always correlate with the beliefs of the participants.

Summary

An adaptive responsive approach to the methods used in this study supported the collection of rich data to answer our research questions. Oversight from the advisory group, as well as diversity in the research team, supported critical reflection of processes throughout the

⁸⁹ R Jaspal, 'Content Analysis, Thematic Analysis and Discourse Analysis' in GM Breakwell et al (eds) *Research Methods in Psychology* (Sage, 5th edn 2020).

⁹⁰ QSR International, 'Technology and Software Solutions' (2020), at <https://www.qsrinternational.com>.

⁹¹ For example, the individual circumstances for the wedding (such as length and type of relationship prior to wedding, family involvement, faith or beliefs of each partner) and wider social circumstances (such as the historical and current rights of their community to have a legal wedding in England or Wales).

⁹² MQ Patton, 'Enhancing the quality and credibility of qualitative analysis' (1999) 34 *Health Service Research* 1189.

project. We also learnt a lot from using remote data collection methods, which we plan to disseminate to other researchers. Despite the ongoing coronavirus pandemic against which this study took place (or perhaps in part because of it, with people in many cases spending more time at home), 170 individuals kindly shared their wedding experiences with us. A number of them also commented on the importance of the study and how they enjoyed taking part.

Having set out the methodological context for the study, in the next chapter we turn to the legal context. We will explain the current legal process for getting married in England and Wales and identify what limitations might give rise to non-legally binding ceremonies, how different types of ceremonies would be classified, and the consequences of conducting a ceremony outside the legal framework.

3. The legal context

Introduction

In this chapter we examine the legal context within which non-legally binding ceremonies take place. There are three key dimensions to this.

First, we set out the current law governing how couples can marry in England & Wales, as set out in the Marriage Act 1949. Understanding what options are available to couples – and what the limitations of these options are – is essential to understanding why some couples have a non-legally binding ceremony. As part of this it is necessary to look at the origins of the current law to explain why special provision is made for Anglican, Jewish and Quaker weddings and how the option of getting married in a registered place of worship – or even in a register office – was designed primarily for other Christian groups, with little real thought ever being given to other faiths.

Second, we explain the rules that determine when a marriage will be valid – or, to put it another way, what constitutes the dividing line between a legally binding marriage and a non-legally binding ceremony. The frequent references to ‘unregistered’ marriages may suggest that the recording of a marriage in an official register is both necessary and sufficient to confer validity. In fact, as we discuss below, registration in this sense is neither necessary *nor* sufficient. Perhaps even more surprisingly, the validity of a marriage does not depend on all of the legal formalities laid down by the Marriage Act 1949 being observed. In addition, the legal classification – and therefore the consequences – of a non-legally binding ceremony is not straightforward: depending on exactly what form it took and the state of knowledge of the couple, it may be either void or non-qualifying.

Third, we explain the consequences of conducting a non-legally binding ceremony. There is an important difference between a ceremony that is *non-legal* and one that is *illegal*. While our study is concerned with the former, there are certain narrowly defined circumstances in which conducting a non-legally binding ceremony may constitute a crime and would, therefore, be illegal. Moreover, while there is no legal prohibition on a non-legally binding ceremony taking place before or instead of a legal wedding, there is a somewhat puzzling provision that imposes conditions on how a non-legally binding ceremony should be conducted *after* a civil wedding.

The current law

The law on governing how couples can get married in England & Wales is set out in the Marriage Act 1949.⁹³ Provision is made for the following types of ceremony:

- Anglican
- Civil
- Jewish
- Quaker
- Any other form of religious ceremony conducted in a registered place of worship

⁹³ In addition to the options discussed in the text, provision is also made for the weddings of those who are detained or housebound, referred to as ‘qualifying residential marriages’ (Marriage Act 1949, ss 26(1)(dd) and 26B(6)) and for weddings in naval, military and air force chapels (Marriage Act 1949, Pt IV). Separate provision is also made for those who are terminally ill (Marriage (Registrar General’s Licence) Act 1970).

The details of each of these options is highly complex and what follows is only a summary of the key requirements of each of these options.⁹⁴

Anglican weddings are governed by Part II of the 1949 Act. These are the only weddings that need not be preceded by civil preliminaries.⁹⁵ Instead, the Anglican preliminaries of banns, common licences, and special licences are all recognised as legal preliminaries. Upon completion of the preliminaries the couple will be issued with a marriage document which serves the dual purpose of authorising the wedding to go ahead and, in due course, providing the documentary evidence that it did go ahead.⁹⁶ Anglican weddings must generally take place in an Anglican church or chapel⁹⁷ and must be conducted according to one of the approved forms of service,⁹⁸ in the presence of two witnesses,⁹⁹ by an ordained member of the Anglican clergy, defined in the legislation as a 'clerk in Holy Orders'.¹⁰⁰ Once the ceremony has taken place, the marriage document must be signed by the couple, their witnesses, and the person who conducted the ceremony.¹⁰¹ The marriage document is then returned to the local register office to be registered.¹⁰²

Part III of the 1949 Act sets out the rules governing civil, Jewish and Quaker weddings, along with those conducted in a registered place of worship. In each case the wedding must be preceded by civil preliminaries. These require each of the couple to give notice of their intention to marry at their local register office. Once the notice period has been completed a schedule¹⁰³ will be issued authorising the wedding to go ahead.

What is required for the wedding itself will depend on what form it takes:

- a civil wedding in a register office (RO) must not include any religious service but must include certain prescribed words and be conducted in the presence of a superintendent registrar, a registrar, and two witnesses;¹⁰⁴
- a civil wedding on 'approved premises' (AP) must not include any material that is 'religious in nature'¹⁰⁵ but must include certain prescribed words and be conducted in the presence of a superintendent registrar, a registrar, and two witnesses;¹⁰⁶
- a Quaker wedding is conducted according to the usages of the Society of Friends;¹⁰⁷
- a Jewish wedding is conducted according to the usages of the Jews;¹⁰⁸

⁹⁴ For a more detailed account of each of these options, and those in n 93, see Law Commission, *Getting Married: A Consultation Paper on Weddings Law* (CP No 247, 3 September 2020).

⁹⁵ Except where the parties to the marriage are not 'relevant nationals', in which case the civil preliminaries must be used.

⁹⁶ The marriage document was introduced by the Registration of Marriages Regulations 2021, SI 2021/411, which came into force on 4 May 2021.

⁹⁷ Unless authorised by a special licence.

⁹⁸ On the approved forms of service see S Farrimond, 'Church of England Weddings and Ritual Symbolism' in J Miles, P Mody and R Probert (eds) *Marriage Rites and Rights* (Hart Publishing, 2015).

⁹⁹ Marriage Act 1949, s 22.

¹⁰⁰ Marriage Act 1949, s 78.

¹⁰¹ Marriage Act 1949, s 53B.

¹⁰² Marriage Act 1949, s 53D(2).

¹⁰³ The schedule was introduced by the Registration of Marriages Regulations 2021, SI 2021/411, which came into force on 4 May 2021. Previously marriages under Part II would have been authorised by two certificates issued by a superintendent registrar.

¹⁰⁴ Marriage Act 1949, s 45.

¹⁰⁵ The Marriages and Civil Partnerships (Approved Premises) Regulations 2005, SI 2005/3168, Sch. 2, para 11(2). On the interpretation of this requirement see S Pywell and R Probert, 'Neither sacred nor profane: the permitted content of civil marriage ceremonies' [2018] 30 *Child and Family Law Quarterly* 415.

¹⁰⁶ Marriage Act 1949, s 46B.

¹⁰⁷ Marriage Act 1949, s 26(1)(c).

¹⁰⁸ Marriage Act 1949, s 26(1)(d).

- a wedding in a registered place of worship (RPOW) must include certain prescribed words and be conducted in the presence of either a registrar or authorised person¹⁰⁹ but may otherwise be conducted according to such form or ceremony as the parties may choose.¹¹⁰

As with the marriage document, once the ceremony has taken place the schedule will be signed by the couple and their witnesses, together with the person by or before whom the marriage was solemnised and, if different, what is now termed the 'specified person'.¹¹¹ The latter is the person who, prior to the introduction of the schedule system, would be described as having a duty to register the marriage. Who has this responsibility again depends on the form of the wedding:

- for a civil wedding, it is the registrar;
- for a Quaker wedding, it is an officer of the Society of Friends;¹¹²
- for a Jewish wedding, it is the secretary of the synagogue of which one or both of the parties is a member;¹¹³
- for a wedding in a registered place of worship, it is either the authorised person appointed for that place of worship (or another place of worship in the same registration district) or, if none has been appointed or is present, a registrar.¹¹⁴

Once signed, the schedule must be returned to the local register office to be registered.¹¹⁵

These different requirements are summarised in Table 1, in order to show more clearly what is regulated and what is not regulated in each case.

¹⁰⁹ An authorised person is appointed by the trustees or governing body of the registered place of worship, who are required to 'certify the name and address of the person so authorised to the Registrar General and to the superintendent registrar of the registration district in which the building is situated': Marriage Act 1949, s 43. For the history of this option see R Probert, R Akhtar, S Blake, V Vora and T Barton, 'The Importance Of Being Authorised: The Genesis, Limitations, And Legacy Of The Marriage Act 1898' (2022) *Oxford Journal of Law and Religion* (forthcoming).

¹¹⁰ Marriage Act 1949, s 44.

¹¹¹ The 'specified person' is the person who, prior to the introduction of the schedule system, would be described as having a duty to register the marriage: Marriage Act 1949, s 53C(8).

¹¹² Marriage Act 1949, s 53C(8)(b). An 'officer of the Society of Friends' means a person whom the Recording Clerk of the Society of Friends in London certifies in writing under their hand to the Registrar General to be an officer in England and Wales of that Society: s 78(1). This replaces the term 'registering officer'.

¹¹³ Marriage Act 1949, s 53C(8)(c). For the detailed provisions setting out who is responsible for certifying who is the secretary for any particular synagogue, see Marriage Act 1949, s 67(a)-(d).

¹¹⁴ Marriage Act 1949, s 53C(8)(d) and (e).

¹¹⁵ Marriage Act 1949, ss 53C and 53D(3). Where the marriage is attended by a registrar, he or she will take custody of the marriage schedule; otherwise it is the responsibility of the specified person to return it.

Table 1: Requirements for a non-Anglican wedding

	RPOW	RO	AP	Jewish	Quaker
Preliminaries	Civil preliminaries				
Place	RPOW	RO	Approved premises	Not regulated	
Content	Prescribed words			Jewish usages	Quaker usages
Person tasked with conducting the marriage	Not regulated				
Persons required to be present	Registrar or authorised person	Superintendent registrar and Registrar		Not regulated	
Person tasked with returning the schedule	Registrar or authorised person	Registrar		Secretary	Officer of the Society

One obvious difference between Anglican weddings and those conducted under Part III is that the law does not state who is responsible for conducting a non-Anglican wedding, merely who is responsible for ensuring that the schedule is returned. A second obvious difference is the relatively relaxed regulation of Jewish and Quaker weddings as compared to other non-Anglican weddings. There are no statutory restrictions on where Jewish or Quaker weddings may take place. Perhaps even more surprisingly, the person responsible for ensuring that the schedule is returned does not even have to be present at the wedding, although he or she must be satisfied 'that the proceedings in relation to the marriage were conformable to the usages of the said Society or of persons professing the Jewish religion, as the case may be'.¹¹⁶

The options that are available to any given couple will also depend on whether they are of the opposite or same sex, as summarised in Table 3. While the Marriage (Same Sex Couples) Act 2013 made provision for same-sex couples to marry, it did not give them the same options as were available to opposite-sex couples.¹¹⁷ Religious groups are able to conduct same-sex weddings if they so wish, but a 'triple lock' means that no religious group or minister can be compelled to do so,¹¹⁸ while an additional lock explicitly provides that it is not possible for same-sex marriages to be conducted according to Anglican rites, whether in

¹¹⁶ Marriage Act 1949, s 55(1)(b).

¹¹⁷ N Barker and D Monk (eds) *From Civil Partnership to Same-Sex Marriage: Interdisciplinary reflections* (Routledge, 2015).

¹¹⁸ The three components of the 'triple lock' were the provisions that (a) religious groups had to make a conscious effort to opt in; (b) a failure to do so would not contravene equality law; and (c) even if a religious group had opted in, no individual member of that group could be compelled to take part in that service: Marriage (Same Sex Couples) Act 2013, s 2.

the Church of England or the Church in Wales.¹¹⁹ The Society of Friends has opted in,¹²⁰ as have the governing authorities for Liberal and Reform Judaism, but only a few registered places of worship have done so,¹²¹ and the number of same-sex wedding celebrated with religious rites remains tiny.¹²²

Table 3: The availability to same-sex couples of different routes into marriage

Type of wedding	Availability to same-sex couples
Civil	Yes (MA s 26(1)(b) and (bb))
Anglican	No (Marriage (Same Sex Couples) Act 2013, s 1(2)-(5)), although note the power to make provision for same-sex couples to marry in the Church in Wales if its Governing Body resolves in favour of conducting same-sex weddings (s 8)
Jewish	Only if the relevant governing authority has opted in (MA s 26B(4))
Quaker	Yes, the relevant governing authority having opted in (MA s 26B(2))
Registered place of worship	Only if the relevant governing authority has opted in (MA s 26A)

Nor is it necessarily the case that all opposite-sex couples will have the option of marrying according to their religious beliefs. The law allows any religious group to register its place of worship for weddings, and there are currently around 22,500 places that are so registered, encompassing all major faiths and many independent churches. But it needs to be borne in mind that there are also around 7,000 certified places of worship that are not registered,¹²³ that many religious groups do not meet in a dedicated building, and that some religious groups do not meet in buildings at all.

In addition, couples marrying in a registered place of worship are subject to additional conditions as compared to those marrying according to Anglican, Jewish or Quaker rites or usages. One aspect in particular stands out. All weddings in registered places of worship must include certain words prescribed by statute, just as is required for those marrying in a

¹¹⁹ Marriage (Same Sex Couples) Act 2013, s 1(2).

¹²⁰ F Cranmer, 'Quakers and the Campaign for Same-Sex Marriage' in R Sandberg (ed) *Religion and Legal Pluralism* (Routledge, 2016).

¹²¹ P Johnson, RM Vanderbeck and S Falcetta, *Religious marriage of same-sex couples: A report on places of worship in England and Wales registered for the solemnization of same-sex marriage* (University of York and University of Leeds, 2017) found that as of 2015 just 139 places of worship had opted in. While the number had doubled by December 2021, it remains small in proportion to the overall number of registered places of worship. However, more registrations are to be expected in the light of the fact that the Methodist Conference voted in 2021 to allow same-sex weddings: <https://www.methodist.org.uk/about-us/the-methodist-church/marriage-and-relationships/guidance-and-resources-for-same-sex-marriage/>.

¹²² In 2018 just 63 same-sex couples married in a religious ceremony: Office for National Statistics, 'Marriages in England and Wales 2018' (10 August 2021).

¹²³ Law Commission, *Getting Married: A Consultation Paper*, paras 2.139-40.

civil wedding,¹²⁴ but Anglican, Jewish and Quaker weddings may take place according to their own rites or usages without having to include those prescribed words.

Moreover, while the law does not formally distinguish between Baptists, Catholics, Hindus, Methodists, Muslims, or Sikhs marrying in a registered place of worship, how that option is experienced is different for Christian and non-Christian couples.

In order to understand why these distinctions exist, and why their impact is not the same for different groups, it is necessary to look at how the law has evolved.

How the law has evolved

The Christian origins of the current law

For much of the past thousand years or so, the law of marriage in England and Wales has been shaped by Christianity. From at least the eleventh century it was the church, rather than the state, that determined what constituted a marriage. The Protestant Reformation of the sixteenth century made little difference to this. Marriage ceased to be regarded as a sacrament, but the form of service adopted by the new Church of England bore a remarkable similarity to the earlier Catholic rite. And – setting aside a brief period under Cromwell’s Commonwealth when weddings had to take place before magistrates rather than ministers – marriage law remained under the jurisdiction of the church courts until the mid-nineteenth century.

From the early seventeenth century the church’s canon law stipulated that weddings were to be conducted by an ordained clergyman in the church of the parish where at least one of the parties was resident, after banns had been called or a licence obtained, and be recorded in its registers. Of these, the only essential requirement was that requiring the wedding to be conducted by a clergyman. A marriage that failed to comply with the other requirements would be deemed clandestine, but it was still valid.¹²⁵

In 1753, however, the law governing entry into marriage was put on a statutory footing. The passage of the Marriage Act of that year was motivated by the concern that weddings were not being conducted in accordance with the canon law. The 1753 Act did not create a new set of prescriptions as to how weddings should be conducted but sought to reinforce the requirements of the canon law by enshrining them in statute. Crucially, it also changed the consequences of non-compliance. Marriages that were not preceded by banns or licence, or which were not conducted in a parish church or Anglican chapel, were now void.¹²⁶

Three groups were exempted from the 1753 Act: Quakers, Jews, and members of the Royal family.¹²⁷ The exemption of the Quakers, even then one of the smaller sects, seems to have been purely pragmatic. The Society of Friends had developed its own marriage practices during the Commonwealth and maintained them thereafter, taking the view that marrying ‘is

¹²⁴ Indeed, many scholars describe weddings in a registered place of worship as ‘civil’ ones: see eg TG Watkin, ‘Vestiges of Establishment: The Ecclesiastical and Canon Law of the Church in Wales’ (1990-92) 2 *Ecclesiastical Law Journal* 110, 111; R Grillo, *Muslim Families, Politics and the Law: A Legal Industry in Multicultural Britain* (Ashgate, 2015), 45.

¹²⁵ See R Probert, *Marriage Law and Practice in the Long Eighteenth Century: A Reassessment* (Cambridge University Press, 2009).

¹²⁶ *Ibid.*, ch 6.

¹²⁷ The latter need not concern us here, although the issue of how members of the Royal family can marry suddenly re-emerged as a topic of debate in 2021 when the Duchess of Sussex claimed that she and the Duke had had a private ceremony of marriage in their garden at Kensington Palace prior to their public wedding.

the work of the Lord only, and not the priests or magistrates'.¹²⁸ As a result, they had long refused to marry in the Anglican church, and there was little likelihood of them starting to do so. Equally, there was little risk in exempting them, given their small numbers, strict endogamy, and stringent internal processes. The exemption of weddings conducted according to Jewish usages reflected the particular positioning of Jewish people at this time. As a judge later explained, they 'had existed always as a separate community, and in some respect on the footing of aliens'.¹²⁹

There was, however, a crucial difference between Quaker and Jewish weddings. All the 1753 Act said about such weddings was that its terms did not apply to them. It said nothing about what their status was, or how it might be determined. It had already been established that Jewish weddings were governed by Jewish law,¹³⁰ and later ecclesiastical judges heard evidence on that law from experts, just as they would when determining the status of a wedding that had been conducted in another jurisdiction.¹³¹ But there was no equivalent body of law governing Quaker weddings, and the status of their weddings remained doubtful well into the nineteenth century.

It was unsurprising that no provision was made for other Protestant denominations, such as the Independents, Baptists, Presbyterians or Unitarians, despite the fact that they accounted for around 6% of the population in the mid-eighteenth century. These groups had not developed their own distinct marriage rites and tended to marry in the parish church. It was equally unsurprising that no provision was made for the small Catholic population, given that Catholics did not enjoy freedom of worship at this time.¹³²

The 1753 Act was repealed in the 1820s, but its provisions were largely re-enacted in the Marriage Act 1823, with the significant difference that only a 'knowing and wilful' failure to comply would result in a marriage being void. The 1823 Act was in turn consolidated as Part II of the Marriage Act 1949. In other words, the laws that govern Anglican weddings today are still in essence the same as those that governed them before 1753.

From the early nineteenth century, however, the fact that only Quakers and Jews were exempted from the necessity of getting married in the Anglican church became increasingly untenable and in 1836 a new Marriage Act was passed. It provided two new options for other non-Anglicans to marry, in either a place of worship (which first had to be registered for weddings) or in a register office. It also brought Quaker and Jewish weddings within the legal framework. And it established the basic framework of prior preliminaries and subsequent registration that remains in place today: all those marrying under the 1836 Act, including Jews and Quakers, had to give notice to the superintendent registrar, and all marriages, including those in the Anglican church, had to be centrally registered.¹³³

For present purposes the significance of the 1836 Act lies in the types of ceremony that it permitted. As the following two sections will show, despite its apparent neutrality, both of the new options it established were designed for Christians.

¹²⁸ George Fox, quoted in *Quaker faith & practice* (5th edition 1995-2021), para 16.01 (available at <https://qfp.quaker.org.uk/chapter/16/>).

¹²⁹ *Vigevena and Silveira v Alvarez* (1794) 1 Hag Con (App) 8n; 161 ER 636.

¹³⁰ *Andreas v Andreas* (1737) 1 Hag Con (App) 10n; 161 ER 638.

¹³¹ *Lindo v Belisario* (1795) 1 Hag Con 216; 161 ER 530; (1796) 1 Hag Con (App) 7; 161 ER 636.

¹³² Probert, *Marriage Law and Practice*, ch 9.

¹³³ R Probert, *Tying the Knot: The Formation of Marriage, 1836-2020* (Cambridge University Press, 2021).

An alternative option for Christians

The Marriage Act 1836 allowed weddings to take place in any certified place of worship that had been duly registered for weddings under the Act.¹³⁴ The aim was to give those who dissented from the Church of England an alternative to being married in the Anglican church.¹³⁵ The phrasing of this is important, for two reasons. First, it was an alternative that was exclusively designed for Christian denominations. While the 1836 Act did not state in terms that the new option of getting married in a registered place of worship was only available to Christian denominations, this was its effect. The possibility of registering a place of worship for weddings depended on it being certified as a place of worship in the first place. And since only Christian places of worship could be certified as such, only Christian places of worship could be registered for marriage.

Second, there was an important difference between providing Dissenters with an alternative to being married in the Anglican church and recognising Dissenters' weddings. The Marriage Act 1836 did the former rather than the latter. There were a number of reasons for this. While Catholics wanted their rites to be recognised, Protestant Dissenters had continued to marry in the Anglican church and had not developed their own rites. Moreover, it would have been a challenge for Parliament to list all of the different dissenting groups that existed at the time. Behind broad denominational labels such as Baptist, Presbyterian, Congregational, Methodist and Unitarian there were a multitude of sub-groups.¹³⁶ And many individual churches were fiercely independent, existing outside any denominational organisation.

This explains why the 1836 Act merely provided a framework within which couples could marry 'according to such form and ceremony' as they saw fit to adopt, rather than conferring recognition on the usages of named groups. This neatly sidestepped any difficult questions about who could marry in a registered place of worship, how they could marry, and who would conduct the ceremony.¹³⁷

Such regulation as there was focused on three aspects: which places of worship could be registered for weddings; the requirement that a civil registrar be present to register the marriage; and the inclusion of certain prescribed words. The latter, it should be noted, were closely modelled on the structure and form of the Anglican *Book of Common Prayer*, pared down to the following:

'I do solemnly declare that I know not of any lawful impediment why I [name] may not be joined in matrimony to [name]'

'I call upon these persons here present to witness that 'I [name] take thee [name] to be my lawful wedded wife/husband'.

Subsequent developments can be briefly sketched. The restriction on non-Christian places of worship being certified as such – and so being registered for weddings – was lifted by the Places of Worship Registration Act 1855.¹³⁸ Following a campaign against the presence of the registrar at Dissenters' weddings, the Marriage Act 1898 allowed registered places of worship to appoint their own authorised persons to take responsibility for registering the

¹³⁴ On the way in which the process of registration built on the earlier requirement for places of worship to be certified as such, see W Kennett, 'The Place of Worship in Solemnization of a Marriage' (2015) 30 *Journal of Law and Religion* 260.

¹³⁵ On this see Probert, *Tying the Knot*, ch 2.

¹³⁶ On the diversity of dissent in the early nineteenth century, see KDM Snell and PS Ell, *Rival Jerusalems: The Geography of Victorian Religion* (Cambridge University Press, 2000).

¹³⁷ Probert, *Tying the Knot*, ch 2.

¹³⁸ *Ibid*, ch 4.

marriage instead.¹³⁹ However, since the 1898 Act referred back to the 1836 Act, rather than to the later 1855 Act, it was interpreted as only allowing those places of worship that could have been registered for weddings in 1836 to appoint an authorised person – that is to say, only Christian ones.¹⁴⁰ Only in 1949, when the various statutes were consolidated into the Marriage Act 1949, did this anomaly disappear.¹⁴¹ And, apart from a few minor adjustments to the conditions for the registration of places of worship,¹⁴² nothing has changed since.

Another alternative devised for Christians

The second option introduced by the Marriage Act 1836 was that of getting married in a register office in the presence of a superintendent registrar and registrar. While this has generally been described as a ‘civil’ or ‘secular’ form of marriage, such labels are rather misleading, at least so far as the early years of its operation are concerned. It is better seen as another alternative devised with Christians in mind, but specifically those Christians who regarded marriage as a ‘civil contract’.

This is borne out by the fact that the same prescribed words – derived, as noted above, from the *Book of Common Prayer* – had to be said in a register office as in a registered place of worship. Nor were early register office weddings ‘civil’ in the sense of excluding religious content. The 1836 Act contained no prohibition on including religious content in a register office wedding. Couples were free to include prayers, hymns, and Bible readings, and there is evidence that some did.¹⁴³

The nature of a register office wedding was fundamentally changed by further legislation in 1856 barring the inclusion of any religious service. Register office weddings began to be described as ‘civil’ weddings, provided *by* the state rather than *for* Christians who dissented from the Church of England. Despite this, one element remained constant: the Anglican-inflected prescribed words still had to be said.

Over the years the number of register office weddings grew, overtaking Anglican ones in 1971 and briefly exceeding the number of all religious weddings later in the 1970s.¹⁴⁴ There was, nonetheless, increasing dissatisfaction with what was on offer,¹⁴⁵ and suggestions that the range of places in which weddings could take place should be widened.

A scheme devised for secular weddings?

The possibility of getting married on ‘approved premises’ was introduced by the Marriage Act 1994 to widen the range of locations for weddings. It proved immediately popular. Not only were these new approved premises generally more attractive than register offices, and able to accommodate more guests, many also had the facilities for couples to hold their reception there too.

It was, however, only possible to have a *civil* wedding on approved premises, and the new regulations that came into force in 1995 indicated that this would be strictly defined. While the amended Marriage Act 1949 had only prohibited the use of a marriage *service* at a

¹³⁹ Ibid, ch 5.

¹⁴⁰ Ibid, ch 6.

¹⁴¹ Ibid, ch 7.

¹⁴² Ibid, ch 8.

¹⁴³ Ibid, ch 3.

¹⁴⁴ ONS, ‘Marriages in England and Wales 2018’ (10 August 2021), table 1: ‘Number of marriages by type of ceremony and denomination, 1837 to 2018’; J Haskey, ‘Marriage Rites – Trends in Marriages by Manner of Solemnisation and Denomination in England and Wales, 1841-2012’ in J Miles, P Mody and R Probert (eds) *Marriage Rites and Rights* (Hart, 2015).

¹⁴⁵ Probert, *Tying the Knot*, ch 8.

wedding on approved premises,¹⁴⁶ the accompanying regulations went further in stipulating that such a wedding had to be 'secular' in nature.¹⁴⁷ While these was subsequently revised and relaxed,¹⁴⁸ to allow for music or reading that included incidental references to religion in an essentially non-religious context, content that is overtly 'religious in nature' remains prohibited.¹⁴⁹ Specifically, weddings on approved premises cannot include extracts from religious marriage services or sacred religious texts, be led by a minister of religion or religious leader, involve one or more religious rituals, or include hymns or religious chants or any form of worship.

It is somewhat ironic, then, that this avowedly secular option still required the inclusion of the prescribed words, their origins in the *Book of Common Prayer* seemingly having been forgotten. A couple marrying in a civil wedding must say that they take each other as their husband/wife, as in the Anglican church; but they must not say the words that follow on from this phrase in the Anglican service. It is even more ironic that when the prescribed words were reformed – as recently as 1996 – the changes that were made actually removed the only words that had differentiated them from those in the Anglican service.

In short, from the Anglican rite to which Part II of the 1949 Act is devoted, to the options designed for other Christians in 1836, to the echoes of the prescribed words in modern civil weddings, the law governing entry into marriage retains clear traces of its Christian origins. The impression that other forms of religious weddings are not recognised is reinforced by the explicit mention of weddings being conducted according to Jewish usages or those of the Society of Friends. While these are few in number, it is nonetheless important to understand precisely how they are regulated, and the problems to which this mode of regulation has given rise.

From ambiguous exemption to formal privilege? Quaker and Jewish weddings

The Marriage Act 1836 had provided that Quakers and Jews 'may continue to contract and solemnise marriages' according to their own usages.¹⁵⁰ Quaker and Jewish weddings did not need to be conducted in a place of worship or include the prescribed words, and the presence of a registrar was not required. However, the parties were required to give notice,¹⁵¹ and provision was made for Quaker and Jewish bodies to certify who would be responsible for registering their marriages.¹⁵²

For Quakers, this was the Recording Clerk of the Society of Friends. For Jews, it was 'the president for the time being of the London committee of deputies of the British Jews' – usually known as the Board of Deputies.¹⁵³ However, this body did not necessarily speak for all British Jews and refused to recognise the new 'Reform' synagogue founded in West London in the 1840s. In 1855 the Places of Worship Registration Act removed the limitation that only Christian places of worship could be certified as such, and in 1856 the West London synagogue was given the power to certify its own secretaries, and those of any synagogues associated with it.¹⁵⁴ In the early twentieth century a new strand of Liberal

¹⁴⁶ Marriage Act 1949, s 46B(4).

¹⁴⁷ Marriage (Approved Premises) Regulations 1995 (SI 1995/510), Sch 2, para 11 (in force from 1 April 1995).

¹⁴⁸ GRO, *Content of Civil Marriage Ceremonies: A consultation document on proposed changes to regulation and guidance to registration officers* (June 2005); *Content of Civil Marriage Ceremonies: A consultation document on proposed changes to regulation and guidance to registration officers: Outcome of Consultation* (November 2005).

¹⁴⁹ The Marriages and Civil Partnerships (Approved Premises) Regulations 2005, SI 2005/3168, Sch 2, para 11(2).

¹⁵⁰ Marriage Act 1836, s 2.

¹⁵¹ *Ibid.*

¹⁵² Births and Deaths Registration Act 1836, s 30.

¹⁵³ Probert, *Tying the Knot*, ch 2.

¹⁵⁴ *Ibid.*, ch 4.

Judaism emerged, but it took until 1959¹⁵⁵ for it to be given the same power to certify its secretaries and those of synagogues connected to it as had been conferred on the West London synagogue a hundred years earlier.

Summing up the law

The option of getting married in a registered place of worship was – unsurprisingly – devised exclusively for Christian weddings. Jewish marriages were dealt with separately, and non-Judaeo-Christian faiths did not feature in the debates at all, save when legislators were referring to weddings overseas. While later changes enabled non-Christian places of worship to be registered, no thought was ever given to whether the alternative provided in 1836 would work for other religious traditions.

An alternative way of presenting the options available under the current law is to think about them from the perspective of a couple seeking to marry according to particular religious beliefs.

Table 4: The options available to different religious groups

	Where the wedding can take place	What form the ceremony must take
Quaker	Unrestricted	Quaker usages
Jewish	Unrestricted	Jewish usages
Anglican	Anglican place of worship	Anglican form of service
Catholic	RPOW	Prescribed words additional to religious requirements
Methodist		
Muslim		
Hindu		
Sikh		
Pagan		

¹⁵⁵ Marriage (Secretaries of Synagogues) Act 1959, s 1, amending Marriage Act 1949, s 67. See *ibid*, ch 8.

From this we can start to see why a couple might wish to have a non-legally binding ceremony even if they do plan to marry legally.

For those for whom getting married in a registered place of worship would mean having to repeat the prescribed words in addition to the words or rituals required by their religion, having the two ceremonies separate may be the preferable option. For those who do not have access to a registered place of worship, or who wish to marry somewhere other than a registered place of worship, having the two ceremonies separate will be the only option.

In addition, the law makes no provision for groups that hold *non*-religious beliefs to register their weddings. This is a particular issue for those who hold Humanist beliefs. In principle, there is nothing to prevent a Humanist ceremony from taking place in a registered place of worship. The law does not require that the ceremony itself is religious, and there have been examples of Unitarian churches ‘hosting’ Humanist ceremonies.¹⁵⁶ In practice, however, this is unlikely to be a satisfactory solution: first, because it depends on the trustees of the registered place of worship giving permission; second, because being married in a place of worship is hardly consistent with Humanist beliefs; and third, because of the importance within Humanism of the ceremony being meaningful to the couple in terms of its location as well as its content. Nor does the law make any provision for weddings to be conducted by independent celebrants.

Having set out the options available under the current law, we can now use the data we gathered during the fieldwork to explain how our participants who were involved in conducting ceremonies operated within these structures.

The different roles that participants performed

As we outlined in chapter 2, we engaged with multiple communities and groups within which non-legally binding ceremonies occurred. However, the parameters of their engagement with such ceremonies differed. Some primarily conducted legal weddings and would only conduct non-legally binding ceremonies if a legal wedding had taken place, or under exceptional circumstances. Others did not have the power to conduct legal weddings at all. In between were those who might be involved in conducting either a legal wedding or a non-legally binding ceremony.

Among those who were, or had been, involved in conducting legal weddings, the nature of that involvement took one of three forms.

First, some conducted the ceremony and were responsible for the completion of the documentation. This was the case for L-222 and L-223, both Anglican clergymen. In their case, ordination and being licensed by a bishop meant that they could conduct weddings according to the rites of the Church of England, and conducting a wedding brought with it the responsibility to complete the documentation.¹⁵⁷ For other religious groups, by contrast, the responsibility to complete the documentation was not automatic but required a separate process of appointment.¹⁵⁸ Within Judaism, that appointment is via one of its representative bodies. L-221, an Orthodox rabbi, explained that he had been the rabbi for a North London synagogue and that ‘although there were one or two lay persons who were authorised to sign off the registers, the community felt it was important that the rabbi should also be appointed’. As he explained:

¹⁵⁶ See J Wynne Willson, *Sharing the Future: A Practical Guide to Non-Religious Wedding Ceremonies* (BHA, 1996), 4-5.

¹⁵⁷ Marriage Act 1949, s 53B.

¹⁵⁸ Marriage Act 1949, s 53C, and see further chapter 3.

In our community, one simply makes an application via the Board of Deputies which is a representational secular organisation in the Jewish community. They make a recommendation to the registrar general office and usually... I've not known anybody to be refused, but usually it's a pretty straightforward but it takes a few weeks to do. You become the secretary for marriages, and you perform the weddings. It's as simple as that. I think there are probably some communities where the rabbi himself isn't necessarily also a secretary for marriages but I think, in most of our communities, that does apply.

For other religious groups, the appointment as an 'authorised person' is made by the trustees or governing body of a registered place of worship.¹⁵⁹ Within our sample, E-152, a Baptist minister, was an authorised person. Two imams, A-103 and A-104, noted that they had been authorised in the past, as had O-251, a Roman Catholic priest.

Second, some were responsible for the completion of the documentation but not for conducting the ceremony. This was the case for M-231 and M-232, who were both authorised persons at a Buddhist place of worship; in their case, however, there was a separate celebrant who conducted the ceremony itself. E-152, the aforementioned Baptist minister, also explained that he had also 'been involved in weddings where another minister has come and led it and I've just been there to be the authorised person and to deal with the paperwork side'.

Third, some conducted the ceremony alongside another person who was responsible for the completion of the documentation. L-224, the minister of an Evangelical church that did not have its own place of worship, reported having 'a very good relationship with the Baptist Church where they do actually have it as a licensed place and a licensed registrar, who will be there listening and will actually do all the legal side of it'. L-225, a Progressive rabbi, drew a distinction between her role and that of the secretaries:

I've always felt that I have enough to do with the Jewish stuff and I've always, you know, whichever synagogue I've been in, we've had our lay members who have been secretaries for the marriage. They look after the civil stuff. I look after the Jewish stuff.

O-252, a Roman Catholic priest, similarly explained that he was not an authorised person; instead, his church had three or four people 'who were authorised... to fill in the registers'. For A-103, too, the authorised person was 'someone who is a member of the Management Committee' rather than an imam; and P-261, a Sikh priest, suggested that within gurdwaras the roles were also divided with 'religious workers' conducting weddings and ideally 'two or three' individuals to oversee the legal requirements. None of the Hindu priests were authorised persons, but most had had experience of conducting ceremonies alongside an authorised person.

As this overview indicates, exactly who is authorised and what their role is, differs within, as well as between different faith groups.

However, the majority of the participants were only involved in conducting non-legally binding ceremonies. This was the case for all of those conducting Pagan ceremonies, as well as for the Humanist and independent celebrants. It was also the case for the majority of imams and Hindu priests, for E-151, a Zoroastrian priest, and for E-154, a representative of the Bahá'í faith.

Within this broad group conducting non-legally binding ceremonies, there were a number of key differences. One was whether they were operating within religious or belief institutions or

¹⁵⁹ Marriage Act 1949, s 43.

not. The two focus groups consisting of Hindu priests involved lengthy discussion of the scriptures: while some were willing to accommodate couples' preferences for their ceremony, there were some core elements that all agreed had to be included for a valid ceremony. E-151 explained how the form of the Zoroastrian ceremony had changed little over the centuries, while P-261, a Sikh priest, referred to the 'Sikh Code of Conduct which is issued by our highest authority called the Akal Takht'. A sense of affiliation to a belief community was also very evident among the Humanist celebrants, who were accredited by Humanists UK: as G-175 noted, 'the point about Humanist ceremonies is Humanism is a recognised belief system'.

Others, by contrast, were conducting non-legally binding ceremonies precisely because the mainstream bodies of their particular religious group would not recognise the ceremonies they conducted as marriages.¹⁶⁰ This was the case for two Roman Catholic priests, O-251 and O-252, who were willing to conduct ceremonies for same-sex couples. E-153 similarly conducted *nikahs* for those who would not have been able to have 'inter-faith and intra-faith wedding ceremonies, including same sex ceremonies and ceremonies for genderqueer folks'. In the latter case, the fact that she conducted *nikahs* at all is in itself worthy of note, since those conducting such ceremonies are usually imams – 'the person, invariably male, who leads the congregational prayer'.¹⁶¹ Within our sample another Muslim female, D-133, also conducted *nikah* ceremonies.

Another key difference related to the centrality of non-legally binding wedding ceremonies. For some, in particular the Humanist and independent celebrants, performing such ceremonies was a key if not central role in their work. For others it was a more minor part. B-115, for example, described himself as a 'resident imam at university' where *nikahs* are not really 'practical to do'; when he did perform a *nikah* it was in his capacity as a visiting imam at various mosques. E-151 was a part-time Zoroastrian priest, while N-241, a Pagan celebrant, also described himself as 'an occasional celebrant rather than a regular.' E-154, the Bahá'í representative, meanwhile, did not see himself as a celebrant at all, describing his role as being that of an 'Master of Ceremonies' and explaining that he 'would only do it in my capacity as a friend of the couple'.

A third difference was whether they conducted ceremonies for a fee or as a service to the community. Again, there were differences within as well as between religious groups. C-122, a hospital imam and chaplain, viewed his role as being in 'service for people', and provided assistance without expecting an 'income' from it. D-132, by contrast, commented that 'obviously, the imams get paid more when the *nikah* is being done. Usually, when a *nikah* takes place, the family... is very happy. So, the Imam's pocket is lined up very well.' A-106 also explained that 'our *nikahs* don't come through a mosque or anything ... we have our own company, so to speak'. Humanist and independent celebrants also charged for the ceremonies they conducted but some strongly put forward the view that the money was not their motivation for conducting these ceremonies.¹⁶²

As the next section will discuss, the status of the person involved in conducting the ceremony may determine what they can do in terms of offering non-legally binding ceremonies.

¹⁶⁰ The struggles faced by same-sex couples seeking religious ceremonies of marriage are discussed in S Falchetta, P Johnson and RM Vanderbeck, 'The Experience of Religious Same-Sex Marriage in England and Wales: Understanding the Opportunities and Limits Created by the Marriage (Same Sex Couples) Act 2013', (2021) 35 *International Journal of Law, Policy and the Family*, ebab003, <https://doi.org/10.1093/lawfam/ebab003>.

¹⁶¹ N Doe, *Comparative Religious Law: Judaism, Christianity, Islam* (Cambridge University Press, 2018), 97.

¹⁶² See further *Briefing Paper*, paras 3.108-113 and 3.134-139.

Distinguishing valid marriages from non-legally binding ceremonies

Our definition of a non-legally binding ceremony is any wedding ceremony that does not give rise to a legally recognised marriage. While this definition may seem somewhat circular, it reflects the difficulty in saying anything about this complex area that is both concise and accurate. Defining a non-legally binding ceremony as one that is 'unregistered' is problematic because of the multiple meanings that may be attached to 'registration'. Defining it as one that does not comply with the requirements of the Marriage Act 1949 would be equally misleading, since a ceremony does not need to comply with all of those requirements in order to be valid; in addition, a ceremony that does not comply with those requirements may be either void or non-qualifying. Defining it as one that does not have the same consequences as a valid marriage is also problematic, as different legal consequences follow depending on whether the ceremony gives rise to a void marriage or is classified as a non-qualifying ceremony.

As we will show, the dividing line between a valid marriage and a non-legally binding ceremony will in some cases depend on whether the couple were aware of what was needed for a valid marriage. First, however, we address the misnomer of 'unregistered' marriages.

The meaning and role of 'registration'

There is a common tendency to refer to a non-legally binding ceremony as an 'unregistered' marriage or to focus on the lack of 'registration' when explaining its lack of legal status.¹⁶³ While these terms provide a convenient shorthand, they have the potential to mislead. 'Registration' is an ambiguous term that may be understood as meaning different things. It may be understood as the entire process of getting married legally. Alternatively, it may be understood as referring to just part of the process, whether this is giving notice to the register office, or recording the fact that the ceremony has taken place, or the registration of the relevant documentation with the register office.

We found evidence of this ambiguity in the way that imams explained what they required couples to have done before the non-legally binding ceremony could proceed. D-139, for example, explained that he made it a pre-condition that the couple had given notice to the register office, emphasizing that 'we don't do anything unless there's a compliance and that people register the marriage first'. As he explained:

we normally ask them to bring a letter to say, you know, they already had an appointment to say that the marriage, legally, is already in process. And we normally advise them before we can do anything to bring a confirmation to say, you know, that we have an appointment within 28 days or whatever the timescale is, within the locality. And then, when we have that evidence that from the register office to say that the marriage is already in the process of being registered, or there's already an appointment or process in place, then we conduct the Islamic marital ceremony... we want to comply with the law and it's our kind of commitment to that.

In other cases, the ambiguity of 'registration' meant that it was not always clear whether the condition applied by a particular mosque or imam required registration in the sense of the legal wedding having been completed, or simply registration in the sense of giving notice. D-143 helpfully drew a distinction between the two stages, noting that mosques in his locality

¹⁶³ See eg *The Independent Review into the Application of Sharia Law in England and Wales* (Home Office, February 2018), '[r]eligious marriages that take place in England and Wales which are not accompanied by civil registration are treated as non-marriages'; SS Ali, J Jones and A Shahid, 'To Register or not to Register? Reflections on Muslim Marriage Practices in Britain' (2020) 10 *Nordic Journal of Law and Social Research* 41.

would only do the ceremony 'if it was proven that they are both British citizens, they've already been registered, they've had their registry marriage or they are about to have their registry marriage'. By contrast, B-115, simply noted that many *masjids*¹⁶⁴ required the couple 'to have the civil marriage paperwork', and C-123 noted that the forms used by his mosque had it as a precondition that the *nikah* was registered 'with the local council'.

The danger of using 'registration' to refer to just part of the process of getting married is that this may give the impression that this particular part of the process is the dividing line between legal recognition and no recognition. But giving notice will not achieve this by itself: if a couple give notice of their intention to have a civil wedding, but instead go through a ceremony in a mosque that is not registered for weddings, it is unlikely that the law would regard this as a valid wedding. And recording the fact that a ceremony has taken place is not sufficient to confer legal validity on that ceremony.

This is crucial in understanding the relationship between a non-legally binding ceremony and a subsequent legal wedding. Where the former is conducted according to rites that are meaningful to the parties and the latter takes place in a register office with little ceremony, it may be natural to conceive of the two stages as the 'marriage' and the 'registration'. In the eyes of the law, however, it is the register office ceremony that constitutes the marriage: the couple are not registering an earlier marriage, however meaningful it may have been to them.

Understanding that recording the fact of a ceremony has no impact on its status is also important in the light of calls for those conducting ceremonies of marriage to be compelled to 'register' them through the imposition of criminal sanctions. As set out above, whenever a marriage is conducted under the Marriage Act 1949, a specific person is tasked with ensuring that the relevant documentation – the marriage document or the schedule – is completed and returned to the register office to be registered. But that duty only arises in relation to a marriage that is conducted in line with the requirements of the Marriage Act 1949. For example, a rabbi who conducts a Jewish ceremony outside the framework of the Act is not under any such duty, whereas an imam who is an authorised person is under such a duty when conducting a *nikah* ceremony that includes the prescribed words in a registered mosque.

Indeed, the issue is not, as has been suggested,¹⁶⁵ that a person conducting a ceremony of marriage otherwise than in accordance with the Marriage Act 1949 does not have the duty to ensure that it is registered. They do not have the power to do so. This has been made even clearer by the substitution of marriage documents and schedules for the old register books. In the past, the power to register a marriage depended on the relevant person – whether a member of the Anglican clergy, an authorised person, a Jewish secretary, or a Quaker registering officer – having been issued with a register book by the GRO. There was therefore at least the possibility of a ceremony conducted without notice having been given being recorded in those register books, even if it should not have been. With the introduction of marriage documents and schedules, it is even clearer that the duty to ensure that the marriage is registered only arises in relation to a specific marriage that is authorised by a marriage document or schedule. The ability to register a marriage depends on the marriage document or schedule being issued – which in turn requires notice to have been given and the parties to have identified where the marriage is taking place. A priest or imam who is conducting marriages outside the framework of the Act in a place of worship that has not been registered for marriage does not have the means to register a marriage.

¹⁶⁴ Arabic term for mosque.

¹⁶⁵ Ali, Jones and Shahid cite Aina Khan, the founder of the 'Register Our Marriage' campaign, as having proposed that 'the Marriage Act of 1949 be widened to automatically register all religious marriages as civil marriages, rather than, as now, only the marriages of Anglicans, Jews and Quakers': *ibid*, 57.

Finally, it should be noted that a couple are married in the eyes of the law once they have exchanged the relevant contracting words,¹⁶⁶ and a subsequent failure either to record the marriage or to register the relevant documentation with the register office does not invalidate it.

In other words, registration in the sense of recording a marriage is neither necessary nor sufficient for it to be valid. For these reasons we have avoided referring to ‘unregistered’ marriages in this report and we would encourage policy-makers to follow suit.

The classification and consequences of non-legally binding ceremonies

Our definition of a non-legally binding ceremony as any wedding ceremony that does not give rise to a legally recognised marriage might suggest that such a ceremony brings no legal consequences. However, matters are not quite so straightforward. The legal classification – and therefore the consequences – of a non-legally binding ceremony will depend on exactly what form it took and the state of knowledge of the couple.

If the ceremony took place *entirely* outside the framework of the Marriage Act 1949 then it will be classified as a non-qualifying ceremony.¹⁶⁷ Such ceremonies carry no legal consequences. Any legal rights that the parties do have will depend on the general law. If they live together after the ceremony then they will have the same rights as a cohabiting couple would have; such rights are however highly limited and in particular do not include a right to provision when the relationship comes to an end.¹⁶⁸

More difficult is the status of a ceremony that *partially* complies with the requirements of the Marriage Act 1949. In practice the most likely form of partial compliance is if the parties go through a ceremony in a registered place of worship but without having given notice beforehand. If they did so ‘knowingly and wilfully’ the ceremony will be void.¹⁶⁹ This is different from a non-qualifying ceremony in that the courts have the same powers to order financial provision when making a decree of nullity as when granting divorce. However, in other contexts a void marriage confers no rights,¹⁷⁰ or confers them on terms that are inconsistent with the circumstances in which a marriage would be void.¹⁷¹

By contrast, if the parties went through a ceremony in a registered place of worship without realising that they needed to give notice, then that ceremony will be recognised as a valid marriage. This was the case in *MA v JA*.¹⁷² If the marriage is valid, then it can only be brought to an end by means of a civil divorce, and upon divorce the courts have the power to make a wide range of financial orders to ensure a fair division of the assets.¹⁷³

Other forms of partial compliance are less likely. If the couple give notice then they will have to identify where they are planning to marry and the registration officer will check whether it is on the list of registered places of worship. Equally, the presence of an authorised person

¹⁶⁶ *Beamish v Beamish* (1861) 9 HL Cas 274; 11 ER 735.

¹⁶⁷ *AG v Akhter and Khan* [2020] EWCA Civ 122.

¹⁶⁸ For a helpful summary see J Miles, ‘“Cohabitants” in the Law of England and Wales: a Brief Introduction’ in Akhtar et al, *Cohabitation and Religious Marriage*.

¹⁶⁹ Marriage Act 1949, s 49(a).

¹⁷⁰ See eg *SSWP v Akhtar* [2021] EWCA Civ 1353.

¹⁷¹ See for example the definition of ‘spouse’ in the Inheritance (Provision for Family and Dependents) Act 1975, s 25, which only includes a spouse in a void marriage where that marriage was entered into in good faith.

¹⁷² [2012] EWHC 2219 (Fam).

¹⁷³ The law on the division of assets on divorce lies outside the scope of this chapter. However, in the light of the frequent misunderstandings about marriage automatically entitling a spouse to half of the other’s assets, it is worth noting that this is not the case.

will generally depend on whether the place of worship has been registered, since only registered places of worship may appoint an authorised person. Compliance with these requirements will generally also involve compliance with other requirements. The question of whether the mere presence of an authorised person at a ceremony that does not otherwise comply with the 1949 Act is sufficient to bring it within the scope of the Act has not been tested but seems unlikely on the basis that any such person would be acting outside the scope of their authority by purporting to act as an authorised person in a place other than a registered place of worship.¹⁷⁴

Finally, there remains some ambiguity as to whether specific compliance with at least one of the formal requirements of the Act is necessary or whether it would be sufficient for the ceremony to be in a form contemplated by the legislative framework.¹⁷⁵ The case law suggests that judges try to ensure that ceremonies conducted in places of worship are accorded at least some legal recognition. However, the bases on which they have done so have been problematic and it would be safer to assume that this is not sufficient by itself for either a valid marriage or a void one.¹⁷⁶

The consequences of conducting a non-legally binding ceremony

As noted above, there is a crucial difference between a ceremony that is *non-legal* and a ceremony that is *illegal* in the sense of exposing the parties to criminal penalties.

It should be noted that a couple commit no offence by going through a ceremony that does not comply with the requirements of the Marriage Act 1949, whether this is before, after, or instead of a legal wedding. Given that some felt – or were made to feel – that they had done something wrong, this is worth emphasising.

Turning to those involved in conducting the ceremony, there is no *general* offence of conducting a wedding outside the scope of the Marriage Act 1949. However, certain defined individuals may commit an offence by conducting a wedding other than according to the 1949 Act, and in certain narrowly defined circumstances any person may commit an offence by doing so.

Here we focus on the offences that might be committed by those conducting a non-legally binding ceremony rather than on the full range of offences set out in the 1949 Act.¹⁷⁷ In particular we do not cover the offences relating to non-registration for the simple reason, as explained above, that the duty to register a marriage only applies to a marriage that is conducted in accordance with the 1949 Act in the first place.¹⁷⁸ We also explain why certain offences do not (or should not) apply to non-legally binding ceremonies.

¹⁷⁴ See further R Probert, 'The evolving concept of non-marriage' [2013] *Child and Family Law Quarterly* 314.

¹⁷⁵ R Probert, 'Determining the boundaries between valid, void and "non" marriages: past, present and future?' in Akhtar et al, *Cohabitation and Religious Marriage*.

¹⁷⁶ For example *Gereis v Yagoub* [1997] 1 FLR 854 (ceremony conducted in an unregistered Coptic Orthodox Church, parties were aware that they needed to give notice, marriage held to be void); *CAO v Bath* [2000] 1 FLR 8 (Sikh ceremony of marriage, place of worship presumed to have been registered and marriage held to be valid). For analysis see R Probert, 'The evolving concept of non-marriage' [2013] 25 *Child and Family Law Quarterly* 314 and 'The Presumptions in Favour of Marriage' (2018) 77 *Cambridge Law Journal* 375.

¹⁷⁷ On which see R Probert, 'Criminalising non-compliance with marriage formalities' [2018] *Family Law* 702; see also Law Commission, *Getting Married: A Consultation Paper on Weddings Law* (CP No 247, 3 September 2020), ch 2.

¹⁷⁸ Marriage Act 1949, s 76(1): '[a]ny person who refuses or without reasonable cause omits to register any marriage which he is required by this Act to register ... shall be liable on summary conviction to a fine' (emphasis added). See further R Probert, 'The Registration of Marriages' [2017] *Family Law* 1103.

The first situation in which a person conducting a non-legally binding ceremony may be guilty of an offence is if that person is also an authorised person. It is an offence for an authorised person to refuse or fail to comply with any of the provisions of the Act or any relevant regulations.¹⁷⁹ This threateningly vague provision could clearly encompass an authorised person conducting a religious-only ceremony. The sanction is either a fine of £10, £50, or imprisonment for two years, with no indication of which infractions might merit which penalty.¹⁸⁰ In addition, it is provided that any authorised person convicted of an offence shall cease to be authorised.¹⁸¹ It is therefore understandable why those who regularly conduct non-legally binding ceremonies might be reluctant to become authorised.

The second situation in which a person conducting a non-legally binding ceremony may be guilty of an offence is if that ceremony takes place in a registered place of worship. It is an offence for *any person* to 'knowingly and wilfully' solemnise a marriage in a registered place of worship in the absence of a registrar or authorised person. The question then arises as to what is meant by 'solemnizing' a marriage. In *R v Bham* the Court of Criminal Appeal held that that what was contemplated by the 1949 Act 'was the performing in England of a ceremony in a form known to and recognised by our law as capable of producing, when there performed, a valid marriage'.¹⁸² Bham was acquitted on the basis that the ceremony in that case had been conducted in a private house; by contrast, a marriage in a registered place of worship will be valid even if no other formalities have been completed, as long as the parties did not 'knowingly and wilfully' fail to comply with the other requirements of the 1949 Act.

By contrast, it should be noted, it is not an offence to conduct a non-legally binding ceremony of marriage in a place of worship that has not been registered for marriage (for example a *nikah* celebrated in an unregistered mosque). In this respect the law creates a perverse incentive for places of worship to decide not to be registered.

The third situation in which a person conducting a non-legally binding ceremony may be guilty of an offence is if the parties have given notice specifying where the marriage is to take place, a schedule has been issued, and the person conducting the ceremony has disregarded this and conducts the marriage somewhere else.¹⁸³ In this context it is an offence for *any person* to 'knowingly and wilfully' solemnise a marriage in any place other than the registered place of worship specified in the notices of marriage.¹⁸⁴ The use of the definite article here is important in defining the parameters of the offence.¹⁸⁵ In other words, this offence can only be committed if notice was given and a particular place of worship was specified. This provision does not make it an offence to solemnise a marriage in a place other than a registered place of worship.

¹⁷⁹ Marriage Act 1949, s 77: 'Any authorised person who refuses or fails to comply with the provisions of this Act or of any regulations made under section seventy-four thereof shall be guilty of an offence against this Act'.

¹⁸⁰ Marriage Act 1949, s 77 further provides that 'unless the offence is one for which a specific penalty is provided under the foregoing provisions of this Part of this Act', the authorised person 'shall be liable, on summary conviction, to a fine not exceeding ten pounds or, on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine not exceeding fifty pounds'.

¹⁸¹ Marriage Act 1949, s 77 provides that a person 'shall upon conviction cease to be an authorised person'.

¹⁸² *R v Bham* [1966] 1 QB 159, at 168.

¹⁸³ A person may also be guilty of an offence where they solemnise a marriage on the authority of a Superintendent Registrar's certificate before the expiry of the waiting period in relation to each notice of marriage (s 75(2)(d)) or on the authority of certificates that have expired (s 75(2)(e)). However, it is not generally an offence to solemnise a marriage where the parties have not given due notice to the Superintendent Registrar. The one exception to this is that a Superintendent Registrar is guilty of an offence in solemnizing any marriage which would be void under any of the provisions of Part III of the Marriage Act, which would encompass the case where the parties had failed to give notice at all (s 75(3)(d)).

¹⁸⁴ Marriage Act 1949, s 75(2)(a)(ii).

¹⁸⁵ This fundamental point was overlooked in *R v Pardesi* (1962) 26(2) *Journal of Criminal Law* 95, in which a Sikh priest was fined for solemnising a marriage in a place other than 'a' registered building, and in *R v Rahman (Abdul)* (1949) 33 Cr App R 121.

Is there a requirement that a non-legally binding ceremony should only be conducted after a legal wedding?

While there is no rule that a religious ceremony cannot take place before the legal wedding, there is one provision of the Marriage Act 1949 that may give the impression that this is the case. This is section 46, which says, in essence, that a couple may have a religious ceremony after a civil wedding, but that this ceremony does not ‘supersede or invalidate’ the earlier wedding and should not be registered as a marriage.

In order to understand this mix of permission and prohibition, we need to look at the provision’s history and the problem that it was intended to address. It originated in the Marriage and Registration Act 1856, and the reason for its inclusion was that some Anglican clergy had insisted on ‘remarrying’ couples who were already validly married under the 1836 Act. Its focus was on what happened *after* the legal wedding, not before it, and the aim was to prevent Anglican clergy from denying the validity of a marriage that had been validly contracted other than according to Anglican rites.¹⁸⁶ There is thus no legal requirement that a non-legally binding ceremony should only be conducted after a legal wedding.

Conclusion

An understanding of the ways in which couples can marry in England and Wales – and the conditions they must fulfil in order to do so – is a necessary prerequisite to understanding what options they do *not* have. We will return to some of the key limitations of the current law in later chapters. Chapter 5 will explore participants’ experiences of weddings in registered places of worship and of holding both their legal wedding and non-legally binding ceremony at the same approved premises, while chapter 6 will look at the lack of options for outdoor ceremonies, interfaith ceremonies, and ceremonies led by a Humanist or independent celebrant.

In the next chapter we turn to the issue of the order in which the ceremonies were held and how the explicit permission to have a religious ceremony after a legal wedding has been interpreted as implying a prohibition on having any form of non-legally binding ceremony before a legal wedding.

¹⁸⁶ A special service now exists for those who had married according to non-Anglican rites, to make it clear that clergy are conducting a blessing rather than a marriage ceremony.

4. Order and meaning

Introduction

A non-legally binding ceremony may take place before, after, or in the absence of a legal wedding. Our focus in this chapter is on those cases in which there was both a legal wedding and a non-legally binding ceremony, exploring the order of these different ceremonies and which was more meaningful for our interviewees.

At the time of the interview, a legal wedding had taken place in 67 of our 83 cases. There were, however, significant variations in both the time and distance between it and the non-legally binding ceremony. The longest period that had elapsed between a non-legally binding ceremony and a subsequent legal wedding was seven years; while the longest period that had elapsed between a legal wedding and a subsequent non-legally binding ceremony was three years. Most, however took place within a much shorter time frame, with 42 being conducted within the same week, and some within a few hours or even minutes of each other. In the first part of the chapter we examine the order in which the ceremonies were held and the significance of the gap between them, identifying the factors that determined this gap.

One key factor in determining whether or not the legal wedding came first was the stance of the person conducting the ceremony. In the second section we turn to those participants who had been involved in conducting non-legally binding ceremonies to explore whether (and if so, why) they required a prior legal wedding.

Exploring which ceremony was more meaningful to the individual or individuals involved is more complex. The relative meaning of the ceremonies was affected by the form that they took, by the beliefs and values of the individual interviewee and those of his or her partner, and by the extent to which they were able to choose the form of each ceremony. In the third part of the chapter we examine how different types of ceremonies were conceptualised differently and the steps that those conducting them took to ensure that their lack of status was made clear. We also explore three key themes that emerged from the interviews: first, whether getting married – and if so which ceremony – marked the start of an intimate relationship for the parties; second, which ceremony marked the point at which they felt ‘married’ or was regarded as the ‘real wedding’; and, third, whether the legal wedding was conceptualised as just being a legal formality.

The order of ceremonies

The 67 cases in which there had been a legal wedding as well as a non-legally binding ceremony (or ceremonies) can be divided into four distinct groups; those in which the non-legally binding ceremony was followed by a legal wedding more than a month later (12 cases); those in which the non-legally binding ceremony and the legal wedding took place on different days but within a month of each other (30 cases); those in which they took place on the same day (17 cases); and those in which the non-legally binding ceremony took place more than a month after the legal wedding (8 cases).

Non-legally binding ceremony followed by a later legal wedding

Twelve non-legally binding ceremonies took place more than a month before the legal wedding.¹⁸⁷ The reason for choosing the period of one month as our dividing line was

¹⁸⁷ 001, 011, 014, 020, 021, 029, 034, 036, 046, 048, 054 and 064.

because the minimum notice period for a non-Anglican wedding is 28 days:¹⁸⁸ anyone who had a non-legally binding ceremony in the month before their legal wedding must therefore have already given notice at the time of the first ceremony and begun the process of getting legally married. While anyone who had their non-legally binding ceremony in the year prior to their legal wedding *could* also have already given notice¹⁸⁹ none had done so. For this group, then, there was a clear split between the initial non-legally binding ceremony and the legal wedding.

The gap between the two ceremonies ranged from two months to seven years, with the median being eight months.¹⁹⁰ In 10 cases the non-legally binding ceremony took the form of a *nikah* and was followed by a civil wedding, usually in a register office.¹⁹¹ 046 (female, 39, Pagan) had a Wiccan ceremony which, in keeping with Pagan traditions,¹⁹² was followed 'a year and a day' later by a legal wedding on approved premises, and 054 (female, 33, Hindu) had a non-legally binding Hindu ceremony in India followed by a register office wedding in England.

Looking at the characteristics of this group and the reasons why they had their religious ceremony first, there was more overlap with those who were in a religious-only marriage at the time of the interview than with those who had the two ceremonies closer together in time. We will therefore look at these 12 cases further in chapter 7, along with the 16 religious-only marriages in our sample.

Non-legally binding ceremony and legal wedding within a month of each other

In 30 cases the two ceremonies took place on different days but within a month of each other.¹⁹³ The majority of the legal weddings took place in a register office, but three were on approved premises (030, 070 and 081), one was in a registered place of worship (016) and one in an Anglican church (068). The non-legally binding ceremonies also reflected a wide range of beliefs: eight were Hindu or Jain,¹⁹⁴ four were Muslim (one of which was followed by a further Catholic ceremony),¹⁹⁵ four were Humanist,¹⁹⁶ and three were Christian.¹⁹⁷ There were also individual examples of Zoroastrian (005), Pagan (032) and interfaith (078) ceremonies. Eight ceremonies were individualised ones, of which five were led by a professional independent celebrant and three by a friend or family member, although there was a degree of overlap between these two categories.¹⁹⁸

Within this group there was a clear tendency for the legal wedding to come first. There were just three interviewees in this group whose non-legally binding ceremony was held *before*

¹⁸⁸ Marriage Act 1949, s 31(1) to (1A).

¹⁸⁹ A schedule (formerly a certificate) is valid for a year: Marriage Act 1949, s 33(3).

¹⁹⁰ 064 (2 months), 048 (3 months), 014 (4 months), 029 (7 months), 011, 021 and 054 (8 months), 036 and 046 (one year), 020 (18 months), 034 (3 years) and 001 (7 years).

¹⁹¹ We have followed the usage of interviewees in referring to any venue owned by the local authority as a register office. For the technical meaning of the term, and the way in which many former register offices have been classified as approved premises, see R Probert, S Pywell, R Akhtar, S Blake, T Barton and V Vora, 'Trying to get a piece of paper from the City Hall?' (2022) 44 *Journal of Social Welfare and Family Law* (forthcoming).

¹⁹² See further chapter 7 below.

¹⁹³ 005, 015, 016, 018, 024, 026, 027, 028, 030, 032, 038, 039, 044, 055, 057, 059, 060A&B, 062, 066, 067, 068, 070, 071, 072A&B, 073, 075, 076, 078, 080 and 081.

¹⁹⁴ 018, 051, 055, 060A&B, 066, 068, 071 and 081.

¹⁹⁵ 028, 038, 057 and 080.

¹⁹⁶ 024, 039, 073 and 076.

¹⁹⁷ 027, 016, 075.

¹⁹⁸ Only 044, 062 and 067 had ceremonies conducted by independent celebrants who had not been previously known to them. 015's ceremony was conducted by a celebrant who was a friend of the family, and 026's by her two brothers, one of whom had previously conducted similar ceremonies for friends overseas. 072A and 072B had asked the latter's brother, who was a deacon, to act as MC, while 030 and 059 asked a friend to conduct the ceremony as a one-off.

the legal wedding. These were 028 (female, 31, Muslim) and 057 (female, 38, Muslim), whose respective *nikahs* took place in the week before their civil weddings, and 071 (female, 35, Hindu), who had a Hindu ceremony four days before her legal wedding on a beach in the Seychelles. The latter noted that the usual expectation was to have the legal wedding before the Hindu ceremony but that she had not disclosed the fact that she had chosen a different order to the priest in case this might have an impact on her ability to have her weddings as she wished.

This pattern suggests that different norms are in operation once couples engage with the legal process. Indeed, the sequence of the ceremonies was not always of the couple's choosing but reflected the advice that they had been given. 005 (female, 34, Zoroastrian) had wanted to have her Zoroastrian ceremony first but reported that 'there was this annoying rule that you have to do your legal one first... it was on the documentations by the registrar that you can't have had a religious ceremony before'. Others reported that their particular religious group required the legal wedding to take place first. 051 (female, 40, Muslim) and 080 (male, 36, agnostic) had both been told this by the respective imams who conducted their *nikahs*, although the former described it as a requirement of this particular imam and mosque while the latter was under the impression that it was a more general requirement.

As noted above, the period of one month was chosen to match the notice period. Within this group, however, the majority were far closer together in time: 25 took place no more than seven days apart,¹⁹⁹ and 19 within three days of each other. However, different combinations of ceremonies exhibited different patterns.

Those within our sample who had a Hindu and Jain ceremony tended to have their legal wedding on approved premises, sometimes with a significant number of guests,²⁰⁰ and for the religious ceremony to be a week or more later. The gap between them was mitigated where they were part of a whole sequence of ceremonies extending over a week or more: for 060A (female, 35, Jain) and 060B (male, 39, atheist), for example, their civil wedding was the first step in the 'build-up' to the Jain ceremony a week later, with other ceremonies taking place almost every day.²⁰¹

By contrast, those who had opted for a ceremony led by an Humanist or independent celebrant tended to have the legal wedding in a register office and to have the two ceremonies as close together as the availability of statutory ceremonies would allow.²⁰² 015 (female, 25, atheist) commented that 'we wanted them as close as possible', while 024 (female, 34, no belief) drew a distinction between *being* married and *feeling* married, explaining that if the legal wedding had taken place a week before, rather than the day before, they might already have 'processed' the fact that they were married and it would be 'a bit strange to have a party'. As 076 (female, 43, Humanist) reflected:

¹⁹⁹ The five non-legally binding ceremonies that took place more than a week after the legal wedding displayed no clear pattern, with practical considerations playing a role in the case of 055 (a member of the armed forces, who had only been able to apply for married quarters once he had a date for his legal wedding), 080 (who had to organise two non-legally binding ceremonies, one of which took place in Italy) and 081 (whose ceremony had taken place in India).

²⁰⁰ 070 reported having 100 guests at the civil wedding, while 081 thought it was between 50 and 100.

²⁰¹ A couple of Muslim interviewees also reported having a range of ceremonies: for example, for 028 the process was 'kickstarted' with a small Mehndi ceremony, followed on the next weekend by the *nikah* on the Saturday and the *walima* (the second traditional banquet celebrating the Islamic wedding) on the Sunday, and the civil wedding on the following Wednesday. Overall, however, there was less of a clear trend among the Muslim interviewees in this group.

²⁰² The limited availability of slots was identified as an issue by a number of participants. 062 reported being advised that the statutory ceremony could 'only be on a Tuesday', while 015 and 059 had also had limited slots from which to choose.

I think we just wanted to have it as close together... I mean, acknowledging the fact that not everybody that we know, our friends and families, would have necessarily recognised the non-legal part of our wedding, and they would maybe recognise the legal part more as being our wedding day. I suppose having them closer together kind of made us feel... it certainly made me feel anyway that everybody would recognise that as the whole... even though they were very separate events – or non-events in the case of the registry office – they collectively made our marriage and our wedding.

We shall return to that distinction between the ‘marriage’ and the ‘wedding’ below. The only interviewee whose non-religious ceremony took place more than a week after the legal wedding was 059 (male, 36, no belief), who had minimised the risk of the register office wedding being seen as the ‘real’ wedding by not telling anyone about it.²⁰³

Other practical factors also played a role in determining the gap between the legal wedding and the non-legally binding ceremony. A number of interviewees mentioned the ‘logistics’ of organising the two ceremonies. For two who had chosen outdoor weddings (026 and 027), the wedding party had been involved in setting the venue up for the ceremony, while for 032 (female, 59, Druid) the distance between the location of the legal wedding and her Druid wedding made it impractical to hold the two any closer together:

Because of the driving and the time and everything else, we couldn’t possibly have the ceremony on the same day. So, we stayed over in [city] that night and by the time we’ve travelled back, we couldn’t organise anything for that day. So, we had a day in between. So, we had the civil service on the Thursday. We came home on the Friday morning and tried to get things sorted on the Friday, food, etc., etc., for the party. And then we had the Druid ceremony on the Saturday and had a party in the garden.

Cost was another factor that led to some having separate ceremonies even if their ideal might have been to have just one, or to hold both on the same day. As 015 (female, 25, atheist), whose non-legally binding ceremony took place on approved premises, explained:

it would’ve cost loads of money to get an actual legal celebrant to come out and do it there, so that’s why we just had to do it on separate days. It would’ve been nice to do it all at the same day, in the same place. And it did have the licence for it, the building that we got married in, but it cost an extra couple of hundred quid. We just didn’t care enough to... yeah... to pay that.

Non-legally binding ceremony and legal wedding on the same day

One (unsurprising) characteristic of the 17 cases in this group was the high number of cases in which the legal wedding took place at the same venue as the non-legally binding ceremony. Participants described this as convenient, particularly for their guests who then did not have to travel to different locations. Two further characteristics were the greater likelihood of the non-legally binding ceremony being conducted according to religious rites and the relatively high number of different-faith couples within this group.

In three cases – 043, 050A&B and 074 – the venue was a registered place of worship and the legal and religious elements would legally have been classified as a single ceremony.²⁰⁴ There were also seven non-legally binding ceremonies at the same approved venue where

²⁰³ He had advertised for witnesses at the bus stop opposite the register office they had booked for the legal wedding.

²⁰⁴ As explained in chapter 2, these fell within the parameters of our project because the legal element was identified as being something distinct from the religious ceremony. The way in which the two elements were perceived is analysed further in chapter 5.

the legal wedding took place (if not necessarily in the part that was approved): three Muslim (051, 061 and 069), one Pagan (010), one Zoroastrian (008), and two ceremonies led by an independent celebrant (022 and 023).

Of the legal weddings that took place in a different venue, three took place in a register office (007, 009, and 012), two in a registered place of worship (041 and 047), and one in an Anglican church (083A&B).²⁰⁵ The accompanying non-legally binding ceremonies were all religious ones: three Muslim (012, 031 and 083A&B), one Hindu (009), one Bahá'í (007), one Jewish (047), and one Christian (041).

There were a number of factors that may have contributed to the higher number of religious ceremonies within this group where both ceremonies took place on the same day. One was the facility for religious groups to register their buildings for weddings, allowing couples to combine the religious and legal elements in a single ceremony. This is not an option that is available to non-religious belief groups such as Humanists. In addition, while those having a civil wedding on approved premises on a Saturday can expect to pay more for registration officers to attend (as 022 commented), the fee payable to the single registrar attending a ceremony in a registered place of worship (assuming no authorised person has been appointed) is fixed by statute at just £86.²⁰⁶

A second was that some religious groups required or expected the legal wedding to be conducted on the same day as the religious ceremony. The expectation of the Bahá'í, as explained by E-154, was that couples would not be living together beforehand and would 'begin [their] life together and set up home together' on the night of their wedding. To avoid any confusion about when a couple were married, they therefore stipulated that the civil wedding should be within the same 24-hour period as the Bahá'í ceremony. 007 (female, 28, Bahá'í) had accordingly married in a register office early on a Saturday morning before her religious ceremony. 041 (male, 31, Christian) similarly explained that members of the Church of Jesus Christ of Latter-Day Saints were encouraged to have the two ceremonies on the same day:

which means that most people will have their services in the morning and will drive up as soon as they can. And because the driving distances in the UK and the proximity to the temples only being in London and Preston, it can mean that some people travel quite a while to get there... because in order to do the temple wedding, we have to have a legally binding civil wedding.²⁰⁷ It is a requirement.

The choices made by different-faith couples were a third factor contributing to the higher number of religious non-legally binding ceremonies within this group. Holding the two ceremonies on the same day was a means of ensuring parity between their different ceremonies. As 047 (male, 35, Jewish) explained:

it was quite important, I think, to both of us that although there were two ceremonies and they were separate, they were seen as part of the same because, I mean, there's always a difficulty with mixed faith couples. So, there's sometimes great pressure to have sort of one wedding followed by a blessing on another date and it always seemed to be me that that meant that the second bit was sort of being set down as being less important. So, although we had sort of two ceremonies, I've always tried to think of it as one.²⁰⁸

²⁰⁵ In the case of 031 the location of the ceremony was not given.

²⁰⁶ Registration of Births, Deaths, Marriages and Civil Partnerships (Fees) Regulations 2016, SI 2016/911, Sch 1.

²⁰⁷ His legal wedding had in fact taken place in one of the church's chapels that was registered for weddings. On the reasons why its temples, as opposed to its chapels, cannot be registered, see chapter 5.

²⁰⁸ In this case the decision that the Catholic ceremony – held in a registered place of worship – would be the legal wedding was determined partly by the wishes of his wife but more fundamentally by the unavailability of a

For 008 (male, 35, Zoroastrian), who had married a Christian, the sense that the Christian ceremony stood on a different footing had led to them choosing a different combination. Since getting married in a church was seen as 'a bit one sided', they had decided to start with a civil wedding on approved premises followed by a blessing from both religions. In this case, then, the desire for parity had led to *two* non-legally binding ceremonies, one of which took place in the same venue as the legal wedding and the other in a nearby church.

There were therefore a number of reasons encouraging couples to have their legal wedding on the same day as their non-legally binding ceremony that were specific to those having a religious ceremony (or ceremonies).

In other cases, however, very similar reasons were put forward by those who had a religious ceremony and those who did not. For some, the desire to have the two ceremonies on the same day was a way of reconciling the different aspects of getting married. The different meanings of marriage as a legal, religious and personal commitment came out particularly clearly in the account of 061 (female, 46, Muslim), whose *nikah* had taken place on the evening of her legal wedding on approved premises. As she explained, it was important for her to have them on the same day because 'for me, that [was] the day I got married. I was able to fulfil the formalities that were required for the state, but also for my family and was important to us'. 022 (female, 38, no belief) similarly explained that she 'didn't want two dates ... for technically what I saw as our wedding, not to be on the same day as the legal part'.

Legal wedding followed by a later non-legally binding ceremony

The final group of eight cases consists of those whose non-legally binding ceremonies took place more than a month after the legal wedding.²⁰⁹ Most of the legal weddings had taken place in a register office but one was in a registered place of worship (049) and one in Scotland (079). The non-legally binding ceremonies also took a variety of forms: three Christian (049, 063, 079's first non-legally binding ceremony), two Hindu (077 and 079's second non-legally binding ceremony), one Muslim (017), one Pagan (004A&B) and two non-religious ceremonies, of which one was celebrant-led (025) and one led by a friend (052).

Given that there were relatively few Christian non-legally binding ceremonies in our sample, the fact that three of them fell within this group is worthy of note. All three were ones where the legal wedding had been precipitated by various factors and the non-legally binding ceremony (or, in the case of 079, ceremonies) was a means of having a larger celebration with family and friends once it felt like the right time to do so.²¹⁰ As 063 (female, 29, Christian) noted, 'we wanted to have that big celebration that we felt like all our other friends were getting. And we weren't able to achieve in the timeframe we were given'. The key issue here is perhaps more the greater ease with which the legal and religious requirements can be combined in Christian ceremonies: as a result, where the Christian ceremony *is* held separate from the legal wedding it is therefore more likely to be for a reason beyond the desire to have a religious ceremony.

Jewish wedding for different-faith couples. His case provides a useful reminder that the special treatment afforded to Jewish weddings brings constraints as well as freedoms.

²⁰⁹ 004, 017, 025, 049, 052, 063, 077 and 079.

²¹⁰ 049 (Covid), 063 (grant of a fiancé visa) and 079 (elopement to Scotland).

In four of the other five cases there were also specific, if varied, reasons for having a gap between the two ceremonies.²¹¹ Only 017 (male, 30, Muslim) had no particular reason for the timing of the two events, simply seeing the legal wedding as something to get 'out of the way' before his *nikah*.

As the next section will discuss, those involved in conducting non-legally binding ceremonies reported similar reasons as to why these ceremonies might take place after, rather than before or instead of, a legal wedding.

Willingness to conduct non-legally binding ceremonies

A number of those involved in conducting non-legally binding ceremonies emphasised that they would only do so if the couple had a legal wedding first, but there were differences in terms of *why* this condition was imposed, how rigorously it was interpreted, and how the subsequent ceremony was conceptualised.

Making a non-legally binding ceremony conditional upon parties being legally married

There were some noticeable differences between, as well as within, different groups in terms of whether the performance of a non-legally binding ceremony was conditional upon a prior legal wedding.

In the context of Christian ceremonies, the assumption that the legal wedding would come first seemed to be so ingrained that it was generally not something that needed even to be discussed with couples. As L-223, an Anglican clergyman, noted: 'the problem [of order] hasn't arisen for me because most people approaching me for a wedding blessing are already married'. While both L-224, a Christian evangelical minister and L-222, an Anglican clergyman, explained that they would often encourage couples to marry in a register office first, their reason for doing so was because they felt that this was the simplest way of having a legal wedding rather than because couples needed to be persuaded to have the legal wedding first. The only Christian minister to have conducted a non-legally binding ceremony without a prior legal wedding was E-152, a Baptist minister, and this had been as a response to the restrictions imposed as a result of Covid.

The two Buddhist interviewees were also adamant that they would not conduct a religious ceremony unless a prior civil ceremony had taken place or was being incorporated into the civil ceremony. As M-231 explained:

we tell every couple, "You have to be legally married before we can marry you religiously.... And they all understand that. Cos, we would be compromising our position if we allowed a religious wedding without having checked that they are legally married. And we ask to see... we ask for the date, time and then we have the ability to check whether they did actually get legally married. So, we would never conduct a religious wedding unless we absolutely were a hundred per cent sure that they were legally married.

Practices were a little more varied among the Hindu priests but there was a clear assumption that the religious ceremony would be accompanied by a legal wedding. As J-201 noted, '[a]ll the weddings that I performed, there was either after I performed, there is a legal

²¹¹ 004A and 004B had chosen the dates of their two ceremonies for their symbolism; 025 had brought her legal wedding forward because of concerns about her mother's health; 052 decided to have a gap so it would be two separate trips for her parents who would be flying in from overseas and to allow for time to sort out anything that might go wrong with the legal wedding; and 077 had travelled to India for his Hindu wedding.

ceremony or before I perform there is a legal ceremony'. In the second focus group, one priest, K-215, was insistent that the civil ceremony had to come first, telling the others that:

there is a directive, which perhaps did not filter down to all the Hindu priests, which was actually issued by the government. They did say that any religious marriage should only be done if the civil marriage has already taken place or if it's taking place on the same day as the religious marriage.

His advice to his fellow priests was that they should always ensure that this had been done. Perhaps not wishing to appear ignorant of such an important directive, all nodded in agreement and none made any reference to conducting a religious ceremony under any other circumstances.

For the participating imams, any condition requiring the legal wedding to be conducted first reflected personal preferences or the practice of specific mosques rather than institutional guidelines originating in any central body.²¹² B-115 commented that 'personally, I would only do a *nikah* after I've seen the civil marriage certificate', while D-132 noted that 'one of our requirements is that the... couple, must do a civil marriage prior to *nikah*. This is our condition, okay?' In a similar vein C-123, D-139 and D-142 all stated that institutionally there was an expectation that the 'civil marriage' takes place first, while D-135 commented that he knew of 'some *masjids*' that would not do the religious ceremony without making sure that the couple were already married.²¹³

While the Pagan, Humanist and independent celebrants noted that a couple would usually have their legal wedding first, most saw the order as being a matter for the couple to decide. As N-242, a Pagan celebrant, put it: 'there's no particular rule as to what they want. That is really a matter [of] their convenience and their choice. Some people say, "No, we don't [want] to be bothered with that for the time being."' F-162, an independent celebrant, similarly noted that '[s]ome of our couples will marry afterwards. That's fine. That's their choice, when they can fit it in'. G-173, a Humanist celebrant, spoke of advising couples about the law and 'just making sure that couples know that it is fine to get married afterwards if you can't find room before', although she added that 'I kind of prefer the registry office to be before me, because then I'm the last and I'm the best!'

By contrast, a few of the independent celebrants did require the couple to have had a legal wedding first. One was H-181, who explained that 'I insist that they actually do the legal parts before we have my ceremony. So, that they're technically, legally married before the ceremony rather than afterwards.' Another was I-192, who noted that he had been told in his training that he should 'always insist on looking at their wedding certificate' before conducting the ceremony. H-188 also commented that she felt that some couples wanted 'to get round the legal process' and would question whether it was necessary: 'they're sort of, "well, do I have to do that?'. Her response was clear:

Yes, you do. Because otherwise it's not legal. You know? And they're like, "oh, right, okay....".

²¹² Mosques in England and Wales do not have a centralised national governing body, though many sign up to institutional membership of bodies such as the Muslim Council of Britain or the Mosques and Imams National Advisory Board.

²¹³ These statements appear to indicate that many mosques and imams pay attention to the legal status of the couple's marriage, raising questions as to why the legal process enabling them to perform legally binding ceremonies is not one they engage with.

Why this condition was imposed

While many of those involved in conducting weddings adverted to the problems that the lack of a legally binding ceremony might cause for the couple, this was rarely cited as a reason for requiring the legal wedding to take place first. M-232 was one of the few to make this link, commenting that '[i]f there were children involved in the future and a divorce went through and they weren't actually legally married, it's just a complete nightmare for that family'. Most participants simply noted that they advised the couple of the consequences and left it to them to decide how to proceed.

A more immediate problem was identified by A-103, who reported his experience of registrars 'being unhappy if they find out that the religious marriage has been conducted before they are approached for the civil marriage' and making the couple 'feel uncomfortable'. He, however, only advised couples to have their civil wedding first, rather than making it a condition.

The primary reason for requiring a couple to have had a legal wedding before their non-legally binding ceremony was the fear of those conducting the wedding themselves getting into trouble with the law. This was very evident amongst those involved in conducting religious ceremonies, although individuals tended to be vague on the details of any potential offence. Thus M-232, an authorised person for a Buddhist place of worship, commented that they 'would run into trouble with the law of the land'. D-133 referred to mosques being 'scared' to conduct non-legally binding ceremonies with 'threats' hanging over their heads, D-143 noted that both the imam and the *masjid* committee would 'get into trouble', and D-135 suggested that 'so many consequences have happened' that '*masjids* do not want to get their hands messed with the consequences related to that'. K-215 warned his fellow priests that they should 'never ever be in a situation' where they had conducted a Hindu ceremony and then realised that no civil marriage had taken place, and K-212 added, with other members of the group nodding agreement, 'we have to be very very careful so that we don't fall in the wrong side of the law'.

Independent and Humanist celebrants were much more confident that there was nothing to prevent them from conducting a ceremony before the legal wedding had taken place. G-171 commented that although there was a preference among registration officers for the legal wedding to come first, 'legally it makes absolutely zero difference'. While H-181, an independent celebrant, explained that her reason for requiring the couple to have had a legal wedding first was to ensure that she did not conduct sham weddings, neither she nor other members of that group thought that there was any prohibition on the ceremony as such. As H-185 pointed out in the chat, doing the legal part afterwards did not make the ceremony a 'sham'.

This greater confidence was also reflected in the dynamics within the different groups. Within focus group K, K-212, K-213 and K-214 were all clearly influenced by K-215's assertion about the 'directive' that the legal wedding should come first. By contrast, the independent celebrants felt able to challenge each other or admit to having different practices. In addition to the exchange in focus group H noted above, two celebrants in focus group I made it clear that they had different practices. When I-192 described how he would always insist on looking at the parties' marriage certificate, the amused response of I-194 was '[t]hat is interesting. I insist on no such thing!'

These differences in perception of what was permitted do have some basis in the law. Those who were authorised persons were wise to refuse to conduct a religious ceremony without a legal wedding having taken place first, since conducting a non-legally binding ceremony could conceivably be seen as a failure to comply with the provisions of the Marriage Act

1949 and lead to their conviction and de-authorisation.²¹⁴ This was presumably what M-231 had in mind when she said ‘we would be compromising our position if we allowed a religious wedding without having checked that they are legally married’. More speculatively, those who conduct non-legally binding ceremonies in a registered place of worship without a prior legal ceremony may also potentially be committing a criminal offence, although this depends how the phrase ‘solemnizing a marriage’ is interpreted. Finally, the fact that the Marriage Act explicitly permits a religious ceremony to be conducted *after* a civil wedding may give the misleading impression that it is illegal for such a ceremony to be conducted before,²¹⁵ while the absence of any reference to ceremonies conducted by Humanist or independent celebrants may conversely provide reassurance that they are free from constraint.

The concerns expressed by imams in particular may also reflect a sense that recent policy initiatives have targeted Muslim marriage practices and created a hostile environment for those conducting non-legally binding ceremonies. As noted in chapter 1, the *Independent Review into the Application of Sharia Law in England and Wales* proposed that ‘the celebrant of specified marriages, including Islamic marriage, would face penalties should they fail to ensure the marriage is also civilly registered’.²¹⁶ This was followed by support in principle for civil marriages to be conducted before or at the same time as religious ceremonies in the government’s *Integrated Communities Strategy Green Paper*.²¹⁷ This proposal, if implemented, would hamper any person from performing a non-legally binding ceremony having serious consequences for all of the ceremonies discussed in this report²¹⁸ and vastly diminishing couple’s choices as to their marriage ceremony.

Absolute or conditional?

There was also a sense that the condition that the couple should have had their legal wedding first might not be an absolute one but was itself conditional on the circumstances.

Again, this varied between participants. For M-231 and M-232, it was clearly an absolute condition. As M-231 put it, ‘we would never conduct a religious wedding unless we absolutely were a hundred per cent sure that they were legally married’.

P-261 similarly stated ‘we can only give a certificate from the gurdwara if they have supplied, previous to the wedding, with a civil wedding certificate.’ However, he went on to note that the gurdwara could provide ‘a letter that we conducted this wedding’ even in the absence of proof that a legal wedding had taken place, suggesting that there was in fact some flexibility in their approach.

Others had made exceptions during 2020 on account of the difficulty – and at times the impossibility – of getting married legally. This was the case for a number of those who were generally involved in conducting legal weddings, including E-152, a Baptist minister, L-221, an Orthodox rabbi, and D-132, an imam.²¹⁹

²¹⁴ Marriage Act 1949, s 77. See further chapter 3.

²¹⁵ See further chapter 3.

²¹⁶ *The Independent Review into the Application of Sharia Law in England and Wales* (Home Office, February 2018), 17 (emphasis added).

²¹⁷ MHCLG, *Integrated Communities Strategy Green Paper* (14 March 2018), 58.

²¹⁸ R Probert, ‘Criminalising non-compliance with marriage formalities?’ [2018] 48 *Family Law* 702.

²¹⁹ See further R Probert, R Akhtar, S Blake and S Pywell, *The impact of Covid-19 on legal weddings and non-legally binding ceremonies* (forthcoming, 2022).

Making the ceremony's (lack of) status clear

All of those who conducted non-legally binding ceremonies – whether before, after, or instead of a legal wedding – noted that they were very clear that these ceremonies lacked legal status.

E-152 explained how his Baptist church had conducted a number of ceremonies during the pandemic and ‘we felt the need to be very explicit that they weren’t legally binding. For us and for the couple’. J-201, a Hindu priest who only conducted religious ceremonies, was similarly clear about the limits of his role:

I make it very clear to them, the wedding that I’m going to perform is nowhere related to any legalities. You guys take care of your legalities. As a priest, I care for you as Hindu faith followers and I do it, but it has nothing to do with legalities.

N-242, a Pagan celebrant, noted that while he had ‘never conducted a ceremony where the people involved weren’t aware that they needed to go, or to have undergone, something legally binding’, he did feel that he had to remind them ‘just in case’:

If people are talking to me, just asking about the idea as opposed to with very specific proposals for what they want to do, then I would always make a point of saying, “This is not a legally recognised thing.”

Humanist and independent celebrants similarly explained how they made it clear that the ceremonies they conducted were not legally recognised. G-173, a Humanist celebrant, not only made it clear that she could not conduct a legal wedding but also that there were certain words she could not use:

I’m not allowed to use words like “marry” and “I pronounce you” but I can say, “I can present the bride and groom” and I can say, “I am joining together” in the wedding ceremony. I just can’t say, “married” and “marriage”. So, knowing those legal things, I explain that ... when I’m talking to my couples, I explain terminology as well. I’m always very clear on what I can and can’t say.

In a separate group of independent celebrants, H-185’s comment that ‘being absolutely transparent and upfront with our couples’ was a ‘critical part’ of their role was met with lots of nodding from the other participants. As she explained:

When I respond to the very first email enquiry that I get from a couple, I always say, “are you completing a legal registration as well?” So, just by asking that question, it makes it absolutely clear that there is the need to actually complete a legal registration. So, it doesn’t become a big deal or awkward and it raises that issue if the couple don’t actually realise that what I do isn’t legal.

Again, this message about the ceremony’s lack of legal status was reinforced by written documentation both before and after the ceremony. F-164 explained that ‘it’s in all my Terms & Conditions, it’s on my application ... my booking form. It’s on my website. It’s a really big part of the conversation I have with my couples’. In a similar vein, I-193 noted, with other members of the focus group nodding:

It’s in my contract... there is a clause that says, “just so you know, this is not legally recognised in England.”... and I always talk about it to them in our first meeting, so they know that it’s not a legally binding ceremony. But they all know that when they come to see me. They already know that.

Another independent celebrant, H-184, explained that he had ‘a little certificate that they sign, and it says at the bottom, “This is not a legal document”’, and his comment that ‘I’m sure everyone else has one as well’ was similarly met with lots of nodding from other members of the group.

The meaning of the two ceremonies

When interviewees were asked which ceremony was the most meaningful to them, most said that it was the non-legally binding ceremony. Only a few identified the legal wedding as the most meaningful, but a significant minority commented that both were equally meaningful, albeit in different ways. In this section we unpack the different meanings attached to the different ceremonies, beginning with the different ways in which the non-legally binding ceremony was conceptualised from the perspective of those involved in conducting them.

How the non-legally binding ceremony was conceptualised by those conducting it

Within the Church of England, a religious ceremony that takes place after a legal wedding is very specifically conceptualised as a blessing rather than a marriage.²²⁰ There is a special form of service for couples who have had a civil wedding; this service is distinct from the usual Anglican liturgy and does not involve any exchange of vows. This was reflected in the comments of the two Anglican clergymen, L-222 and L-223.

Other than this, the format of religious ceremonies did not differ according to whether they came before or after the civil wedding. L-221, an Orthodox rabbi, acknowledged that it might be ‘splitting hairs a bit, but we don’t do blessings... I mean, the format of our Jewish wedding ceremonies is the standard liturgy... the actual format is exactly the same, whether or not there’s civil registration’. The two Roman Catholic priests, O-251 and O-252, similarly confirmed that the ceremonies they conducted would follow their usual liturgy where the purpose was to ‘convalidate’²²¹ a ceremony that the Catholic Church did not recognise as a marriage.

None of those involved in conducting Muslim, Hindu, Buddhist or Sikh ceremonies made any mention of the ceremony being different depending on whether it came before or after the legal wedding. While some did use the language of ‘blessing’ the union of the parties, they did so for very specific reasons. One imam, A-104, reported how he strategically described the *nikah* as a blessing to defuse potential criticism and what he saw as the risk of prosecution:²²²

the wording I’m using is precisely to avoid prosecution because, as you probably know, there are vociferous voices in this country who have called many times for imams like us, or anybody who does *nikahs* like this before a civil wedding, to actually be prosecuted.

Among Humanist and independent celebrants, the narrative was rather different, with the emphasis on the ceremony being the ‘wedding’ whether it came before or after the legal wedding. As one independent celebrant, H-188, put it: ‘you don’t celebrate your birthday on

²²⁰ Described as ‘An Order for Prayer and Dedication after a Civil Marriage’, the Church of England provides specific liturgy for such ceremonies. See <https://www.churchofengland.org/prayer-and-worship/worship-texts-and-resources/common-worship/marriage#mm107>.

²²¹ The purpose of ‘convalidation’ is to ensure that the parties are regarded as married by the Catholic church as well as by the law.

²²² As proposed in *The Independent Review into the Application of Sharia Law in England and Wales* (Home Office, February 2018), 17.

the day that you were registered. You celebrate the day that you were born... So, there is no need to think of your registry... your legal ceremony, as the day you need to celebrate your marriage or your wedding'. This distinction reflected their sense of the relative importance of the two ceremonies: H-181, another independent celebrant, suggested that couples felt 'more married' at their celebrant-led ceremony than at the legal wedding. It also rendered issues of its legal status irrelevant: a wedding was, in the words of I-193, about a couple 'declaring their love and their commitment to each other in front of their friends and family'.

Those attending a celebrant-led ceremony would not necessarily know that there had been a prior legal wedding. While some celebrants would explain that the couple had already done the 'legal bit' (I-193), others thought that this was unnecessary. One independent celebrant, I-191, noted that 'during the ceremony we don't say, "oh, by the way, they've already got married". We never say anything like that.' Another, F-165, similarly noted that:

as a celebrant, it's something that I think we're all really clear with our couples about. But we don't need to be clear with their guests about. I think it's making that distinction. Because quite often couples will say, "I don't want other people to think this isn't... that I'm not legally married". "Well, no, because you are legally married. You've already done your ceremony. You've done your legal... you've done the paperwork" and it's separating out the two sides, if you like. So that couples understand that the one side is administrative, and the other side is their wedding day.

The one key difference in the form of celebrant-led ceremonies that came after a legal wedding was that celebrants felt able to declare the couple to be married. As F-162, an independent celebrant, explained:

the majority of our couples, we advise them to do a statutory ceremony or as close to a statutory ceremony as they can find, that they can get, before the celebration. Basically, so you can publicly announce them as husband and wife at the end.

Whether getting married marked the start of intimacy/living together

For the vast majority of couples getting married in England and Wales, marriage is no longer a prerequisite for living together, still less for embarking on an intimate relationship.²²³ Within our sample, however, different norms could be observed. In this respect there was a sharp divide between those who had a religious ceremony and those who did not. All of those who had a Humanist ceremony or one led by an independent celebrant or friend had been cohabiting before they married. Amongst those who had a religious ceremony, three²²⁴ key variables affected the likelihood of pre-marital cohabitation: type of religious belief; the importance attached to that belief; and whether the interviewee's partner shared that belief. What is also of interest here is *which* ceremony marked the beginning of cohabitation: the legal wedding or the non-legally binding ceremony.

A clear pattern emerged among the Muslim interviewees, who were the most likely to describe their beliefs as important or very important and the most likely to be marrying someone who shared their beliefs. Put simply, none of the Muslim interviewees who were marrying another Muslim cohabited before the ceremony. The only two cases in which a couple cohabited before their *nikah* both involved a Christian partner (080 and 083A&B), and

²²³ R Probert, 'From This Day Forward? Pre-marital Cohabitation and the Rite of Marriage from the 1960s to the Present Day' in J Miles, P Mody and R Probert (eds) *Marriage Rites and Rights* (Hart Publishing, 2015).

²²⁴ We also explored whether it was ethnicity, rather than religion, that determined practices, as many Muslims, Hindus and Sikhs in our sample were of South Asian origin. However, the choices made by two White British Muslims in our sample were the same as those made by other Muslims, suggesting that religion may have an impact independently of ethnicity.

in the case of 080 (male, 36, agnostic) the *nikah* was conducted for the sake of the family rather than on account of his own beliefs. Moreover, for the majority of Muslim participants, marriage – in the sense of the *nikah* rather than the legal wedding – marked the start of *any* kind of intimacy.²²⁵ This can be illustrated by two cases in which the *nikah* and the civil wedding took place around four months apart. 048 (male, 38, Muslim) had his *nikah* before his legal wedding and ‘after that, we were obviously allowed to have intimacy. After that, we were allowed to be husband and wife and live together and so religiously, it was everything is just like you were fully married, of course.’ Conversely, the legal marriage of 017 (male, 30, Muslim) took place *before* his *nikah* but as he explained ‘That’s not the proper marriage. We didn’t really want to co-habit or have marital relations until the *nikah* took place.’

A slightly different narrative emerged among those who had a Hindu or Jain ceremony. Due to the purposive nature of our sample, our findings here need to be expressed with a degree of caution, as they are based on a smaller numbers and may reflect the characteristics of these particular individuals rather than broader trends within these faith groups. That said, it was interesting to see more reference being made to family expectations rather than their own religious beliefs. 054 (female, 33 Hindu) noted that her family were ‘very strict’ and did not approve of cohabiting before marriage. The difficulty of challenging family expectations was reflected in the experience of 060 (female, 35, Jain): her decision to live with her husband-to-be was ‘a big shock’ for her family, to the extent that her parents stopped talking to her for a while. The importance of family expectations rather than personal beliefs was also reflected in the fact that 066 (female, 39, atheist) described herself as having no beliefs, despite having had a Hindu ceremony, attributing the fact that she had not lived with her partner before the ceremony to her parents being ‘more strict’. Individual beliefs still played some role though, in that none of those who described their belief as important or very important to them were living together before marriage. In addition, as with the Muslim interviewees, whether those beliefs were shared with their partner was also a factor in determining the likelihood of cohabitation: 067 (female, 37, Hindu), who described herself as ‘not practising’ had been cohabiting with her atheist partner, while 043 (male, 32, agnostic), had not cohabited with his (practising) Hindu partner. And, as for the Muslim participants, among those who had not cohabited before marriage, it was the Hindu ceremony that was the key point of transition: 077 (male, 31, Hindu), whose Hindu ceremony had taken place in India six months after the legal wedding, explained that marital life did not really start after the legal wedding but ‘more after the Hindu marriage’. 066 reported that she stayed at her husband’s house after ‘the civil’ but went ‘back home the following day’, and ‘it was from the wedding day, from that moment onwards, it was... I lived with him’.

By contrast, of the participants who had a Christian ceremony (n=7), the majority had cohabited with their partner in advance of the wedding(s). The two who had not – 041 and 049 – both defined their beliefs as very important to them and had married someone who shared their beliefs. In the case of 041 (male, 31, Christian) the question of which ceremony was the trigger for cohabitation did not arise as both took place on the same day but 049 (female, 28, Christian) did not live with her husband until her religious ceremony had taken place. However, 016 (female, 35, Christian) and 075 (male, 61, Christian) similarly defined their beliefs as very important to them and had married someone who shared their beliefs but had still chosen to cohabit. Indeed, 016 described their eight-year cohabitation as resulting in there being ‘not much difference between being married and not being married’. The remaining three had all married someone who did not share their belief, and while 027 (female, 44, Christian) and 068 (female, 38, Christian) described their beliefs as being important to them, both also defined themselves as non-practising.

²²⁵ This is examined further in chapter 7.

A different pattern again was observable among the five Pagans within our sample:²²⁶ all described their beliefs as important or very important to them, and all had married someone who shared their beliefs, but all had cohabited in advance of the wedding. The same was true of two of the interviewees who described themselves as spiritual (045 and 078).

Among those of other faiths, dominant themes were less clear but there were indications that practices were likely to be varied depending on religiosity and family norms as above. 009 (female, 26, spiritual) attributed the fact that she had not cohabited with her husband prior to the wedding to their work schedules rather than religious beliefs, but her description of herself as being from a 'traditional Indian family' suggests that family expectations played a part here too. For the Bahá'í, as noted above, there was a clear norm that couples should not cohabit in advance of the ceremony and 007 (female, 28, Bahá'í) and her atheist partner had not done so. 047 (male, 35, Jewish) and 008 (male, 35, Zoroastrian) had both cohabited with their respective partners – both Christian – after they got engaged, and for 050A (male, Buddhist, 43) and 050B (male, Buddhist, 46), their Buddhist faith did not prohibit intimacy prior to marriage. By contrast, 005 (female, 34, Zoroastrian) had not cohabited with her atheist partner before their wedding.

Marking the point at which they felt 'married' or the 'real wedding'

A second way of assessing the meaning attached to the two ceremonies is to ascertain the point at which interviewees described themselves as 'married' or which ceremony they described as 'the real wedding'.

Of those who had a religious ceremony, almost all regarded that as the point at which they were married, regardless of whether it came before or after the legal wedding. Again, the clearest pattern emerged among the Muslim interviewees, with the *nikah* marking the point at which they were married whether it was before or after their legal wedding. As 036 (female, 27, Muslim) put it, 'for us, that was us classed as married'. Some framed this in terms of being married 'in the eyes of God',²²⁷ others simply referred to the greater importance of the religious ceremony,²²⁸ while 048 (male, 38, Muslim) described himself as being '[m]entally, spiritually, psychologically married' after the *nikah*. Two of those who had their legal wedding before the *nikah* described the second ceremony as the 'official' one: 017 (male, 30, Muslim) referred to being 'officially married. Culturally and religiously', while 038 (female, 30, Muslim) felt that the *nikah* was 'more official'. She did however reflect that while 'in terms of actually feeling that I was married, married was after the *nikah*', both ceremonies 'did play a part in me feeling that I was married. If I didn't have the legal one as well, I don't think I'd feel as at ease.'

That sense of the religious rites marking the point at which they felt married was echoed across other faiths. As 060 (female, 35, Jain) put it, 'the Indian wedding for me was the day I got married. I mean the religious part of my brain was like, "oh yay! I'm actually married now." Even though, legally, we had been married a week before.' 049 (female, 28, Christian) similarly didn't consider herself married until her religious ceremony had taken place, even though her legal wedding had taken place in a church,²²⁹ while 004A (female, 44, Pagan) contrasted her Pagan ceremony with her legal wedding, which 'didn't make us feel bound together in a way meaningful to our beliefs'.

²²⁶ 004A&B, 010, 032 and 046.

²²⁷ 020 ('the most important thing is to be married in the eyes of God with the *nikah*'); 035 ('Everyone does a *nikah*, if you're a Muslim that is... in the eyes of God that you become husband and wife').

²²⁸ This was a point made by 012, 036, 048, 057, 061 and 069.

²²⁹ See further p 79.

A similar point was made by some of those who had married in a registered place of worship. 043 (male, 32, agnostic) very clearly distinguished between the legal and religious elements of the wedding:

The registration came first... I understand that's the legal bit to it, but it just didn't really... for me, we got married when we completed our ceremony. We didn't get married when we signed a piece of paper.

For 050B (male, Buddhist, 46), the order had been different, with the Buddhist ceremony preceding the legal declarations, but, as he noted, 'when I was stepping to [name of celebrant]'s desk, I felt already married, that's what I felt from the religious ceremony because my commitment in the religious part was 100% there'.²³⁰

Two cases in which the religious ceremony did not mark the point of 'being married' were those of 063 (female, 29, Christian) and 079 (female, 40, Hindu). These cases shared two characteristics: a longer gap between the legal wedding (one year in the case of 063 and three in the case of 079) and the religious ceremony (or ceremonies) and at least one of the ceremonies being in an Anglican church. The significance of the latter lies in the fact that the Anglican ceremony is very carefully conceptualised as a blessing. As 079 commented

we couldn't have a Christian wedding because we already had that legally binding ceremony in Scotland. So, that was something that we learned as well, that you can't have a Christian wedding, it's a blessing. So, you can't wear a veil and there's things that can't be said during the ceremony.

Those two cases underline the importance of how a ceremony is labelled. Many of those whose ceremony had been conducted by a Humanist or independent celebrant followed their practice of using the term 'wedding' rather than 'marriage' and were clear that the non-legally binding ceremony was the 'real' wedding. 073 (female, 37, unclear), for example, commented that 'we were very firm that our proper wedding was going to be the Humanist ceremony with all our friends and family there', while 062 (female, 30, agnostic) similarly felt that her celebrant-led ceremony 'was the most meaningful because it felt like 'this is our wedding.' I think that's how we saw it.' 052 (female, 42, no belief), whose ceremony was led by a friend, described it as 'The Big Day' and noted that she would 'mainly describe' it as the wedding, but acknowledged that she referred to the legal wedding as a wedding too. However, she was more unsure about whether she could describe her ceremony as a *marriage*:

I don't know how it works legally, if I was to have the non-legal marriage beforehand but I think we felt it was important to have the legal piece ahead of the fun, party celebration piece. Can I legally call it a marriage? I'm not... I don't know.... That there's almost a little bit of doubt in your head of does it count if I haven't had the other first?

Such comments reflect both how these terms mean different things to different people²³¹ and the complex interplay of factors that underpin the idea of what 'counts' as a marriage. There are parallels here with Leeds-Hurwitz's study of inter-cultural weddings in the United States: as she found, combining rituals, or creating new ones, created the risk that family and friends would see the resulting ceremony as a party rather than as a wedding.²³² Within our

²³⁰ His partner, by contrast, had seen it as one ceremony, reflecting how perceptions of the same ceremony may differ.

²³¹ As we explained in chapter 1, we have used 'marriage' to refer to the state of being married, but these extracts show that couples often use it to denote the act of getting married.

²³² W Leeds-Hurwitz, *Wedding as Text: Communicating Cultural Identities Through Ritual* (LEA, 2002).

study, interviewees' perceptions of when they were married were shaped not only by their own internal sense of what was meaningful to them but also by the reactions of family, friends, and the wider community. Interviewees whose ceremony followed prescribed rites were more likely to have their sense that this was their 'marriage' confirmed and validated by those who shared their beliefs, whereas interviewees who had a personalised ceremony were more likely to have its status called into question. As 024 (female, 34, no belief) reported:

one of my bridesmaids went around on the big day saying, "you know they're already married? They got married yesterday, so this is..." as if she thought it was a bit... sort of, well why would you have this big party if you're already legally married? So, as it was, people didn't really understand anyway, why you would have two ceremonies.

Just a piece of paper?

At the same time, it is important not to downplay the importance of the legal wedding to participants. For most, however, its importance lay in its consequences, rather than the ceremony itself – that is to say, in being legally married, rather than getting married. 011 (male, 32, Muslim), 029 (female, 30, Muslim) and 064 (male, 42, Muslim) all spoke of the legal wedding being required for recognition by the state, 052 (female, 42, no belief) described it in terms of feeling 'official' and 049 (female, 28, Christian) was conscious of the 'huge commitment' she was making.

For the majority of our interviewees, the legal wedding had taken place in a register office. Most who had married in this way described regarding it as a purely administrative process and just something that they needed to do. However, some were surprised by their feelings during the ceremony and felt that it was more meaningful than they had expected.

The view of the legal wedding as being purely administrative was not linked to the nature of the interviewee's beliefs or to the form of their non-legally binding ceremony. For example, both 017 (male, 30, Muslim), who went on to have a *nikah*, and 024 (female, 34, no belief), who went on to have a Humanist ceremony, described the legal wedding as a 'formality'. For 015 (female, 25, atheist), who went on to have a ceremony led by independent celebrant, and 078 (female, 36, spiritual), who went on to have an interfaith ceremony, the legal wedding was a 'tick-box exercise'. 004A (female, 44, Pagan) described it as 'just a cold, legal bit of red tape', while for 066 (female, 39, atheist) it was 'crossing the t's, isn't it? Dotting the i's.' Indeed, the most commonly occurring word in their accounts was 'paper': for 007 (female, 28, Bahá'í), 014 (male, 41, Muslim), 027 (female, 44, Christian) and 073 (female, 37, unclear) it was 'paperwork'; while for 005 (female, 34, Zoroastrian) it was 'literally just going and signing the papers'.

Similarly, for many the order of the two ceremonies had little impact on the way in which interviewees regarded the legal wedding, with very similar language being used regardless of whether the non-legally binding ceremony had taken place before or after the legal wedding. 021 (female, 32, Muslim), whose *nikah* had taken place eight months prior to her legal wedding, explained that 'I just want to sign a paper and get done with it because I've already done what I needed to do', while 015 (female, 25, atheist), who married three days before her celebrant-led ceremony, noted that she and her partner had 'just needed the piece of paper' to go ahead with their ceremony, and that it was 'a bit annoying having to go through all the hoops that we had to go through'. Similarly, 064 (male, 42, Muslim), described his legal wedding (which took place four months after his *nikah*) as an 'official procedural thing', while for 063 (female, 29, Christian), whose legal wedding took place a year before her blessing, it was a 'very legal proceedings type thing'.

A few, however, did comment on the impact of the order. For 029 (female, 30, Muslim), the fact that the legal wedding was taking place some time after her *nikah* meant that she 'just went with what was straightforward and would get it done'. By contrast, those who had found the legal wedding to be meaningful in itself tended to be those who had this ceremony first. 031 (female, 30, no belief) noted that her 'favourite part' was the legal wedding 'because we did that first, we said our vows the first time'. 080 (male, 36, agnostic), who felt that all three of his ceremonies 'were all very meaningful in different ways', noted that the civil ceremony was meaningful 'because it came first'. 044 (female, 44, unclear) reported getting 'a bit tearful' during the vows in her legal wedding, adding 'but I didn't get like that the next day. Maybe I'd got it out of my system, I don't know'. And 025 (female, 61, Christian) described herself as 'totally, totally emotional. I didn't expect to get that emotional and I was absolutely blubbing my way down the aisle, with my son, who was holding me up almost.'

Others reflected on the words used in the legal wedding. 009 (female, 26, spiritual) thought the ceremony was 'lovely' and 'was meaningful because it felt like it was really, really established'. 052 (female, 42, no belief) had liked the fact that the words were prescribed: as she explained '[w]e both liked that there is an available template that you can choose from cos, you know, we all recognise from tv and culture and whatever else, what we think a wedding is'.

By contrast, some interviewees questioned whether the register office wedding should be seen as a 'ceremony' at all. 026 (female, 33, no belief) said that she and her partner 'had always seen... the first legally binding ceremony, not really as a ceremony but as a step in the process to get married in the way that we wanted to'. For 027 (female, 44, Christian), '[i]t was literally an exercise in form-filling, apart from the bit of ceremony you have to have'. And for others that 'bit of ceremony' – ie the prescribed words – had not made much of an impression at all. 036 (female, 27, Muslim) described the legal wedding purely in terms of what she and her husband had signed, rather than what they had said: 'it was just to the office, sign the forms, take a few pictures, and that was about it'.

For many that lack of ceremony was a matter of choice because they wanted the focus to be on their non-legally binding ceremony. 005 (female, 34, Zoroastrian) explained that 'I wanted all the emphasis to be on the religious ceremony, which we did the next day'. 015 (female, 25, atheist) had chosen to defer the exchange of rings to her non-legally binding ceremony.

For some, however, there was rather more ceremony than they had been expecting. 062 (female, 30, agnostic), had expected that 'we'd go into a room, we'd say a few words that we're told to say, and we'd sign a couple of documents.' However, as she went on to relate:

when we got there, we realised, 'Oh, no, this is actually a ceremony'. They are having us stand and face each other and hold hands *[laughs]*. And we both felt ridiculous because we were under-prepared... Because it felt like it had been made to sound like it would be quite a clinical legal process... My parents thought it was really nice. But we were just a bit like... yeah, we just didn't expect it.

This was not a unique experience. Four other interviewees reported registration officers being surprised by the fact that they had not chosen music or readings and making their own choices as to what should be included. This was the case for 024, 026, 063 and 078. While 063 (female, 29, Christian) was positive about the registrar's choice of a poem – describing it as 'quite nice and a bit of a surprise' – 026 and 078 had seen these additions as impositions rather than enhancements, with 026 (female, 33, no belief) commenting that '[w]e just didn't need the formality that they were trying to impose upon it', and 078 (female, 36, spiritual) 'thinking we really don't want this and trying not to laugh about it as they tried to take it very seriously'. And for 024 (female, 34, no belief) the additions to the legal wedding had created something of a tension. As she explained:

we didn't plan any vows, music, readings, because the way we were seeing it, was it was functional, it was getting it out of the way, it was making it legal, so that the next day when we were having our big deal, we knew that we were... that it wasn't 'not legal'. So, that was the way that we were kind of seeing it, as there was a day that was unsentimental, it was a formality and, in the end, actually, it was more emotional than we thought it would be, on that day, because the Registrars were so surprised. They said that we hadn't filled the form out properly because we hadn't said what readings we wanted, or which vows we wanted, and we said 'well we didn't want any, because this isn't what we were considering our wedding'. So, they sort of shoehorned in Pachelbel's Canon and props for photos and stuff and, in the end, it actually was quite a special day. But we had decided we didn't want the legal day to be special because we wanted the next day to be the special one.

By contrast, those who had *chosen* an enhanced form of ceremony tended to be more positive about the process. As 018 (female, 32, Hindu) explained, 'with the legal ceremony there are a few options. You could literally just go in and sign and be done with it. Or you could go in and have an entrance and sort of structured vows and songs. And we went for the bigger option.' Despite – or perhaps because of – all the planning that had gone into her Hindu ceremony of marriage, she described the legal wedding as 'our most favourite day, actually... I think it mirrored a lot more of our personalities probably and it was just quite simple and small and non-fussy'. 072A (female, 27, no belief) similarly explained how she and 072B had been about to 'choose three songs to walk out to, which was very nice', while 060A (female, 35, Jain) described feeling like a 'princess' during her legal wedding.

Perhaps surprisingly, those whose legal wedding had taken place on approved premises – and had paid more for the registration officers to attend – were not necessarily more positive about the process than those who had married in a register office. 022 (female, 38, no belief) described how her legal wedding had taken place with two witnesses and was 'as simple and basic as it could possibly be'.

Where the legal wedding had taken place in a religious venue, the significance attached to it was more varied. Where the legal wedding was seen as reflecting the faith of one or both of the parties then it tended to be accorded equivalent weight to the non-legally binding ceremony. In the case of 041 (male, 31, Christian), both ceremonies were conducted under the auspices of the Church of Jesus Christ of Latter-Day Saints and he described them as 'equally meaningful'. By contrast, in a few cases the legal wedding was not seen as reflecting the faith of *either* of the parties.²³³

Finally, five interviewees defined their legal weddings as being more meaningful to them than their non-legally binding ceremonies. At first sight these five would seem to have little in common. 016 (female, 35, Christian) married in a Catholic church, 018 (female, 32, Hindu) in a register office, 030 (female, 37, atheist) on approved premises, 071 (female, 35, Hindu) on a beach in the Seychelles, and 079 (female, 40, Hindu) in Scotland. Their non-legally binding ceremonies were almost as varied: 018 and 071 had Hindu ceremonies, 016's was conducted on approved premises by the same Catholic priest who had conducted the legal wedding, 030 had what she described as a 're-enactment', and 079 had both a Christian blessing and a Hindu ceremony.

²³³ This was the case for 049 who had had a scaled-down legal wedding in a registered place of worship in October 2020 because of the uncertainties as to whether her full wedding would be able to go ahead in the light of likely Covid restrictions (see further R Probert, R Akhtar, S Blake and S Pywell, *The impact of Covid-19 on legal weddings and non-legally binding ceremonies* (forthcoming 2022)). It was also the case for 043, who saw his Hindu ceremony as separate from the 'legal bit'.

What united them was the sense that the non-legally binding ceremony was largely for others rather than for themselves. As 016 reflected:

at the time, I think our view was, “No, this is just a tick box and the other one’s going to be more meaningful.” But actually it kind of worked out the other way and I don’t know if that’s because of the fact that it was in the church or if it was because the fact actually it was quite nice just having those people that you genuinely do class as the closest people to you. So it wasn’t as stressful. You didn’t have to run around entertaining everybody for the day... We’ve said since for that, we could have just done that. [laughs] But you kind of keep a lot of people happy, which I know isn’t what it’s about but it does work out that way sometimes.

018 and 030 had similarly had just a few guests at their legal weddings, while 071 explained that ‘us saying our vows to each other was quite private and I didn’t want to share that with the whole world’. For 079, too, the legal ceremony was ‘our choice’ whereas the subsequent ceremonies were ‘more about two families coming together’.

Conclusion

While the general trend was for the legal wedding to come before the non-legally binding ceremony, the gap between the two varied considerably. In some cases, the gap was of the couple’s choosing but in others it reflected more practical constraints. Nor was there any straightforward split between a legal wedding being regarded as a mere formality and the non-legally binding ceremony alone being meaningful for those involved, although this was certainly true of some participants. A number of participants reported being surprised by how meaningful they had found the legal wedding, and a few felt that it was more meaningful than the non-legally binding ceremony.

There is, however, an important difference between attaching meaning to being legally married and valuing having a separate legal wedding. Many of those who had two ceremonies would have preferred to have just one. In the next chapter we examine the constraints on combining ceremonies under the current law, before going on to look at those who chose a form of ceremony for which the law as yet makes no provision.

5. The limitations of the current legal options

As the previous chapter has shown, a number of interviewees had chosen to have their legal wedding and non-legally binding ceremony on the same day. Others indicated that they had wanted to have their legal wedding and non-legally binding ceremony on the same day but had been unable to do so. Furthermore, when asked about how they would like the law to be reformed, many indicated that their ideal would be either for the two ceremonies to be combined or for their chosen ceremony to be given legal effect. Given this gap between how couples had wanted to marry and how they *had* married, it is necessary to look a little more closely at the existing legal options and how they operate in practice.

In this chapter we focus on the two options for having a legal wedding and non-legally binding ceremony on the same day and in the same place. The first is that of getting married in a registered place of worship. As we will show, while for some a wedding in a registered place of worship is conceptualised as a religious wedding given legal effect by the inclusion of prescribed words, for others the prescribed words are seen as constituting a civil wedding before, during or after a (legally unrecognised) religious ceremony. This latter option is therefore not dissimilar to the second option, that of having a non-legally binding ceremony before or after (but not during) a civil wedding on approved premises. For some, however, this was not an option at all: our findings point to considerable variation in practice as to what is permitted on approved premises and highlight the factors that may prevent the legal wedding and non-legally binding ceremony taking place at the same venue on the same day.

Getting married in a registered place of worship

Access to a registered place of worship

While in principle it is open to any religious group to register its place of worship for weddings, it does not follow that all couples are able to marry in a registered place of worship, still less where they worship.

First, there is the question of whether the place where they worship *can* be registered for weddings. There are two stages to this. The initial stage requires the building (or part of a building) to be certified as a place of religious worship under the Places of Worship Registration Act 1855, although the requirements for this are admittedly unexacting.²³⁴ A separate application then has to be made for this certified place of worship to be registered for weddings. The criteria here are more demanding, requiring the support of 20 householders who use the building as their usual place of public religious worship. 041 (male, 31, Christian), a member of the Church of Jesus Christ of Latter-Day Saints, noted that their rule that only members with a ‘temple recommend’²³⁵ could attend ceremonies in their temples was seen as contravening the requirement that a wedding in a registered place of worship has to be celebrated ‘with open doors’.²³⁶ More fundamentally, the House of Lords held in *Church of Jesus Christ of Latter-Day Saints v Henning (Valuation Officer)*²³⁷ that the restriction to members meant that a Mormon temple was not a place of *public*

²³⁴ In particular, it is not necessary for it to be certified as a place of *public* worship: in *Church of Jesus Christ of the Latter-Day Saints v Henning (Valuation Officer)* [1964] AC 420, the Mormon temple in question was in fact certified as a place of religious worship under the 1855 Act; the point at issue was whether it was a place of public religious worship for the purpose of rating exemptions.

²³⁵ That is, only members recommended by church leaders as permitted to enter the temple.

²³⁶ Marriage Act 1949, s 44(2).

²³⁷ [1964] AC 420, upheld in *Gallagher (Valuation Officer) v Church of Jesus Christ of Latter-Day Saints* [2008] UKHL 56.

religious worship and so could not be registered for weddings at all. It has been suggested that this requirement may prove an obstacle to many places of worship being registered.²³⁸

Even assuming that the place where they worship *can* be registered, there is the second question of whether it *is* registered. Non-registration has been identified as a particular issue in the case of mosques.²³⁹ across England and Wales, just 300 mosques are registered for weddings, accounting for only 21% of all Muslim certified places of worship.²⁴⁰ Moreover, the uneven geographical distribution of these 300 mosques means that Muslims in some parts of the country have no realistic option of marrying in a registered place of worship.²⁴¹ For those living in Cornwall, Devon or Somerset the closest registered mosques are in Bath and Bristol, while for those in Wales, the choice lies between Cardiff (which has four mosques registered for weddings) and Bangor (which has just one). Among our participants, 012 (female, 36, Muslim) noted that ‘we couldn’t have the civil at the mosque’, while 083A (female, 33, Muslim) was unable to find a local mosque in which she would be able to marry. In addition, the fact that so many mosques are not registered for marriages may mean that couples do not even look into the possibility: 029 (female, 30, Muslim) noted that the mosque in her husband’s town ‘do both the *nikah* and the civil ceremony... you can do it in one shot, basically’, but added that ‘But I didn’t know. The formality is that you have the *nikah* done where the girl lives.’ Nor, it should be noted, is non-registration just an issue for mosques. While a higher *percentage* of Sikh gurdwaras and Hindu temples are registered for weddings, their overall *number* is smaller, and in the case of Buddhist places of worship, both the number and the percentage registered for weddings are actually *lower* than for mosques.²⁴²

For those who belong to smaller and often more geographically dispersed religious groups, then, the question is not simply whether they can marry in their usual place of worship but whether they realistically have access to *any* place of worship that is registered for weddings. In the focus groups, E-151, a Zoroastrian priest, confirmed that Parsis in England and Wales had very limited options if they wanted to marry in a Zoroastrian place of worship that was registered for weddings, and that most Zoroastrian ceremonies took place in other venues, from back gardens and living rooms ‘to beaches and palaces and manor houses’. For the Bahá’í, the very concept of a formal place of worship was somewhat alien. As E-154 explained, Bahá’í did not have ‘any formal places of worship in the sense of temples or mosques or churches’. Smaller groups would generally meet in each other’s homes, while bigger ones might rent a hall. While a few Bahá’í centres are registered for weddings,²⁴³ Bahá’í couples generally had a civil wedding and a separate Bahá’í ceremony. For Pagans, the issue was even more acute, with just one place of worship being registered in the whole of England and Wales.

²³⁸ A Bradney, ‘How Not To Marry People: Formalities Of The Marriage Ceremony’ [1989] *Family Law* 408, 409, and *Religions, Rights and Laws* (Leicester University Press, 1993), 41.

²³⁹ A Bone, ‘Islamic Marriage and Divorce in the United Kingdom: The Case for a New Paradigm’ (2020) 40 *Journal of Muslim Minority Affairs* 163.

²⁴⁰ GRO, *Places of worship registered for marriage* (July 2021), <https://www.gov.uk/government/publications/places-of-worship-registered-for-marriage> (accessed 23 September 2021). There was some suggestion in focus group A that the mistaken belief that they would be compelled to conduct same-sex weddings had deterred some mosques from being registered and led others to de-register, although it should be noted that the issue of non-registration long predates the introduction of same-sex marriage.

²⁴¹ If there is no registered building of the denomination according to whose rites the parties wish to be married in the district(s) in which they reside, a superintendent registrar may issue a schedule authorising a wedding in the nearest registration district in which there is such a registered building: Marriage Act 1949, s 35(1). That, however, may be some distance away.

²⁴² According to the list held by the GRO, 77% of Sikh gurdwaras, 48% of Hindu temples, and just 12% of Buddhist places of worship are registered for weddings.

²⁴³ Seven Bahá’í centres – those in Brighton and Hove, Burnley, Fallowfield, Liverpool, London (Knightsbridge), Newcastle-upon-Tyne, and Whitfield – are registered for weddings.

Couples who belong to these groups must therefore decide whether to travel some distance to a place where they could be married or have a civil wedding and a separate non-legally binding religious ceremony. If they chose the former, there was the added consideration of family and friends also having to travel.²⁴⁴ This was the dilemma faced by 010 (female, 52, Pagan). As a Druid, she wanted to be married in a handfasting 'but the only place we could do that legally was Glastonbury'. While they had looked into this as an option, they had decided against it:

[I]t was getting family and friends and the Order up there. A lot of our Order are older people, some of them are disabled and some of them don't have a great deal of money. And we wanted certain people around us, and we knew we couldn't cater for them hotel-wise and things.

In addition, some couples may not have the option of getting married in a place of worship, registered or otherwise. This is a particular issue for same-sex couples.²⁴⁵ Within our sample, 075 (male, 61, Christian) noted the impossibility of him and his husband getting married in a Catholic church. However, they had been able to call on a priest friend to conduct a ceremony for them, if 'slightly below the radar'. As this indicates, even if a religious group is officially opposed to same-sex weddings, there will often be individuals within it who are willing to conduct a non-legally binding ceremony. Among those conducting ceremonies, E-153 was willing to conduct *nikahs* for same-sex couples while O-251 and O-252, two Roman Catholic priests, similarly indicated that they were personally willing to conduct same-sex ceremonies.²⁴⁶

It should also be acknowledged that the possibility of a same-sex couple having a religious wedding depends on which religion they follow, given that a number of registered places of worship have opted in to conduct same-sex weddings.²⁴⁷ Among our interviewees, 050A (male, Buddhist, 43) and 050B (male, Buddhist, 46) were very proud of the fact that they had apparently been the first couple to have a religious same-sex wedding in England and Wales, in a Buddhist place of worship. Each, however, had different perceptions of that wedding: while 050A saw it as a single ceremony with legal and religious implications, 050B saw it as two ceremonies, one legal and one religious. As the next section will explore, this reflects the fundamental ambiguity at the heart of the Marriage Act 1949 as to the nature of a wedding in a registered place of worship.

The experience of getting married in a registered place of worship

Just seven couples in the sample had their legal wedding in a registered place of worship. Four – those whose wedding had taken place in a Christian church – all had an additional non-legally binding ceremony elsewhere.²⁴⁸ The other three – two of whom (050A&B and

²⁴⁴ M-231 and M-232, who were authorised persons for a place of worship that was the only one in England and Wales that was registered for weddings within their particular strand of Buddhism, also identified this as an issue.

²⁴⁵ The Marriage (Same Sex Couples) Act 2013 made provision for religious groups to conduct same-sex weddings if they so wished, but s 2 also introduced a 'triple lock' to ensure that no religious group or minister could be compelled to do so.

²⁴⁶ On religious blessings of same-sex unions, see also G Goddard, 'The Church of England and gay marriage: What went wrong?' in N Barker and D Monk (eds) *From Civil Partnership to Same-Sex Marriage: Interdisciplinary reflections* (Routledge, 2015).

²⁴⁷ On this see F Cranmer, 'Quakers and the Campaign for Same-Sex Marriage' in R Sandberg (ed) *Religion and Legal Pluralism* (Routledge, 2016); P Johnson, RM Vanderbeck and S Falcetta, *Religious marriage of same-sex couples: A report on places of worship in England and Wales registered for the solemnization of same-sex marriage* (University of York and University of Leeds, 2017).

²⁴⁸ These comprised 016 (wedding in a Catholic church, Catholic ceremony on approved premises led by the same priest); 041 (wedding in a chapel of Church of Jesus Christ of Latter-Day Saints, ceremony in one of their temples); 047 (wedding in a Catholic church, Jewish ceremony); 049 (wedding in a Baptist church, ceremony in another Christian church).

074) had married in a Buddhist centre and one (043) in a Hindu centre – had not, but differentiated between the legal and religious elements of their legal wedding.

The Marriage Act 1949 provides that a wedding conducted in a registered place of worship may take place ‘according to such form and ceremony’ as the couple ‘may see fit to adopt’, the only stipulation being that ‘in some part of the ceremony’ each of them should make a declaration that they are free to marry, and consent to marry, according to one of the forms set out in the statute.²⁴⁹ In practice, how it was experienced differed between different religious groups. Put simply, Christian participants saw the law as recognising their ceremonies, whereas Buddhist, Hindu, Muslim and Sikh participants saw the prescribed words as a separate civil element within, or alongside, an unrecognised religious ceremony.²⁵⁰

How the prescribed words were experienced also depended on whether they were said before a civil registrar or an authorised person. As explained in chapter 3, the latter is a person appointed specifically by the governing body of the registered place of worship to take responsibility for the registration of the marriage.²⁵¹ He or she may, but need not, be a minister or priest, and may, but need not, also conduct the wedding.²⁵² The spectrum of possibilities – which was reflected in our data – thus runs from the ceremony being conducted by a minister who shares the couples’ beliefs and who is also authorised to register the marriage, through to the prescribed words being spoken before a civil registrar separately.

These are crucial findings in identifying why there have been such conflicting perceptions of weddings in registered places of worship and how having a single set of legal rules for all religious groups²⁵³ does not ensure equality if those rules were formulated with a particular religious group in mind.²⁵⁴ In order to show how different the experience is for Christians and non-Christians, we will examine how the prescribed words are incorporated into their ceremonies.

An invisible join

For Christians getting married in a registered place of worship, the fact that there are certain words that are prescribed by law barely registers. Thus E-152, a Baptist minister who was also an authorised person, told us that ‘our weddings are normally at church and are legally binding themselves’, while 049 (female, 28, Christian) noted that ‘as a Christian, I can have the type of service I want, ideally also legally recognised’. The prescribed words have been absorbed into their weddings to the extent that their statutory origins have been forgotten. There is, in effect, an invisible join between the prescribed words and the rest of the religious service.

The reason for this is simple. As explained in chapter 3, the option of getting married in a registered place of worship was designed for Christians. To the extent that Protestant

²⁴⁹ Marriage Act 1949, s 44.

²⁵⁰ In addition to the three couples who had either a legally binding Hindu or Buddhist wedding ceremony, whose experiences will be discussed later in the chapter, other participants referred to the ‘clumsy’ nature of combining the legal and religious elements as a reason for choosing distinct ceremonies.

²⁵¹ Marriage Act 1949, s 43 and 43B.

²⁵² On the history of the option of appointing an ‘authorised person’, and the confusion that exists regarding their role, see further R Probert, *Tying the Knot: The Formation of Marriage 1836-2020* (Cambridge University Press, 2021); see also R Probert, R Akhtar, S Blake, V Vora and T Barton, ‘The importance of being authorised: the genesis, limitations, and legacy of the Marriage Act 1898’ (2022) *Oxford Journal of Law and Religion* (forthcoming).

²⁵³ The slightly different rules that apply to weddings in Catholic places of worship are not material here. Nor are the different rules that apply to Anglican weddings or those according to Quaker and Jewish usages.

²⁵⁴ As discussed in chapter 3.

Dissenters were starting with a blank slate in 1837, their new wedding services could be constructed around the prescribed words rather than these having to be inserted into an existing liturgy. To the extent that they had already devised their own wedding services, these tended to be just as closely based on the *Book of Common Prayer* as the prescribed words were. Either way, incorporating the prescribed words was a simple enough matter.²⁵⁵ For Catholics, too, the prescribed words would have been familiar ones, given that the *Book of Common Prayer* was itself almost identical to earlier Catholic liturgies.²⁵⁶

Of the four interviewees who had married in a Christian place of worship, two made no mention of the prescribed words at all. Both had married in a Catholic church, with 016 (female, 35, Christian) saying very little about the content of the wedding and 047 taking the view that the form of the service was entirely dictated by the Catholic church. Neither saw it as constituting a civil wedding combined with an unrecognised religious ceremony. 041, a member of the Church of the Latter-Day Saints, had married in one of their chapels and described it as 'a typical religious wedding'; asked specifically about the prescribed words, he simply noted that they had used 'the standard words'.

Only 049 (female, 28, Christian) expressed any awareness of the existence of the prescribed words, and that was because she had had a deliberately pared-down legal wedding in a Baptist church before going on to have a larger ceremony in another church.²⁵⁷ Because of this split they had tried to make the first ceremony as 'secular' as possible: for her, it was not a matter of including the prescribed words in the ceremony but the prescribed words *being* the ceremony. In her view it was 'quite cool that there were certain words that you would say and that would make you legally married'. It was significant that these were words with which she was already familiar. When she was asked by the interviewer whether, if given the choice, she would still have said the prescribed words or just the religious vows used in her second ceremony, she replied that she would have had all of them. Her reason was that she had always heard the 'traditional words' – by which she meant the prescribed words – interspersed with the religious ones. As a result, she thought that the form of Christian weddings would not change even if there was no longer a requirement to include prescribed words.

in terms of the Christian aspect of it, I think most people will continue having a traditional one. So, if the words... if you didn't have to say those words I think there's just a force of habit, isn't there, that people want to have the ones that they've heard their friends and family have. So, even if those got cut out, they would probably continue with it.

For Christians, then, the legally prescribed words are, or have become, part of their own religious tradition to the extent that they may continue to use them even if there was no legal requirement to do so.

Interwoven

Other participants were aware of the prescribed words as the legal element but saw them as woven into the religious ceremony. This was the view of 074 (male, 36, Buddhist), who had married in a Buddhist place of worship. As he described, 'initially it was introduction and

²⁵⁵ For examples of post-1836 marriage liturgies, see R Probert, 'Secular or sacred: the ambiguity of "civil" marriage in the Marriage Act 1836' (2022) *Journal of Legal History* (forthcoming).

²⁵⁶ On the evolution of liturgy see KW Stevenson, *To Join Together: The Rite of Marriage* (New York, Pueblo Publishing Company, 1987); M Searle and KW Stevenson, *Documents of the Marriage Liturgy* (Collegeville, Minnesota, The Liturgical Press, 1992).

²⁵⁷ This particular wedding had taken place in 2020, and the combination of ceremonies had been dictated by the desire to ensure that they could get married: see further R Probert, R Akhtar, S Blake and S Pywell, *The impact of Covid-19 on legal weddings and non-legally binding ceremonies* (2022, forthcoming).

then... I think the legal declaratory words and vows were said. And then it interweaved back into the religious parts.’ He was one of the few to see them as having a role to play in giving the ceremony ‘an appropriate level of seriousness or officialness’. As he noted, his feeling was that both the Buddhist part and the legally binding part were important, with the latter being ‘about your place in the country’.

It should be noted that the authorised persons for that particular place of worship, M-231 and M-232, would have preferred the different elements to be interwoven in a slightly different pattern. As they explained, the prescribed words had originally come towards the end of the ceremony, after various religious ceremonies. This had been the experience of 50A and 50B, a same-sex couple who had married there in 2015. They had had their religious ceremony – after which 050B (male, Buddhist, 46) noted that he ‘felt already married’ – and then signed their Buddhist certificate before shifting to a separate table for ‘the civil one’.

However, M-231 and M-232 had subsequently been told by their local register office that they were not allowed to write anything in the marriage register until the prescribed words had been said. Given the time that this took, they had had to bring the declaratory and contracting words close to the beginning of the ceremony in order to give the authorised person sufficient time to complete the register by its close. This meant, as M-231 confirmed, that there was a ‘mismatch’ between the legal and religious aspects of the ceremony: ‘we can’t, in terms of our faith, declare them married but they are legally married.’

Despite these constraints, the positive experience of 074, 050A and 050B indicates the importance of a place of worship having its own authorised persons who can oversee the prescribed words. While this makes no difference to what the words are, it does seem to make a big difference to how they are experienced.

Splicing and dicing

Where a civil registrar was present at the wedding, having the prescribed words in the middle of the ceremony was more problematic. This was a particular issue for Hindu ceremonies. 043 (male, 32, agnostic) who had married in a Hindu temple that had been registered for weddings, commented how pausing the ceremony to ‘do the Registration’ and then restarting it was ‘really clunky and awkward’. This perception was shared by 055 (male, 38, Jain), who had opted to marry in a register office and have a separate Hindu ceremony. As he noted, the alternative of incorporating the legal element into the Hindu ceremony had not appealed to them: ‘[t]hey stop the ceremony and then you have it within the ceremony but every place we’ve seen that it’s just seemed very messy’. J-202, a Hindu priest, described it as ‘dicing and splicing’ the Hindu wedding.

In addition to the disruption to the religious ceremony, there was a sense that the prescribed words were seen purely as a legal formality rather than as a meaningful part of the ceremony. This came out particularly clearly in the interview with 071 (female, 35, Hindu) who was marrying a (non-practising) Hindu male. She had seen her sister’s (legal) wedding in the same place: ‘she was told what to say and she said, “well, that’s not really meaningful”’. When 071 came to marry, she had chosen not to have a legally binding element as part of her religious ceremony in a Hindu temple.

A third source of tension was the role of the registrar in pronouncing that the parties were husband and wife. J-201 commented that ‘[t]wo-three times it happened so that the bride and groom... express their dissatisfaction that somebody else has to declare them wife and husband other than the priest’. Again, this dissatisfaction seemed to arise from the fact that the person declaring them to be married did not necessarily share their faith: as he put it, couples did not know anything about this ‘civil person’.

It was understandable, then, that the recital of the prescribed words in the middle of a religious ceremony by an unknown registrar who pronounced that the parties were husband and wife regardless of what religious ceremonies had been completed generated a sense of a disjuncture between what mattered in religious terms and what mattered in legal terms.

Sequential

A final way of accommodating the prescribed words was for them to precede or follow the religious ceremony. This was the practice reported by one of the imams, B-111. As he explained, in one centre that was registered for weddings ‘we do both of them separately. Just in the same sitting, one is the Islamic one and then the legal one, okay, you know the declarations’. Since the *nikah* consisted of an exchange of consent, rather than of a series of rituals, there was not the same scope for it to be ‘diced and spliced’ by the inclusion of the prescribed words. Even so, there was very much a sense of the religious ceremony and the prescribed words being separate.

Sequential ceremonies were also reported by P-261, a Sikh priest. As he explained, the ‘civil ceremony’ would take place within the same congregation ‘after the final prayer’, and be ‘conducted by a separate officiant who’ll get the signatures of the boy and the girl and the two witnesses in front of the congregation’. However, this particular way of incorporating the prescribed words was relatively recent. He reported that the government had ‘stepped in’ a couple of years earlier and instructed gurdwaras that the prescribed words had to be said in the presence of the congregation at the religious wedding. His gurdwara, which had previously had the ‘spiritual wedding ceremony in one hall’ and the ‘civil ceremony’ in another place,²⁵⁸ had responded to this by having the religious and legal elements sequentially in the same space. As he added, ‘[w]e’re not happy about that but that is like a compromise that we have agreed to.’

While the precise source of this instruction was unclear,²⁵⁹ section 44 of the Marriage Act 1949 does direct that the prescribed words should be included ‘in some part of the ceremony’.²⁶⁰ In addition, the guidance issued by the General Register Office to registration officers states that a ceremony in a registered place of worship must consist of more than the prescribed words. Yet there are plenty of examples of the prescribed words being said separately where there are challenges in incorporating them into the religious ceremony,²⁶¹ and allowing for such an option would preserve the integrity of the religious ceremony for the parties involved.

The other solution, of course, would be to dispense with the prescribed words altogether.²⁶² It is worth noting that for all of these participants, while the prescribed words did not necessarily detract from the religious ceremony, they added nothing to it.²⁶³ B-111 identified the prescribed words as one of the aspects that couples found difficult, and D-134 more bluntly described them as ‘ridiculous’:

²⁵⁸ For a description of such separate ceremonies see A Rani, *The Right Sort of Girl* (Blink Publishing, 2021), 299-230: ‘Once the religious ceremony was over, we headed down into the temple basement to conduct the legal bit of the wedding. I had to jump over a Hoover and slide between stacked-up tables. The “uncle” registrar could barely speak English, so he got the names, birthdates and occupations all mixed up. My marriage certificate is covered in crossings out. Oh, the glamour!’

²⁵⁹ There is nothing in any of the regular newsletters issued by the General Register Office to authorised persons to indicate any change of guidance on this point (see <https://www.gov.uk/government/publications/authorised-persons-newsletters>). Nor does its *Guide for Authorised Persons* make reference to this specific issue.

²⁶⁰ Marriage Act 1949, s 44(3).

²⁶¹ See Probert, *Tying the Knot*, ch 5.

²⁶² As proposed by the Law Commission, *Getting Married: A Consultation Paper on Weddings Law*, para 6.68.

²⁶³ See further *Briefing Paper*, paras 4.8-17, for discussion of the challenges of the prescribed words in civil weddings, including their perceived religiosity and the stress induced by having to repeat them exactly.

the wording's been a right headache, it's just a right joke, it's so archaic, it's just... honestly it's like we're in 2020 and we're still having these silly conversations about what words we're going to use... I think it's ridiculous.

Implications for non-legally binding ceremonies

Getting married in a registered place of worship is not a realistic option for all religious groups. Even where it is a possibility, it is clearly experienced differently by different religious groups. The prescribed words are generally invisible to those getting married in a Christian place of worship, but all too visible in other types of weddings. The extent to which the prescribed words were a problem also depended in part on how they were included in the ceremony. There was a sense among those involved in conducting weddings that the law intruded too far when it dictated *when* the prescribed words had to be said.²⁶⁴

The sense that non-Christian ceremonies were not recognised – and that incorporating the prescribed words into a religious ceremony might be more disruptive than having the two separately – also explains why many of our interviewees simply took it for granted that the religious ceremony would be a separate one.

How the ceremony was experienced also depended on who was responsible for leading the couple through this part of the process. Given that the most negative responses were associated with the presence of a civil registrar, it is perhaps surprising that the option of being authorised has not been more widely adopted. However, while every registered place of worship can, in principle, appoint its own authorised person to take the place of a registrar, this was not necessarily an option in practice. In the next section we explore why the option of being authorised had not been adopted more widely within our sample.

Becoming authorised

For many of our participants being authorised was simply not an option, whether because the law made no provision for them (as with Humanist and independent celebrants) or because they were unable to avail themselves of the legal options (as with religious groups that lacked buildings to register or individuals who were not affiliated to a registered place of worship).

Lack of awareness

Some of those involved in conducting ceremonies seemed to be unaware of the possibility of becoming authorised. Among the imams, this was the case for D-137, D-138 and D-144. The first two also commented on the lack of awareness among Muslims more generally, with D-137 pertinently asking 'if you don't know, how can you do this?' Others were uncertain about what was required. C-121 implied that if the mosque was registered for marriages any imam could conduct the ceremony;²⁶⁵ however, when questioned by another imam within the same group, he admitted that he was not sure: 'probably the law is not clear or unfortunately we are not clear about the law, we don't know'.

²⁶⁴ This was a point noted by both M-232 and P-261. The latter commented that 'some local authorities require us to have these civil weddings... bang in the middle of the Sikh wedding ceremony, which we are very, very uncomfortable about'.

²⁶⁵ This is true insofar as there are no legal restrictions on who can *conduct* the ceremony, but misleading in that either an authorised person or a registrar needs to be present to ensure that it is recorded: Marriage Act 1949, s 44(2).

Misunderstandings

E-154 thought that the absence of any formal clergy within the Bahá'í faith²⁶⁶ would preclude them from appointing an authorised person: as he explained, the reason that he would not be authorised was because 'the Bahá'í faith doesn't have any clergy or doesn't have any people who have that kind of mandate or responsibility'.

Conversely, some saw an authorised person as being a 'registrar'. This had an unfortunate consequence: among imams in particular, there was an assumption that they would be under precisely the same obligations as a civil registrar employed by a local authority and so might be compelled to conduct same-sex weddings.²⁶⁷ For some, this was a clear deterrent to becoming authorised. A-103 reported that he had spoken with a number of imams who did not want to be authorised for this reason:

they feel that they don't want to be authorised... because they feel that they will have to conduct the marriages of anyone that puts a notice up. And despite reassuring them that, "you won't have to do same sex marriages and things like that", they still feel that if they do become authorised, then they will have to either choose between doing religious marriages or doing civil ceremonies.

He suggested that a number of places became 'deregistered' for marriage 'out of fear of having to perform *nikahs* that were, from an Islamic point of view, not valid.' D-135 similarly noted that being required to conduct same-sex marriages would be the only issue that would deter him from being authorised.

Reluctance

For some, it was hardly worth engaging with the option of being authorised, since it did not match the way in which they operated. The geographical constraints of the role were identified as a particular issue. While authorised persons are not limited to registering marriages in the building to which they were appointed, they are limited to the registration district in which it is located. As J-203 noted, being limited to a single district was unhelpful given that Hindu priests travelled all over the country and indeed 'all over the world' to conduct marriage ceremonies.

Others identified the option of being authorised as administratively burdensome.²⁶⁸ A-103, in addition to highlighting the concerns about same-sex weddings, noted that imams were averse to getting 'bogged down with red tape'. As he explained:

there's also this fear of getting involved with authority. And they feel that it's better that if we're not authorised, we can do our own thing in our own way, charge whatever fees we feel appropriate and not be bound by rules and regulations.

A final reason for being reluctant to be authorised was where the individual saw a clear conceptual distinction between the religious ceremonies that they performed and the legal marriage. This was articulated by J-201, who explained that 'it is purely religious for me'.

²⁶⁶ Marriage in the Bahá'í faith is described as a 'fortress for well-being': E Marquadt, *Marriage, A Fortress for Well-Being* (Bahá'í Publishing, 2009)

²⁶⁷ This is not the case: an authorised person, unlike a civil registrar, cannot be compelled to conduct a same-sex wedding and incurs no liability under the Equality Act 2010 for refusing to do so: Marriage (Same Sex Couples) Act 2013, s 2; Equality Act 2010, Sch 3, r 25A.

²⁶⁸ The General Register Office provides guidance for authorised persons detailing their roles and responsibilities:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/999992/Guide_book_for_Authorised_Persons_June_2021.pdf.

O-252, a Roman Catholic priest, similarly noted that the priest he had worked with had been 'quite insistent' that he shouldn't be authorised 'as he wasn't, because he didn't want to mix up the roles of Church and State, you know, to roll them up into one person. He wanted to keep them separate.'

Discouragement

A number of imams who had investigated the option of being authorised reported finding the process difficult to navigate. B-113 commented that the council had given them 'a tonne of information', but that the mosque had felt 'we weren't ready to go into that aspect of it immediately', while B-114 confirmed that 'there was a time where we were looking into it' but was not sure why the option had not been pursued. Similarly, C-123 reported that 'when I looked up the training that was involved at that time I just couldn't do it because it was too much involvement'. Significantly, none reported having help or support from their local register office in how to apply. One, who prior to the interview had been unaware of the possibility of being authorised, asked the interviewer in some bafflement 'why [do] local authorities not make us aware so we can apply?' This is a significant issue which raises questions about whether local authorities and the General Register Office could play a greater role in positively encouraging places of worship to become registered and/or to appoint authorised persons and providing them with structured support through this process, perhaps through a programme mirroring other 'widening participation' initiatives.

Others had the sense that their application was not welcome. C-122 commented that he had not found the system to be 'transparent':

it's not something that I personally feel is welcomed by the councils... I contacted, I think it was a few years ago, the registrar office and I wasn't given really satisfactory answers. I was asked to go onto a particular website and go through and read the requirements, etcetera... I don't know whether anybody else has felt that way, but I just feel that there isn't a concerted effort to incorporate approved personnel from other religions to be able to register a civil marriage in the UK. I felt that that was almost like it needed to be kept within the host community.

The starkest evidence came from D-131, who reported that his local register office had actually refused to accept him as an authorised person, despite the mosque having been registered as a place of worship for ten years:

Rotten civil marriage people [haven't] given us the register... you know, it's that idea of not trusting the Muslims to give us the certificate... the register. And so, as a consequence, that's again an off-putting factor for people to register there and then pay extra for the superintendent to come into the mosque and to do both the civil and the Islamic *nikah*... They've been very rotten with us, but that's I presume, they're just saying, 'Oh, we want to keep our hands on our register ourselves and not give it to...' Yet we fulfil all the conditions. We've got a safe, proper safe. I know what I'm doing very clearly. I've done it a couple of times with the superintendents and well, I conduct it all. But no, they've been a nasty bunch... But they said, because you don't get enough... you don't get lots of people coming to you. That is one of the reasons why we're not giving the register to you people.

This raises some important issues about the accessibility of the formal legal process, suggesting that in some cases it is not a lack of will to engage that is the barrier to being authorised.

The implications of the Law Commission's scheme

Three aspects of the Law Commission's proposed scheme are particularly relevant to weddings in registered places of worship: those on location, officiants, and the prescribed words.

As regards location, the Law Commission's scheme envisages that there would no longer be any need for buildings to be registered for weddings. Nonetheless, it would still be open to religious groups to set their own requirements as to where a wedding can take place.²⁶⁹

The proposed scheme would switch from regulating the location of the wedding to regulating the person officiating the wedding.²⁷⁰ In many respects the role envisaged for the 'officiant' is similar to that of an authorised person under the current law.²⁷¹ However, there are a number of key differences that are likely to influence take-up, including the fact that officiants will not be limited to specific registration districts – or buildings – and will have responsibilities that go beyond recording the fact that the marriage has taken place.²⁷²

The idea of regulating the officiant generally found widespread support amongst the participants in this study as it was viewed as creating greater ease for couples and enabling them to marry with a ceremony which is meaningful to them and in a location of their choosing. Amongst those conducting ceremonies, D-134, an imam, stated that this would make 'life a lot... easier' and 'I think it would mean the uptake of the registration... the legal registration of marriage or the civil marriage the uptake would be a lot more.' J-202, a Hindu priest, also welcomed the idea of being able to 'officially sign the documents saying you have married them as an officiant'.

The role of the officiant in the reform proposals is not necessarily the same as that of a celebrant under the current system, and this was particularly welcome for those whose theological position was that no celebrant was in fact needed such as within the Bahá'í faith (E-154) where there are no clergy. The officiant potentially taking on a more administrative role was also welcomed by some imams (D-131 and D-139) who liked the idea of simply performing the ceremony while the officiant completed the 'paperwork'.

While there was widespread support, participants also highlighted some concerns. Some of these were based on a misreading of the proposed reforms. For example there were concerns about the extent to which non-legally binding ceremonies could potentially be limited. D-142 was worried that it would no longer be possible for imams to conduct a non-legally binding ceremony, while D-140 thought that such ceremonies would continue, but would be pushed 'underground'. However, these concerns are largely unfounded as the proposed officiant system would not prevent religious-only marriages occurring, instead providing an option for a single ceremony for couples seeking a single religiously *and* legally valid ceremony.

Another concern, expressed by D-132 and clearly shared by other imams, was what the consequences of legal recognition as an officiant would be and whether he would still be able to opt out of conducting same-sex weddings. His perception was that under the Equality

²⁶⁹ The focus groups and interviews with those involved in conducting ceremonies revealed a range of views as to the necessity and desirability of a wedding being conducted in a place of worship: see further *Briefing Paper*, paras 5.82-91.

²⁷⁰ See further *Briefing Paper*, paras 3.12-22 for discussion of the importance of it being the person rather than the place that is authorised.

²⁷¹ Law Commission, *Getting Married: A Consultation Paper on Weddings Law*, ch 5.

²⁷² See further R Probert, R Akhtar, S Blake, V Vora and T Barton, 'The importance of being authorised: the genesis, limitations, and legacy of the Marriage Act 1898' (2022) *Oxford Journal of Law and Religion* (forthcoming).

Act it would not be possible for him to refuse, whereas both the Marriage (Same-Sex Couples) Act 2013 and the Equality Act 2010 make it clear that such refusals will be protected.

Potential loss of control over the ceremony was a central concern. A range of different facets appeared here. Some worried that elements would have to be added to the religious ceremony in order for it to be legally recognised.²⁷³ E-152, a Baptist minister who was also an authorised person, asked whether he might 'face pressure to conduct a wedding with wording or in a way that I would not previously have done', noting that at present the official certificate recorded that the weddings he conducted were according to the rites and traditions of the Baptists. However, since the Commission's proposed scheme does not require the expression of consent to be made in a particular form, there would be no need for any such attempt to 'graft' one form of ceremony on to another.

Under the Law Commission's proposed scheme, the nomination of officiants would be by a religious group rather than in relation to a specific building. However, the proposals recognise that there may be many different strands within any given faith. J-201 identified the potential for a small group to nominate an officiant who would not respect the traditions of the religious group, however, this is an existing possibility under the current law as any group that has registered a place of worship may nominate an authorised person.

Perhaps most importantly of all, the removal of the prescribed words was broadly welcomed as a sign of the law recognising other faiths and their marriage ceremonies.²⁷⁴ M-231, an authorised person in a Buddhist place of worship, was particularly positive about this:

That feels to me like, you know, honestly that feels like a freedom. I think that sounds wonderful. Like, we can celebrate, we can, you know, our faith is recognised in a way. I love it. I think it's a very dignified... it dignifies our weddings, in a way. Yeah. I think it's great. Great development.

Overall, while the legal outcome for couples marrying in this way would be no different under the Law Commission's scheme, and many religious groups might still require couples to marry in a specific place of worship, their experience would be very different.

Getting married on approved premises

For some couples, getting married on approved premises offered a way of having a separate religious ceremony on the same day and at the same venue as the legal wedding. However, this was not always an option either.

In ten cases, the legal wedding had taken place on approved premises. In seven of these the non-legally binding ceremony was celebrated there on the same day. These comprised three *nikahs* (051, 061, 069), a Zoroastrian ceremony (008), a Pagan handfasting (010), and two ceremonies involving an independent celebrant (022 and 023). The three who did not have their non-legally binding ceremony at the same venue were 030 (female, 37, atheist), who had an informal ceremony in her back garden, 070 (male, 35, Jain), who had a larger Hindu wedding in a different venue the following week, and 081 (male, 42, Jain), whose Hindu ceremony took place in India.

Perhaps surprisingly, despite the fact that they could in principle have held their non-legally binding ceremony anywhere, at least seven couples chose to pay to hold it on approved

²⁷³ Imams D-138, D-140 and C-124.

²⁷⁴ See further *Briefing Paper*, 4.38-43. The concern expressed by one Baptist minister, E-152, reflected how the prescribed words were seen as indistinguishable from the Christian liturgy.

premises yet have their legal wedding elsewhere. These ceremonies encompassed a similarly wide range to those that took place alongside a legal wedding.²⁷⁵

In this section we explore how some couples had their legal wedding alongside their non-legally binding ceremony while others were either not able to do so, or chose to separate the two.

Four degrees of separation

Combined

As explained in chapter 3, there is nothing preventing the inclusion of non-religious content into a civil wedding. And as H-182, one of the independent celebrants, reported, Staffordshire registration services had worked with Civil Ceremonies Limited to provide 'combined' ceremonies. This had involved registrars and celebrants working together so that 'both parts' of the wedding ceremony – 'the legal and the celebratory side' – could be conducted at the same time. F-163 – a former registrar who had become an independent celebrant – also provided an example of close co-operation with registration officers:

I started the wedding ceremony in the wedding room, and we got past the ring exchange and then they went out to another room to do the legal bits and pieces with the registrars and then they came back. I announced them back in and they came in and we did a handfasting to complete.... It was unusual to have the registrars there at the same time. But it worked on this occasion. It worked very well.

However, three factors constrained the uptake of this initiative: cost, content and competition.

Cost was the reason put forward by H-182 to explain why the Staffordshire initiative had not taken off. As she noted: 'it really was a bit of a double hit for [the couple]... financially'. As the Law Commission found, the fee to have the required two registration officers attend a wedding on approved premises will vary according to the time, day, and season, but they calculated the median attendance fee for a wedding at 2pm on a Saturday in summer to be £488.²⁷⁶ To this must then be added the fee for the celebrant, which Pywell found to be generally somewhere between £251 and £750,²⁷⁷ although this encompassed the preparatory work in constructing the ceremony as well as their attendance on the day. In other words, having all three present at the wedding is likely to double its cost. In addition, approved premises are often more expensive than other wedding venues, not least because they need to recoup the fee that they are required to pay for being approved.²⁷⁸ It is therefore understandable why couples might prefer to split the two ceremonies and have the

²⁷⁵ These included 005 (register office wedding followed by Zoroastrian ceremony on approved premises), 015 (register office wedding followed by ceremony led by independent celebrant), 016 (Catholic wedding followed by Catholic ceremony on approved premises led by the same priest), 028 (*nikah* and *walima* on approved premises followed by register office wedding), 062 (register office wedding followed by ceremony led by independent celebrant), 066 (register office wedding followed by Hindu ceremony on approved premises), 083A and 083B (*nikah* on approved premises followed by Anglican wedding at the church next door). There may have been others but interviewees did not always clarify – or perhaps even know – if the venue for the non-legally binding ceremony happened to be approved.

²⁷⁶ Law Commission, *Getting Married: A Consultation Paper on Weddings Law*, para 12.48.

²⁷⁷ Of her 287 respondents, 49% normally charged £251-500, and a further 30% charged £501-750. Most of the remainder (15%) had no standard fee; just over 3% reported normally charging more than £750, and just under 2% reported that they normally charged less than £251: see S Pywell, 'The day of their dreams: celebrant-led wedding celebration ceremonies' [2019] *Child and Family Law Quarterly* 177.

²⁷⁸ On approval fees, see Law Commission, *Getting Married: A Consultation Paper on Weddings Law*, para 12.39.

legal wedding at a register office and the non-legally binding ceremony at a venue that is not approved.

Moreover, the fact that many Humanist and independent ceremonies included religious content would have precluded them being combined with the legal wedding. Handfasting, for example, while identified by some as a specifically Pagan practice, was often incorporated into Humanist ceremonies and those led by independent celebrants. On one occasion it was the desire to include a handfasting that had led to separate ceremonies: F-167 reported being taken on 'to do that segment' where a registrar had identified it as a religious ceremony and therefore prohibited from being part of the legal wedding.²⁷⁹

In addition, there was also a sense of celebrants being in competition with registration officers. Some celebrants had previously been registration officers and so had a keen sense of the similarities and differences between them. At the same time, there is evidence that some local authorities are themselves offering additional non-legally binding ceremonies and describing themselves as celebrants.²⁸⁰

Seamless

There were a few examples of the civil wedding and the religious ceremony flowing seamlessly into each other with minimal separation. One was the handfasting conducted by F-167. As she described, she was in the audience during the legal wedding. The registration officers 'did their bit' and then left, one of the family read a poem, and she 'walked up and carried on the ceremony and did the handfasting bit'. Another was the case of 008 (male, 35, Zoroastrian), whose Parsi ceremony had taken place in the same room as the legal wedding: as he described, 'when we moved on to my religious element,²⁸¹ essentially, everybody sat still and we just switched over down the front, moved the table away, and proceeded with my religious element'.

For 051 (female, 40, Muslim), who had had the 'civil ceremony' and then the *nikah*, they were 'two ceremonies like within 20 minutes of each other'; for 069 (female, 35, Muslim) the *nikah* had come first, but it had been 'quickly followed, with no break, by the Registrar's part'. 069 could not remember whether the registrar had been present during the *nikah*, but one imam, A-104, confirmed that the ceremony he had conducted on approved premises had taken place in the presence of the registrar who 'was actually very complimentary and very kindly said it was a beautiful ceremony'.²⁸² E-154 similarly reported that the 'civil people' would often stay for the Bahá'í wedding if it was taking place on approved premises.

While in the eyes of the law all of these were two separate ceremonies, there was little to distinguish them from the supposedly single ceremony in a registered place of worship.

Temporal

In other cases, while the ceremony took place in the same room as the legal wedding, there was more of a sense of a clear temporal separation between the two events. N-242, a Pagan priest, commented that couples 'have to have two separate ceremonies and the register people have to leave cos they're not allowed at any mention of anything religious

²⁷⁹ Interestingly, the handfasting had originally been offered by one of the registration officers as part of the *civil* wedding, which provides a further example of the variability in what is recognised as religious.

²⁸⁰ Probert, *Tying the Knot*, ch 9.

²⁸¹ The 'my' is significant here, as he and his wife went on to have a further ceremony in her church.

²⁸² This particular wedding had actually taken place inside the Houses of Parliament, which has a number of rooms approved for weddings.

which people find absurd'. In a similar vein, E-151 described how the civil wedding would take place and '[a]n hour later they will just rearrange the chairs and do the Parsi ceremony'.

In the case of 023 (female, 58, no belief) – whose celebrant-led ceremony had taken place before the legal wedding – more fundamental changes to the room were required, apparently to remove any evidence that the ceremony had taken place at all. As she reported, the registration officers conducting the legal wedding 'didn't want any indication that there had been a celebrant ceremony just beforehand'. This was not an isolated incident, since she added that the staff at the venue had had experience of clearing the room between ceremonies before.

Spatial

Where individuals had had their ceremony in a different part of the venue from their legal wedding, this was generally a matter of their choice rather than being required by either registration officers or the venue. 010 (female, 52, Pagan), for example, reported moving from the approved room to the grounds of the hotel and having her Druid ceremony out amongst the trees.

061 (female, 46, Muslim) had similarly had her legal wedding in the morning and her *nikah* outside in the marquee in the evening. Since this spatial separation also involved a temporal separation, she found herself having to navigate different perceptions of when she was actually married. Having a civil wedding had been a positive choice for her to ensure that there was something that the non-Muslims in attendance 'could relate to'. The hours that elapsed between the legal wedding and the *nikah* meant that people were congratulating her on being married at a time when she did not regard herself as married: as she put it 'for me, I still wasn't married'.

As a number of independent celebrants noted, some approved premises welcomed non-legally binding ceremonies. F-162, F-164 and F-166 all reported good working relationships with approved premises; they, along with G-178, H-185 and I-193, all emphasised the benefit to such venues of being able to hold ceremonies in all parts of the venue rather than just the parts that were approved. F-164 described one venue that had four approved rooms but also a very attractive outside space overlooking the sea. As she commented, being able to offer options to couples to have a ceremony there had 'brought in a lot of business'.

Forced apart

As noted above, a number of participants reported that only their legal wedding or, more commonly, only their non-legally binding ceremony had taken place on approved premises. In this section we examined whether that was a matter of choice by the parties (and if so what constraints might affect that choice) or as a result of externally-imposed constraints.

A (constrained) choice

Insofar as couples were making a choice to split their legal wedding and non-legally binding ceremony, it was a choice that was often influenced by the cost, availability, and approach of registration officers, and by the rules on where the legal wedding could take place.

Cost emerged as a very significant factor in couples' choosing to separate their legal wedding from their ceremony. For some it was the inherent cost of holding a large event on approved premises. 030 (female, 37, atheist), for example, referred to her friends spending £25,000-30,000 on their weddings and herself opting for a very small wedding on approved

premises, with just 10 people, and a larger celebration at home.²⁸³ For others it was the additional cost of paying for registration officers to attend. When faced with a choice between paying £500-600 for the registration officers to attend a wedding on approved premises or having a non-legally binding ceremony and going to the register office, 028 (female, 31, Muslim) had chosen the latter. As she commented, 'why are we going to spend that much more money when we can just go and get it done later?'²⁸⁴

The decision of 052 (female, 42, no belief) to have a non-legally binding ceremony on approved premises was more influenced by the (un)availability of registration officers. As she reported, nine months ahead of their intended date 'all the good slots had already sold out for the day, so we couldn't get someone for a Saturday afternoon in July'. 083A (female, 33, Muslim) and 083B (male, 34, Christian) were also concerned about whether registration officers would be available to conduct a wedding for them, having already postponed their wedding from June 2020 on account of Covid restrictions.²⁸⁵

The concern of 062 (female, 30, agnostic), by contrast, was what a registrar-led ceremony might entail. For her, the idea of meeting the person who was to conduct the wedding 15 minutes in advance was 'a bit intimidating... a bit nerve wracking'. As she noted, 'the registrar could be lovely, but then what if they're not?'

A further factor identified by 052 as influencing her decision to have a non-legally binding ceremony was that they wanted it to be outside the venue rather than inside. The outside of the venue held more meaning for her: as she explained, '[i]t's in our local park and we do Park Run every week and we run around this venue every week.' 083A and 083B had similarly wanted to marry in the rose garden of their chosen venue, and had been surprised that this was not an option. As 083B noted, there were just two parts of the building that were approved, one being the porch and another a long room inside the building: 'everything in between, we couldn't get married there, that was very confusing'.

Constraints on what could take place

Three participants had experienced registration officers putting a bar on religious ceremonies taking place on the same day as the legal wedding. 066 (female, 39, atheist), for example, had wanted to have her Hindu ceremony and her legal wedding on approved premises on the same day, as her sister had done when she had married in 2007. However, when she got married in 2015 she found that this was 'absolute no-no. Couldn't do that. If you wanted to do that, you'd have to either have it on a separate day and I think it would have to be prior to... the Indian ceremony.' 005 (female, 34, Zoroastrian) had experienced similar obstacles, and had decided to marry in the register office the day before and have just her religious ceremony on approved premises. 081 (male, 42, Jain), who had married on approved premises in 2012, similarly reported that the registrars 'had, I think, put a condition that we had to make it secular'. As a non-practising Jain marrying a Hindu, their 'engagement' had taken place at the venue just before the legal wedding, and there had been a religious element to this. But 'once the registrars arrived, there was no religious aspect to that day'.

Other research has similarly identified examples of registration officers indicating that they would not be willing to perform a civil wedding on the same day as a religious ceremony

²⁸³ For others this was a reason for not having either ceremony on approved premises: 004A and 004B had considered getting married at a nearby hotel that was approved for weddings but it was 'phenomenally expensive' and 'just wasn't right for us'.

²⁸⁴ 015 had similarly decided against paying for registration officers to attend, and 052 commented on the cost this would have entailed.

²⁸⁵ See further R Probert, R Akhtar, S Blake and S Pywell, *The impact of Covid-19 on legal weddings and non-legally binding ceremonies* (2022, forthcoming).

where the two are taking place in the same venue.²⁸⁶ There were also indications that this reluctance was not limited to religious ceremonies. One independent celebrant, F-161, reported that some couples had been told by registrars that they could not have their civil wedding on the same day as their celebrant-led ceremony ‘and therefore my couples were almost forced to have it either before or afterwards’. As she added, ‘I don’t know if there’s a legal reason why’.

The guidance from the General Register Office does now make it clear that it is entirely permissible for two ceremonies to be held at the same venue on the same day, although it emphasises that the two should be kept separate, that it is best practice for the civil wedding to come first, and that it should be made clear that any ‘additional blessing or commemorative event’ does not have any legal standing.²⁸⁷

Constraints on whether ceremonies could take place on approved premises at all

Those participants who had had their religious ceremony on approved premises and a separate legal wedding elsewhere did not report any difficulties in so doing. In the case of 016 (female, 35, Christian), the ceremony on approved premises had been led by the Catholic priest who had previously conducted her wedding; as she noted, while it was only possible to have a civil wedding there, they ‘did allow him to act almost as a celebrant’ and to conduct a full religious ceremony. In this case, of course, there was no need for the parties to engage with registration officers since they were already married.²⁸⁸ 083A (female, 33, Muslim) and 083B (male, 34, Christian) had a *nikah* in the garden of their chosen venue (which at that time would not have been an option if it had been a legal wedding²⁸⁹).

However, a number of independent celebrants did report that there had been difficulties with registration officers where a couple wanted to have their legal wedding and a celebrant-led ceremony on approved premises. G-172 reported losing one booking because ‘the registrar flatly refused to conduct the ceremony if I was involved’. F-165 and H-182 also knew of couples who had been told that they could not have a celebrant at their ceremony – with the latter using the term ‘bullied’ – while F-163 had had to explain to couples that ‘this isn’t an illegal wedding as that particular registration service will say’.

Independent celebrants also gave examples of registration services placing pressure on approved premises not to allow celebrant-led ceremonies. F-164 reported that one venue had been ‘threatened with having their licence removed because they were recommending independent celebrants, as opposed to registrar-led ceremonies’. G-172 had also heard of threats to this effect. Even in the absence of overt threats, the risk was still there, as H-182 noted:

there are registration offices around the country who tell the venues that they cannot have a celebrant and that the only way that weddings are going to take place at that venue, is if a Registrar is in attendance... The venues toe the line with them for fear of

²⁸⁶ See R Probert and S Saleem, ‘The legal treatment of Islamic marriage ceremonies’ (2018) 7 *Oxford Journal of Law and Religion* 376.

²⁸⁷ *Ibid.*

²⁸⁸ The split between the ceremonies in this case reflected the tension between a wedding as a means of being married in accordance with one’s beliefs and a wedding as a celebration: as 016 explained, practical considerations meant that ‘there wasn’t really a possibility of getting everybody to that small church and then going to the venue for the celebration afterwards... And also it was quite expensive for the day at the venue. It was almost like we’re going to be at the church then for the majority of the day, the stress of getting people to this venue and paying all this money for basically a meal and a dance’.

²⁸⁹ See further chapter 6 on the relaxation of the rules governing where on approved premises a civil wedding may take place.

upsetting the local registration service or maybe losing their licence or life just being made difficult for them. We all know that's wrong, but it does go on.

Implications

To some extent, what was possible depended on the nature of the non-legally binding ceremony, in that non-religious content could be incorporated into a legal wedding. However, in practice what was permitted varied considerably, whether the ceremony was a religious one or not. While in some cases registration officers were present at the non-legally binding ceremony, in others they strategically absented themselves, and in yet others they refused to let it go ahead on the same day.

Under the Law Commission's proposed scheme, the concept of 'approved premises' – and any associated restrictions about the types of weddings that can take place there – would simply cease to exist.²⁹⁰ However, the fact that some couples chose to have their non-legally binding ceremony on approved premises even when their legal wedding was taking place elsewhere indicates that there will continue to be a demand for places that are set up to host weddings.

Conclusion

While there are options for having a legal wedding and non-legally binding ceremony on the same day, and in the same place, these options do not adequately cater for all. The experience of getting married in a registered place of worship – and whether it is perceived as two ceremonies or one – depends not only on the cultural familiarity of the prescribed words but also at which point they are said and whether they are asked for by someone familiar to, and of the same belief and/or community, as the couple marrying. The experience of getting married on approved premises – and whether it is possible to have a non-legally binding ceremony before, after or combined with the civil wedding – depends on the perceptions of the law of both the venues themselves and the registration officers that conduct weddings there. Under the Law Commission's provisional proposals, weddings would no longer have to take place in specific buildings or include the prescribed words.

In addition, at present the possibility of marrying in a registered place of worship, or on approved premises, only addresses the situation where the parties want a particular type of ceremony and are happy to marry in any place where they can have that ceremony (either recognised as a legal wedding or alongside a legal wedding). It does not address the situation where the couple wish to be married in a specific place that is neither registered nor approved, or where they want a Humanist ceremony, or one led by an independent celebrant, and it is to these issues that we turn in the next chapter.

²⁹⁰ Law Commission, *Getting Married: A Consultation Paper on Weddings Law*, ch 7 and in particular para 7.158.

6. The lack of a legal option for how the couple wanted to marry

As we noted in the introduction, one of our key research questions was whether couples were opting for non-legally binding ceremonies because it reflected a way of marrying not currently available within the existing legal framework. In this chapter we look more closely at the choices of those whose non-legally binding ceremony took place outdoors or was led by someone who could not have conducted a legal wedding, such as a Humanist or independent celebrant. As we will show, there was a considerable overlap between the two categories. We also look at the choices made by couples of different faiths, and the particular constraints on recognising different religions within a single legal wedding.

For each of these groups, we analyse whether these interviewees wanted the option of their non-legally binding ceremony being legally recognised, or whether they preferred to have an additional ceremony. We also draw on the data from our focus groups and joint interviews to explore why individuals conducted these ceremonies, and consider whether the Law Commission's proposed scheme would provide a suitable solution.

As we will show, individuals' motivations were varied, with the location being the primary consideration for some, while the ceremony was the primary consideration for others. In other words, some ceremonies were *belief-led*, in that the priority was to have a ceremony that reflected particular beliefs. Others were *location-led*, in that the choice of location came first and determined subsequent choices about the form of the ceremony and who was to conduct it. And some were *person-led*, in that couples wanted a specific person(s) to lead the ceremony

Outdoor ceremonies

Among our interviewees, there were 17 cases in which a non-legally binding ceremony had taken place outdoors.²⁹¹ While these 17 ceremonies took a range of forms, some clear trends did emerge. All four of the Pagan ceremonies in our sample took place outdoors. By contrast, just four of the other 63 religious ceremonies took place outdoors: two *nikahs* (061 and 083A&B), one interfaith ceremony (078) and one Methodist blessing (027). Humanist ceremonies and those led by an independent celebrant or by a friend or relative of the couple tended to be more or less equally divided between indoor and outdoor locations.

Of course, 'outdoors' can potentially encompass everything from the terrace of a stately home to a remote windswept clifftop. Ascertaining *where* outdoors couples might want to marry is particularly important in the light of recent changes that have been made to the rules governing legal weddings on approved premises. In July 2021 these were temporarily amended to allow weddings to take place in 'a linked outdoor area'²⁹² rather than, as before, only under a structure that itself qualified as approved premises. However, our findings demonstrate that this change is unlikely to meet the demand for outdoor ceremonies: first, because those marrying outdoors do not necessarily want a civil wedding, and, second, because the desire to be married outdoors is not just about being outside a building but about particular locations that are important to the couple.

²⁹¹ 004A&B, 010, 025, 026, 027, 030, 032, 039, 045, 046, 052, 059, 061, 062, 076, 078 and 083A&B.

²⁹² This is defined as 'any areas within the boundary of the land of which the built premises form part, which are not indoors and which may be used in common with the built premises': The Marriages and Civil Partnerships (Approved Premises) (Amendment) Regulations 2021, SI 2021 No. 775, reg 3(2)(ii). The Regulations are due to expire on 5 April 2022 but in December 2021 the Ministry of Justice consulted on whether to make this change permanent and extend it to places of worship: <https://www.gov.uk/government/news/outdoor-weddings-and-civil-partnerships-consultation-launched>.

Outdoor ceremonies at approved premises

In five of the 17 cases the non-legally binding ceremony had been in the garden or other outside area of an approved venue.²⁹³ However, even if the 2021 changes to the regulations had been in force at the time, it is unlikely that a civil wedding conducted by registration officers would have matched how these couples wanted to marry. In three cases this is because the couple wanted a religious rather than a civil wedding: 010 (female, 52, Pagan) had a Pagan ceremony while 061 (female, 46, Muslim) had a *nikah*, as did 083A (female, 33, Muslim) and 083B (male, 34, Christian). In the case of 062 (female, 30, agnostic) it was because she had specifically rejected the idea of having unfamiliar registration officers in attendance at her ceremony, opting for an independent celebrant instead. And while 052 (female, 42, no belief) would have been willing to have registration officers attend her ceremony, her reason for having a non-legally binding ceremony was that they were not available at the time she wanted.

For other interviewees, too, being able to have an outdoor ceremony on approved premises would not have been an adequate solution. While 030 (female, 37, atheist) had her legal wedding on approved premises, her subsequent back-garden ceremony was an economical means of celebrating with a wider group of friends and family. 076 (female, 43, Humanist) had not even considered the option of getting married on approved premises, explaining that 'we really didn't want to get married in a hotel... I don't even think we would have wanted to get married in a converted barn or anything, either. We really did want to be outside.'

Outdoor ceremonies at locations of the couple's choosing

For most of our interviewees who had chosen an outdoor ceremony, it was not simply a matter of being outdoors but being in a location that was of particular significance to them.

This was a particularly strong theme in the interviewees with Pagans, for whom being married outdoors was very clearly linked to their beliefs. Their accounts emphasised how the locations of their ceremonies had been chosen for their religious significance: 004A (female, 44, Pagan) spoke of being married in a place that was 'sacred' to them, 046 (female, 39, Pagan) had chosen an 'ancient site' and for 032 (female, 59, Druid), her chosen venue was her 'temple in nature'.²⁹⁴ 032 went on to describe how the location was woven into the ceremony itself:

we started by consecrating the circle and opening up the circle to the spirits of the north, south, east, and west. Calling to air, sea, and sky. And calling in those spirits to be with us in that ceremony. And the call for peace as well. And we called to the ancestors. So, the ancestors of the land where we are... people that have gone before us. The birds... local birds... the wildlife, all that sort of thing. And then the circle is open and we concentrated on the marriage ceremony itself.

078 (female, 36, spiritual), who noted that she would sometimes describe herself as having a 'Pagan-earth-based spirituality, so connecting with nature and the earth', similarly commented of her outdoor wedding that 'it mattered that it was outdoors and connected to the earth and that I could feel that I was amongst earth, I could feel the trees and I could feel the sky'.

²⁹³ A further interviewee, 005, had wanted her non-legally binding ceremony to take place outdoors but seemed to be under the impression that the same restrictions applied to it as to a legal wedding.

²⁹⁴ In these cases, it also seemed that the location had been very specifically chosen for the *ceremony* rather than for any wider celebrations. While there was some ritual sharing of food and drink, these interviewees had all organised any celebratory meal to take place in a separate place.

Two interviewees whose Humanist ceremony had taken place outdoors also emphasised how important the particular location was to them. 076 (female, 43, Humanist), for example, noted that 'it was more personal to us outside, because I love being... you know, nature's a huge part of our lives as well, and we wanted to be as close to it as possible. Water was important to me; I'm a bit of a water baby, I love the water'. 039 (female, 40, no belief) explained that she had always wanted her wedding to take place on a beach, describing a particular seaside town as 'my favourite place in the world'. As she added, 'I love it, and I thought, "Why can't I get married there?"' Humanist celebrants similarly spoke of conducting ceremonies in outdoor locations that were deeply personal to the couple in question. G-176 gave the example of a ceremony 'under an oak tree in their father's field', while G-175 described the most recent ceremony she had conducted as not being at a 'usual' wedding venue but at 'a campsite and apple and cider making place, because the couple are very seriously into beer and cider and so that was their choice'.

Others had also chosen a place that was of profound personal significance to them. In the case of 025 (female, 61, Christian) it was the back garden of the home where her parents had lived for 50 years and where many other family occasions had been held over the years, thereby linking it to past memories and creating new ones. 059 (male, 36, no belief) had chosen an 'idyllic' spot close to where his wife's father lived, on the edge of a cliff: as he explained, 'we knew that's where we wanted to get married from the start'.

Of course, those whose ceremonies took place on approved premises often had very personal reasons for choosing their particular venue too. 062 (female, 30, agnostic) explained why she had wanted to have her ceremony on a clifftop overlooking the sea:

We both love the sea. And I also thought it was quite a nice thing as well, because we spent a lot of time over the years... apart, like, across the sea [chuckles]. But then also as well because his family are English and mine are Irish, we thought there's a bit of a 'across the sea' kind of narrative there as well. So, we knew we wanted to do that.

010 (female, 52, Pagan) had also chosen a venue with which she and her husband-to-be were familiar:

we spend a lot of time in the woods, it's where we're comfortable with nature. And there's this lovely little hotel in the middle of it. We go in for a glass of wine and lunch. So, we thought what better place really? If anything, it's got to be [hotel name] amongst those trees.

The key point here, therefore, is not that ceremonies on approved premises cannot be personal to the parties, but simply that limiting legal weddings to approved premises reduces the likelihood that couples will be able to marry in a place that is personally meaningful to them.

The final couple of interviewees, 026 (female, 33, no belief) and 027 (female, 44, Christian), spoke about the location as a venue that matched their requirements rather than its personal significance to them. Both had had their ceremonies at dedicated outdoor venues: As 026 explained, while the location was still 'relatively rustic', it was set up for events with 'toilets and all the facilities you would need'. For her, the main attraction had been its flexibility:

Lots of venues we went to and they said, "you can come on the morning from 10am but you have to be out by 10am the next day". And it really felt like a wedding conveyor belt, which didn't really feel... so enjoyable or relaxed.

Overall, then, while interviewees had a range of reasons for choosing their particular outdoor location, it is unlikely that being able to have a legal wedding in the garden of an approved venue would have changed their plans. Being able to have a wider range of legal weddings on approved premises might have addressed the needs of some, but even then there were others who would not have wanted to be limited to the types of venues that were approved.

The relationship between the choice of location and the choice of ceremony was a complex one. For some, the location was chosen *because* of the couple's beliefs. As described above, this came through particularly strongly in the context of Pagan weddings. For others, it was their desire to be married in a specific place that had led to them having a non-legally binding ceremony, with the form of the ceremony playing a secondary role. And for yet others both the form of the ceremony and its location were important, but for independent reasons. The case of 027 (female, 44, Christian) provides an example of this. Both she and her partner wanted to have their ceremony outdoors, and she also wanted some form of religious blessing. At one point they were contemplating *two* non-legally binding ceremonies, a 'very quick blessing' at a local church for the two of them followed by a celebrant-led ceremony in a wood. In the event she had been able to have just one, when the local Methodist minister proved enthusiastic about the idea of the woodland ceremony and was willing to conduct a religious blessing for them there.

The data from the focus groups reinforced the message that an outdoor wedding might be chosen by couples of any beliefs or none. Among the independent celebrants, F-167, H-181, and H-186 noted that they specialised in outdoor ceremonies or conducted the majority of their ceremonies outdoors, and almost all had conducted at least some of their ceremonies outside. Humanist celebrants also reported conducting both indoor and outdoor ceremonies, and the same was true for Pagan celebrants. For other religious celebrants, outdoor ceremonies were usually in gardens rather than remote locations, but E-151, a Zoroastrian priest, mentioned conducting a ceremony on a beach, and K-213, a Hindu priest, spoke of how a couple's 'perfect place' might be in the countryside.

The focus groups also provided a reminder that the law does not specifically *prohibit* outdoor weddings; it is simply that most of the legal options are either constructed around the existence of a building²⁹⁵ or (in the case of Anglican weddings) stipulate which churches are available for the purpose. The significance of this is that there is nothing to prevent Jewish or Quaker weddings, or those authorised by an Anglican special licence, from taking place outdoors, there being no specific legal regulations stipulating that such weddings need to take place in a building. Two rabbis, L-221 and L-225, provided examples of this freedom to marry outdoors being exercised in practice.²⁹⁶ As the latter noted, '[w]e already have some of those freedoms and I don't see why we should be allowed to have them and nobody else is allowed to have them.'

The importance of legal recognition

All interviewees were asked whether they would have wanted the option of their non-legally binding ceremony being legally recognised. Those who had married outdoors were clear that they would have liked to have had the option of being married outdoors. As 039 (female, 40, no belief) put it:

if you're not religious and you're just going to get married in a stuffy office in a registry office, why can't you get married in somewhere really beautiful? Outside on the beach

²⁹⁵ See the provisions of the Marriage Act 1949 dealing with the options for getting married in a register office, on approved premises, or in a registered place of worship.

²⁹⁶ *Briefing Paper*, para 5.7.

or on the moors, or your own garden where you feel happy, instead of a room you've never been into?

In addition, a number of those who had not had a ceremony outdoors commented that they would have liked this option or thought that it should be a possibility.

While not all of those involved in conducting ceremonies took the view that weddings should be conducted wherever the couple wanted, it was noticeable that support for outdoor weddings was not confined to those who did not have the option of conducting legal weddings under the current law.²⁹⁷ E-152, a Baptist minister who was also an authorised person, was willing to contemplate the idea of conducting a wedding on a beach, although he added that 'it would be something we would want to talk through and reflect through'. L-223, an Anglican clergyman, also indicated that he would be willing to conduct outdoor weddings, should that be an option in the future.

The Law Commission's proposal was that weddings should be legally permitted to take place anywhere, including outdoors,²⁹⁸ with the officiant being responsible for deciding whether a wedding should be able to take place in any given location.²⁹⁹ In principle, then, it would be possible for any wedding to take place outdoors.

In practice, of course, not all officiants are likely to agree to conduct weddings outdoors. Those officiants nominated by a religious organisation (or by a non-religious belief organisation) would be expected to comply with any requirements of their nominating organisation. But that means it would still be open to religious groups to set their own requirements as to where a wedding can take place, and many might prefer to continue to conduct weddings in places of worship.³⁰⁰

That said, the proposed reforms would clearly benefit Pagan communities. Those involved in conducting Pagan ceremonies had considerable experience of outdoor ceremonies and expressed their willingness to conduct weddings in the place of the couple's choosing.³⁰¹

Humanist and independent celebrants were also happy to conduct outdoor weddings. That, however, brings us on to the fact that such celebrants have no legal recognition at present, and how that lack of legal recognition is also a factor encouraging couples to have a non-legally binding ceremony.

Humanist ceremonies

As noted in previous chapters, Humanists who wish to marry in accordance with their beliefs face particular challenges. While there is nothing in the Marriage Act 1949 to prevent a place of worship from hosting a Humanist ceremony,³⁰² this is not the same as Humanist groups having the right to register the buildings where they meet to conduct weddings there. Similarly, while there is no bar on incorporating Humanist content into a civil wedding – or even having a Humanist celebrant lead the ceremony – that option may be limited in practice.³⁰³ In addition, as a number of Humanist celebrants emphasised, the personalisation involved in Humanist weddings meant that it was also important for the ceremony to be

²⁹⁷ See further *Briefing Paper*, para 5.82-91.

²⁹⁸ Law Commission, *Getting Married: A Consultation Paper on Weddings Law* (3 September 2020), para 7.158.

²⁹⁹ *Ibid*, para 7.190. It further proposed that officiants would be responsible for ensuring that the wedding location was safe and dignified in accordance with guidance to be issued by the General Register Office (paras 7.191-2).

³⁰⁰ For further discussion of this see *Briefing Paper*, paras 5.84-88.

³⁰¹ *Briefing Paper*, para 5.96.

³⁰² See chapter 3.

³⁰³ See chapter 5.

conducted in a place that held significance for the couple, rather than being limited to pre-approved venues.

In discussing Humanist ceremonies, it is important to distinguish between Humanism as a belief system and a tendency to label any non-religious ceremony as 'humanist'. This distinction was very clear for the five celebrants accredited by Humanists UK, who formed part of focus group G. As G-175 noted:

it's not a question of choosing your celebrant, it's a Human Rights issue. If people are Humanist, they should be able to have a legal Humanist ceremony like a legal Catholic ceremony or Church of England ceremony.

G-173 added that this 'alignment of the system of belief that we have' was part of the reason why she was asked to conduct the ceremonies of Humanist couples. G-177 similarly noted that the importance of Humanist ceremonies lay in 'being able to have your values recognised as part of your wedding ceremony and your declaration of commitment'. At the same time, Humanist celebrants also emphasised the importance of choice. As G-177 explained:

Humanist ceremonies are about celebrating life and the couple, sharing the couples' story, their dreams and aspirations. They are written based on what values are most important to that couple. There's freedom of choice, which is not available in a civil ceremony like the venue, the celebrant, the order and the length of the ceremony, the symbolic actions and it's a ceremony that is written collaboratively. So, the couple have full input, full control over edits, which again is not available in a civil ceremony.

Among our interviewees, the distinction was less clear. 067 (female, 37, Hindu), for example, described herself as having had a Humanist ceremony, having been told by her chosen venue that the ceremony would have to be 'humanist-style'. The venue had then recommended one of its preferred suppliers. Upon checking the website of this venue, the celebrant was an independent one, who made no claim to be conducting Humanist ceremonies.

In addition, the relationship between the form of ceremony and the parties' beliefs was complex, with the desire for a ceremony conducted by a Humanist celebrant extending beyond those who formally identified as Humanist.³⁰⁴ For example, 073 (female, 37, unclear), explicitly noted that she didn't 'identify as a Humanist'; for her, a Humanist ceremony was a means of having more flexibility as to when and where she married rather than an end in itself. For 024 (female, 34, no belief), the choice was as much about the celebrant as the ceremony. As she noted, neither she nor her husband held religious beliefs and so 'didn't want to get married in a church and by saying vows that we actually felt were contradicting our ways of life'. At the same time, they had been to a number of civil weddings and found them 'quite dry and quite formulaic' as well as unreasonably prescriptive. They had also considered having a friend conduct the ceremony but had 'realised that the sorts of friends we have are better as Masters of Ceremony, than leaders in a ceremony'. With their Humanist celebrant, they felt that they had found someone who would bring the right mix of the light-hearted and the authoritative:

When he talked to us, we felt that we would trust what he was saying when he was talking about marriage and about us and he wanted to know a lot about us, which

³⁰⁴ This reflects the take-up of Humanist weddings in other jurisdictions: see M McLean, 'Beyond belief: the law and practice of marriage formation in contemporary Scotland' [2018] 30 *Child and Family Law Quarterly* 237; A Rejowska, 'Humanist Weddings in Poland: The Various Motivations of Couples' (2021) 82 *Sociology of Religion* 281.

mattered to us because we were inviting someone to take part in an important day for us.

Only one interviewee, 076 (female, 43, Humanist), actually defined herself as a Humanist when asked about her beliefs at the start of the interview. Her account clearly emphasised the importance of having a personalised ceremony in terms of both the location and the ceremony: 'just being able to do it in a place that, you know, we connected with and... and yeah, making it into our own'. That sense of 'values aligning' was also apparent in the case of 039 (female, 40, no belief). As noted above, she had wanted to be married on a beach and it was upon looking into the options for outside weddings that she had 'found out about the Humanist celebrants and what they do'. The 'Humanist way of living' had resonated with her.

Humanist ceremonies were also seen as an option for different-faith couples. 009 (female, 26, spiritual) knew that in wanting to marry a Hindu man, she would be barred from having a ceremony in her gurdwara. However, her 'forward-thinking' father had suggested a Humanist ceremony, on the basis that this was 'a way that everybody would be able to see it.' While this particular ceremony had to be cancelled on account of Covid, this sense of a Humanist ceremony as a neutral option was also echoed by Humanist celebrants. As G-176 noted, 'you might have observing Muslims on one side of the room and hard-drinking cradle Catholics on the other side, but because it's not religious territory they can both join in the wedding ceremony.' G-177 also gave the example of a Sikh groom and Hindu bride who had not been allowed to get married in a Sikh Temple and wanted a Humanist ceremony because their 'values still aligned even though it wasn't a religious ceremony'.

As G-177 also made clear, the willingness of Humanist celebrants to conduct ceremonies *for* couples who held religious beliefs did not mean that they were willing to conduct ceremonies *according to* religious beliefs. As she noted, while they valued other faiths 'there is a difference between what we would include in terms of a religious line'. The line – which G-173 acknowledged could be a blurred one – was between content that was of cultural significance and content that was of religious significance:

Because there are people who are culturally Jewish, and they do want to have Jewish cultural gestures in their wedding ceremony but that doesn't mean that they believe in God. It means that this is part of their heritage and this is part of their cultural observance and respect towards their families. But it doesn't mean that it's actually religious.

The importance of legal recognition

When it came to the question of legal recognition, all four interviewees who had a Humanist ceremony were clear that they would have wanted that ceremony to be legally recognised, rather than having to have a separate legal wedding. As 076 (female, 43, Humanist) explained, it was about having a single event that conferred legal recognition and reflected them as a couple:

Because there's no question that being legally recognised as married is important. It's important to me and my husband. But equally if not more important was the fact that we had a wedding that was personal, a ceremony that was personal to us, and reflected us as people individually and as a couple. So, to combine those two very important events to make that ceremony the ultimate important event absolutely would have been our choice.

As 024 (female, 34, no belief) reflected, having two ceremonies had meant the need to come to terms with the idea of getting 'married' on a different day from her 'wedding'. As she explained:

I wish I hadn't felt like I didn't want people to know that we had the legal section the day before because I was worried that it would detract from the big day and people wouldn't see it as so symbolic as we found it. Because we found that to be the important day. We wanted everybody else to think that too... I didn't really want people to understand my wedding in a different way. I wanted them to see it's different. I was happy for them to go, "oh, a ring warming. How great. Wow, the celebrant said some really interesting and thought provoking things." But I didn't want them to think that it was just a party. And that's a shame because I think that's my own fear that there's a stigma of Humanist ceremonies.

However, in discussing potential reforms, an interesting distinction emerged in terms of whether the law should recognise a Humanist *ceremony* or a Humanist *celebrant*. 076 (female, 43, Humanist) was somewhat equivocal about the idea of someone other than a civil registration officer conducting the ceremony:

Yeah. I don't know. I mean, yes, I think that's possibly a good idea. I don't feel quite as strongly about that. So for example, I wouldn't have an issue with a registrar still required by law to be the person that actually does the ceremony. You know, I appreciate the training that they go through and the experience that they have, particularly when it comes to, you know, sham marriages or forced marriages. I would hate to think that the responsibility would be taken away from the registrars and moved to a celebrant of some sort, whether they be religious or non-religious, and then the priorities change. So I still certainly think that there's a place for a registrar, and even if that is to ensure that from a legal and, you know, sometimes safeguarding perspective, that they're, you know, they're ticking the boxes. So, you know, I'm on the fence with that one, really.

By contrast, while 024 (female, 34, no belief) would have been willing to have a registrar at her ceremony if that would have given it legal status, her ideal would have been for 'our Humanist celebrant... to do exactly what he did but have the status of Registrar', adding 'that would have been perfect because he carried the whole thing'.

Humanist celebrants also attached considerable importance to being able to conduct legal weddings. G-175, who had conducted a legally binding ceremony in Scotland as a Humanist UK Accredited Celebrant', reported that 'it was absolutely magical to be able to do that, to have them signing that piece of paper, which actually represented the legality in that moment, was just incredible'. Humanist celebrants predicted that there would be more demand for the types of ceremonies they conducted if couples did not have the hurdle of going through an additional ceremony in order to be legally married. G-173 noted that she was aware of couples opting for a single legal ceremony rather than having an additional Humanist ceremony on the grounds of cost and ease and '[n]one of this question from your grandma about, "is that the real wedding, June?"'. She spoke passionately of how legal recognition would be 'amazing', not least because it would convey that 'essentially the Government approves of us. Because, at the moment, it feels like the Government are saying we're not real and we're not authentic and we're not needed.'

In terms of potential reform, it should be noted that the Law Commission's terms of reference made it clear that their role was to devise a scheme that *could* accommodate ceremonies conducted by non-religious belief organisations, the question of whether legal recognition *should* be extended to such ceremonies being for the government to resolve.

Its proposed scheme envisaged that non-religious belief organisations could be accommodated by treating them in the same way as religious organisations in terms of being able to nominate officiants. In other words, if the government decided to extend recognition to non-religious belief organisations, each organisation would be responsible for deciding who it would nominate to conduct legal weddings,³⁰⁵ and would have the primary responsibility for monitoring its nominated officiants and requesting withdrawal of authorisation if they failed to comply with their duties and responsibilities.³⁰⁶

The Humanist celebrants saw that model as working for them. As G-177 explained, such processes are already in place within Humanists UK:

as a Humanist celebrant we have our interviews and then we have training and assessments. Then we have a probationary period where we're observed. We have peer reviews. We have to log all our ceremonies. We have to provide evidence of professional development. We've got the network meetings, the celebrant conference, the celebrant forums that we're on and, as [171] was saying, if it was that the person was licensed, rather than a venue, all of that would come under the same thing, the insurance, the DBS checks and things that we all have to do. And then the quality would be there.

Their only caveats related to what G-173 referred to as a 'pay cap' and to the potential timescale for reform. The 'pay cap' was a reference to the Commission's proposal that nominated officiants would be prohibited from making a business of officiating at weddings by elevating the making of profits above the expression of their beliefs.³⁰⁷ As she put it:

I don't charge more than is reasonable anyway. I work like crazy. But... it seems rather odd to me that just because I am under a distinct belief system and am accredited with that belief system, that my mortgage apparently doesn't require to be paid in the same way as an independent celebrant.

In terms of the potential timescale, G-175 alluded to the *Harrison* case³⁰⁸ and suggested that '[i]t would be really great if... whatever the other proposals are, Humanist marriage could be agreed straight away, like it should have been for years, like it is in Scotland, Northern Ireland, Jersey and coming in Guernsey'.

Ceremonies led by an independent celebrant

The distinction between Humanist and independent-led ceremonies

As noted above, at least one interviewee used the term 'Humanist' in relation to a ceremony conducted by an independent celebrant.³⁰⁹ There were certainly similarities in the ceremonies conducted by Humanist and independent celebrants, with both emphasising the importance of choice and the ceremony being meaningful to the couple.

³⁰⁵ Law Commission, *Getting Married: A Consultation Paper on Weddings Law*, paras 5.115-134 and 5.161-163. This would include ensuring that those nominated were 'fit and proper' persons and providing suitable training and CPD.

³⁰⁶ *Ibid*, para 5.212.

³⁰⁷ *Ibid*, para 5.189.

³⁰⁸ *R (on the application of Harrison and others) v Secretary of State for Justice* [2020] EWHC 2096 (Admin).

³⁰⁹ In other cases it was not clear whether the interviewee meant a Humanist or independent celebrant. For example, 072A noted that the manager of the venue where she was planning to hold her non-legally binding ceremony had told her 'we can get someone in that specialises in Humanitarian ceremonies because you're already legally married'. However, 072A had not pursued this option on account of the cost.

However, in the view of independent celebrants who participated, what differentiated them from Humanist celebrants was that they were not representing a single belief system. As H-181 explained, 'with an independent celebrant there are no set rules or etiquettes or traditions. Everything is compiled based on what the couple believes, whether that's religious, spiritual or secular content or a mix of.'

One consequence of this was that independent celebrants were happy to include rituals that held religious significance for the couple. As G-172 put it:

there must be a place for couples like the couples that I work with, who want elements of religion... it's really important that we don't just get divided into you have to have a registrar office wedding, which is civil, or you can have a Humanist wedding, which again, unless someone else says the words, is non-religious.

A further small but significant difference of opinion emerged regarding the concept of 'dignity'. In focus group G, the comment of G-175, a Humanist celebrant, that there needed to be an element of 'dignity' and 'solemnity' was met with nods from other members of the group. By contrast, in focus group I, one independent celebrant, I-194, questioned how such terms would be interpreted:

the problem with words like dignity is they also imply solemnity and if there's one thing that a celebrant-led wedding is going to have in it, it's going to have some fun. There is going to be some laughter in there amongst the tears... We don't want something which is so dry and dusty that it becomes sonorous. What we want is something that has meaning for the two people, or three people or 47 people in the wider community who are involved in this ceremony.

The difference of opinion coalesced around the specific example of 'Elvis' weddings, cited by G-175 as an example of the kind of wedding he thought should not be permitted. In focus group I, however, one independent celebrant (I-192) specialised in Elvis-style weddings and gave a moving account of how he had conducted his most recent ceremony for a couple who were 'big Rock and Roll fans', one of whom was terminally ill. As I-193, another member of that group, concluded:

We are catering for all different couples. Couples come in all different shapes and sizes and it's important that celebrants are able to offer ceremonies to cater for all those couples.

The motivations for choosing an independent-led ceremony

Among our interviewees, eight couples had a ceremony led by an independent celebrant.³¹⁰ As with those who had chosen a Humanist ceremony, there were a range of different reasons for choosing this form of ceremony: what was possible at the couple's chosen location; the identity of the person conducting the ceremony; and freedom of choice as to what could be included in the ceremony.

These three factors intersected in different ways for different couples, depending on their awareness of what was possible. Three had no prior knowledge of independent celebrants: 067's celebrant had been recommended by her venue, 044 thought that she had probably found out about independent celebrants by 'just researching it online', and 062 (female, 30, agnostic) similarly referred to how she 'came across celebrants' when looking into the options for getting married. That lack of prior knowledge of the existence of independent

³¹⁰ These were 015, 022, 023, 025, 026, 044, 062 and 067.

celebrants reflected some of the discussion in the focus groups. While F-165 thought that there was a 'growing awareness' of celebrants as their numbers increased and more people attended ceremonies led by an independent celebrant, F-168 thought that it was still the case that 'there aren't that many people who know what a celebrant does'. Of the other five interviewees whose ceremony was led by an independent celebrant, two (023 and 025) were themselves independent celebrants and a third (022) was employed by an organisation that trained celebrants.³¹¹ The other two were both aware of the option through personal contacts: 015's celebrant was a friend of her mother, while 026's ceremony was conducted by her brothers, one of whom had experience of conducting ceremonies for others.

Looking first at what was possible at the chosen location, for 044 (female, 44, unclear) and 067 (female, 37, Hindu) the choice of ceremony was very much driven by the fact that their chosen venue was not approved for weddings. As 067 explained, 'we found a venue which was a farm, like a luxury farm. And we both fell in love with the farm but then they told us that they don't have a marriage... what's it called? A...licence'. By contrast, 015 (female, 25, atheist) and 062 (female, 30, agnostic) both had their ceremonies on approved premises, but chose a celebrant to lead it, the former because she did not want to pay the fee for registration officers to attend and the latter because she did not want an unknown person conducting the ceremony.

The specific identity of the person conducting the ceremony was a particularly strong factor for those who had existing links with independent celebrants.³¹² 023 (female, 58, no belief) had asked a fellow-celebrant who was 'a dear friend' to lead her ceremony; 025 (female, 61, Christian) chose someone she 'had met already, who I felt would do the right thing by me'; and 022 (female, 38, no belief) wanted her ceremony to be conducted by her boss, whom she described as having been a 'huge part' of her life and career and 'like a mother figure' to her. Those who had no pre-existing relationship with their celebrant also emphasised how they had established a good rapport when they met to discuss the wedding.³¹³ The importance of this was clear from the account of 044 (female, 44, unclear), who was the only one to report speaking to more than one potential celebrant. As she explained:

So, initially we tried to find a Humanist celebrant, and the chap that we made contact with, he put together some... we had an interview with him, and he put together some wording for us, and we didn't like it at all. And I don't know if that was him, or if it was the Humanist side of it, I think it was probably him more than the Humanism bit. But it just didn't feel right for us.

In terms of the content of the ceremony, interviewees gave accounts that were very similar to those who had a Humanist ceremony, in emphasising that they wanted a ceremony that was personal to them. All had a script written for (and sometimes at least partly by) them. As 022 (female, 38, no belief) noted that '[w]e just wanted it ... to make it really personal, the wording that we wanted to use, to include our guests in it and his children, my stepchildren, as well'. Again, the perceived limitations of the legal options were part of the rationale for choosing a celebrant-led ceremony. 062 (female, 30, agnostic) explained that 'we felt like religious ceremonies and civil ceremonies either had a lot of restrictions, or extra complications. And we just felt like the celebrant wedding meant we could do what we wanted to do, basically.'

³¹¹ This was perhaps a reflection of awareness of the research project among independent celebrants. As noted in chapter 2, we asked our advisory board, which included a member of the Wedding Celebrancy Commission, to assist with recruiting participants.

³¹² This was not unique to independent celebrants: on the importance attached to having a particular person conduct the ceremony see the *Briefing Paper*, paras 3.15-18.

³¹³ This also resonated with the discussions in the focus groups with independent celebrants about the importance of building a relationship with the couple in advance of the ceremony.

That greater freedom of choice as to what could be included in the ceremony was reflected in the fact that some of the rituals that were included in the celebrant-led ceremony were ones that registration officers might have regarded as 'religious in nature' and so prohibited.³¹⁴ In particular, 023 (female, 58, no belief) reported jumping the broomstick, which she described as 'Pagan'.³¹⁵ 025 (female, 61, Christian) had a handfasting, which she was aware would not have been possible in her legal wedding:

I had a couple who wanted a handfasting and they couldn't have one because it was said to be Pagan, so I knew that would be an issue if I even brought that up, if I wanted to make more of the Registrar's one. That wouldn't have been feasible. So, that was another reason why I looked to have another ceremony because I just wasn't even going to bother bringing anything up because I didn't think it was worth it. I just thought go with the flow, go for the very basic one at the Registry Office and then save the rest.

In addition, 067 (female, 37, Hindu) had had a ceremony that included a nod to her faith:

so with Hinduism light and a candle is really important because for Diwali, it's a celebration of light and moving darkness away. So, what we had asked the celebrant to do is, when people were coming into the barn, they all had a candle to light.

In the focus groups, independent celebrants highlighted a similar range of reasons why couples might choose them to lead a ceremony. F-165, for example, described independent celebrants as 'giving options', adding 'when the one person does something that is so drastically different, that realisation for everybody else is like, "oh my goodness me, there is another way"'. F-163 suggested that it was 'partly to do with cost and wanting to do something that is more personal for them' but also commented on the lack of availability of registration officers at the times and dates couples wanted. H-184 thought that the demand had come 'because of a decline in religiosity in the UK', suggesting that 'more and more people are turning away from the church, but they don't want this completely sterile, almost irreligious service at the Registry Office'.

The importance of legal recognition

All eight interviewees who had had a ceremony led by an independent celebrant would have wanted the option of it being legally recognised.³¹⁶ 062 (female, 30, agnostic) spoke of the advantages of having 'one day' for their wedding, while 023 (female, 58, no belief) wanted 'one ceremony' that was both personal and legally binding. In terms of how such legal recognition would be conferred, none expressed any caveats about the idea of it being the celebrant who was authorised, although 023 emphasised that there would be a need for 'some formal training' in order to spot sham or forced marriages.³¹⁷

Most independent celebrants were also keen to become authorised, if this were to be an option for them. The comment of F-162 that she 'would be delighted to be able to conduct

³¹⁴ The Marriages and Civil Partnerships (Approved Premises) Regulations 2005 (SI 2005/3168), Sch 2, para 11(2). On the likelihood of particular rituals being included in a civil wedding, see S Pywell and R Probert, 'Neither sacred nor profane: the permitted content of civil marriage ceremonies' [2018] 30 *Child and Family Law Quarterly* 415.

³¹⁵ There are, it should be noted, multiple origin stories for broomstick weddings. For an analysis of the concept see R Probert, 'Chinese Whispers and Welsh Weddings' (2005) 20 *Continuity and Change* 211.

³¹⁶ For 025 matters were complicated by the fact that she had decided to have her legal wedding as soon as possible on account of concerns about her mother's health and organise a later ceremony: as she acknowledged, 'Probably I would have liked them to be together, but it actually suited me, after the story I've told you, for them to have been separate'.

³¹⁷ See further *Briefing Paper*, para 2.51, for her concerns about celebrants deliberately conducting 'sham' marriages for immigration purposes.

the legal ceremonies' was met with lots of nodding and smiling from other participants in the group. In fact she, along with F-163, F-165 and F-166, had previously conducted legal weddings as a registration officer, but described being an independent celebrant as far more rewarding because of the opportunity to get to know the couple beforehand:

when I was a Superintendent Registrar... I didn't always know my couples. You would just turn up on the day with the choices that they had made and that would be, sometimes, the first time that you had met them, when I was a registrar. Now, we usually meet them in person over a cup of tea, several times or by Zoom. Certainly, lots of phone calls. So, it's a far more personal and involved process with them.

As H-182 noted in a separate group, 'as celebrants, we are passionate about ensuring couples have the choice but be able to combine the legal element. We've been campaigning for this for years.' Only one, H-181, commented that she would prefer to remain as a celebrant rather than becoming an officiant; as she noted, 'personally, I don't want to become a Registrar'.

Again, in terms of the Law Commission's proposals, it should be noted that its role was to devise a scheme that *could* accommodate independent celebrants, not to decide whether independent celebrants *should* be able to conduct legal weddings. It proposed that if the government decided to allow independent celebrants to conduct legal weddings there should be a separate category of independent officiants who would apply directly to, and be authorised by, the General Register Office. Independent celebrants applying to be authorised as officiants would have to demonstrate that they are 'fit and proper' persons by proving that they (1) are aged at least 18; (2) understand the legal requirements for being an officiant and performing the role; and (3) have undergone mandatory training and continuing professional development in the legal aspects of being an officiant, with the content to be determined by the Registrar-General.

The issue of training attracted some discussion among independent celebrants.³¹⁸ While most had undergone training with a celebrancy organisation,³¹⁹ it was recognised that the training required in order to be authorised as an officiant would be different. Training was welcomed as a sign of their professionalism,³²⁰ although a number commented that it should be limited to what was necessary for them to fulfil their legal duties and responsibilities and expressed concern about the potential cost of such training. Questions were also raised as to whether that training could be delivered by existing organisations. The Law Commission had envisaged this as a possibility, although it made it clear that the content of that training would have to be approved by the Registrar General.³²¹

One corollary of independent officiants being appointed by the state is that they would, like registration officers, be limited to conducting 'civil' weddings.³²² That, however, would not necessarily preclude them from including religious content, as the Commission also proposed that the restrictions on what could be included in a civil wedding should be

³¹⁸ See further *Briefing Paper*, paras 3.123-133.

³¹⁹ For example, Civil Ceremonies Ltd, the International College of Professional Celebrants, the Fellowship of Independent Celebrants, the Fellowship of Professional Celebrants, and the UK Society of Celebrants. On the widespread take-up of training see S Pywell, 'Beyond beliefs: a proposal to give couples in England and Wales a real choice of marriage officiants' [2020] 32 *Child and Family Law Quarterly* 215.

³²⁰ As I-193 noted, it would be a means of differentiating 'professional' celebrants from those who were just 'playing at it', while G-172 emphasised the importance of officiants being 'qualified, registered, legally insured and monitored' and I-191 wanted 'a course that we have to attend, something we have to sign to prove that we are ... we know what we're talking about'.

³²¹ Law Commission, *Getting Married: A Consultation Paper on Weddings Law*, para 5.168.

³²² *Ibid*, para 5.142. The same approach has been adopted in Jersey and Guernsey: see further chapter 1.

relaxed. Under its scheme, religious content could be included ‘provided that the ceremony remains identifiable as a civil ceremony rather than a religious service’.³²³

The Commission also asked an open question about ‘whether specific examples of religious content should be expressly allowed at civil weddings, and, if so, what those examples should be’.³²⁴ As a result, it is not possible at this stage to identify specific content that independent *celebrants* currently include in non-legally binding ceremonies that independent *officiants* would not be able to include in legal weddings. It may however be useful to note the types of religious content that independent celebrants mentioned. F-162, for example, commented how a couple might ‘want their Dad to do a Bible reading, because it’s an important part of getting him to be part of the wedding’. She, along with G-171 and H-187, all spoke of bringing in religious ‘elements’ to a ceremony. The latter, for example, described conducting a ceremony for a ‘very westernised’ Muslim couple who ‘didn’t want a full Muslim wedding’ but chose to ‘include some Muslim elements in the wedding ceremony and used poems from the Prophet and that sort of thing’. F-161, who specialised in ceremonies within the Asian community, also gave the example of walking round the fire four times: within a Hindu ceremony this would be an occasion for ‘the translation of the religious scriptures’ whereas she would use that for the couple’s ‘personal vows to each other’.

Potentially more challenging was F-162’s reference to couples who wanted an inter-faith ceremony rather than just ‘some elements from each’. If a ceremony needs to remain ‘identifiable as a civil ceremony rather than a religious service’, then it seems unlikely that one combining the rites or liturgies of different faiths would be classified as civil. With that in mind we will now turn to those couples who had deliberately opted for two or more ceremonies to reflect their different faiths.

Different-faith couples

In six cases the reason for the non-legally binding ceremony was because the interviewee had married a partner of a different faith³²⁵ and they had separate religious ceremonies to reflect their respective faiths or faith backgrounds. In half of these cases one of these ceremonies was also the legal wedding,³²⁶ while in the other half the couple had opted for a civil wedding plus *two* non-legally binding ceremonies.³²⁷

The legal options

The options for different-faith couples depend in part on the nature of their respective faiths. First, there is a specific legal restriction that applies to Jewish weddings: for a wedding to be solemnised according to Jewish usages, both parties must be Jewish.³²⁸ This had been an issue for 047 (male, 35, Jewish), who was unable to marry his Catholic partner in a Jewish wedding. What he had not anticipated was that his synagogue would not be willing to conduct a non-legally binding ceremony either, their reasoning being that they would not conduct a ceremony that was not capable of being legally binding. He had therefore had to look elsewhere, eventually finding someone ‘who acts as a Rabbi for weddings where people have fallen outside what is offered by mainstream Judaism’. There are also legal

³²³ Ibid, para 6.109.

³²⁴ Ibid, para 6.110.

³²⁵ Our focus here is specifically on faith rather than belief more broadly, as we did not have any cases in which interviewees defined themselves as holding different non-religious beliefs from their partner.

³²⁶ 047 (Catholic wedding followed by Jewish ceremony); 068 (Anglican wedding followed by Hindu ceremony); 083A&B (Muslim ceremony followed by Anglican wedding).

³²⁷ 008 (civil wedding followed by Zoroastrian and Anglican ceremonies on the same day); 079 (civil wedding followed by Anglican and Hindu ceremonies three years later); 080 (civil wedding followed by Muslim and Catholic ceremonies one month/six weeks later).

³²⁸ Marriage Act 1949, s 26(1)(d) and 26B(4)(b).

restrictions on who may have a Quaker wedding, although these give the Society of Friends considerable discretion to allow non-Quakers to marry according to Quaker usages.³²⁹

Second, weddings in Anglican churches are constrained by canon law as well as by statute and the ceremony must take place according to one of the authorised rites of the Church of England or the Church in Wales. However, there is more flexibility as regards any additional content. The Church of England's guidance for different-faith couples is that 'with the advice of the vicar, there may be places where you can bring an element of other traditions, cultures and even different languages into your service, perhaps through readings and music'.³³⁰ Among our interviewees, the Anglican wedding of 083A (female, 33, Muslim) and 083B (male, 34, Christian) had included the bride's mother giving a reading from the Koran, while 068 (female, 38, Christian) reported how her vicar had been very positive about the Hindu ceremony that was taking place the following day and had gone out of her way to talk about it during the service 'which was really lovely and I think really meant a lot to [husband's] parents who were sitting there'.

Third, while there is no legal prohibition on a wedding in a registered place of worship including elements from different faiths, in practice, the content of the ceremony will be limited by what those in charge of that particular building are willing to permit. 047 (male, 35, Jewish), whose legal wedding had taken place in a Catholic church, commented that 'a feature of Catholicism is one doesn't really get very much choice', and that the ceremony was 'the standard service which they performed for a wedding between a Catholic and a non-Catholic'. Even more fundamentally, different-faith couples may not be permitted to marry in certain places of worship. 009 (female, 26, spiritual) reported that as a Sikh marrying a Hindu she was not able to get married in her gurdwara and 042 (female, 26, Sikh) had also faced challenges in finding a gurdwara willing to conduct her wedding.

A number of those involved in conducting religious ceremonies did refer to how they would adapt their ceremonies for different-faith couples. A-106, an imam, spoke of asking couples what they wanted in their *nikah*, adding that 'if it's an inter-faith marriage ..., there are certain things that we are going to say differently'. K-211, a Hindu priestess, noted that in cases of mixed-faith couples she would always do a 'tailor-made service, exactly what they want and they decide', while N-242, a Pagan celebrant, had conducted 'a pagan-Buddhist ceremony' incorporating references to deities from the Buddhist bride's home country of Thailand. While not all of these would have been legal weddings, there is no reason why they could not have been, if conducted in a registered place of worship in the presence of an authorised person.

The flexibility of the current system – and its constraints – was reflected in the comments of two interviewees who were both interfaith ministers and members of the OneSpirit Interfaith Foundation. 045 (female, 55, spiritual) explained how she had previously been what she described as the 'licensed celebrant' for an independent chapel: 'we came as a package. If you had your wedding there, you could have me and we could make it legal.'³³¹ 078 similarly noted that:

some interfaith ministers have contacts with the local Unitarians who are often very open to having interfaith ministers do ceremonies there.... And places like the Glastonbury Goddess Temple. I've known ministers who've done it there.

³²⁹ Marriage Act 1949, s 47. On the evolution of the provisions see Probert, *Tying the Knot*, ch 4. Within our sample, 078, whose former husband was from a Quaker background, noted that 'we did even contemplate doing the legal part with the Quakers just because it felt more authentic than rocking up to the registry office. And I can't remember why we didn't in the end. It was probably just another complication.'

³³⁰ <https://www.yourchurchwedding.org/article/mixed-faith-marriages/>.

³³¹ See further *Briefing Paper*, para 3.5 on whether her role was that of celebrant or authorised person.

However, she added that ‘the trouble is that we can legally marry people in places of worship, but the places of worship won’t let us in’.

Significantly, for all three couples who had had one legal religious wedding and one non-legally binding religious ceremony, it was the Christian one that was chosen as the legal one. As noted above, 047 (male, 35, Jewish) did not have the option of choosing between a Jewish legal wedding or a Catholic legal wedding. For 068 and 083A&B, the choice was determined both by the ease of marrying in an Anglican church and by the sense that a ceremony conducted according to other faiths was not legally recognised. 083A (female, 33, Muslim) reported that it had been very hard to find out whether it was even possible to have a legally recognised Muslim wedding, noting that the website for the local council had listed licensed venues and churches, but not non-Christian places of worship registered for marriage. 068 (female, 38, Christian) had a similar perception that a Hindu ceremony was not legally recognised. By contrast, for 008 (male, 35, Zoroastrian), the sense that the Christian ceremony stood on a different footing had led to them choosing a different combination. Since getting married in a church was seen as ‘a bit one sided’, they had decided to start with a civil wedding followed by a blessing from both religions.

The importance of legal recognition

When asked whether they would have wanted both religious ceremonies to be combined, 083A (female, 33, Muslim) and 083B (male, 34, Christian) were enthusiastic, as this was exactly what they had wanted. Their ideal ceremony would have been conducted outdoors and been led by an imam and a Christian minister. As 083A explained, they had wanted the form of their wedding ‘to subtly reinforce the fact that someone who is Muslim and someone who is Christian could get married. And I felt like having two separate ceremonies just didn’t do that.’

By contrast, other different-faith couples found it difficult to envisage how a combined ceremony would work. 068 (female, 38, Christian) articulated the sense that different-faith marriages were not about ‘mixing’ faiths but rather having the two ‘standing alongside each other’; in her view, having a joint ceremony ‘would have ruined both sides’. Even if it had been possible to have a combined ceremony, these couples would still have opted for separate ones.

That is not to say that those who preferred keeping the ceremonies separate regarded the law as satisfactory. A consistent theme was the importance of treating all faiths equally. 047 (male, 35, Jewish) would have liked for both his Jewish and Catholic ceremonies to be legally recognised, with the marriage certificate recording both locations and being signed by both the priest and the rabbi. For 080 (male, 36, agnostic), it was important to have the choice of which ceremony would be the legal wedding and for all faiths to be treated equally.³³² Indeed, interviewees’ experiences of weddings within different faiths had made them more keenly aware of the differences in legal treatment. 068, coming from an Anglican background, had not realised that the legal status of a wedding was not quite such a simple matter for other religious groups until she had begun to meet people from other religions. As a result, she felt that it wasn’t right ‘that a church wedding can be a legal ceremony and none of the other religions can’.

Our data also suggest that there may be a broader demand for ceremonies that include elements of different faiths among those whose beliefs are more fluid or who, as 078 described, ‘may not be particularly religious or spiritual themselves, but they want to please

³³² A similar view was expressed by 008: having reflected on the difficulties in combining a Zoroastrian ceremony and an Anglican one into a single ceremony, his suggested solution was ‘to have the state recognise that Zoroastrian wedding ceremony and wedding rites, perhaps would have equal weight with a Christian one’.

family, or they've got people coming from an older generation and they want to honour that'. As an interfaith minister, she commented that:

increasingly, I find that actually the dialogue is happening for the people who don't fit into any of the boxes. So, the people who believe in something, but they don't necessarily have a name for it. Or they do have a name for it, but... or even... I mean a lot of the time actually, people somewhere in it are kind of vaguely identified as Christian, but they would never go to Church and they would never tick the Christian box. But they believe in God and they believe in Heaven and all those sorts of things. So, for me, the role of an interfaith minister is to work with another person and find out what is sacred to them and what language they use to identify what's sacred to them and how they connect.

In addition, as noted above, both Humanist and independent celebrants reported incorporating cultural and religious elements in their ceremonies, including for couples of different faiths.

Analysing the potential impact of the Law Commission's proposals on different-faith couples is therefore complicated by the different types of ceremonies that such couples might want to have. Nonetheless, its proposals would go some way to accommodating different possibilities. Under its proposed scheme, a civil wedding could include elements of religion. It also envisaged that organisations such as the OneSpirit Interfaith Foundation would qualify as a religious group and be able to nominate officiants to officiate at legal weddings,³³³ and the move away from a buildings-based system might also enable a wider range of religious groups to qualify to nominate officiants.

What is not covered within its scheme is the situation where there are *sequential* ceremonies. Here it is worth returning to the wish of 047 to have the marriage certificate recording his Jewish ceremony as well as the Catholic wedding. Adding a box to the schedule to record any additional ceremony – at least one that takes place within a short space of the legal wedding – would be a simple way of acknowledging that there will always be some couples who will want to have two ceremonies.

Conclusion

All but one of those whose ceremony had taken place outdoors,³³⁴ and all of those whose ceremony was led by a Humanist or independent celebrant, had also had a legal wedding. In other words, these were largely not couples who had opted for a non-legally binding ceremony because they were rejecting the idea of legal marriage. Most spoke of how they valued being legally married. Their choice of a non-legally binding ceremony was because the law did not provide them with a means of getting married in the way they wanted. Their ideal would have been to combine the two, so that they could make their legal vows in the place or form of their choosing, and before the person of their choosing.

For different-faith couples the issues were different. Again, all had had a legal wedding and valued being legally married. For most, the choice of an additional non-legally binding ceremony (or ceremonies) was necessary to reflect their different faiths or faith backgrounds. While having a combined ceremony may have been undesirable for most of our participants, having further options to legally recognise their respective ceremonies was desirable.

³³³ Law Commission, *Getting Married: A Consultation Paper on Weddings Law*, para 5.91.

³³⁴ As 045 reported, she had had *two* non-legally binding ceremonies but no legal wedding. Her first ceremony was outdoors and involved just herself, her partner, and 'a bloody great piece of granite', and the second was an interfaith ceremony in a village hall.

7. The reasons for having a religious-only marriage

Introduction

In this chapter we focus on the 28 participants who had gone through a non-legally binding ceremony at least one month before their legal wedding or who were not legally married at the time of the interview. We analyse their motivations for having the non-legally binding ceremony first, how these participants regarded the process of getting legally married, and why some were unlikely to have a legal wedding. We also draw on the focus groups and interviews conducted with those who were involved in conducting non-legally binding ceremonies, who had their own perceptions of the motivations of those who chose to have such a ceremony.

All 28 of these non-legally binding ceremonies were religious ones, and the majority were Muslim ones. Of the 16 participants who were not legally married at the time of the interview, 14 had a *nikah*,³³⁵ one (042) had a Sikh ceremony and one (045) had one private exchange of vows and one interfaith ceremony. Of those who had a *nikah*, six had experience of divorce or separation, whether in relation to the marriage that was the subject of the interview or another one.³³⁶ Of the 12 who had gone on to have their legal wedding more than a month later, 10 had a *nikah* first,³³⁷ one (046) had a Wiccan ceremony and one (054) a Hindu one.³³⁸

One of the reasons for considering these two groups together is that a number of the 16 were planning to be legally married at some point in the future and there was therefore a considerable overlap between their motivations and perceptions and those of the 12 who had already gone on to have a legal wedding. However, others, as we shall see, had strategically decided against a legal wedding due to their previous experiences or other considerations.

The dominance of Muslim religious-only marriages within these groups is striking for two reasons. The first was that the 24 who had their *nikah* first or had not (yet) legally married accounted for the vast majority of the Muslim interviewees in our sample as a whole. Indeed, if one includes those participants who had their *nikah* and their legal wedding within a short period of each other,³³⁹ then all but six of our Muslim interviewees had the *nikah* first. The second is that religious-only marriages were not identified as a significant practice within the other faith groups we engaged. As a result, while this chapter is not *solely* about Muslim religious-only marriages, it is *primarily* about such marriages. If one of the motivations for reforming the laws governing weddings is to address the situation of those who unwittingly find themselves in a religious-only marriage,³⁴⁰ then any such reforms need to be devised with a knowledge and understanding of Muslim marriage practices.

³³⁵ 002, 003, 006, 013, 019, 033, 035, 037, 040, 053, 056, 058, 065 and 082.

³³⁶ 006 (in a religious-only marriage at the time of interview; first marriage had been non-legally binding), 013 (in a religious-only marriage at the time of interview; first marriage had been legally binding), 033 (separated after a non-legally binding ceremony), 035 (religiously divorced after a non-legally binding ceremony), 058 (divorced; first marriage had been non-legally binding and second legally binding), and 082 (in the process of getting divorced following a religious only marriage).

³³⁷ 001, 011, 014, 020, 021, 029, 034, 036, 048 and 064.

³³⁸ See further chapter 4.

³³⁹ 028 and 057 had a register office wedding in the week after their *nikahs*, 069 had her *nikah* on approved premises, followed by the civil wedding, and 083A and 083B's *nikah* was celebrated in a rose garden next to the Anglican church where their legal wedding took place minutes later.

³⁴⁰ See the discussion of religious-only marriages in Law Commission, *Getting Married: A Consultation Paper on Weddings Law*, paras 10.171-205.

The motivations for having the religious ceremony first

As we discussed in chapter four, many of those who had a religious ceremony regarded this as more important to them – whether in terms of marking the start of their life together or in terms of the nature of the ceremony – than the legal wedding, whatever the order of these events. This trend was even more marked among the 28 participants who had a non-legally binding ceremony before or in the absence of a legal wedding, and particularly among the 24 who had a *nikah* first. Since the reasons they gave were also echoed by those involved in conducting ceremonies, we will discuss the two sets of data together.

Prioritising religion

Three of the four participants in other (non-Muslim) religious marriages spoke of the importance of their faith to them. 045 (female, 55, spiritual) described her beliefs as ‘universally welcoming of every different belief’ and that this was ‘absolutely fundamental to who I am’. 046 (female, 39, Pagan) explained that she had been a Wiccan since she was a teenager and that her faith gave her a ‘grounding’ and a means of ‘understanding the world around me’. 054 (female, 33 Hindu) was one of the few Hindu participants in our study to identify her faith as playing a significant role in her life, wherein religion was ‘a daily aspect of mine and my husband’s life. We are very religious and we consider ourselves proud to be Hindu’. For the fourth, 042 (female, 26, Sikh), matters were complicated by the fact that she had converted to a different faith upon her marriage, explaining that ‘previously I was Jain and post marriage I am now a Sikh’. The importance of religion in her life had also changed:

Previously no importance at all. Very little in fact. Now a lot more important but, again, we’re not very religious. It’s just around customs and traditions and the culture rather than the actual religion.

Of the 24 Muslim participants, all but two described their faith as being important or very important to them.³⁴¹ It was central to the way that they lived their lives and the decisions that they made. 013 (female, 31, Muslim) described it as ‘the centre of my life. Everything revolves around that for me.’ For 019 (male, 40, Muslim) it was ‘a way of life and it’s a guide on how to live your life and also it gives your moral compass and sense of being as well in this world’ and for 029 (female, 30, Muslim) it was a ‘guiding principle and blueprint’.

All 24 stated that the *nikah* was crucial and they would not consider themselves as married without it. 011 (male, 32, Muslim) described the religious ceremony as a ‘religious obligation’, framing it as something that was mandated by his religious beliefs rather than being a choice. 053 (female, 24, Muslim) similarly explained that the *nikah* was ‘what my religion commands me to do. It’s the only valid form of ceremony in terms of my religion’, and 058 (female, 33, Muslim) framed having a *nikah* as ‘being legitimate in the eyes of Allah’.

A number also commented on the *nikah* as being more important than the legal wedding. 006 (female, 31, Muslim) explained that ‘me being register married is not as important as my mosque ceremony because of my belief’, 033 (male, 30, Muslim) expressed the view that the religious ceremony was ‘obviously’ more important to him, 040 (female, 26, Muslim) noted that ‘as a Muslim and as per my belief, it’s more important for me to be recognised in the eyes of my religious laws’, and 056 (female, 42, Muslim) thought ‘that’s what is important, first and foremost’. 002 (female, 32, Muslim) similarly commented that she would not be recognised as married until the *nikah* had taken place:

³⁴¹ The two who did not – 002 and 003 – still described themselves as ‘practising’ or ‘moderate’.

I could have had a civil ceremony but that doesn't mean I'm married in our terms, as a Muslim. You're only married once you've had the *nikah*. So that one's the serious stuff.

These views were echoed by the imams, with D-132 commenting that 'from an Islamic perspective the *nikah* is the most important role in any person's life when they're getting married'. In explaining why they were willing to perform a *nikah* without a prior legal wedding, they emphasised how the religious ceremony was a key part of their faith. As C-121 put it:

As we believe that the *nikah* and the marriage is part of the religion, it is not only worldly matter, it is part of our faith, part of our religion, and so the imam and the Islamic centre has to facilitate it for the Muslim community. So because we think it is an essential part of our religion, so that's why we conduct it. It is you can say similar to the prayer as imam has to lead the prayer, the same way imam has a responsibility to conduct these ceremonies as well.

D-131 further described it as a 'religious duty' and an 'honour', and elaborated that imams have a duty to 'encourage young people to get married' and to 'support' this process, while B-111 believed that he was responsible only for the *nikah*: '[w]ith our responsibility, we just want you to conduct the Islamic one'. D-133 thought that it was 'unhelpful' to refuse to conduct a *nikah* until a couple were legally married: 'the *nikah* for the Muslim is the religious faith-based ceremony, which is essential to us as practising aware Muslims'. And for C-122, the importance of the *nikah* as 'an act of worship' meant that it might be problematic to make it conditional on a legal wedding taking place before or even after the ceremony:

So if you're the kind of person to say, "actually you must after this go to a civil marriage ceremony and get yourself legally married otherwise I'm not going to continue, that could one way. But that can be harsh because you potentially depriving somebody from engaging in what's considered to be an act of worship."³⁴²

A number noted that it was for the couple to decide what was important for them. As C-124 commented, 'if somebody says, "no, we believe that in Allah's sight we are married and that's good enough for us" then that's between them and Allah, I don't disagree with them on that.' D-141 thought that while most couples would opt for a legal wedding, 'some people will say I don't care; we are husband and wife in the sight of Allah.' As he added, 'I don't have power to say you have to do this, you don't have to do that.' D-144 similarly noted that it would depend on what the couple wanted: 'we do ask them, "do you want a legally binding *nikah* or are you just doing this ... just the basic foundation... get the Islamic process done and you're not really worried about that?" Whichever they choose.'

Religious ceremony necessary to enable the relationship

There was also the question of what a couple felt permitted to do in the absence of a *nikah*. As 040 (female, 26, Muslim), who was in a religious-only marriage at the time of the interview, explained: 'it's better for me to do it via my religion, because the government doesn't actually stop me from having a relationship, whereas my religion does'. This highlights how the Muslim participants regarded a *nikah* ceremony as necessary to enable their relationship in multiple ways that were not as marked for participants of other faiths.

Again, this was reflected in the discussions among the imams, with a key theme being that a *nikah* was necessary to make the relationship *halal*. A-103 described the moral dilemma some couples face when they begin an intimate relationship:

³⁴² See generally R Arshad, *Islamic Family Law* (Sweet & Maxwell, 2010).

you get individuals that are in a relationship already. They realise that that relationship is wrong. In some cases, the families are not even aware that they are living as man and wife. And for them it's a moral dilemma that they want to be doing right in the sight of God... In which case, I feel ... others may disagree, that if that can be a good steppingstone to some sort of normality and some sort of approaching their families to say, "look, we are serious about this. Will you bless us as a family or as relatives", then I will perform the *nikah* ceremony. I will not insist on being more stringent.

B-114 similarly spoke of the role of the *nikah* in combatting 'what we see as *haram*, illegal relationships', while B-115 agreed that the idea of 'making something into a *halal* relationship... is actually of paramount importance'.

Significantly, none of the 24 Muslim participants had lived together beforehand. For them, marriage and intimacy went hand in hand. As 003 (male, 33, Muslim) stated, there was 'no intimate relationship. Only through marriage.' For 028 (female, 31, Muslim), the relationship was long established but there was still a clear demarcation where intimacy was concerned: 'we've known each other a long time so we were extremely close in terms of the emotional aspect of things but physical intimacy, yeah, it would have had to have been marriage before.' The desire to avoid what 002 (female, 32, Muslim) described as 'sin' in their relationship was key.

These 24 had generally been planning to marry³⁴³ for a shorter period of time than those who had their legal wedding first. They had also generally known each other for less time. Indeed, a number of participants explained that the 'getting to know' journey was for the singular purpose of deciding whether to marry that person or not. 048 (male, 38, Muslim) mentioned meeting 'with other people present', and 'on the initial occasion when we actually met to discuss marriage, that was the first time we ever met alone and that was in an open restaurant'. 035 (female, 36, Muslim) described the process as an 'interaction, so I wouldn't class it as a relationship. So, it was somebody I was introduced to and from the introduction period to deciding I wanted to get married, or we wanted to get married, it was probably four months.' 064 (male, 42, Muslim) similarly described his pre-marital relationship as 'Islamic courting', where the two people were only meeting with a view to marriage.

In addition, their 'getting to know' period had generally been limited to some social interaction with others present and occasionally meeting in public places. 003 (male, 33, Muslim) described his engagement as a 'cultural engagement' where all socialising had been with family members around, stating 'we knew each other as friends and actually, probably to be honest, probably acquaintances really than friends'. 001 (male, 40, Muslim) had had 'coffees now and then' with his future wife. 014 (male, 41, Muslim) described it as 'like best friend kind of relationship where you're constantly in touch with each other, you're talking on a daily basis. You know, you do meet up... I think we met up once or twice for a meal, coffee et cetera.' 040 (female, 26, Muslim) had not even had this level of interaction, describing the relationship prior to the *nikah* as:

just mutual communication via telephone or... So there was no, obviously, physical interaction or seeing [name of partner], it was just getting to know each other, seeing what your fundamental principles are in life, what you want from a relationship, what you're looking for in families, and in a spouse ultimately, so it was just more getting to know each other before, obviously, you make that commitment; making sure you're right for each other before you go further.

³⁴³ We use this term as many of our participants drew a distinction between being engaged and deciding or planning to marry: of the 15 participants who said they did not have 'an engagement', 13 were Muslim and stated that engagements are not part of their religious traditions.

While most had spent at least a few months getting to know their spouse, for 006 (female, 31, Muslim), the period was much shorter. As she explained, 'literally from the moment we met to the moment we proposed, all in all it was two weeks.' The *nikah* had taken place a week and a half later.

It should be noted that few of these were arranged marriages where the couple were introduced for the sole purpose of a potential marriage.³⁴⁴ As outlined by 002 (female, 32, Muslim), couples usually 'choose' each other, further stating 'our parents weren't really involved in that process but we both wanted to make sure that what we were looking for, so that requires you having to see each other a few times and stuff.' However family expectations clearly played a role in terms of what was permissible. D-133, who conducted *nikah* ceremonies, also reiterated the role of this in her own family, describing how she had insisted on her daughter having a *nikah* before cohabiting with her partner:

So, what I'm saying to you is, I need [name of daughter's partner] to go through this ceremony so that he understands that you are my daughter. You are a young Muslim girl, and I am responsible for you. And now he is responsible for you and he had better step up to the mark for that responsibility. So, he has to understand this whole relationship thing. Okay, you can wait for a while and you can do your civil marriage and whatever it is. But that's where we start. That's the starting point." And it happened. And he ... even [name of daughter's partner] would say to me, "I'm so glad that you made us go through this because that was the point at which I knew that this relationship and this marriage was important. Was absolutely vital to us moving forward.

This distinctive pattern of a religious ceremony taking place at an early stage of the parties' relationship suggests a strong correlation with normative practices in their communities relating to relationship behaviour. It also supports the lack of a link between intimacy and the relationship prior to marriage. For these couples, the real 'getting to know' occurs after the *nikah* is performed.

That was reflected in the fact that a number of couples did not begin to live together immediately after the *nikah*. Instead, the *nikah* was a means of enabling them to meet more freely. 029 (female, 30, Muslim) explained that 'we were a bit more conservative and we didn't really want to... you know, we just wanted that freedom to meet up as much as we wanted'. Five months had elapsed between the *nikah* and her moving to live with her husband. For 036 (female, 27, Muslim) it was 'a little bit complicated, just because we were studying at the time'. As she explained:

so I didn't move into his house at that point, because we were still studying in different cities. So, in a normal setting, you would have another function, or it could be that same reception day. But the girl would go on to live with the boy straightaway, but we did that function a good six to nine months later. Again, there was no religious ceremony there, it was just a reception sort of meal, and then I moved into his house at that point.

Of the other four participants who had had a non-legally binding ceremony some time before or in the absence of a legal wedding, 042 (female, 26, Sikh), 045 (female, 55, spiritual) and

³⁴⁴ 033 described an arranged marriage where he did not really feel like he knew his wife until they were married and behind 'closed doors'. The marriage unfortunately failed due to this lack of knowledge about each other beforehand. This perhaps demonstrates the potential downsides of this approach, though the majority had far better experiences and there were others who described their marriages as failing despite having known their spouses for years prior to the marriage (056).

046 (female, 39, Pagan) had all been cohabiting in advance of the ceremony. Only 054 (female, 33 Hindu) reported that there was no cohabiting or intimacy before marriage, as her family were 'very strict' and would not have approved, although they did go on 'holiday together'.

The role of the imam prior to the religious ceremony

In this section we focus on the role of imams who conducted non-legally binding ceremonies without requiring a prior legal wedding and examine four key issues: whether they met with each of the couple in advance of the ceremony; whether they advised couples that the ceremony was not legally binding; whether they also advised couples to have a legal wedding; and whether they discussed the legal consequences of not having a legal wedding.

Whether they met with each of the couple in advance

The majority of the 31 imams who participated³⁴⁵ reported feeling responsible for providing the couple with some form of guidance prior to the marriage. Pre-ceremony engagement included a range of matters including identity checks and proof of address, general guidance on the *nikah* contract and ceremony, guidance on marriage, ensuring that all conditions for the marriage were met from an Islamic perspective, and ensuring that both parties were freely consenting to the marriage. A-104 noted that 'usually we have at least one meeting, usually two or three meetings before the *nikah* goes forward' and A-107 added 'several phone calls and meetings beforehand'.

Some imams emphasised how they would speak to the bride before the ceremony. B-112 reported feeling a safeguarding duty and would ensure that he spoke to the bride to ascertain that she was consenting to the marriage prior to the ceremony. D-134, by contrast, noted that where the families were known to him and 'conservative' in their practice of faith he would continue with the *nikah* even where the bride was not present or he had not met her at all. This lack of pre-ceremony engagement with women potentially raises concerns as the familiarity with the families may cloud independent approaches and judgements. D-144 also mentioned that no prior engagement or indeed any engagement with the bride would be needed if they were of the Shafi'i school of thought³⁴⁶ and that he would rely solely on the father conveying consent for the bride in that case.

C-124 spoke of ensuring the families were aware of the wedding before performing the *nikah*, suggesting that the wishes of the bride and groom may be superseded by that of the families. B-114 and D-140 amongst others mentioned needing the father of the bride to consent and if possible be present. This suggests a propensity for imams acting as gatekeepers in ensuring women are not able to access a *nikah* without a father's consent despite this not being a criterion for all schools of thought.

In other examples, the institutional framework of a mosque may result in imams feeling less personally responsible for the couple. A-102 reported not engaging with the couple directly when operating within a mosque, but doing so now that he was not affiliated. This suggests that mosques are expected to provide some safeguards and checks/balances as institutions, with imams feeling less responsible personally in such settings.

³⁴⁵ All 31 are listed as 'imams' for ease of reference. 29 were male clerics performing the role of 'imam' to varying degrees, and two were female Muslims who performed *nikah*.

³⁴⁶ One of the four main schools of thought in Islamic jurisprudence. The different schools of thought take differing approaches to consent and guardianship of the woman prior to marriage: WB Hallaq, *An Introduction to Islamic Law* (Cambridge University Press, 2009), 27-31.

Whether they advised couples that the ceremony was not legally binding

All of those conducting non-legally binding ceremonies without a prior legal wedding confirmed that they made it very clear that the ceremony would not be legally recognised.

Among the imams, A-103 commented that he would 'make a point of specifying that this is a religious marriage' and that 'it's not recognised, at this moment in time, in law'. A-104 confirmed that he also 'made it very clear that it's not legally recognised by the law of England and Wales. I always say that.' D-135, noted that some couples already understood that the ceremony would not be legally recognised but that he would 'mention it to them, that this kind of ceremony is not legally binding', while E-153's practice was to 'make them sign something and indicate in writing that they understand our weddings are not legally binding'.

This message about the *nikah*'s lack of legal status was reinforced by the documentation that accompanied it. A-106 explained that 'on the actual *nikah* certificate it does say, at the bottom in bold, that this *nikah* is a religious ceremony. It does not constitute the legal marriage.' D-134 described a proforma on his website on which 'it really is very clearly stated that the *nikah*...is an Islamic marriage ceremony ... it isn't a legally binding ceremony under British law, that's stated on there'. The certificate issued by D-136 also included a nudge to couples to have a legal wedding, since it stated that 'this will be valid after the registration in the Council', while D-133 went even further and withheld the *nikah* certificate altogether until the couple returned with a certificate to show that they had had a legal wedding.

Whether participants advised couples to have a legal wedding

Many imams did see it as their responsibility to advise couples about the necessity of a legal wedding. As B-114 noted, '[w]e don't get involved in civil marriages, but we do advise on them'. For D-139, it was about helping couples to understand that 'they have to register the wedding legally'. D-138 similarly confirmed that:

where the *nikah* takes place, either inside the *masjid* or a private venue, we always give advice. This is Islamically OK. OK? But you need also to go to the local authorities to register your marriage. That's the advice we always give.

D-137 tried to encourage couples to complete the legal stage as quickly as possible, explaining that he would always advise them 'go tomorrow or day after tomorrow, book your registration, is much better these things', and would sometimes 'give them the link of the Council' by way of encouragement. For D-143, it was particularly important that it was the imam who was advising the couple to have a legal wedding:

I think it's vital because, let's be honest, Muslims tend to take on what the Imam has to say as law more than anything else. So if it's in Islamic authority, an imam advising them this is what the law of the land says, they are more likely to accept it, you know. They are more likely to abide by it and take it on, so I think it's important and I think all imams should be aware of the law of the land and advise accordingly.

C-124, by contrast, felt that the 'law of the land' imposed no obligation on him. While his view was that 'it's best to... say that "okay, legally to some extent we would advise it"', he added that 'it doesn't matter how much pressure on this there is for us to advise, until something is set in law to say that we have to do something or the couple have to register we ourselves wouldn't be in a position to be able to enforce that either'.

Only a small number did not consider it their responsibility to advise couples on the legalities at all. C-121 noted that 'I never ask them and if the couple asks then we simply advise them to make contact with a register office themselves', while D-134 regarded the decision whether or not to have a legal wedding as being for the couples, the 'personal private decisions that they may want to make'.

Whether they discussed the consequences of not having a legal wedding

A few imams felt that it was important to explain the consequences of not having a legal wedding. D-140 noted that he would 'stress, especially to sisters, the importance of having a civil marriage at the same time, or as soon as possible. Because... when you have a registered civil marriage in this country, that tends to protect your rights.' D-141 explained that although he could not tell couples to get married, '[w]hat I can do is advise and to let them see the implication of not doing that second bit'. D-144 also commented on the various 'privileges' that attached to being legally married: '[t]hat opens doors to many things that, if you are not married, you wouldn't get'.

D-133, one of the two women who conducted *nikah* ceremonies, took a particularly interventionist role in terms of the *mahr*.³⁴⁷

I've had people coming in to me throwing the loose change in their pockets on my desk and saying, "oh ... you know ..." because they haven't discussed this, and he has certainly not even talked to her about it. So, he puts his hand in his pocket and takes out his loose change and there's a couple of £10 notes and maybe a couple of £20's and so on. And I look at her and say, "well, there you go. That's what you're worth. Are you happy with that?" So, it's like sometimes you have to make women think... I say to them, "if you are giving her a gold ring as a *mahr*, that's really not going to take her very far", given today's market for gold and here in the UK and whatever. But if you're both married or even if you're not married and you both buy a property and the property is in both names, then that is kind of her *mahr* as well. It's kind of her safety net, in a sense. Because she owns that property jointly with the other person. So, I do talk to them about that. "If you can't afford a *mahr* at this point in time, fine. But let me point out that if there's any property that is attained during the marriage, any assets, property, savings, whatever it is, that is part of the marital assets, then you have to understand that they are jointly owned and that she has a joint right to them. So, if you're not going to give her £5,000 or £15,000 or whatever it is that they ask for in Egypt or in Saudi or whatever it is, then let's look at the joint ownership of property here in terms of that futuristic *mahr* that she might walk away with, should this marriage break down."

Others, however, simply advised couples to obtain legal advice. A-103's practice was to say 'that this isn't recognised in law and that you need to seek your own legal advice and formalise the relationship, if you choose so, through a civil marriage'.

The role of the legal wedding

While those who had gone through a religious ceremony of marriage regarded themselves as married, they recognised that they were not so regarded by the law. 034 (female, 28,

³⁴⁷ For an interesting discussion on *mahr* in English courts, see M Jindani, 'The Concept of *Mahr* (Dower) in Islamic Law: The Need of Statutory Recognition by English Law' [2004-2005] 11 *Year Book of Islamic & Middle Eastern Law* 219.

Muslim) explained that she had continued to call herself 'Miss' until her legal wedding had taken place, somewhat to the bafflement of her husband:

I remember he kept asking me why I kept saying Miss, like at the bank or whatever. Miss or Mrs? I would say Miss. And I was like, "Well, I'm not going to lie, I'm a Miss." And he would be, "But why? No, we are married." So, we didn't have a very clear conversation about the stages of the ceremony in UK, but we were on different pages. Like, I was married for me, but I knew, and he wasn't as aware, you know.

029 (female, 30, Muslim) commented that she 'wouldn't consider myself married without either, I think.' While the *nikah* took priority for her as it was the 'real wedding', the legal wedding had its own significance. 020 further stated that 'from a legal perspective, it was very important for us to have that ring'.

A number of participants identified financial and legal reasons for being married legally. 048 (male, 38, Muslim) mentioned that a legally binding marriage 'entails firm financial implications and also implications in terms of your pension and all kinds of things,' demonstrating that legal security was attached to that ceremony. 036 (female, 27, Muslim) similarly felt that if 'anything was to happen to either' of them, then they would know their legal rights if legally married, while 029 (female, 30, Muslim) thought that legal steps like changing her name and getting a new passport could not be completed without the legal ceremony.

A number of the Muslim participants attached significance to the legally recognised ceremony on the basis of its relevance to the state and their citizenship of the state.³⁴⁸ 029 (female, 30, Muslim) stated 'with the civil ceremony, again it is also very important and in terms of my British identity and that part of it, but it's also what's legally required and it was really important to get that done'. 021 (female, 32, Muslim) provided further details on this:

even in Islam, the idea is that you live under the laws of the country. So, because we are citizens of the United Kingdom, therefore a civil ceremony is also important for my own rights as a citizen of the country. So, the civil ceremony was important to be undertaken but it wasn't... in terms of priority, that wasn't the priority. We just needed to make sure that it was done as soon as possible. But it wasn't the one that I would have put forward before a *nikah*.

As this indicates, there is a difference between attaching importance to the legal wedding and giving it priority. In a similar vein, 036 (female, 27, Muslim) explained that 'we obviously wanted to have the legal ceremony, so that it's recognised in the country, or by law, but it wasn't a priority for us. But it was something that we needed to do. So we did that, I think a year later.' For 056 (female, 42, Muslim), who was in a religious-only marriage at the time of the interview, '[a] legally binding one is a secondary thing. It's more to do with your finances and the security surrounding this country'.

Moreover, combining the two was seen by 003 (male, 33, Muslim) as potentially detracting from the importance of the *nikah*. As he explained:

the venue that we chose was actually authorised to have a legal marriage, so we could have actually had the legal marriage at that time but... yeah, it just felt very special with the *nikah* so we wanted to have a separate day for a legal marriage and then just a separate day for the *nikah*.

³⁴⁸ 021, 029, 034 and 038.

Single ceremony

The Law Commission's proposals will make it easier for couples to have a single ceremony that is both legally recognised and conducted in a way that they regard as meaningful. As a result, a number of imams took the view that the Commission's scheme would ensure that more Muslim marriages were legally recognised.

There were two key elements to this. First, there was a perception that the proposed scheme would make it easier to have a legally binding wedding. Of particular relevance here were the removal of the requirement for Muslim (or other religious) weddings to take place in a place of worship that had been registered for the purpose, the authorisation of officiants, and the streamlining of the process of giving notice. In relation to location, A-106 noted that the majority of venues were not registered for weddings and that the cost of organising a separate civil wedding was 'a major obstacle'; by contrast, 'if we can just shift all of that to one wedding, one function, where, let's just say *nikah*,... *walima*, all of that, is in one place, then I think that will actually be a huge encouragement for couples to get their marriage registered'.

Second, there was the greater scope for this wedding to be in accordance with their religious beliefs. Couples would no longer need to say words prescribed by statute but would be able to express their consent to be married in a way that reflected their beliefs. As B-111 put it:

if you can unify, providing the settings that are suitable for the marriage of the Muslim community within the legal framework... that would actually save a lot of your hassle, a lot of your future disputes.

The proposals of a single ceremony was viewed as potentially advantageous by a number of participants for a range of further reasons.

Simplicity

Numerous participants viewed a single ceremony as creating greater ease.³⁴⁹ I-192 and I-194 mentioned not having 'to have all the faff about the legal side of it being done elsewhere'. K-212, K-224 and M-232 viewed it as 'less hassle' than having two ceremonies, with D-136 and D-137 stating that a single ceremony would be more secure for the parties. Such 'streamlined' ceremonies³⁵⁰ were on the whole welcomed for greater simplicity. C-124 commented:

I think most people will welcome it... if somebody says that one simple ceremony which for everybody else in other religions, other backgrounds is done in one place and in one time and fully, officially done and dusted... most people they would prefer that it be kept that way.

This proposal was also viewed as more flexible (D-131, D-141) and cheaper (D-143, F-164, I-194). It was however noted that a single legally binding ceremony under the proposed scheme would require more planning than a religious-only ceremony at present within Muslim communities (D-137).

The question of when to celebrate the anniversary was raised by non-religious celebrants³⁵¹ in particular, who highlighted the issue for couples of having two anniversaries if the legalities were separated from the 'real' wedding. A single ceremony eliminates this problem.

³⁴⁹ D-132, D-134, D-141, D-143, E-151, H-184 and I-191.

³⁵⁰ C-121, C-124, E-154 and H-193.

³⁵¹ H-182, I-192 and I-193.

Inclusivity and Equality

Participants welcomed the proposals as accommodating a wider range of beliefs and choices. Those involved in conducting religious weddings highlighted how being recognised as an officiant would signal that they were valued and trusted. Thus one imam, D-143, spoke of how this:

would give us some sort of authority and significance... It would give us some recognition. It would make us feel as if we are part of the community a lot more. It would make us feel appreciated and then show that, you know, we're not just a people that live here. We are an important part of the community that live in Islam.

One of the key problems with the current system is the fact that rules governing how couples can marry are different for different religious groups. These differences are experienced as discrimination, as was clear from comments from a range of different faith groups. G-174, a Pagan celebrant, commented that 'I just want to say one thing, equality. Because, as a Pagan, sometimes I almost felt a bit discriminated against.'

Participants expressed a desire for a system that would apply equally to different groups. D-139, an imam, spoke of the need for 'a framework that works for all communities and everyone who's involved'. L-225, a Liberal rabbi, noted that Jewish communities 'already have some of those freedoms and I don't see why we should be allowed to have them and nobody else is allowed to have them.'

For the most part, the Commission's proposals were seen as treating all religious groups equally. G-174 commented that 'I think these reforms are going to be brilliant if this can go ahead. Because it's equality. What we've got at the moment is outdated.' The only respect in which the proposals were identified as not treating religions equally was the fact that Anglican clergy would be officiants by virtue of being ordained, which one Pagan priest, N-242, described as 'offensive'.

The issue of equality was also raised by independent celebrants with I-194 commenting '[i]t will be a huge step towards equality. An absolutely massive step towards equality because it wouldn't matter to a certain extent what you look like, what colour you were, what creed you were, what variant of that. A celebrant, somewhere, will get you and so someone will get you right.'

Cost

A number of participants emphasised how expensive it was to have two or more ceremonies. Individuals who conduct weddings highlighted how not having to have a separate civil ceremony would reduce the costs to couples of getting married.³⁵² F-161, an independent celebrant specialising in ceremonies for couples from South Asian communities, commented how 'some of my couples are doing the Registry, the wedding ceremony with me, then doing the Hindu ceremony and then doing a reception. So, that's four events with X number of people there.'

Participants referred to 'getting two for the price of one!' (D-131) and identified the cost of bringing people together for two or more ceremonies.³⁵³ Further to this, the fact that couples would not be limited to marrying in specific venues was also identified as making the

³⁵² D-143, G-173, I-191, I-192 and I-194.

³⁵³ A-106, C-121 and F-161.

process more cost-effective (D-142). Independent and Humanist celebrants in particular highlighted the expense entailed in having a separate civil ceremony (F-164, I-193).

Reasons for delaying the legal wedding

Legal/administrative barriers

The duration of the gap between the non-legally binding ceremony and the legal wedding was not always of the couple's choosing, with some experiencing delays due to legal processes.

The impact of Covid was clear, with a number of participants waiting for a slot to marry legally. 002 (female, 32, Muslim) and 042 (female, 26, Sikh) both explained that their legal weddings were scheduled to take place following their interviews, with 002's due a week later and 042's the following month, while 003 (male, 33, Muslim) was on a 'waiting list'.³⁵⁴

Others commented on the challenges of navigating the legal processes. The additional requirements for those subject to immigration control had been an issue for 034 (female, 28, Muslim). As she explained, 'we didn't really choose [a non-legally binding ceremony]. We didn't want to start a relationship being not married because being fully committed was really important to us'. However, her husband had overstayed his visa and, as she explained 'wanted to secure a job and everything before appealing'. They were also conscious that they would face an investigation if they went to give notice of their intention to marry but that it would be more difficult to prove that their relationship was genuine if they were not already living together.³⁵⁵ From their *nikah* in the summer of 2015 it was two-and-a-half years before their child was born and 'something related to immigration happened and the solicitor basically gave us the go [ahead] to go and get married'. Even then there were further hurdles:

We had the whole investigation. My house was always tidy because I was expecting anyone to come in any time. So, it was horrible, and no one came. But then we had the interview. So, we actually studied so hard for this. Even if we were actually, you know, living together and everything, we were quizzing each other about our preferences, family history, what we did, we confront everything. So, we had this interview, which was quite horrible, to be honest. It was really... but it was a man who was trained to intimidate us, and we are both kind of conservative and it was like, "Bullshit!" Like he was using strong words and everything. This was really bad. But we passed cos we were not lying. And as soon as we got the news that we passed, we called them and got a date. We got the first available date.

It should also be noted that she had even faced obstacles in having a non-legally binding ceremony. Her local mosque refused to perform the *nikah* due to her partner's immigration status, but she eventually found an imam who was willing to conduct it. One imam, D-132, also commented that his mosque had ceased to offer non-legally binding ceremonies:

³⁵⁴ The data collected in this study from those conducting non-legally binding ceremonies suggests that Covid may have given rise to an increase in such ceremonies among Muslim couples: see R Probert, R Akhtar, S Blake and S Pywell, *The impact of Covid-19 on legal weddings and non-legally binding ceremonies* (2022, forthcoming) on this and on the way in which Covid gave rise to other couples having a legal wedding only without any religious ceremony.

³⁵⁵ This requirement demonstrates how some legal processes fail to take account of the linkages between intimate relationships / cohabitation and marriage for some couples. 034 went on to say of the Home Office's requirement of proof that the couple are living together: 'it doesn't make any sense because maybe not all immigrants, but maybe half of the immigrants are going to have a Muslim background so maybe they are not going to want to live together before being married'.

I would say two years ago/three years ago, people wanted to do Nikah within a week, within ten days, within five days, within two days... And the majority of these people, we found, that they wanted a *nikah* done because of their status. They wanted to show the immigration people to say, "I am in a *nikah*. This is the mosque that did my marriage. You can check with them." So, they were using us as an in-between to show the Government that, "yes, I got married". This is also one of the reasons we then became stricter, to say, "you know what? They are going to use us for their own purposes, so why don't we make it difficult?" Well, not difficult, make it legally binding for them to do this...

P-261, a Sikh priest, also described the tensions his gurdwara faces when dealing with immigration issues, commenting that:

If a Sikh boy and a girl turn up at the Gurdwara that they want to have this wedding ceremony and it would not matter... it should not matter to the management what their other status is in the country. If they are Sikh, they profess to be a Sikh, if they want this wedding ceremony, then we ought to have this wedding ceremony for them. OK, whether they're legal or illegal, that's a separate aspect.

He found it problematic that the gurdwaras were being 'forced to' check whether the couple had legally married beforehand. In his view, '[w]e should not be looking at that side. That is for the authorities to look at.' He also referred to a case where the wife was not legally in the country; the gurdwara had provided a letter to say that a ceremony had taken place there but had insisted that a certificate could only be issued if the couple had supplied a civil wedding certificate beforehand.

Others identified the challenges involved in giving notice, which requires the physical presence of the parties at their local register office and then for those notices to be displayed for 28 days. 036 (female, 27, Muslim) and her husband were students and found it difficult to find the time to travel to their home town and make an appointment at the register office. For this reason, they waited until they had 'settled back' in their home town after their studies were complete. This was when they had the time to plan and attend to the details. 014 (male, 41, Muslim) also struggled with location, as he and his wife were from two different cities and therefore had to give notice in different registration districts:

It was like, "Really, are you serious?" They said, "Oh yeah, one has to go to..." So I was from [city 1], missus from [city 2]. She had to go to the [city 2] office and register there. I had to go to [city 1] and register there. And then, their system had to amalgamate the two files online and that was an issue for them. We had to go back and forth a few times. It's supposed to be such a simple admin matter. But anyway, that had to happen and that's one of the reasons why it was delayed, because that takes a couple of weeks. So it's done that. I think I got a permit relatively fast. She had to wait two weeks. And then the system had to wait for it to amalgamate for a couple of weeks.

While these couples persevered, it is possible that many others do not and do not prioritise this process where they have already had a ceremony that is recognised as a marriage by their families and communities.³⁵⁶ For 053 (female, 24, Muslim), there were 'too many forms to fill out', deterring her from beginning the process despite encouragement from a parent.

For others, the decision to marry had happened too quickly to allow time for the civil preliminaries to be completed. This was the case for 037 (female, 29, Muslim), who stated

³⁵⁶ RC Akhtar, 'Unregistered Muslim Marriages: An Emerging Culture of Celebrating Rites and Compromising Rights' in J Miles, P Mody and R Probert (eds) *Marriage Rites and Rights* (Hart Publishing, 2015).

that the 'short timescale' between the engagement and wedding did not allow for a legal wedding to take place though they would 'potentially have done both together'. Her story also reveals the ease with which years can slip by once the religious wedding is complete and married life begins despite having every intention to legally marry, as we discuss in the next section.

Delay in getting round to it, life getting in the way

Those who had gone on to have their legal wedding many months or even years after their original non-legally binding ceremony spoke of the various life events that had delayed it. For 001 (male, 40, Muslim), once the *nikah* had taken place, there was no 'rush' to have a legal wedding and it was seven years before it eventually took place:

we never got around to doing it and we had our first child and then eventually someone said, "you know what? You need to just go ahead and do that in case it becomes an issue later on in terms of the legality of your current wedding." And, at first, I didn't take it seriously and neither did my wife. We didn't really pay much attention to it but then, eventually, I think after enough nagging from parents and other people we ended up having our civil ceremony almost seven years after. So, we had that, and we now have to explain to our child that we had this extra civil ceremony while he was still a baby.

'Life events' such as buying a house and other personal difficulties had hampered 020 who legally married 18 months after his *nikah*. He explained that neither of them had any objections to the legal wedding, but had simply not got round to it earlier.

'Getting round to it' was also identified as an issue for others. 019 (male, 40, Muslim), for example, noted that 'life's got in the way a little bit', with the birth of a child and then Covid restrictions hampering his efforts to make plans for a civil wedding. For him, the 'red tape' involved in a legal wedding was off-putting, and he had not engaged in the legal process at all to the date of the interview despite 'fully planning' to marry legally at some point.

As noted above, 037 (female, 29, Muslim) reported that she would have been happy to have had the legal wedding at the same time as the *nikah*, which had taken place in 2014. She explained how 'we always had it in the back of our heads that at one point in time we would do it, it just wasn't a priority'. She acknowledged that 'it was supposed to be ... well, after I fell pregnant... but that didn't happen'. While suggesting it might take place 'in the next year or so', she could not think of any event that would push them to do it. As she commented, 'I consider myself married now, so really for me, what's the rush of trying to get something done as a formality?'

Deliberate delay

One participant, 046 (female, 39, Pagan), made it clear that she had delayed the legal wedding in order to test the relationship. Her initial Wiccan ceremony had involved her making a commitment for 'a year and a day'. As she explained:

So, the significance is a year and a day so that you have the opportunity to live as a married couple without the... it's like a test run, to see if it works because, from my own personal perspective, people can change when they get married. There's this feminist fight or flight-type thing for me, where it was like I need to know that there's not this bind and that it can work and he's not going to change. Or there's not this possession. And to see if it worked without the entanglement of legal things because even co-habiting has its own restrictions. But it's also making that commitment and you

know when they get things like cold feet and stuff, I think it got rid of that element of it as well because... and it was something very personal... The year and the day was a big emphasis for me because it was the trial. The trial so that we made the commitment without, like I said before, the gap. The mess [laughs] that could happen. But it's also, it takes away the... it's making that commitment to each other without the stress, I guess, that can be on people when they think of weddings.

Others did not conceptualise the religious-only marriage as a trial quite so explicitly but, as discussed towards end of this chapter, were still conscious of the greater ease of exit from a marriage that was not legally recognised.³⁵⁷ This was particularly apparent in the account of 064 (male, 42, Muslim). As he explained, he had met the woman who became his wife in March and that 'literally the first day we met was for the reason of getting to know each other for marriage'. They had agreed to marry a month and a half later, and the *nikah* had taken place in July. This had enabled them to spend time together, but the *arusi*, a further public celebration, had been necessary for them to be able to live together. This took place in September, and the legal wedding at the register office had then taken place in November. As he noted, this process made sense for them.

So, us doing the Islamic one, then I knew that OK, that's it. We've made our commitment and I'm committed to you now. And so, now we can go and do the legal part. However, if I'd done the legal part and things didn't work out, the process of the annulment is, you know, complicated and it's just extra and a legal kind of divorce would be added to her name and I didn't want to do all of that stuff. So, for us, we were going to do the legal one anyway, but the process of doing it Islamically and then legally in British law, just makes sense.

An additional layer of complication in this particular case was the fact that his wife came from a different ethnic background to his Iranian heritage: as he explained:

for me, *nikah* is marriage. For my wife, her background is Iraqi. They see the *akhid* or *nikah* as a kind of engagement. So, we always have this debate, and she agrees that it's wrong because Islamically, we married, right? So, we should take it seriously as opposed to, "Oh, it'll work out. Let's go to the sheikh. He'll do a *talaq* for us." That's wrong. That's, I think, disrespectful to their idea of thinking. But for me, I said to her, "This is marriage." And she agreed, like, "I'm going into it knowing that I've chosen you for marriage." Not, let's see if it works out, kind of engagement.

As this indicates, he was keen to emphasise that his intentions were serious, reflecting the subtle but important difference between an engagement entered into to see if the relationship 'works out' and a marriage that is easily terminable if it doesn't.

However, some of the imams described a *nikah* being used to ensure that a relationship was *halal* without the parties necessarily committing to the idea of marriage. A-103 thought that this was on the increase, with couples being refreshingly upfront by saying to him:

"look Imam, this is the reason why. It's not that we aren't committed but we don't know how things will pan out. So, we would rather just be going through a *nikah* ceremony and receive your blessings and then hopefully we will come back to you. We will organise another event, another feast where we will have a civil ceremony and we will ask you to bless us then as well."

³⁵⁷ See eg 056, who commented that 'I intentionally didn't ever want to have a legal marriage cos I didn't have that stability in my marriage to stand up to think that "Oh, I know this is going to be forever." I knew there were so many things that were going to be risky and slippery slopes for us. So, I preferred not to have a legal marriage on top of my *nikah* as well.'

A-107 was similarly of the view that many couples saw the *nikah* 'as a way of having a proper formal relationship before locking it down legally' and was of the view that this 'is probably a really sensible approach ... in our times today'. For others, the *nikah* itself did not mark the beginning of cohabitation, with 014 (male, 41, Muslim) viewing it as more of an 'engagement', and 036 (female, 27, Muslim) stating that 'I didn't move into his house at that point, because we were still studying in different cities.' Similarly, 020 reported that 'we did the Islamic ceremony, but my wife did not come with me on the day, stayed in London for another three months.' In his case, they waited for the 'big' wedding party before moving in together. However, for the majority, the *nikah* did mark the beginning of their intimate relationship.

Within our Muslim sample, one participant's experience suggested that her partner may not have seen their relationship as intended to be permanent. 082 (female, 37, Muslim) had wanted a legally binding marriage and indeed took steps to enable this, she reported that her soon-to-be ex-husband had possibly deliberately missed the meeting to give notice, resulting in them running out of time prior to departing for another country for work. The experience of another participant also suggests that it is not simply the couples' view of permanence which influences the timing of legal weddings. 056 (female, 42, Muslim) deliberately delayed the legal ceremony as she wanted time to convince her family to accept the union.

I couldn't resolve matters with family, and neither could my husband resolve things with his family, so we just decided to do [the religious part]. And then we thought, maybe in the future, we may still be able to do something more if we resolved friction between families. But never did. It never got resolved.

Given that the majority of our participants were aged at least 30, it is possible that we have not captured the approach of couples in their 20s who may display an increased likelihood of 'testing' their relationship prior to making a legal commitment within Muslim communities.³⁵⁸ Age was a factor in the experience of 029 (female, 30, Muslim) who stated:

I think younger people getting married and then they're not of age, they're getting married under 18. There are still those instances. I know of weddings where people have been married and they're 17 and they're like, "we'll get it done later". But what 17-year old is going to prioritise a civil ceremony after they've had their *nikah* done?

Reasons for not having a legal wedding

Financial reasons for avoiding legal marriage and perceived challenge of access to legal remedies

Some participants had made a conscious decision not to enter a legally binding marriage. 006 (female, 31, Muslim) was in her second religious-only marriage; as she noted, when her first had come to an end, she had discovered that she was better off not being legally married due to her more advantageous financial position, and 'with what I've been through before, and with me having my son, I would rather protect my finances and everything... I felt better protected this way'. For 056 (female, 42, Muslim), financial considerations had not been a factor in her decision to have the religious ceremony first, but had become a reason for not having a legal wedding when the relationship ran into difficulties. As she bluntly

³⁵⁸ RC Akhtar, 'Modern Traditions in Muslim Marriage Practices, Exploring English Narratives' (2018) 7 *Oxford Journal of Law and Religion* 427, 445-447. A survey conducted as part of a programme aired on Channel 4 titled 'The Truth About Muslim Marriages' in 2017 found that 80% of those surveyed under the age of 24 classed themselves as being within 'unregistered' marriages.

stated, 'I don't want... for my husband to have more rights', and she was already exploring ways of ending her religious-only marriage.

In addition, while 002 (female, 32, Muslim) was planning to marry legally, she did acknowledge that the thought had crossed her mind that if she was 'not legally bound to anything' she would be able to 'walk away' from the 'relationship with little scarring because I don't have to go through any hardship'. However, she acknowledged that a legal wedding 'protects us both as well'. At the time of the interview she was based in Luxembourg, and noted that:

this country, actually, gives you reason to do it. In England, I don't think there is much reason to actually legally say that you're married. You don't get loads of tax rebate and you don't get health... people see it as a, "Ah, can you be bothered. It's just going to cost money."

Such evaluations reinforce the comment of B-114, an imam, that some couples will weigh up the pros and cons and in some cases 'they see that there's more benefits not to do it'. In particular, he suggested that couples with a 'low economical finance status' may 'prefer not to register their marriage because perhaps it helps them when it comes to housing and benefits'. Another imam, C-123 shared concerns about the absence of control over what happens in the case of divorce, while B-111 suggested that some might prefer to remain in a religious-only marriage so that Islamic principles would apply in the event that it broke down.

Certainly in situations where there are no assets and no children, a legally binding marriage could merely delay the separation process. Another imam, C-121, outlined how some couples may actually prefer the seemingly quicker option of a religious divorce 'because if it is only simply Islamic *nikah* then they can get the divorce done by a Sharia Board, a Sharia Council. That would be enough and that would be sufficient, that would be sorted within a couple of weeks or within 2, 3 months.'

It should be noted that this may underestimate the time needed to obtain a religious divorce. Existing research suggests this process can sometimes take a lot longer, depending on the length of the marriage and the reasons for the divorce.³⁵⁹ Nonetheless, the processes for ending a legal marriage were cited by 013 (female, 31, Muslim) as a reason for remaining in a religious-only marriage. She had been married before and recognised that she would have been in a more vulnerable position if that marriage had not been legally binding: 'It would be pretty bad, to be honest.' At the same time, she referred to it having been 'like a battle' to get out of her legal marriage 'and that bit really puts me off... And financially, the way that you're tied and how you have to detach yourself from that, it's a struggle to do that. And all of that just scares me.' She reported that her current husband would be happy either way: 'he's like, "Look, it's up to you. If you're happy to do it, I'm happy to do it. If you don't want to do it, don't."'

033 (male, 30, Muslim) was also in favour of the flexibility afforded by the process for obtaining a religious divorce. Now separated, he alluded to the option of the triple *talaq* – where the word *talaq* is spoken three times and which effects an immediate divorce – but felt that it was 'horrible to divorce someone on the spot'. Instead, he had opted for a different version, where the word *talaq* is stated by the man and then the couple separate and consider whether they want to reconcile over a three-month period, with the divorce

³⁵⁹ I Uddin, 'Nikah-Only Marriages: Causes, Motivations and Their Impact on Dispute Resolution and Islamic Divorce Proceedings in England and Wales' (2018) 7 *Oxford Journal of Law and Religion* 401, 421-425; SS Ali, 'Authority and authenticity: Sharia Councils, Muslim women's rights, and the English courts' (2013) 25 *Child and Family Law Quarterly* 113, 125-126.

becoming final if they do not resume contact or communicate during that time. He thought that this was 'good for both parties':

That's a personal thing but it does give them an open door to get away from everything, have a good think about if you want to continue to stay with this person or not.

The *talaq*, of course, can only be initiated by the man. For a woman to obtain a religious-divorce is more difficult.³⁶⁰ This was reflected in the contrast drawn by D-144, an imam within the Somali community, between the equal access to divorce afforded to women under English law and the constraints within Islamic law:

Islamically a woman couldn't just go and divorce herself, just like that. You know? Where, by the law here a woman could actually file a divorce and she could get a divorce without even her husband's consent. Even without her husband's approval. And the fact that by doing this legally binding agreement tends to push her towards that. Yes, you can do this. It doesn't give 100% affirmation of it but it tends to make her own mind and think, "you know what? We were married by law anyway of this land and I'm just going to get divorced by the law of this land." She could easily take matters into her own hands. But she won't be able to do that if it wasn't a legally binding agreement.

The inherent inequality of the different forms of divorce is compounded in the Muslim-minority context, since where there are no judicial processes for a religious divorce there are no procedural safeguards either.³⁶¹

The perception that there are financial reasons for avoiding a legally recognised marriage may also be fostered by (mis)conceptions about divorce outcomes. Some imams in the study in particular had a negative view of how assets would be divided after a legal marriage. D-144 recalled a story of a woman who divorced her wealthy husband after a short marriage, having, in the imam's retelling, made false allegations against him to secure a settlement.

The critical question here is whose choices are prevailing. It is one thing for a couple to made a joint – and informed – decision to opt out of the protections afforded by a legal marriage. It is quite another for decisions to be made on the basis of misunderstandings about the law, or where the decision is that of one of them alone and leaves the other vulnerable.

One imam, A-103 stated that in his experience, it was 'professional sisters more than men' who did not wish to legally marry in order 'to safeguard their financial assets'. There are perhaps issues here about whether it is more acceptable for women to be open about their desire to retain control of their assets and how this may be linked to the needs of any children of the relationship. Moreover, given that existing research, statistics, and case law all suggest that women are still more likely to be the financially weaker party, the wishes of 'professional sisters' are unlikely to represent a norm.

³⁶⁰ For discussion of the various options see I Uddin, 'In Pursuit of an Islamic Divorce: a Socio-Legal Examination of Practices Among British Muslims' in RC Akhtar, P Nash and R Probert (eds) *Cohabitation and Religious Marriage: Status, Similarities and Solutions* (Bristol University Press, 2020); S Bano, 'British Muslim Communities, Islamic Divorce and English Family Law' in J Miles, D Monk and R Probert (eds) *Fifty Years of the Divorce Reform Act* (Hart Publishing, 2022).

³⁶¹ K O'Sullivan and L Jackson, 'Muslim Marriage (non) Recognition: Implications and Possible Solutions (2017) 39 *Journal of Social Welfare and Family Law* 22.

While our study did provide examples of women preferring to remain in a religious-only marriage because this was better for them financially – 006 and 056, discussed above – there were also examples of women who had wanted to marry legally but whose partners had refused or taken evasive action. As 035 (female, 36, Muslim) noted, ‘there were times when I was adamant that we should get our marriage registered but my partner, at that time, wasn’t ... he just wasn’t interested basically’. While she thought that she might have benefited from a legal marriage, she also reflected that it would have been ‘a lot more bureaucratic’ to obtain a divorce in that case. The former ‘husband’ of 082 (female, 37, Muslim) had made an excuse not to give notice and looking back she suspected that this had been a deliberate ploy; as she put it, ‘I think everything added up to knowing that he kept his power by ensuring it was just a *nikah*’. And while 038 (female, 30, Muslim) was legally married, she reported that she had seen ‘horrible things happen’ to others who were not, and that religious only marriages could lead to abuse, with men using it as a form of control: ‘there’s that threat as well that, “you’re bound to us in *nikah*” so the divorce process is a little bit different and the woman feels that she’s binded, and she doesn’t feel like she’s got those rights’.

It should also be noted that the choice may not be that of the couple alone. 020 (male, 35, Muslim) explained that he had faced pressure from his family not to have a legal wedding:

On my side, especially my mother, she’s not very keen on a registry wedding because there’s a very unhealthy attitude from certain sections of the Bengali community where they think that you have the registry and things go wrong, then you can lose wealth and assets et cetera.

He, however, had resisted this pressure, taking the view that it ‘speaks to a complete lack of trust within a relationship which is completely unhealthy and toxic’. Among the imams, D-144 also identified a generational divide within the Somali community: ‘[t]he younger generation coming up now are more towards the whole legally binding thing but the older generation who are still around tend to push their children and say, “no, don’t go through that route”.’ C-121 even described a marriage ‘breaking’ over the issue of whether to have a legal wedding. As he explained: ‘So the girl’s side of family, they wanted to just do the marriage in the register office, but the groom family didn’t agree and this was the main issue and unfortunately at the end of the day the marriage broke just because of this issue.’ The fact that the arguments were being made by the families rather than the couple suggests that any changes in practice may require engagement with faith communities as a whole rather than just those planning to marry.

Unable to have a legal marriage

For some, a legal wedding was not a possibility and so having a non-legally binding ceremony was their only option. While none of our interviewees identified any legal impediment that would prevent them from marrying legally, 082 (female, 37, Muslim) did suspect that her partner had still been married to his first wife and that this had been one of the reasons why he had evaded going through a formal ceremony in the register office.

The issue of polygamy was also discussed by a number of imams. A-103 acknowledged that:

now and again we do come across a situation where we are asked to be part of a process of recognising or celebrating a polygamous relationship. And you can’t say, “well, I’m not going to perform”, because Islamically that may not sit well. It might be a member of the congregation who wants to do right by Allah... So, it’s a difficult one, but I think we need to be creative in the way that we facilitate... not facilitate but assist

those individuals. Otherwise, what answer do we have to the couple or the individuals or their families?

By contrast, B-115 and D-133 noted that they would both refuse to conduct a *nikah* if it was polygamous, with the latter being particularly vehement on this point:

I just go, “that’s it! End of! We’re going nowhere with this.” “Yeah, but Islam says this and who are you to tell me that God ...” and I say, “well, I’m sorry. We can’t conduct a marriage ... a *nikah*, where there’s already a marriage in place”.

N-242, a Pagan priest, was open to the possibility of conducting a polyamorous handfasting ‘if I’m reasonably convinced that they all mean it’, but added ‘not that anyone’s ever asked’. He also explained how he would deal with cases where a couple did not wish to commit to each other for more than a year but ‘wanted to have a year-and-a-day ceremony’:

clearly that is not legally recognised. So, we would say that to them, “This is not legally recognised. But I’m very happy to do it for you but it’s not the same thing. It isn’t legal.”

In other cases the reason for the non-legally binding wedding ceremony was not clear. G-175, a Humanist celebrant, described how she had conducted:

a very interesting ceremony for a couple from France who didn’t want... who couldn’t at that time enter into a legal ceremony. Again, I did one for a couple who the registrar rang up on a Wednesday before the ceremony on the Saturday and said, “I’m sorry, your papers haven’t come through from Pakistan. We can’t do your wedding.” So, those kinds of issues arise.

In the latter case it may have been confirmation of a divorce in Pakistan that was in issue, rather than the parties’ immigration status, given the processes that are in place for non-relevant nationals to give notice. Within our sample, however, immigration status had been a factor in delaying one legal wedding.³⁶²

Lack of awareness that the religious ceremony was not legally recognised

A small number of participants thought that there was a lack of awareness that a non-legally binding ceremony does not provide the same family law protections as a legal wedding. D-138, an imam, opined that there is a ‘lack of understanding, culturally, because for example, different cultures, some countries, they don’t register, it’s enough that the shaykh conducted the *nikah*. That’s it. Islamically, we’re happy. And as Muslims because they are non-Muslim authorities, OK? The message is it’s enough for us, what else do we want?’ This difference in culture and wedding custom may give rise to a lack of understanding that the legal outcomes are different.

The notion of a lack of awareness is something that drew both scepticism and support. 029 (female, 30, Muslim) could not ‘imagine people not knowing because there’s so much awareness about it.’ She accepted that ‘maybe if you’re someone who has not been in the country for that long and you just genuinely don’t know’. However, she was unwilling to accept that an ordinary person would not know as ‘there’s so much work that’s been done now, like how could you not know?’ 051 (female, 40, Muslim) on the other hand was of the opinion that a lot of women in particular in fact did not have that knowledge:

Even educated women that I know. I mean the women that I was talking about in the Bengali community, they have been to university and it’s just because they’re busy and

³⁶² That of 034, discussed at p 121 above.

they just take it as gospel. Their families told them, “This is all you need to do.” And then, you know, ten, 15, 20 years down the line, they find themselves in a very difficult position but actually they don’t have a legally binding document from the UK government.

033 (male, 30, Muslim), confessed that at the time of his *nikah* he ‘didn’t know anything about marriage’ and had only become aware of the law when he had separated from his wife. As he added, ‘obviously understanding it now is very important... we parted our ways and obviously looking into it properly and thinking about stuff, how to do this. So, yeah. That’s the time I actually knew about it.’ It was unclear whether his wife was aware of the law. 082 (female, 37, Muslim) on the other hand identified that she felt that there was a knowledge imbalance in her relationship, stating ‘if I knew [then] what I know [now] then I think I’d be in a very different position. Probably not be separated because I... we would both know more about our rights and I think he absolutely knew all of this which is why, you know, he was always going to be in a more powerful position, because he was aware of this and I wasn’t.’ This participant’s situation reflected the ‘paradigm case’³⁶³ of a financially vulnerable woman who was left without recourse to financial remedies following a breakdown of her relationship, with a son to care for.

037 (female, 29, Muslim) was the only participant in a non-legally binding marriage who thought she might have rights as a cohabitant, stating that she had heard that those who had ‘been living together for a certain period of time as like in a partnership’ were entitled to legal rights. However, she was clearly unsure on this point, adding ‘I don’t know how true it is’.

Lack of interest in being legally married

There were also a number of participants who were not planning to marry legally simply because they saw no point in doing so. 045 (female, 55, spiritual) explained how she and her husband did not see the point in being legally married: the ‘cynical and swift answer that I give to everyone is we both had the bits of paper before, and they didn’t help in the slightest’. Her point was not that their experiences of previous marriages (and divorces) had deterred them from marrying but that she felt ‘more married’ in her non-legally binding marriage than she had done in her legal marriages. 065 (female, 32, Muslim) similarly did not see any reason why a legal wedding was necessary, stating ‘I just wanted to be married to him sort of in a religious ceremony and to do a legally binding, you know, that just... it didn’t bother me at all. I probably didn’t even look into it at all, come to think of it.’

A number of imams reported how some couples were making a deliberate decision to have a religious-only marriage. D-134 described witnessing ‘an increase in people wanting just a *nikah* done’. As he added, ‘when we ask them, “are you going to be registered?”... they say, “we’re not interested in that”’. D-142 similarly stated that ‘most of them, they don’t see the need of it. So, they see that the *nikah* is the most important thing. That’s it.’ Any need to evidence the religious wedding could be achieved with the *nikah* certificate, with this imam citing examples of being told ‘I don’t even need a marriage certificate’ and ‘when I’m going for Umrah or Hajj ... my *nikah* certificate is sufficient.’ In a similar vein D-140 noted that:

Some couples are not looking for a legally recognised marriage... They’re looking for an Islamically recognised marriage by Allah. Okay. As far as the government is concerned, they are partners living together. Adults who are consenting to each other, which is also recognised. Yeah?

³⁶³ RC Akhtar, ‘Modern Traditions in Muslim Marriage Practices, Exploring English Narratives’ (2018) 7 *Oxford Journal of Law and Religion* 427.

This is an important point in the light of the concerns that have been expressed in certain quarters about religious-only marriages, with suggestions being made that those conducting such ceremonies should face criminal penalties or, alternatively, that all religious ceremonies should be recognised as legal marriages. Given that the law does not prevent two people from living together without having gone through any ceremony, why should it seek to prevent two people from living together having gone through a ceremony that is meaningful to them but which both recognise is not legally recognised?³⁶⁴

In the view of D-143, this view as to the importance of the religious ceremony as compared to the legal wedding was also shared by other faith groups:

People... want to live their lives according to the law of their religion as does the Jewish community, as does the Hindu community, you know, as any other religious community they like to live their lives according to the law of their religion so it's the same with Muslims, you know. I mean I know friends from school and college and growing up who are not Muslims, you know, that they've got married Sikh families, Hindu families, that they've got married in their religious ceremony but they've not had a registry marriage either, you know, for them that's not important. And according, you know, they would say, that there's no need is there, according to their religion they're married so that's sufficient enough for us.

However, our study does not suggest that religious-only marriages are common within other faith groups. The Hindu priests in focus groups J and K were very clear on the importance of ensuring that the religious ceremony took place after or at the same time as the legal one. None of the Hindu interviewees were in a religious-only marriage at the time of the interview, and the legal wedding of 054 (female, 33 Hindu) would have taken place shortly after her non-legally binding ceremony had it not been for the restrictions imposed as a result of Covid. 042 (female, 26, Sikh) would also have been legally married had it not been for Covid, and P-261, a Sikh priest also spoke of how gurdwaras would generally not conduct religious-only ceremonies. M-232, a Buddhist authorised person, commented that the centre at which she officiated received on average 'one question a year from a couple saying, "You know, we really don't want to do the legal bit. Can we just have religious wedding?"' As she added, 'we have to say no. And they go away disappointed.'

Within the Pagan community, there was the idea of being married for 'a year and a day' to which 046 (female, 39, Pagan) had alluded. N-241, a Pagan celebrant, described how his own handfasting had been 'for this lifetime and all lifetimes to come' but explained that 'there's also the very traditional year-and-a-day handfasting which is perhaps, when people are younger, maybe more appropriate than looking at something that's for all lifetime'.

A number of Humanist and independent celebrants also described how they had conducted commitment ceremonies for couples who did not want a formal legal marriage. As G-175, a Humanist celebrant, noted '[s]ome people really do not want a formal legal marriage, for one reason or another'. H-186, an independent celebrant, also had experience of couples who wanted to share their love and commitment for each other with their friends and family but not enter a legal commitment.

They've made it very clear to me from the beginning that they want to demonstrate to their family and friends that they are committing to one another but not within the legal framework. So, there hasn't been any disparity about is it legal, is it not?

She described these commitment ceremonies as having a 'very different feel to a wedding celebration ceremony. They're two very different things.' They were also less common.

³⁶⁴ Akhtar et al, *Cohabitation and Religious Marriage*.

Another independent celebrant, H-183, noted that she ‘had only one couple in five years... who have said, “we’re not going to do the legal bit”.’ This particular couple would have considered a civil partnership had they been available to opposite-sex couples at that time, and they reiterated that their non-legally binding commitment ceremony was ‘not the marriage thing. It’s not being married we are celebrating. It’s our love for each other and our commitment to each other, which is going to last for the rest of our lives.’”

Ceremonies conducted instead of a legal wedding

As we have discussed above, our participants identified a number of reasons for having a non-legally binding ceremony without having had a legally binding one.

For those couples who had no intention of going through a legally binding ceremony at any point in the future, the ease or difficulty of the legal process is unlikely to make any difference. Pragmatic reasons were identified by imams as one reason why a couple might not want a legally recognised marriage. Beyond the Muslim weddings, Humanist and independent celebrants also reported that some couples just wanted a commitment ceremony, whether because they rejected the legal and/or religious institution of marriage or had pragmatic reasons for not wanting to be legally married.

However, the Commission’s proposals were seen as potentially having a positive impact where at least one of the parties was expecting a legally binding wedding to follow. D-143 expressed the view that questions would be asked if a couple said that they just wanted a *nikah*:

Well why? What’s the reason, you know? What’s wrong in wanting to do it legally, unless you’re not doing it for the right reasons?

Fewer marriages not legally recognised?

A key aim of the reform proposals is to reduce the number of ceremonies taking place which are non-legally binding. However, for some couples the proposals will have little impact and they will continue to marry without legal recognition attached to the ceremony. For example, the majority of the Muslim participants in this study who had their religious ceremony first had their legal wedding at a much later date. For many, this was deliberate, in order to allow the couple to spend more time with each other during the ‘getting to know’ stage. It is unlikely that the Law Commission’s proposals will change the approach of these couples.

This becomes problematic where the couples are ‘uneven’³⁶⁵ – that is where one party wishes and expects to have a legal wedding and the other does not. 020 (male, 35, Muslim) viewed the reform proposals as a potential ‘wake-up call’ to couples of the importance of ‘transparency’ within the relationship. Where the couple do not agree the form of the ceremony, he suggested that ‘becomes a big, big barrier in the relationship, it’s almost like, “Do you not trust me?”’ Where a single ceremony is an option, this was seen as potentially making it more difficult for individuals to hide behind an excuse that the formalities are complex as a reason for not getting legally married. 056 (female, 42, Muslim) added that where a religious ceremony could be legally recognised, ‘I can’t imagine how people could say, “Oh no, we won’t do that option. Let’s do the one where you have no protection.”’

Where mistakes as to the nature of the ceremony are concerned, 051 (female, 40, Muslim) was of the view that the proposed scheme would make it less likely that people would be

³⁶⁵ A Barlow, ‘Modern Marriage Myths: the Dichotomy Between Expectations of Legal Rationality and Lived Law’ in Akhtar et al, *Cohabitation and Religious Marriage*.

mistaken as to their marital status. This would however rely on knowledge of the new regime for marrying, should it be adopted.

Conclusion

As this chapter has shown, there are a range of reasons why couples have a non-legally binding ceremony in advance of making arrangements for a legal wedding. A particularly significant finding is the incidence of this order of events with Muslim couples, where unlike in other religious communities there does not seem to be the same norm of having a legal wedding around the same time as the non-legally binding ceremony. As the *nikah* was closely linked to the beginning of an intimate relationship and in some cases to the beginning of any form of courtship, any restrictions on non-legally binding ceremonies would limit the scope for Muslim couples to enter into an intimate relationship or, alternatively, push them into formalising their relationship at a much earlier stage than they might wish.

Most of the 28 interviewees had either gone on to marry or had plans to do so, although these plans ranged from having a register office wedding already booked to vaguer hopes of getting married at some point. Some marriages had broken down relatively swiftly, underlining the importance of the non-legally binding ceremony in enabling the couple to test their relationship. Only a few of the 16 in religious-only marriages had no plans for a legal wedding and were satisfied with the status of their relationship. The imams provided a more diverse image of the issue, with some suggesting that many couples simply do not pursue a legal wedding following their *nikah*. That said, while our sample was not designed to be representative but instead to capture a range of experiences, the relatively low numbers of participants in religious-only marriages who did not intend to have a legal wedding does call into question the high estimates put forward elsewhere³⁶⁶ as to the number of Muslim couples in religious-only marriages. The majority were aware that their marriage did not have legal recognition and what the outcomes of that would be. With only one participant unaware of the lack of legal protections for cohabitants or those in non-legally binding marriages, misconceptions and misunderstandings were few amongst this cohort of participants. It is unlikely that the Law Commission's proposals will have an impact on those who fall within the category where they are unaware of steps required for a legally recognised marriage to take place.

³⁶⁶ See for example the Register Our Marriage campaign suggesting that '80%+ of young British Muslims are not registering their religious marriages', Register Our Marriage Briefing, 1 December 2019, available at <https://registerourmarriage.org/about#mission>.

8. Conclusion

The findings presented in this report are ground-breaking in many respects. It is the first to explore the broad range of non-legally binding ceremonies that are taking place in England and Wales. It has engaged with those who conduct such ceremonies as well as those who opt for them. It has explored the meaning of the different non-legally binding ceremonies that take place, whether they are preceded or followed by a legal wedding, and how those involved navigate different expectations. It has presented data that illustrates the limitations of the current law, and the way in which proposed reforms might work.

Having a legally recognised marriage remains important for many reasons, not least as the gateway to obtaining key legal protections. Yet our discussions with those conducting non-legally binding ceremonies suggest that increasing numbers of couples are opting to ‘marry’ in a ceremony that does not adhere to the required formalities and so has no recognition in the eyes of the law. As our sample demonstrated, many will go through an additional legal wedding, sometimes at considerable expense. Others will not, whether because they do not wish to be legally married, do not regard the legal wedding as a priority, or do not realise that they are not legally married. The latter scenario has been responsible for the majority of the ‘bad press’ surrounding non-legally binding ceremonies, with the concern of policy makers primarily focussed on Muslim communities. But as this study has shown, there are a range of reasons why couples opt for a non-legally binding ceremony.

Perhaps one of the most important findings is how the non-legally binding ceremonies in our study reflected the beliefs and values of the individuals involved. Many held very strong religious beliefs and would not have regarded themselves as married without a ceremony conducted in line with the norms of their faith group. These individuals were drawn from a range of different faiths: Christian, Muslim, Hindu, Pagan, Buddhist, Zoroastrian, Sikh, Jewish, and Bahá’í. Others chose a Humanist ceremony because this aligned with their beliefs and values, or had a ceremony led by an independent celebrant, a friend, or a member of the family. These latter types of ceremony did not follow a standard script or prescribed rites but were highly personalised. That said, it was striking how often they included rituals that were designed to emphasise not only the commitment that the couple were making to each other but also the new bonds being forged between families. At least some of these rituals were religious in origin, suggesting that there is no sharp dividing line between ‘religious’ and ‘non-religious’ ceremonies but rather a spectrum of practices.

In other words, for the vast majority of the couples in our sample the non-legally binding ceremony was a vitally important part of the process of getting married. Many of those whose legal wedding preceded or followed their non-legally binding ceremony would have preferred to have had a single ceremony that was both legally recognised and conducted in a manner (and at a location) that was meaningful to them. That this was not an option for them is a reflection of the limitations of the current law.

As detailed in chapter 3, the origins of the current law lie very much within historic Christian wedding traditions. Besides the special position enjoyed by the Anglican church (and, for somewhat complex reasons, by the Society of Friends), the option of getting married in a registered place of worship – introduced by the Marriage Act 1836 – was designed with Christian ceremonies in mind. The prescribed words that have to be included in a legal wedding in a registered place of worship were even drawn from the Anglican marriage service. The legacy of that is clear today. For Christian participants, the prescribed words are part of the marriage service. For non-Christian participants, by contrast, the prescribed words are often experienced as a separate ‘civil’ ceremony within the religious ceremony. The message that they took from this was that their own religious ceremonies were not

recognised, and so not respected.³⁶⁷ It is unsurprising, then, that many in our study took it for granted that they would have a separate religious ceremony before or after their legal wedding.

In addition, the fact that the law allows places of worship to be registered for weddings is of little assistance to a couple if their place of worship is not registered, or if there is no registered place of worship within easy reach. Nor does it assist couples who do not attend a formal place of worship, or do not regard their place of worship as the most meaningful place to get married. In addition, there is no option for a building to be registered for Humanist ceremonies.³⁶⁸

Overall, participants considered the existing laws to be outdated and that reform was needed to reflect the diversity of beliefs and practices in modern society. It is clear that the demographic profile of England and Wales has changed significantly in recent decades and that the law governing weddings has largely failed to address or accommodate these changes.

A key part of our project was to ascertain how the Law Commission's proposals for reform³⁶⁹ would work for those couples currently opting for non-legally binding ceremonies. Our detailed analysis of how our findings speak to different aspects of the Law Commission's proposals are available in a separate Briefing Paper.³⁷⁰ Here we summarise the potential impact of those proposals on the different types of non-legally binding ceremonies discussed in this report.

The most obvious impact would be on those types of non-legally binding ceremonies that currently take place within a month or less of the legal wedding (ie in those cases where notice has already been given in relation to the legal wedding at the time of the non-legally binding ceremony). Here there is considerable scope for the two ceremonies to be fused into one.

One proposal made by the Law Commission that would be key to such fusion is the removal of the need for prescribed words. This proposal was seen by participants as crucial in making weddings law more inclusive and enabling couples to consent to be married in a way that is in accordance with their beliefs. (It should be emphasised however that the Commission's proposal is not that the law will recognise different forms of religious wedding. Recognising that a couple can express consent to be legally married by going through a *nikah* is not quite the same as recognising a *nikah* as legally valid in and of itself. The latter implies that the ceremony would need to comply with religious norms in order to be recognised, which would not be the case under the Commission's proposed scheme).

A second proposal that would facilitate such fusion is shifting from the current buildings-based system of regulation to regulating an 'officiant'. This shift was broadly supported by participants, although the importance of ensuring that officiants were properly regulated was emphasised.

The Commission's officiant-based system could – depending on the decisions made by Government – accommodate Humanist and independent celebrants. Among our participants, most of those who had had a ceremony led by an independent or Humanist celebrant would have preferred that ceremony to be legally recognised, and almost all of

³⁶⁷ See chapter 5.

³⁶⁸ See chapter 6.

³⁶⁹ Law Commission, *Getting Married: A Consultation Paper on Weddings Law* (CP No 247, 2020).

³⁷⁰ R Probert, RC Akhtar and S Blake, *When is a wedding not a marriage? A Briefing Paper for the Law Commission* (2021).

those who worked as Humanist or independent celebrants were keen to be authorised to officiate at legal weddings. Implementing the Commission's proposals as to how such celebrants could be authorised as officiants would remove the need for two ceremonies in such cases.

An officiant-based system would work for those who wish to marry outdoors or at home. The current restrictions on where a wedding can take place were one reason why some couples opted for a non-legally binding ceremony, most notably those who wanted a Pagan ceremony. Relaxing these regulations found favour with our participants, with the current rules being deemed unnecessarily restrictive.

An officiant-based system would also work better for those religious groups that have relatively few places of worship registered for weddings across England and Wales. However, moving to an officiant-based system does of course depend upon religious groups being willing to nominate officiants, and upon individuals within those groups being willing to be nominated. Of those currently involved in conducting non-legally binding ceremonies, some indicated that they would want to be authorised as officiants. Others, however, indicated that they would be unwilling to do so. The same reasons were given as for their decision not to become 'authorised persons' under the current law.³⁷¹ Some feared being compelled to conduct same-sex weddings, others were concerned about the administrative burden of the role, and yet others had a sense that their religious role should not be tangled with a legal one. This latter point speaks to the way in which weddings are conducted within some communities. For example, some saw a separation between their role in leading the religious rites and the more administrative role of the person responsible for recording it. The proposal by the Law Commission would enable such a division of labour to continue.

Ascertaining the potential impact of the Commission's proposals on the types of couples who are currently choosing to have a non-legally binding ceremony before a legal wedding is more difficult, as the reasons for doing so are varied. For those who have already decided that they want to be legally married, the greater ease of giving notice under the Commission's proposed scheme may encourage some to have a legal wedding since they may not have to wait so long in order to do so. This would avoid the problem of 'drift' that we observed with some participants, for whom having a legal wedding was simply not a priority once they had had their religious ceremony. The Commission's proposals would also make it more difficult for one partner to persuade the other to have a religious-only ceremony on the understanding that a legal wedding would follow shortly afterwards. After all, the easier it is to have a religious ceremony that is also legally recognised, the harder it becomes to find a plausible excuse for separating the two and postponing the legal wedding.

However, there will still be many who want to have a non-legally binding ceremony as a means of testing their relationship before making a legal commitment. This is particularly true for those Muslim couples who may wish to 'get to know' each other better before getting legally married, such as younger couples. There will also be those who regard a legal marriage as undesirable, in particular those who have been previously married and divorced and found that process difficult. As a result, non-legally binding ceremonies will still continue to serve a purpose and so continue to take place.

Here we should note that one shortcoming of the sample recruited in this project was its limited engagement with more recent immigrants to England and Wales with limited English. Further research may be required in this area, particularly to understand how these individuals find out about and are supported in the legal processes surrounding weddings. Further to this, whilst a few participants did describe ceremonies which were low-cost,

³⁷¹ See chapter 5.

further research could also seek to ascertain whether these findings are reproduced within younger cohorts and lower socio-economic sample groups.

This brings to the fore an issue with which some practitioners and campaign groups are uneasy – whether couples should be able to choose to be in a religious-only or other kind of non-legally binding marriage. Our findings echo that of other studies in showing how couples are navigating past experiences, relationship stages, and perceived relationship needs in making their choices as to how and when to marry. They suggest that, where informed choices are made by couples, the freedom to be in a non-legally binding marriage must be maintained, just as couples are free to cohabit without any ceremony at all if they so wish.

Indeed, our findings reinforce the Commission's conclusion that conferring legal recognition on every religious ceremony of marriage is not a viable option for reform. As noted above, there is the question of what constitutes a religious marriage ceremony. Would a ceremony led by an independent celebrant count as a religious marriage ceremony if it included significant religious content? Would it be for the parties themselves to determine what was regarded as 'religious'? Or would it be for a religious tribunal or other governing authority to decide, with the risk of non-recognition of those ceremonies that do not comply with its religious requirements, not to mention potential disputes as to who had the right to decide?

Within our sample, most individuals who were in a non-legally binding ceremony at the time of the interview were aware of its lack of status and the implications of this in terms of their legal rights and responsibilities. All but one couple had been aware of this at the time of entering into the non-legally binding ceremony. In addition, the vast majority of the participants who conducted non-legally binding ceremonies took steps to ensure that couples were aware of the non-effect of the ceremony despite having no obligation to do so. Only a small minority stated that this was not their concern and that their role was simply to perform the (religious) ceremony. This suggests that campaigns such as that led by ROM³⁷² are making progress in raising awareness of the lack of legal protection for those in a religious-only marriage and that those conducting ceremonies are conveying this information to couples.

While the Commission is not proposing that there should be any penalty for conducting a non-legally binding ceremony, it is proposing that it would be an offence for a person who is not an officiant to purport to be one and 'deliberately or recklessly' mislead either of the couple about their status or the effect of the ceremony. It is also proposing that it would be an offence for an officiant to 'deliberately or recklessly' mislead either of the couple about the effect of the ceremony. While this falls far short of proposals to criminalise those who conduct non-legally binding ceremonies³⁷³ it is still likely to ring alarm bells in Muslim communities where imams feel that they are blamed for the poor financial outcomes facing women in non-legally binding ceremonies. It would be good practice for imams who conduct non-legally binding ceremonies to follow the examples of some of those who participated in this study and ensure couples are aware of the lack of status of these ceremonies.

While this study reinforces the assumption that Muslim religious-only ceremonies are less likely to be accompanied by a legal wedding (at least in the short term) than other non-legally binding ceremonies, it does also indicate that the focus of policy makers needs to be broader. Proposals for reform that focus only on Muslim religious-only ceremonies (or even on religious-only ceremonies more broadly) are difficult to justify, and even more difficult to craft, in the light of the growing number of ceremonies led by Humanist and independent celebrants.

³⁷² Register Our Marriage campaign (<https://registerourmarriage.org/>).

³⁷³ *The Independent Review into the Application of Sharia Law in England and Wales* (Home Office, February 2018).

Even so, there will doubtless continue to be cases where individuals are unaware that their ceremony is not legally recognised, and only become aware upon relationship breakdown or the death of one of the parties. In such circumstances, the negative financial consequences for the financially vulnerable partner can be considerable. Reforms to the law governing cohabitation would obviously help these couples. Yet there seems little logic in bundling such reforms together with changes to weddings law in a single piece of legislation. Given that proposed reforms to the law governing cohabitation focus on the consequences of the relationship, rather than its formation, they would be more naturally partnered with reforms to the law governing the consequences of a marriage or civil partnership, which a number of our participants thought to be in equal need of reform.

Overall, our findings suggest that reform of weddings law is not only important but also achievable. Focussed reform in the area of weddings law can be self-contained in a similar way to the recent reforms of divorce law.³⁷⁴ We believe this reform is long overdue.

Appendix 1: Oversight and Research Team Profiles

Ethics

Ethical approval for the study was granted by the Faculty of Business and Law Ethics Committee at De Montfort University on 1 September 2020. We envisaged that describing the ceremonies which individuals had conducted or gone through would not in itself give rise to specific ethical issues. However, we also recognised that for some participants, for example those who had since divorced, recounting these experiences might be upsetting. In the event of a participant becoming upset, we planned to stop the interview and signpost the participant to appropriate help such as a support group or counselling service. In addition, we recognised that particular care was needed if individuals were not aware of the lack of legal status attached to their wedding ceremony. For this reason, most of the interviews with those who had only had a non-legally binding ceremony were conducted by the principal investigator, who had prior experience of research in this area and was in a position to signpost individuals to sources of legal advice if needed. Reflecting the pandemic context within which the study was taking place, all team members acted with an awareness that each of them and also the participants could be dealing with additional stresses such as working from home whilst simultaneously home-schooling, ill-health, or bereavement. In particular, Covid had had serious consequences for those planning to get married and those working in the wedding industry.³⁷⁵ This in turn meant that we were conscious of the need to be sensitive in dealings with all potential participants. The added ease with which online modes of data collection could be re-arranged meant that this supported a flexible approach to suit individual needs and circumstances.³⁷⁶

To ensure participants could make an informed voluntary decision as to whether to participate, each was sent a copy of a study information sheet which set out the aims of the study, what was involved in the interview, how their personal data would be stored, and who they could contact should they have any concerns. Written consent to participate was sought prior to participation through either the completion of a Google form (which they completed via a link sent to them and which was automatically returned to one of the research team) or through the completion of a Word document which they needed to save to their computer and then email back. Typed signatures were accepted. Opportunities to ask any questions and verbal checks on consent were provided at the start of each session.

Only university platform accounts (for Zoom, for example) were used, to enhance the security of using online data collection methods, and all collected data was held on a secure university server. Audio recordings held on personal recording devices were deleted as soon as the file was uploaded to a secure shared folder. The collection of participant demographic data was limited to characteristics of interest to the substantive project (e.g., addresses/date of birth were not collected), and such data was kept separately from the interview transcripts, which were produced by an independent university-approved transcription company. All of the transcripts were checked by the interviewer against the audio recording, any observation notes were added, and the transcripts anonymised by redacting any personal data shared without changing the meaning of what had been said.

Processes of ethical oversight continued throughout the study as we responded to issues that arose and made changes to the study design as discussed below. As discussed in Chapter 1, during the research it became apparent that there was a general lack of

³⁷⁵ R Probert, R Akhtar, S Blake and S Pywell *The impact of Covid-19 on legal weddings and non-legally binding ceremonies* (2022, forthcoming).

³⁷⁶ For example, dates and times for interviews were re-arranged on several occasions, and one participant who needed to leave a focus group early to attend a funeral was invited to provide written answers to the questions they missed.

awareness of the laws governing weddings and confusion regarding our use of the term 'non-legally binding'. Participants were therefore reassured throughout that we were not looking for or expecting expertise, nor that we were suggesting that the ceremonies they had held were 'illegal'. This being said, in a few instances we went back to the ethics committee for guidance when participants potentially revealed that laws could have been broken. The constantly changing rules regarding weddings in the pandemic context added to confusion about what was and was not allowed. A small number of participants did disclose uncertainty as to their legal status or distress regarding their relationship during interviews, and their interviewers spoke to these participants following their interviews to ensure no further signposting was required. During the focus groups, one participant had to leave early to attend a funeral and another expressed dissenting ideas from the majority views being discussed. One of the research team followed up with both participants to check that they were well and to offer an opportunity to clarify any views they did not feel they were able to contribute during the session.

Advisory Group and Research Team

A group of stakeholders and experts in this policy area was convened to advise the research team and provide critical input throughout the study. Members included representatives from religious and belief organisations, independent celebrants, family law practitioners, civil servants, and academics.³⁷⁷ As shown in Figure 1, the whole advisory group met with the research team three times during the study, while smaller meetings were convened with one or more members of the group. The advisory group provided input and feedback on the schedule of questions for interviews and focus groups. It also played a key role in raising awareness of the study to support participant recruitment, as well as informing the interpretation of emerging findings and helping to disseminate resulting publications. Overall, the purpose of this group was to act as a critical friend, helping to ensure rigorous and focused research data collection.

The research team that conducted this study comprised five members who spent varying periods of time on the project. All contributed to data collection to varying degrees, please see profiles set out below. The background of each team member reflected a variety of academic disciplines, as well as faith/non-faith and cultural backgrounds, and relationship statuses. This diversity was important in respect of recruitment as it meant that, where possible, we were able to match interviewer with interviewee to facilitate shared understanding of cultural practices and pick up on nuance not obvious to an outsider. One of the research team was also the specialist consultant to the Law Commission Weddings project that developed the proposed law reforms. The team's diversity also helped counter-balance potential bias, notably during analysis where different interpretations of the data sets could be considered. To support research processes, an open communication style was adopted, whereby each team member was encouraged to contribute on an equal basis regardless of academic status and to record written reflections on their experience and learning in a shared log.

Research Team Profiles

Rajnaara Akhtar (Assistant Professor, School of Law, University of Warwick) was the Principal Investigator on this project. With extensive empirical research experience spanning the UK, Qatar and Australia, her work has focussed on socio-legal enquiries of family law in practice. In particular, she has researched Muslim marriage practices and family dispute resolution. On this project, she led the planning and empirical research with both sample groups. While recruiting across all participant groups, her particular focus was on imams and

³⁷⁷ Please see Acknowledgements for individuals involved. Different representatives from the Ministry of Justice also attended advisory group meetings.

those conducting Muslim marriages, and Muslim participants. She conducted the majority of the focus groups and interviews with these participants. She worked in collaboration with team members on data analysis, write up of findings and presentation of findings at multiple meetings, seminars and conferences.

Rebecca Probert (Professor, School of Law, University of Exeter) was a co-investigator on the project. She is the leading expert on marriage law in England and Wales and specialist advisor to the Law Commission's weddings project. On this project, Rebecca was involved in recruiting participants and conducting focus groups and interviews with individuals who conduct non-legally binding ceremonies, plus a further interview with a couple who had a non-legally binding ceremony. She also worked with team members on data analysis, writing up the findings, and presenting those findings at multiple meetings, seminars and conferences.

Sharon Blake (University of Exeter Medical School, Warwick Law Unitemps) worked as a Research Associate for the full project duration. Sharon is an experienced qualitative researcher who has worked on studies across topics and disciplines, including law and relationships. She has a particular interest in qualitative methodologies and drafted Chapter 2 of this report, as well as forthcoming publications regarding methods used in this project. She supported recruitment, undertook a large number of interviews with individuals who had a non-legally binding ceremony and was heavily involved in handling and analysis of the data and write up of the findings.

Dr Tania Barton (University of Law) worked as a Research Coordinator for part of the project. Tania is a law school teacher, non-practicing solicitor and researcher. Her qualitative research is interdisciplinary, looking at law and dementia. On this project, Tania assisted with recruitment of participants, provided support for focus groups, undertook a large number of interviews of individuals who had a non-legally binding ceremony and coordinated a broad range of administrative tasks supporting the fieldwork.

Dr Vishal Vora (independent researcher; Visiting Research Fellow, De Montfort University) was a co-investigator for part of the project. His research interests include international family law, marriage law and the social regulation of families. On this project he held two focus groups and an interview with individuals who conduct non-legally binding ceremonies and recruited and interviewed primarily Hindu participants who had a non-legally binding ceremony. He was involved in the initial stages of analysis (in collaboration with team members developing the codebooks and coding transcripts).

Appendix 2: The Coding Tree

Phase 1 and Phase 2 Nodes

- **Ceremony**
 - Faith/Belief/Independent
 - Meaning of ceremonies
 - Order of ceremonies
 - Prescribed or personal
 - Scale of wedding
 - Venues
- **Changes in forms of wedding**
- **General comments or observations**
- **Impact of Covid**
- **Impediments to Legal Marriage**
- **Interfaith weddings**
- **Law Commission Proposals**
 - Comments on proposed law reforms
 - Content of ceremony
 - Impact
 - Modernisation
 - Officiants
 - Other options for reform
 - Polygamy or polyamory
 - Preliminaries
 - Venues to allow
 - Advantages (combined, cost-effective, easier, enabling, inclusivity)
 - Disadvantages (commercialisation, loss of control, preference for multiple ceremonies, problems)

Phase 1 Further Nodes

- **Celebrant**
 - Affiliation
 - Legally authorised
 - Post-ceremony engagement
 - Pre-ceremony engagement
 - Qualification
 - Role
 - Legally binding v non-legally binding
- **Celebrant and Couple Motive**
 - Legal advice and understanding
 - Knowledge of the law
 - Law or practice elsewhere
 - Registrars

Phase 2 Further Nodes

- **Ceremony preferences**
 - Cultural family norms
 - Reasons for dual ceremonies
 - Celebrant role and engagement
 - Wedding celebrations
 - Knowledge of / satisfaction with legal status
- **Decisions about Ceremony**
 - Agreement between parties
 - Consultation
 - Role of families
- **Legal Process**
 - Prescribed words
 - Registration
 - Views on improvements
- **Relationship status**
 - Engagement Period
 - Relationship prior to marriage (intimacy)
 - Religiosity or Belief