

Family Matters: Cohabitation

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The government has disappointed family lawyers by indicating that it would not implement the Law Commission's recent recommendation in relation to the financial disputes between unmarried cohabitants.

More and more people now live together without marrying. Since the arrival of Civil partnerships for gay and lesbian couples, many commentators have argued that unmarried heterosexual couples should have a similar ability to make financial claims against their former partners. It is tempting to say that if unmarried cohabitants want the same legal remedies as married couples or gay couples in Civil partnerships, then the solution is simple; they should marry.

The trouble is that it takes two to tango. What if one cohabitant does not want to tie the knot? An enormous number of people believe, wrongly, that if you cohabit, you become a common law husband or wife, entitling you to make a financial claim against your ex-partner. In fact, common law marriage was abolished in the eighteenth century. All too often, solicitors are confronted by the following:-

- Miss Smith has lived with Mr Jones for 10 years in his house. Mr Jones bought the house in his sole name. Miss Smith has never paid anything towards the mortgage, nor has he ever agreed with her that she is a joint owner of the house. Miss Smith thinks that she is a common law wife and is entitled to half of the equity. In fact, she is entitled to nothing.

The Law Commission had recommended that in cases where cohabitants had had a child or who had lived together for a specified number of years, they could seek a financial order against their cohabitant if they could prove that they had made qualifying contributions to the relationship which had given rise to certain enduring consequences. Just living together would not be enough, nor would the parties' needs following the separation be relevant. The applicant would have to show that his or her cohabitant had retained a benefit or that the applicant had a continuing economic disadvantage as a result of the contributions.

This solution seemed eminently sensible to most family practitioners. It does not go as far as giving unmarried couples the same rights as married couples, but it is an enormous improvement on the current position which is potentially significantly unjust. However, the government has decided not to implement the Law Commission's recommendations until it is seen how some planned reforms in Scotland work out. Resolution (formerly the Solicitors Family Law Association) and Lord Lester of Herne Hill QC are introducing a bill in the House of Lords to improve the financial rights of former cohabitants, but whether it has any chance of becoming law remains to be seen.

Solicitors are increasingly recommending Living Together Agreements. Such an agreement would allow an unmarried couple to set out in black and white precisely what the financial arrangements would be in the event that their relationship ends. While it is not very romantic to ask your new partner to sign a Living Together Agreement, it would provide an enormous level for security and certainty if things turn sour.

Furthermore, Living Together Agreements do not just help in cases where only one part of the couple is the property owner. Many cohabiting couples end up buying house together in joint names. They often do so in such a way that if they split up, they are entitled to 50% of the sale proceeds each. However, they may often have made differing contributions towards the purchase price or the mortgage. A Living Together Agreement will make it quite clear what the effect will be of these differing contributions.

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