

Co-habitation - the Government's response

The background

The Government has in the last fortnight finally responded to the Law Commission's 2007 report, "Cohabitation: The Financial Consequences of Relationship Breakdown," a report that was originally commissioned by the previous administration back in 2005 to consider what reform, if any, there should be of the law applicable to the distribution of financial assets between cohabittees at the end of their relationship.

The 2007 report proposed that changes should be made to this area of law, not least because the law that governs this arena is uncertain and expensive, and has given rise to results that can appear unjust, traditionally most particularly in relation to female cohabittees who gave up careers to focus upon family life.

The report recommended that although cohabittees should not be granted the same rights as married couples or civil partners in the event of their separation, a new scheme of financial remedies should be implemented.

Couples who had had a child together, or who had lived together for a minimum period (suggested to be two years or upwards), would be eligible to apply for financial relief. Awards would be based solely upon contributions made to the relationship. Couples would have been able to opt out of the scheme.

The reforms proposed were put on hold while similar law was enacted in Scotland in 2006. The Government at the time said it wanted to see the outcome of research considering the changes in Scotland before deciding whether changes were also required in this jurisdiction. The Justice Minister, in the last fortnight, has said that he has seen some such research, and has

concluded that no such reforms are required in England and Wales. He went on to say that cohabittees could, in any event, enter into Cohabitation Agreements dealing with the distribution of financial assets on relationship breakdown, and could by will, deal with finances passing on death.

The Law Commission, judging from its response to the Government, seems to consider that reform of this area of law has merely been postponed until early in the next Parliamentary session, rather than permanently shelved. Time will tell, although giving cohabittees the same rights as spouses and civil partners is both a political hot potato, as well as an area of some controversy.

As things stand, therefore, the situation remains as it currently is for cohabittees, namely that on relationship breakdown, neither cohabitee will have any strict claims against the other for themselves for capital, maintenance or pension-sharing. It is only if children are born during the relationship that claims can be made either via the Child Support Agency or by way of Schedule 1 to the Children Act 1989. Any such claim, despite the best efforts of the Court to interpret the language of Schedule 1 as widely as possible, can however only be expressed to be for the benefit of any children of the relationship.

The lack of reform of law in this area makes it even more imperative that clients consider entering into Cohabitation Agreements setting out how their finances will be divided if their relationship breaks down. These sorts of agreements can make allowance for future events such as inheritances or the birth of children. If there is no such agreement in place, parties may end up fighting an uphill battle

in Court at great expense and distress, applying tortuous concepts of trust and property law, to obtain some financial compensation for contributions made during a cohabiting relationship.

The present law in England and Wales stands – there is no such thing as a common law wife and on separation, a cohabitee has no intrinsic rights or financial claims against his or her partner. However, if a surviving cohabitee had been maintained by the deceased for a specified period prior to their death, they may be able to bring a claim against the estate of the deceased under the Inheritance (Provision for Family and Dependents) Act 1975 on the ground that the distribution of the estate of the deceased under either his will or the law relating to intestacy did not make reasonable financial provision for the survivor. It is most regrettable that this anomaly, as a result of the Government's recent announcement, looks set to continue.

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