

# The long overdue re-emergence of cohabitation law reform on the political agenda

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At their recent party conference in Glasgow, the Liberal Democrats passed a policy entitled 'Cohabitation Rights' which, if enacted, would provide unmarried couples who live together with 'fair and reasonable' redress upon their relationship breakdown and in the event of death. The policy motion was given impetus by a recent survey of MPs commissioned by Resolution (the body representing 6,500 family law professionals in England and Wales) which revealed that 75% of MPs surveyed agreed that legislation should be introduced to give financial rights to long term cohabiting couples upon their separation.

Statistics published by the Office of National Statistics last Autumn show that the number of couples in the UK who choose to live together without marrying (or entering a civil partnership) has doubled in the last 15 years, from 1.5 million to 3 million. These numbers are predicted to continue to rise so that by 2050 married couples will be in a minority. Other recent surveys show that over half of those who cohabit still believe in the myth of common law marriage, assuming that when they split they have automatic rights similar to those available on divorce, even though this concept has not existed since 1753.

The harsh reality under current English law is that unmarried couples have no financial rights for themselves arising from their relationship, be it long or short or whether they have children together. Unless the home is jointly owned, it can be difficult as well as inordinately costly for cohabitants to argue that they have a share in the other's property. Claims of this nature are determined by reference to complex and esoteric principles of trust law. Financial provision for children will inevitably be limited in duration and, unless the paying parent is very wealthy, limited in amount too.

In its 2007 report the Law Commission recommended reform and described the current law relating to cohabitation as 'unsatisfactory, complex, uncertain, expensive to rely on, and, as it was not designed for family circumstances, often gives rise to outcomes that are unjust'. The effect is best highlighted by the oft-cited court case of *Mrs Burns*, who lived with her male partner for 19 years, bearing and bringing up their two children, but who was left homeless and without income when he pulled the plug on their relationship. The law was unable to assist her. Members of the judiciary too have added their voice for change in recent years, with Lord Justice Wall saying (in 2011): 'I am in favour of cohabittees having rights because of the injustice of the present situation'.

The policy that the Liberal Democrats have adopted is based on the Law Commission's recommendations for reform made in 2007. Under those proposals, financial claims by cohabitants on separation would be more limited in scope than those available to their married counterparts on divorce. The objective would be to redress economic disadvantage suffered as a result of the relationship (for example, giving up a career to have children) or to re-balance the retention of a benefit from the relationship by the other party (such as a contribution by one towards the other's property).

The Law Commission's subsequent report in 2011 proposed reform of intestacy law to enable provision to be made for the survivor in the event of death of the other cohabitant. In adopting the Law Commission's proposals, the Liberal Democrats have picked up the baton for reform that was spurned by the Labour Government in 2008 and subsequently by the Coalition Government in 2011. The irony of those previous decisions (which is accentuated by the cutbacks in welfare spending) is that in the absence of statutory remedy, those coming out of a cohabiting relationship unable to support themselves inevitably have to fall back on the State.

The proposals for reform are not pioneering. Australia introduced cohabitation legislation more than 25 years ago, and other European countries also offer protection to their cohabittees – with recent notable additions to the list being Scotland and Ireland. It remains to be seen whether the Liberal Democrat policy will gain sufficient traction to create a change in the law, but many will welcome the re-emergence of the debate at political level. The need for reform of this area of law which affects rapidly increasing numbers of people, 5.9m at the last count in 2012 and rising, is long overdue.

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