

## Cohabitation nation – unmarried couples on the rise, and at risk

22 NOVEMBER 2017

Katharine Landells

PARTNER | UK

**CATEGORY:**  
ARTICLE

**CLIENT TYPES:**  
HIGH-NET-WORTH INDIVIDUALS



*Cohabiting couples are the fastest growing family type, having doubled over the past 20 years. But cohabitation offers much less protection than marriage does. How would you fare if problems arose?*

### The scenario

It's November 2017. You and your partner have been together since university and a few years ago bought a house together and set up home. Work is going well and you've never been closer as couple. When the time came to start a family six years ago, you flirted with the idea of getting married, but concluded that a wedding would cost too much and, anyway, why conform to an archaic legal ritual when things are going so well. Why jinx it?

Fast forward to November 2018. Your partner has had an affair with a colleague and wants to move out before Christmas. You agree upon how to handle things with your children – they come first of course – and then you look at the finances.

After a 10 year relationship, you are quietly confident that you will be able to reach an agreement with your ex about maintenance, capital, your pension, child support and what to do about that endowment policy and extra savings account you agreed to put into his name for tax purposes. Your income took a knock after the children were born and so you are also expecting that to be reflected into any settlement, especially since you and your partner have been banking on using the very large bonus he is about to receive to pay off a chunk of the mortgage. Oh yes, and the fact that you will be taking on the daily care of your children for until they leave home (if they ever do) while your partner is as free as a bird, is an ongoing contribution to the family and so that must be built into any financial settlement, surely?

Except that none of this protection is available. Not one penny. It would have been on the cards, had you been married, but you were one of the 3.3m cohabiting couples in the UK to whom the law gives no protection on relationship breakdown. There is no such thing as a common law spouse. You didn't know this. You are devastated.

### What do the stats tell us, and what can you do about this situation?

ONS statistics published this month show that cohabitation in the UK in 2017 has doubled over the last 20 years. Of the 19m families in the UK in 2017, 3.3m are cohabiting couples. This is a rise of 15%, making cohabiting couple families the fastest growing family type. By contrast, the number of married couples has grown by only 1.5% over the same period. These new figures reflect real changes in family structures in the UK. Our laws need to move with the times and reflect society's choices, but successive governments have persistently neglected to enact the reforms recommended by the Law Commission (and notable members of the judiciary) to give cohabiting equal rights to divorcing couples. This is short-sighted on many levels, not least in terms of the ultimate cost to the public purse, but also increasingly damaging, according to the stats, for society.

Cohabiting couples need to be more aware of the risks they face and the practical legal steps they can take to protect themselves. There are things you can do – you just need to know what and how. Resolution's Cohabitation Awareness Raising Week 27th November to 1st December 2017 ([www.resolution.org.uk](http://www.resolution.org.uk)) aims to dispel the myths and present protection options for all couples living together – whether for months or for years – so that financial hardship can be avoided.

Knowing your rights is the key. Getting legal advice and signing a cohabitation agreement can be simple and straightforward. It is a little like signing a prenuptial agreement – it sets out how your finances will be split should you separate and so provides some legal protection if the relationship ends and it often goes hand in hand with a 'declaration of trust', which legally records how the home is owned and in what shares. It is

also important for anyone in a cohabiting relationship to make a will.

### **Now, better prepared, how do you play it?**

So, fast forward to November 2018, but this time, with your cohabitation agreement and declaration of trust safely 'in the bottom drawer'!

Okay, the bad news is that relationship has broken down, but the good news is that you and your partner each went to see a family law solicitor early on in the relationship to work out your legal rights. You based your plans on staying together, but decided there and then what the arrangements might be if life didn't turn out quite as you hoped it would.

That informed the decisions you made about finances throughout your relationship – the house is in joint names supported by a declaration of trust which evidences the fact that it is owned in proportions which reflect your greater capital contribution, so your share is safe; you have an agreement with your partner that they will pay generous child support and some monthly payments for you for a period of years and you have organised your savings and pensions carefully so that there is no imbalance. Your cohabitation agreement was validly entered into and signed as a deed and so will stand up in court if your partner wants to contest it, but that is unlikely as you were both clear about finances from the start.

The cohab agreement dealt with the payment of living expenses, improvements to your property, 'buy out' clauses, pre-owned property that you brought into the relationship, the closing of joint bank accounts, house contents and even what to do with the dog. Crucially, it informed your decisions about how to run the family finances while you were together and should you part. You may be a one of the 3.3m, but you are an informed member of the Cohabitation Nation, with peace of mind and protection.

# Authors

Katharine Landells

PARTNER | LONDON

Divorce and family

 +44 20 7597 6188

 [katharine.landells@withersworldwide.com](mailto:katharine.landells@withersworldwide.com)