

Couples living together in the UK – financial provision for your children

15 APRIL 2020

CATEGORY:
ARTICLE



In 2019 University of Exeter research revealed 55% of households with children mistakenly believe that common law marriage exists. Unfortunately, it does not exist, and there are no financial remedies available as a result of a cohabiting relationships. There are though some remedies in respect of the children (regardless of whether their parents have lived together).

The parent with whom the child lives can make an application for financial provision from the other parent. Although it is possible to make an application against the step parent of the child, it is not possible in respect of a cohabiting partner who is not the parent of the child.

There are two distinct aspects of financial provision: maintenance and capital claims.

Maintenance

Where both parents and the child live in the UK, the first port of call is the Child Maintenance Service. The parent with whom the child lives makes the application. If the child spends equal time with both parents, so that there is not a 'parent with care' the CMS cannot process the application, and in the absence of agreement the application would come before the court.

The CMS calculates the maintenance payable mathematically. Where the paying party has an income (before tax of over £800 per week the percentage of income is 9% for one child, 12% for two children and 15% for three or more, the percentages for income under £800 per week are 12%, 16% and 19%. The amounts payable will reduce depending on the number of nights the child spends with the non-resident parent. If the non-resident parent has other relevant children living in his/her household, for the purposes of the calculation then there will be a notional deduction made to the total available gross income figure as follows: 12% for one child; 16% for two children and 19% for three or more children. Parents who are on low incomes or benefits pay a flat rate of child maintenance of £7 per week.

As from January 2019, the CMS can also take into account assets worth over £31,250, (after mortgage and subject to certain exceptions) as a resource with an assumed income of 8%.

Where the non-resident parent has an income in excess of £156,000 gross per annum, the CMS will make a maximum income assessment, and the parent with care can apply to the court for a 'top up' payment. The court can determine the amount that the parent should pay, depending on all the relevant circumstances. A recent court decision reported that in every case where the gross annual income of the non-resident parent does not exceed £650,000, the starting point should be the same as the CMS formula ignoring the cap. However, this is not a change in law, it is just guidance as to approach.

Capital payments

A parent can make an application to the court for various additional financial needs in respect of the children for example:

- Housing fund;
- A car;
- School fees and other educational costs;
- Lump sum (typically for car, redecoration, furniture but can include legal costs).

However, all these payments must be for the benefit of the child. This means that the financial benefit must not continue beyond the child's majority (usually termed as their 18th birthday or until they complete tertiary education). For example the house would be held on trust or a loan, or tenancy arrangement until then, and would then automatically revert to the paying parent, at that point.

Financial provision for children is an important part of the provisions available for cohabiting couples, but it still leaves the financial weaker party in a vulnerable position as soon as the children reach majority. The current law takes no account for the considerable contribution that has been made to the family during those years and the impact it can have on one party's ability to secure their financial future.

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