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Last year
the House of
Commons

women and equalities committee urged the government to reform family law to better protect cohabiting couples and their children from financial hardship in the event of separation – a recommendation rejected by the government.

The government said ongoing work on the law of marriage and divorce must conclude before considering any change to the law in respect of the rights of cohabitants when relationships break down.

However, family lawyers who have long campaigned for cohabitation reform – the subject of a conference at Inner Temple last week – remain undeterred.

‘We still believe reform is needed urgently because we know many couples are unaware that they do not have the same legal protections as married couples,’ solicitor Graeme Fraser, chair of family law group Resolution’s cohabitation committee, told the conference. ‘We say more of the same is no longer good enough. We need to take action to reset the campaign for reform.’

According to the Office for National Statistics, there were around 3.6 million cohabiting couples in the UK in 2021 – up from 1.5 million in 1996.

Whereas married couples and civil partners in England and Wales have certain legal rights and responsibilities upon divorce or death, cohabitants receive inferior protections. ‘Notwithstanding the legal reality, many people believe in the so-called “common law marriage myth”, which is the erroneous belief that after a certain amount of time of living together, the law treats cohabitants as if they were married,’ the women and equalities committee said in its report.

Why does the ‘common law marriage myth’ continue to persist?



Kicking the cohabit

Despite a succession of governments being reluctant to act, family lawyers are resetting their campaign to secure reform of the rights of cohabitants when relationships break down

Common law marriage embeds a ‘legal’ meaning, Anne Barlow, professor of family law at the University of Exeter, told the conference. ‘Lived experience through social security or buying car insurance confirms the myth.’

The conference also heard that the law treats people in religious-only marriages as cohabitants. The women and equalities committee was concerned about the lack of protection for women who feel pressured into religious-only marriage or other non-legally recognised weddings.

Cohabitation reform is not unfamiliar territory for parliament. In 2005, the Labour government asked the Law Commission to look at the law that currently applies to cohabitants when they separate.

The commission said the existing law often gave rise to ‘unjust’ results because it was not designed for cohabitants. While the commission concluded that cohabitants should not be given the same rights as married couples and civil partners in the event of separation, it recommended a new scheme of financial remedies that would provide economically vulnerable members of society with the private means to rebuild their lives and ensure a fairer division of assets. In 2011, the coalition government announced that it would not be taking forward the commission’s recommendations.

How can family lawyers ‘reset’ the campaign for cohabitation reform? By playing the long game.

Resolution spent decades campaigning for ‘no-fault’ divorce, which the government finally introduced last year.

‘We launched our manifesto after LASPO, appeared on many TV shows, spoke at party conferences, lobbied MPs, worked with Liz Trinder on her research,’ Jo Edwards, partner and head of family law at Mayfair firm Forsters, told the conference.

Resolution commissioned a YouGov survey in 2014, the findings of which made the front page of *The Times*. Resolution members ‘bounced from studio to studio’ that day talking to journalists about the benefits of no-fault divorce. Edwards finally saw the conversation move from no-fault divorce being perceived as more work for lawyers and devaluing marriage, to being seen as a ‘no-brainer’.

When it comes to re-energising the campaign for cohabitation reform, raising public awareness and dispelling myths are obvious starting points, Edwards said. Evidential basis for reform and media support will be important. (‘We need to build case studies of people for whom the current law creates injustice.’) Lawyers should continue to lobby policymakers and speak to politicians on both sides of the divide. (‘This year’s party conferences are a good target.’)

Cohabitation reform is likely to be the focus of Resolution’s next big campaign after a recent member survey identified it as a top priority.

The introduction of new legislation does not have to cause controversy, Fraser told the conference, pointing out that it didn’t in Canada or Australia. The current law, however, is ‘not fit for purpose’.

He added: ‘We now need to deal with the situation we find ourselves in following the government’s decision. The most effective thing we can do is accept more of the same is no longer enough. We need to take the action necessary to reset the campaign. We need to recognise our responsibilities as family lawyers to do the right thing.’

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