

Financial Planning for Unmarried Couples

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As of 2021, 3.6 million couples in the UK chose to cohabit rather than get married or enter a civil partnership.

This increasingly popular family type grants couples limited legal protection. Unlike in a marriage or civil partnership, cohabiting couples have no recognised legal status in the UK. With England and Wales still having a considerable gender pay gap, amongst other gendered issues, the lack of legal rights disproportionately impacts women. As the [Women and Equalities Committee report](#) from August 2022 stated, “The lack of legal protection on family breakdown means that women, including women from an ethnic minority background and those who have had religious-only weddings, can suffer relationship-generated disadvantage.”

Contrary to popular belief, the UK does not recognise ‘common law’ marriages. As a result, cohabiting couples have limited options, and many need to be made aware of what could happen to their assets if they were to separate. Currently, the most effective means to protect an unmarried couple is to enter into a trust deed and/or a cohabitation agreement.

The Family Home

The family home will often be the most valuable financial asset a couple owns during their relationship. However, making a financial claim against the family home depends entirely on ownership. In determining this, it is essential to consider whether the parties are joint owners, on what terms, and the amount contributed by each towards purchase, mortgage, and even significant repairs to the property.

Joint ownership gives both parties equal rights to stay in the property. If necessary, either joint owner can apply to

the court for an order for sale. It is difficult, save in certain limited cases, to prevent the sale of a jointly owned property.

The position alters if there are any children under the age of 18. In those instances, one party may establish their need to remain in the property until the youngest child turns 18. In this scenario, the joint owners then divide the property's equity at that later stage. Although this may deprive one party of their share in the capital, it resolves any housing problems for any children and the primary carer. The court will always consider the welfare of children as a priority.

If the family home is owned solely by one partner, the other may have little to no legal rights to remain in the house if their partner asks them to leave. They may, however, be able to claim a ‘beneficial interest’ in the property by getting the court to formally recognise the same, whether by reference to contributions or another legal principle.

Capital

The presumption regarding capital, including money in banks, expensive items, interest in insurance policies and other investments, are treated as belonging to the person whose name they are in at the time of separation. To establish otherwise, it may be arguable that capital was held on trust for the other.

Individual Maintenance

Cohabiting couples are not entitled to claim financial maintenance, for themselves, from their partners in the same way that married couples can seek to do. However, the situation is different where dependent children are involved. For example, the parent who remains in the property or resides predominantly with the children (until

the youngest child turns 18) may be able to claim child maintenance income.

Child Maintenance

Parents have a legal duty to support their children financially. Hence, the parent living with the children after separation is entitled to child maintenance payments from the other parent. In most cases, this is not dealt with by the court. However, the parent with the day-to-day care of the children can apply to the Child Maintenance Service for child support unless a level of maintenance is agreed upon amicably. The parties may make other claims over children, but parties should seek expert legal advice before considering those options.

Pensions

These cannot be divided or shared between cohabiting couples who are separating.

Whilst together, or as part of estate planning, certain pension schemes make it easier to provide for your partner when you are unmarried and cohabiting, usually through the scheme member making an 'expression of wishes' declaration as to who benefits from their pension.

Cohabitation Agreements

Unmarried couples living together can enter into a cohabitation agreement. It can establish the couple's rights and responsibilities towards each other during their separation or death. It can seek to regulate interests in property and other finances and consider child arrangements and expenditure. It can potentially prevent the strength of future claims against property and finances upon either party's death or a breakdown in their relationship.

Cohabitation agreements are becoming increasingly popular as they cover all aspects of joint life and prepare for the consequences of a potential split-up by offering reassurances for both parties and their assets. Well-drafted cohabitation agreements can provide certainty akin to if the couple were married. However, the law surrounding those agreements is less protective than those that assist married couples.

Cohabitation agreements are not automatically legally binding but provide clarity and show the intention of the parties.

The [Women and Equalities Committee](#) report made some excellent recommendations to improve the legal position for cohabiting couples and raise much-needed awareness of the issues. There have also been numerous bills put before Parliament for consideration.

Unfortunately, in November 2022, Parliament confirmed it would not consider further readings of the latest [Cohabitation Rights Bill during the 2023/24](#) parliamentary session. The wait for real and much-needed reform continues.

Taking clear advice when purchasing a property or joint assets and entering into a cohabitation agreement and trust deed are the best routes for cohabiting couples wishing to protect their interests.

Call one of our family lawyers today to discuss your position and formalise your living arrangements.

Contact family partner, Vandana Chitroda today.

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Note: This article is not legal advice; it provides information of general interest about current legal issues.

