

## FAMILY AFFAIRS: COHABITATION, MARRIAGE AND THE LAW

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### The study

Cohabitation is increasing in Britain and is expected to double by 2021 (Shaw and Haskey, 1999). Furthermore, a quarter of all children are now born to unmarried cohabiting parents. Yet the law still retains important distinctions in the way it treats cohabiting and married families. In this context, our Nuffield Foundation funded study aimed to:-

- assess public attitudes about cohabitation and marriage;
- explore who cohabits and why;
- investigate legal attitudes and beliefs about so-called 'common law marriage'; and
- consider attitudes to and options for legal reform.

There were two complementary parts to the research. First, a nationally representative survey, with a sample of 3,101 respondents, examined public attitudes towards marriage and cohabitation and their legal consequences as part of the British Social Attitudes Survey 2000<sup>1</sup>. Second, a qualitative study comprising 48 in-depth interviews with current and former cohabitants selected from the national sample, aimed to find out more about *why* people choose to cohabit or to marry; how, if at all, their understanding of the legal position affects their choice; and about their attitudes to reform of cohabitation law.

### KEY FINDINGS

- Cohabitation is accepted across all strata of British society as both a partnering and parenting structure.
- Young couples are most accepting of cohabitation, and it is likely that it will become increasingly popular over time.
- Married couples are not generally viewed as making better parents than cohabiting parents.
- Marriage is still seen as an ideal relationship in the abstract, but no longer viewed as essential.
- Most cohabitants in the in-depth study saw themselves as mutually committed to one another.
- Reasons for cohabiting rather than marrying included - avoidance of stereotyped gender roles associated with marriage, disillusionment with marriage, trial marriage, avoiding divorce, the emotional security of living together, unexpected pregnancy, and the cost of a 'proper' wedding' being outweighed by other priorities.
- Reasons for choosing marriage after cohabitation included - the wish to have children, the desire to achieve greater emotional security (including having the same family name), greater financial security and religious belief.
- Over half of those interviewed in the national survey believed, incorrectly, that cohabitants have a 'common law marriage' giving them the same legal rights as married couples.
- The perceived legal position was *not* normally a factor directly influencing the decision to marry or cohabit for interviewees in the in-depth study.
- Whatever their knowledge of the law, only a small number of cohabitants had made any provision regarding the legal consequences of their relationship.
- There is strong support among cohabitants and others for treating married and cohabiting couples the same in law.
- The idea of a formal Partnerships Register where cohabitants could agree the terms of their relationship was, in the in-depth study, popular among current and former cohabitants.

## Attitudes towards cohabitation and marriage

Cohabitation is widely accepted across British society. 67% of respondents in the national survey thought it 'all right for a couple to live together without intending to get married.'

**Nigel:** *'I'm sure there's more acceptance because of more people going the same way, you have to accept that's what's happening.'*

Only 27% thought that married couples made better parents than cohabiting ones and just under a half thought marriage gave better financial security. Cohabitation was most accepted among younger age groups, with younger women particularly ambivalent about marriage, but acceptance has increased even among more traditional groups of older and religious respondents.

### Who cohabits and why?

The national survey showed cohabiting relationships are most common amongst younger age groups, with 25 – 34 year olds being the most likely to cohabit. The non-religious are twice as likely to cohabit as the religious, and few elderly couples cohabit. There is little difference in education and social class between cohabitants and married couples.

Our in-depth study suggests a number of inter-related values inform cohabitants' decisions to live together without marrying. Some expressed a desire for a less gender-stereotypical relationship. Some feared divorce and wished to avoid it.

**Melanie:** *'...Well, I don't know, after two marriages I feel that is what it's all about - it's you own me and I own you and what for? At least this way you know you're together because you love each other and you want to be together.'*

**Natasha:** *'Living together you get on better. You really do - with marriage you own each other - with that bit of paper you are tied no matter what but living together it's easier - you are easier with each other and you haven't got that piece of paper hovering over your head all the time - you haven't got that ball and chain on your finger. He doesn't say to me you've got my ring on your finger I own you, you're mine, there's none of that.'*

Others, whilst not against the idea of marriage, made a qualified decision not to marry, either because they viewed cohabitation as a 'trial marriage' or saw the 'proper' marriage that they desired as a cost that competed with other priorities.

**Pamela:** *'...It's like going to buy a car, you don't go and buy a car without test driving it, would you at the end of the day? That's the way I've felt. Live together, test each other out first.'*

**Gail:** *'... the cost of everything stops us from getting married... We want to start going on holidays and that's costing money..., it's "what would you rather have, a new car or a wedding?" and now it's a conservatory.'*

The need for the emotional security of living together was also a factor influencing the choice to cohabit. Pregnancy instigated the decision to cohabit in some cases.

**Colin:** *'She got pregnant and had the baby and it didn't make sense to have two houses on the go. I just couldn't manage two.'*

Those that chose to marry following cohabitation were influenced by a variety of factors including the wish to have children, the desire to achieve greater emotional security (including having the same family name), greater financial security and religious belief. For some though, marriage was seen as an abstract ideal, and most, whatever their reasons for cohabiting, did not see

marriage as either necessary or expected.

**Bethan:** *'In the nice fairytale world it would be nice to meet somebody and fall in love and live happily ever after but life doesn't happen like that. I wish it did...'*

### **A committed relationship?**

Cohabitation relationships are often portrayed as very short-term and lacking commitment (Ermisch and Francesconi, 1999). However, the national survey found that the average (or mean) duration of cohabitation among current cohabitants was six and a half years with only one in five having been in the relationship for under a year<sup>2</sup>. This seems to reveal a trend towards longer periods of cohabitation and a reduction in any perceived need to marry.

Evidence suggests that on average there may be differences in the commitment shown by cohabiting and married couples. Yet this of course masks enormous variation within both styles of partnership. Our in-depth study revealed strong feelings of commitment to the cohabiting relationship. Often however, other people viewed cohabitants as 'less serious' than married couples.

**Phillip:** *'I'm sure people think that we're not getting married because we're not quite sure about each other and that isn't the reason at all but I'm sure that's what a lot of people think.'*

In fact, the idea that people think about relationships in terms of 'marriages' and 'cohabitations' is perhaps a false assumption to make.

**Susan:** *'I don't see it as being married or not. What I do is compare my relationship, my and Martin's relationship, with the person I was with before regardless of the fact that I was married to one and not to the other, and it's how happy I am and how the relationship's working, and I think that's*

*much more important than the fact that one was a marriage and one isn't.'*

### **Legal attitudes and beliefs**

In the national survey 56% of respondents believed that cohabiting gave rise to a legally recognised 'common law marriage'.

The majority in the in-depth study either thought that married couples and cohabitants have the same legal rights or were unsure. For most though, their perceptions of the legal consequences had no impact on their decision to cohabit or marry.

**Melanie:** *'I don't think that affects us - or my choice or what I'm doing in any way.'*

Over half of those respondents in the in-depth sample who believed in common law marriage thought these rights commenced after a given period of cohabitation. This varied from 6 months to 6 years.

**Amanda:** *'You have to be living together for 6 months and then everything gets split down the middle.'*

**Sharon:** *'... I think it's if you've been living together a certain amount of years that you have the same sort of rights.'*

Most had formed their views from talking or listening to friends, work colleagues or family.

**Caroline:** *'Listening to adult conversations between my mum and she'd be talking to her mates saying she was living together and "I've been living with him for so many years now, I'm his common-law wife" and that's where I heard it from.'*

Other sources of information included the media and official forms such as benefit applications. None of the interviewees had sought legal advice specifically in relation to their position as

cohabitants. The idea that you only go and see a solicitor if things go wrong was evident in several accounts.

**Richard:** *'I didn't feel threatened, I didn't feel like I needed the advice I suppose. If we did have a problem and I thought the relationship was going pear shaped then definitely I would seek advice.'*

**Emily:** *'If we ever did split up then I suppose I would have to get legal advice...'*

Only a small number of cohabitants make any provision regarding the legal consequences of their relationship. In the national survey, just 14% of current cohabitants had made a will and only 10% had a written agreement about ownership shares in the family home.

### The desire for reform

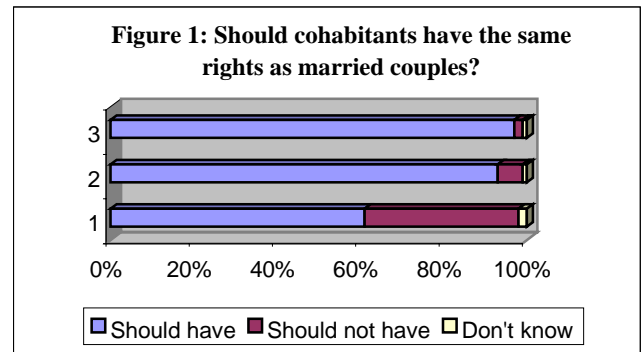
Current law relating to cohabitants lacks cohesion and is confusing in the extreme. In some situations the law treats them as couples with the same or similar rights to those who marry. In others, they are categorised as separate individuals.

The national survey found clear support, amongst both cohabitants and the wider population, for reform of the law to assimilate the rights of married and unmarried couples. Respondents considered key aspects of the current law unjust. They were asked about three issues where the law discriminates against cohabitants:-

**Q1.** Should a woman who had cohabited for ten years be able to claim financial support following relationship breakdown? 61% thought she should, 37% thought she should not and 2% were unsure (see fig. 1).

**Q2.** Should a cohabitant of ten years be able to remain in the family home after the death of her partner? 93% thought she should, 6% thought she should not and 1% were unsure (see fig.1).

**Q3.** Should a cohabiting father have the right to consent to his child's medical treatment? 97% thought he should, 2% thought he should not, and 1% were unsure (see fig.1).



In the in-depth study, views varied as to when the legal rights should begin. One popular view was that married and unmarried couples should have the same legal rights from day one of living together. Others preferred the idea that couples should live together first for a given period ranging between 6 months and 10 years. Some also thought that the presence of children should provide a trigger for these legal rights.

However, automatic marriage-like rights were not necessarily seen as the only or best option. There was an awareness of the need for flexibility.

**Caroline:** *'There's different things about different people though - what situation is good for one couple might not be for another couple.'*

The majority of the in-depth sample also thought that the idea of a formal Partnerships Register, in which legal arrangements were agreed, was a good one.

**Sandra:** *'If you're making all the decisions and there's a get-out clause then I think it's quite good.'*

**Caroline:** 'Yes, definitely because you can meet somebody and you might not get married for 10 or 20 years and something like that, I think it would be quite good to bring something like that in.'

### Options for reform

How can the law be reformed to take account of the findings of this research? There are several options.

- **Inform cohabitants of their legal position**

This might reduce the prevalence of the 'common law marriage myth'. However, it would do nothing to simplify the law, and would leave cohabitants with no clear course of action. In addition, both the national survey and in-depth study show cohabitants do not in practice, despite good intentions, make legal provision even when aware of their legal situation.

- **Equalisation of rights between married and cohabiting couples**

A time period of say two years - in line with existing statutory provision - could trigger marriage-like rights and responsibilities. The birth of a child could provide a separate trigger.

- **Introduction of a Partnerships Register**

Based upon models that exist in France and the Netherlands, this would enable couples to register their relationships and agree terms to apply should one partner die or the relationship break down.

- **Equalise, Register and Inform**

Combining these options would protect cohabitants who perform marriage-like family functions yet allow couples who wish to opt-out and agree their own terms, subject to legal advice, to do so.

### Conclusion

For most cohabitants, their relationships perform the same functions as marriage

- in terms of childrearing and providing emotional and financial support between partners. Indeed the move away from an 'institutional' to a 'companionate' idea of marriage, which is no longer necessarily a life-long commitment, means that marriage has itself become more like cohabitation.

The study has shown that there is strong support for the legal protection afforded to married couples to be extended to cohabitants. To do so, would recognise that the functions of the family are no longer exclusively undertaken within marriage. If these functions are worthy of legal safeguards on death or relationship breakdown within marriage, it seems appropriate to extend these same rights to cohabitants. This would remove confusion, achieve legal cohesion, and provide a social justice reflective of current social attitudes and trends.

### Bibliography

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### Endnotes

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<sup>1</sup> The 3,101 respondents from the British Social Attitudes survey 2000 referred to in this research were located in England and Wales. This is due to differences in the legal situation in Scotland. A detailed discussion about cohabitation in Scotland can be found in Barlow (2002).

<sup>2</sup> The median duration was 4 years. This confirms findings in other studies (e.g. Haskey, 2001, p.10).