

Separating from cohabitation: making arrangements for finances and parenting

Rosalind Tennant, Jean Taylor and Jane Lewis



This study comes at a time when the Law Commission is conducting a review of legal rights for cohabitants. It provides evidence about how cohabiting couples make arrangements for their finances and parenting when they separate and about their needs for advice and support at this time.

- Cohabiting relationships in the study varied widely in terms of how people came to be living together, their expectations of the relationship and how they arranged their financial affairs.
- Cohabitants had little awareness of their legal rights and therefore the law had little impact on their financial arrangements while they were together.
- The financial arrangements they made when they separated were equally diverse. Unlike in divorce, cohabiting couples did not base their arrangements on principles of equal division or on meeting the needs of children or adults. Rather the driving influence was ownership.
- When people got advice about their legal situation or their entitlement to state support, this was mainly from solicitors, the Citizens' Advice Bureau (CAB) and the Child Support Agency (CSA). But people did not always get the help they needed and were not always made aware of their full legal rights or their entitlement to other support, partly because advisers tended to specialise in different areas.
- The arrangements people made following separation did not always reflect their full legal entitlement. Some, most notably those who were the primary carers for children, were particularly disadvantaged.
- Wider use of existing cohabitation law would have helped some people but would not have addressed all the instances of disadvantage identified by this study. Advisers and cohabitants identified potential areas for review. The study also highlights the need for strategies to improve advice and information.

This summary presents findings from a study commissioned by the Department for Constitutional Affairs (DCA) to explore how cohabiting couples make arrangements for parenting and financial division after separation. The study looked at use of legal and other advice, the arrangements people make during cohabitation and after separation, the influences on their decision-making, the impact of these decisions on people's financial and parenting circumstances, and at ways in which necessary advice, information and other support could be provided.

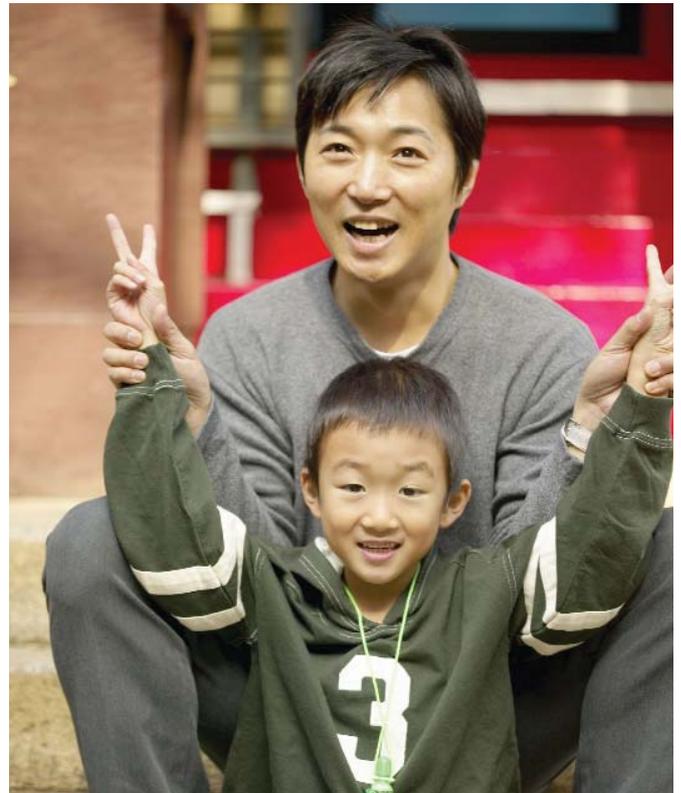
Cohabitants' limited understanding of the legal framework is reflected in sometimes informal and ad hoc arrangements.

Cohabitants had patchy understanding of their legal situation and generally gave legal implications little thought when they moved in together or during the cohabitation. Some had specific reasons for living together and had discussed the decision, but for others cohabitation 'evolved' over time without an identifiable trigger or discussion.

The study found great diversity in the financial arrangements people made while they were together. They were not always discussed explicitly or formalised, so that somewhat different assumptions and expectations could arise between the couple when they separated. There were four financial models:

- joint and equal (assets were seen as joint and both partners contributed broadly equally to housing and living costs);
- joint and unequal (assets were seen as joint but the partners did not make equal financial contributions);
- individual and unequal (assets were seen as individual, and the partners made unequal contributions to housing and living costs);
- individual and equal (assets were seen as individual, but the partners made broadly equal financial contributions).

These models had implications for how far one partner was economically dependent on the other during the cohabitation, and for how they were affected financially by the separation.



Financial arrangements made after separation are primarily influenced by ownership rather than principles of equal division or the needs of children or adults.

Where there were children, it was clear that parents were very concerned about their well-being when they separated. In all the families in the study, children continued to have some contact with both parents and it was generally accepted that child support would be paid, though people often agreed lower levels than suggested by the Child Support Agency (CSA). However, children's needs were not more generally reflected in financial settlements.

The driving influence on financial arrangements was ownership. Homes and other assets owned by one partner were retained by that partner. Unlike in divorce, financial and non-financial contributions made by the other partner were generally not recognised, equal division was not seen as an objective, and settlements were not needs-based. However, financial dependency during the relationship, and the implications of this for the dependent partner following separation, was rarely recognised.

Cohabitants seek advice from solicitors, the Citizens' Advice Bureau (CAB) and the Child Support Agency (CSA) though they do not always get the help they need.

Solicitors, the CAB and the CSA were the main sources of advice. Other sources of advice were the local council, Jobcentre Plus and the tax credit helpline. Some people had actively sought advice, using recommendations from friends or the Internet and telephone directories, whilst others found advice by accident whilst accessing another service, for example via their local council or Jobcentre Plus office.

Where people sought advice this was because they wanted a 'fair' outcome or an improved understanding of the legal situation, or they used the threat of seeking advice to put pressure on their partner. But there were a number of reasons why people did not seek advice. People did not know that relevant advice was available, felt it was too costly, thought their situation was sufficiently amicable or straightforward not to need it, assumed they had few or no rights, or anticipated that advice might be biased against them.

Cohabitants sought advice about the division of assets and property, child support, and entitlement to state



benefits or support. However, they were generally disappointed by the advice they received – either because they were told they had few or no rights, or because the advice didn't deal with all the issues with which they needed help. The specialist nature of many advisory services meant that people had to find their own way through a network of different types of agencies.

Arrangements do not always reflect people's full entitlement and people who are primary carers for children are particularly disadvantaged.

Cohabitation law is messy and complex, and gives people much more limited rights than in divorce. However, there are two main avenues through which people may have rights to the family home even if they do not own it, or might have a right to stay in it. They may have rights under trust law, or under the Children Act 1989 (Schedule 1) which provides that the court can order that a child and his or her main carer can live in the family home until the child finishes full-time education. However, the research carried out with solicitors and advisers suggests that there are circumstances under which these rights are insufficient or hard to operationalise, and in some cases cohabitants had rights that were not enforced.

It was common for people to be worse off financially after they separated, if only from the loss of 'economies of scale' and the cost of moving to separate households. But some people experienced very significant changes in their financial circumstances, becoming dependent on others, such as family or friends, or on the state. Assessing whether financial outcomes are 'fair' is highly complex. However, the clearest cases of financial disadvantage – in the sense of people being markedly worse off than when they were together, markedly worse off than their partner or markedly worse off than they would have been had they been married – arose where people lived in their partner's home, where they had made non-financial or only informal financial contributions, where they were the main carer for the children, and where the children were from a previous relationship.

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The study supports the current review of the legal framework surrounding cohabitation but also points to the need for better advice strategies.

Ex-cohabitants and advisers had mixed views about legal reform. Some argued for reform in the areas of rights to property and other assets, recognition of non-financial contributions, and parental responsibility, agreements and orders. There were different views about whether cohabitants should have the same rights as married couples in all circumstances, in some circumstances, or never. People discussed the relative merits of cohabitants acquiring rights and responsibilities as soon as they moved in together versus at a particular point during their cohabitation, and automatically versus only if they 'opted in' or 'opted out'. The fact that wider use of existing cohabitation rights would not have addressed all the instances of disadvantage supports the current review of the legal framework.

However, whether or not the law is changed, the study highlights a need for multiple strategies to help people understand their legal situation and make informed decisions about their financial affairs, both when they are together and when they separate. Suggestions that emerged in the study were: providing information at key points in a cohabiting couple's relationship, such as when they open a joint bank account, buy a property or have a child; an online 'idiot's guide' to cohabitation; a dedicated advice line for cohabitants and former cohabitants; 'one-stop-shop' advice services which meet all the varied needs arising from relationship breakdown; raising awareness of the advice currently available; helping advisers to be better informed about cohabitation law; encouraging advisers to signpost other advice sources that deal with issues beyond their own specialism; and reviewing entitlement to legal aid.



Methodology

The study involved 29 interviews with former cohabitants (15 with women and 14 with men), selected by following up a series of national surveys. The sample was purposively selected to represent variation in terms of the duration of cohabitation, the recency of separation, partners' age and sex, whether there were children and their ages, annual income, home ownership, the use of formal advice, and re-partnering. Everyone involved had cohabited for at least six months, and had separated between three months and four years previously. The study also involved three group discussions with solicitors and two group discussions and a paired interview with other advisers from the CAB, the CSA, lone parent organisations, housing and welfare rights centres, counselling services, mediation services, and Sure Start and Home-Start.

Obtaining the full report for this study

The full report of these research findings, *Separating from cohabitation: making arrangements for finances and parenting*, by Rosalind Tennant, Jean Taylor and Jane Lewis (2006) is published by The Department for Constitutional Affairs and available online at: <http://www.dca.gov.uk/research/resrep.htm>. For further information, contact Sue Johnson or e-mail info@natcen.ac.uk