

# Women and Equalities Committee

## Oral evidence: The rights of cohabiting partners, HC 130

Wednesday 3 November 2021

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Members present: Caroline Nokes (Chair); Theo Clarke; Philip Davies; Jackie Doyle-Price; Kim Johnson; Kate Osborne.

Questions 36 - 74

### Witnesses

**I:** Graeme Fraser, Cohabitation Committee Chair, Resolution; Mandip Ghai, Senior Legal Officer, Rights of Women; Nazmin Akthar, Co-Chair, Muslim Women's Network UK; and Lisa Ray, General Secretary, Civil Service Pensioners' Alliance.

Written evidence from witnesses:

- [Resolution](#)
- [Rights of Women](#)
- [Muslim Women's Network](#)

## Examination of Witnesses

Witnesses: Graeme Fraser, Mandip Ghai, Nazmin Akthar and Lisa Ray.

Q36 **Chair:** Good afternoon and welcome to the Women and Equalities Select Committee. Before we start, I remind witnesses and Committee members of the current guidance on the importance of wearing masks. That does not apply to the two witnesses appearing by Zoom, obviously, but if members could wear masks in accordance with the guidance it would be appreciated.

This afternoon's evidence session is for our inquiry on the rights of cohabiting partners. It is the second evidence session. I welcome Graeme Fraser, chair of the Cohabitation Committee at Resolution; Mandip Ghai, senior legal officer at Rights of Women who is appearing by Zoom; Nazmin Akthar of the Muslim Women's Network UK—I declare my interest in this respect as co-chair of the APPG for Muslim women, for which the Muslim Women's Network UK provides the secretariat, and I want to put that on the record—and Lisa Ray, the general secretary of the Civil Service Pensioners' Alliance, who is here in person. Thank you all very much for attending this afternoon.

I will start with a question to Mandip Ghai. We heard in earlier sessions of the common law marriage myth, which is difficult to overcome and is deeply embedded in people's thoughts. Do you have any views on how it could be overcome?

**Mandip Ghai:** I will start by introducing Rights of Women quickly. Rights of Women is a legal rights organisation. We specialise in supporting women who are experiencing or are at risk of experiencing violence against women and girls. We offer a range of services, including a family law advice line to which we receive calls from survivors of domestic abuse who are cohabitants and women who have entered religious-only marriages. We hear at first hand how they are impacted by the absence of laws that protect the rights of cohabiting couples.

In relation to your questions, for starters, more could be done to raise awareness when cohabitants are entering into a religious-only marriage, buying a property, entering into a tenancy agreement, starting a pension, opening a bank account or any other type of legal or financial transaction. The drawback of this approach is that, by the time they receive this advice, they may feel it is too late to turn back. This approach will reach only a certain number of people.

To get this information out to the public at large would probably need a much larger campaign. That would require the skills of communications experts, which I am afraid I do not have. I am not sure whether a campaign would be successful. I agree with Professor Anne Barlow, who gave evidence at the first session, that these views are so entrenched that it would be difficult to correct them and the public will probably wonder why the rights they expect to exist do not exist.



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Of course, making the public aware that common law marriage is a myth is not enough. Most couples who enter into a relationship do so optimistically with the intention that the relationship will last. Even with greater awareness, many people will choose not to enter into cohabitation contracts in the same way that many married couples do not enter into prenuptial agreements. I know lots of people who have not got around to making a will, even though they know the potential consequences of not doing so, which is why it is so important that there are laws that promote the rights of cohabiting couples.

**Q37 Chair:** Graeme Fraser, we heard that there could be opportunities when cohabiting couples engage with the legal system in some way, making tenancy agreements and so on, but what evidence can you give us about how couples will usually experience the legal system after separation? Could there be some checks and balances put in before to make their experience of the legal system after separation better?

**Graeme Fraser:** Good afternoon, Chair. I want to introduce myself. I represent Resolution, an organisation of 6,500 family lawyers and family justice professionals in England and Wales who believe in a constructive, non-confrontational approach to family law matters. Resolution also campaigns for better laws and better support for families and children undergoing change.

In answer to your question, family law practitioners strive to find solutions for their clients. We aim to settle our cases. We strive to use out-of-court processes whenever we can, but the fact of the matter is that the law as it currently stands is not fit for purpose. It does not help our clients. It does not help society. It fundamentally needs to be changed because it is out of kilter with modern-day society and the way our laws run.

Resolution has been at the forefront of trying to help our clients in terms of putting together tools that will assist, such as cohabitation contracts at the beginning of a relationship. The comment made by the previous speaker completely chimes with my practice. People often inquire. I have had lots of telephone calls since the pandemic restrictions have been eased. Then, simply, people do not get around to it. They are also optimistic in the sense that they hope it will all work out. Good for them, frankly, because that is how they feel and people go by their actions.

However, the reality is that lawyers do not come cheaply. We do a service and we want to offer value for money, but people come at a time when they are in distress. When they come at those times, we cannot offer the solutions they need because the law does not work. Fundamentally, women are disproportionately disadvantaged in this scenario and that is where we are coming from. That is the difficulty we face at the moment.

**Q38 Chair:** Resolution strives to use out-of-court processes but, for cohabiting couples, are there in-court processes?



**Graeme Fraser:** There are in-court processes, but none of them is specifically for cohabitation when it comes to family law.

Essentially, the two main ones are property law remedies: quite a long-winded sounding Act that we call TLATA for short—probably the easiest thing to call it—and another piece of legislation called schedule 1. They are two separate remedies and they operate under two different sets of procedural rules. It can even be a struggle to get those cases heard together. Simply assembling the cases costs a lot of money. The running of the cases costs a lot of money.

Often, when one gets to court, a judge finds it difficult to provide a remedy because the common law is not able to develop in a way that will provide remedies that reflect and appreciate the contribution, particularly, that women make in terms of their caring roles and their non-earning responsibilities. That is essentially why the law is not working.

Q39 **Chair:** You have highlighted the gender impact. Can you give us any indication of the split? From Resolution's experience, is a higher proportion of women than men negatively impacted? Can you put a figure on that?

**Graeme Fraser:** I can put a figure on it statistically because we have had two surveys done in the last five years. Generally speaking, in surveys, about two thirds of our clients are women who are disproportionately disadvantaged, but in my own practice it is virtually always women who come to see me.

I cannot offer them the solutions they want. If they go to the out-of-court processes, they do not tend to work because we do not have fair laws that enable them to work. It already starts with a disproportionate balance often in favour of men.

Q40 **Chair:** When you say "we do not have fair laws," how would you go about securing a more just outcome for all individuals, not necessarily women but men as well? Starting from a blank sheet of paper, how would you make it fairer?

**Graeme Fraser:** From a clean-sheet policy, you have to go back to the start and have specific, defined cohabitation laws with cohabitation law remedies that deal with this modern family type. Now one in four families is cohabiting. It is about having specific rules that will provide the right level of remedies and will deal with things such as childcare, pensions and property. It needs a global approach that looks at everything, not one aspect in isolation. We feel that is the only way it will ever work.

Q41 **Chair:** You have highlighted that lawyers are expensive. Could you perhaps indicate to us what proportion of clients that you see who are cohabitants looking for a legal remedy are eligible for legal aid? How has that changed over the years?



**Graeme Fraser:** I am not aware there is an eligibility for the specific cohabitation remedies. The only eligibility would be in respect of domestic abuse remedies if you fit within that category. That is possibly one of the most damaging impacts of the removal of legal aid. It is particularly impactful at the start when somebody needs early advice.

The value of getting early advice, if that were funded, would be significant because lawyers do not work in isolation. We work in a hub with lots of different professionals who can provide the level of support that our clients so badly need. As family lawyers, we want to see our clients have the benefit when they leave our offices. We want to know they can get on with their lives and have improved lives.

Q42 **Chair:** Mandip, I can see you nodding on the question of domestic abuse victims and access to legal aid. Do you want to add anything to that?

**Mandip Ghai:** To clarify, family law legal aid is available to survivors who can produce specified types of evidence of that abuse, but survivors of coercive and controlling behaviour are less likely to be able to evidence domestic abuse. Even if they can evidence the abuse, we regularly hear from survivors who are not eligible for legal aid because of the very strict and narrow financial eligibility criteria. The lack of legal aid puts people off pursuing claims because they are not able to instruct a lawyer to assist them.

In 2015, Rights of Women surveyed survivors of domestic abuse on their eligibility for family law legal aid. When asked what action survivors took as a result of not being eligible for legal aid, nearly 53% said they did nothing. For some women, that meant remaining with their abusive partner in the hope that things would get better.

Most cohabitation disputes settle before getting to court because they are so complex and costly. One way to reach a settlement is through mediation. The point has been made that mediation is not an option for most survivors because of the imbalance of power and the safety issues involved in negotiating directly with an abusive partner.

An alternative is solicitor negotiations whereby solicitors write to each other with offers and counteroffers. This option is not available to many survivors if they are not eligible for legal aid. More should be done to ensure legal aid is available at those early stages of a dispute.

Q43 **Chair:** This is probably straying slightly outside the brief of the rights of cohabiting couples, but we fairly recently legislated with the Domestic Abuse Act. Should the specified evidence that can be used to make somebody eligible for legal aid be widened? Should there be more types?

**Mandip Ghai:** The difficulty is that a specified and exhaustive list will not capture everyone's experiences. The types of evidence that survivors currently have to provide are from other professionals like doctors, social workers, the courts, the police or domestic abuse support services. There will be survivors who never report the abuse to a professional. In those



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circumstances, they find it very difficult to provide any form of evidence. Yes, any exhaustive list of evidence would be difficult for survivors of domestic abuse.

**Nazmin Akthar:** I want to add to what Graeme and Mandip were saying in terms of how many will end up going to court in the event to claim their rights. I want to add the extra layers and issues that can be involved in making that decision.

As well as whether they can afford the legal costs, they have to consider and balance the competing interests involved. Although they are treated as cohabitants, they might be in Islamic marriages that are about to be dissolved and they want to leave those marriages. However, the issue they find is that they could have family members against it. They could be looking at the possibility of becoming isolated from family members or becoming disowned. Taking matters to court to try to claim some financial rights and remedies increases the chances of them being ostracised because of the belief that they are doing this out of spite or are trying to claim money.

Unfortunately, the women that Muslim Women's Network UK works with constantly find how easy it is to malign women, especially victims of abuse. Unfortunately, it is so easy to dismiss their claims of abuse and say, "No, they are making it up because they want to get money out of this."

When such an individual goes to seek legal advice and is told either that they have no legal rights because, as Graeme explained, the law is currently not fit for purpose or that what they can claim is quite limited, it is almost not worth the backlash they will receive as a result of trying to access their rights. We need to think about those added issues and barriers that are involved in even thinking about taking that first step to make a claim.

Q44 **Chair:** Graeme Fraser, from Resolution's perspective, what happens to those who cannot make any sort of legal claim and who have no remedy through the courts? Are they left to their own devices?

**Graeme Fraser:** That is a good question. As a soliciting practice, we form good relationships with our clients and we are concerned about what happens when they leave the door. Usually, at the point of contact with cohabitants, they are often dealing with children issues alongside. We will have a relationship with them on that score because we can negotiate that, but effectively they are pigeonholed and they have difficulties.

From practice I find that two scenarios cause particular difficulties: one is when the woman gets towards retirement age, the children are grown up, the couple are separating and the family cannot move on with their lives because the man is holding all the cards. The second scenario is when the breakup is happening and the children are still of school age but the mother cannot do anything because there is such a lack of remedies.



Many people become reliant on the state and they become reliant on benefits or they become reliant on social housing. Our view is it is a question of people being required to take more responsibility. We know of scenarios where men simply walk away from their responsibilities after 30 years and do not pay their fair share in terms of helping with the family. That is a real concern for us. There can be issues of child poverty and reliance on the state.

**Q45 Chair:** I don't know if you are able to give us this figure but, for legal advice in the event of separation of cohabiting couples, what is the ballpark cost?

**Graeme Fraser:** I will give a number of ranges because I want to be fair. If somebody comes in for a first meeting, I imagine the cost may be £100 to £200. If it can be resolved or if we can do an agreement, the cost is no more than £1,000 or £2,000. If we get into a detailed negotiation, which the first speaker mentioned, it might cost a bit more and have a bit more involvement of solicitors.

The nightmare scenario, which at Resolution we want to avoid, is going to trial, which is a disaster in this country and is more of a disaster when you have to go through two different remedies using two different processes. It is fair to say, if you end up in a trial, the couple could spend up to £100,000 inclusive of VAT and counsel's fees. If you are running a TLATA claim, you have to cost budget at the beginning of the case. On a property claim, a lot of the work has to be done early on because the civil process requires a lot of that work to be frontloaded, so it becomes uneconomic from the start. Also, a schedule 1 remedy is difficult to run and rarely gets off the ground. Even in my practices—and I have worked in various different practices—I find that they are quite rare.

**Q46 Chair:** Can you give us an indication of "quite rare": 10%, 5%, 2%?

**Graeme Fraser:** I suppose out of the people who come to see me—I happen to do a lot of it in my practice—and in terms of what gets off the ground, maybe 20%. I am hazarding a guess. It is a very low number. If there was more eligibility and if schedule 1 or the new cohabitation remedy was done completely differently, the remedy would be different.

However, we are not necessarily looking to go to court. We are looking to have processes that work better. Fundamentally, as lawyers, we try to settle cases. Inbuilt into every Resolution member is the opportunity to train in out-of-court processes, bring people to the table early on, try to find solutions and try to agree matters.

Most cases in family law settle out of court. It is just that these particular cases do not settle well and, when they go to trial, it does not go well.

**Mandip Ghai:** On your previous question, on the consequences of the lack of options available in the law and on the point that Graeme made about settlements out of court, we submitted our written evidence to this Committee with Southall Black Sisters, which submitted a response to the



Law Commission's consultation on weddings law earlier this year. It made the point that the lack of access to remedies in the formal legal system has a disproportionate impact on black and minoritised ethnic women who live in culturally conservative, religious communities. A consequence of the lack of protection in the law for cohabiting couples, is that women are even more vulnerable to the discriminatory processes of religious arbitration forums and can end up with decisions that are harmful to them. That is an important point to bear in mind.

**Q47 Theo Clarke:** Lisa Ray, what effect do the current rules on pensions and inheritance have on cohabitants?

**Lisa Ray:** First, can I introduce myself? I am the general secretary of the Civil Service Pensioners' Alliance, which is a founder member of Later Life Ambitions, a campaigning organisation that represents over 250,000 older people. We want those older people to have fulfilling later lives when their contribution and their value is respected. We need the Government to come up with the right legal means for them to have that. We hope we can put across some useful points to you today to help with that.

In pension rules, the position of cohabiting partners is not clear. We were talking earlier about the common law marriage myth. A lot of people think that, because they live with their partner, they are entitled to receive some sort of pension from them. Whenever we publish something in our magazine about pensions, we get quite a few inquiries from our members saying, "I cohabit with my partner. Surely she will get something," and you have to tell them, "No, she is not entitled to anything." We are playing catch-up here all the time with the older pension cases.

Cohabiting couples have to jump through a lot of hoops to get access to a survivor pension. They have to provide a lot more information on the death of their partner. If they were married or in a civil partnership, they have to come up with a death certificate and a certificate of marriage or civil partnership. However, if they were cohabiting they have to provide lots of things. For the civil service scheme, it is a partner's form, a dependent pension claim form and two further pieces of evidence to show that they were financially dependent on one another such as a joint mortgage, joint credit arrangement, joint bank account or council tax. None of these can be more than six months old. It is no good going to a filing cabinet and getting out some old documentation. That will not cut it.

Other schemes ask intrusive questions about your relationship to your partner who is deceased. Unfortunately, one of my colleagues lost her husband a year ago and was sorting out access to her widow's pension. She said she came across the form that would have had to be filled in by any partner—somebody not in cohabitation—and it had a great long list of questions to answer at a time when you are in a bad place because you have just lost your partner like, "Who pays your mobile phone bill?" She



said that would have devastated her if she had had to answer that question at that time when going through grief.

Most pensioners are unaware of this requirement. It is unfair that people are put through so much more and have to jump through these hoops to get access to something that has been paid for by their deceased partner.

**Q48 Theo Clarke:** You have partly answered my next question, which is about the evidence required before a cohabitant can claim.

Later Life Ambitions said that under some pension schemes widows and widowers are no longer entitled to their deceased spouse's pension if they choose to remarry or cohabit. What impact does that have on your members' lives?

**Lisa Ray:** It has a big impact on our members' lives. In the civil service scheme, we have been running a campaign on this for quite some time. To explain what happens: if you have a widow's or widower's pension, where you have been married before and have lost your partner, and you happen to meet somebody new and decide you would like to cohabit with them, marry them or enter a civil partnership, you lose your independent widow's or widower's pension.

This is absolutely appalling because, in effect, you are saying that the woman—and it is usually a woman—becomes the responsibility of her new partner, so they no longer have financial independence and their own income. This seems absolutely Victorian to me. That attitude is ridiculous in this day and age.

I have case histories from some of our members. A woman lost her husband in her late fifties and did not think she would ever meet anybody and settle down again, but she did. She met a man and they had a couple of years together. He asked her to marry him but she had to say no because she knew that she would lose her widow's pension. His pension was not big enough to support both of them. She is 74 now. She had to say no to marriage in her early 60s and regrets it. She has been left in a situation now where she is living on her own. We know loneliness is bad for health outcomes. It is unacceptable.

**Q49 Theo Clarke:** What could the Government do to ensure that pensions are for life? How could we intervene to improve that situation?

**Lisa Ray:** You could perhaps emphasise what I have said. It is unacceptable in this day and age that people should be expected to continue to live on their own. Some of these people are affected at an earlier age. They could lose their husband or wife in their forties. Who then expects them to continue living on their own? It is important to intervene and say that public sector pensions should pay pensions for life. After all, that pension has been paid for by the wife or husband who has been working. They have made provision for their partner or spouse to continue to receive a pension after they have gone.



Q50 **Theo Clarke:** Graeme, what conditions, if any, should be placed on a cohabitant's entitlement upon intestacy? Should the law in this area change?

**Graeme Fraser:** The Law Commission made a proposal back in 2011 that included a draft Bill. Under that draft Bill, on intestacy a former cohabitant who had lived together with their deceased partner for five years would have a claim. I believe it is two years if they have children together. We support that proposal. We supported it at the time and we were disappointed it was not enacted. It would be relatively easy to enact it, we believe, as well.

**Lisa Ray:** It would be easy to put something in place, and it should be put in place. Why should people be treated differently if they are not married or in a civil partnership? It needs to be fair. We need to level up the playing field now.

Q51 **Kim Johnson:** Mandip and Nazmin, if you were to draft a new law for cohabitants, how would you ensure it recognises the disproportionate economic impact of separation on women?

**Mandip Ghai:** As you have already identified, women are at an economic disadvantage in society and are therefore more likely to experience financial hardship as a result of a relationship breaking down. This includes, but is not limited to, women who have children and who have had to leave work or reduce their earning capacity. Women are also more likely to experience domestic abuse. This has an impact on their life physically, mentally, emotionally and financially.

As organisations such as Southall Black Sisters and Muslim Women's Network UK have raised, the fact that cohabitantes have fewer rights than married women is used as a tool to control and disempower black and minoritised women who are forced or coerced into religious-only marriages.

With all these issues in mind, first, it is important that the rights and entitlements available to cohabiting women should be the same as they are for married women and women in civil partnerships. This means that cohabiting couples should be able to apply for all the orders on separation that married and civil partnership couples can apply for on divorce and dissolution. The factors that the courts take into account, when deciding whether to make an order, should include all those listed under section 25 of the Matrimonial Causes Act. That includes the needs of the parties and the contributions they have made to the relationship, financial and non-financial.

The law could go further. In addition to the factors under section 25 of the Matrimonial Causes Act, the courts should also take into account domestic abuse—including coercive and controlling behaviour and economic abuse—when deciding what financial orders to make on



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separation. This is currently lacking in the law relating to divorce and civil partnerships.

Finally, it is important that the law does not arbitrarily exclude cohabitants by imposing a minimum time period and enabling perpetrators to abuse women and end the relationship shortly before the minimum time period to stop her making any claims.

**Nazmin Akthar:** To clarify what the Muslim Women's Network UK does, because it will be relevant to the conversation, it is a national charity that works with Muslim women and girls across the UK with a range of activities, including training and advocacy work.

Most importantly, we run the national Muslim Women's Network helpline, which provides support and advice to Muslim women who find themselves in a cohabiting relationship, whether they know it or not, and are at the point of breakdown. More often than not, domestic abuse is involved in these cases, as well as various other issues, potentially even child abuse. The lack of financial protection is a key reason for them to remain.

We need the law to be clear. We completely agree with Mandip that we need to ensure we are not inadvertently keeping women outside of scope. At the same time, we believe that we need some sort of clear definition with a minimum threshold for it to be properly assessed whether these are cohabitants. The Committee and all of us need to take a pragmatic approach. At the end of the day, we all want to ensure that cohabitee rights are strengthened. If we have no checklist and no minimum threshold, it will make it quite difficult to have a law in place.

We suggest having a realistic minimum threshold. We don't have a particular timeframe to suggest, but we say a realistic threshold that is not too onerous, maybe one year rather than five years. However, we want any legislation to give judges the discretion to fairly and equitably decide otherwise if they feel a couple have been in a relationship for much longer than the minimum threshold when cohabitation started.

A couple might have been together for five years and then they moved in together and the issues started, or perhaps the coercive control has been going on for a long time. You don't need to be living together for there to be coercive control. In fact, we have had many cases where the couple have been in a relationship for three years previously, not living together, but the partner has been finding different ways to get money from the victim and, once they move in together, it gets worse.

We should ensure the legislation allows judges to think, "Yes, you have been together for only six months and we should be tracking it but, clearly, when you look at the circumstances, the context, the evidence of domestic abuse and coercive control, we have the discretion to disapply the minimum threshold and provide you with the rights." That is what we suggest.



The other suggestion is to have a rebuttable presumption of cohabitation. We often find that the onus is on the vulnerable party, whether or not they are a victim—and for us the majority are women—to seek the rights and they don't have the financial rights and remedies. It can be difficult to prove contribution, to prove all of that.

More importantly, the thought in itself, "I have to go to court and prove my rights, and I am too scared to do it," is a mental barrier. A rebuttable presumption of cohabitation would help in allowing women or individuals who want to make a claim feel more able and more empowered to go to court. Judges can then look at it on a case-by-case basis and decide whether the presumption is rebutted on this occasion.

**Q52 Kim Johnson:** Your organisation supported 1,200 women last year, and marriage and divorce was one of the top three issues. In your opinion, will the Law Commission's proposals on wedding law reform address the key problems that people face in unrecognised religious marriages?

**Nazmin Akthar:** It depends on the final proposals but, no, we don't think they will strictly do that yet. The current proposals look more at simplifying the process of getting married. It is more directed at those who want to get a legally recognised marriage in the first place.

What we find—and this is the reason why there are unregistered marriages in the first place—is that many choose not to, not because it is too difficult to follow the civil marriage process but because they do not want to have it. More often than not, that is due to one party wanting to ensure the other does not have financial rights and wanting to protect that.

While it might help to a certain extent, it will not solve the problems at all, which is why we are proposing—and I appreciate this is slightly off-topic from cohabiting rights—to introduce laws that require a civil marriage prior to an Islamic marriage being entered into. If somebody is committed to getting married, it is not fair that they should be able to choose between an Islamic marriage and a civil marriage, especially when if they went abroad they would have to have both.

In the majority of countries that follow Islamic laws, those individuals have greater rights than Muslim women in the UK because, over there, Islamic marriages are automatically legally recognised but here they are not. That is why there need to be greater measures in place. Until that can happen, we should strengthen cohabiting rights so that at least those women have cohabiting rights to fall back on if necessary.

**Kim Johnson:** Thank you for that detailed response, Nazmin.

**Mandip Ghai:** We are clear that we do not think the Law Commission's proposal will address this situation, partly because the proposal is that only couples who have children together or who have lived together for a minimum time period of between two and five years will be eligible. I know there is a difference of opinion here. For us, this means that women



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who enter into an Islamic marriage, or a religious-only marriage, and separate within the minimum time period and do not have any children will not be eligible to make any of the claims that are available under the scheme.

Secondly, the Law Commission's proposals are that the remedies will be available under the scheme only if the applicant made qualifying contributions to the relationship. These contributions relate to economic advantages for the respondent and economic disadvantages for the applicant. This is very narrow compared with divorcing couples, where the courts have much wider discretion to consider what is fair for that particular family and a checklist of factors that include non-financial contributions.

We are calling for women who have entered religious-only marriages to have the same entitlements and claims as those who have entered into legally recognised marriages. The proposals put forward by the Law Commission do not achieve that aim.

**Kim Johnson:** Thanks for setting out the limited scope of the Law Commission's proposals, Mandip.

**Nazmin Akthar:** I want to clarify that we are not suggesting the Law Commission has it absolutely right in terms of the minimum threshold, but there needs to be some sort of minimum threshold if we are to be successful and see the law reforms come into place. Regardless, we still need to ensure there is sufficient scope and discretion so there are ways that those who do not meet the minimum threshold can still access rights when it is fair and just to do so.

Q53 **Kim Johnson:** Graeme, what changes would you make to schedule 1 of the Children Act 1989 and why?

**Graeme Fraser:** I will preface this by going back to my earlier response, which is that to reform cohabitation law properly you need cohabitation law reform. That is our starting point because we think that works best.

Our view is that schedule 1 is discriminatory to unmarried couples with children. The Law Commission recognised in 1982 that there should be no discrimination. Non-discrimination should be the centrepiece of any changes to that legislation. It would be fairly simple to change schedule 1 to put it more along the lines of the Matrimonial Causes Act 1973, which would effectively give the same eligibility as children of married couples. We say that the overall picture is to change the law. Making available the correct level of remedies and more options would provide so much more coverage, in particular for mothers, for example, who need childcare. Pension sharing orders could be available and property rights would be completely different.

Q54 **Kim Johnson:** How much does it cost to make a claim under schedule 1?



**Graeme Fraser:** It is difficult to estimate, and I am thinking about regional variations, but maybe £5,000 to £15,000 to get up to a first hearing. Schedule 1 has three stages, which are akin to a financial remedies claim: a first appointment, an FDR, which is a court-based form of resolution, and then a final hearing. Putting schedule 1 on the same level as the Matrimonial Causes Act would allow mediation processes and early advice to work a lot better.

A large number of cases of divorce in this country are settled by consent orders and, therefore, they never go to court on a contested basis. It is much more likely to happen if you were to change the remedy because cases rarely get off the ground because, generally speaking, the Child Maintenance Service has jurisdiction unless the earner—usually the father—is earning over £156,000 gross per annum, which is quite a high level.

Q55 **Kim Johnson:** £5,000 to £15,000 would be out of reach for a lot of women, particularly some of the women we have spoken about in terms of financial abuse. Should legal aid support certain cases?

**Graeme Fraser:** It is a question of funding and how it can be handled. In terms of funding cases, some people have to resort to litigation loans, which are more widely available in divorce cases than they are in schedule 1 cases, so I imagine access to funding would be far improved. Having said that, you will get fair reform only if you truly reform property law. Because property law is so narrow, in terms of the discretion, you need to have the overall reform so you can open up the whole remit of the claims.

Q56 **Jackie Doyle-Price:** Mandip, why is it important that the legal definition of cohabitation should avoid a comparison with marriage and civil partnership?

**Mandip Ghai:** The primary reason for this is that some cohabittees choose not to marry for specific social and ideological reasons. One example of this is that marriage is rooted in patriarchy. For these couples, comparing their relationship to marriage is unwanted and inappropriate.

Apart from that, describing cohabitants as people who live together as if they were married places marriage on a pedestal or implies that marriage is the ideal. That simply does not reflect the views of many parts of modern society.

What does living together as a married or civil partnership couple even mean? It means different things to different people in terms of how they conduct their relationship. The only tangible characteristic of a married or civil partnership couple is that they have registered their relationship and they have a certificate. Cohabiting couples do not have that, so it does not make sense to have that as the definition of cohabitation. We can look to examples of other definitions in law that do not refer to marriage.



**Q57 Jackie Doyle-Price:** That is helpful. You articulate my view beautifully about it being patriarchal. At the same time, it is part of our law that, if you choose to get married or have a civil partnership, you incur and establish those rights. Are we looking at a different set of rights for cohabitants? What would be your starting point for defining cohabitation?

**Mandip Ghai:** We don't agree that there should be a different set of rights. The same set of rights should be available to cohabiting couples because we want to achieve fairness in the circumstances. It should not depend upon whether they have decided to marry.

We can look to other definitions. For example, section 144 of the Adoption and Children Act defines a couple for the purposes of being able to adopt a child as two people who are married or in a civil partnership, or two people "living as partners in an enduring family relationship". This definition does not reference marriage and there is not a minimum time period, and it has not caused any problems.

Also, an example in the Human Fertilisation and Embryology Act sets out who can apply for a parental order. That includes married couples, civil partnership couples and "two persons who are living as partners in an enduring family relationship and are not within prohibited degrees of relationship in relation to each other". We think these would be a good starting point when considering the new definition of cohabitation.

**Q58 Jackie Doyle-Price:** That would not restrict it to people living in an enduring sexual relationship. A family relationship could be extended to describe, basically, a loving friendship or something. Would you see that?

**Mandip Ghai:** Yes. It says, "Living as partners", and I suppose it would depend upon how the courts interpret that. As far as we are aware, there have not been any issues so far in relation to interpreting these two definitions. The courts look to Parliament's intentions when the laws were enacted.

**Q59 Jackie Doyle-Price:** I guess that using the definitions, which relate to raising children, more widely for cohabitants could become more questionable in law. Graeme, what would be your starting point for defining cohabitants?

**Graeme Fraser:** I want to preface this answer by saying that a lot of people are worried about this in this country and they do not need to be. Where cohabitation law has been enacted—and I talk about our nearest neighbours, Scotland—I am told by practitioners that they can spot cohabitation when they see it. We should not get too overly concerned.

As the previous speaker said, it is possible to identify it from legislation. The starting point we tend to take is from social security legislation, because family case law has drawn from that over the years. The most important aspect is living together in the same household. Sharing daily tasks and duties, stability and permanence in the relationship and, in terms of eligibility, commitment is particularly important.



Also, the financial affairs of the couple are indicative of that relationship. In our interpretation on financial remedies in divorce, financial interdependence is a clear signal for cohabitation. An admitted and ongoing sexual relationship is crucial because that identifies it as a familial relationship.

**Q60 Jackie Doyle-Price:** There are all kinds of relationships. There are such things as platonic relationships between cohabiting couples.

**Graeme Fraser:** I acknowledge that but, for the purpose of introducing this particular remedy and for introducing cohabitation-specific legislation, it would cover this category of an unmarried couple. It is for opposite or same-sex couples, but it is looking at that family life as such. That is how we see it.

**Q61 Jackie Doyle-Price:** The criterion you mentioned that struck me was financial interdependence. As you say, if you can spot a cohabiting couple when you see one, would that be one of the primary indicators? What else would you expect to see?

**Graeme Fraser:** Certainly, from 25 years of practice, we always look for cohabitation because it is a factor in financial remedies. We look for financial interdependence, perhaps if a couple decide to get a mortgage together and put their names on a mortgage application. In the first session Anne Barlow referred to gas bills addressed to both of them. There are obvious things in sharing daily life. For example, they have the same wardrobe. They share their lives together. It gets spotted. People would not be shady about it, as such. That does not happen.

**Nazmin Akthar:** I will be the dissenting view. We have been quite neutral on this point, to be honest, because we agree that marriage and civil partnerships should not be placed on some sort of pedestal or that there should be any hierarchy. Generally, it is better if a comparison to marriage and civil partnerships can be avoided.

At the same time—especially hearing what everyone has said—the priority should be on ensuring access to rights. If the lesser of two evils is to have legislation drafted so that there is a comparison to make it clear who can and cannot be a cohabitee, that should be the priority. It is more important to ensure the rights of cohabitees than to figure out how to define them or how to compare and contrast them. That almost becomes an academic point, whereas our main purpose should be ensuring protection. I appreciate that is the dissenting view, but it is important to make that point.

**Q62 Jackie Doyle-Price:** That is helpful because it is looking at it from a different angle. We need to think about that if we are to distinguish between marriage and cohabitation.

Graeme, do you favour a minimum period of cohabitation as an eligibility requirement for couples without children?



**Graeme Fraser:** Yes, Resolution has been in favour of that and we take our stance from the Law Commission report and from other areas of law. At the moment, for example, the ability to claim financial provision on death appears after two years of cohabitation because that period allows the relationship to be established and is a clear marker. That is in a situation where you do not have children. Where you have children together, that is a clear example of commitment.

Cohabiting relationships are diverse. There are examples of people at the beginning of life—flat mates at university, for example—who share together to save rent. My view is that they probably would not be captured by a new scheme. On the other hand, a couple having been together for a couple of years is evidence of commitment.

The difficulty if you do not have that and if there are no children is that, when you go later on into what the legislation might look like—I am sorry if I am going into what you might want to ask questions about later on—our view is that there would be an opt out of this system. You might not know what you are opting out of.

From watching webinars about this recently, I have learned that was a problem in New Zealand. De facto couples did not know they were actually in a relationship. Clearly, that period of time is clear evidence of stability, permanence and commitment.

Q63 **Jackie Doyle-Price:** Perhaps I can put a similar question to Nazmin. We heard from Professor Rebecca Probert that, if someone has sufficient grounds for financial relief, there should not be a minimum cohabitation period. What is your view on that? Should there be any eligibility criteria for a legal definition in terms of a minimum cohabitation period? The evidence we have heard suggests that, frankly, if someone needs financial relief, it should not matter how long they have been cohabiting for.

**Nazmin Akthar:** We agree with that but, at the same time, we feel it would be difficult to push legislation without some sort of minimum period. It would be viewed that just because someone is your boyfriend or girlfriend, you have to give them money. Unfortunately, we have to think about the society we are in and the way people think, the way people control vulnerable individuals and how that would all be interpreted.

When we say there should be a minimum threshold, it should be a relaxed and broad minimum threshold. The Law Commission said something like two years in a relationship. We would even say six months of cohabiting. We want a low minimum threshold but with the option that it can be dispensed with if a judge feels it would be unfair not to allow it. We are asking for legislation where a judge could say that a person has rights from the get-go because of the evidence available and everything that has been seen in that relationship.



Q64 **Jackie Doyle-Price:** On the basis of what you have said, Nazmin, it feels that, in reducing everything down to a checklist of criteria, you will inevitably not cover every scenario because every relationship is different. I am attracted to your suggestion of the rights of cohabitants viewed distinctly from the framing of a couple. Mandip, what do you have to say about those issues?

**Mandip Ghai:** I am the only witness here who is clear that I think imposing a minimum time period will be a mistake. Any time limit will be arbitrary, whether it is six months, one year or two years. It will lead to harsh outcomes for cohabitants who fall short of the time limit but are in every other way in exactly the same position as cohabitants who are on the other side of the time limit. Relationships can be stable and established well before they move in together.

Many cohabitants make financial commitments right at the start, at the point of moving in together. They might purchase a property. They might take the responsibility of paying rent. They may pay for improvements to the home. They may give up their job or make other sacrifices at the point of moving in. It would be completely irrational and unjust for a cohabitant who has separated a few days short of the minimum time period not to be able to make a claim when someone who is in the same position a few days later can make a claim.

We have also heard of cases where people have sold their homes or spent all of their savings to pay off their cohabitant's debts or other financial liabilities at the point of moving in with them. When that relationship breaks down within the minimum time duration, there is no way of getting that money back. There is a real danger that perpetrators of domestic abuse, including economic abuse, will use the minimum time period to their advantage, by abusing their partners and ending the relationship just before the minimum time period to ensure that survivors have no recourse against them.

Again—I have made this point already—couples who have undergone religious marriage ceremonies but separate before the minimum time period will be in exactly the same position that they are in now. Minimum time periods are rigid. They are not responsive to individual circumstances and can lead to very unfair outcomes.

I know it has been suggested that we could leave this to the discretion of judges to set aside the minimum time period, but that could lead to inconsistency, and different judges may take different approaches. It is also helpful to point out that the Scottish definition of cohabitant does not have a minimum time period, and this has not posed any issues, as far as I am aware. I think we should look to the Scottish jurisdiction and learn some lessons from that.

**Chair:** Thank you. I am going to do something a little strange and suspend the meeting before we move on to the last section of questions, because we are expecting a vote bang on 3.30 pm. We will reconvene in



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15 minutes.

*Sitting suspended.*

*On resuming—*

Q65 **Chair:** Thank you to the witnesses for the evidence so far. I want to wrap up with some questions on the Law Commission's recommendations way back in 2007. I am very conscious that time has moved on enormously since then, and we have seen way more cohabiting couples in the last 14 years. Nazmin, you gave evidence suggesting that you disagree with the Law Commission's recommendations for an opt-out scheme. Can you expand on why that is?

**Nazmin Akthar:** This is because of the work that the Muslim Women's Network UK does, working with Muslim women who are in unregistered marriages. The vast majority of them were fully aware that the Islamic marriage they were about to enter into gave them no legal rights, but they still did it because of various other factors. A lot of it was to do with pressure, coercive control, abuse and various other factors.

For example, many of our service users have told us that they knew they would not have any legal rights by entering into an Islamic-only marriage, but they felt they had no option but to agree to that because otherwise no one would have married them. Being single at the age of 25, for example, carries too much stigma, and they were getting pressure from their family and extended family members. There is a lot going on that forces women to feel they have to agree to these kinds of demands.

Another key reason that keeps coming up in many of our cases is where they say they were emotionally manipulated into agreeing to have an Islamic-only marriage. For example, they were asked, "Why do you think this marriage is going to fail? You already think it is going to be a disaster from the outset. That means you are only marrying me for money." Those kinds of manipulative comments are made to make the woman feel guilty about even trying to secure her financial and legal rights, and a lot more goes on around that.

To give you a specific example, in one case the woman was told, "You clearly have no faith in God and are not a good Muslim woman then. If you had faith in God, you would know that God will ensure this marriage is a success." Unfortunately, this Islamic marriage did not work out and she found herself without any legal remedies. She had been a victim of abuse and a lot of coercive control, and there were a lot of other issues involved. Unfortunately, the impact of it also caused her mental health issues.

There is a lot involved in how these unregistered marriages, these Islamic-only marriages, come about. We are already seeing an opt-out in a different context almost, in the sense that they know they could have a legal marriage and they are opting out of it by staying in an Islamic-only marriage. We feel that if cohabitees are given the same option, so that



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they can opt out right from the outset, we will see the exact same issues replicated again. We will see coercive control, domestic abuse and emotional manipulation all over again.

We feel there is already an opt-out built in, in the sense that if a couple at the end of their relationship genuinely do not want to have any rights, do not want to make any financial claims, they have the option to do that mutually themselves, without going to court. Nobody is going to force anyone to claim their legal rights if they do not want to.

Why allow that legal loophole, allowing abusers to take advantage of vulnerable individuals at the beginning of a relationship, and to say, “No, we have to opt out or we are not going into this relationship”, when it isn’t necessary? Those who do not want the legal rights and do not want to exercise them do not have to. That is why we feel the opt-in and opt-out options are not viable. All it will do is replicate the issues again and again.

**Q66 Chair:** Mandip, do you agree with that, or do you see that safeguards could be put in place to protect vulnerable people?

**Mandip Ghai:** We can see merit in arguments both for and against an opt-out system. Ultimately, we have decided that there should be an opt-out system, because we understand that there will be many women who, together with their partners, feel that the new provisions on cohabitation are not right for them, and it is important to respect their autonomy.

We think it would be better to have a wider definition of cohabitation—as I have been speaking about today—which includes as many cohabitants as possible to ensure that they are eligible to make a claim if they want to, but with an opt-out system for those who do not want it, rather than a narrow definition of cohabitation that excludes people, and no opt-out, which forces people to be part of a scheme that they do not want to be a part of. However, we are concerned about the potential for abuse of the opt-out system, and that women in abusive relationships may be coerced into opting out.

We propose that there should be some caveats and safeguards to the opt-out system. The decision to opt out should be an informed one. All parties should receive legal advice on the implication of opting out. That should be required for a valid opt out, and legal aid should be available for those who cannot afford to pay for this advice. The scheme should be flexible, and it should be possible to opt back in at any point during the relationship. The court should have the power to review and revoke decisions to opt out in the interests of justice and fairness.

In our written evidence we have given examples of when the courts might exercise that power, which includes where the formalities of opting out have not been followed. For example, where the decision is made without adequate legal advice, where the decision is not taken by parties giving their free and full consent—that covers the kinds of situations that



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Nazmin was just talking about—or where certain events occur that result in a significant change of circumstances, such as the birth of a child, or where a significant financial contribution is made.

I agree with Nazmin's point that even if people don't opt out, if people are eligible under the scheme, they don't have to make a claim. I was going to make a similar point in relation to the definition of cohabitation—going back to the students' example—just because people are eligible under the scheme does not mean that they will make a claim, and even if they do make a claim the courts may not make the orders that they are seeking. They will look at what is fair in the circumstances. Overall, we think an opt-out system would be helpful, with certain safeguards.

We envisage that there may be some couples for whom it is not as simple as opting out. They may want to keep some entitlements and not others, or they may want additional entitlements. These couples might create a cohabitation agreement, or a cohabitation contract, and advice and assistance should be made available so that cohabitation contracts are not limited to those who can afford to pay for them, and to ensure that parties are not misled or coerced into signing them. There are similar arrangements for married couples in relation to prenuptial agreements.

**Q67 Chair:** Does that not just take us back to the situation where there needs to be more information and better advice to couples ahead of cohabitation? It strikes me that if there has to be advice on an opt-out, if courts could potentially override an opt-out agreement, we are almost back to square one and this comes down to an imbalance of information, knowledge and power.

**Mandip Ghai:** I suppose the difference with reformed cohabitation laws is that the law would be there to protect the more vulnerable parties, and they would have to get advice to opt out. Right now the law protects the less vulnerable party. We still think it is important that there is reform to cohabitation laws, but with the option for people to opt out if they have that advice.

**Graeme Fraser:** I am broadly in agreement with Mandip. I want to emphasise, in terms of the development of family law—and this is something that is worldwide—individuals wanting to express their autonomy is something that we feel, and the courts here and internationally feel, we should give respect to. If people want to assert their autonomy and want to opt out of this and make their own agreements, we say that should still be possible under the new legislation.

The important emphasis in the new legislation is that opting out, rather than opting in—which is what you have at the moment—protects more people. There is a safety net. If there was an opt-out, there would still be the safeguard check of manifest unfairness. There would be a buffer there. We are well accustomed in this country to seeing nuptial agreements. It has become a common part of our work as family lawyers



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over the last 11 years or so. Generally, they work when people want them.

From personal experience, I don't see the coercion and control behind it and generally courts are trying to uphold them. If they do go wrong, there is a level of protection. What would happen would be so much better than what we have at the moment. Australia is an example of where they have opt-out agreements and they are working quite well.

**Nazmin Akthar:** I feel we all have the same aim of protecting victims of abuse, but we are looking at it from different starting points. I understand what Mandip is saying about opting out and then having safeguards in place. For us, we prefer not to have the opt-out and to look at a minimum threshold instead. To look at that first step to ensure that, as long as you fall within the criteria and/or the judge decides it would be unfair not to allow them, anyone is able to be part of it. As I explained, this is because many people knowingly don't enter into a legal marriage because of various factors.

Perhaps the biggest example of that was last year with the case of Akhter and Khan. In that case, the woman was in an Islamic-only marriage, despite the fact she was a solicitor herself. She knew she had no legal rights and she eventually wanted to legalise her marriage, but her husband refused to let her. They were both professionals. They were both high earning and they had children together and everything. My concern is that, when we start looking at the opt-out system and whether they were informed, whether they got legal advice, it is quite easy to say, "Yes, you were given all the information you needed. You consented to the opt-out and therefore you don't have rights."

For the bigger picture, the pressures that are involved—especially for south Asian and Muslim women in that context—are not always taken into account. That is why we are so hesitant with this opt-out system, because there is so much more to unpack and it should be decided on a case-by-case basis.

Mandip made a comment about having a minimum threshold where a judge can exercise discretion. Will a judge get it right every time with an opt-out system? As we all know, circumstances change. I feel like so much more work would be involved if you have to assess the opt-out system, whether somebody had opted out and whether discretion should be applied to revoke the opt-out, rather than sticking with a simple process of looking at the minimum threshold.

**Lisa Ray:** This is about balance of power and having knowledge of your entitlements if you are a cohabitee. When you move into a house together and you are not married, you can have an agreement with your partner on your share of the house, for instance. That is a massive asset to have. Another massive asset is your pension. It is really important that we make sure there is clarity on entitlements for cohabitees in pension schemes.



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I am a cohabitee, and when I was preparing to come here I checked back on my own pension situation. I thought I had made provision for if I did not get married or have an agreement with my partner, but it turns out that 15 years of my pension contributions do not count towards any pension that he might get if I predecease him. I did not realise this. It means that any survivor pension he gets from me is reduced to a third of what it would have been if we were married or in a civil partnership.

We have had to sit down and have a discussion about whether we decide to do that, and why should we have to? The point to learn is that we really need to get clarity out there on people's entitlements when they should have a share of these quite big assets in their lives.

**Q68 Philip Davies:** I want to pick up on what one or two people have said. Graeme, in effect, you are arguing we should have an opt-out system instead of an opt-in system, in basic terms. Is it not sometimes a bit dangerous for the state to presume that people want something even though they have not said they want it? The state is going to presume they want it, because it thinks it might be in their best interests, unless they actively opt out. Is that not a dangerous way for the law to proceed?

**Graeme Fraser:** There are two things I want to say about that. First, if there is new law, and when there is existing law, public education and law need to go together. It is essential for people to be educated. One of the benefits of what I have heard this afternoon is that this Committee is actively looking into how people can be better informed. That is a really good aim for this Committee.

To come back to your point, the difficulty we have is that the demographics have changed in this country. We now have nearly 7 million people cohabiting. Nearly 50% of all children are born to unmarried couples, and it will very soon be over 50%. That is a significant number of people in this country. Our view, and what we have seen in practice, is it is just wrong—it is unfair and unjust—for those people to be punished because they are not married. That underpins why there needs to be law that protects those people.

Some people are in that position because they are in complicated situations in family life, or they have delayed the decision to marry. The point at which people decide to marry has gone to later in life. As I said earlier, coming to see me is often a distress call. People don't particularly want to go and see lawyers, but it happens because something interrupted what was going on in their life. The fact is that, whatever policy makers and Governments try to do, what people decide to do socially is distinct from the laws you make to deal with the society you currently have. That is the situation I feel we are in.

**Q69 Philip Davies:** Mandip, I want to pick up on a couple of things you said. It was before the Division, so correct me if I am wrong—my memory might have failed me. I think you said that cohabiting couples should have exactly the same rights as married couples. I accept that there are



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lots of people who are not big on marriage and don't particularly believe in marriage, but there are a lot of people in this country who do and who think it is an extra commitment to go forward and get married, and who think that should be recognised in law as well. What would you say to those people?

**Mandip Ghai:** That is their view, and I don't think it is right that their view should be enforced on people who don't share that view.

Q70 **Philip Davies:** You want to enforce your view on those people who do not agree with you. What is the difference?

**Mandip Ghai:** You ask why the state should force obligations and responsibilities on people; in the same way, why should the state force on people the view that marriage is what couples should aim for? I do not think it is right that, because some people think marriage is the right course of action, it should be forced on people who do not think it is. That does not mean those people should not have the same protections available to them when relationships break down, to protect them and their children.

Q71 **Philip Davies:** You said that many people do not get married for understandable reasons. They think it is part of the patriarchal society. I am sure that is right, that people do think that. Equally, some people may not get married because they don't want the commitment of being married. They don't want to have legal obligations placed upon them. They might be prepared to live with somebody and see how it goes, and all the rest of it, but they don't want it to be taken that they then have to give up half of everything to them. They are avoiding getting married because they do not want to do that. What would you say to those people? You would force them, in effect, and treat them as if they had made the commitment of marriage, even though they were specifically avoiding that.

**Mandip Ghai:** Yes. That is why we have suggested that there should be an opt-out system for people who do not think the reforms in relation to cohabitation law are for them. Also married couples know that along with marriage there are certain claims that can be made if the marriage breaks down, and that is why they enter into prenuptial agreements. I think over time the same will happen with cohabiting couples. They will learn that there are now rights for cohabiting couples, and they can decide to opt out or enter into cohabitation contracts, if that is what they want to do.

Q72 **Philip Davies:** Finally—again I apologise if I am wrong, and please correct me if I am—I think you said you do not believe there should be a time limit for the definition of a cohabitee. One of the reasons you gave was that you might fall a few days before the limit and it would be unfair. Where do you draw the line? If there was no time limit, somebody could say, "We were just about to move in together and I have now fallen foul of this rule. We were planning on moving in, but we had not quite made



it.” What would you say in that case? Should there be a special exemption made for those people? Where would you draw the line? Can somebody say, “We were just about to move in,” and that should count?

**Mandip Ghai:** It depends on the definition of cohabitation. If the definition includes that they should be living together—which I assume it probably will—those cohabitation laws would not be available to them. It may well be that there needs to be other options available for them, but they would not fall under the cohabitation laws.

**Q73 Philip Davies:** You would draw the line at actually living together? Some people might fear that, once you start down this road, it will then be people who are in a relationship even though they are not living together. Some people might say this is the thin end of a wedge. Would you say it has to be people living together, and once that has been achieved it is the end of the matter? Or would you then say, “Hold on a minute, now we have achieved this we want to extend it to people who were in a relationship, even though they were not living in the same house”?

**Mandip Ghai:** What we are talking about here is in relation to people living together. There may be situation that needs to be addressed for people who were not living together, depending on what has happened. For example, if there has been some sort of abuse, or sometimes we hear of people who meet on dating websites and they are coerced out of huge amounts of money. Those are issues that need to be addressed, but I do not think they would fall within cohabitation laws.

**Graeme Fraser:** I want to make some follow-up points. One thing we have to appreciate about cohabitation in modern Britain is that many of these relationships are committed. The people who come to see me have been in long, committed relationships. They are the ones we are really very concerned about.

The other thing we are concerned about—I can tell you about this because the law reports are littered with this, and the newspapers are as well from time to time—is there is sometimes an element of mischief in this situation where men may deliberately avoid the commitment of marriage and then take advantage of the imbalance. In those situations, I say there is an urgent need for legislation so that those people take personal responsibility and there is a sharing of the financial commitment between the family, so that the family is properly catered for. Only legislation is going to solve that problem.

**Q74 Chair:** Do any of our other witnesses want to cover any areas they feel we may have missed? Is there anything any of you would like to add?

**Nazmin Akthar:** There is one point I want to make. Unfortunately, I do not have a solution but I want to highlight it. One of the key issues I feel we will have to figure out is how to deal with the issue of polygamy in Islamic marriages. We have cases where one man has an Islamic marriage to more than one woman and shares his time with both of



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them. Which one do the cohabitee rights apply to? We do not have the answer, but it is something that needs to be considered.

Out of those two women, one of them will not have any rights and the other will, depending on the definition. Especially, for example, in the case of pensions or inheritance, I assume only one of these women would be able to claim a right to the state pension. We need to take into account the fact that there could be up to four women married to one man through Islamic-only marriages.

This is one of the reasons why we are so keen to change the laws around marriage itself, so that you cannot just enter into Islamic-only marriages. You can have an Islamic marriage only if you have a legal marriage, to stop cases of polygamy. It is leading to a lot of abuse and unfairness, and it is creating a huge tax burden because many of these marriages involve women who are not being supported by their so-called husband. They are all on benefits, and in fact they are usually supporting him. There is a lot to consider here, which needs to be taken into account, with these polygamous marriages. The law needs to find a way to figure out what the fair process is there.

**Lisa Ray:** I want to make you aware that we have a member who was a British Telecom employee and who has been cohabiting in a very committed relationship for 20 years. He is trying to make sure that his partner will inherit a pension from him if he predeceases her, and he has been working really, really hard with the trustees of the pension scheme to get some sort of assurance. About 80% of people rely on trustees' discretion in order to secure a cohabitee's pension, or a partner's pension, and he cannot get that certainty from the trustees of the scheme. Linda will have to fill in a lot of forms when he dies to make sure she qualifies as somebody who is entitled to a pension that he has paid for.

What we are really asking for here is clarity on the entitlement in pension schemes for cohabitees. We want clarity on consistency of evidence, because some schemes ask for more than others. Some people do not have to rely on the discretion of trustees. The other, of course, is pensions for life for those in schemes who remarry or cohabit, for all the reasons I outlined earlier about the impact on other services, like health and finance. That is a campaign in the civil service scheme and the police scheme at the moment. Thank you very much for letting me make you aware of that.

**Chair:** No problem at all. If no other members have questions, I will take this opportunity to thank the witnesses for their evidence this afternoon. It has been hugely appreciated. Sorry we had the hiatus in the middle of it. Thank you.