

# Women and Equalities Committee

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

Wednesday 1 December 2021

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Members present: Caroline Nokes (Chair); Alex Davies-Jones; Jackie Doyle-Price; Kim Johnson; Bell Ribeiro-Addy.

Questions 103 - 123

### Witnesses

**I:** Elizabeth Darlington, Barrister at Parkland Plowden Chambers and member of the Family Law Bar Association, and Michael Horton QC, Queen's Counsel at Coram Chambers and member of the Family Law Bar Association.

**II:** Harry Benson, Research Director at Marriage Foundation, and Baroness Ruth Deech.

Written evidence from witnesses:

[The Family Law Bar Association](#)

[Marriage Foundation](#)

### Examination of witnesses

Witnesses: Harry Benson and Baroness Ruth Deech.

Q103 **Chair:** Good afternoon and welcome to our second panel for this afternoon's evidence session in our inquiry on the rights of cohabiting partners. I welcome Baroness Deech and Mr Benson to the evidence session. Thank you very much for coming along.

I will start with a question to Mr Benson. Please very briefly introduce yourself and the organisation that you represent. Then my question is: what evidence do you have that extending legal rights to cohabitants in England and Wales might undermine the institution of marriage?

**Harry Benson:** Thank you very much indeed for inviting me. It is a pleasure to be here. I am the research director for Marriage Foundation, which is a national charity. We are headed up by a former High Court judge, Sir Paul Coleridge, and we attempt to be champions for marriage using data empirical evidence as much as possible. I am also doing a PhD



## HOUSE OF COMMONS

at Bristol University, at the School of Social Policy, on the subject of why the rich marry and the poor do not. Of course, it is a gradient more than an absolute one or the other. That is an interesting question that does not appear to have been answered in the academic literature just now.

The essence of my argument for why we need to be extremely cautious, I believe, about giving marriage-like rights automatically to cohabiting couples is because of the risk of undermining commitment. There are several aspects of commitment that happen when couples get together and make a decision to be together, they make a plan to be together, they get social affirmation and social accountability. These things are necessary ingredients that go within marriage. They do not necessarily go with cohabiting.

The reason why we need to be careful is that cohabiting is essentially a gigantic new social experiment. We did not have cohabiting really anywhere in the world until the 1960s, 1970s, until birth control let the genie out of the bottle and made it a possibility. Therefore, we need to tread quite carefully before suddenly equating marriage and cohabiting as if they are the same. I know the common parlance is to say "living together as if married" but the outcomes look very different. There is an awful lot of research on that that I could go into if you like.

Q104 **Chair:** It would be helpful if we could have some evidence as to why cohabiting couples, in your view, are less committed.

**Harry Benson:** Not always less committed, of course. Some cohabiting couples do perfectly well. I will give you an example. I and my colleague, Professor Steve McKay at the University of Lincoln, did a study using data from Understanding Society, which is also known as the UK Household Longitudinal Study. We looked at parents with 15 year-olds and we tracked back through their marital status. We found that the break-up risk for couples who married before their kids were born was 24%. That is basically the divorce rate, 24% from birth to age 15 for couples who were married. For couples who never married the break-up rate was 69%, a gigantic leap.

You can control for anything you like. You can take into account age, education, all these other factors. You never quite get rid of that vast gap. I think there are three reasons why marriage might have a causal element to it. This is a debate that is always going to run and run. Association and cause are always difficult to disentangle. I think there are three reasons why marriage has a causal element to it.

The first thing is that you have to make a decision to engage with the process of marriage. When we make decisions we tend to be more likely to stick at things. We put up with the bad things and we tend to enjoy the good things more. I could give all sorts of examples of that. If we went out for a walk this afternoon and said, "Right, let's go for a walk", we are making a decision to go for a walk. If it starts raining we will probably keep going and enjoy the walk. If we say, "Let's see how it



## HOUSE OF COMMONS

goes" we are less likely to keep going if the heavens open. Therefore, we are more likely to stick at things when we make decisions.

The second thing is that when you get married you make a plan. You ask that question: will you spend the rest of your life with me? That puts couples on the same page once they have agreed that. It is a really important step because it produces real symmetry of commitment. You both know exactly where you stand. You have signalled to each other what is going on and there is a real difference. That does not necessarily happen in cohabiting. It can do, of course it can, but it does not necessarily happen, and it may be one of the reasons why cohabiting couples are not necessarily as successful and why only a minority of them do so well because they do not start with a plan.

Very few successful businesses did not start with a plan. It is extremely difficult to achieve something if you do not have a plan at the beginning. That is very important. There is also an interesting side issue with cohabiting that there is an awful lot of ambiguity that happens in relationships. You want to get rid of ambiguity to provide the kind of security that gives people confidence in their relationship. That is mostly what marriage is supposed to do. It removes ambiguity and gives you certainty. When you have ambiguity in a relationship you often have one person who is less committed.

I heard your previous panel talking about power arrangements in a relationship. Power in a relationship rests with the less committed person and the less committed person more often than not in cohabiting couples is the bloke. That is your modern patriarchy. It is not in marriage. Marriage was yesterday's story and undoubtedly the law was antagonistic towards women in the past. It did not favour women. It favoured men, and we all know that.

That was yesterday's story. Today's story is you find your patriarchy, you find your ambiguities, your asymmetries, your power arrangement are the men in cohabiting relationships. Therefore, normalising cohabiting more than it already is, trying to pretend that there is no longer any clear blue water between marriage and cohabiting I think is a big risky step, because we risk undermining the foundations of commitment. I have not even talked about the whole thing of the celebration itself, which provides social affirmation and social accountability as well. Having all your friends around for that great big decision makes a huge difference to helping people stick at things.

Those sorts of things are all important and if we automate the process we risk undermining those things and increasing the number of cohabiting couples and therefore increasing the level of family breakdown.

Q105 **Chair:** Can I take you back to a comment that you made right at the beginning—apologies for my own ignorance around this—that birth control is the reason that we saw an increase in cohabitation?

**Harry Benson:** Yes.



## HOUSE OF COMMONS

**Chair:** Does that hold true now we know that one of the fastest groups of cohabitees are older people?

**Harry Benson:** That is part of my PhD. I have just been looking into exactly this. I am looking back through parish records going back to the 16th century to see what happened. There was plenty of sex outside of marriage. There was plenty of illegitimacy or what they rather rudely called bastardy. There wasn't was very much cohabitation of couples living together in the sense that we understand it now.

People slept together, they clearly did, but most births took place within marriage. Marriage and childbirth were deeply linked together. It is only once you get past the 1960s and 1970s that birth control became a thing. I think it was initially available to married women and then subsequently to unmarried women. That then made living together much less risky because, obviously, before birth control you had the risk of getting pregnant and you needed to think about whether you were going to turn that into a marriage at some stage. People were a lot more careful then. The big change has been that society has normalised cohabiting now. The question is whether we should be normalising the law about it as well.

Q106 **Chair:** Thank you. Baroness Deech, do you have anything that you would like to add to the question of committed relationships? We have heard from many of our witnesses that there is plenty of evidence of committed relationships among cohabitees.

**Baroness Deech:** Yes. As Harry was talking, I remember there was a study by the University of Denver that showed that men in a relationship did not feel commitment—whatever that is—until they had signed a piece of paper of one sort or another that they had actually accepted the obligation, whereas women saw commitment arising from moving in, sharing a bathroom and sharing a home. There was a mismatch in what they saw.

There is also a paper by Gillian Douglas about commitment. If you think about commitment, it does not mean anything. Commitment lasts as long as commitment lasts. If you decide you are no longer committed you are no longer committed, whereas an obligation, a legal or moral or even religious obligation is of a different nature. I do not take quite the same moral stance as Harry. I have never argued that recognising cohabitation would undermine marriage. I do not feel strongly about that. People still see marriage as a good thing and, of course, as Harry said, children are much more likely to have a stable parental relationship if they are married, but I do not take the moral line on that.

Q107 **Kim Johnson:** Good afternoon, panel. My first question is to Baroness Deech. What are the merits of maintaining the current system for resolving disputes between cohabitants?

**Baroness Deech:** I see, maintaining the current system. The current system is quite sketchy. It is based on property law, which seems to me fair enough because that treats the cohabiting couple like it would any other two people in the population.



## HOUSE OF COMMONS

I look at Mumsnet every day. There was a question recently from a woman who said that she had put a lot of money into the shared home that they had and now they were breaking up what was going to happen to her. I did not answer, but the answer would have been that if she saw a lawyer—and of course, unfortunately, these things end with seeing a lawyer, that is another story—she would be entitled to such share of the property as she had actually paid for. That would be the case if our children set up home with a fellow student, for example, with a contribution from mum and dad or the other side.

If two people share a property they are entitled to reclaim that share. Beyond that, there are a few fringe elements, particularly on death. We see some very unedifying cases where the cohabiting woman—it is usually a woman—is making a claim from the estate of the deceased, which she is entitled to do. Of course, she is then pitted against the children of the first relationship and, indeed, the widow or maybe a wife. We should not think that men typically just have one cohabitant or one wife. Some of them have both.

Then, as far as benefits go, there are benefits and so on, but you have to remember that if there were a law whereby men typically—I am using “men” in a stereotype fashion—had to pay maintenance to the women they had cohabited with and they are at the benefits level, universal credit would take that maintenance, pound for pound, so it is wasted. Whereas, if, as I strongly urge, all the assets and force of the law were imposed to get maintenance and property for children that would be kept.

I find it quite extraordinary that all the lawyers I have talked to about this—and I have been writing and talking about it for over 40 years—are very concerned about the position of women and the litigation that would induce, but I cannot get anyone to care about the position of children. A week or two ago, we heard that the Child Maintenance Service has about £2 billion-worth of uncollected money. There are huge debts owing typically from fathers to their children and no one seems agitated about this.

If we are going to have a cohabitation law, which I do not think we should have, I would like to see the entire strength of that law brought to bear on the parent—usually but not always the father—to transfer property and maintain his children right through to the age of 21. As we all know, children do not leave school at 16 any more and become self-supporting, if we are lucky not even at 21. Absolutely, I would like to see the strongest possible force of the law finally brought to bear on child poverty that way. Those are the people who need maintaining. It is the children not the women, in my view. There is an unbreakable relationship and obligation between the parents and the child, however that child comes into the world, and those children need to be supported.

**Q108 Kim Johnson:** Thank you, Baroness Deech. What do you think are the main challenges of developing a legal definition of cohabitation?



## HOUSE OF COMMONS

**Baroness Deech:** They are manifold. What is living together? We all know about couples. We have read about couples where he is in one house, she is in another or they spend a couple of nights a week together or they have a long-distance relationship or they live together for a while and then they break up. It is very hard to define. If you say two years or three years, there will be a whole new cohort of disappointed people who say, "I didn't quite chalk up the three years but looking in my diary I can see that we did have some time together".

You will open up a whole new glorious field for the most aggressive lawyers in: what is the length of that relationship; what is that relationship? Then, what about relatives? What about sisters who live together? What about agreements that may or may not have been made between the two? Who owns what? There is an absolute glorious field for lawyers.

I love lawyers, I have regulated them and I am married to one; I trained myself. It is said that every new piece of legislation in the family law field results in a good 10 years of fresh litigation by the lawyers. I have a whole dossier of cases—not about cohabitation, a few, about prenups and divorce—where the legal costs eat up half, three-quarters or the whole lot of assets.

Going back to what I said earlier, I think it is shameful that money should be spent on legal fights when that money should be going for the children, if there are any. Whatever system we have must be one that avoids that kind of fight. Any definition that you come up with will open the doors for blackmail. Any time a couple split up—whatever that means—she might typically say to him, "Well, you owe me X, Y, Z" and, rather than go to court, he will pay up or it will lead to expensive litigation. It sends a very bad message to women, but that is another topic in my view.

Q109 **Kim Johnson:** Why do you think a new cohabitation law would put back the status of women?

**Baroness Deech:** The underlying principle is full of stereotypes. It is posited on a notion that any woman who lives with a man is somehow disadvantaged, and I do not buy that. I empathise with another group that the law tends not to think about, single women, women with children and the father just isn't around. The law puts its whole force behind the woman who happens to live with a man, and you get all these arguments about, "She gave up her career and she took care of the house" and so on. First of all, it will not do anything except for women who are living with very rich men.

Secondly, there is this kind of 1950s notion that a woman who lives with a man is thereby condemned to a life of housewifery, servitude and disadvantage. Many women who live with a man may well have given up a job, either because they agreed or they wanted to and, if it is a stereotypically not very well-paid female job, maybe in retail or in offices, it is very hard to argue that they are losing anything because if you live



## HOUSE OF COMMONS

with someone he is keeping you. He is housing, clothing and feeding you. I think sometimes we underrate the contribution that stereotypically men make to keeping the family going by going out every day and earning a living. Therefore, I think only very well-off women would benefit.

I have this little vignette that I often offer when I speak. Imagine three sisters. One is very pretty and she lives with a well-off footballer. One marries a vicar, works terribly hard and lives in tithed property and works with him. The third one never marries. She stays at home and looks after her aged parents who do not leave her anything in the will. Why should the pretty one who lives with the footballer get—as she probably would—a lot of money? The other two won't. It sort of rewards women for living with someone who is pretty well-off, and I do not like that. I think you have to justify that and I think you can only do it where there are children. If there are children, pour your largesse out on them. I do not think a woman should think, "Well, I have lived with this man and therefore I need never work again. He owes me something".

Q110 **Kim Johnson:** You touched on the fact that there is an imbalance between men and women under the current law. What is your solution to making some changes to that?

**Baroness Deech:** I do not think there necessarily is an imbalance. My daughter's generation are well educated. They have good careers. I am sorry to say sometimes they do not seem to be able to get a man to commit. There are many young women who have lived with a man for many years and he will not marry her. She is earning well. You have to remember it works both ways. I think the disappointment and anger of a well-off woman who finds not only that her man friend has left her, will not marry her but is making a claim, should not be underestimated.

If you think there is an imbalance—and I am not sure that there is—the only solution is, of course, more publicity, but also getting people to understand that they need to sign papers when they buy a house together or perhaps make a contract. I would like to see the day when every WH Smith has cohabitation contracts—as they do in the States—and get people to think about this. Many civil law countries have contractual relationship and, after all, today you can cohabit. You can have a civil partnership. You must be quite unthinking just to casually live with someone and not consider what sort of partnership you might have.

Therefore, I am not sure that I buy this power imbalance at all. I think it is high time we stopped thinking that somehow women's lives are wrecked by living with a man; no one ever expects them to work again. My generation fought to get careers and opportunities and political positions. It grieves me to see that there is still a strong strain of thought nationally that once a woman is living with a man—married or not, mother or not—she is thereby exempt from the labour market for ever more.

Q111 **Kim Johnson:** I do not think that is the situation for many working women at the moment.



## HOUSE OF COMMONS

**Baroness Deech:** Exactly, and they won't get much, will they, if they live with someone?

**Kim Johnson:** They are all my questions, thank you, Baroness Deech.

Q112 **Chair:** Can I pick up on something you just said about people who cohabit being unthinking? Some of the evidence that we have taken indicates that there is a very strong assumption that they are already protected by the common law marriage myth. If we are going to help—in your words—the unthinking, how should we go about explaining better to them that they have no such protections?

**Baroness Deech:** This is a big problem throughout family law. Many of the proposals that have been put forward for the protection—whatever that means—of cohabiting people depend on opting in or opting out or knowing what the law is. People do not know what the law is. I used to run the All-Party Parliamentary Group on Family Law in the Lords. One thing that many members of the public came up with was, "Why doesn't somebody tell us what the law is? Why can we not have a booklet when we get married telling us what the law is?" You have a widespread going beyond family law situation, people not knowing what the law is.

As for protection, what does that mean? I think the protection that many women and children want is that the man typically stays there and fulfils his commitment to the children and the woman. Protection by way of money is not going to mean a lot if those people are living in a council house and they are on benefits. What does she think she will get? She will get next to nothing. The only one who will get something—and it is true in divorce as well—is the woman who is married to or living with a reasonably or perhaps pretty well-off man, so I am not sure about protection and quite what that means.

Q113 **Chair:** What about the circumstance where a woman who has contributed to not necessarily the cost of a property, not necessarily the mortgage, but has contributed to the running costs? In law at the moment there is very little opportunity for her to see the recoup of any financial contributions she has made.

**Baroness Deech:** Leaving aside property, as you said, if she has contributed to the running costs so has he, and she has benefited from that. She is living in a house. She is helping to pay for the heating, the food, which she could have done if she was single. I think most women know implicitly they are rather better off living with someone than being on their own. If you live on your own you would also have to contribute, wouldn't you? You would have to pay for the heating and the food and all the rest of it. Young single people find it difficult. Life is expensive. I do not see that you should necessarily be contributed for paying, let's say, something towards the mortgage or the heating bills of a house or residence that you are living in. You do that in life wherever you are.

Q114 **Bell Ribeiro-Ady:** Baroness Deech, you touched on the issue of the children a number of times. Professors Anne Barlow and Gillian Douglas have suggested that cohabitants with children should be treated as if



## HOUSE OF COMMONS

they were married. How do you respond to that suggestion?

**Baroness Deech:** My answer to that is—albeit, that the divorce court treats women with children and without children just the same—full use of the Children Act 1989, so that when those people break up there is the power of law under that Act to transfer property for the children, money, maintenance all towards the children. Of course, the mother will be living in that house and benefiting from the maintenance, but it would satisfy me as far as a matter of principle. That would be an obligation to house and maintain the children and their mother, assuming she is the carer living with them. Therefore, it would all be directed towards the children and I think that would be a great improvement in the situation of children and the massive child poverty that we face.

Although I am not an expert, one hears the deprivations of children who have no father, married or not, who lack a role model and have no relationship with their father. I would really like to see that parental obligation reinforced, and the vehicle for that is the Children Act.

Q115 **Bell Ribeiro-Addy:** You do not see that there is any other scope for using the types of provisions that are available in divorce law, to be able to make sure that children—

**Baroness Deech:** Only towards the children, not towards the women. Otherwise, you simply have a situation where, if you live with someone, you are entitled to money, whether you are same sex or a man or woman or whatever it is. I find that very odd.

I got involved with the case of the Burden sisters. Have you heard about the Burden sisters? They were two elderly ladies who must surely be dead by now. They lived together unmarried for close to 80 years and they went in the end to the European Court of Human Rights. They said, “If we were able to form a cohabitation contract or a cohabitation partnership we would have tax relief when we died. As it is, although we have lived together and we can’t imagine a greater commitment than living together for 80 years, we get none of the tax breaks that a man and woman who have cohabited, have been together for a couple of years, would get.”

That struck a chord with me. Family relationships don’t get treated with the same largesse, if there is largesse, as so-called intimate relationships. The law focuses on two people who are having sex, or are presumed to have had sex, and that apparently is much more worthy of money than a blood relationship. I think that needs some explanation.

Q116 **Bell Ribeiro-Addy:** Thank you. This question is to both of you. If cohabitation law reforms proceed, what do you think should be the minimum level of legal protection that exists for cohabitants? There would have to be something.

**Baroness Deech:** Whatever existed, I think they should have the right to opt in as opposed to opting out. I bear in mind Article 8 of the European Convention on Human Rights, which says that everyone has



## HOUSE OF COMMONS

respect for their private life and family life. If two people don't get married, I think it is wrong to force marriage-like structures on them. We are all against forced marriage, aren't we? If two people live together and there is litigation, why should we treat them as if they are married? That is not what they were, not what at least one of them wanted to be. I think the minimum would be, as I have explained, a generous law towards the children and, of course, the existing property law. If she paid for a quarter of the house or three quarters of the house, she should have whatever she has contributed. Other than that, the children. If goes beyond that I think it should be an opt-in legal situation, that people should choose it, not that they should be expected to opt out. As has already been mentioned, they may not know the law.

I also think that it would be very unpopular with members of the public. I included in my written submission part of my little collection of blogs and comments that you get in *The Guardian*—not *The Daily Mail* but *The Guardian* and *The Times*—whenever I or someone else talks about cohabitation. Members of the public all write in and say, "If we are going to have a two-year limit, I am walking out before two years is up. I have kept this woman for two years, I'm not putting up with it". I don't think it would go down well with the public. It has been knocked around for 40 years or more and there is no public pressure for it. The lawyers want it, for reasons I have explained, but I have never had a letter from a member of the public saying, "We need a cohabitation law". I have lots of letters asking for changes in divorce law but I have never heard from anyone in the public saying, "I want a cohabitation law".

**Harry Benson:** I go back to something that was said earlier, which is that I am not in favour of marriage for moral reasons at all. I am in favour of marriage for very much evidence-based reasons that children do better, couples are more likely to stay together and so on.

I think that the answer to your question is that if you were to implement some new laws on this, there is a case for having a great deal of compassion to people where there is hardship. I think that something that dealt with that would almost certainly be very good, but whatever you do, for me—and I have talked about how I think if you automatically transfer marriage rights to cohabiting couples you undermine all the things that happen when people commit to one another—you will increase family breakdown. There is a much bigger social issue, and I think there needs to be some clear blue water between what the marriage law and divorce law says and what the rights are for cohabiting couples.

Q117 **Bell Ribeiro-Addy:** Thank you. At the beginning, you talked about there being an issue with any cohabitation law because it is not clear what cohabiting is. I want to put to you something that you said about marriage. People talk about children, but not everybody has children. Not everybody necessarily—some people have what they call open marriages. Some people have marriages where they do not live together. They may be married but spend a lot of their time in other countries. If there is no



## HOUSE OF COMMONS

strict definition for that but then you have protections, how do you justify no protection for people who are cohabiting who might fall into your definitions of what is good in a marriage, carry out those activities, living together, having children? How do you justify them not having protection but perhaps others do simply because they have entered into a contractual arrangement for which the law does not specify the aim to do these particular things?

**Harry Benson:** I think that is a very fair point. Societies throughout history for hundreds of years, if not thousands of years, have had some version of marriage, ultimately to protect women during the time of having children and to make sure that men don't run off and otherwise be feckless, which then costs communities, societies and states. We regulate marriage for a good reason. Obviously you are not mandated to have children within marriage, but 90% of people who marry do have children. The idea of an open marriage—if that is what you want to do then go for it, but it is not my thing and I don't think it is the thing for most people. The main point about marriage is that it is there to protect, ultimately to provide stability for couples that helps improve kids' outcomes and reduces the cost to society of picking up the pieces. We have done it for hundreds, if not thousands, of years.

I think that is a legitimate reason to be extremely cautious about attributing the rights that have historically been put to this particular family structure if we attach it to this new family structure, which is a new thing that has been around for 40, 50 years. We need to be extremely cautious about doing that and wondering about what the unintended consequences are.

On the subject of unintended consequences, if I may, Scotland introduced cohabiting laws in 2006, and I am sure you have heard about this before. In the first four years, the University of Edinburgh did a study where it found that 1,000 couples put forward some kind of legal claim under the cohabiting law. That is 1,000 couples, which is 250 a year, half of them had children, so it is 125 with children. In Scotland, if you work out the births and family breakdown and stuff, we are talking about 20,000 children every year experiencing family breakdown, compared with 125 adults who were seeking help because there was an injustice. I am much more accepting that there is an injustice here that tends to affect women more than men. That is a ratio of 160:1. That is the scale we are talking about. We are talking about 160 children affected by family breakdown for every one adult who has this injustice. It is an injustice of being hard done-by when they have left a relationship for which they have sacrificed maybe many years and given up their career.

I think that 160:1 is the scale that we need to attach to this. If we start changing the law to move things across, you don't have to move 160 very far for it to make an enormous difference to an awful lot of families compared to just that one adult. I say "just", I don't mean to say "just". It is an awful situation to be in. I have had one in my own family with my uncle who was left after 25 years of partnership, so I am deeply sympathetic to it.



## HOUSE OF COMMONS

**Bell Ribeiro-Addy:** Thank you very much. Those are all my questions.

Q118 **Alex Davies-Jones:** To go back to Baroness Deech's point on an opt-out system, you spoke quite firmly against that. You wouldn't like to see that. You would rather see an opt-in system for cohabiting partners if a regime was brought in, but you could argue that we have that currently with a marriage or a civil partnership. Why are you so against an opt-out system, which you could argue would answer some of the impact on civil liberties and state interference in relationships and so on?

**Baroness Deech:** As people have said around this cosy table, cohabiting couples don't necessarily know the law, so I am not sure that they would necessarily opt out. They probably wouldn't know that they had to or it might be seen as hostile, rather like prenuptial agreements, which many countries in the rest of the world have and are seen as quite normal, while here it is still seen as a bit doubtful and not quite the right romantic thing to do. I think if there is a system people ought to be able to opt in. Cohabitation, marriage, civil partnerships—the papers and magazines are full of it every day. It is very hard to believe that people would not be aware that there are other systems that they could enjoy.

I think one should leave a little corner of freedom for people who might be experimenting in relationships, "I am going to live with you for a year or two, let's see how it goes". They may want to do that to avoid the terrible tangles of maintenance law on divorce, which is so expensive and unpleasant that the Government are now paying couples £500 each to go to arbitration or mediation rather than go through the mill of divorce law. How bad can a law be when the Government pay you to avoid it? I think many people, again judging by the blogs and comments, want to avoid that. They don't want to get tangled up in the law and, as I said in my submission, elderly Peers come up to me sometimes and say, "Ruth, I hope you can get the law changed because I am frightened to cohabit".

**Chair:** Sorry, we have a Division in the Commons and I will have to suspend the meeting.

*Sitting suspended for a Division in the House.*

*On resuming—*

**Chair:** Thank you very much for your patience and welcome back. I will go back to Alex Davies-Jones.

Q119 **Alex Davies-Jones:** Baroness Deech, we were discussing your thoughts on opting out. Do you want to expand on where you were?

**Baroness Deech:** Again, I think that people don't know the law, but for those who do—and I was talking to Harry about this while you were out—I know elderly people, and indeed younger people, who don't want to get married again when they have been living with someone for a long time or don't want to cohabit for fear of jeopardising the assets they had from their first marriage, which they want to go to their children. They say to me, "I want to protect what I have got. Not that I don't love the person I am with now, but I want my children to benefit and if I marry again or I



## HOUSE OF COMMONS

cohabit and the law changes, my children will suffer". As I said, some of the most unpleasant litigation that one sees is the pitting of a cohabitant against the children of the first marriage. The prospect of cohabitation law casts a shadow over relationships. People feel that they will lose by regularising a relationship.

Of course the people I am talking about probably know something about the law and they would opt out, but there must be a whole lot of people who would not know. I would prefer opt-in, because I come back to this issue of freedom. I think people should be free to have a relationship that suits them outside of the law that is protected by Article 8 of the European Convention on Human Rights and that the law should not go chasing after them when they never opted into it.

Q120 **Chair:** I will follow up on that, Baroness Deech. We heard from Elizabeth Darlington in our first session exactly the scenario that you have just outlined to us, that perhaps an older person who already has children would be more anxious about cohabiting with someone and might choose not to cohabit because they would be worried about, as you put it, the shadow hanging over the relationship of what would happen to the property rights. But surely an opt-out system absolutely covers that scenario. They could do so safely provided they had opted out.

**Baroness Deech:** If that were the law, and also judging by the litigation over prenups, I wonder how much litigation there would be over opting out. We now have very expensive litigation where there is a prenup in black and white and you would have thought that is decisive and someone says, "No, I was under duress, it doesn't mean this and it doesn't mean that", you would have the same problem with opting in and opting out and people saying, "I was pressurised into this, I didn't know what I was doing, this isn't my signature, it is unfair". It would simply lead to yet more litigation.

Q121 **Chair:** Thank you. A final question for both of you. I will start with Mr Benson, because I am conscious that we have asked you a lot of questions, Baroness. Can you outline what you think the main challenges might be in seeking to define a legal cohabitation?

**Harry Benson:** A nightmare. When does it start? There is a paper by Manning and Smock from 2005, American sociologists, and I can't remember the exact details of it, but essentially a quarter to a half of the couples who were living together in this particular study couldn't pin down their start date to within plus or minus three months of each other. There is a lawyers charter in simply identifying a start date. If you are talking about any kind of time horizon for a cohabiting law, it is two years, three years, whatever, from what? That would be an absolute nightmare to do.

I hope you would address the aspect that there is something faintly illiberal of foisting a bunch of rules on to people who have perfectly free choices to fill in a cohabiting agreement or sign a civil partnership, which I think is an excellent idea. I part company with some of the lawyers on



## HOUSE OF COMMONS

this particular issue, but I have agreed with them on civil partnerships and no-fault divorce, for example, just so that I am not totally against the legal profession on this. I think that we have to take into account the bigger issue of the effect on family stability and whether it will undermine commitment and, therefore, ultimately produce more of the problem that we are trying to avoid in the first place.

**Baroness Deech:** As I said, I think that defining would be very difficult and it would open the door to a great deal of litigation. Would it be retrospective? I believe that one of the Bills introduced by Lord Marks and the late Lord Lester made it retrospective and I say that is even more contrary to one's human rights and civil liberties, that you are living with someone and then suddenly the law changes and it is retrospective. I think that defining it would be very difficult. Did it start when the two of you shared a flat on campus or was it not until you moved into another house and so on? I think definition would be difficult. I am very conscious of the cost of that litigation. The costs are just astronomic sometimes.

Q122 **Chair:** Is there any reason why the costs of that litigation should be any more or less than the costs of litigation in seeking to establish your rights under property law?

**Baroness Deech:** They will probably be the same, except that property law is much more defined. You have a solid base of case law and it goes back not a hundred years but a long time and it much easier to advise ahead of time. You pay this much, it is X proportion, or both your names on the title deed. It is a lot more straightforward. That is much more developed law.

Q123 **Chair:** Thank you. I am conscious of time. I know we kept you hanging around for a long time. Are there any final points that you feel we have not covered that you wanted to put on the record?

**Baroness Deech:** A plea for tolerance and freedom in this country. We have not gone down the route that some other states have taken and even in America, where a few states have cohabitation law, I am told they are gradually rowing back. Although it started in the case of Marvin in the late 1970s, it has not really taken off because we see young people cohabiting and they want to be free and I support that. I think there is quite enough law to do justice—I prefer that word—to longer cohabitations.

I put in a plea for the support of children. Child poverty is a terrible problem in this country. Alienation of fathers, their neglecting their obligations, is a big problem and we have got it in our grasp. You have it in your power to recommend that the law is much more pressurising on fathers, usually, to support their children.

**Harry Benson:** My plea is that as well as listening to the lawyers who listen to these very difficult cases of people who have been abandoned after having sacrificed great chunks of their lives in some cases and seem to be treated very unfairly, we realise that these people are adults. They have a certain amount of choice and I have huge sympathy for them



## HOUSE OF COMMONS

when they have not made that choice, but I think that we have to take into account the much bigger picture. That is the social consequences of the risk that you undermine commitment by normalising cohabiting further than it already is and pretending that cohabiting and marriage are the same thing—they are not. In outcomes in so many strands of research they are quite different things and that is what I would ask you to take into account.

**Baroness Deech:** Can I say one more thing? We all know that women tend to do badly in the job market in some cases and that childcare is expensive, but if you just give the cohabiting woman rights, this will do nothing for the legions of unmarried single women with children who will continue to find childcare expensive and perhaps that they are not appreciated at the workplace as they should be. It will not cure that problem. It will simply help a few women who cohabit with reasonably well-off men.

**Chair:** I think it is important to emphasise that this is an inquiry into cohabiting couples, so not specifically about women, but equally it would be a stretch for us to include recommendations about childcare in the report. Thank you very much, both of you, for your contributions this afternoon.