

THE RIGHTS OF COHABITING PARTNERS

Dear Caroline,

Thank you for inviting me to give evidence on behalf of the Ministry of Justice in front of your Committee on “The Rights of Cohabiting Partners” on 2 February. As the Minister responsible for family justice, I very much value the work your Committee is doing on this matter. As promised, I am writing to follow up on a number of important points raised during the evidence session.

Q145: The impact of current property law on victims of domestic abuse.

On 2 February, we outlined the importance of the Trusts of Land and Appointment of Trustees Act 1996 (TOLATA) to property disputes between separating cohabiting partners. It was suggested that current arrangements are particularly difficult for victims of domestic abuse. TOLATA itself does not currently make specific provisions for domestic abuse victims different to those available to other cohabiting couples. However, should the Committee have evidence of ways in which the current framework creates particular problems for the victims of domestic abuse, then we would be happy to consider it.

More generally, however, the landmark Domestic Abuse Act 2021 (DA Act) enhances the support available for victims of domestic abuse (including those who have been in intimate relationships outside marriage or a civil partnership) in civil proceedings including TOLATA cases. In particular, we intend to bring provisions in the DA Act to enhance victims’ rights to special measures and to prohibit perpetrators cross examining their victims (and vice versa) in civil proceedings into force this spring. These important reforms, similar to existing or other new arrangements in the family and criminal jurisdictions, are designed to make attending court less traumatic for victims. The DA Act has also introduced important changes in housing law, which came into effect last autumn, to ensure that those who are eligible and are made homeless as a result of domestic abuse: receive “priority need” status for accommodation secured by the local authorities; and to protect the security of tenure for victims who are in, or who have been in, lifetime social housing tenancies by requiring the landlord to give a new *lifetime* tenancy if they grant them a new tenancy for reasons connected to the abuse.

In addition, where shorter term measures are required to protect a victim by restricting access to a property (rather than resolving longer-term ownership or tenancy issues) victims are able to apply for an ‘**occupation order**’¹ – an injunction which decides who can live in the family home or enter the

¹ Who can apply: occupation order - GOV.UK (www.gov.uk)

surrounding area. Occupation orders can be granted in a range of circumstances, including if the victim owns or rents the home and shares it with a partner; cohabitant or parent of their child; and, most applicably in this context, if the person you **cohabit** or cohabited with is the owner/tenant, and the home is, or was, intended to be your shared home.

There's no fee to apply for an occupation order and legal aid is available subject to certain criteria being met. Emergency orders can be granted to provide immediate protection in some cases, which are 'ex parte' so do not require the person victims want protection from to be informed of the application immediately. The person named in the injunction can be arrested if they break it, thus helping to provide safety for victims.

Additionally, victims of domestic abuse may be eligible for legal aid if they have evidence of their abuse and cannot afford to pay legal costs². Individuals will usually need to show that they or their children were at risk of harm from an ex-partner. Legal aid can be used in cases relating to property, such as homelessness or losing your home; protecting yourself or your child from abuse; or needing financial advice if you've been in an abusive relationship.

Q151: Predicted numbers of people of different faiths who have had a religious only marriage ('non-qualifying ceremonies') in the UK.

On the issue of non-qualifying religious ceremonies, the precise number of marriages and ceremonies of this kind is unknown, since by definition they do not appear in any state record. The Law Commission's 2008 scoping paper on marriage suggested that as only 200 legal marriages in Muslim places of worship were recorded in 2010 compared to a population of 2.7 million Muslims in the 2011 census, the prevalence is significant.

Marriages which have taken place overseas (i.e. outside the United Kingdom) will only be legally recognised in English law if they are legally recognised in the country where they took place and also according to the domicile of the parties³. As I expressed in the evidence session, a thorough review of the law as a whole needs to be carried out in order to provide a system that is both coherent and fair to all. The Government will consider the case for more comprehensive and enduring reform once the Law Commission has completed its review of marriage law, expected in July.

Q153: Steps the Government has taken to dispel the common law marriage myth.

Whilst there have been no specific Government-led communications campaigns aimed at dispelling the myth of common law marriage, a number of charities continue to run education and awareness campaigns to this end. As mentioned in the evidence provided to your committee, 'Resolution⁴' continue to educate on the rights of cohabitants on separation, as well as specifically through their 'Cohabitation Committee' which seeks to raise awareness of current provisions and educate members and legal professionals. Furthermore, the National Centre for Social Research continue to investigate and educate on the common law marriage myth and potential resolutions including opposite-sex civil partnerships⁵.

Q168: Whether there was Government support for Lord Marks' Cohabitation Rights Bill.

² www.gov.uk/legal-aid/domestic-abuse-or-violence

³ A guide to marriage - Rights of Women Rights of Women

⁴ Cohabitation Committee | Resolution

⁵ NatCen Social Research

On the question of Government support for Lord Marks' previous Cohabitation Bill, I can confirm that as the Noble Lord Marks will know, the Second Reading of his Cohabitation Rights Private Members' Bill was never reached in the 2019-21 parliamentary session and therefore the Government did not have the opportunity to fully consider or express its position on it.

Q172-175: DWP update on the progress of the draft Remedial Order on bereavement benefits, and clarifying policy details.

At present, DWP bereavement benefits, namely Bereavement Support Payment (BSP) and its predecessor, Widowed Parent's Allowance (WPA), can only be paid to working age people who were in a legal union with the deceased on the date of death. On 30 August 2018, the Supreme Court ruled that the primary legislation governing WPA is incompatible with the European Convention on Human Rights (ECHR). On 7 February 2020, the High Court similarly ruled that the primary legislation governing BSP is also incompatible with the ECHR. In both cases, the courts found that restricting eligibility to these bereavement benefits to people in a legal union, and therefore excluding cohabitants, unfairly discriminates between children on the grounds of the legal status of their parents' relationship.

To address these incompatibilities, DWP laid proposals for a draft Bereavement Benefits Remedial Order before Parliament on 15 July 2021. The draft Order proposes to extend eligibility for WPA and the higher rate of BSP to surviving cohabitants with dependent children. It is proposed that the Order will have retrospective effect, with WPA payable for deaths occurring before 6 April 2017 and BSP payable for deaths occurring after this date. All retrospective awards, regardless of the date of death, will be payable from 30 August 2018: the date of the first legal judgement. Where a change of circumstances between the date of death and 30 August 2018 results in a cohabitee no longer being eligible for bereavement benefits, for instance, they enter into another relationship, reach State Pension age, or no longer receive Child Benefit for any children, there will be no entitlement to any Bereavement Benefit payments. Those entitled to a retrospective payment will have 12 months from the date the Order comes into force to make a claim. Claims made after this date will be subject to the standard 3-month backdating period with claimants receiving 3 backdated monthly payments, plus any remaining future payments that are due. It is intended that all retrospective payments, for deaths occurring before the Order comes into force, will be paid as a single lump sum.

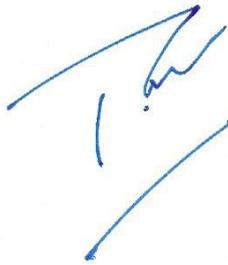
In line with the incompatibilities raised in both the Supreme Court and High Court judgements, the draft Order focusses on the needs of bereaved families with dependent children. There are no current plans to go beyond the scope of these legal judgements in relation to bereavement or any other DWP benefits.

Remedial orders go through extensive consultation and parliamentary scrutiny before becoming law. On 12 November 2021, the draft Order completed the first of two 60-day laying periods and the Joint Committee on Human Rights published its report on the proposals. DWP are currently considering representations received during this time and, on conclusion, the final draft Order will be laid for a second 60-day sitting period, and it will then be subject to debates in both Houses before it can become law. Due to the nature of the Parliamentary processes, DWP cannot say at this stage when the Order will come into force. The draft Order has been published on the GOV.UK website and DWP will continue to update this page at key points during the remedial order process.

Once again, thank you for your work as a committee on this matter, and I trust that this information is helpful.

With best wishes,

Yours ever,

A handwritten signature in blue ink, consisting of several fluid, overlapping strokes that form a stylized representation of the name 'Tom Pursglove'.

TOM PURSGLOVE MP

February 2022