

Written evidence from the Christian Institute [HAB0269]

Introduction

1. The Christian Institute exists for “the furtherance and promotion of the Christian religion in the United Kingdom”. We are a nondenominational Christian charity supported by over 60,000 individuals and churches throughout the UK. We hold to mainstream Christian beliefs on sexual ethics.

Marriage has far better outcomes than cohabitation

2. The attempt to equate the rights and responsibilities of marriage with cohabitation demonstrates a low view of marriage. ‘Living together’ and being married are not the same. The public commitment made in marriage vows is the foundation for stable families and society. Marriage has consistently been shown to be best for adults and their children alike.
3. Unlike marriage, cohabitation is generally a transitory phase. Studies have shown that less than one in five of all cohabitations last more than five years, and only around one in 20 last over ten years – the rest either married or separated.¹ One result of this instability is the sad fact that more than half of the children of cohabiting parents will experience their parents’ separation by the age of five, compared to only 15 per cent for children of married parents.²
4. It is incumbent upon government to ensure children are given the best opportunity by supporting, protecting and prioritising marriage among parents. Research consistently shows that children do best when their mum and dad are married. A large number of the benefits of marriage over cohabitation are summarised by the Centre for Social Justice (CSJ) in a report titled *Family Structure Still Matters*. It finds that economic and health standards are better for children of married parents, alongside cognitive development, behaviour and academic achievement. And the benefits are carried over into future generations, as children learn the value of familial stability from their parents. The director of policy at the CSJ recently argued that whether or not their parents are married is a bigger factor in children’s achievement than race, poverty or social class.³
5. A separate CSJ report in June 2021 found that communities with higher proportions of married people were stronger than those with fewer married residents.⁴
6. As well as the social cost, family breakdown is a drain on the country’s resources. The current economic impact is estimated at £51bn per year.⁵ This would get worse as cohabitation rates rise. The impact on health and wellbeing is also enormous, with married women smoking and using drugs less than their cohabiting counterparts and married men having better cardiovascular health and cancer survival rates. And there is an impact on the criminal justice system: twice as many unmarried mothers report partner violence and crime among young people is known to be associated with family instability.

¹ *Cohabitation in the 21st Century*, Jubilee Centre, 2010, pages 1-2

² *Family Structure Still Matters*, The Centre for Social Justice, August 2020, page 3

³ *The Spectator online*, 23 June 2021, see <https://www.spectator.co.uk/article/forget-race-or-class-marriage-is-the-big-social-divide> as at 1 July 2021

⁴ *Pillars of Community*, The Centre for Social Justice, June 2021, pages 37-38

⁵ *Family Structure Still Matters*, The Centre for Social Justice, August 2020, page 9

7. Raising public awareness of the benefits of marriage over cohabitation should be a priority of government. Instead of looking for questionable ways to bolster family life and to care for children, the focus should be on protecting and promoting marriage as the proven means of doing so. There are many other forms of living arrangement, but for good reason marriage has been given special status as the best foundation for family life.

Defining cohabitation for these purposes would be complex

8. Whether a couple are married or not is a straightforward, factual and objective criterion to apply. Defining cohabitation will result in confusing rules that lack logical consistency. The law has grappled with similar issues in other areas, such as adoption, where definitions rely on the similarity in behaviour to marriage. For example, the 2002 Adoption and Children Act's definition of "a couple" includes married couples, civil partners and "two people (whether of different sexes or the same sex) living as partners in an enduring family relationship".⁶ The description 'enduring family relationship' clearly cannot be applied to a cohabiting relationship at the point it breaks down – precisely when many of the rights and responsibilities would become relevant.
9. The limited case law on "enduring family relationship" emphasises the importance of the intention of the parties.⁷ Those seeking adoption will be keen to demonstrate their shared intention. But in many cases involving cohabitants' rights, the status of a relationship is likely to be contested and would not be assessed until long after any 'cohabitation' ended. Couples who formerly 'cohabited' may become 'housemates' or 'lodgers' for a period when the relationship is coming (or has come) to an end, living together but with no intimate relationship. In such a situation, any definition of cohabitation becomes highly problematic. In some cases, a couple will move in together mainly for practical reasons, but may not have a mutual understanding of the nature of their relationship – the intention of the parties would not be clear. And alongside relationships understood differently by each member, it is difficult for legal definitions to account for blended forms, such as housemates who form a romantic relationship but would not otherwise have lived together.
10. There are further unanswered questions. Why should an intimate or sexual relationship be a determining factor in property rights? Why should friends or siblings who live together be considered any differently? Couples already have the choice to put their relationship on a formal legal footing. It is not the place of the state to apply the terms and conditions of formally committed relationships to those who choose not to enter into them.
11. Any attempt to legally define 'cohabitation' is fraught with difficulty and likely to result in lengthy and acrimonious court cases. Every cohabitation that ends either by separation or death would quite understandably be open to legal dispute in the courts.

There are already legal mechanisms open to cohabitants

12. Under the law, marriage is a lifelong partnership between two people, whereas cohabitation is universally understood as a couple living together without such a public or legal commitment. As mentioned above, it makes no reasonable sense to automatically carry across the rights and responsibilities which correspond to lifelong commitment to those who do not make such a commitment. But in reality there are few circumstances where further rights or responsibilities

⁶ Adoption and Children Act 2002, Section 144(4)

⁷ *T&M v OCC & C* [2010] EWHC 964, para. 16

for separating cohabitants would provide a beneficial supplement to current law. The problems are being vastly overblown by those who support a change.

13. Where there are disputes over property, legal remedies already exist. For example, where one member of the couple has contributed to a mortgage and the other paid bills, a court is able to adjudicate a fair financial resolution through considering 'beneficial interest'.⁸ Courts can take into account previous agreements made between cohabitants, the needs of any children, and judgments do not necessarily depend on financial contributions by either parties.⁹
14. Cohabiting couples may benefit from greater certainty if they chose to make a formal agreement over property rights, but more complex legal scenarios are a natural consequence of choosing not to enter into formally recognised relationships. It is obviously inappropriate to associate cohabitation with the 50 per cent division of property that results from marital divorce. This flows from the couple's decision to be considered as a single legal entity, but cohabiting couples choose not to enter into this arrangement.
15. There is little difference in the relevant legal rights and responsibilities of parents who are married compared to those who cohabit. Parental responsibility does not specifically distinguish between the relationships of the parents. Serious disputes in both instances can be agreed within or without the family courts. Adoption is likewise available to both married and cohabiting couples.
16. In the case of one cohabiting partner dying, the most significant area of difference from marriage is in relation to inheritance. Again there is no reason for a change in the law. Cohabiting couples can establish their intentions for inheritance (and related concerns) in a will and it would be a clear attack on the principle of consent if inheritance did not depend on a person's stated intention. There are sadly cases where death occurs unexpectedly and no will has been written, but it would be impossible to discern the intention of the parties in these cases. Whereas marriage offers a clear legal indication of a person's opinion regarding inheritance (unless amended by a will), choosing to cohabit offers no parallel indication.
17. In many of these areas, changing the law would represent a significant attack on the principle of consent. The law has always relied on expressions of individual intent and, failing that, the choices of family members. Deciding matters such as property and inheritance on the basis of personal proximity rather than established status denies a person's ability to consent on these matters.

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⁸ 'Living together and marriage: legal differences', *Citizens Advice*, see <https://www.citizensadvice.org.uk/family/living-together-marriage-and-civil-partnership/living-together-and-marriage-legal-differences/> as at 1 July 2021

⁹ 'Occupation rights if one partner is the sole owner', *Shelter*, see https://england.shelter.org.uk/professional_resources/legal/relationship_breakdown/housing_rights_of_cohabiting_leaseholders/occupation_rights_if_one_partner_is_the_leaseholder as at 1 July 2021