

Written evidence from Paths Through Change [HAB0271]

Paths Through Change is an organisation dedicated to helping children navigate their parents' separation. We do this by supporting families, sharing information and recommendations and connecting children with others in similar positions. The organisation was founded by Eily Livingstone, a former family solicitor and this experience also informs this document.

The largest question is whether there should be overarching rules that apply to cohabiting couples or whether each family should be able to make the rules that apply to them. To answer this, we need to double check which factors affect people's access to 'making their own rules' – such as language, education, finances and power within relationships. It is one thing to say that cohabiting couples 'can' make legal arrangements to reflect their own wishes but this – like saying that cohabiting couples can *choose* to marry or get a civil partnership – relies on certain layers of privilege.

We note that there are currently different laws that apply to cohabiting couples in Scotland and that in England & Wales, most of the laws have been adapted from property and contract laws that were developed to reflect people who were not in a romantic relationship with one another. They are not fit for purpose as they do not reflect the realities of modern families.

Our main concern, informed by the mission of our organisation, is to ensure that children are not disadvantaged by their parents' decisions and/or their parents' access to making decisions. In considering this, we have reflected on the child maintenance system – which applies across England & Wales and Scotland – and the ability to make an application for financial support under Schedule 1 of the Children Act 1989.

We consider the benefits of the current provision for financial support for children of separated cohabiting couples:

- Certainty – the child maintenance service uses a fairly clear formula that is accessible to most people online.
- It separates out provision for former partners and children.

The disadvantages are:

- The CMS has limited resources and can be outwitted by parents who move abroad, manipulate their finances or simply don't pay.
- It doesn't take into consideration the geography of the family, and therefore the financial implications of housing for example.
- It doesn't take into consideration the financial circumstances of the primary parent.
- The rules regarding overnight stays encourage some to manipulate the practical arrangements for the children to reduce their financial obligations.
- The laws are different between England & Wales and Scotland, which leads to confusion and a sense of unfairness.

As such, it is our view that there should be over-arching laws that come into play that regulate the financial arrangements of families with unmarried parents. There could be an opt-out provision for

those with the resources to make their own arrangements, similar to a pre-nup (with similar provisions regarding fairness, independent legal advice etc). The financial responsibilities of parents should be separate from the financial responsibilities of unmarried partners, as parents are not always in a romantic relationship and/or cohabiting when they have a child.

The financial responsibilities of a parent should be calculated by reference to where the child lives (a parent to a child living in London should have to pay more than one living in Lincolnshire, for example) – the online formula could incorporate this aspect by including a postcode requirement. While we do not feel that the financial situation of the primary parent needs to be relevant in every case, the schedule 1 provision should include applications from a primary parent who is really struggling financially (and not just where the other parent is particularly financially well-off). This route needs to be more accessible – particularly to those primary parents where the other parent lives abroad – perhaps this could be done by way of legal costs orders.

Legal costs orders could be used to strengthen the appeals process of the child maintenance service, where a primary parent needs to challenge the information provided by the other parent.

As a final note, we want to raise the issue of medical – next of kin status. It is currently an unclear area of law and one where other institutions are involved (rather than just as a matter between the parents). There needs to be a clear route for adults to choose their own next of kin without marriage and for this to be recognised by external organisations.

We would be happy to discuss these issues further should the inquiry want more information.

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