

## Written evidence from Dr Anna Heenan [HAB0286]

### About me

I am a Lecturer in the School of Law and Politics at Cardiff University. My research is in Family Law, with a particular focus on the financial consequences of relationship breakdown. Prior to becoming an academic, I worked as a family lawyer in practice.

I am submitting evidence to this inquiry because findings from my recent research project ('Equal sharing and unequal caring? How should family law and policy take account of caretaking responsibilities on parental separation?') are relevant to some of the questions the Committee is considering.

### Evidence Submission

#### Overview

This submission is based on a recent research project, which considered how law and policy should account for the financial consequences of childcare responsibilities on parental separation. The project looked at the experiences of both married and cohabiting couples. It was a small qualitative study, so it makes no claim to be representative of the experiences of all couples. Instead, it aimed to offer more detailed insights into the experiences of a range of parents with different post-separation childcare arrangements and different financial circumstances. I believe this evidence will be helpful to the inquiry because it provides qualitative detail about the issues under consideration. The project also included a comparative element, which included interviews with lawyers in Sweden and the Netherlands.

What equalities issues are raised by the lack of legal protection for those in cohabiting relationships?

The division of childcare responsibilities in families has unequal financial consequences.

A key equalities issue arises from the ways in which parents divide childcare responsibilities between them in intact families. Both taking time out of work and working part-time affect women's wages.<sup>1</sup> However, it is important to note that this effect is most pronounced for college graduates; the effects are more modest for those with GCSE and A-Level qualifications.<sup>2</sup> Part time and flexible work may also have implications for career progression.<sup>3</sup>

This is a gender issue as women perform more childcare than men<sup>4</sup> and are more likely to work part-time because of caring responsibilities.<sup>5</sup> This is at least partly

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<sup>1</sup> Monica Costa Dias, Robert Joyce and Francesca Parodi, 'The gender pay gap in the UK: children and experience in work' (*IFS*, February 2018) <[https://www.ifs.org.uk/uploads/publications/wps/MCD\\_RJ\\_FP\\_GenderPayGap.pdf](https://www.ifs.org.uk/uploads/publications/wps/MCD_RJ_FP_GenderPayGap.pdf)> accessed 2 July 2021, 23.

<sup>2</sup> *Ibid*, 22-3.

<sup>3</sup> Department for Culture Media & Sport, 'Attitudes towards Equality: Findings from the YouGov Survey' (June 2014) <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/316290/Attitudes\\_towards\\_Equality.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/316290/Attitudes_towards_Equality.pdf)> accessed 2 July 2021.

<sup>4</sup> ONS, 'Women shoulder the responsibility of unpaid work' (*ONS Digital*, 10 November 2016) <<http://visual.ons.gov.uk/the-value-of-your-unpaid-work/>> accessed 2 July 2021.

grounded in gendered social attitudes to childcare. For example, in the 2019 British Social Attitudes survey, 51% believed that a woman should stay at home (19%) or work part-time (32%), with the father working full-time, where there is a child under school age.<sup>6</sup> In contrast, the options of the father staying at home or working part-time while the mother works full-time were each favoured by less than 0.5% of respondents.<sup>7</sup><sup>8</sup> Further, women from particular ethnic groups are more likely not to work because of caring responsibilities.<sup>9</sup> However, the consequences of care are not unique to women: men who care may face similar disadvantages.

In my research, in line with broader social trends, all of the mothers I interviewed had reduced their working hours or given up work entirely to prioritise childcare. One of the fathers who was the primary carer for his children during his relationship had also done this. In contrast, it was less common for breadwinner fathers to reduce their working hours during their relationships, although some did so post-separation. More common for fathers, particularly post-separation, was to make use of flexible working to carry out their existing paid workloads around childcare responsibilities. This sort of flexible working is unlikely to carry the same sort of career consequences as the part-time work undertaken specifically to reconcile work and care. It also tends to be available to those who are relatively senior in their careers. Thus, the way in which parents divide care between them during their relationships can have unequal financial consequences on separation.

The lack of a legal framework exacerbates power imbalances.

Research shows that on average women and children experience a greater fall in their living standards on divorce than men.<sup>10</sup> However, whereas a specific legal framework deals with the division of assets for married couples, cohabiting couples have no financial claims against each other arising from their relationship. For those with childcare responsibilities, this can mean being left in a financially precarious position on separation. In my research, state benefits were seen as invaluable by a number of those who had been primary carers during their relationships (both married and cohabiting).

While the breadwinning partner might choose to be financially generous on separation, this is entirely within their discretion, creating a power imbalance. This is of particular concern in abusive relationships, but the problem is not confined to such

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<sup>5</sup> ONS, 'Women in the labour market: 2013' (25 September 2013)

<<http://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/articles/womeninthelabourmarket/2013-09-25>> accessed 2 July 2021 and ONS, '2011 Census analysis: Ethnicity and the Labour Market, England and Wales' (13 November 2014)

<<https://www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/ethnicity/articles/ethnicityandthelabourmarket2011censusenglandandwales/2014-11-13>> accessed 2 July 2021.

<sup>6</sup> John Curtice, Elizabeth Clery, Jane Perry, Miranda Phillips and Nilufer Rahim (eds) *British Social Attitudes 36* (The National Centre for Social Research, 2019) <[https://www.bsa.natcen.ac.uk/media/39363/bsa\\_36.pdf](https://www.bsa.natcen.ac.uk/media/39363/bsa_36.pdf)> accessed 2 July 2021.

<sup>7</sup> Ibid.

<sup>8</sup> The remaining figures are 6% in favour of both parents working full-time, 9% in favour of both parents working part-time and 30% who can't choose.

<sup>9</sup> ONS, '2011 Census analysis: Ethnicity and the Labour Market, England and Wales' (13 November 2014)

<<https://www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/ethnicity/articles/ethnicityandthelabourmarket2011censusenglandandwales/2014-11-13>> accessed 2 July 2021.

<sup>10</sup> See, for example, Mike Brewer and Alita Nandi, 'Partnership dissolution: how does it affect income, employment and well-being?' (*Institute for Social & Economic Research*, September 2014)

<<https://www.iser.essex.ac.uk/research/publications/working-papers/iser/2014-30.pdf>> accessed 2 July 2021. See also Hayley Fisher and Hamish Low, 'Recovery from divorce: comparing high and low income couples' (2016) 30 *International Journal of Law, Policy and the Family* 338 which indicates a similar pattern for married couples.

relationships. In my research, female cohabiting partners who had been primary carers for children during their relationships were most likely to feel that their caring contribution to the relationship was perceived by their partner as less valuable. More generally, those who had not been primary carers during their relationship and who had post-separation arrangements in place that involved significant time with their children, but outside of school days, were most likely to downplay the work involved in childcare. It is, therefore, possible that such power imbalances will lead to worse financial outcomes for the primary carer parent if their contribution is devalued. However, even in one of the cases in my sample where financial arrangements were made, it created a dynamic where the mother in question felt 'beholden' to her former partner.

What legislative changes, if any, are needed to better protect the rights of cohabiting partners in the event of death or separation?

It is important to look at the issues raised by caring responsibilities holistically. A legal regime that offers the possibility of financial claims on separation is important to try and redress some of the issues outlined in the previous section. As others have argued, an opt-out regime is key in this regard.<sup>11</sup>

Nevertheless, even where couples are married, women do worse financially on separation.<sup>12</sup> This suggests a need to look at policies affecting intact families as well as separating families. For example, those around shared parental leave, nursery care and state benefits more generally.

Are there examples of good practice in relation to the rights of cohabiting partners in the UK or internationally that the Government should seek emulate in England and Wales?

In Sweden there have been sustained attempts to improve gender equality in society by focusing on policies that encourage the sharing of childcare between parents. While there is still some way to go in Sweden,<sup>13</sup> policies such as reserving periods of parental leave to each parent (often referred to as 'Daddy months'<sup>14</sup>) on a use it or lose it basis, mean that around 30% of all paid parental leave is taken by fathers.<sup>15</sup> There is some evidence that this translates into greater involvement of fathers in childcare thereafter, although whether this results in exactly the same care being provided is less clear.<sup>16</sup> Sweden has also made a concerted attempt to allow both mothers and fathers to engage in paid work. Nursery care, for example, is highly subsidised: currently the maximum fee is just under £130 per month.<sup>17</sup> These sorts of policies could help to facilitate a more equal sharing of care in intact families.

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<sup>11</sup> See, for example, Law Commission, *Cohabitation: The Financial Consequences of Relationship Breakdown* (Law Com No 307, 2007); Anne Barlow and Janet Smithson, 'Legal assumptions, cohabitants' talk and the rocky road to reform' [2010] CFLQ 328; Andy Hayward, 'The Steinfeld effect: equal civil partnerships and the construction of the cohabitant' [2019] CFLQ 283.

<sup>12</sup> Hayley Fisher and Hamish Low, 'Recovery from divorce: comparing high and low income couples' (2016) 30 *International Journal of Law, Policy and the Family* 338.

<sup>13</sup> Anna Heenan, 'Neoliberal autonomy and financial remedy reform: lessons from Sweden' [2020] *Child and Family Law Quarterly* 263.

<sup>14</sup> See, for example, J Ekberg, R Eriksson and G Freibel, 'Parental Leave – A Policy Evaluation of the Swedish "Daddy-Month" Reform' (2013) 97 *Journal of Public Economics* 131.

<sup>15</sup> Official Website of Sweden, 'Work-Life Balance' <<https://sweden.se/life/society/work-life-balance>> accessed 2 July 2021.

<sup>16</sup> For further discussion, see Anna Heenan, 'Neoliberal autonomy and financial remedy reform: lessons from Sweden' [2020] *Child and Family Law Quarterly* 263.

<sup>17</sup> See, for example, Älmhults Kommun, 'Preschool Fees'

In light of the gendered and economic consequences of the ways in which many cohabiting couples organise their family lives, reform of the law in this area is long overdue.

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