

**Re: Supplementary Evidence on the Irish Experience of Cohabitation Law Reform**

Many thanks for allowing me to provide oral evidence to the Women and Equalities Committee on Wednesday, 5<sup>th</sup> January. I hope the Committee found the session beneficial. Further to the request for further supplementary evidence regarding the Irish experience of cohabitation law reform, please see below.

- *What tests must cohabitants satisfy to claim remedies? How effective are these tests?*

There are, in effect, three tests that a cohabitant must meet before his/her claim will be considered by the Irish courts. Meeting these tests or surmounting these thresholds does *not* entitle a claimant to a remedy. It merely allows a claimant to have their case considered: the court retains discretion to make an award or otherwise.

First, a prospective claimant must meet the definition of a 'cohabitant' as defined in section 172(1) of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010. It defines a 'cohabitant' as

'one of 2 adults (whether of the same or the opposite sex) who live together as a couple in an intimate and committed relationship and who are not related to each other within the prohibited degrees of relationship or married to each other or civil partners of each other'.

Pursuant to section 172(2), in determining whether or not two adults are cohabitants, 'the court shall take into account all the circumstances of the relationship'. There is a non-exhaustive list of factors to which the court shall 'in particular' have regard.

Second, a prospective claimant must meet the definition of a 'qualified cohabitant'. Section 172(5) defines a 'qualified cohabitant' as

'...an adult who was in a relationship of cohabitation with another adult and who, immediately before the time that that relationship ended, whether through death or otherwise, was living with the other adult as a couple for a period –

(a) of 2 years or more, in the case where they are the parents of one or more dependent children, and

(b) of 5 years or more, in any other case.'

Third, pursuant to section 173(2), in seeking redress a qualified cohabitant must satisfy the court that he or she 'is financially dependent on the other cohabitant and that the financial dependence arises from the

## Written evidence submitted by Kathryn O'Sullivan [HAB0382]

relationship or the ending of the relationship'. Where each of these three tests are met, the court may make an order in favour of a claimant 'if satisfied that it is just and equitable to do so'.

The effectiveness of these tests is open to debate. While the scheme is clearly designed to provide a remedy to the most vulnerable categories of cohabitants, the stringent eligibility criteria set out above, most notably the 'financial dependence' requirement, serves to prevent many potentially deserving claimants from proceeding with a claim. While the tests are, therefore, certainly effective in ensuring that there were no 'floodgates' opened by the introduction of the legislation, it is questionable whether the 'gates' are too tightly shut.

- *Additional note: Clarification of oral evidence regarding succession provision for cohabitants.*

During the course of the oral evidence session, I was asked to elaborate on the current law for cohabitants on the death of a partner. In my answer I omitted to mention that while cohabitants may now seek provision from the estate of a deceased cohabitant, pursuant to section 194(7) the court may not make provision beyond the value of that to which the cohabitant would have been entitled had they been party to a marriage or civil partnership with the deceased.

I hope these answers are of benefit to the Committee and I remain at its disposal for any further clarifications or information on the Irish scheme.

**January 2022**