

Understanding cohabitation:

A critical study of the Living Together as Husband and Wife Rule In UK Social Security Law

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Increasing numbers of couples live together and have children without being married. Those who argue for greater protection for financially vulnerable cohabitants invoke evidence that suggests that modern cohabitations are often just like marriages and should be treated as such by law. In social security legislation, the cohabitation or living together as husband and wife rule treats cohabiting couples who claim means-tested benefits as if they are married. However, this may not provide protection for financially vulnerable cohabitants who are not necessarily in the same circumstances as married couples. Drawing on research with men and women who have had relevant personal experience of 'the cohabitation rule', this briefing identifies problems with its underlying assumptions about unmarried couples' relationships and their financial support obligations to each other.

Key Points

- Treating marriage and cohabitation equally in UK social security law is based on questionable assumptions about cohabitants' obligations to share resources
- How couples manage their money is part of complex couple relationship negotiations. The cohabitation rule can affect money negotiations and can reinforce gendered economic inequality
- Instead of encouraging couples to pool their resources, the cohabitation rule might interfere with the development of their relationship towards one in which they do take shared financial responsibility
- Some cohabitants might try to avoid a cohabitation ruling because they are worried about meeting their financial support obligations to their children
- Some measure of financial independence can be crucial for individual cohabitant's self-esteem and might be an important part of sustaining a particular couple relationship. Being forced to depend completely on a partner for financial support can lead to lowered self esteem and relationship difficulties
- In the absence of a marriage contract, it is difficult to determine whether a relationship is or is not one of 'marriage like' cohabitation
- Where it undermines relationship stability and puts children's welfare at risk by removing state support from the parent with care and making them dependent on their partner, the cohabitation rule runs counter to government policy which emphasises the importance of stable families and the support and well being of children

Background

For the purposes of means-tested benefit entitlement, two people who are married or living together as husband and wife¹ cannot make individual claims for benefit; one of them must make the claim for both of them and any children in the household. Benefit is then assessed on the basis of their 'couple status', their joint incomes and the number of people in their 'household'. If joint income takes the couple above the threshold for a couple (which is less than two individual rates) or, in the case of Income Support and Income-based Jobseekers Allowance (JSA), the new partner is in full-time work, benefit will be withdrawn. This is the 'cohabitation rule', officially known as the living together as husband and wife rule. It is based on an assumption that cohabiting couples will financially support each other and any children in the household. However, unlike marriage, cohabitants are under no legal obligation to support one another.

Originally, the cohabitation rule aimed to reflect the asymmetrical support obligation within marriage:

that married women should look to their husbands for financial support but not the other way round (Supplementary Benefit Act 1966, Schedule 2, Paragraph 391). The condition that women had to meet in exchange for a continuing valid claim for state support was that they did not have a male breadwinner. Nowadays couples can choose which partner claims and receives the benefit. This gives the impression that the rule is gender neutral. However, the cohabitation rule is more likely to place women and their children into financial dependence on men, there is no guarantee that such support will be provided.

It is 34 years since Lister (1973) carried out her study of the cohabitation rule, drawing attention to its intrusive nature, the hardship caused when couple's relationships are not stable enough for a mutual financial support obligation and 'the lack of a clear-cut definition of what cohabitation means'. Despite government recognition of the problems at the time, the most significant change was that benefits officers were told they could no longer ask claimants about sex. Why was reform so limited?

There were two² main reasons given (DHSS 1976, section 22):

- The implicit moral view that cohabiting couples should share financial responsibility for the household and that if cohabitants are allowed to choose to make individual claims for benefit, it will encourage irresponsible couple behaviour
- Concerns about not undermining the privileged status of marriage by treating unmarried couples more favourably than married couples for the purposes of calculating means-tested benefit entitlement

Since then, there has been a substantial increase in the numbers of people who cohabit and the number of children living in households with unmarried cohabiting couples. However, the rule remains largely untouched.

The UK study

The aims of this study were to assess critically the assumptions underlying the rule and the justifications for its retention in social security law. It was an interview study which explored couples' perceptions and organisation of their household finances, personal understandings of relationships and views about the effects of the cohabitation rule.

Twenty semi-structured, in-depth interviews were conducted with women and men who had relevant benefit and relationship experience. All households had children either from this relationship or from a previous relationship. Participants' accounts of their relationships provided insights into why people might try to avoid a cohabitation rule determination, thus adding the context of lived experience to the social security fraud statistics on the living together as husband and wife rule.

Cohabiting couples and money

Findings from this study strongly suggest that there are explanations for a failure to provide financial support other than irresponsibility. In some cases, the expectation of financial support was considered inappropriate. For example:

- The relationship was too new for one partner to feel that they should rely on a partner for financial support
- In the absence of a biological tie or parental role there was no financial obligation felt towards a child from a previous relationship

The cohabitation rule assumes that it is reasonable to expect cohabitants to pool their resources, whatever the nature of their relationship, as would be the case within marriage. Although the men and women in this study agreed that when two people lived together, regardless of whether they were a couple, they should share, it became clear that there were different views on exactly what sharing meant. It did not mean total financial dependence on a partner. On the contrary, being forced to depend on a partner by a cohabitation rule determination might be seen as the opposite of sharing. Participants felt it was essential to self-esteem to make a contribution from their own income or feel they had some money they could call their own.

This study found that, for some, enforced financial dependency could significantly affect and even destabilise relationships. The evidence suggested that a cohabitation ruling could lead to or contribute to relationship breakdown.

Participants in this study told how they wanted to avoid becoming or being treated as a couple in order to meet, rather than avoid, their financial responsibilities – a further indication that the discourse of irresponsibility is misplaced. Studies have shown that it is unsafe to make assumptions about the even distribution of income in the home (Vogler and Pahl 1994) and that ownership of household income tends to be assumed by the person who brings the money in (Snape et al 1999). A cohabitation rule determination often means that one partner, usually the woman, loses her lone parent or claimant status. This means she will also lose direct control over the money to buy food, pay bills and so on. The women spoke about the importance of knowing that they had “a reliable source of income”. Financial dependence on an unreliable partner put this in jeopardy. Women knew from experience that in couple claims, it is the man who usually receives the benefit payments:

If I did put down as a couple, I wouldn't trust him because at least if I've got my money and the bills are getting paid, the bairns are getting clothes and stuff like that. I wouldn't be able to rely on him.

It was also sometimes the case that shared financial responsibility for the household might never develop if couples tried to avoid the cohabitation rule by maintaining separate households or a 'hidden' partner who might feel like a lodger with lesser rights and responsibilities.

How couples actually behaved towards money was specific to particular relationship dynamics and challenges, including the challenge of managing on a low income.

Understanding cohabitation

It would be pushing naiveté to the point of imbecility to suppose that fraud is never attempted, or that the truth about a relationship between a man and a woman will always be openly told. It is not therefore possible to rely on the unsupported word of persons to whom concealment or untruth can bring substantial advantage. (DHSS 1971, section 20)

Because of the distrust of a claimant's 'unsupported word', living together as husband and wife must be established according to the 'facts of the case'. The lack of a clear definition of cohabitation remains a major problem in the determination of cohabitation rule cases. In place of a definition, there are guidelines informed by a substantial body of case law on the subject. However, commissioners have acknowledged the difficulty in establishing the 'truth' about relationships because of conceptual vagueness and the complex nature of personal relationships. In this study, participants' stories revealed that relationships are dynamic. One woman said “relationships don't stay in some stagnant place”. It is not easy to arrive at a single, static truth about a relationship.

Benefits decision-makers are instructed to look at six issues when trying to determine whether or not a couple are living together as husband and wife: financial support;

sexual relationship; members of the same household; stability; children; public acknowledgement. In this study, the six issues could not be applied unequivocally to participants' complex relationships.

Decision makers are instructed that sharing a household is more than just living under the same roof and that to be treated as part of the same household couples must have ‘a particular tie’³ but it is not clear how this should be determined. Not all decisions to live together are well thought through. Two participants described how a sudden set of circumstances meant that they found themselves living with someone they had only recently met. In such cases, it is difficult to determine the point at which having sex turns into a stable committed relationship. On the other hand, another participant in the study no longer had any sexual relationship with her partner and tolerated him in the house for the sake of their children; “That's the only reason he's still here!” How should cases like this be judged?

When a new partner moves in, it may take a while before they feel it is their home. One man spoke about “gradually becoming part of the household”. Furthermore, when a partner comes and goes because of low commitment or a chaotic lifestyle, as was the experience of some participants in this study, it is unclear whether or at what point the relationship should be treated as one of cohabitation.

‘Care and support’ for each other is treated in official guidance as an indication of ‘stability’. ‘Caring for children’ is considered to provide a strong case for a finding of cohabitation. However, the guidance is based on ‘couple behaviour’, not individual behaviour. Some women in this study were doing all or most of the caring and supporting work alone, suggesting that shared responsibility was not part of their relationship. One woman described how “that was my place, the house and the bairns, I was a nanny.” There is nothing in the official guidance on the meaning of a gendered imbalance in the provision of care. The full significance of this is brought home by the fact that a cohabitation rule determination is likely to lead to the removal of financial support from the person most likely to be doing the caring work.

Decision makers are told to consider whether a partner who is not the biological parent is an ‘acting parent’. In this study it was found that a new partner might take on some aspects often (but not exclusively⁴) associated with being a parent but not accept/be expected to accept the financial responsibilities of parenthood.

The treatment of financial support as just one of the six issues, rather than the main issue, ignores the highly gendered reality of financial dependency and the overarching importance of financial well-being and independence.

Some participants in this study were happy to be treated as a couple. In these cases trust, deemed to be an important measure of stability by participants, but ignored in the guidance to adjudicators, was high. A lack of trust could be a powerful reason to resist being treated as a couple.

Participants in this study might have been able to argue that they were not living together as husband and wife. However, ignorance of the law, the consequences of immediate withdrawal of benefit and the fear of not being believed⁵ were all reasons to conceal a relationship.

As husband and wife

Case law has established the importance of the words ‘husband’ and ‘wife’ as an extra condition on top of the words ‘living together’. However, attitudes to marriage are treated as irrelevant to decisions unless they support a determination⁶ (on the basis that claimants cannot be expected to tell the ‘truth’ where it will reduce benefit entitlement). In this study, participants' attitudes to marriage revealed a lot about their relationships and the reasons why they did not want to be treated as if they were married. For example, they might have had a previous negative experience of marriage e.g. abuse, loss of a sense of self.

Not all participants were against marriage. Some had positive views about what a marriage should be. Their resistance to being treated as husband and wife was based on the belief that their relationship was not marriage standard or the relationship was too new to expect the financial obligations associated with marriage.

Policy implications

This study demonstrates that the cohabitation rule continues to reinforce gender inequality, despite the gender neutral language it uses. It can also have negative effects on the formation and sustaining of stable couple relationships and puts children at risk when financial support is removed from their main carer (usually their mother) to a co-resident partner. The cohabitation rule conflicts with other government policy which emphasises the importance of stable families and the well-being of children (Home Office 1998).

The significance of a marriage is that it creates a legal financial obligation and has a clear beginning and end. It is not easy to determine when a cohabitation begins or ends, or when, if ever, it becomes ‘like a marriage’. This study identifies complex problems in determining what is and is not a cohabitation. The rule is based on contested assumptions about what it means to cohabit and the nature of cohabiting couples' financial support obligations to each other and any children in the household. This raises questions about the integrity of cohabitation rule decision making in public law.

¹The cohabitation rule has been extended to include same sex couples ‘who are civil partners of each other’ or ‘who are not civil partners of each other but are living together as civil partners’ (Decision Makers Guide 2005, section 11001)

²The cost of separate and equal payments to individual cohabitants is also a reason why the couple and not the individual remains the unit of assessment for means-tested benefits (Select Committee on Public Accounts Thirty First Report 2003). In the study this was addressed by looking at the societal costs of retaining the rule

³Commissioner's File No. CIS/671/1992

⁴A ‘friend’ or other relation might provide the care/support usually associated with parenting from time-to-time

⁵Distrust of claimants' own accounts is institutionalised in the cohabitation rule so there are reasonable grounds for caution

⁶If couples state that they intend to get married then that can be taken as proof of cohabitation