

# SHARING HOMES: A DISCUSSION PAPER

## EXECUTIVE SUMMARY

### **The project**

1. The Law Commission Discussion Paper “Sharing Homes” examines the property rights of those who share homes. It covers a broad range of people- not only “couples”, married or unmarried, but also friends, relatives and others who may be living together for reasons of companionship or care and support.
2. The Law Commission has not been examining the issue of the rights and obligations of unmarried couples. It is important to emphasise this. The project we have conducted is both broader and narrower than a project on cohabitation would have been. It is broader in that we have placed no limit on the kinds of relationship with which we are concerned. It is narrower in that we have focused on a single area of activity – the home, in an attempt to consider how people who live in the home gain rights in and over it, and whether we can propose any useful reform of the principles which currently apply.

### **The problem**

3. Where two people buy a home together, there is rarely a problem. They are likely to seek legal advice. If they are married, or, although not married, are in a long-term relationship, it is very likely that they will decide to have title to the home registered in their joint names. They will also execute a declaration of trust stipulating what their respective shares in the property are to be- this will then govern the proportions into which the proceeds of sale of the house would be divided in the event of sale.
4. But sometimes a home is purchased and no express arrangements of this kind are made. Or a home-owner invites someone to live with them- a partner, a friend, a carer, a relative. There may be no discussion at all about the potential legal implications of what is happening, or there may be some conversation, but no formal agreement is entered into. Over a period of some years, the person may make very substantial contributions towards the home- assisting with the mortgage payments, paying towards- or even physically building- an extension, or (less directly) dealing with the household bills so that the home owner can pay the mortgage. Eventually the question may arise whether they have obtained a share in the home.
5. This question may require to be answered in several circumstances:
  - Most obviously, where the persons who have been sharing the home cease to do so. It may be that this follows the breakdown of a relationship between them- but it may also occur where one obtains employment elsewhere, or even where one dies. It will be necessary to establish what shares the persons had in the home so that the outgoing sharer (or, if they have died, their estate) can be paid out the capital to which they are entitled.
  - It is very likely that the home will have been purchased with the assistance of a mortgage- there may be more than one if the home-owner has sought funds for

other purposes subsequently. The borrower defaults on the mortgage, and the lender seeks possession of the home so that it can be sold to satisfy the debt which is owed. Can anyone living in the home claim rights which prevail over those of the lender- and thereby defend the possession proceedings?

6. We have not been concerned in this project with the jurisdiction of the court to make orders adjusting property rights on divorce. If a married couple separate, and intend to divorce, the resolution of their finances will not normally require the court to work out their respective shares in the matrimonial home, as its powers are so extensive that such an exercise is unnecessary. However, it remains important to be able to ascertain the spouses' shares on death and where third parties, in particular secured lenders, are concerned.

### **The current law**

7. The current law which determines whether a person has rights in a home which they share with its owner is quite complicated and difficult to apply. It is not ideally suited to the typical informality of those who are sharing a home. The current law can be criticised for several reasons:

- Much depends on what the court identifies to be the common intention of the parties. This can be a somewhat unrealistic exercise, as people do not tend to think about their home in such legalistic terms.
- Although certain contributions towards the acquisition of the home can give rise to an interest in it, it is not very clear where the line is drawn between contributions which count and contributions which do not. (For instance, it is accepted that payment of the mortgage instalments is normally sufficient to obtain an interest, but it remains doubtful whether regular payment of household bills which enables the owner to pay the mortgage will suffice.)
- It does not seem to be the case that extensive work in and around the home- which may include looking after children of a relationship - will result in the acquisition of a share.
- Quantifying the share is extremely difficult - and has led to decisions which are inconsistent and difficult to reconcile.
- The uncertainty of the law can lead to lengthy and therefore costly litigation.

### **The scheme: "a property approach"**

8. The Law Commission sought to address these problems by devising a scheme which would determine when a person who was not the owner of the home obtained an interest in it, and what the value of that share would be. We believe that parties should be encouraged to provide for themselves wherever possible, and therefore the scheme would only apply in the absence of the parties having made express arrangements of their own.

- The scheme would therefore apply where the home was occupied by two or more persons, each of whom occupied it as a home, and at least one of whom would have an interest in it. It would not apply where the parties were in a commercial relationship such as landlord and tenant or landlord and lodger. The parties' intentions, save as expressed in a declaration of trust (in which case the scheme would not apply), would be irrelevant.

- The scheme would be based on the contributions of the parties to the shared home. It would be necessary to define which contributions would qualify- and that definition would be broad so as to include both payments of household expenditure and non-financial contributions- looking after the home and the family, or caring for an elderly relative.
9. The advantages of a contribution-based approach were to be certainty and predictability. It would be possible to value contributions objectively and to aggregate them in such a way as to provide a sum total. The contributions of each party would then be weighed against each other so as to enable their respective shares in the home to be calculated.
  10. It was an underlying objective of the scheme that it would apply irrespective of the nature of the relationship between those who were sharing a home. This objective, adopted so as to ensure that the scheme operated entirely fairly and without discrimination between different classes of relationship, ultimately proved impossible to achieve.
  11. In the Discussion Paper, we set out two examples of how the scheme might work. The first example concerns a couple in their sixties whose son, now aged 22, comes to live with them having dropped out of college. He lives there for ten years, during which time he does not make any financial contributions towards the acquisition of the home (as it is owned outright by his parents as the mortgage has been paid off). However, he does make significant contributions to the household budget as he is on a reasonable income, he pays for some improvements to the house, and he helps his parents with their shopping and around the home. He doesn't pay anything by way of board and lodging. We then ask the question: Should the son obtain a share in the home- and if so, what should it be?
  12. The second example concerns a man who is the owner of a house over which there is a mortgage. His partner, who is expecting his child, comes to live with him. They live together for ten years. The partner makes no direct financial contribution to the house (as she does not have any significant earned income)- but during that time she assumes primary responsibility for the day-to-day care of their child, and she does almost all of the necessary house-work. Should she obtain a share in the home- and if so what should it be?
  13. The problem with an objective valuation of contributions is that it does not allow any flexibility to take account of the different nature of the relationship between the parties. Neither the son in Example 1 nor the partner in Example 2 are paying anything by way of rent. But the expectations are quite different - one might expect the son to pay something, but not the partner. Likewise one might expect the partner to obtain a share- but not necessarily the son.
  14. There are many cases where additional tests or controls are necessary to achieve a fair result whereas there are other cases where they are not- and where their application would lead to unfairness. Yet the basis for distinguishing between the factual situations cannot be expressed in a suitably principled or rational manner.

## **Conclusions**

15. In this Discussion Paper, which concludes the present project, we are not making specific proposals for legislation. The purpose of the Paper is to provide a framework for future public debate and consideration by Government. The main points which emerge from the Paper are as follows:

- We have concluded that it is not possible to devise a statutory scheme for the determination of shares in the shared home which can operate fairly and evenly across all the diverse circumstances which are now to be encountered.
- It is essential that all those who are living together are positively encouraged to investigate the legal consequences of doing so and to make express written arrangements setting out clearly what they intend their rights to be. This is best achieved by executing a declaration of trust.
- Where no express declaration of trust has been executed, we believe that the courts must continue to ask themselves what the parties' intentions were. There are some useful reforms which can be made by the courts themselves taking a broader view of the kinds of contributions from which they might infer "common intention". For instance, where a person who is living with the home owner has paid the household bills and thereby enabled the home owner to pay the instalments due under the mortgage, that should normally be sufficient to enable the courts to infer that the person was intended to obtain a share in the home. We also believe that it would be more just if courts adopted a broader approach to quantifying the value of the share.
- We accept that marriage is a status deserving of special treatment. However, we have identified, in the course of this project, a wider need for the law to recognise and to respond to the increasing diversity of living arrangements in this country. We believe that further consideration should be given to the adoption- necessarily by legislation - of broader based approaches to personal relationships, such as the registration of certain civil partnerships and/or the imposition of legal rights and obligations on individuals who are or have been involved in a relationship outside marriage.
- It is not appropriate for the Law Commission to attempt to define a status which would lead to the vesting of rights and obligations. To do so would not only be well outside the remit of this project, it would also take it outside its function as a law reform body in requiring it to answer very difficult questions of social policy which are essentially matters for Government.
- The Law Commission would be prepared, if asked, to contribute to any further process of consideration of reform in this area in any way which is appropriate given its role as a body concerned with law reform.