How LGBT couples are more exposed than their heterosexual counterparts

By Gary Yan, Partner, Coote Family Lawyers | 22 October 2018

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This is in stark contrast to opposite-sex couples, who are over 4 times more likely to be married to their partner than living with them unmarried. Given the relatively recent introductions of civil partnerships and same-sex marriage, this imbalance is perhaps unsurprising. Unfortunately, however, there is little awareness within the LGBT community of the shocking lack of rights that cohabiting couples have when their relationships come to an end.

Contrary to popular belief, there is no such thing as 'common law marriage' in England and Wales. Rights are not accrued on the basis of the length of a relationship alone. In fact, the law treats unmarried, cohabiting couples very differently to their married counterparts.

For example, in England and Wales a cohabitee has no automatic financial claims against their partner if their relationship breaks down. If one sacrifices their career to support the other at home, they have no right to share in the wealth that their partner has accrued during their relationship. By contrast, orders for maintenance, lump sum payments and the transfer of property are common following divorce and the dissolution of civil partnerships.

The differences continue after death, too. If someone dies without a will, the law applies a set of rules – known as the intestacy rules – to distribute their assets to those who were closest to them (their spouse or civil partner, children, parents and siblings etc.). A cohabiting partner, regardless of how long they were in a relationship with the deceased, is not provided for at all.

Cohabiting couples also lack a range of tax breaks and financial benefits that are open to married couples and civil partners. For example, Siobhan McLaughlin lived with her partner for 23 years and had 4 children with him. When he sadly died, she was not eligible to receive thousands of pounds worth of bereavement benefits that she would have been entitled to had they been married. Her case reached the Supreme Court in April, with a decision on whether this is discriminatory expected in the coming months.

A number of jurisdictions across the world do things differently. In Australia, for example, de-facto relationships (broadly defined as two people of different or the same sex who are not married but effectively living under a genuine domestic basis) is recognised under both State and Federal law, which means that when it comes to laws relating to taxation, social welfare and pensions, de-facto couples are largely treated in the same manner as married couples.

When the relationship breaks down, a de-facto couple (subject to the relationship being of more than 2 years in duration) is also treated under the Family Law Act 1975 (Cth) in essentially the same manner as a married couple for the purposes of a division of their property assets and maintenance matters. The rules of intestacy (i.e. where someone dies without a Will) under the laws of each State and Territory of Australia also means that a surviving spouse is largely treated in the same manner as a surviving domestic partner.

Unfortunately, there does not seem to be any real political consensus in favour of reforming the law to protect cohabiting couples in England and Wales. Given the recent ONS statistics, this leaves the LGBT community particularly exposed.

However, there are a number of practical steps that cohabiting couples can take in the interim: ensuring that their will makes adequate provision for their partner; entering into a cohabitation agreement to provide for them in the event of relationship breakdown; nominating their partner as a beneficiary of any life insurance policy or pension scheme; or discussing the ownership of any joint property, for example.

These steps, however helpful, only go some way to addressing the disadvantages faced by cohabiting couples. Ultimately, it is for the government to reform this area of law to reflect modern society and the various ways in which people are increasingly choosing to live.

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