Ministry of Justice Consultation on A fairer end to relationships – England and Wales

Response from Propertymark

August 2026

Background

1. Propertymark is the UK's leading professional body of property agents, with over 19,000 members representing over 12,500 branches. We are member-led with a Board which is made up of practicing agents, and we work closely with our members to set professional standards through regulation, accredited and recognised qualifications, an industry-leading training programme and mandatory Continuing Professional Development[1].

Consultation – overview

2. The Ministry of Justice has launched a consultation examining the rights and protections available to both married and cohabiting couples, building on wider work around the protection of women and girls against violence. The consultation recognises that how finances are divided on divorce have remained unchanged for over half a century, and that the law has not kept up with changing family dynamics. The UK Government says, "supporting families also means ensuring families have financial security".

3. The consultation is split into three main sections covering divorcing couples, separation of cohabiting couples and intestacy of cohabiting couples. The UK Government is looking at how the law currently covers these circumstances and, in particular, where it can be made clearer for courts to make a decision on the separation of assets in the case of a relationship ending, whether as the end of a legal marriage, cohabitation or the death of a partner outside of marriage where there is no will.

4. Currently the objective of the law only provides that a separation of assets in a divorce should produce a "fair" outcome. The UK Government proposes that this is vague and unhelpful and is looking to change the law by creating a clearer framework, establishing "sharing" and "needs" principles. The Supreme Court has confirmed that the sharing principle applies only to

[1] https://www.propertymark.co.uk/

matrimonial property and that equal sharing is the appropriate and principled starting position for the court, unless there is justification, for example, to meet the financial needs of individuals.

5. Where the equal division of assets does not meet the needs of the concerned parties, the judge may depart from equality to ensure needs are met. Needs are broadly considered to refer to the income and capital needs of the divorcing couple, the needs of any children of the marriage, the need for a home, the need for provision for retirement and, as far as possible, to avoid either party being left dependent upon state benefits.

6. When cohabiting relationships end there is no statutory framework to guide how financial matters should be resolved. Legally there is no such thing as "common law marriage" and so many cohabitants are unaware that, when their relationship ends, they have very limited financial provision.

7. Cohabiting couples currently have very little legal protection when it comes to inheritance if one partner dies without a valid will (intestacy). Currently, unlike married couples, cohabiting partners have no right to apply for a Grant of Administration to manage the estate of their partner if they die intestate. The UK Government says that this is a misalignment between who inherits and who has legal authority to administer the estate and can lead to avoidable delay, conflict and distress.

8. The UK Government says a needs-based approach will prioritise fair outcomes for children, who are often the most affected by instability following family separation. Financial vulnerability in the primary carer can directly affect a child's wellbeing and long-term outcomes. By ensuring that the primary caregiver has the resources to meet their housing and living needs, a "needs" model promotes continuity and stability for children, reducing the risks associated with financial disruption.

<u>Propertymark response – summary</u>

9. Propertymark welcomes the opportunity to respond to this consultation on behalf of property agents in both residential lettings and sales sectors. Personal finances have a huge bearing on the work that property agents do, with property, more often than not, the most significant financial burden a couple may have to deal with and the splitting of finances and assets can have substantial knock-on effects in both renting and home buying and selling.

10. In formulating our response we have engaged with our members to establish how the proposals would affect their work in estate and letting agency. From the feedback our members broadly agree with the proposals set out and that greater clarity around the treatment of matrimonial and non-matrimonial assets, together with a legal framework that better reflects modern family structures, has the potential to reduce conflict and provide greater certainty for those involved.

11. An estate agent's role in the sale of a matrimonial property (purchased or acquired during a marriage or civil partnership) is with the intention of achieving the best sale for the seller or joint sellers. Estate agents are instructed by either the owner or joint owners, or by one party under the direction of the court. What agents require at the instruction stage is clarity about who is legally able to instruct them in the sale, and at the point of sale when and where the resident party be moving to, as lack of clarity with a buyer at this point can delay or even jeopardise the sale.

12. A dispute between the owners of a property during a marital or cohabitation breakdown can also hamper a sale, for example where one party is willing to accept an offer, but the other party is not, or where the resident party is uncooperative about viewings. One agent told us "Agents will keep to their defined role as property transaction advisers, whether that's sale or letting, rather than being involved in anything to do with the financial settlement itself. Mostly, we would be unaware of this aspect".

13. Our response can be broken down into the following three key points:

- **Greater clarity around legal definitions -** property agents want to see clear definitions which will enable agents and conveyancers to work with couples to ensure smoother and simpler transactions post relationship breakdown.
- **Clear outcomes based on the needs, equity and the financial contribution of each party -**the division of assets is usually the most contested part of a divorce or relationship breakdown and to minimise the distress and length of time legal proceedings take into account not only the needs of the parties but also providing a fair share based on the contributions each party has put into the relationship and financial improvements.
- **Legal definitions which mirror all types of relationship -** the UK Government must recognise that modern relationships come in all different shapes and sizes and afford them the same rights across the board. According to the Office for National Statistics (ONS), "the greatest change in the proportion of people living in a couple who were cohabiting was seen in those

aged 20 to 34 years, most notably for those aged 25 to 29 years for whom the proportion increased from 56.5% in 2011 to 71.6% in 2021."[2]

<u>Consultation Questions</u>

Part 1: Reforming the Law of Financial Remedies on Divorce

<u>1. Do you agree with the Government's view that the objective for the sharing principle is to give equal benefit to the parties of matrimonial property by dividing matrimonial assets equally?</u>

14. No, Propertymark agrees that there is a need for fairness, however, there should be allowances for nuance within the definition of a sharing principle. The definition of the sharing principle is that both parties to the marriage are entitled to an equal share of assets acquired during the marriage unless there is good reasons to depart from equality.

15. Sharing does not always mean equal parts and in some situations, equity is not the fairest outcome for each party. As it is not proposed to be mirrored in the cohabitation model, a blanket definition could be seen as a reason not to enter into a legal marriage. One agent told us "In practice, we regularly see situations where one party has made a substantially greater financial contribution towards the purchase or improvement of a property. A legal framework that better recognises financial contributions, alongside future needs, is likely to produce outcomes that are perceived as fairer by both parties".

16. On one hand, splitting assets equally would make the division of a relationship easier to manage, however, it does open the door for dispute where one party does not recognise that there was equal input into the estate. Propertymark supports the compensation model as a principle in determining the splitting of assets, this is the principle that the court should aim to redress any economic disadvantages which arose from the marriage.

[2] Office for National Statistics. People's living arrangements in England and Wales: Census 2021 https://www.ons.gov.uk/peoplepopulationandcommunity/householdcharacteristics/homeinternetandsocialmediausage/articles/livingarrangementsofpeopleinenglandandwales/census2021#living-arrangements-of-couples

2. Do you agree with the Government's view that the court should consider the sharing principle as the starting point and consider the needs principle where equal sharing would not allow needs to be met?

17. No, Propertymark thinks that the court should consider both the sharing principle and the needs principle together. The needs principle is defined as where the equal division of assets does not meet the needs of each party a judge may make a decision to depart from equity to ensure that needs are met. This is generally used where one party is the primary carer for children who require a home, and to avoid either party having to become reliant on state benefits.

18. The housing needs of both parties, particularly where children are involved, are clearly important, but should be balanced alongside financial contribution and the individual circumstances of the relationship. By setting the sharing principle as the default position it diminishes the input of either party either financially or personally.

3. Do you agree with the Government's view that it should codify the distinctions between matrimonial and non-matrimonial property, in line with the Supreme Court's decision in Standish?

19. Yes, there is a need for clarification around the distinctions of both matrimonial and non-matrimonial property. We support the Standish case definitions:
    - "Matrimonial property" comprises the fruits of the marriage partnership, reflects the marriage partnership or is the product of the parties' common endeavour.
    - "Non-matrimonial property" is typically pre-marital property brought into the marriage by one of the parties or property acquired by one of the parties by inheritance or gift.

4. Should the court be able to consider how the property has been used, shared and treated by the parties, and over what time period, when deciding whether non-matrimonial property has become matrimonial?

20. Yes, there should be consideration of the use of the property, this takes into account the nuance of each relationship. In reality, there is a difference between a property which was owned by one party before marriage and subsequently let out, with the rental income going to only that party, and a property which has been lived in as a marital home for twenty years with both parties contributing to the upkeep and improvement.

21. One property agent from North Lancashire said, "I agree the court should retain discretion to consider how property has been used throughout the relationship. Where an asset has become the family home or both parties have invested significantly in it over time, that should be capable of being recognised".

5. Do you agree with the Government's view that the overarching objective of the court when making a financial order should be to reach a fair outcome through the application of the sharing and needs principles?

22. Yes, financial settlements should take into account the sharing of assets as well as the needs of particular parties. However, there should also be the inclusion of the compensation principle which takes into account the use and input of each party to the asset. Another example would be where a party owns a property before marriage but gives responsibility to let it out to the other party during the marriage. The other party has no financial interest in the property but has been completing work on behalf of their spouse, the rental income has been split equally during the marriage. At the point of divorce the court would have to consider whether this non-matrimonial property should be exempt from the financial settlement or whether there should be consideration to the work put in by the other party.

6. Do you agree with the Government's view that the objective for meeting needs should be to enable both parties to transition to independence, as far as resources allow?

23. Yes, the needs of each party are significant in the final decision of the court. The outcome should enable both parties to transition to independence, thus taking into account how each party will live after the marriage has ended. It should enable both parties to be able to house themselves adequately and should not disadvantage either party disproportionately.

24. One member said: "Agents will often be engaged in finding new accommodation for the resident party. I have observed that sometimes the agreed settlement has not allowed one, or sometimes both the parties, to achieve what they want. For example, if you take the typical three bedroom family home, proceeds of sale will often not extend to buying a family home for the party with custody AND family home with enough space to accommodate the children at weekends."

7. Do you agree with the Government's view that the court should apply the needs objective using a three-stage hierarchical approach?

25. Yes, the hierarchy of needs set out in the proposals is fair and balanced, the needs of the family should be first and foremost, particularly where it relates to housing. Housing the children in their main residence is a key part of any relationship breakdown and, once a decision has been made on their custody, there should be a clear outline as to where their needs are best placed. The difficulty will arise where there is joint custody and the divorcing couple find that they cannot afford the size or location of property that they formerly enjoyed together.

26. Propertymark agrees with the hierarchy of needs in this order:
    a. Needs of the children
    b. Capital and income needs
    c. Discretionary needs

8. Do you agree that the stages should be focused on the following:

- **first consideration to the welfare of any children of the family;**
- **capital and income needs, including their housing and pension needs in keeping with the standard of living during the marriage;**
- **and where resources allow, discretionary need, in keeping with the standard of living during the marriage?**

27. Yes, this hierarchy seems most appropriate to ensure a fair and balanced split of assets.

9. Do you agree with the Government's view that there should be a checklist of factors that the court must consider when applying the needs and sharing objective?

28. Yes, Propertymark supports this model, taking into account the Section 25 factors which largely cover all the circumstances of a relationship, and we agree with the addition of the compensation model which will take into account the financial input or disadvantage of one party within the relationship.

10. Do you agree that this checklist should include an explicit reference to any disadvantage suffered as a result of the relationship?

29. Yes, we agree that this is the fairest approach to the splitting of assets and will help to resolve any potential dispute which could come from either party claiming that the settlement is unfair when split equally without consideration of individual circumstances or nuance. This is especially important when considering discrimination under the Equality Act 2010, which states that it is against the law to discriminate against anyone because of a number of characteristics, one of which is sex. Where splitting assets can lead to the discrimination of women or the protected characteristic of being pregnant or on maternity leave, this should be taken into consideration.

30. To set this out in a real-world examples, there are differences between a relationship which lasted ten years but had no children, where both parties inputted financially equally, to a relationship that lasted five years but within which the wife had two children and gave up her employment to care for them full time. In this case the wife did not financially contribute equally but contributed to the relationship by raising and caring for the children. To avoid discrimination against the wife for not contributing as much money to the marriage, consideration should be given to her time with the children where she was not earning an income.

Domestic Abuse

11. Do you think that domestic abuse should more readily be taken into account in relation to the distribution of assets by the court in financial remedy and cohabitation proceedings?

12. To what extent should domestic abuse, if established, influence the court's decision-making in financial remedy and cohabitation proceedings?

13. If domestic abuse were more routinely considered in financial remedy and cohabitation proceedings, how do you think this should affect the division of assets between parties? For example, what principles should guide how misconduct is reflected in financial outcomes and how should this be applied in practice?

14. If courts were more readily able to take domestic abuse into account in financial remedy and cohabitation proceedings, what impact do you think this would have on those proceedings (for

example, the length of cases, evidential requirements, costs to parties and the overall experience of victim-survivors)?

15. Do you agree that the language currently used to describe the threshold for considering misconduct in financial remedy proceedings (sometimes referred to as the "gasp factor") is inappropriate and should be replaced?

31. Questions 11 to 15 sit outside the scope of our organisation, the opinions of professional bodies that support survivors of domestic abuse should be considered.

Misconduct generally

16. What forms of behaviour do you think should be considered as "misconduct"?

32. All forms of financial misconduct should be taken into consideration, as mentioned in the proposal, financial misconduct can be a form of domestic abuse which should be taken into account as a mitigating factor when deciding the outcome of a financial settlement. Any form of financial misconduct should be considered seriously as it impacts on the outcome of the relationship and in many cases may have impacted the state of the relationship and contributed to the end of it.

33. Examples of financial misconduct could include fraud, embezzlement and money laundering. As well as gambling or excessive spending such as large credit card debts which can be attributed to one party, particularly where the other party is unaware. It should also be noted that in many relationships only one party takes control of joint financial matters, so there may be instances where bills have not been paid or loans taken out without the knowledge of the other party.

34. The obvious outcome is that these types of financial misconduct results in less money to be shared at the end of the relationship, however there are greater consequences which may impact both parties in the future such as county court judgements (CCJs) on their file or negative credit ratings. The 'innocent' party may not know about any issues until they are looking for a new property to live in and are turned down for a mortgage or fail credit checks, this impact should be considered by courts when making a judgement on a financial settlement.

<u>17. What sort of impact do you think misconduct should have on a financial remedies claim or cohabitation claim?</u>

35. As outlined above, there are certain circumstances which can have a lasting effect on both parties, these should be taken into account when considering financial remedies, particularly where there is clearly one party who was at fault.

<u>18. If you believe misconduct should be more readily taken into account by the court, do you think misconduct which has financial consequences should be treated by the court in the same way as misconduct without financial consequences?</u>

36. No, not necessarily. Each relationship's circumstances should be considered on their own merit. It is difficult to put a price on conduct, whether that is financial or otherwise. The individual circumstances of the case should be considered when making a judgment, there are no two situations alike as not only the financial impact needs to be taken into account but also the emotional and physical impact. Not all conduct is the same and it could be argued that a financial misconduct has more negatively affected a relationship than a non-financial one, but in another relationship the opposite is true.

Pension sharing

<u>19. Do you agree with the Government's view that the court should specifically be required to give consideration to pensions accrued during the marriage and pension needs when making financial orders?</u>

37. Yes, income or lack thereof can have significant impact on the outcome of the end of a relationship. When in a committed relationship both parties would enjoy the lifestyle afforded to them by the joint income and pension benefits. When each party is looking to move after a relationship ends, they may be looking at buying a new property or renting, the income they have at their disposal is key to the type of property they can afford or pass credit rating checks for. There may be situations where the pension income is required to find alternative accommodation.

38. As stated in the consultation proposal, the value of pension assets is often lower for women who are more likely to take a career break for caring responsibilities. Overlooking this could be

considered discrimination under the Equality Act 2010, under the protected characteristics of sex and pregnancy and maternity leave.

Qualifying nuptial agreements

20. Do you consider that these proposed safeguards will ensure individuals understand the consequences of their agreement and provide sufficient protection against coercion?

39. Yes, nuptial agreements provide a useful and clear outline of both party's intentions. Propertymark agrees that safeguards to protect against coercion are key and will help with any subsequent legal proceedings. Estate agents say that having clear legal definitions helps them when acting on behalf of one party during a relationship breakdown and can prevent sales of assets becoming drawn out and disputed.

21. Do you agree with the Government's view that when considering meeting "needs" under the qualifying nuptial agreement model proposed, this should exclude discretionary needs, in the same way as proposed for cohabitants?

40. Yes, Propertymark agrees that discretionary needs are less important than the needs of the family where children are involved. It is also important to consider that nuptial agreements are usually made at the start of the relationship and that over time things can change, family requirements, such as children leaving home, and financial needs change, such as where one partner may become the breadwinner. The basic needs of housing, capital, income and pension, are the most important before assessing any further discretionary needs that each party may have.

22. Beyond housing, capital, income and pension, are there any other elements that you think should be included in, or excluded from, the assessment of "needs" within the context of qualifying nuptial agreements?

41. No, there are no further considerations which we think should be included in the assessment of needs.

Seamless cohabitation prior to marriage

23. Do you agree with the Government's view that the court should consider a pre-marital cohabiting relationship as counting towards the length of a marriage, where that relationship moves seamlessly from cohabitation to marriage?

42. Yes, the UK Government should take into account any length of time, seriousness and joining of assets before a marriage. Modern lifestyles mean that more unmarried couples are living together for longer. Census data from 2021 shows that the proportion of people living in a couple who were married or in a registered civil partnership decreased to 75.7%, from 79.4% in 2011.[3]

43. It is important to note that the number of couples who are cohabiting is highest among younger people, aged 20 to 34 years, reflecting the increase in age at marriage and the reduction in marriage rates. This is a significant age as the majority of homeowners will purchase their first property within this age range, meaning that unmarried couples are more likely to own a property together now than historically.

24. Which factors, as outlined by the Law Commission's 2007 report, do you think the court should take into account when assessing whether there has been seamless cohabitation prior to the marriage?

44. The factors outlined in the Law Commission's 2007 report are:
    - Existence of a joint household
    - Stability of the relationship
    - Financial arrangements
    - Responsibility for children
    - Presence of a sexual relationship
    - Public recognition of the relationship

45. Propertymark agrees that all factors outlined by the Law Commission's 2007 report are important and should be taken into account when assessing whether there has been a seamless cohabitation

[3] Office for National Statistics Census Data 2021 https://www.ons.gov.uk/peoplepopulationandcommunity/householdcharacteristics/homeinternetandsocialmediausage/articles/livingarrangementsofpeopleinenglandandwales/census2021#living-arrangements-of-couples

prior to marriage. However, some of the factors could be considered subjective and open to scrutiny such as the stability of a relationship. This is open to interpretation as many couples may experience times of separation before deciding to get married and "settling down", yet the length of time the relationship is stable should be considered a factor, for example where the couple have signed a joint lease on a property or have a mortgage in both names.

46. The presence of a sexual relationship and public recognition of a relationship can be questioned as scrutiny of these could discriminate against a couple who chose not to engage in a sexual relationship (asexuality) or those who are not publicly announcing a relationship for personal reasons, such as if it goes against their family's religious beliefs. However, these factors are also important to consider when differentiating a relationship between friends or housemates rather than as a romantic couple.

Part 2: Reforming the Law for Cohabitants on Separation

25. Do you agree that cohabitants captured within the framework should be two people living together as a couple in an enduring family relationship?

47. Yes, Propertymark broadly agrees with this definition.

26. What factors, as outlined by the Law Commission's 2007 report, do you think the court should take into account when considering whether individuals are cohabitants?

48. As outlined in the response to question 24 above, Propertymark thinks that the factors which should be taken into account when considering whether individuals are cohabitants should match those which are considered when assessing whether there has been seamless cohabitation prior to the marriage.

27. Do you agree that those who are already married or in a civil partnership with each other, or those who are too closely related to each other to have married, should be ineligible for the framework?

49. Yes, Propertymark agrees that those who are already married or in a civil partnership with each other, or those who are too closely related to each other to have married, should be ineligible for the framework.

28. Do you agree that the minimum age to be eligible for the framework should be 18?

50. Yes, this aligns with both the legal age for marriage and the age legally allowed to rent a property.

29. Do you agree with the Government's proposal that couples without children must have lived together for a minimum of three years, before they can access the cohabitation framework? If you disagree with the three-year minimum duration period suggested above, what period would you propose having instead?

51. Yes, Propertymark agrees with the decision to require couples without children to have lived together for a minimum of three years. Although no relationship can be properly defined by the passage of time, it does create a clear timescale within which a committed relationship can be established. Propertymark members commented that their key priority is that there should be clear and defined statutory definitions.

30. Do you agree that where cohabitants are living together and there is a child of the family, the minimum duration requirement should be disapplied?

52. Yes, where the relationship includes a child the needs principle should be applied from day one in line with the rights afforded to married couples.

31. Do you agree that a time limit should be introduced to prevent claims being made after two years have passed since the relationship ended? If you disagree with the two-year period suggested above, what period would you propose having instead?

53. Yes, Propertymark agrees that there should be a cut off date after the relationship has ended. Our members tell us that clear timelines, definitions and deadlines are key to ensuring that both parties can move on to sell the property and divide their assets. One member told us that "one of the greatest challenges following relationship breakdown is where one party simply disengages from the transaction. Estate agents regularly encounter situations where a jointly owned property cannot progress because one party fails to respond to correspondence, refuses to sign documentation or otherwise delays decisions."

32. Do you agree that "needs" should be the guiding principle the court follows for determining outcomes when cohabitants separate?

54. As with divorce proceedings, Propertymark thinks that the courts should consider needs, sharing and compensation principles as a whole. Each relationship is unique and the contribution of each party to the assets, as well as the resulting needs, are always different. As referenced in our answer to question one, a blanket definition of equal sharing could be seen as a reason not to enter into a legal marriage, especially if needs are put first in a cohabitating couple. Therefore, the court should consider sharing the assets, the needs of each party and any compensation due for each case. We recognise that this is more complex for courts to consider, but we believe that it would reduce opposition from unhappy parties. In our research a member said, "I support the court considering needs, particularly where children, disability or significant health conditions are involved. However, I do not believe needs should be considered in isolation and should instead be balanced alongside financial contribution and the wider circumstances of each case."

33. Do you agree with the Government's view that the objective for meeting needs should be to do so in such a way as to enable termination of dependence and obligations as soon as is just and reasonable?

55. Yes, Propertymark does agree that the objective should be to enable independence for each party. This is particularly important where there is a property that needs to be sold so that assets can be divided. Our members have told us that difficulties arise when one party does not agree to a sale,

or they may be looking for a higher asking price for example. The court will need to make swift decisions on what each party should receive in order to minimise disputes.

56. Propertymark members said either or both parties often express that they are not satisfied with the financial terms of separation and are reluctant to accept any consequential drop in living standards. One member said "I notice that location, tenure (owned or rented) space and condition, and those factors relationship with price, all come into the conversation about what the next set of separate living arrangements will be. This is particularly true where children are concerned and there is motivation by either or both parties to be near to relatives, familiar childcare and schooling."

34. Do you agree that discretionary needs should be excluded from the consideration of needs for cohabitants?

57. Yes, to avoid further complication and unnecessary time added onto discussions of asset splitting, we agree that discretionary needs should be excluded from the consideration of needs for cohabitants.

35. Do you agree that the court should be able to take account of needs arising from wider circumstances than the relationship (for example, serious health conditions or disabilities) when determining financial provision?

58. Yes, Propertymark agrees that wider circumstances should be considered in the needs of each party to the relationship. If the relationship was to continue these needs would form part of the ongoing partnership and therefore it is fair to consider them as the relationship is ending to ensure a fair and just outcome. For example, if one party becomes disabled and is unable to work, within a relationship it would be expected that the other party would become the breadwinner and support the family, in the case of separation this would no longer be possible and therefore should be considered under the needs of that party.

36. Do you agree there should be a checklist of the matters the court must particularly consider when applying the needs principle?

59. Yes, to echo our response to question 9, Propertymark does support a checklist broadly covering the Section 25 factors, this gives clear and definitive factors to consider and matches the Government's approach to divorce proceedings.

Remedies Available

37. Do you agree with our proposed approach in relation to remedies for cohabitants?

60. Yes, Propertymark supports the proposed approach, that the court should have access to a broad set of remedies which reflect what is available on divorce, including property adjustment orders, lump sum orders and pension sharing orders. This proposal supports our comments above and will give independence to each party by allowing them to move on with selling, purchasing or renting a new property.

38. In relation to maintenance in particular, do you agree with the follow statements. Please tick all that apply:

- **Maintenance should be awarded in exceptional circumstances (such as serious health issues or disability).**
- **Any maintenance order should be time-limited, with no open-ended "joint lives" orders.**
- **A maintenance order term may not be extendable beyond the original period set by the court.**

61. As Propertymark represents property agents, we do not have a view on how or when maintenance orders should be awarded. However, in relation to ongoing property costs, for example the cost of renting a property in which the couples' children will live, ongoing costs are a significant factor which should be taken into account when determining the split of assets.

39. Do you agree there should be an explicit requirement that the court cannot award cohabitants a higher award than one which would have reasonably been made if they were a married couple divorcing?

62. Propertymark agrees that any award should be equal to that which a couple would have received if they were married.

Opting out of the framework

40. Do you agree that all of the safeguards listed above should be required in order for an opt-out agreement to be valid?

63. Yes, Propertymark agrees with the safeguards listed in the proposal to ensure that vulnerable individuals are not at risk of exploitation. Propertymark agrees that an opt-out should include a legal contract, an agreed statement and disclosure of finances. This should reduce any issues arising after an opt-out agreement is made and actively discourage opting out altogether.

64. The safeguards listed in the proposal are:
    - **Contract validity:** the agreement must be a valid contract without, for example, undue influence or misrepresentation.
    - **Execution as a deed:** the agreement must have been made by deed and must contain a statement signed by both individuals that they understand that the agreement is an opt-out agreement that will remove the ability of either party to make an application under the cohabitation framework.
    - **Material financial disclosure:** each party to the agreement must have received, at the time of the making of it, disclosure of material information about the other party's financial situation.
    - **Independent legal advice:** Independent legal advice for each party signing the opt-out, to ensure each understands the legal effect and consequences of the agreement.
    - It should not be possible for a party to waive their rights to disclosure and legal advice.
    - Any variation of an agreement must meet the requirements listed above.

41. Do you agree an opt-out should not be able to prevent an application being made on behalf of a child?

65. Yes, Propertymark agrees that an opt-out agreement should not be able to prevent an application for a child, including child maintenance and any needs that the party may require in respect of a child or children.

Public Engagement

42. What do you think is the most effective way to communicate these reforms to the public, particularly to help dispel the common law marriage myth and raise awareness of the new legal rights?

66. There should be an educational campaign which targets all agencies and organisations that come into contact with separating couples. It is not the role of an estate or letting agent to give legal advice to separating couples but they are closely involved in the separation of property or assets and therefore, if they have knowledge of the updates to the law, they can pass on this information to get further advice from a legal professional. The same could be said for social workers, charities who support domestic abuse survivors, Citizens' Advice services, local councils and health professionals. The Ministry of Justice should target all agencies who may work with people who are experiencing a relationship breakdown.

Part 3: Reforming the Law for Cohabitants on Death

43. Should qualifying cohabitants receive the same intestacy rights as spouses or civil partners?

67. Yes, Propertymark agrees with the UK Government's concerns that cohabitants may be missing out on the rights which are afforded to married couples and the proposal to extend intestacy rights to cohabitants provided that certain conditions are met. This is because a consistent approach is the most welcome to those who deal with property and asset transactions.

44. Should qualifying cohabitants have the same priority as spouses and civil partners to apply for a Grant of Administration where their partner dies intestate?

68. Yes, where a cohabitant can prove that they were in a meaningful relationship with the partner who has passed away they should be afforded the same rights as married or civil partners. This ensures consistency across all relationships and does not discriminate against a couple who chose not to marry. There are many instances where a couple may be in a relationship for many years but are unmarried and they should be able to apply for a Grant of Administration. This is particularly true where the couple have built up finances and assets together, it would be unfair then that a child or other family member should be able to apply for the grant which would then deal with the financial matters of the surviving partner.

45. What, if any, are the other factors the Government should consider when deciding on the definition of a cohabitant for the purposes of intestacy rights?

69. Propertymark broadly agrees with the factors highlighted by the UK Government in the consultation document. The definition of a cohabitant should mirror that used in other legal contexts; in the Family Law Act 1996[4] it is defined as two persons not married to or civil partners of each other but living together as if married or as if civil partners and the Inheritance (Provision for Family and Dependants) Act 1975[5] states that a cohabitant must have lived in the same household as the deceased “as the husband or wife” or “as the civil partner”. In most cases the definition is the same as if the couple were married and therefore, the law should reflect the similarities between cohabitants and married or civil partners.

46. What do you consider to be an appropriate minimum duration period where the couple do not have a child together? What are the potential unintended consequences of setting either a shorter or a longer minimum duration period?

70. Propertymark thinks that the minimum period should reflect that of a married couple and the definition mentioned above under the Inheritance (Provision for Family and Dependants) Act 1975, which states that the couple should have been living together for at least two years. This brings consistency to both marriage and cohabitation and does not favour one above the other.

[4] Family Law Act 1996 s62(1)(a) https://www.legislation.gov.uk/ukpga/1996/27/section/62
[5] Inheritance (Provision for Family and Dependants) Act 1975 ss1(1A)–(1B) https://www.legislation.gov.uk/ukpga/1975/63/section/1

71. It is possible that a shorter duration could result in accusations of malicious intent on the part of the surviving partner, however, there is no minimum duration in which a partner may have bad intentions. There are a number of reasons why a couple may be cohabiting without a child and it is not for the courts to make this decision, but to set a minimum time which matches that of married couples who do not have children.

47. What do you consider to be an appropriate minimum duration period where the couple have a child together? Are there any specific risks or benefits you have identified that the Government should consider when setting a minimum duration period for couples with a child together?

72. Propertymark thinks that it would be most appropriate to match the timescales outlined above for married couples and set no minimum period for couples who have children. In modern relationships there are many instances where a couple may have a child before the two-year period suggested, they may have even had child before deciding to cohabitate for personal or financial reasons. Modern families do not adhere to the traditional format of living together, marriage and then children and they present in different ways which reflect modern concepts. For this reason, Propertymark thinks that couples with children should not face a minimum period before they can prove their cohabitancy.

48. Do you agree with the Government's proposal to extend eligibility for I(PFD)A 1975 claims where cohabitants have shared children?

73. Yes, in line with our response to question 47 above, we think it would be most appropriate to have no minimum time period for cohabitation where there is a child involved. Propertymark thinks that the simplest and clearest definitions would be mirrored across all eventualities, so a couple who have children together who is married, in a civil partnership or are verified cohabitants all enjoy the same rights at the point of having a child.

49. Are there any wider impacts of extending eligibility for I(PFD)A 1975 claims where cohabitants shared children that the Government should consider?

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74. No, as outlined above, Propertymark wants to see clear definitions which reduce any additional cause for conflict between either couples or wider families.