

The Myth of Common Law Marriage – Unmarried parents

MYTH: There is a concept of “common law marriage” in English and Welsh law.

FACT: There is big difference between the financial obligations of married parents and unmarried parents on separation.

The number of children born to unmarried parents has more than doubled since the 1990s and it may only be a few years before the majority of babies are born outside marriage. However, awareness of unmarried parents' financial obligations towards their children and one another on separation remains worryingly low.

Ideally, on any break-up, you should sit down as reasonable adults and agree who gets what and how you will care for the children and each readjust to your new single lives. But this can become difficult when children are involved and one parent has sacrificed a career to care for them.

Most unmarried couples look to the Child Maintenance Service (or CMS, which recently replaced the CSA) to gauge the appropriate level of child maintenance payable to the primary carer of the children. The standard CMS calculation is slightly more complicated than previously, but their [online calculator](#) is a useful starting point.

However, this doesn't help the unmarried parent suddenly left with children to care for and insufficient resources of their own to fund the family home and lifestyle. Step up Schedule 1 of the Children Act 1989. This nifty piece of legislation, which is a rare jewel compared with other countries' family laws, enables a “parent with care” to claim additional financial support from the other parent for the benefit of the children.

Crucially, the parent can ask the court to order the other parent to provide funds for a family home (all within the context of the parties' respective financial circumstances). However, the fundamental difference from a married couple divorcing is that the capital is effectively lent to the parent with care while the children are young (normally until they are 18 or leave education), rather than given to him/her outright. Once the children have flown the nest, the house is sold and the other parent gets his/her money back.

Claims can also be made for school fees and ‘top up maintenance’ (above the CMS limits) and outright lump sums to pay for other capital expenses, e.g. initial birth and home equipment (if the parents never cohabited), a family car and other items likely to depreciate significantly over time. Above all, the primary aim is for these to benefit the children, not their carer.

Schedule 1 claims are not widely known about, so it is important to seek expert legal advice, whether you are thinking of making a claim yourself or trying to work out what would be reasonable to pay.

Heather Weavill and Steven Barratt are both experienced Family Solicitors at Alison Fielden and Co in Dollar Street, Cirencester (01285 653261) and can advise and assist you in all types of family cases.