

CIVIL PARTNERSHIP ACT: WHAT IF IT ALL GOES WRONG?

The legal implications of dissolving a civil partnership

Statistics currently say that one in two relationships break down. These relationships cover the whole spectrum of sexual orientation. We can therefore expect that a fair proportion of people who register as civil partners will seek to dissolve their civil partnership at some time in future. Although not a 'romantic' view, it is worthwhile considering the likely consequences of such a dissolution.

Although civil partnership is not 'gay marriage', it nonetheless purports to confer rights and responsibilities "akin to marriage". There is nothing in the legislation which states that way in which the law relating to civil partners is applied will be the same as the way in which the law relating to married couples is applied. However, it is envisaged that the courts will follow the existing law, adapting it to fit the circumstances of the same-sex couple's relationship. This may produce some unexpected results for same-sex couples.

Methods of terminating civil partnership

First, let us turn to the formalities of how a civil partnership can legally be dissolved. It will not be possible to simply separate and announce to friends and family that that is the case. The courts will have to be involved as they would be if the couple were married. There are two methods of terminating partnership. These are:-

1. Applying for a dissolution (akin to a divorce)

The main features are:

- No dissolution can be granted until one year has lapsed after the civil partnership has been registered.
- The only ground for dissolution is the irretrievable breakdown of the relationship. This is proved by relying on one of four facts namely:
 - (i) unreasonable behaviour;
 - (ii) living apart for a period of two years (with the consent of the other partner);
 - (iii) living apart for five years (without the consent of the other partner);
 - (iv) desertion for a period of two years or more.

There is no concept of adultery, which has a 'legal' definition of having a relationship with someone of the opposite sex, but forming a relationship with a third party can of course be an example of unreasonable behaviour.

- Where the ground being relied on is either two years' separation (with consent) or five years' separation (without consent), the court may refuse to grant dissolution if this would

cause grave financial hardship to one of the partners. Financial matters would therefore need to be sorted out before proceedings are completed.

2. Applying to annul the partnership (akin to nullity proceedings)

The law distinguishes between what are termed as 'void' and 'voidable' partnerships.

- A void partnership is one which has not been registered properly i.e. the partners were not eligible to register or there has been some procedural irregularity in the way in which the partnership has been registered, including improper registration procedure abroad.
- To have the partnership declared voidable, the partners will have to rely on grounds similar to those in nullity proceedings in marriage and will include non-consummation of the relationship and venereal disease.

In summary, the main difference between the different methods of terminating a partnership is that if the partnership is dissolved it will be deemed to have existed up until the date of dissolution whereas if the partnership is annulled it will be deemed never to have existed in the first place.

Aside from the legal method of terminating a partnership there will be ongoing consequences for any children and for the parties' finances. These can be summarised as follows:-

A. Children

The effect of registering as civil partners will put a civil partner who is not a biological parent in the same position as a step-parent. On termination, where only one partner, the biological parent, has what is known as 'parental responsibility' (enabling him or her to make major decisions regarding the child's upbringing) the other civil partner can acquire parental responsibility in a number of ways i.e.

- (a) By agreement – this will usually be in the form of the parties signing a prescribed legal form whereby the biological parent with parental responsibility consents to parental responsibility for the other partner.
- (b) By order of the court

It should be understood that the parties do not need to wait until the relationship is likely to be terminated before applying for parental responsibility. This can be done on registration or any time after.

In addition to the above the non-biological parent can also apply to the court for parental responsibility 'without leave' where he or she has previously been obliged to apply to the court for an order that the child resides (lives) or has contact with him or her.

As a consequence of these provisions, future arrangements for any child will be an important issue to be considered by registered civil partners. Developing a good relationship between parents and co-parents after separation will remain an important goal and couples will be encouraged to work towards this. Mediation will be encouraged and this may become an increasingly important route to resolving disputes concerning children for civil partners in particular.

B. Finances

This is likely to have a major impact on most couples. The Civil Partnership Act makes provision for couples to make claims against each other as they would be able to do if they were married. In future, civil partners will be able to make the following financial claims against each other:

- (a) A lump sum of money;
- (b) A property adjustment order (including a transfer of property or a sale of property);
- (c) A pension sharing or attachment order;
- (d) A maintenance order (known as 'periodical payments').

The important change is that these claims will remain open even after the relationship has been terminated unless the court specifically dismisses such claims. Effectively, all civil partners will now have to address and resolve the financial matters between themselves before they can let go of that final link with their partner. Generally the courts will aim, as they do now with a married couple, to achieve a clean break by dismissing all claims against each other if that is possible. This will depend upon the resources of the parties.

The court will take into account a variety of factors in considering how to divide the finances. All the circumstances of a case will have to be taken into account. The first consideration will be given to the welfare of any child. Other factors will include (and in no order of priority):-

- (a) Income, earning capacity and financial resources of each partner.
- (b) Financial needs, obligations and responsibilities of each partner.
- (c) The standard of living enjoyed by the partners.
- (d) The age of the partners and the duration of the partnership.
- (e) Physical or mental disability of either of the partners.
- (f) The contributions which each partner has made or is likely to make in the future.
- (g) The conduct of each partner if that conduct would in the opinion of the court be inequitable to disregard.
- (h) The loss to a partner of the benefit of the partnership such as a benefit that that party would lose the chance of acquiring.

The court is obliged to divide resources on the basis of fairness. This makes the system very flexible depending on the couples' circumstances but also uncertain because of the discretionary nature of the assessment that is undertaken by the court.

The overall point is that civil partners cannot expect to terminate their relationship without having some impact on the financial matters between them. The likely result is that it will impose upon the partner who is in a stronger economic position a greater obligation towards the other. It is therefore important for civil partners to understand the financial commitment that they are making to each other on registering their partnership.

Limitation and pre-partnership agreements

As with marriage, there are few steps that can be taken to limit the effects of registering a civil partnership. Once entered into, it can only be dissolved formally through the courts. Arrangements for children will have to be made via the courts if there is no agreement otherwise.

However, whilst civil partners cannot escape the financial claims that can be made if a relationship is dissolved, it may be possible to influence the approach the courts take towards the division of resources by entering into a 'pre-partnership agreement'. This is an agreement that is signed prior to the registration of the civil partnership and which sets out what arrangements the parties intend if their relationship breaks down at some point in future and the civil partnership is dissolved. This is akin to a 'prenuptial agreement'. A pre-nuptial agreement is not legally recognised in England and

therefore cannot fetter the courts discretion. However, it can be given some weight, provided it is entered into fairly with proper legal safeguards and where the circumstances at the time of the breakdown of the relationship are not too dissimilar to what the parties agreed to beforehand. This is much more likely to be the case if the marriage was short. It is expected that the courts will treat pre-partner registration agreements in a similar way and this may be a real option to parties who feel that they want more control over the way in which the financial matters in their relationship are regulated.

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