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Women and Equalities Committee  
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13<sup>th</sup> September 2021

Dear Committee

**Re: Women & Equalities Committee Inquiry into the Rights of Cohabiting Partners**

Thank you for providing us with the opportunity to share our thoughts in respect of your Inquiry looking at the rights of cohabiting partners. We are very grateful.

**Introduction**

Muslim Women's Network UK (MWNNUK) is a national Muslim women's organisation in Britain ([www.mwnuk.co.uk](http://www.mwnuk.co.uk)) that has been advancing equality, promoting women's empowerment and connecting voices for change for over 18 years. We are a small national charity (reg. no. 1155092) that works to improve social justice and equality for Muslim women and girls. Our membership also includes women of other faiths and of no faith, and men who support our work. We find out about the experiences of Muslim women and girls through research and our helpline enquiries, as well as through our online membership platform, the MWN Hub. We identify policy and practice gaps and use this information to inform decision makers in government as well as informing our community campaigns at a grassroots level.

We also develop resources and train and capacity-build women so that they are better aware of their rights and feel empowered to exercise their own choices. We have a separate website for our national helpline (MWN Helpline: [www.mwnhelpline.co.uk](http://www.mwnhelpline.co.uk)) that provides advice and support on a range of issues including: Islamic divorce, domestic abuse, forced marriage, honour based abuse, sexual exploitation, female genital mutilation, employment issues and mental health matters. Our online membership platform (MWN Hub: [www.mwnhub.com](http://www.mwnhub.com)) is another means by which we share information and resources on a range of issues, encourage Muslim women to share their views and opinions on contemporary issues (including relationship matters) and engage with one another.

The impact of our work is particularly felt in reducing the vulnerability of Muslim women and girls, reducing the prejudice they face, and giving them greater access to rights and services – all of which allow them to contribute to society like any other citizen. We are also creating a critical mass of voices to influence change with more women being confident to challenge discriminatory practices within their communities and in society and to influence policy makers. To this effect, MWNUK also acts as the Secretariat for the APPG on Muslim women.

When talking about Muslim women and girls, we take an intersectional approach because their experiences will be affected by different aspects of their identities. For example, the Muslim population is ethnically diverse and an analysis of the broad ethnic groups from the 2011 Census show that the Muslim population of England and Wales was, at the time, made up of the following<sup>1</sup>: Pakistani (38%), Bangladeshi (14.9%), Indian (7.3%), Arab (6.6%), Black African/Black Caribbean/Other Black (10.1%), Other Asian (7.2%), White (7.8%), Mixed Race (3.8%) and Other (4.1%). As the majority of our service users identify as Muslim BAME, our points and recommendation are done so having taken into account the intersectionality of experiences of our service users and beneficiaries.

Additionally, although we work predominantly with Muslim women and girls and will generally focus on the experiences of Muslim women and girls within our Evidence, we wish to clarify that the points we raise may equally apply to non-Muslim women (and generally to the wider population).

We wish to raise the following points in respect of your Inquiry:

**Should there be a legal definition of cohabitation and, if so, what should it be?**

1. We believe that a legal definition of cohabitation would assist in strengthening the rights of cohabitants and more importantly, dispel myths as to what rights and protections are or are not available to cohabitants. We often find through our MWN Helpline and our work generally that misunderstandings around the rights of cohabitants are one of the reasons why individuals may not have taken relevant steps within their relationships to ensure that they are afforded legal protections, particularly where home ownership is involved. More often than not, individuals (particularly Muslim women) may have thought that they already have various rights and recourses available to them due to misconceptions around the legal status of so-called 'common law marriages'. This may be one of the reasons why they may not have insisted on a legally recognised marriage or some other form of protection. For instance, when purchasing a home with their partner, they may not be included as registered proprietors or the declarations of trust may not accurately reflect their contributions or the intentions of the parties due to misunderstandings as to the status of cohabitant relationships. That is, one party may think it is not necessary to be more specific because they already have rights that protect them when in fact they do not. There is certainly scope for better awareness raising in this respect (and law firms may also need to consider what else they may be able to do ensure that clients are truly understanding the impact of such choices and/or disclosing all relevant information to them) but we feel the introduction of a legal definition, together with appropriate rights and remedies, will make the status of cohabitants clearer and help to reduce such issues.
2. Nevertheless, when considering the context of Muslim couples who may only be in Islamic only marriages (where they have had a religious marriage but not a legal marriage), we do need to make the point that in a significant number of cases, ignorance of the law is not the reason for not having legally recognised marriages or for not taking steps to protect any property or other financial rights. Rather, our MWN Helpline cases and our long history

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<sup>1</sup> [Muslim Council of Britain \(2011\), British Muslims in Numbers: https://mcb.org.uk/report/british-muslims-in-numbers/](https://mcb.org.uk/report/british-muslims-in-numbers/)

of campaigning on the issues make clear that one of the very reasons for some Muslim couples entering into an Islamic only marriage is because one party wants to ensure that the other does not have the rights and remedies they would do if they were a spouse. That is, they want to protect their property and financial assets and ensure that their partner cannot claim any stake in such assets in the event of relationship breakdown.

3. Issues around Muslim marriage and divorce are consistency in the top three issues that we deal with most frequently via our MWN Helpline, and a recurring pattern in our cases tends to be the hardships arising for Muslim women due to not being in legally recognised marriages. Whilst Muslim women in the UK will have a religious marriage ceremony, this is not always accompanied with a civil marriage which means that whilst they are married as per their faith, they are not married in the eyes of the law. On the other hand Muslim women who have had religious marriages abroad are more likely to have their marriages legally recognised in the UK (where the formalities of the original country have been satisfied). In 2020, the MWN Helpline assisted over 1200 women and of those who provided us with information regarding their marriage status, 25% were not in legally recognised marriages. This is in line with data available to us from previous years on the MWN Helpline, highlighting that this is a significant concern for Muslim women. The Committee's Inquiry into cohabitation rights is therefore directly relevant to a large proportion of the British Muslim population.
4. There are unfortunately many reasons why Muslim women may agree to have a religious marriage only (without immediately or later entering into a legally recognised marriage), including due to coercive control and societal stigma. For example, some Muslim women may fear that no one will marry them if they insist on having a civil marriage in addition to the Islamic marriage and the stigma associated with remaining single may lead to them agreeing to forego the rights they would otherwise have as spouses. Thus, we feel that a legal definition is necessary to provide better protection to Muslim women in such situations and also reduce the incentive used by some Muslim men to create an unequal bargaining power. We are aware of the argument put forward by some individuals and organisations that the introduction of a legal definition of cohabitants may dilute the concept of marriage and people may become less likely to be married; we do not agree as we feel those who wish to be legally married will get married regardless. Nor are we trying to push people towards marriage rather than cohabitation as we fully respect that these are matters of individual choice. However, what we do hope to see addressed through any law reforms is that people are not making choices purely to ensure that the other partner's rights and remedies are limited, or so as to be able to control and abuse their partner.
5. Moreover, whilst we of course appreciate that a distinction does need to be made between spouses and cohabitants, we do also hope that a legal definition (and associated rights) can be put together which takes into account the varying circumstances by which individuals may find themselves being a cohabitant rather than a spouse. To this effect, whilst we are aware of the Law Commission's previous proposals for a checklist approach towards the definition of cohabitants (such as the couple having a child together or they have been living together for a minimum length of time) and we appreciate why a checklist approach would assist with gaining certainty, we would also ask that provisions are included that provide the courts with flexibility to make decisions outside the parameters of any checklist where it is fair and just to do so, with supporting guidance issued to assist with such decision making. Because of the complex nature of relationships generally and the different dynamics which could be involved, we feel it is important to acknowledge that every situation may differ and mechanisms need to be included in any law reforms to help avoid creating or exacerbating unfairness, particularly if domestic abuse is involved. It would be wholly unfair for example, if a victim of coercive control felt unable to leave her abusive partner because she did not fall within the legal definition of cohabitant due to how

long they have been living together as she knew that she would not have any legal rights if she left sooner than the minimum period threshold. It is also important to note that relationships, and in turn abusive relationships, may start a lot longer than when they started living together and it may be that one partner had already started making financial contributions towards a home (whether by choice or under coercion) even before they had started living together.

6. We also wonder whether it would be useful to consider the introduction of a presumption of cohabitation unless rebutted; whilst we appreciate that such a presumption may come with its own potential problems, it may nevertheless assist in providing clarity and assurance. The reason we suggest is that we fear that without such a presumption, individuals may find themselves outside the definition in circumstances where it would be unfair to do. For example, one member of MWNUK (who was also in an Islamic only marriage) has shared with us how her and her husband initially lived with his parents after their Islamic marriage and six months later moved into a place of their own (as there were issues between her and her in-laws) but her husband still meant the majority of the week at his parents. The husband would argue that his first responsibility was with his parents and he should spend more time with them than her. Other reasons for living separately could be work related or other caring responsibilities or because the husband has more than one wife (an issue we talk about in further detail below). It would be unfair if those in such situations were unable to seek legal recourse due to technicalities that make them fall outside the legal definition of cohabitation.
7. We also feel compelled to make the point that predators are always one step ahead in finding loopholes in the law whereby they are able to protect themselves and abuse their victims. We therefore hope that any law reforms to cohabitation rights will ensure that there is no room for loopholes. Any legal definition must also be clear and easy to understand, and we also feel that there is merit to ensuring that the introduction of any new legislation is accompanied with an awareness raising campaign to highlight the changes.

**What legislative changes, if any, are needed to better protect the rights of cohabiting partners in the event of death or separation?**

8. In our opinion, the means by which cohabitees are currently able to seek legal recourse are limited and also confusing. For example, as you will be aware, cohabitees may be able to pursue claims under the Trusts of Land and Appointment of Trustees Act 1996 but in our experience, such claims can be complicated, time-consuming and also costly. We feel that it might be simplest to introduce new legislation which is clear and concise in terms of setting out the rights and remedies available, rather than attempting to amend existing legislation to make it fit for purpose for cohabitees. We feel that an attempt to do the latter is likely to create more confusion and reference to one Act would help the situation better.
9. We do wish to make the point that one of the key issues that arise in terms of cohabitee rights, particularly for Muslim and BAME women, is the lack of protection afforded in terms of property and financial matters. Muslim women (and women generally) in such relationships may have for example, made contributions to the family home in a number of ways including by leaving their jobs and looking after children or the elderly who form a part of the family or extended family. Financial contributions may have also been made in ways that are not entirely obvious; for example, they may have agreed to do the food shopping with their salary or welfare benefits, freeing up their partner to pay the mortgage directly. It appears that the current legislative provisions are as such that whilst such points can be taken into account for married women in any property or financial claims, this is difficult to do for cohabiting women.

10. We also wish to highlight the complications caused by the focus placed on children only in terms of applications made for financial provisions for children under the Children Act 1989. Whilst we of course appreciate the necessity for such legal provisions and do not suggest that they are taken away, our concern is the fact that the needs of the parent (the former cohabitee) does not form a part of the consideration. For example, an application can be made for the child to be able to remain in the family home and for the parent to reside in the family home with them. However, not only is there no guarantee that this will in fact occur (as decisions are made on a case by case basis) but the decisions may also be time limited which means that the parent is only able to stay in the home temporarily (until an agreed event occurs, such as the child reaching a certain age or completing compulsory education). This is concerning for us for a number of reasons. On the one hand, it does not take into account the current and future circumstances of the parent which will arise and also opens the parent up for abuse. For example, one Muslim woman who had been a victim of domestic abuse informed us how she was given the right to remain in the family home until both her children had completed their education (which was actually only for three years, after which the home was to be sold). Her children would spend time with their father and his family every other weekend and during such stays, her former in-laws would take the opportunity to emotionally manipulate her children, telling them how bad a wife and mother she had been and that she had no right to say anything to them because she is only allowed to stay there because of the children. She said that all this ultimately strained the relationship between her and her eldest child and the lack of security and worry about what would happen to her in three years time had a detrimental impact on her mental health. She said that she felt the court had taken too much of a simplistic view and not taken into account the intersectionality of her experiences. For example, they took into account that she had a degree and used to work before marriage (and earn well) but did not take into account how long she had been out of work and that the reason was because it was a condition of her husband before marriage that she must not work. She also felt disappointed in herself that she had not been more honest about the emotional abuse she had suffered and the impact on her confidence levels. Thus, we feel it is very important to take into account the impact of domestic abuse which may be relevant in cases and introduce provisions which can be used on a case by case basis to ensure fairness to all involved.
11. It is also critical that the unfairness caused by existing legislation in the context of death is addressed as soon as possible, particularly in the case of inheritance and pensions. The MWN Helpline has for example dealt with a case where the couple were in an Islamic only marriage only and on the death of the husband, the property was passed onto the children under the intestacy rules. The children then began abusing the widow of the husband to force her to leave the home and all of a sudden she found herself in a situation where she was homeless and with no financial support. It is important to bear in mind also that not everyone will have the means or support to pursue a claim in court and even if they did, the mental health impact of having to pursue legal action and the uncertainty that they will face as they await an outcome, cannot be ignored.

**What equalities issues are raised by the lack of legal protection for those in cohabiting relationships?**

12. From our experience, it is generally women and children that are most affected by the lack of legal protections afforded to those in cohabiting relationships and this is especially the case for Muslim women in Islamic only marriages. We wish to share with you the following case examples:

(a) A Muslim woman in her 40s went to her siblings' home for the weekend to attend a wedding and once she arrived there, she found a letter waiting for her

from her husband where he had written down that he had taken another wife (Islamic marriage only), that he divorces her and that she must not return to the family home which is in his name.

(b) A Muslim couple had an Islamic marriage only and she became pregnant very soon after. On their first anniversary, her husband came home and told her he was not happy in the marriage as this was not the life he wanted for himself and pronounced talaq three times and told her to leave the home with her then 6 week old newborn baby.

(c) A 25 year old Muslim woman married her boyfriend of two years and after marriage moved in with him and his family, which included his parents, brother and two sisters. Conflicts started to arise not between the couple but between the wife and the husband's mother and two sisters. The mother in law in particular was unhappy that the wife was still working and not staying at home. One day the husband was given an ultimatum by his mother that if he loves and respects her, he will immediately divorce his wife to teach her a lesson and throw her out of the house. Out of loyalty to his mum he complied but then later regretted his actions and sought advice from the local Imam who confirmed that as he had pronounced the talaq out of pressure from his mum, that it is invalid. The couple decided to move into a house of their own and have since then had no issues albeit there is still friction between the wife and mother.

(d) An arranged marriage took place between two cousins (both of whom were British) in the UK and the young woman moved in with her husband's family, her husband's mother being her paternal aunt. Two years later a conflict arose within the wider family as the young woman's sister had refused to marry her cousin (the brother of the husband in this scenario) and threats were made by the paternal aunt that if she did not agree to the marriage that the elder sister's marriage would also end. One talaq was pronounced (i.e. one and not three as one can be revoked) and the younger sister agreed to the marriage so as not to end her older sister's marriage, which would ultimately harm the older sister as she would face stigma and other forms of hardship. From then on both sisters lived under constant fear of having their marriages unilaterally ended overnight if they did anything to displease their paternal aunt who was also their mother in law.

13. The above are all cases which we have previously brought to the attention of the Ministry of Justice in the hope of seeking legislative reform to current marriage and divorce laws and provide better protection to Muslim women in Islamic only marriages. We are campaigning for the law to change so that it becomes a criminal offence for a celebrant to perform a religious marriage without either ensuring that this religious marriage is capable of being legally recognised or ensuring that a legal marriage has already been entered into prior to the religious marriage. We are also seeking an amendment to the Divorce (Religious Marriages) Act 2002 so that the granting of a decree absolute can be delayed by a court where to do so would assist in ensuring that the Islamic marriage has also been dissolved either by the husband or a Shariah council. We appreciate that these reforms are outside the scope of this Inquiry but the reason we wish to raise these with you is because, until and unless our law reform proposals are implemented, many Muslim women will continue to find themselves at a disadvantage in Islamic only marriages. They are likely to be at the mercy of their abusers due to stigma around divorce and also finding themselves without any financial support in the event of marital breakdown, and may also be further trapped where they are unable to obtain an Islamic divorce. As mentioned above, approximately 25% of the cases we deal with which relate to Muslim marriage and divorce, consist of Islamic only marriages and the consequences of being in marriage that have no legal standing. This is a significant number of Muslim women therefore who are at risk of abuse and financial hardship due to the current state of laws, and more often than not their children also face hardship in the event of relationship breakdown. Whilst

reform to the laws around cohabitation will not resolve all the issues arising from Islamic-only marriages, it would be a step in the right direction in providing better protection to them.

14. Additionally, it may be that the incentive of remaining in Islamic-only marriages is removed because there will no longer be a financial benefit for being only religiously married if cohabiting partners are given appropriate financial and property rights. If the Muslim men who would otherwise resist legal marriages due to the financial benefits involved (for them) are no longer resisting, then this would assist Muslim women as if they are in a legally recognised marriage then additional options are opened to them in the event that they want to seek an Islamic divorce. For example, there is one Islamic opinion that the granting of a decree absolute to end the civil marriage can also be taken as simultaneously dissolving the Islamic marriage. Whilst this opinion is not yet widely accepted, in recent years it has started to gain more popularity and is therefore a means by which Muslim women can move on with their lives without being tied by their ex husbands. Moreover, there are a number of Shariah councils who will grant an Islamic divorce upon seeing that the civil divorce has been granted. Thus where women are legally married in England and Wales, they do have greater options by which to end their Islamic marriage too. If the financial incentive to remain in an Islamic only marriage is removed for some Muslim men, it could lead to some shifting to agreeing to legal marriages and thus better protection for Muslim women. Of course, there may be other reasons why Muslim men may not wish to have a legal marriage (such as polygamy) but we nevertheless feel that the reforms to cohabitation rights will have a positive impact.
15. We also do wish to mention the very real issue of polygamy which will need to be navigated when considering the rights of cohabitants. Whilst bigamy is of course illegal in the UK, as Islamic only marriages are not legally recognised, a loophole exists whereby Muslim men can have more than one spouse by only entering into Islamic only marriages. The issue this creates of course is that in the event of relationship breakdown, which of these partners will be afforded rights as cohabitants if they have for example, been largely simultaneous marriages? Will only one relationship be recognised as the cohabiting relationship and the other ignored and if so, which one and why and how? As a point of public policy, we appreciate that it would be problematic to acknowledge more than one Islamic marriage as cohabiting relationships. However, this is also likely to cause unfairness as one woman is likely to be without any legal recourse. We appreciate of course that this is a risk taken by Muslim women when entering into polygamous marriages, but we are also very aware of the emotional, physical and financial abuse that could be involved in pushing Muslim women towards agreeing to become a second, third or even fourth wife. We feel that some Muslim men see it as an incentive that they can have multiple wives through Islamic only marriages and the wives cannot have a claim over their finances and properties and we feel it is important to address this issue so as not to allow such unfairness to continue. We would welcome the opportunity to hold a roundtable meeting to discuss this particular point in more detail so that we can consider proposals by which to protect victims of abuse without inadvertently having it appear as if polygamy has been legitimised.

#### **Should legal changes be made to better provide for the children of cohabiting partners?**

16. We do believe that changes need to be made for better support for children generally and not just children of cohabiting partners. We have, on a number of occasions, raised with various government bodies our concerns about the arbitrary nature of the calculations made in respect of statutory child maintenance which is based on percentages, rather than taking into account the range of circumstances which may be involved. For example, the paying parent could have significant disposable income whilst the receiving parent may

not have any and needs additional support. Indeed, there may be circumstances where the receiving parent has been a victim of coercive control and the reason for their reduced income is due to debts that the paying parent may have created in the receiving parents name (which they are refusing to now acknowledge or pay for) or because the receiving parent left their employment during the course of the relationship and their income is now low due to a former joint decision (whether out of choice or due to coercion). We therefore do feel that provisions need to be included which allow matters to be addressed on a case by case basis. We do appreciate that doing so may increase the time and effort which may be involved in assessing child maintenance cases. However, we also feel that it would be advantageous overall to have a process that allows fairer contributions to be made to the upbringing of a child. We do also feel it is necessary to require paying parents to report increases to their salaries sooner rather than await annual reviews; this is a concern that has been raised with us by a number of Muslim women.

17. We are also aware of concerns raised by our service users and beneficiaries as to the ways in which some paying parents who are self-employed are able to find ways to show their income at a reduced rate and in turn, reduce the maintenance payment sums that they would need to pay.

**Should cohabiting partners have the same rights as those who are married or in a civil partnership?**

18. As you will appreciate, MWNUK consists of a network of Muslim women who come from diverse walks of life and with a range of views and experiences on matters. As such, there is no one set consensus amongst our service users and beneficiaries in respect of whether the rights of those who are married or in a civil partnership and those who are in a cohabiting relationship should be exactly the same. The difference in opinion is on the basis that some feel that those who have legally married or entered into a civil partnership have taken the extra step to confirm their commitment to one another and similarly a conscious decision has been made by others not to, and therefore some differences need to be maintained. Others are of the opinion that the type of relationship should not be the focus but rather a holistic approach needs to be taken, taking into account the quality and duration of each relationship.
19. Nevertheless, we do feel that the same or at least similar financial orders should be available to all couples regardless of whether they are married, in a civil partnership or cohabiting and decisions can be made on a case by case basis as to the actual remedies and orders granted to individuals. We are aware that a number of other civil society organisations have proposed introducing a checklist of factors which can be taken into account in such decision and we also lend support to this suggestion, provided that ultimately, judges are asked to take a holistic approach taking into account all aspects of the relationship into account (including whether the couple had entered into an Islamic only marriage during the course of their cohabiting relationship). There is of course already a similar example readily available by reference to the factors in section 25 of the Matrimonial Causes Act 1973 and we feel that a similar approach will allow clarity and at the same time flexibility so that instances of hardship and unfairness can be reduced.
20. We must also stress that we do not believe that the Law Commission's proposal to allow individuals to choose not to have cohabitation rights apply to their situation, should be pursued. We feel that there is too much risk of abuse and manipulation involved in such decision making processes, which we already see in cases involving Islamic only marriages (where vulnerable Muslim women choose to forego their legal rights that they would have as a spouse if they entered into a civil marriage, by agreeing to be in an Islamic only marriage). We feel that those who genuinely see no reason for needing rights as



cohabitees always have the option to not exercise those rights and part ways on relationship breakdown without making any claims. Cohabitation agreements can also be created should they need to document any specific agreements relating to property or other financial matters (provided that the decisions are fair and reasonable, and not made out of coercion or some other unequal bargaining power) and which can form one of the factors that are taken into account by a judge. Thus we do not see the reason to allow individuals to 'opt-out' from the rights when mechanisms could be put in place to deal with specific scenarios and individuals can always choose not to exercise their rights. We would prefer that the starting base is that everyone has cohabitation rights (subject to the legal definition of cohabitation) and whether and the extent to which these rights are exercised and accepted is then decided on a case by case basis. In any event, it is likely that the legal definition of cohabitation will have at least some minimum thresholds which need to be satisfied and we feel that will be a sufficient hurdle which needs to overcome to be able to access cohabitation rights.

### **Final Comments**

We would like to thank the Women and Equalities Committee once again for seeking opinions on the subject of the rights of cohabiting papers and thank you for providing us with the opportunity submit evidence. We hope our submissions prove to be useful in your considerations and would be happy to assist further.

We look forward to hearing from you.

Yours faithfully

Nazmin Akthar  
**Co-Chair**  
**Muslim Women's Network UK**