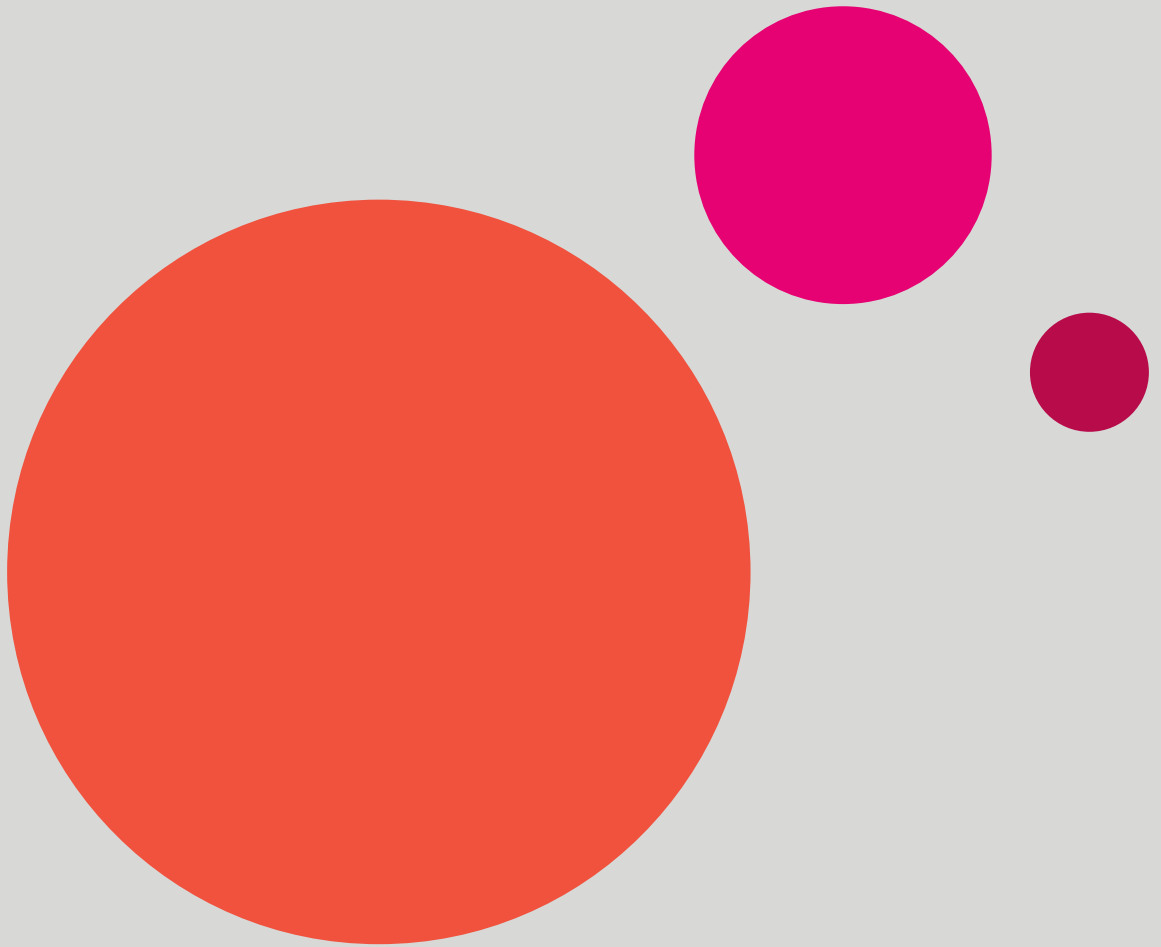


# Resolution

## Manifesto for Family Law



Resolution represents 6,500 family lawyers and other family law professionals, who want to see divorce and separation handled in a way which minimises conflict, minimises stress on those involved and minimises the impact on children.

Divorce and separation are issues which directly affect hundreds of thousands of people in England and Wales every year. They are a fact of modern life.

And yet our laws are distinctly ‘unmodern’. The law needs to catch up quickly.

Resolution’s Manifesto for Family Law sets out what the next government should do in order to improve the lives of separating and separated families across England and Wales, for marriages, civil partnerships and unmarried couples.

Resolution represents 6,500 family lawyers and other family law professionals, who want to see divorce and separation handled in a way which minimises conflict, minimises stress on those involved and minimises the impact on children. The current laws around divorce and separation are often barriers to finding constructive outcomes in separation.

We have a divorce system focused on blame; little support for vulnerable people going through a separation; restricted access to alternatives to court; a lack of financial clarity for couples on divorce; and no legal protection for people who split up after living together. It also currently makes it difficult for separating couples to focus on the needs of any children they may have.

**We want to see a family justice system that**

- provides support through relationship breakdown
- puts children first, helping separating/separated parents to work together in the child’s best interests
- provides fair and lasting outcomes on relationship breakdown
- protects all those at risk of harm and sufferers of domestic abuse

# Resolution's Manifesto identifies six key areas where changes are needed to our family justice system



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Protect vulnerable people going through separation

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Pages 6–9



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Introduce measures to help separating people reach agreements out of court

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Pages 10–13



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Introduce a Parenting Charter to help parents understand their responsibilities when they separate

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Pages 14–17



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Allow people to divorce without blame

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Pages 18–21



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Help people understand how their divorce will affect their future finances

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Pages 22–25



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Provide at least basic legal rights for couples who live together if they separate

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Pages 26–29

# Facts about divorce and separation

48

Percentage of divorcing couples who have at least one child under 16.

44

Most common age for divorce.

118,140

Divorces (per year).

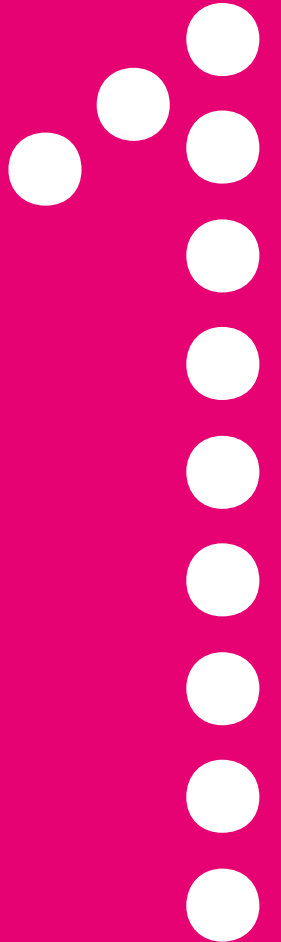
2.9m

couples are cohabiting in 2013, up from 2.2 million in 2003.

Cohabitees are the fastest growing family type in the UK.

These figures are taken from the Office of National Statistics Statistical Bulletin: Divorces in England and Wales 2012, which are the most recent available.

Protect vulnerable  
people going  
through separation



# The problem

## Ellen's story

Having reluctantly agreed to pay child maintenance, Ellen's former husband hasn't paid her in months. It was a small amount of money to most people but made a huge difference to her kids. They need new school uniforms and she's behind on the rent.

Finding £20 to apply to the Child Maintenance Service would be a stretch for her, and she doesn't want to spend money she really needs, and get nothing in return.

She decides not to apply because she's not certain where he's living now, and has no confidence the Child Maintenance Service will find him and make him pay. She'll just have to find the money some other way.

Since the cuts to legal aid in April 2013, fewer people have access to legal support during their divorce or separation.

This restricts people's potential to resolve their disputes, whether or not they use the courts. Before the introduction of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), solicitors provided crucial initial advice for people going through separation under the legal aid scheme, helping them to understand their options and steps they needed to take.

They were also the major point of referral to out-of-court dispute resolution.<sup>1</sup> Publicly-funded mediation numbers have dropped 45% over two years,<sup>2</sup> despite the Government's objective of diverting more separating couples into mediation.

Child maintenance is one of the key issues during separation involving children, but the way the system currently works puts vulnerable families, particularly children, at risk of falling into poverty.

Since August 2014 parents need to pay a one-off fee of £20 to make an application to the Child Maintenance Service (CMS). On top of this, the CMS started charging collection fees for people who need to use the agency to collect regular maintenance payments.

These are currently 20% for the paying parent and 4% taken from the maintenance payments for the requesting parent. This means that for every £100, the paying parent will have to pay £120 but the receiving parent will only receive £96. Resolution is concerned that these new charges may put many parents off applying to use the Child Maintenance Service altogether, and reduce the amount of maintenance actually received for a child.

While we agree that there may be some need for a fee structure to incentivise regular payment directly between parents, the first statistics since the £20 application fee was introduced showed that applications to the service were down by 38% compared to the previous quarter.<sup>3</sup> This means that children in vulnerable families may be missing out on the maintenance support they need and deserve. In 2012, one in five parents receiving maintenance saw these payments lifting them out of poverty.<sup>4</sup>

# Our solution

Some form of initial advice from a professional, who can talk someone through the options available as well as the individual's legal rights and responsibilities, is essential.

**Resolution proposes a form of "family law credit"—where anyone who meets the criteria for legal aid for family mediation is able to have an initial meeting with a family lawyer to help them gather evidence they need in order to access legal aid, or to discuss their options.**

It may be a combination of services, so that people are able to receive help from a legal professional at the points in the process where they need it most—so even if they end up representing themselves, they have an initial discussion about what they need or want to do.

This would provide a more comprehensive system of support and enable vulnerable people to access the domestic violence gateway to legal aid, and/or learn about and choose more options to help them than just mediation. It is also likely to result in a higher referral rate to mediation, as it would restore a major source point of access that existed before LASPO.

## Michael's story

Michael has learning difficulties and mild autism, which affects his ability to communicate and to adjust to new surroundings. When he split up with Joanne, with whom he has a son, a friend helped him to complete an application form to apply to court to spend some time with his son as he is not entitled to any publicly funded legal advice or support, even on a limited basis.

He didn't know about exceptional funding and had no one to help him to try to negotiate with Joanne. He went to a MIAM but had not heard of mediation before and Joanne refused to mediate. Michael was confused and disoriented by the court procedure and in the courtroom and struggled to effectively argue his point.

The judge did make an order about his son spending time with him but Joanne has not complied. Michael doesn't know what to do and is devastated for his son. He is thinking of giving up.

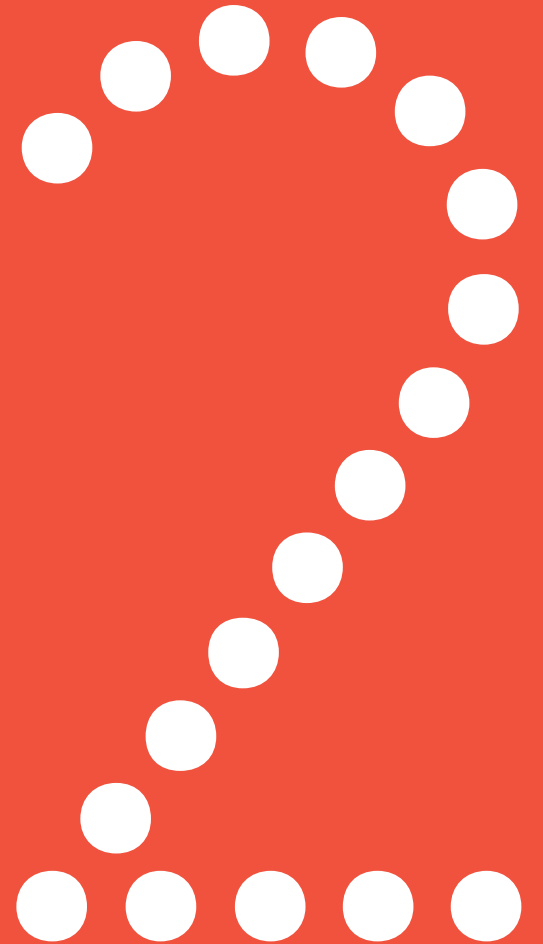
We also want to see reform to the Child Maintenance System to ensure children of vulnerable parents are not losing out as a result of the way the system currently works.

While many people are able to reach agreement on how their children will be financially provided for after their parents separate, many others cannot. Those that need to seek help from the Child Maintenance Service to access the support they need for their children should not be penalised, and neither should their children.

Resolution calls for the abolition of the £20 application fee and the removal of collection fees for the requesting parent to minimise the impact on the child, the ultimate beneficiary of any child support.

We also urge government to reconsider whether the 20% collection fee disproportionately penalises the paying parent, and serves the best interests of families.

Introduce measures  
to help separating people  
reach agreements out  
of court



# The problem

Resolution believes that, where possible, separating couples should be able to resolve their disputes without going to court.

We welcome the current Government's commitment to helping people access mediation and support its introduction of Mediation Information and Assessment Meetings (MIAMs) to ensure most people consider mediation before applying to court.

## Jane's Story

Jane is separating from Sanjit, who is a successful commercial solicitor. Sanjit is a dominant personality and Jane, who gave up her career several years ago to be a stay-at-home mum, is worried that he'll run rings around her during mediation —after all, he knows the law well—but she's still keen to sort things out quickly and with as little conflict as possible.

She doesn't know about other options such as collaborative law that would allow her to separate from Sanjit in a co-operative way without going to court, with the support of a family solicitor by her side. They end up proceeding to litigation which takes months to complete and with only Sanjit having the benefit of a lawyer.

**However, the Government's intentions are not reflected in policy outcomes —publicly funded mediation numbers are down by 45%, and unrepresented parties coming to court are on the rise.<sup>5</sup>**

The Government has focused its attention on mediation as the only alternative to court. But for some couples, other dispute resolution options such as collaborative law, solicitor negotiation, arbitration, or helping people reach agreements themselves can work better for their circumstances, while keeping families out of court and minimising conflict.

There is no such thing as a 'standard' divorce or separation and people need to be aware of all of the options so they can choose what is right for them.

# Our solution

## Resolution recommends that Government

—Changes the way MIAMs are described and delivered.

We recommend that MIAMs are renamed 'Advice and Information Meetings' (AIMs), to make clear that they are not solely focused on mediation. This is reflected in the recommendations of the Mapping Paths to Family Justice Report.<sup>6</sup>

—Makes AIMs available earlier in the separation process, before an application to court is considered. This would enable couples to find out at the outset about available options and choose the right one for them. This is common practice among Resolution members, and we believe this approach should be available to everyone.

—Extend the availability of legal aid for all dispute resolution options. People should be able to choose which out of court method will be most suitable for them, with funding available for the use of one chosen method—not just mediation.

We want Government to extend legal aid to cover all dispute resolution options, not just mediation, so couples can choose the right one for their circumstances.



Introduce a Parenting  
Charter to help  
parents understand  
their responsibilities  
when they separate



# The problem

Current laws and definitions around parents' responsibilities before, during and after separation, whether or not they go through the courts, are too complex and the language is not accessible.

## Amelia's story

"My mum and dad are getting a divorce. They're always shouting at each other on the phone, and since dad moved out mum's been telling me about how he's left her without any money and how selfish he is.

Even worse, I know they're arguing about me and where I'm going to live, but they never tell me what's going on. It's horrible—I wish they'd stop fighting. I feel like I'm caught in the middle."

Resolution members have found that, despite most parents having their child's best interests at heart, many don't understand what their responsibilities are as a parent going through the separation process or when parenting apart.

We believe that our children have the right to be at the centre of any decisions made about their lives.

# Our solution

Resolution proposes a 'Parenting Charter' clearly setting out what children should be able to expect from their parents if they are separating and what separating parents need to do in the interests of their children.

We believe a greater shared understanding of rights and responsibilities of both parents (and their children) will reduce the likelihood of parents going to court.

## The Parenting Charter

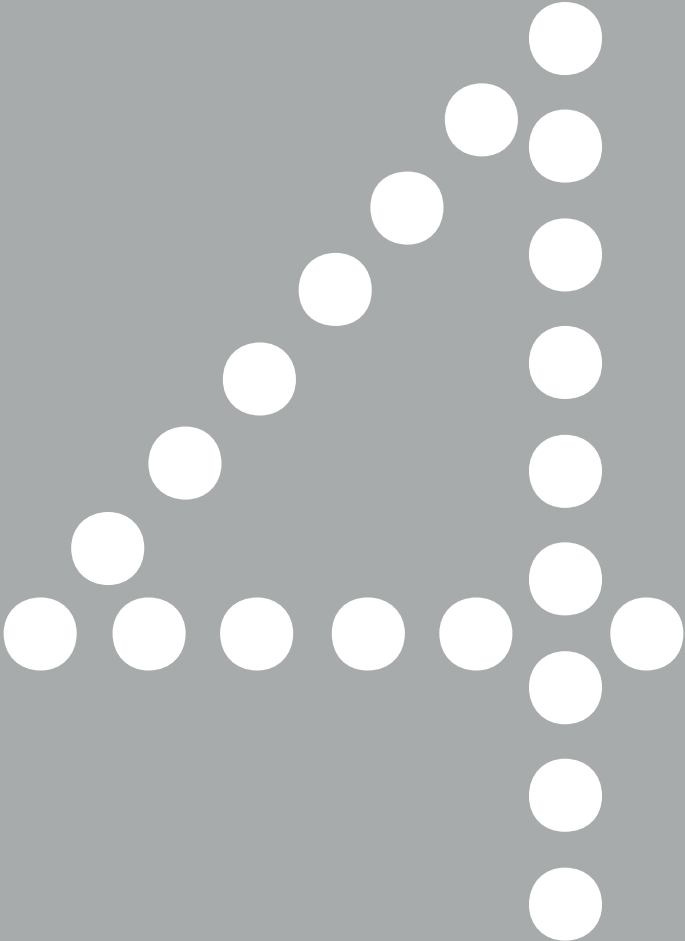
At times of family difficulty, it is easy for adults to forget what it is like to be a child, distracted as they may be by feelings of hurt and fear for the future.

Resolution encourages parents to agree together:

### Our children have the right to

- be at the centre of any decisions made about their lives
- feel and be loved and cared for by both parents
- know and have contact with both sides of their families, including any siblings who may not live with them, as long as they are safe
- a childhood, including freedom from the pressures of adult concerns such as financial worries
- financial support and protection from poverty
- support and encouragement in all aspects of their lives, including their education, as well as their physical and mental well-being
- form and express their own views on any matter affecting them
- be kept informed about matters in an age-appropriate manner
- privacy and respect for their feelings, including the way they feel about each of their parents
- protection from information and material, including that found online, which may be harmful to them
- protection from harm, and from adults who might do them harm

Allow people to divorce  
without blame



# The problem

At present, in order to divorce, unless couples have been living apart for two years, one of them needs to apportion some form of blame—adultery or unreasonable behaviour.

This often creates conflict and makes reaching a mutually acceptable agreement much more difficult. Academics have shown how the legal requirement to assign blame can undermine attempts to resolve disputes outside of court.<sup>7</sup> It can fuel conflict between parents, causing significant stress and upset for their children.

## John's story

"Me and my wife both decided that the marriage wasn't working, and that we should get a divorce. We wanted to do it as quickly and as easily as possible to cause as little damage to our son as possible—he was only six at the time. We agreed that we would say that I had committed adultery as a way to get around the problem, even though I'd been faithful.

Everything was fine until a few years later when I lost my job and couldn't pay maintenance anymore. My wife went ballistic and turned my son against me, saying I'd had an affair and, look, here's the divorce papers to prove it. He said he hated me and never wanted to see me again.

We now have a relationship, he knows the truth, and won't speak to his mother for lying to him. He's left school with no qualifications and had been in trouble with the police. I'm trying to get him to forgive his mother—even if I can't—because no father wants to see his son turn out that way."

Removing blame from divorce will not make it more likely that people will separate. It will simply make it easier for people to manage their separation with as little conflict and stress as possible and reduce the likelihood that they will end up in court.

In 2012, there were over 72,000 divorces where adultery or unreasonable behaviour were cited. People should not have to go through this blame charade to bring their relationship to a dignified conclusion and move on with their lives. A civilised society deserves a civilised divorce process.

# Our solution

Resolution proposes a new divorce procedure, where one or both partners can give notice that the marriage has broken down irretrievably. The divorce can then proceed and, after a period of six months, if either or both partners still think they are making the right decision, the divorce is finalised.

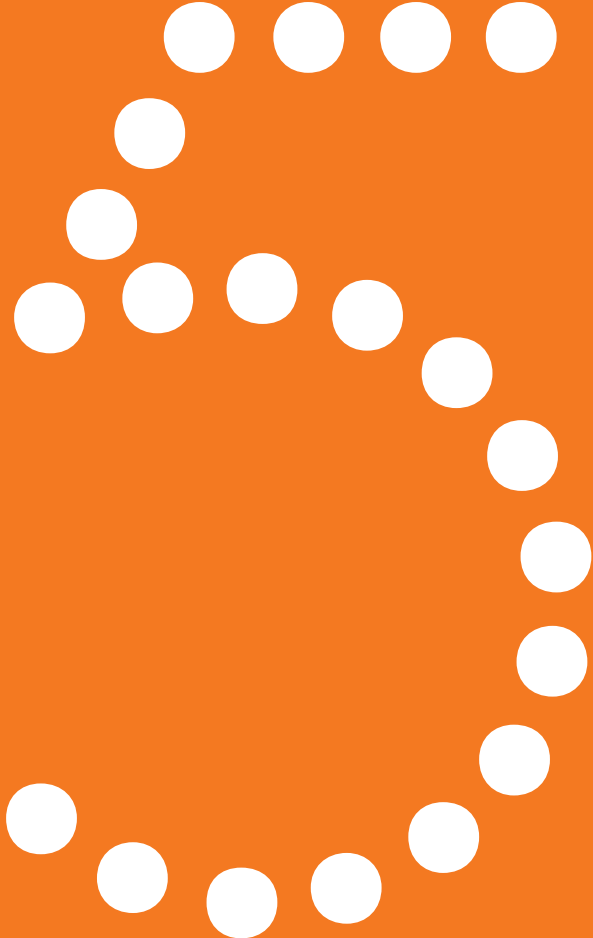
Divorce without blame was provided for in the Family Law Act 1996 but never enacted. The Government's own Family Mediation Taskforce recently recommended that divorce without blame be introduced.

Divorce without blame will increase the chances of success for non-court dispute resolution processes as it immediately puts both partners on a level footing. This will reduce the burden on the family court and help government to meet their aim for more people to resolve their problems outside of the courts.

Resolution is not alone in calling for change. Successive Presidents of the Family Division have stressed the need for reform. Many other countries around the world—including Australia, the United States, and Spain—allow for divorce without blame.

Removing blame from divorce will not make it more likely that people will separate. It will simply help people manage separation with less conflict, reducing the burden on the courts.

Help people  
understand how their  
divorce will affect  
their future finances



# The problem

**The removal of legal aid has led to a rise in unrepresented litigants, with over 50,000 people representing themselves in family disputes in 2013.<sup>8</sup>**

Divorce law relating to finances is complex and difficult to understand. Outcomes can be difficult to predict, even for legal professionals. Section 25 of the Matrimonial Causes Act 1973, which determines how money is divided up on divorce, has fundamentally remained unchanged for the last 40 years.

## Suraya's story

"I'm currently going through a divorce. My shared assets with my husband aren't worth more than £300,000 in total, but I think he might have a really good pension. We've tried mediation but my husband won't tell me about the pension or offer me a share.

He has made me his own offer and says that if we go to court, I will get less money. I want to stand on my own two feet but I can't afford legal advice, and I don't know if his offer is about right or how to agree with him what would be fair to us both.

We have two children and I'm worried about their future, and that we're going to end up broke and dependent on the state if we can't sort this out.

It might have been easier if we had made an agreement when we both still loved each other which we could have relied on."

The concern is that people separate with little or no understanding of the financial consequences of their break up, making it more difficult for them to reach agreement and placing a greater burden on the court system.

With the average median household income at £32,600,<sup>9</sup> most people do not have huge resources to divide on separation. The complexity of current law affects ordinary people, living in ordinary circumstances. Reform is needed to make sure they are fairly provided for after they separate.

# Our solution

Resolution calls for clear guidance for people entering the court system, so that they are more aware of the potential outcomes and consequences, and for a wide-ranging reform of the financial provision system to achieve more clarity.

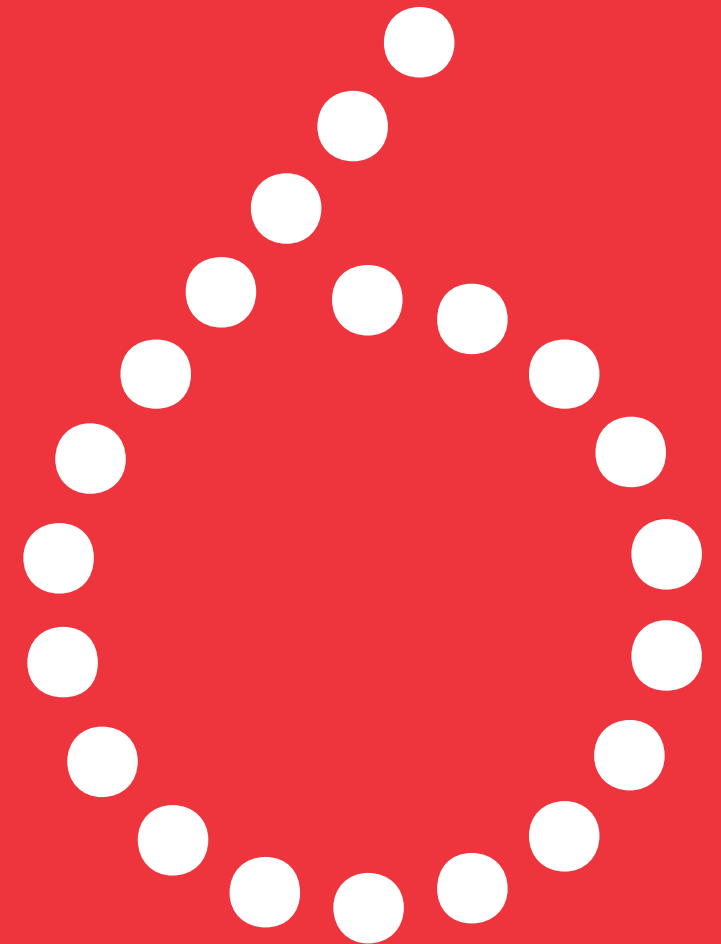
The reforms to Section 25 of the Matrimonial Causes Act 1973 that Resolution wants to see emphasise independence and greater certainty on the level and timescale for payment of maintenance, with children's interests at their heart.

Enforceable agreements (commonly known as 'pre-nups') should be permitted with suitable safeguards. This would provide certainty to people entering the courts that a previously-made agreement will generally be binding, unless it does not satisfy clearly identified criteria. The independent Law Commission has also called for change in this area.

Clear guidelines are needed on the division of capital resources and pensions. Resolution proposes a distinction between matrimonial property and non-matrimonial property in cases where resources exceed the needs of the separating couple.

**Reform to the Matrimonial Causes Act should emphasise independence and greater certainty on the payment of maintenance, with children's interests at their heart.**

Provide at least basic  
legal rights for couples  
who live together  
if they separate



# The problem

## Mary's story

"By the time I realised I had no rights it was too late. I had two children with my former partner and had sold my house and given up my job to take care of the kids and support his business. He promised to marry me, but it never happened.

I thought that as his common-law wife, I had some legal standing—it turns out that I was wrong, there's no such thing as a common-law marriage in this country. Since our split he hasn't helped the children and me financially at all, and I've had to rely on government handouts while I try to rebuild my life and look for a new job. I guess I made the mistake of trusting someone I loved."

There are currently nearly six million people who live together in the UK without being married or in a civil partnership. Cohabitees are the fastest growing family type in the UK. And yet, in England and Wales, these people have little or no legal protection if they separate.

47% of the public aged 18-34 think cohabiting couples have the same legal rights as their married counterparts.<sup>10</sup> They do not.

It is possible to live together with someone for decades and even to have children together and then simply walk away without taking any responsibility for a former partner. This needs to change.

Currently, a rapidly growing proportion of the population have limited rights or ability to access support if their relationship breaks down.

# Our solution

Resolution calls for a legal framework of rights and responsibilities when unmarried couples who live together split up, to provide some legal protection and secure fair outcomes at the time of a couple's separation or on the death of one partner.

Other countries, such as Australia and Canada, and closer to home Scotland, recognise these relationships and provide legal protection. The Law Commission has recommended changes in this area.

Resolution proposes that cohabitants meeting eligibility criteria indicating a committed relationship would have a right to apply for certain financial orders if they separate. This right would be automatic unless the couple chooses to 'opt out'.

The court would be able to make the same types of orders as they do currently on divorce, but on a very different and more limited basis.

Awards might include payments for child care costs to enable a primary carer parent to work.

MPs also support reform, with more than 57% believing the law needs to be reformed to afford protection to unmarried couples upon separation.<sup>11</sup>

Cohabitees are the fastest growing family type in the UK, but in England and Wales these people have little or no legal protection if they separate.



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**If you believe family law needs to change, or want to find out more, please contact us.**

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