

**INTESTACY AND FAMILY PROVISION CLAIMS ON DEATH
LAW COMMISSION CONSULTATION PAPER NO. 191 (2009)**

**SUBMISSION BY
THE CENTRE FOR CHILD AND FAMILY LAW REFORM**

We refer to paragraph 8.29 of the Commission's List of Provisional Proposals and Consultation Questions:

“We invite consultees’ views as to whether the categories of applicant for family provision should be further widened to include other relatives, such as parents, descendants other than children, siblings, nephews and nieces, and so on.”

We submit that the categories of applicant for family provision should be widened to include siblings who live together in the same household, i.e. cohabiting siblings. The following examples illustrate the unfairness of the present law.

- (1) A and B are two of six siblings. A and B have cohabited for several years. A dies intestate and those entitled on his intestacy are his siblings. Clearly, the intestacy rules could operate unfairly against B, especially where he has been the only sibling concerned for A's welfare.
- (2) C and D are cohabiting siblings. C dies leaving all his estate to the children of his former marriage, who have had only limited contact with him.

In the Consultation Paper (at paragraphs 6.33 and 6.34) the Commission refers to the likelihood of increased litigation if relatives were to be able to

apply for financial provision simply in recognition of their blood relationship with the deceased and not because they are dependants. We submit that for the following reasons the risk would not be a serious one in respect of cohabiting siblings.

- (1) A surviving sibling will often be the sole or main beneficiary under the deceased's will or intestacy.
- (2) A survivor will not be an entitled applicant for family provision unless, as we recommend, there has been a minimum period of cohabitation, which would be the same as that prescribed for cohabitants.

Our submission therefore is that there is no fundamental difference between a surviving cohabitant, as defined in paragraph 4.60, to claim financial provision and the right of a surviving cohabiting sibling to do so.