

Joint Tenancies and Survivors of Domestic Abuse Domestic Abuse Bill Briefing

Safe and stable housing is a core need for people experiencing domestic abuse, however we know that domestic abuse continues to be the leading cause of homelessness amongst women. For survivors who have exhausted all other options to remain safely in their homes, escaping and accessing specialist refuge services is a vital step in achieving safety and starting to rebuild their lives. Those who stay within their own homes, however, often face significant housing barriers which forces them to become homeless, needing to access local housing services, and carry the practical, economic, and emotional burden of starting again. For these survivors, research¹ highlights that sharing a joint tenancy with the perpetrator is the primary barrier to staying safely within their own homes.

We welcome the measures included within the Domestic Abuse Bill which will deliver support for survivors in safe accommodation, including life-saving refuge services. It is vital the Bill also delivers legal solutions for survivors with joint tenancies to gain housing security and stay safely within their own homes long-term.

To improve the existing complex, costly and uncertain legal routes for survivors to secure a transfer of tenancy, **we recommend a simplified legal mechanism for the transfer of tenancy in the family court if a survivor of domestic abuse shares a joint secured or assured social tenancy with the perpetrator.**

If you have any questions or would like to discuss this further, please contact either Deidre (d.cartwright@standingtogether.org.uk) or Sophie (s.francis-cansfield@womensaid.org.uk)

Sharing a joint social tenancy with a perpetrator: barriers for survivors

If a survivor needs to remain within their own home, they can only truly achieve safety, stability, and housing security if the perpetrator is removed from their joint tenancy.

Yet, even after a perpetrator has physically left a property their signed consent is required to remove them from an ongoing joint tenancy. This process empowers perpetrators to use the joint tenancy to prevent the survivor from continuing her tenancy and /or to further their abuse, by unilaterally ending the tenancy without the survivor's consent or knowledge.

"A' was living in a four-bed property with her 4 children and her abusive partner had left the property after subjecting to her of years of emotional, psychological and financial abuse. They were both joint tenants. The perpetrator served notice to quit without her knowledge. The first she knew of it was when the landlord came to repossess the property."

Case study from a local housing provider

¹ Walker, S-J. and Hester, M. for the Domestic Abuse Housing Alliance. (2019) Policy Evidence Summary 4: Justice, housing and domestic abuse, the experiences of homeowners and private renters. Available [online](#)

The survivor's only option, other than costly court proceedings, is to end the joint tenancy with the perpetrator, and in doing so, place herself at risk of homelessness as there is no guarantee that the landlord will issue a sole tenancy to the survivor.

The limitations of the current legal options for survivors to maintain their social tenancy

If the survivor is unable to gain the signed consent of the perpetrator to be removed from the joint tenancy, her only option is to take legal action to have the perpetrator removed from the property and the tenancy. This process is complex, expensive, and often inaccessible.

Temporarily legal remedies

Under the Family Law Act 1996, survivors of domestic abuse can seek an order to suspend the rights of occupation of the perpetrator through the family courts. This is usually a time limited solution to protect them and their children in an emergency. Permanently excluding the perpetrator requires further legal steps. Emergency orders are a costly temporary fix, which can cost up to £5,000 at legal aid rates and more than double that if funded privately.

Once a survivor pays these high costs, there is still no guarantee that the Occupation Order will be granted by the court, particularly if it places the perpetrator at risk of homelessness. Even if an Order is granted and provides temporary breathing space for the survivor:

- Once the order ends (usually after 6–12 months), the perpetrator could return to the shared tenancy, **or**;
- If the perpetrator does not return, there is still no guarantee that he will consent to a tenancy transfer or that the landlord will grant a sole tenancy to the survivor once the joint tenancy has ended, **or**;
- If the perpetrator does not return, there is still a risk that he will end the joint tenancy without the survivor's consent or knowledge and force her (and any children) to become homeless.
- Even with an occupation order, a survivor would be required to take further legal action to prevent a perpetrator from giving notice to end the tenancy.
- If the joint tenancy continues, the survivor may not be able to access housing benefit to solely pay for the rental fees if the tenancy remains in both parties' names.

Permanent legal remedies

The legal options available to have perpetrators permanently removed from a joint tenancy are currently all costly, burdensome on the survivor and time consuming. The process can often take up to two years to complete, after which the temporary legal measures suspending the perpetrator's rights to the property would have already expired, which will place the survivor at a continued risk of homelessness and harm.

To remove the perpetrator from a joint tenancy is lengthy and costly. If married, a survivor may have to apply for a divorce and a financial remedy order to transfer the tenancy via the Matrimonial Causes Act. Alternatively, those with children can bring an application under Section 1 of the Children Act on the basis of providing a home for the child until a certain age.

"She was punched several times in the head in front of her children and the police were called. Since then she has tried on several occasions to apply for divorce, but he has refused to sign the papers."

**Local Women's Aid
member service
Service**

The decision regarding how to access safety requires the expert advice of a family lawyer, which is costly to the survivor. On average, this lengthy legal process can cost a survivor between £10,000-£20,000 depending on the survivor's access to legal aid. If they can access legal aid, there are still significant costs to the public purse in contested proceedings of around £5000 or higher. Throughout this long, costly and uncertain process, the survivor is also forced to repeatedly face the perpetrator in court.

Due to the myriad of complex legal and economic barriers faced by survivors who share joint tenancies with perpetrators, many find that their only option is to become homeless and carry the practical, economic, and emotional burden of starting again².

The limitations of the current legal options for social housing providers to remove perpetrators from joint

tenancies

There is currently no specific legal mechanism to enable social housing providers to support survivors to stay in their homes, and transfer a joint tenancy shared with the perpetrator into a sole tenancy for the survivor. The legal mechanism that addresses domestic abuse specifically, through ground 2A in Schedule 2 of the Housing Act 1985 (secure tenancies) or ground 14A in Schedule 2 of the Housing Act 1988, only allows social housing providers to evict a perpetrator after a survivor has permanently left a shared property³. This does not address the needs of the survivor to safely remain within their own home and is dependent on her fleeing.

This leaves the few social housing providers who are able and willing, to creatively use other legal remedies that are not specifically designed to address domestic abuse or immediately evict a perpetrator. This leaves survivors in the precarious position of being dependent on the will of social housing providers and without any guarantee that their immediate housing and safety needs will be met.

Opportunity to make a difference: The Domestic Abuse Bill

Section 20 of the Domestic Abuse Bill provides for new civil Domestic Abuse Protection Notices (DAPNs) and Domestic Abuse Protection Orders (DAPOs), which will replace Non-Molestation Orders, Occupation Orders and Restraining Orders in all cases of domestic abuse where a protective order is being considered.

A DAPN is an immediate notice given by the police to the perpetrator, and includes the prohibitions set out in section 21 that *"where the victim and perpetrator live in the same premises, [the perpetrator] is prohibited from evicting the victim from those premises; is prohibited from entering those premises; or is required to leave those premises"*. As a DAPN is intended to provide immediate protection, the police have the power to serve a DAPN directly on the perpetrator and the process does not require a court order or the consent of the victim.

"We often hear women explain that whilst they're in a joint tenancy, they are solely responsible for paying the rent and the perpetrator hardly or never contributes."

Women's Aid Direct

² Walker, S-J. and Hester, M. for the Domestic Abuse Housing Alliance. (2019) Policy Evidence Summary 4: Justice, housing and domestic abuse, the experiences of homeowners and private renters. Available [online](#)

³ Henderson, K. Domestic Abuse Housing Alliance (DAHA) (2019). Whole Housing Toolkit, Chapter 16: Perpetrator Management Toolkit. Available [online](#)

Within 48 hours of the DAPN being served, an application for a Domestic Abuse Protection Order (DAPO) will be heard by the Magistrates Court. If granted by the Magistrates Court, a DAPO is a longer-term order that will replace the DAPN. DAPOs can be applied for by any professional or the survivor even without a DAPN being first issued by the police, and continues the prohibitions set out in the DAPN. These provisions would replace the need for a survivor to apply for a Non-Molestation Order or an Occupation Order. There are many benefits to DAPN and a DAPO replacing Occupation Order:

- A DAPN will immediately remove the perpetrator from the property when it is issued by the police, and therefore does not depend on the survivor applying to the family courts to initiate this process, which even on an emergency basis, takes a considerable amount of time and leaves the survivor and children at risk while the perpetrator remains in the family home.
- A DAPN or DAPO does not place the onus on the survivor to apply or pay for a DAPN or DAPO.

However, the DAPN/DAPO is still only a temporary legal measure, which does not provide any long-term solution to the housing needs of survivors and does not address the severe barriers survivors face in ending a joint tenancy outlined above. Therefore, once a DAPO ends, the survivor will face the dangerous position of either becoming homeless or the perpetrator claiming his rights to the jointly shared property and returning to the home.

The solution

To truly use DAPNs and DAPOs to provide survivors with the opportunity to stay safe within their own homes over the long-term, the Domestic Abuse Bill must introduce a new general mechanism through which survivors could apply for the transfer of tenancy in the family court, if a survivor shares a joint secured or assured social tenancy with the perpetrator.

Crucially this would work directly in-line with the new provisions of DAPOs, which both survivors and professionals can apply for. Our proposal also simplifies the evidential and decision making process for the transfer of a tenancy by incorporating a scale of presumption that the tenancy would be transferred, which would apply to both secure and assured tenancies in social housing. For example:

- If the perpetrator has been convicted of a domestic abuse related offence (for example, violence, harassment, coercive control) against the survivor, the court will order the transfer of tenancy.
- If a domestic abuse protection notice or a domestic abuse protection order has been made against the perpetrator, there will be a presumption that the tenancy should be transferred, which the perpetrator must rebut.
- Where the perpetrator is subject to an injunction or restraining order in relation to the survivor, there will be a presumption that the tenancy should be transferred, which the perpetrator must rebut.
- Where the court is satisfied on the evidence that the perpetrator has carried out domestic abuse, there will be a presumption that the tenancy should be transferred, which the perpetrator must rebut. We call for this evidence requirement threshold to be based on that required for legal aid.

This means that, where **any** of these presumptions apply, the court will be compelled to grant the order unless the respondent (the perpetrator) can satisfy the court that there are exceptional circumstances which should cause the order to be refused.

The order will also incorporate a threshold test, which will mean that the court needs to be satisfied that the survivor can afford sole liability for the rent within a reasonable period, whether through income and/or benefit level.

The proposed amendment - drafted by Giles Peaker and Justin Bates

Insert

(1) This section applies where there are two or more joint tenants under a secure or assured tenancy and the landlord is a local housing authority or a private registered provider of social housing.

(2) If one joint tenant ("A") has experienced domestic abuse from another joint tenant ("B") then A may apply to the county court for an order that B is removed as a joint tenant.

(3) For the purposes of subsection (2) it is sufficient that the domestic abuse was directed at A or to anyone who might reasonably be expected to reside with A

(4) On such an application, the court must take the following approach:

(a) the court must be satisfied that the tenancy is affordable for A, or will be so within a reasonable period of time;

(b) If the court is so satisfied, then:

(i) if B has been convicted of an offence related to domestic abuse as against A or anyone who might reasonably be expected to reside with A, the court must make an order under this section;

(ii) if B has been given a domestic abuse protection notice under section 19, or a domestic abuse protection order has been made against B under section 25, or

B is currently subject to an injunction or restraining order in relation to A, or a person who might be reasonably expected to reside with A, the court may make an order under this section.

(c) for the purposes of subsection 4(b)(ii), the court must adopt the following approach

(i) If B does not oppose the making of such an order, then the court must make it.

(ii) If B does oppose the making of such an order then it is for B to satisfy the court that – as at the date of the hearing - there are exceptional circumstances which mean that the only way to do justice between A and B is for the order to be refused.

(d) if the application does not fall within subsection (b), then the court may make such an order if it thinks it fit to do so

(5) Where A has made such an application to the court, any notice to quit served by B shall be of no effect until determination of A's application or any subsequent appeal.

(6) Notwithstanding any rule of common law to the contrary, the effect of an order under this section is that the tenancy continues for all purposes as if B had never been a joint tenant.

(7) For the purposes of this section, an offence related to domestic abuse includes as against A or anyone who might be reasonably expected to reside with A, an offence of violence, threats of violence, criminal damage to property, rape, other offences of sexual violence or harassment, coercive control, breach of injunction, breach of restraining order, or breach of domestic abuse protection order.

(8) At section 88(2) Housing Act 1985, after "section 17(1) of the Matrimonial and Family Proceedings Act 1984 (property adjustment orders after overseas divorce, &c.)" insert ", or section [this section] Domestic Abuse Act,".

(9) At section 91(3)(b) Housing Act 1985, after subsection (iv), add "(v) section [this section] Domestic Abuse Act".

(10) At section 99B(2) Housing Act 1985 (persons qualifying for compensation for improvements), paragraph (e), after subsection (iii) add "(iv) section [this section] Domestic Abuse Act".