



women's aid  
until women & children are safe

Domestic Abuse Housing Alliance

## Joint Tenancies & Domestic Abuse Briefing

By its very nature, domestic abuse is a human rights issue, directly impacting on a survivor's right to a life free of violence and abuse, and the right to a safe and stable home<sup>1</sup>. Yet, for survivors of domestic abuse, home is often the most dangerous place, domestic abuse continues to be the leading cause of homelessness amongst women, and housing insecurity and uncertainty is the primary barrier for women attempting to leave their abuser<sup>2</sup>.

All survivors' safety and housing needs are different, with some survivors requiring access to lifesaving refuges to become safe, while others need to stay safely within their own home, to maintain employment, access their children's school, family, and support networks, and maintain stable housing.

For survivors who wish to remain safely within their own home, yet share a joint tenancy with their perpetrator, they are often dependent on perpetrators to voluntarily remove themselves from the joint tenancy, and if unable to achieve this, they face significant legal barriers which often leaves survivors homeless and carrying the economic, practical, and emotional burden of starting again<sup>3</sup>.

Without significant legal changes which empower survivors to maintain their tenancy and their home, the Government cannot achieve its ambitions set out in the Tackling Domestic Abuse Plan, of "*bringing victims and survivors more security if the right option for them is remaining in their own home*"<sup>4</sup>.

**We recommend a simplified legal mechanism for survivors of domestic abuse to apply directly to the county court to remove a perpetrator of domestic abuse from a secure or assured social tenancy.**

If you have any questions or would like to discuss this further, please contact either Deidre Cartwright ([d.cartwright@standingtogether.org.uk](mailto:d.cartwright@standingtogether.org.uk)) or Zainab Gulamali ([z.gulamali@womensaid.org.uk](mailto:z.gulamali@womensaid.org.uk))

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<sup>1</sup> 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](#)

<sup>2</sup> DAHA (2021) Facts and Statistics. Available online.

<sup>3</sup> 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](#)

<sup>4</sup> [Tackling Domestic Abuse Plan – CP 639 \(publishing.service.gov.uk\)](#)

## 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.

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.

*"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

## 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.

### Temporary 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, with a balance of harm that often favours the perpetrators, particularly if it places the perpetrator at risk of homelessness<sup>5</sup>. Even if an Order is granted and provides temporary breathing space for the survivor:

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<sup>5</sup> Speed, Anna. Richardson, Kayliegh. Northumbria University (2022), 'Should I Stay or Should I Go Now? If I Go There will be Trouble and if I Stay it will be Double': An Examination into the Present and Future of Protective Orders Regulating the Family Home in England and Wales'. The Journal of Criminal Law.

- 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 1973. 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.

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-

*“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.”*

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£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 £5,000 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 again<sup>6</sup>.

<sup>6</sup> Part 3, Powers for Dealing with Domestic Abuse, Domestic Abuse Act 2021: <https://www.legislation.gov.uk/ukpga/2021/17/part/3/enacted>

## 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 property. 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 and have extremely low success rates. 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.

*"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**

## Opportunity to make a difference: The Domestic Abuse Act 2021

Part 3 of the Domestic Abuse Act 2021 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 23 that, *"If P (perpetrator) lives in premises in England or Wales in which the person for whose protection the notice is given also lives, the notice may also contain provision- (a) prohibiting P from evicting or excluding that person from the premises; (b) prohibiting P from entering the premises; (c) requiring P to leave the 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 survivor.

Within 48 hours of the DAPN being served, an application for a 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 and/or an Occupation Order. There are many benefits to a DAPN and DAPO replacing an 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 as 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 in the long-term, the Government 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 DAPN or a DAPO 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.

### **A balance of rights**

Our proposal is a balance of rights between the survivor and the perpetrator. While the order will remove the property rights of the perpetrator, it does so with the aim of promoting the safety, stability, and housing security of the survivor. Given the proposed standard for a transfer order to be made, there is a clear proportionality in depriving the perpetrator of [Article 1 Protocol 1](#) rights in the European Convention on Human Rights. Article 6 rights would be protected as the perpetrator could make representations on the application for an order.

Additionally, 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 social landlord's ability to uphold the tenancy or serve notice to end the tenancy would not be affected, and although the nature of the tenancy will change (from a joint to a sole tenancy) the residing tenant will remain the same, which provides continuity for the social housing provider. Existing common law and contractual obligation for joint tenants' states that each is jointly and severally liable for the whole rent, which means that any previous arrears on a joint tenancy are joint and several such that each joint tenant is individually liable for the whole of the rent.

Equally, other joint tenants will not be impacted by these changes, as the order only seeks to remove the perpetrator from the secured or assured social tenancy. However, it is very unlikely that there are more than two joint tenants on a secure or assured social tenancies, which would likely only be the perpetrator and survivor of abuse.

Further information

For more information about the details of the current legal options available to survivors and the new proposed solution, please refer to the [Joint Tenancies & Domestic Abuse Question & Answer Document](#).

### **The proposed amendment - drafted by Giles Peaker, Justin Bates, and Jenny Beck**

*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 [this section]*
- (9) *At section 91(3)(b) Housing Act 1985, after subsection (iv), add "(v) section [this section]"*
- (10) *At section 99B(2) Housing Act 1985 (persons qualifying for compensation for improvements), paragraph (e), after subsection (iii) add "(iv) section [this section]"*