



domestic abuse commissioner

10th May 2022

Written evidence from the Domestic Abuse Commissioner: Department of Levelling Up, Housing and Communities consultation on the impact of joint tenancies on victims of domestic abuse

About the Domestic Abuse Commissioner

The Domestic Abuse Act 2021 establishes in law the Office of the Domestic Abuse Commissioner to provide public leadership on domestic abuse and play a key role in overseeing and monitoring the provision of domestic abuse services in England and Wales. The role of the Commissioner is to encourage good practice in preventing domestic abuse; to identify adult and child victims and survivors, as well as perpetrators of domestic abuse; and to improve the protection and provision of support to people affected by domestic abuse from agencies and government. The Domestic Abuse Commissioner also co-chairs the National Expert Steering Board for Part 4 of the Domestic Abuse Act led by Eddie Hughes MP, Minister for Rough Sleeping and Housing in the Department for Levelling Up, Housing and Communities.

Introduction

The Domestic Abuse Commissioner welcomes the opportunity to respond to this call for evidence on the impact of joint tenancies on victims and survivors of domestic abuse. As the Domestic Abuse Act made its way through parliament the Commissioner supported a proposed amendment to the Act in relation to joint tenancies.¹ This amendment put forward a simplified legal mechanism developed by family and housing law experts Jenny Beck, Giles Peaker and Justin Bates, in consultation with Women's Aid and the Domestic Abuse Housing Alliance (DAHA), which would allow a survivor to apply directly to the county court independent of their landlord to remove a perpetrator from a secured or assured social tenancy. While the amendment was not supported by the Government, the Commissioner welcomed the Government's commitment to undertake consultation on this issue. One year since the passage of the Domestic Abuse Act, the Commissioner calls on the Department for Levelling Up Housing and Communities to bring forward swift and meaningful changes to ensure that victims and survivors of domestic abuse are protected from the use of joint tenancies as a form of domestic abuse.

Domestic abuse is inherently a housing issue, and for too many victims and survivors of domestic abuse, home is the most dangerous place. Evidence suggests that housing is the primary barrier for victims and survivors attempting to flee domestic abuse,² and according to Women's Aid, 70% of victims and survivors of domestic abuse said their housing situation and concerns about future housing, including fears of homelessness or lack of safe housing, prevented them from leaving a perpetrator of domestic abuse.³ Safe housing is essential to ensure victims and survivors of domestic abuse can rebuild their lives, yet survivors who share a joint tenancy with their perpetrator face significant legal barriers to

¹ Domestic Abuse Bill Written evidence to the Public Bill Committee from the National Housing and Domestic Abuse Policy & Practice Group June 2020. Available at: [media_10764_domestic-abuse-bill-joint-committee-housing-final.pdf \(weareagenda.org\)](https://www.parliament.uk/business/committees/committees-a-z/commons-select/housing-and-domestic-abuse-policy-practice-group/written-evidence-to-the-public-bill-committee-from-the-national-housing-and-domestic-abuse-policy-practice-group-june-2020/)

² DAHA (2021) Facts and Statistics. Available [online](#).

³ Women's Aid. (2020) The Domestic Abuse Report 2020: The Hidden Housing Crisis. Bristol: Women's Aid.

staying safely in their home.⁴ Introducing legal changes which empower survivors of domestic abuse to maintain their tenancy and their home will enable the Government to meaningfully 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”⁵.

The Domestic Abuse Commissioner meets regularly with members from across the domestic abuse and housing sectors, including through the National Housing and Domestic Abuse Policy and Practice Group led by the Domestic Abuse Housing Alliance (DAHA). This evidence submission draws from the evidence provided to the Commissioner through this group, including from:

- Women’s Aid Federation England, who carried out two focus group sessions with member services throughout March 2022 to gather insights and evidence from front-line specialist domestic abuse practitioners. They consulted a total of 23 specialist domestic abuse services, which are based in the following areas: Yorkshire; Birmingham; Staffordshire; Essex; Brighton; Kent; Luton; Greater London; Middlesbrough and Coventry.
- DAHA, which over the course of March 2022 held 4 focus group sessions with 55 of their regional group members, including a combination of local authority, privately registered social housing providers and specialist domestic abuse services across all regions of England.
- DAHA also provided an opportunity for regional group members unable to participate in the focus group sessions to share their views in response to a survey. DAHA received a total of 35 responses from housing providers, 54% privately registered social housing providers, 31% local authorities, 3% ALMOs, and 12% other types of housing organisations.

The Domestic Abuse Commissioner welcomes and supports the proposal of a simplified legal mechanism put forward by Women’s Aid, Standing Together and the Domestic Abuse Housing Alliance (DAHA) who worked closely with legal experts, Giles Peaker, Justin Bates, and Jenny Beck during the progression of the Domestic Abuse Bill to develop this mechanism. The simplified legal mechanism allows for the transfer of a tenancy in the family court if a survivor of domestic abuse shares a joint secured or social tenancy with the perpetrator. The Commissioner would encourage DLUHC to consider the evidence submission and accompanying annexes provided by the National Housing and Domestic Abuse Policy and Practice Group which outline this mechanism in more detail.

Q16: Do perpetrators of domestic abuse use the threat of terminating a joint tenancy as a form of abuse? If they do, please provide additional information to support your answer

The Domestic Abuse Commissioner has heard evidence of perpetrators using the threat of terminating, and even terminating, a joint tenancy as a form of abuse. Examples included perpetrators using Notice to Quit to terminate the tenancy without the survivor’s consent or knowledge, then leaving. In these situations, the survivor is left not only homeless, but also burdened with the liability for and the legacy of arrears, damage, and anti-social behaviour (ASB), which make it exceedingly difficult to access alternative housing.

⁴ 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](#)

⁵ [Tackling Domestic Abuse Plan – CP 639 \(publishing.service.gov.uk\)](#)

Several housing providers also shared with DAHA cases where the perpetrator and survivor had been separated for several years with the perpetrator no longer living in the joint property, however the perpetrator had refused to remove their name from the tenancy agreement. The perpetrator used this as an opportunity to continue post-separation abuse, by threatening to reclaim their right to live in and access the victim's home, and threats to end the tenancy without the survivor's consent.

Housing providers and specialist domestic abuse services have also highlighted a range of other ways in which perpetrators will use a joint tenancy shared with a survivor as a form of abuse. In a survey conducted by DAHA for social housing providers, 82% of respondents said they were aware of perpetrators using a joint tenancy with a survivor as a form of abuse.

Perpetrators adding themselves as a joint tenant as a form of abuse

DAHA has shared evidence with the Commissioner from their focus group sessions with local authority housing providers and privately registered social housing providers on the use of joint tenancies as a form of abuse. In focus groups, housing providers shared concerns that perpetrators have coerced survivors with sole tenancies to add the perpetrator to the tenancy agreement. Once the perpetrator has gained joint tenant status, it is then far more difficult for the housing provider or other partner agencies, to take action to remove the perpetrator from the property or the tenancy and support the survivor to put protective measures in place, such as changing the locks.

In one Domestic Homicide Review into the death of Eve, the victim had been coerced by the perpetrator into adding him to her sole social tenancy, enabling the perpetrator to use the joint tenancy as a form of economic abuse and coercive control. The DHR recommended improved housing policies and procedures to provide better support to tenants experiencing domestic abuse, including improvements to make sure a tenant is not being coerced when housing receives a request to convert a sole tenancy to a joint tenancy.⁶

Despite this recommendation, there is presently no requirement on housing providers to take any precautions to safeguard against situations where individuals may be coerced or manipulated into adding a partner or family member to their sole tenancy. Evidence from DAHA suggests that this results in significant disparities in safeguarding approaches. Housing providers who have a high level of awareness and knowledge around domestic abuse, such as those who have gone through the process of DAHA accreditation, may be more attuned to these issues and have preventative measures in place, and implement a range of responses to safeguard against perpetrators adding themselves as a joint tenant.

Some housing providers shared with DAHA that they take a 'zero tolerance approach', by not allowing any new tenants to be added to an existing sole tenancy, while other housing providers have put checks in place which includes methods such as requiring tenants to wait 12 months before adding a new tenant, interviewing the existing tenant in private and assessing whether there has been any coercion or manipulation, or doing checks on the prospective tenant, including whether they are a known perpetrator of domestic abuse or had previous tenancy issues. However, housing providers who take these additional steps to safeguarding survivors appear to be in the minority.

The use of a joint tenancy as a form of economic abuse and coercive control

Evidence suggests that where the perpetrator has successfully become a joint tenant, they can use this position as a form of abuse that goes beyond, and often starts before, the threat to terminate the tenancy shared with the survivor. Research shows clear links between anti-social behaviour, rent arrears, damage, and domestic abuse, where perpetrators use these

⁶ Sandwell Metropolitan Borough Council, Domestic Homicide Review into the death of Eve. Published June 2019. https://www.sandwell.gov.uk/info/200324/domestic_abuse/4326/domestic_homicide_review_-_published_11_june_2019

behaviours as joint tenants with joint and several liability, threatening the victim/survivor's housing and financial security. These actions may not only lead to an end of their current tenancy, but also compromise a survivor's ability to secure future housing due to debt, financial insecurity, and damaged/strained credibility with landlords.

According to DAHA, there is a vast disparity between how different housing providers identify and link these issues to domestic abuse, the support they offer to survivors, and how they can hold perpetrators to account, particularly in the context of a joint tenancy where the victim and perpetrator share joint and several liability. Where housing providers have domestic abuse policies and procedures in place and staff who are trained to identify domestic abuse, they can offer some support, such as support with arrears, debt forgiveness and covering the cost of repairs. However, this is still at the discretion of the landlords, and some housing providers shared that by the point they are aware of the abuse and the need to address these issues, it can often be too late, with evictions (or other) legal proceedings underway.

Recommendations

The Commissioner supports the following recommendations, put forward by the National Domestic Abuse and Housing Policy and Practice Group:

1. **The Department for Levelling Up, Housing and Communities (DLUHC) should ensure housing providers are equipped to identify and support survivors who share a joint tenancy with their abuser, including by:**
 - a. Amending the Social Housing White Paper to specify that housing providers' domestic abuse policies should include specific direction on supporting survivors who share a joint tenancy. This should include robust procedures to safeguard against perpetrators adding themselves as a joint tenant as a form of abuse against victims of domestic abuse and other potentially vulnerable tenants.
 - b. Commissioning a specialist domestic abuse service to develop a template policy on supporting survivors who share a joint tenancy, in consultation with social housing providers.
 - c. Commissioning a specialist domestic abuse service to provide training to social housing providers on how to effectively identify and safely respond to both victims and perpetrators of domestic abuse.
 - d. Conducting an audit on a routine basis to understand the extent to which social housing providers are developing and implementing policies on domestic abuse and how survivors with joint tenancies are being supported.
2. **These measures should be accompanied by necessary steps to simplify the legal options available to survivors**, as set out in response to the questions below.

Q17: Please provide your views on how effective the current means available to landlords to support victims in joint tenancies, as set out above, are.

Ground 2A of Schedule 2 of the Housing Act 1985

The consultation states that '*local authorities have powers to take action against any tenants who are perpetrators of domestic abuse, including where they are joint tenancies with their victims. For instance, they have the power to seek to evict the perpetrator under ground 2A of Schedule 2 of the Housing Act 1985*'. Evidence suggests however that such powers do not present an effective legal mechanism that supports survivors to remain safely within their home, with eviction of the perpetrator from a joint tenancy also dependent on the survivor becoming homeless and permanently leaving their home. Ground 2A of the Housing Act (HA) 1985 can only be used in circumstances where the survivor has already fled the

property, with no intention of returning, which means that it does not support the survivor to remain within their home and avoid homelessness.

According to DAHA, local authority housing providers and privately registered social housing providers have been clear that this legal power is rarely used in practice, because it does not offer any safety or housing security to the survivor, and is legally difficult to achieve in practice, particularly without the survivor's support. Even in cases where housing providers have attempted to evict a perpetrator based on ground 2A, the evidential threshold is burdensomely high and can often be dependent on the survivor providing supporting evidence, which they have not been able to achieve. Where housing providers have attempted to remove a perpetrator based on ground 2A, they have shared that it can take many months and even years to bring the case to court, and once they have, judges are often reluctant or unwilling to grant possession to the local authority. None of the housing providers DAHA consulted with were able to share any successful cases of perpetrators being evicted under Ground 2A.

Evicting the perpetrator and allowing the victim to remain in their home with a new tenancy agreement.

Both housing providers and specialist domestic abuse services raised significant concerns that evicting the perpetrator does not work in cases of joint tenancies, as any action taken by the housing provider to gain possession of the property will impact all tenants who will all be evicted if the housing provider successfully gains possession. This means that the survivor will be evicted, will become homeless, and may lose their secure tenancy status due to these actions, even if it is the intention of the housing provider to provide the survivor with a new tenancy in the same or a different property.

As there is currently no ground in housing legislation that gives the social landlord the ability to gain possession in cases of domestic abuse where the survivor intends to return to the home, this leaves housing providers with the very limited and restricted options of creatively using other grounds for possession, usually under anti-social behaviour grounds such as Part 1, Anti-Social Behaviour Act 2014, Injunctions with Positive Requirements, which were not designed to protect or support survivors, or enable them to remain safely within their own home. Housing providers shared concerns that these grounds also require them to meet high evidential requirements to prove it meets the conditions for possession. Many housing providers shared with DAHA that they do not feel they can take the financial risk of seeking possession under these grounds, and many survivors fear that they cannot risk their safety, wellbeing, and security to support this uncertain process either. As one front line domestic abuse practitioner stated during Women's Aid's focus group in March 2022:

“Getting enough evidence to remove the perpetrator is almost impossible and often survivors are too scared to report to the police, so they are left in a situation where they are invalidated, feeling disbelieved and having to go through the housing system again.”

Even where the housing provider is willing to take this risk, housing providers also shared that it could take between 12-18 months to prepare and to have the case heard in court, which long surpasses the window of opportunity offered through a temporary Occupation Order, Non-Molestation Order or Domestic Violence Protection Order (which will eventually be replaced by DAPN/Os). In some cases where the survivor may have been placed in interim or temporary accommodation during the legal process, this can leave survivors, including children, in unsafe, unstable accommodation for a long period of time, while the perpetrator remains in the family home, which in turn can increase their risk of further harm.

Housing providers further shared that where these cases eventually do go to court, they have low success rates due to a balance of harm that often favours the perpetrator, and judges who are reluctant to take actions that would make the perpetrator homeless. It is important to note that no housing provider consulted by DAHA was able to share an example

of successfully using housing legislation to remove a perpetrator from a tenancy so that a survivor could safely remain in their home and maintain their tenancy.

Allowing the victim to remain in/ return to the property under a new tenancy agreement

The consultation states: “Where one joint tenant (e.g. the victim) has served valid notice to quit, and the landlord is made aware that there has been domestic abuse, the landlord has the option of a. allowing the victim joint tenant to remain in/return to the property under the new tenancy agreement; or b. securing possession of the property and offering the victim joint tenant suitable alternative accommodation. “

The Commissioner has additional concerns with these suggested solutions. Tenants are not often aware of their rights and their options to potentially give notice to quit without the consent of their other joint tenants. Survivors of domestic abuse may also be fearful of the repercussions of serving notice to quit on their abuser, particularly if they are unable to access adequate safety measures and support while the perpetrator remains in the property.

Housing providers shared concerns with DAHA that as the landlord they are not able to advise either tenant to end their tenancy, particularly in relation to advising one tenant to give notice to quit without the consent or knowledge of the other tenant. Not only do they need to consider the risk implications for the survivor, but also the implications for them as a landlord who must be seen as fair and impartial in their treatment of all tenants, and not seen to advise tenants to (intentionally) place themselves or others at risk of homelessness. Some housing providers, who are progressing towards DAHA accreditation, have taken additional steps to work around these limitations, such as working with their legal teams to carefully advise the victim/survivor to access legal advice on their rights to end the tenancy, however this must be done carefully, with legal support.

Even in cases where the survivor has given notice to quit with the intention of remaining in the property, this is still often dependent on first seeking a Non-Molestation Order or Occupation Order to remove the perpetrator from the property in the first instance. The process of seeking these temporary orders comes with their own difficulties and barriers (as outlined in response to questions below), including no guarantee of a positive outcome.

Recommendations

- 1. Ground 2A of the HA 1985 should not be considered a solution to survivor safety and housing security** where a joint tenancy is shared with the perpetrator of domestic abuse. Where Ground 2A is used to evict perpetrators after a survivor has been made homeless, the evidential requirements should not be dependent on survivor/victim support or participation.
- 2. All other current grounds for possession under the Housing Act 1985**, which a housing provider may attempt to use to evict a perpetrator, such as ASB order (e.g., Part 1 Injunctions with Positive Requirements) **should not be considered viable options for the removal of a perpetrator of domestic abuse from the joint tenancy.**
- 3. Instead, survivors should be able to use legal grounds specifically designed for the removal of perpetrators of domestic abuse from an ongoing tenancy.** The Domestic Abuse Commissioner supports the proposed legal mechanism for survivors to utilise independent of their landlord, outlined in more detail in response to question 21 below.

Q19: Please provide your views on how successfully the law on joint tenancies functions to enable victims to transfer such tenancies into their own name. Please provide reasons.

Evidence provided to the Commissioner suggests that the legal options available to survivors via the Matrimonial Clauses Act (MCA), Family Law Act (FLA), and the Children's Act (CA), to have perpetrators permanently removed from a joint tenancy are expensive, burdensome to the survivor, lengthy, and were not designed for the purpose of enabling survivors of domestic abuse to achieve a transfer of tenancy.

For survivors who need an immediate housing solution to ensure they can maintain their accommodation, seeking to have the perpetrator removed from the tenancy via these legal routes is neither timely nor straightforward, and may require them to apply for a divorce and a financial remedy order to transfer the tenancy via the MCA. Alternatively, those with children can bring an application under Section 1 of the Children's Act based on providing a home for the child under a certain age. A transfer of tenancy via these legal pathways may take up to two years, which would conclude long after the protection granted via Occupation Order or Non-Molestation Order, meaning the perpetrator could reclaim their rights to the home or end the tenancy without the survivor's consent or knowledge. In cases where the survivor must access alternative interim accommodation during this period, this can leave the survivor homeless for up to two years, with no guarantee that a transfer of tenancy will be granted at the end of these lengthy proceedings.

Additionally, the decision regarding how to use these legal pathways requires the expert advice of a family lawyer, which on average costs between £10,000 to £20,000 dependent 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, evidence shared with the Commissioner suggests that many find these legal pathways are not viable solutions.

Recommendation:

The Domestic Abuse Commissioner welcomes and supports the proposal of a simplified legal mechanism put forward by Women's Aid, Standing Together and the Domestic Abuse Housing Alliance (DAHA) who worked closely with legal experts, Giles Peaker, Justin Bates, and Jenny Beck during the progression of the Domestic Abuse Bill to develop this mechanism. The simplified legal mechanism allows for the transfer of a tenancy in the family court if a survivor of domestic abuse shares a joint secured or social tenancy with the perpetrator.

Crucially, the proposed mechanism compliments the protection of DAPNs and DAPOs, by extending the survivor's right to remain in their own home to a long-term basis. This would be obtained through the introduction of a new general mechanism in the family court, through which survivors that share a joint secured or assured social tenancy with the perpetrator could apply for the transfer of tenancy. The proposed mechanism 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.

Critically, the proposed mechanism ensures there 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. The mechanism ensures that Article 6 rights would be protected as the perpetrator could make representations on the application for an order. The order provides the perpetrator with the opportunity to rebut the presumption of a transfer of tenancy. Therefore, the mechanism effectively ensures the perpetrator's rights are not revoked, whilst placing the

onus on them to satisfy the court that there are exceptional circumstances, and to ensure justice between the survivor and the perpetrator.

To use DAPNs and DAPOs to provide survivors with the opportunity to stay safe within their own homes over the long-term, a new general mechanism must be introduced 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. For instance:

- 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. This evidence requirement threshold should 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. This would be determined in the survivor's application. The making of a transfer order would be conditional on the survivor demonstrating to the court that sole liability for the rent is achievable within a reasonable period, either through benefits and/or income level. A statutory provision stating that the survivor is solely liable for the rent during the transfer, for example a DAPN/O, and period of application for the order would clarify that the survivors would be able to claim benefits for the relevant period if solely liable. As joint tenants, the survivor and perpetrator are jointly and severally liable for any debts accrued on the joint property. Thus, in cases where debts have accrued, by gaining sole tenancy of the property, the survivor does not become solely liable for the debts accrued during the joint tenancy.

Furthermore, the mechanism does not dilute existing powers held by social housing landlords. Crucially, social housing landlords maintain the ability, under the proposed mechanism, to uphold the tenancy or serve notice to end the tenancy. 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. If the transfer of tenancy order is granted, each tenant would still be liable for these arrears. It is a decision on behalf of the social housing provider regarding whether they wish to take additional steps to support the survivor to repay any arrears or damages. The proposed mechanism therefore serves to significantly enhance the rights of survivors, whilst preserving the existing rights of all parties.

Q20: Have you ever taken any (other) legal action, such as obtaining an occupation order, against your abuser? Please include details on why you did / did not take legal action, and your experience of that legal action.

N/A

Q21: Please provide your views on how successfully temporary injunctions work to enable victims to prevent perpetrators from serving a notice to quit. Please provide reasons.

While Occupation Orders are the only legal remedy dedicated to supporting survivors of domestic abuse to remain in the home, other temporary measures, such as Non-Molestation Orders and Domestic Violence Protection Orders, can also be used in some circumstances as well. While the Commissioner supports temporary measures to exclude the perpetrator from the survivor's home, there are a range of barriers to the successful implementation of these measures and their ability to protect the victim/survivor from abuse through a joint tenancy.

Limitations of temporary orders

Primarily, temporary injunctions such as NMOs and DVPOs are only temporary, eventually requiring the survivor to take significant legal actions to permanently remove the perpetrator from the property via the Matrimonial Clauses Act, Family Law Act, or the Children's Act. Temporary orders also do not automatically prohibit the perpetrator from serving notice to quit on the tenancy, and survivors must seek additional legal measures to prohibit the perpetrator from giving notice. Even with these measures in place, a perpetrator may still breach these conditions, and there is nothing to stop the landlord, who may or may not be aware of the order in place, from accepting the notice to quit.

Balance of harm test

An additional barrier specific to these temporary legal measures is that the balance of harm test can, and often does, favour the perpetrator, particularly where there is a risk that the perpetrator will become homeless if excluded from the family home. A recently published study in the Journal of Criminal Law, commissioned by Surviving Economic Abuse (SEA) and conducted by Northumbria University found that:

“Case law indicates that victims experience barriers to securing orders to do the high threshold criteria and because concerns about protecting the rights of perpetrator has led to judicial reluctance to grant extensive protection to victims. Some judges are seemingly willing to bypass this by granting alternative remedies which may offer victims a weaker form of protection in respect of the family home. Where orders are granted, the data suggest this is on restricted terms and for limited durations which reduce their effectiveness at preventing post-separation abuse and supporting victims to regulate their short and longer-term housing situation.”⁷

These findings were also shared by housing providers, who had mixed experiences of survivors being able to utilise Occupation Orders to temporarily remove a perpetrator from the property. One survey respondent wrote: “Sometimes courts will order victims and perpetrators to remain together in the property (one living upstairs, one to live downstairs for example). The process is very long, and distressing and victims are either in the property with their perpetrator during this time, putting them at risk or forced to flee and rely on

⁷ Speed, Anna. Richardson, Kayleigh. 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.

refuges of LA EA.”⁸ The Commissioner is significantly concerned by such practice. Any version of measures that allows the perpetrator to remain within the property places the survivors, including children, at an ongoing risk of harm and homelessness.

Cost of seeking temporary measures

Another barrier to victims is the cost of seeking temporary legal measures. The Northumbria University research found that: “Although the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ‘makes efforts to preserve legal aid for victims of domestic abuse, the means test is difficult for victims to satisfy, resulting in increases both in the number of victims taking no action to pursue protection and who act as litigants in person in Occupation Order Proceedings.”⁹ Where victims act as litigants, the research found this can adversely impact their prospects of security protection. Even where a survivor may be able to meet the legal aid means test, gaining an emergency order with legal support can cost up to £5,000 at legal aid rates, and more than double if funded privately.¹⁰

Risk of breaches of orders

Where survivors have successfully obtained temporary measures, housing providers in particular shared concerns with DAHA that both survivors and the housing professionals are dependent on police partners to pursue breaches of these orders, particularly where the perpetrator may refuse to leave the family home. Due to this concern, as a precaution, survivors are often incentivised to seek temporary or interim accommodation while efforts are made to seek the order and/or remove the perpetrator from the home, which can negatively impact the status quo. By offering the survivor alternative accommodation in these cases, it can influence judicial decisions to allow the perpetrator to remain in the home as the perpetrator alternatively would be seen as intentionally homeless and not in priority need compared to the survivor who may have already accessed alternative accommodation. Additionally, by requiring the survivor to leave the family home to return, it does not in practice enable a survivor to stay safely within their own home.

As shared within the Northumbria research, there is some hope that many of these issues linked to Occupation Orders and Non-Molestation Orders may be resolved with the roll-out of the Domestic Abuse Protection Notices and Orders, however, this remains to be seen and much learning needs to be gained through the pilot process. The successful use of DAPOs will also be dependent on robust training and guidance for the multi-agency professionals who will utilise these orders, and for the police partners who will be tasked with enforcing them. These changes to DAPN/Os also do not solve issues regarding judges’ reluctance to grant orders that exclude the perpetrator from the home, and still much need to be done to ensure judges are provided with the necessary training and support to make decisions on these orders, and much needs to be done to monitor and quality assure how the DAPN/Os are being rolled out in practice.

Our recommendations

In practice, survivors will only be able to use temporary legal measures to suspend a perpetrator’s rights to the property if significant changes are made to ensure these measures are useable and accessible, including:

1. Through the piloting and roll-out of Domestic Abuse Protection Notices & Orders (DAPN/Os), there must be evidence of an even balance of harm between the victim and the perpetrator, which does not equate the perpetrator’s homelessness to the survivor’s, including their children’s, risk of both homelessness and the harm. Within

⁸ Ibid

⁹ Ibid

¹⁰ Ibid

the balance of harm, the children must also be considered victims of domestic abuse in line with the definition of domestic abuse in the Domestic Abuse Act 2021.

2. Judges should be required to grant a DAPO in its fullest form to remove the perpetrator from the home, and not any other version of measures that allows the perpetrator to remain within the property, which places the survivors, including children, at an ongoing risk of harm and homelessness.
3. There must be an automatic provision that the perpetrator cannot give notice to end the tenancy while the order is in effect, and that where the perpetrator does breach the order to give notice, that this does not take effect even if the landlord has accepted the perpetrator's notice to quit.
4. Once a temporary order is in place suspending the perpetrator's rights to the home, survivors and/or housing providers must be able to access new legal mechanisms (as outlined below) that have been specifically designed to remove the perpetrator quickly and effectively from the tenancy, if it is safe, affordable and the survivor wishes to maintain the tenancy and remain within the family home.
5. Judiciary professionals must be required to have domestic abuse training delivered by domestic abuse specialists, which includes an understanding of coercive and controlling behaviour, the gendered nature of domestic abuse, counter allegations, and the short and long-term impact of domestic abuse on survivors' - including children's - safety and security, and how DAPN/Os should be used and enforced, particularly in cases where they will temporarily remove the perpetrator from the shared home with the survivor.
6. In the Ministry of Justice's forthcoming review of the means test for legal aid, the Commissioner recommends the exemption of domestic abuse survivors from the legal aid means test with immediate effect to ensure that all who need to make an application for a protective order or take action to retain their home can do so.

Q22: Fixed term tenancies can leave victims at the risk of being trapped in a tenancy with their abuser. Do you have any experience or evidence of this issue? Please provide details, including whether you have any ideas for how to solve the issue.

The Domestic Abuse Commissioner has heard evidence from DAHA and Women's Aid of survivors being trapped in a fixed term tenancy with their abuser which has a significant impact on their safety, housing, and economic security.

As outlined above in response to Q16, perpetrators of domestic abuse are adept at using a joint tenancy shared with the survivor as a form of abuse, including causing arrears, damage, and anti-social behaviour, for which the survivor will be jointly and severally liable. This can place survivors at risk of eviction, debt, negative credit ratings and negative references that can have both short and long-term impact on their housing security.

In these circumstances, the survivor may feel their best option is to end that tenancy with the perpetrator to leave the perpetrator and access alternative accommodation and/or to ensure they are no longer liable for any further arrears, damage or ASB caused by the perpetrator. However, where there is a fixed term contract, the survivor will not be able to do this without a break clause, and/or without the mutual consent of all joint tenants and the landlord. Perpetrators of domestic abuse will often use this dependence as a form of control, and it can cause a significant barrier to survivors being able to leave an abusive relationship.

One survivor shared with DAHA how her perpetrator used their fixed term joint tenancy as a form of abuse by causing both arrears and damage to the property. This severely damaged their relationship with the landlord and with neighbours, as well as causing debts for which the survivor was liable. The survivor wanted to end the relationship and the tenancy, however as it was fixed term, she could only do so with the consent of both the landlord and the perpetrator. Her abuser used this as an opportunity to further economically abuse and

control her, and only agreed to end the tenancy if he could keep the deposit which she had solely provided. To end the tenancy and safely leave the perpetrator, she agreed to let him take the deposit she had provided. The consequences of his behaviour were long-lasting. She now had to produce a significant amount of money to replace her lost deposit and had to seek a new PRS tenancy without a positive reference from her previous landlord who refused to separate her from her partner's abusive behaviour due to their joint liability and would not provide a separate reference. As a result, she became homeless and was unable to secure a new PRS tenancy on her own.

In March 2021, the Guardian published an article detailing the circumstances surrounding the death of Alex Reid, a victim of domestic abuse who died by suicide in February 2020, after two years of domestic abuse from her ex-partner, Peter Yeung. In describing Yeung's abuse leading to Alex's death, her sister Katy relayed that:

"they found a house in Anfield, Alex was the main tenant, as Yeung (the perpetrator), couldn't get a guarantor. The day they moved in was the day it changed. He had a roof over his head. Alex paid the rent, the bills, she bought the furniture. She was working all the time, taking loans left, right and centre. She was quickly in a lot of debt - and she'd never been in debt. She was always a saver.... Her fear was always that, if she left, Peter would smash up the house and she'd have to pay for it. Yeung had already broken a table, a chair, and all the Christmas presents Alex bought for her family. Alex called the estate agent many times - once in tears - explaining that she was with a violent man and needed him to leave the house. They said there was nothing they could do as he was on the contract as the second tenant." After Alex's death, Yeung asked if he could move back into the house now that Alex was no longer in it. "The police told me it was his human right," says Katy. "I had to take away all of Alex's belongings, all the furniture-it was awful-then he stayed there until his trial in December."

From these and many other examples, shared by victim/survivors regarding their experiences of abuse, it is evident that when sharing a fixed term tenancy with their abuser, they can often be trapped in the relationship and the ongoing abuse, and through their shared tenancy, tied to the arrears, damage and anti-social behaviour caused by the perpetrator, making it often impossible for victims/survivors to move forward with their lives and become safe from their abuser.