

Joint Tenancies & Domestic Abuse

Questions & Answers

Why do survivors need a legal mechanism to transfer a joint tenancy shared with the perpetrator into a sole tenancy in their own name?

Until a perpetrator is removed from a joint tenancy shared with the survivor, the survivor cannot fully achieve safety or housing security and remain within their own home. While a perpetrator remains named on a joint tenancy, the perpetrator will be able to give notice to end that tenancy without the survivor's consent or knowledge, even after the perpetrator may have physically left the property.

The perpetrator can also continue to cause rent arrears and damages to the property, for which both the survivor and the perpetrator will be jointly and severally liable. This may cause the survivor lasting debt, economic harm, and risks of eviction and homelessness. While the perpetrator remains on the tenancy, they can limit the survivor's access to housing benefit to solely cover the rent.

Even after the perpetrator has physically moved out of the property, while they remains named on the tenancy, the survivor will not be able to change the locks or restrict the perpetrator's access to the property. The survivor may seek a temporary court order to do so, but when this inevitably ends, the perpetrator has a right to return to the family home.

Outside of costly court proceedings, there is no means to legally transfer the tenancy to the survivor, and they are dependent on the perpetrator to give their signed consent to be removed from the tenancy. Otherwise, the survivor must end the joint tenancy, become homeless, and seek a new tenancy with the landlord. There is no guarantee the landlord will grant the survivor a tenancy and she may become permanently homeless as a result.

Why are current legal options to secure a transfer of tenancy unsafe and inaccessible?

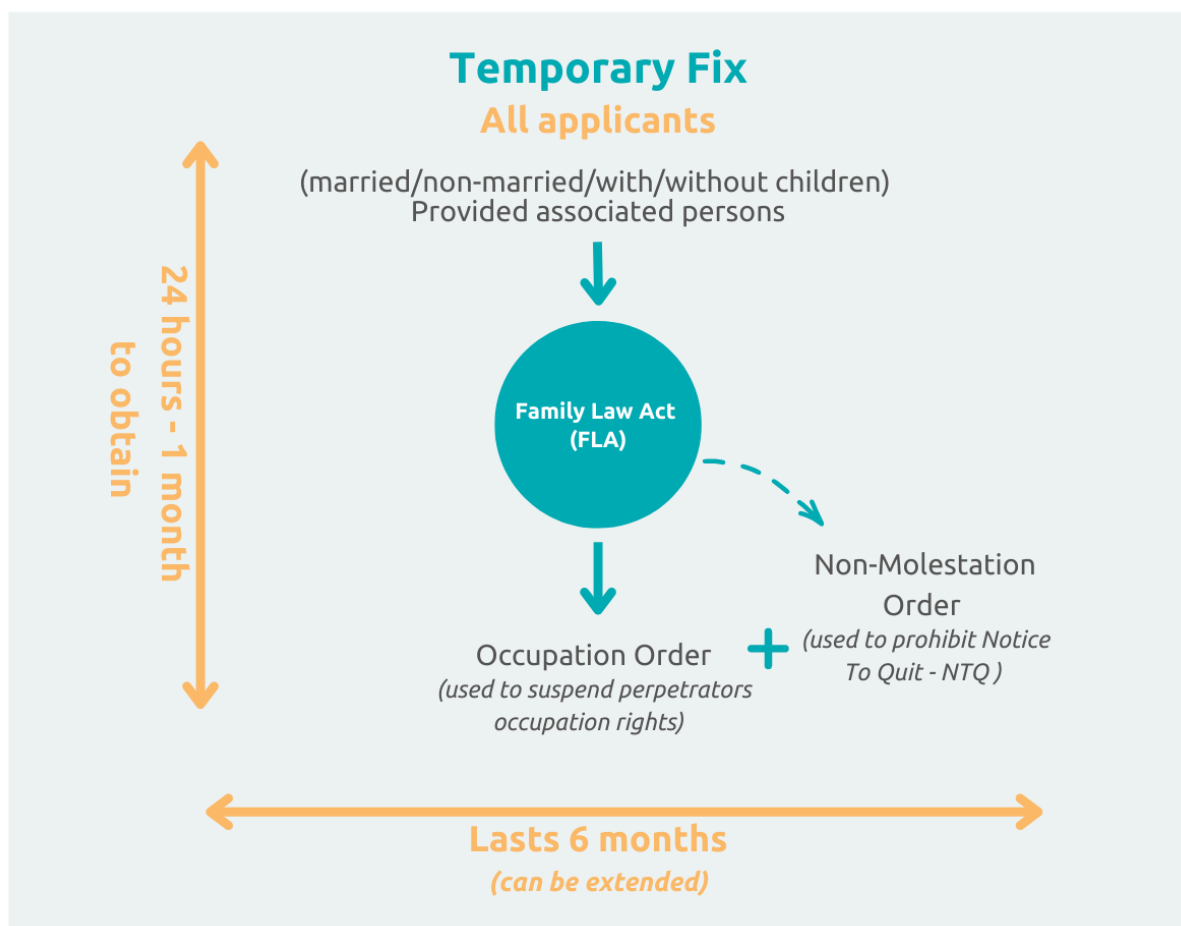
In our briefing, we set out the current barriers faced by survivors to stay within their homes and our proposal to place responsibility on the perpetrator to leave the family home.

As summarised in the below diagrams developed by Jenny Beck, Solicitor and Director of Beckfitzgerald, this is due to the complex, costly and often inaccessible mechanisms currently available to survivors to temporarily remove perpetrators from the home and transfer a joint to sole tenancy. Most survivors will need to go through two stages of legal actions:

1. Temporary legal solution: To immediately remove the perpetrator from the family home, a survivor will need to obtain a temporary court order (usually lasting 6-12 months), such as an Occupation Order and a Non-Molestation Order, that will temporarily suspend the perpetrator's rights to the property. This is only a time limited

solution to protect survivors, including children, in an emergency and can cost a survivor up to £5,000 at legal aid rates and more than double if funded privately. Without the use of a Non-Molestation Order, the perpetrator can still serve notice to quit, which can cause the survivor to become homeless. Even with a NMO in place, this is only a deterrent.

2. Permanent legal solution: To then secure a transfer of tenancy, the survivor must then take further legal actions which are protracted, costly and often inaccessible. These legal actions can take up to two years, during which time the temporary Orders are likely to have ended, and result in the survivor incurring costs of £10,000-£20,000 depending on their access to legal aid.



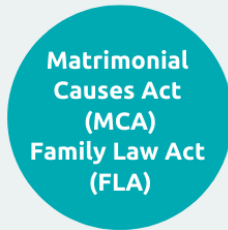
Problems:

- 1 Not a permanent fix. Right of Occupation only suspended (6 months - can be extended).
- 2 Non Molestation orders do not suspend the perpetrators rights to occupation and only can be used to deter perpetrators giving notice to quit. This is a deterrent only (6 - 12 months).
- 3 Balance of harm test can favour the perpetrator.
- 4 Incentive for survivors to flee to refuge which alters status quo, making it harder to return and distressing for children.
- 5 Legal Aid Means Test is required.

Permanent Fix

Different possibilities for different classes of applicants

Married



Unmarried without children



Unmarried + children



Issues with using Matrimonial Causes Act:

- 1 Divorce necessary.
- 2 Different Legal Aid eligibility for MCA/FLA.
- 3 Timescales potentially longer than 12 - 18 months.
- 4 Lack of immediate relief impacts the case.
- 5 Protection under Family Law Act may expire before final solution.
- 6 Court can only order assignment of tenancy - problem when tenancy agreement prohibits assignment.
- 7 Requirement to await conditional order before an order for transfer will be granted.
- 8 Restrictive approach to conduct arguments.
- 9 Requirement for extensive and disproportionate financial disclosure.

Issues with using Family Law Act:

- 1 Not publicised / used enough.
- 2 Balance of harm can be used to prejudice case.
- 3 Divorce necessary for married couples.
- 4 Requirement to await conditional order before an order for transfer will be granted.
- 5 Timescales potentially longer than 12 - 18 months.

Issues with using Children Act:

- 1 Different funding eligibility.
- 2 Potential to be rejected by the court if considered a back door application where parties are married.
- 3 Raises contact/child arrangement issues.
- 4 The order is for the benefit of the child and therefore may only last until the child is 18.
- 5 Timescales potentially longer than 12 - 18 months.

Do social housing providers have legal remedies available to evict perpetrators of domestic abuse and support survivors to maintain their 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 into their name. 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 property¹. This does not address the needs of the survivor to safely remain within their own home, and in fact, is completely dependent on her fleeing.

This leaves social housing providers with the only option to creatively use other legal measures that were not specifically designed to address domestic abuse. For example, some social housing providers may use injunctions designed to address Anti-Social Behaviour (ASB), such as Part One Injunctions with Positive Requirements, to act against perpetrators of domestic abuse. This is problematic, as the injunction was developed to address the perpetrator's behaviour over the long-term by mandating certain positive requirements to support tenants committing anti-social behaviour. This does not address the risks presented by perpetrators of domestic abuse and does not guarantee they will be evicted from the family home. This also leaves survivors in the precarious position of being dependent on the social housing provider to decide whether they will use an ASB order for this purpose and how they will use the order to address the perpetrator's behaviour, which may or may not lead to their eviction.

Social housing providers are also limited by the temporary legal remedies available to survivors, such as Occupation Orders or Non-Molestation Orders, or in the future Domestic Abuse Notices (DVPNs) and Orders (DVPOs), to have perpetrators removed from sole or joint properties. As detailed within the briefing, the issue remains that these measures are only temporary, and they do not affect the joint tenancy.

The solution: offering survivors long-term safety and housing security through a transfer of joint to sole social tenancies in cases of domestic abuse.

Who developed the Domestic Abuse Tenancy Transfer Order and why?

The domestic abuse transfer of tenancy order was developed by housing and family law experts, Giles Peaker, Justin Bates, and Jenny Beck, in consultation with Women's Aid Federation for England (Women's Aid), the Domestic Abuse Housing Alliance (DAHA), Standing Together Against Domestic Abuse, and the support of the National Domestic Abuse and Housing Policy and Practice Group.

This new legal mechanism was developed by these partners to provide survivors of domestic abuse with a simplified legal mechanism for the transfer of a joint social tenancy, shared between a perpetrator and a survivor, into a sole social tenancy in the name of the survivor.

Crucially, this legal mechanism was developed to complement much needed changes to DAPNs and DAPOs through the Domestic Abuse Act 2021 to make it easier to remove perpetrators from shared homes temporarily. The Domestic Abuse Transfer of Tenancy Order will also build on necessary changes through DAPNs/DAPOs by allowing survivors to use this "breathing space", when the perpetrator has already been removed from the home, to secure the tenancy for the survivor long-term. This means that once the temporary order inevitably

¹ Henderson, K. Domestic Abuse Housing Alliance (DAHA) (2019). Whole Housing Toolkit, Chapter 16: Perpetrator Management Toolkit. [Available online](#)

ends the perpetrator cannot return to the shared tenancy and place survivors and children at risk of harm and homelessness.

What will the Domestic Abuse Tenancy Transfer order do?

If a perpetrator and survivor of domestic abuse share a secured or assured joint tenancy with a social housing provider, the order would remove the perpetrator from a joint tenancy shared with the survivor, leading to a sole tenancy for the survivor (unless there are other joint tenants, who will remain on the tenancy, however this is not likely for a secured or assured social tenancy). It will not apply to introductory social tenancies or tenancies within the private rented sector.

Who can apply for the Domestic Abuse Tenancy Transfer order?

Survivors of domestic abuse who share a joint secured or assured social tenancy with the perpetrator will be able to make an application directly to the county court for a 'domestic abuse transfer of tenancy' order.

Can a social landlord apply for a Domestic Abuse Tenancy Transfer Order?

Only the survivor of domestic abuse who shares a joint tenancy with the perpetrator can apply to the county court for a Domestic Abuse Tenancy Transfer Order. This ensures that survivors can act independent of their landlord to remove a perpetrator from a joint secured or assured social tenancy. As the order does not impact on the rights of the social housing provider, the survivor does not need to gain the support or permission of the landlord to seek to remove the perpetrator from the joint tenancy.

The scale of presumption used for granting the order will ensure that robust evidential requirements are met that the survivor is experiencing domestic abuse from the perpetrator joint tenant, and that the survivor can afford the tenancy within a reasonable time. 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, to be paid to the social housing provider.

Can a survivor living in the private rented sector or with an introductory social tenancy seek a Domestic Abuse Tenancy Transfer order?

No, the order only applies to secured and assured social tenancies.

How will the survivor or social housing provider obtain a Domestic Abuse Tenancy Transfer order?

The order will be applied for and obtained through the county courts.

Who does the Domestic Abuse Tenancy Transfer order apply to?

- (1) The order is applied where there are two or more 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 the joint tenant ("A") has experienced domestic abuse from another joint tenant ("B" then A may apply to the county court for an order B is removed as a joint tenant).
- (3) The domestic abuse was directed at A or to anyone who might reasonably be expected to reside with A.

On what basis will the Domestic Abuse Tenancy Transfer order be granted?

As detailed in section 4 of the amendment, our proposal simplifies the evidential and decision-making process and has presumptions in place under which an order will be made unless successfully rebutted by the perpetrator.

The presumptions mean that the order will be granted if:

1. The perpetrator has been convicted of an offence related to domestic abuse against the survivor or anyone reasonably expected to live with the survivor, or;
2. The perpetrator has been given a court order such as a, Restraining Order, Occupation Order or Non-molestation Order (eventually replaced by DAPNs and DAPOs) in relation to the survivor or anyone reasonably expected to live with the perpetrator.

There is a presumption that the transfer of tenancy will be granted if the court is satisfied these conditions are met. The perpetrator will have the opportunity to rebut the presumption, however the onus is placed on them to satisfy the court that there are exceptional circumstances which means the only way to do justice between the survivor and the perpetrator is for the order to be refused.

Can a survivor apply for a Domestic Abuse Tenancy Transfer order if they have been forced to flee the property?

Yes, if the survivor currently shares a joint secured or assured social tenancy with the perpetrator.

Can a survivor apply for a Domestic Abuse Tenancy Transfer order while the perpetrator is still occupying the property?

Yes, but it is practically easier if the perpetrator is not occupying the property or has had their rights to occupy suspended (for example as a result of an Occupation Order), such that the survivor is not dependent on eviction proceedings.

Will the tenancy rights of the survivor be affected if the tenancy is transferred into their sole name?

No, they will not. The secured or assured tenancy will remain the same and the survivor will maintain their assured or secured tenancy rights. The only aspect of the tenancy that will change is that they will go from a joint to a sole tenancy.

Will the tenancy rights of other joint tenants be affected if the perpetrator is removed from the tenancy?

No, they will not. The secured or assured tenancy will remain the same and all other tenants will maintain their assured or secured tenancy rights. However, it is extremely rare for a secure or assured social tenancy to have more than two tenants.

How will the rights of the perpetrator be considered when granting a Domestic Abuse Tenancy Transfer order?

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.

The order provides the perpetrator with the opportunity to rebut the presumption of a transfer of tenancy. However, the onus is placed on them to satisfy the court that there are exceptional circumstances, which means the only way to ensure justice between the survivor and the perpetrator is for the order to be refused.

How will the Domestic Abuse Tenancy Transfer affect the rights of the social housing provider/landlord?

The social landlord's ability to uphold the tenancy or serve notice to end the tenancy would not be affected. 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.

How will the court determine if the survivor can afford the rent after the Domestic Abuse Tenancy Transfer is granted?

This would be addressed 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.

How will debts accrued on the joint tenancy shared between the survivor and the perpetrator be addressed?

As joint tenants, the survivor and perpetrator are jointly and severally liable for any debts accrued on the joint property. This means that by gaining sole tenancy of the property, the survivor does not become solely liable for the debts accrued during the joint tenancy.

Once the joint tenancy has ended, how social housing providers recover debts between joint tenants is discretionary and based on their current policies and procedures. Some social housing providers have demonstrated good practice in this area, such as having domestic abuse policies in place that enables them to use their discretion to support the survivor to manage any debts resulting from economic abuse. For example, this may include the social housing provider seeking arrears on a 50/50 basis between the survivor and the perpetrator or choosing to recover only the perpetrator's portion of the debt, or to recover the whole debt from the perpetrator. However, it is also worth noting that the Social Landlords' Pre-action Protocol applies in rent arrears cases, and the provider will be expected to have engaged with the survivor and support her in dealing with any rent arrears. The proposed mechanism therefore serves to significantly enhance the rights of survivors, whilst preserving the existing rights of all parties.

In preparation for the implementation of the order, we would support the Government to provide guidance and advice to social housing providers about how they can support survivors before and during this period of a tenancy transfer. This includes practices they can use to support survivors to overcome the burden of any previous accrued debts so that they can gain financial independence from the perpetrator and afford to pay the rent on their sole tenancy going forward. The Domestic Abuse Housing Alliance (DAHA) is recognised across the housing and domestic abuse sector as the leading experts on the role of social housing providers in response to domestic abuse and are well positioned to provide this guidance and advice.

Cost

Is there a cost benefit to survivors and/or social housing providers by obtaining a Domestic Abuse Transfer of Tenancy Order?

We project there is a cost benefit to both survivors and social housing providers in obtaining a Domestic Abuse Tenancy Transfer Order, compared to the current legal and housing solutions available.

Will obtaining a Domestic Abuse Tenancy Transfer Order cost less for survivors?

Our research found that by offering survivors and social housing providers with the option to obtain a Domestic Abuse Transfer of Tenancy Order, survivors will be saving a significant amount in legal costs. The current legal pathway places the onus on survivors to first seek Non-Molestation Orders and/or Occupation Orders to temporarily removing perpetrators from the shared property, which costs up to £5,000 at legal aid rates and more than double that if funded privately.

The legal actions required of survivors to then gain a transfer of tenancy can cost a survivor between £10,000-£20,000 depending on the survivor's access to legal aid. If they secure legal aid, there are still significant costs to the public purse in contested proceedings of around £5,000 or higher.

Under the proposed DAPNs and DAPOs through the Domestic Abuse Act 2021, survivors will not need to pay to obtain these orders. This will therefore result in significant savings for the survivor, compared to the potential £5,000 at legal aid rates and more than double that if

funded privately need to secure an Occupation Order or Non-Molestation Order (which the DAPN/DAPO will replace).

Costs to survivor of seeking a transfer of tenancy through the current legal pathway	
Average cost of seeking a temporary order to remove the perpetrator from the family home and prevent further harm	£5,000
Average cost of permanent legal solutions for a transfer of tenancy.	£10,000-£20,000
Costs to survivor when independently seeking a transfer of tenancy through the new proposed pathway	
Average cost of seeking a Domestic Abuse Protection Order to remove the perpetrator from the property	£0

Will enabling survivors to obtain a Domestic Abuse Tenancy Transfer Order have a cost benefit for the social housing providers?

Without a current legal mechanism which enables survivors to maintain their tenancies and remove the perpetrator, the social housing provider is at a risk of bearing the significant cost of domestic abuse. This includes the cost of ongoing domestic abuse in the home, eviction and re-letting the property, as detailed below.

The cost of ongoing domestic abuse in the home

Ongoing domestic abuse in the home can result in significant damages to the property that require the social housing provider to pay for repairs. It can cause rent arrears (as a form of economic abuse) that must be covered by the social housing provider.

The cost of repairs to damages resulting from domestic abuse

The average cost of repairs resulting from domestic abuse over the course of 2 years (2015-2017): 43,470 jobs at a cost of £8.4million. That is the equivalent of 13% of all jobs or 21% of all repair costs attributed towards domestic abuse. **This was then costed at £1.2k per household².**

The cost of rent arrears in cases of domestic abuse³:

² SafeLives & Gentoo. Safe at Home: the case for a response to domestic abuse by housing providers. Available [online](#). SafeLives and Gentoo "received anonymised data regarding 234 tenants in rent arrears that had experienced domestic abuse. Those arrears were primarily around the time of the reported incidents of domestic abuse. It is likely that domestic abuse incidents took place before the reported incident (month 0 in Table 6.2a)) and that must be considered as a factor contributing towards those who had debt before the reported domestic abuse incident date "(Table 6.2a)

³ Ibid

According to the same research, “the average cost of a weekly arrear was £40 and was likely to go up in the six months after a (domestic abuse) incident. However, for those with cumulative arrears, the average debt was £209 and was likely to increase upon reporting the domestic abuse incident and continue to increase”⁴.

The cost of evicting a household following domestic abuse (due to domestic abuse, rent arrears and damages).

Cost of evicting a tenant and re-letting the property:

Action	Cost
Cost of eviction from a LA property	£1,200
Rent arrears-write off	£1,900
Average cost of repairs to get a property to a good standard for re-letting	£1,800
Average cost of home sitting empty for 20 days	£320
Cost of re-letting property post eviction	£2,800
Administrative cost of new LA letting	£500
Total cost	£8,520

The cost of rehousing a survivor and children who are made homeless because of domestic abuse.

A report by the All-Party Parliamentary Group on Ending Homelessness⁵ found if a household experiences homeless because of domestic abuse and were to be found in priority need, the potential indicative cost to the public of helping a single housing to secure accommodation would range between **£3,617 to £11,434**.

⁴ Ibid

⁵ All Party Parliamentary Group on Homelessness (2019): *A Safe Home: Breaking the link between homelessness and domestic abuse*, pg 29. Available [online](#)