



## **The Chartered Institute of Housing's submission to the Department for Levelling Up Housing and Communities (DLUHC) consultation regarding the impact of joint tenancies on victims of domestic abuse**

### **Initial comment**

Chartered Institute of Housing (CIH) welcomes the government's commitment to addressing the needs of survivors and victims of domestic abuse, and we are pleased to submit evidence on this important consultation topic. It is well documented that domestic abuse is one of the leading causes of homelessness amongst women and that housing is a primary barrier for women attempting to leave abusers. Domestic abuse is currently the second most common reason for households approaching English councils for homeless relief as shown in [DLUHC's official statistics release](#). In the 2000 Women's Aid [Hidden Housing Crisis](#) research 70 per cent of women said their housing situation and concerns about future housing, including fears of homelessness or lack of safe housing, prevented them from leaving an abuser. This forces survivors, including children, to remain living in dangerous, life-threatening, and traumatic situations.

All survivor's safety and housing needs are different and therefore survivors require a range of housing and support and to enable them to have the viable choice to remain in their accommodation if it is safe and they choose to do so, or to access alternative accommodation. However, as set out in the consultation document, for survivors who wish to remain within their own home yet share a joint tenancy with their perpetrator, they are often dependent on the perpetrator to voluntarily remove themselves from the joint tenancy, or alternatively they face significant legal barriers to achieve this. Without significant changes to this situation 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".

CIH is part of the [National Housing and Domestic Abuse Policy and Practice Group](#) (referred to in this submission as the National Group) led by the [Domestic Abuse Housing Alliance](#) (DAHA). The National Group has submitted a response to the consultation which is underpinned by engagement with a wide range of partners. As well as being part of National Group response CIH are also submitting our own responses to several the consultation questions. We would be happy to discuss any elements of this submission further with you.

## CIH response to consultation questions

### Q1- Select the portion that applies to you

- Professional in the housing sector

### Q16- Do perpetrators of domestic abuse use the threat of terminating a joint tenancy as a form of abuse?

Yes, we are aware that perpetrators of domestic abuse often use the threat of terminating a joint tenancy as a form of abuse (including post separation when the perpetrator has no longer lived in the property for a considerable amount of time). In a National Group survey of social housing providers conducted by for this consultation exercise, 82 per cent of respondents answered 'yes' when asked whether they were aware of perpetrators using a joint tenancy with a survivor as a form of abuse.

It is important to note however that the threat of ending a joint tenancy is not the only time that perpetrators may use a joint tenancy as a form of abuse. Perpetrators adding themselves as a tenant to a survivor's sole tenancy may also be a form of abuse in the first place. A perpetrator may manipulate or coerce survivors with sole tenancy to add them to the tenancy agreement. Once a joint tenant, a perpetrator can use this position as a form of ongoing economic abuse and coercive control which goes beyond and often starts before the threat to terminate the tenancy. This can include anti-social behaviour, rent arrears and damage where perpetrators use these behaviours to threaten survivors housing and financial security.

Housing providers need to be better equipped, supported and advised to identify and support survivors who share a joint tenancy with their abuser, and to offer practical support to reduce the impact of the abuse on the survivor's safety and housing security. To achieve this, DLUHC should advise that housing providers not only have clear domestic abuse policies and procedures in place on how they will respond to domestic abuse and its impact (as specified within the Social Housing White Paper) but also that housing providers equip their staff with the professional skills through training and professional development, to effectively identify and safely respond to both victims and perpetrators of domestic abuse. This training should be required across all housing teams, for staff who may deal with a survivor or perpetrator's housing needs. This should be in line with DLUHC's current guidance on tier one local authorities' new duty under Part 4 of the Domestic Abuse Act which advises that all local authorities and housing providers seek [DAHA accreditation](#). The standards set out through DAHA accreditation ensure that a housing provider can give a safe and robust response to domestic abuse which equips all staff with any contact with survivors and/or perpetrators, to identify and respond effectively to domestic abuse before it reaches a 'crisis point' when a survivor is at a significant risk of harm and homelessness.

DLUHC should advise and guide housing providers to have robust procedures in place 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. We do not advise that housing providers should take a 'zero tolerance approach' to adding tenants to an existing sole tenancy and should instead be led by the expressed wishes and needs of survivors on an individual basis.

**Q17. How effective are the current means available to landlords to support victims in joint tenancies?**

We do not consider that the current means available to landlords to support victims in joint tenancies are effective - they do not offer safety or housing security to the survivor and are legally difficult to achieve in practice.

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 her home and avoid homelessness, and in fact, is entirely dependent on the survivor fleeing. Even in cases where housing providers have attempted to evict a perpetrator based on ground 2A, the evidential threshold is burdensomely high, it can take many months to bring the case to court, and when it gets to court may still be unsuccessful.

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. This is problematic as the injunction was not designed to protect or support survivors or enable them to remain safely within their own home. This leaves survivors in a precarious position of being dependent on the housing provider to decide whether they will use an ASB order for this purpose. High burdens of proof being required, alongside using grounds that are not designed to respond to domestic abuse, leaves many housing providers feeling like they cannot take financial risk of seeking possession under these grounds. Even where the housing provider is willing to take this risk getting to court can take many months, long surpassing the window of opportunity offered through a temporary Occupation Order Part 4 Family Law Act 1996, Non-Molestation Order Part 4 Family Law Act 1996 or Domestic Violence Protection Order (which will eventually be replaced by DAPN/Os). Once finally in court there is no guarantee of success, in fact anecdotally we understand the chances of success are extremely low.

The consultation document also notes "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". We would suggest tenants are often not 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 are additionally trying to survive in dangerous and uncertain circumstances, experiencing various forms of ongoing trauma, and may be fearful of the repercussions of serving a 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 as landlords also face a difficult situation here in advising a tenant to end their tenancy, particularly, 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.

**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.**

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 options available to survivors via the Matrimonial Causes Act (MCA), Family Law Act (FLA), and the Children Act (CA), to have perpetrators permanently removed from a joint tenancy are all 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 - nor do they guarantee this as an outcome.

Those with children can bring an application under Section 1 of the Children Act based on providing a home for the child. However, 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 is extremely costly. As the 2021 [Denied Justice](#) by Surviving Economic Abuse and other research demonstrated, many survivors are unable to satisfy the legal aid means test despite being unable to afford legal representation. This results in many survivors choosing not to proceed with protective order applications or having to represent themselves against the perpetrator.

As an alternative, Women's Aid, Standing Together and the Domestic Abuse Housing Alliance (DAHA) worked closely with legal experts Giles Peaker, Justin

Bates, and Jenny Beck during the progression of the Domestic Abuse Act to develop a simplified legal mechanism for the transfer of a tenancy in the family court if a survivor of domestic abuse shares a joint secure or social tenancy with the perpetrator. Our recommendation is the government reconsider these proposals (as detailed in National Group consultation response). This proposed legal mechanism was developed to provide survivors of domestic abuse with a simplified legal route 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. It was developed to complement much needed changes to Domestic Abuse Protection Notices (DAPNs) and Domestic Abuse Protection Orders (DAPOs) through the DA Act 2021 to make it easier to remove perpetrators from shared homes temporarily. This means that once the temporary order inevitably ends the perpetrator cannot return to the shared tenancy and place survivors and children at risk of harm and homelessness.

As a broader point, CIH believe that in the longer-term government should look to undertake a more comprehensive overhaul of tenancy law to make it easier to use and understand. In Wales new provisions will come into force in July this year based on a new legal framework developed by the Law Commission; the foundation of which were the Law Commission's [Renting Homes Final Report \(2006\)](#) and [Draft Bill](#). CIH believes that this should be something that the government also considers for England. More details on this can be found in CIH's [consultation response submission to the New Deal for Renting](#) from 2019.

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

Temporary injunctions are by their very nature only temporary measures which exclude the perpetrator from the family home for a brief period, usually within 6-12 months. After this the perpetrator can reclaim their rights to the family home, including returning to the property. While we support temporary measures to exclude the perpetrator from the survivor's home, and in some cases survivors do not require further permanent measures to remove the perpetrator from the tenancy, it is still only a temporary measure that still requires 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 Act, which has its own set of barriers as set out in our response to question 19.

Temporary orders, such as Non-Molestation Orders, also do not automatically prohibit the perpetrator from serving notice to quit on the tenancy, and survivors must seek costly and time consuming additional legal measures to prohibit the perpetrator from giving notice. 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.

Where survivors have successfully obtained temporary measures, 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. This can be especially difficult with Occupation Orders which may have a power of arrest attached, as breach of these orders is not a criminal offence. 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. By offering the survivor alternative accommodation in these cases, it can influence judicial decisions to allow the perpetrator to remain in the home as he alternatively would be seen as intentionally homeless and not in priority need compared to the survivor who may have already accessed alternative accommodation. This does not in practice enable a survivor to stay safely within their own home.

The barriers encountered by survivors of domestic abuse to use the current temporary legal remedies are also impacted by the legal aid means tests which leaves many survivors unable to afford legal actions to protect themselves from the perpetrator. As noted in answer to question 19, research by Surviving Economic Abuse and others demonstrates that many survivors are unable to satisfy the legal aid means test despite being unable to afford legal representation. Despite the existence of the 'domestic abuse waiver' that applies to the legal aid means test in applications for injunctions, [research](#) commissioned by the Law Society in 2019 found that 20 per cent of victim-survivors who were eligible for an injunction could not proceed with the application as they could not afford the contributions that were required with the waiver.

Additionally, survivors who need to leave their perpetrator while also remaining within the family home will encounter additional economic difficulties, particularly in the context of economic abuse, that may have left a survivor economically dependent on their perpetrator, or when a perpetrator has accrued significant debts and arrears for which the survivor is jointly and severely liable. A survivor's level of access to economic resources can make a great difference to the process of leaving an abuser, as outlined in the Women's Aid [Economics of Abuse](#) report. Survivors often face a stark choice between safety and poverty. A situation which is only likely to get worse with the current soaring cost of living and welfare policies which do not provide adequate protection for the most vulnerable. There are many 'gaps' in the benefits safety net, some of them so big they may even deter survivors from escaping abuse. The two most obvious are the benefit cap and payment of universal credit into a single bank account. It seems perverse that the rules should penalise survivors for circumstances not of their own making. Analysis in the [Benefits Cap and Domestic Abuse Briefing](#) by Shelter and Women's Aid in 2021 shows that the cap has caused hardship, destitution and homelessness and has had a disproportionate impact on women and children experiencing domestic abuse. The Government should award an exemption for survivors of domestic abuse. An exemption of just a year would provide enough time for someone to adjust to changes in circumstance

after escaping an abuser, and allow survivors a period of transition, free of the cap. We would like to draw government's attention a briefing paper and [a proposed amendment](#) which CIH suggested in 2020, designed to introduce a new exception from the cap for domestic abuse survivors. Without exemption from the cap other measures in the welfare system that are designed to help domestic abuse survivors (notably the temporary absence and two homes rules) are rendered ineffective.

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:

- Through the piloting and roll-out of Domestic Abuse Protection Notices & Orders (DAPN/Os), there must be evidence of an even balance of harm test 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 the balance of harm, the children must also be considered victims of domestic abuse, who will be impacted by the decision for the perpetrator to remain within the property.
- 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.
- 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, this does not take effect even if the landlord has accepted the perpetrator's notice to quit.
- 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.
- Judiciary professionals are 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.

We welcome the Ministry of Justice's forthcoming review of the means test for legal aid which will specifically consider the experiences of survivors of domestic abuse.

**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.**

Fixed term tenancies can leave survivors trapped a tenancy with their abuser. As already outlined in our response, 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 the 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). Ultimately, perpetrators will use this dependence as a form of control, and it can cause a significant barrier to survivors being able to leave an abusive relationship.

We are aware that the majority of our CIH members no longer use fixed term tenancies; primarily because they are costly to manage (taking resources away from people who need support) and cause unnecessary anxiety to tenants. The fact that they can leave survivors trapped in a tenancy with their abuser gives even more weight to our recommendation that landlords still using them review their policy on fixed term tenancies and cease to do so.

## About CIH

The Chartered Institute of Housing (CIH) is the independent voice for housing and the home of professional standards. Our goal is simple - to provide housing professionals and their organisations with the advice, support, and knowledge they need. CIH is a registered charity and not-for-profit organisation. This means that the money we make is put back into the organisation and funds the activities we carry out to support the housing sector. We have a diverse membership of people who work in both the public and private sectors, in 20 countries on five continents across the world. Further information is available at: [www.cih.org](http://www.cih.org).

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