

Refuge response: Consultation on the impacts of joint tenancies on victims of domestic abuse.

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About Refuge

- (1) Refuge is the largest specialist provider of gender-based violence services in the country, supporting t80thousands of women and children on any given day. We provide a national network of 41 refuges, community outreach programmes, child support services and independent advocacy services for those experiencing domestic, sexual, and gender-based violence. We also run specialist services for survivors of tech abuse, modern slavery, 'honour'-based violence, and female genital mutilation. Refuge runs the 24-hour National Domestic Abuse Helpline which receives hundreds of calls from women experiencing domestic abuse every day.
- (2) Violence against women and girls (VAWG) takes many different forms, including domestic abuse, rape, and other forms of sexual violence, stalking and harassment, modern slavery, forced marriage, honour-based abuse, and female genital mutilation. Domestic abuse can include physical, sexual, psychological, emotional, economic and tech abuse, and has a devastating impact on survivors. More than one in four women in England and Wales aged 16-74 experience domestic abuse at some point in their lives, and an average of two women are killed every week by their partner or ex-partner – a statistic which has not changed in decades.^{1 2}

Introduction: domestic abuse and housing

- (3) Refuge strongly welcomes the opportunity to submit evidence to this consultation and expand on concerns raised during the passage of the Domestic Abuse Act 2021 regarding survivors' experience of joint tenancy law and practice. Domestic abuse is, by its very nature, a housing issue, because domestic abuse and other forms of VAWG typically occur within the home. Women are most at risk at the point of, or shortly after, separating from a perpetrator and 70% of women killed by men from 2009 – 2018 were killed in their own home or the home they shared with a perpetrator.³ Domestic abuse is also one of the top three causes of homelessness, and the leading cause of homelessness among women, with 11.6% of households recording 'domestic abuse' as their main reason for being homeless or threatened with homelessness in 2020/21.⁴
- (4) Access to safe, secure housing is therefore an integral part of a survivor's journey. It is a vital step towards escaping their perpetrator, rebuilding their life, and regaining their

¹ ONS (2020), 'Domestic abuse prevalence and trends, England and Wales: year ending March 2020,' <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/domesticabuseprevalenceandtrendsenglandandwales/yearendingmarch2020>

² ONS (2020), 'Homicide in England and Wales: year ending March 2019,' <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/homicideinenglandandwales/latest#how-were-victims-and-suspects-related>

³ Femicide Census, UK Femicides 2009-2019

⁴ [Live tables on homelessness - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/live-tables-on-homelessness)

independence. In Refuge's experience, survivors often feel like they have no choice but to stay with abusive partners because of the enormous difficulties of finding safe, affordable housing. It is vital that law and policy for all tenancy types, including those with joint tenancies, are improved so that the barriers to safe and affordable accommodation for survivors are removed. Refuge's frontline staff report that in some cases, local authorities are attempting to support women to stay in their homes by default, rather than prioritise them for social housing due to acute housing shortages. This is just one gatekeeping tactic making up a much wider, systemic culture of gatekeeping amongst local authorities. It is vital that any measures to improve survivors access to social housing are guided by the informed choices and best interests of survivors, rather than the aim of reducing the demand on social housing.

- (5) Survivors have different housing and safety needs, with some survivors requiring emergency support in refuges to become safe from their abusers, and others needing to stay safely within their own home to maintain employment, access to their children's school, family and other support networks, and long-term housing stability. It is therefore vital that survivors have a range of housing and support options, to enable them to have a choice to remain within their home, if it is safe to do so. For example, the vast majority (80%) of the women Refuge supports rely on community-based services, including independent domestic violence advocates (IDVA) and outreach support, while living in their own homes. Also, many survivors are unable to move out of their home and into refuge due to a shortage of spaces. While we welcome the new duty on Tier 1 local authorities to commission accommodation-based services, it is not yet clear whether this will result in an increase in the number of bedspaces across the country. In addition, there remains a significant funding shortfall between the £125 million allocated by government for 2022/23 for these new duties and the £181 million (Women's Aid Federation England estimates) required to meet current need⁵. Since 2011, Refuge has experienced cuts to our Refuge services by an average of 50%. In 2021, 57.2% of all refuge referrals were declined due to a lack of capacity⁶.
- (6) Where it is safe to do so, survivors should have the option to be supported in their own homes and not penalised by the system because they have not 'fled'. Currently, those who do stay within their own homes often face significant barriers to safety and research shows that sharing a joint tenancy with a perpetrator is the most prevalent barrier to safety facing survivors⁷. Refuge therefore strongly welcomes the Department for Levelling Up, Housing and Communities' interest in addressing this issue and supporting more women and children to live safely in social housing.

Summary

- (7) Survivors of domestic abuse living in joint tenancy properties are at serious risk of further abuse, financial difficulty, and homelessness due to the limited options available to them to remove their perpetrator from the property and tenancy. Without a clear route to remain in the property without the perpetrator, many of the survivors Refuge supports in this

⁵ Women's Aid Federation England (2021), 'The Domestic Abuse Report 2021: the annual audit'. <https://www.womensaid.org.uk/wp-content/uploads/2021/09/The-Domestic-Abuse-Report-2021-The-Annual-Audit-Revised-2021.pdf>

⁶ [The-Domestic-Abuse-Report-2022-The-Annual-Audit.pdf \(womensaid.org.uk\)](#)

⁷ 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.

situation feel as though they are simply unable to continue living safely in their homes, forcing them end the joint tenancy and in doing so place themselves at risk of homelessness.

- (8) Refuge’s specialist frontline workers report a myriad of problems and difficulties when supporting women living in joint tenancies with their perpetrators. These include vastly different interpretations of statutory guidance by social landlords, gatekeeping behaviour by local authorities, a lack of understanding of domestic abuse by housing officers, and severely limited options for supporting survivors to pursue a legal route to removing their perpetrator from a joint tenancy.
- (9) 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 with the perpetrator into a sole tenancy for the survivor. The safety of survivors in joint tenancies is therefore dependent on the willingness of social landlords to use the means available to them to remove the perpetrator from a joint tenancy and transfer it into a sole tenancy for the survivor. In Refuge’s experience, this is rarely used effectively, and, in most cases, survivors are forced to choose between staying in the property and pursuing the few complex and expensive legal routes available to transfer the tenancy to their name (further details in question 18) or ending the tenancy, becoming homeless, and seeking a new tenancy. There is no guarantee however, that the landlord will grant the survivor a tenancy and she may become homeless as a result.
- (10) As the largest specialist provider of services for survivors of domestic abuse and other forms of VAWG, Refuge is in a unique position to share the views and experiences of survivors. This response has been developed in consultation with survivors and frontline staff and sets out Refuge’s two key recommendations:
- To address the difficulties facing survivors trapped in joint tenancies with their perpetrators, Refuge strongly recommends the introduction of a simplified, legal mechanism for the transfer of tenancy in the family court if a survivor of domestic abuse shares a joint secured or assured social tenancy with the perpetrator. Refuge supports the legal mechanism developed by Standing Together, Women’s Aid Federation England (WAFE), and the Domestic Abuse Housing Alliance during the passage of the Domestic Abuse Act 2021⁸. This mechanism would enable the courts to transfer a joint tenancy to a sole tenancy in circumstances where a perpetrator has been convicted of a domestic abuse related offence, was subject to an injunction or protection order or had been serviced with the Domestic Abuse Protection Notice. The full detail of the proposed legal mechanism is set out below in points 25 – 30.
 - To support the application of this new legal mechanism and ensure effective use of the current means available, Refuge recommends that DLUHC should advise that housing practitioners have clear domestic abuse policies and procedures in place on how they will respond to domestic abuse and its impacts (as specified within the Social Housing White Paper) and introduce a statutory requirement on housing providers to 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.

⁸ [domestic-abuse-bill-joint-tenancies-briefing.pdf \(dahalliance.org.uk\)](https://dahalliance.org.uk/domestic-abuse-bill-joint-tenancies-briefing.pdf)

Refuge has also responded in detail to the questions relevant to its work (questions 16, 17, 19 and 22).

Consultation questions

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

- (11) In Refuge's experience, threatening to terminate a joint tenancy is just one of the many ways that perpetrators use current joint tenancy law as a form of abuse. Refuge's frontline staff report that survivors living in joint tenancy properties feel trapped and unprotected. If a survivor needs to remain within their own home, for the reasons outlined in paragraph 5, they can only achieve true safety, stability, and housing security, if the perpetrator is removed from their joint tenancy.
- (12) Consultation with Refuge's frontline staff found that survivors feel most threatened by the knowledge that their perpetrator has a legal right to return to their property at any time, even after he has physically vacated. In many cases, perpetrators refuse to remove their name from the joint tenancy agreement and use this as a form of post-separation abuse by threatening to reclaim their right to live in, and access, the survivors' home. This leaves survivors powerless to take necessary measures for protection such as changing the locks or restricting access to the property.

Jane (pseudonym), a survivor supported by Refuge, experienced domestic abuse by a perpetrator living with her in a joint tenancy property. Her perpetrator used his legal right to access the property as a way to prolong the abuse after he had moved out. He had a key to the property and would come and go as he pleased.

- (13) Perpetrators also commonly use joint tenancies as a form of abuse by causing rent arrears and damages to the property, which both the survivor and the perpetrator are jointly and severally liable for. This is a common form of economic abuse experienced by survivors living in joint tenancy properties, which may cause them lasting debt, economic harm, and risk of eviction and homelessness. Economic abuse involves an abuser restricting a person's ability to acquire, use and maintain money or other economic resources. It is rarely the only form of abuse a perpetrator uses and instead, many survivors experience economic abuse as part of a pattern of control or coercion. In response to a survey conducted by Refuge, 80% of survivors reported having experienced emotional, sexual, or physical abuse in addition to economic abuse.⁶ Whilst the perpetrator remains on the joint tenancy, he can also limit a survivors' access to housing benefit to solely cover the rent.
- (14) In the vast majority of cases, the fear and threat survivors experience living in a joint tenancy with their perpetrator without a clear route to safety causes them to end the tenancy and, in doing so, place them at risk of homelessness. As set out in the response to questions 17 and 18 below, it then becomes legally difficult and complex for either the housing provider or the survivor to remove the perpetrator from the joint tenancy, often requiring the survivor place themselves at risk of homelessness in the process. It is therefore vital that survivors have a viable legal route through which to remove their perpetrator from a joint tenancy.

(15) It is equally vital that housing providers are better equipped, supported and advised to identify and support survivors who share a joint tenancy with their abuser, and to offer practical support so that survivors can achieve or maintain safety and housing security. To achieve this, Refuge recommends that DLUHC should advise that housing practitioners 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) and introduce a statutory requirement on housing providers to 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.

Q17: Please provide your views on how effective the current means available to landlords to support victims in joint tenancies.

(16) There is currently no effective legal mechanism for enabling social housing providers to support survivors to stay in their homes and transfer a joint tenancy shared with the perpetrator into a sole tenancy for the survivor. The legal mechanism that addresses domestic abuse specifically, through section 2A in Schedule 2 of the Housing Act 1985 (secure tenancies) or section 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 property⁹. This does not address the needs of the survivor to safely remain within their own home and is dependent on her fleeing.

(17) This leaves the few social housing providers who are able and willing, to creatively use other legal remedies that are not specifically designed to address domestic abuse or immediately evict a perpetrator. It leaves survivors in the precarious position of being dependent on the will of social housing providers and without any guarantee that their immediate housing and safety needs will be met. In Refuge's experience, social landlords rarely use the means available to them to support survivors in joint tenancies. In addition, we find that many social landlords are reluctant to evict a perpetrator if it puts them at any risk of homelessness, even when a lack of action risks the very same for a survivor of domestic abuse.

Sandra (pseudonym) is a survivor of domestic abuse supported by Refuge, who has been living with her children and abuser in a joint tenancy property. Sandra's abuser has recently moved out of the property but has refused to remove his name from the joint tenancy. On leaving the property, her perpetrator left Sandra with £700 rent arrears which she had to clear, despite the fact that he is the higher earner. Sandra told us that taking the step to ask her perpetrator to remove his name from the tenancy was extremely difficult as she was worried about how he would react.

Sandra's housing officer advised her of the options available to her, given that her perpetrator was unwilling to have his name removed from the joint tenancy – either take legal action or resign the tenancy, effectively making herself homeless. She also spoke with a solicitor who advised her that, because her perpetrator wasn't living in the property, she would be unable to apply for an occupation order. They suggested pursuing a transfer of tenancy which would require proof of domestic abuse for legal aid eligibility. Sandra told us that the legal options available to her seemed as though they would be too difficult to deal with and chose not to go down this route.

⁹ Henderson, K. Domestic Abuse Housing Alliance (DAHA) (2019). Whole Housing Toolkit, Chapter 16: Perpetrator Management Toolkit.

Sandra's perpetrator applied for a new council property but, as his name is still on the joint tenancy, he was refused. Despite the council being aware of the abuse Sandra had experienced, advised that her perpetrator move back into the property whilst he waited for a suitable council property to become available. One of the suggestions for accommodating this from the council was "he can live upstairs, and you can live downstairs". Sandra remains living in the property and, although her perpetrator has physically moved out, he continues to have a legal right to access to the property as the council refuse to remove him from the joint tenancy.

- (18) Effective use of the current means available to social landlords to support survivors in joint tenancies also relies on housing officers' understanding the dynamics of domestic abuse and the importance of housing in enabling survivors live safely. In many cases, social landlords lack sufficient understanding of both the means available to them to support survivors and the dynamics of domestic abuse. In Refuge's experience, social landlords' understanding of domestic abuse – particularly the nature of coercive and controlling behaviour – is limited and housing officers often mischaracterise domestic abuse as anti-social behaviour (ASB).
- (19) Refuge's frontline workers report that housing officers are much more likely to encourage women to independently apply for non-molestation orders or occupation orders, rather than use their powers of eviction. This puts responsibility onto the woman and does not take into account the difficulties survivors face when taking legal action to have a perpetrator removed from the property and tenancy, including the highly restrictive access to legal aid. For example, since 2012, the proportion of domestic abuse cases funded by legal aid has fallen from 75% to 47% and an estimated 34,000 people have been denied access to orders to help remove perpetrators from the family home or prevent them from returning¹⁰. The process of applying for a non-molestation or occupation order is complex, expensive, and often inaccessible and is simply not a viable option for many survivors (further detail on this in question 19).
- (20) In Refuge's experience, when social landlords do take action, it is largely done as a means of reclaiming their stock, rather than as a means of supporting a survivor. Often, when a survivor flees, she will leave the perpetrator in a property with a vacant bedroom which it is in the landlord's interest to reclaim. To depend on housing providers to creatively use housing options which are not designed to support tenants experiencing domestic abuse is not a safe, robust, or effective approach to supporting survivors in joint tenancies. A simplified legal mechanism for the transfer of tenancy in the family court – the leading recommendation of this response - would make it easier for housing providers to support survivors when a violent perpetrator has been identified. To support the application of this new legal mechanism and ensure effective use of current means available, Refuge recommends introducing a statutory requirement that housing practitioners be provided with specialist training on identifying and responding to domestic abuse (including economic abuse, tech abuse and coercive control) to enable housing officers to correctly identify domestic abuse and take appropriate action.

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.

¹⁰ [Tens of thousands of domestic abuse survivors denied legal aid, study reveals | The Independent](#)

- (21) There are limited legal routes for survivors looking to transfer a joint tenancy into their own name and the options that are available are complex, expensive, and often inaccessible. Under the Family Law Act 1996, survivors of domestic abuse can seek an occupation order to suspend the rights of occupation of the perpetrator through the family courts. This is usually a short-term solution of 6 – 12 months to protect them and their children in an emergency. Occupation orders can cost a survivor up to £5,000 at legal aid rates and more than double that if funded privately
- (22) In Refuge’s experience, survivors rarely choose to pursue an occupation order as they are complex and costly to acquire and offer only short-term protection. Once a survivor pays the high costs associated with securing an occupation order, there is no guarantee that the order will be granted by the court, particularly if it places the perpetrator at risk of homelessness. If an order is granted, it provides only temporary breathing space for survivors as their perpetrator has a right to return to the property once it ends (usually after just 6 – 12 months). This leaves survivors facing the same barriers to safety, as there is no guarantee that the perpetrator will consent to a tenancy transfer once the occupation order has expired. Survivors who do choose to take this legal route are rarely successful and permanent legal remedies are pursued in an even smaller number of cases.
- (23) Insight from Refuge’s frontline team paints a clear picture –transferring a tenancy using one of these legal routes is not an accessible, common, or recommended legal option for the vast majority of survivors of domestic abuse. The law on joint tenancies does not serve to support survivors to access safety and there are only a few successful instances where a survivor successfully secure protection via legal route. Many survivors therefore find that their only option is to become homeless and carry the practical, economic, and emotional burden of starting again.

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 of how to solve the issue.

- (24) As outlined above in response to question 16, perpetrators of domestic abuse are adept at using a joint tenancy shared with the survivor as a part of their 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. 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. Fixed term tenancies can therefore present significant barriers to survivors being able to leave an abusive relationship and perpetrators can use them as a form of control.

Refuge’s recommendation: The Domestic Abuse Transfer of Tenancy Order

- (25) To protect survivors living in joint tenancies, Refuge recommends the introduction of a simplified, legal mechanism for the transfer of tenancy in the family court if a survivor of domestic abuse shares a joint secured or assured social tenancy with the perpetrator, developed by Standing Together, Women’s Aid Federation England (WAFE), and the

Domestic Abuse Housing Alliance during the passage of the Domestic Abuse Act 2021.¹¹ This is also the central recommendation of the National Housing and Domestic Abuse Policy and Practice Group's joint response, which Refuge are a part of and which DLUHC have consulted with directly throughout the consultation period.

- (26) The Domestic Abuse Transfer of Tenancy Order simplifies evidential and decision-making processes for the transfer of a tenancy by incorporating a scale of presumption that the tenancy would be transferred, which would apply to both secure and assured tenancies in social housing. For example:
- If the perpetrator has been convicted of a domestic abuse related offence against the survivor, the court will order the transfer of tenancy.
 - If a domestic abuse protection notice (DAPN) or a domestic abuse protection order (DAPO) has been made against the perpetrator, there will be a presumption that the tenancy should be transferred, which the perpetrator must rebut.
 - Where the perpetrator is subject to an injunction or restraining order in relation to the survivor, there will be a presumption that the tenancy should be transferred, which the perpetrator must rebut.
 - Where the court is satisfied on the evidence that the perpetrator has carried out domestic abuse, there will be the presumption that the tenancy should be transferred, which the perpetrator must rebut. We call for this evidence requirement threshold to be based on that required for legal aid.

This means that, where any of these presumptions apply, the court will be compelled to grant the order unless the 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.

- (27) Crucially, the proposed legal mechanism does not change the rights of the survivor or the landlord - only the perpetrator. Whilst 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. The proposed mechanism therefore serves to significantly enhance the rights of survivors, whilst preserving the existing rights of all parties.

- (28) This proposed legal remedy supports the government's ambitions to enable survivors to remain within their own home as 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

¹¹ [domestic-abuse-bill-joint-tenancies-briefing.pdf \(dahalliance.org.uk\)](#)

home”.¹² It also builds on the welcome changes brought in by the Domestic Abuse Act 2021, including the new Domestic Abuse Protection Notice and Orders, so that once a perpetrator is temporarily removed from the property, this proposed legal mechanism could quickly, effectively, and permanently remove the perpetrator from the tenancy and allow a survivor to remain within their home long term, including maintaining their secure tenancy status.

(29) In Refuge’s view, a new legal mechanism would be far more effective in addressing the issues surrounding joint tenancies for survivors than any changes to existing guidance. Refuge’s frontline staff already encounter great difficulty when trying to ensure social landlords comply with existing law and guidance. Current guidance is commonly not followed as it is not accompanied by strong mechanisms to hold local authorities to account or an effective appeals process. In our view therefore, changes to this guidance will have little impact in practice. Further, providing survivors with an accessible legal route to remove perpetrators from a joint tenancy would reduce the number of survivors applying for homelessness applications and reduce the cost of ongoing domestic abuse in the home, eviction and reletting the property to social landlords. Refuge also advises that this legal solution has the best probability of being successfully applied in the private rented sector in the future as it is not dependent on the legal action of the housing provider.

(30) To support the application of this new legal mechanism and ensure effective use of the current means available, Refuge recommends introducing a statutory requirement that housing practitioners be provided with specialist training on identifying and responding to domestic abuse (including economic abuse, tech abuse and coercive control) to enable housing officers to correctly identify domestic abuse and take appropriate action.

¹² [Tackling Domestic Abuse Plan - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/tackling-domestic-abuse-plan)