

Consultation on the impacts of joint tenancies on victims of domestic abuse

National Housing Federation submission in response to the Department for Levelling Up, Housing and Communities

Summary

The National Housing Federation (NHF) is the voice of housing associations in England, representing almost 800 housing association members that provide homes for around six million people.

Housing associations are committed to providing safe, quality homes for all residents and we welcome this consultation concerning the impact of joint tenancies on victims of domestic abuse in the social rented sector. We recognise the key role housing plays in the issues concerning domestic abuse and in this submission, we answer specific questions and set out the following:

- The experiences that victims may encounter in regard to perpetrators threatening to end a joint tenancy.
- The barriers landlords face in their ability to support victims in joint tenancies.
- The limitations of the current resources available to social landlords to support victims.
- To what extent the current legal framework on transferring joint tenancies is functioning successfully for victims.
- Further considerations to ensure domestic abuse issues are tackled consistently across the board and deliver workable solutions that take into account the experience of victims.

Introduction

The National Housing Federation (NHF) is the voice of housing associations across England, representing 800 housing association members that provide homes to around six million people.

Housing associations are committed to providing safe quality homes for all residents. We welcome this consultation in exploring some of the barriers faced by housing providers in their efforts to support victims of domestic abuse and offer suggestions where we think changes could be made to better support victims of domestic abuse who are in a joint tenancy with their abuser.

During the passage of the Domestic Abuse Act 2021, concerns were raised over the current rules on joint tenancies, which mean that victims of domestic abuse who are in a joint tenancy with their abuser can be vulnerable to the threat of being made homeless. Should the victim want to stay in the family home, there is currently no straightforward means to remove the abuser from the tenancy and remove the risk of homelessness.

Throughout the coronavirus lockdown, individuals were required by law not to leave their homes unless permitted. Emerging findings on the pandemic's impact on domestic abuse show there was a 7% growth in police recorded domestic abuse crimes between March 2019 and March 2020 and in mid-May 2020, there was a 12% increase in the number of domestic abuse cases referred to victim support¹. These figures indicating an increase of domestic abuse cases highlight the critical role that housing plays in the issues of domestic abuse and the need to provide victims with safe homes.

Perpetrators' ability to end a joint tenancy

The prevalence of domestic abuse remains high and housing has a huge part to play in the role of domestic abuse. Perpetrators can use housing as a form of abuse, in some instances, using their ability to end a joint tenancy to exert control over their victim and threaten them with homelessness. Due to the lack of straightforward means to remove the perpetrator from the joint tenancy, and without access to alternative and permanent accommodation, a victim may feel they have no choice but to remain in a situation that is no longer safe or render themselves homeless.

¹ Domestic abuse in England and Wales, Nov 2020, Office of National Statistics

Where victims have children, they may end up feeling trapped in the joint tenancy with the perpetrator in an effort to avoid destabilising their children's lives.

Housing continues to be a primary barrier for victims attempting to flee domestic abuse and a joint tenancy in particular restricts those who wish to stay in their own home from doing so. A survivor of domestic abuse may wish to stay in their own home to preserve stability especially for their children as well as remain in their local area where they may have established support networks. However, a joint tenancy requires the signed consent of both parties to end the tenancy agreement which can be impossible with domestic abuse. Even where the perpetrator has left the property, the perpetrator remains a joint tenant unless the survivor has taken steps to transfer the tenancy. This means the survivor or household remain at risk of having their tenancy terminated by the perpetrator through a Notice to Quit without the victim's knowledge or consent. It's therefore crucial to ensure social housing providers are granted the power to remove a perpetrator from a joint tenancy and support survivors to remain safely within their own homes.

Current guidance for social landlords

The current guidance and powers for social landlords is insufficient in enabling providers to adequately support victims in joint tenancies. Although the Housing Act 1985 under grounds 2A of Schedule 2² issues grounds for possession of a dwelling including where a joint tenancy with a victim exists, it's dependent on the survivor having left the home because of violence or threats of violence in addition to the court's satisfaction that the victim has left and has no intention of returning.

This mechanism does not give sufficient flexibility for social landlords to support victims in joint tenancies to remain in their home should they wish to and helps increase their risk of homelessness. Often, victims are advised to leave their home with safe refuge provided until alternative arrangements are made which places the victim at a disadvantage due to the disruption of leaving their home and starting afresh.

The guidance also states that where one joint tenant has served a valid notice to quit the tenancy, and the landlord is made aware that domestic abuse has occurred, the landlord could secure possession of the property and allow the victim to return. However, for the housing provider to gain possession of the property, all those who

² [Housing Act 1985, Schedule 2](#)

reside in it, including the survivor will be evicted. This process places a disproportionate burden on survivors to evidence domestic abuse and risk their own safety in providing notice without the agreement of the perpetrator.

While statutory guidance advises authorities and private registered providers to consider evicting the perpetrator and allow the victim to remain in their home with a new tenancy agreement, there are a number of practical challenges that arise for social landlords. For example, the practicality of recovering rent arrears can be complex, particularly in instances where the perpetrator who has left is liable or where there have been no direct reports of abuse made by the victim to enable a housing provider to write off rent arrears or damages as a result of domestic abuse. Our members are committed to doing all they can to support domestic abuse survivors and make decisions in the best interests of victims. However, funding and additional protections are necessary to ensure that in the process of transferring a joint tenancy, the survivor does not assume responsibility for any liabilities and housing providers don't foot the bill with unreasonable costs.

The current statutory guidance also specifies that victims of domestic abuse should be assisted to move on from temporary accommodation into settled accommodation and wherever possible incorporate the preferences of the survivor and household. The current demand for social housing far exceeds the supply which means alternative accommodation is not readily available and can result in victims residing in temporary accommodation for longer periods. In some cases, where registered housing providers may wish to administer an internal transfer and provide ongoing support to victims, options can be restricted as a result of nomination agreements and allocation policies.

Government guidelines could be helpful in facilitating cooperation between authorities and applying a degree of flexibility based on the fundamental principles of meeting housing need. A flexible approach applied to specific and individual circumstances and guidelines on how to priorities these could assist in breaking down barriers and routes for victims to access alternative and suitable accommodation.

The Domestic Abuse Act introduced measures to ensure lifetime tenants who suffer from domestic abuse retain lifetime tenancy status when granted a new tenancy by a local authority. These protections are welcome in helping to alleviate concerns of survivors who may be reluctant to leave an abusive situation in fear of losing their security of tenure.

The law on joint tenancies

It's vital the legal mechanisms for supporting victims of domestic abuse in joint tenancies are accessible and deliver solutions for survivors to gain housing security and stay safely within their own homes long-term.

The Domestic Abuse Act provides new civil Domestic Abuse Protection Notices (DAPNs) and Domestic Abuse Protection Orders (DAPOs) that temporarily prohibit the perpetrator from residing in the home. In addition, where perpetrators are compliant, other temporary measures such as the Occupation Orders and injunctions are helpful as an immediate remedy to safeguarding the victim and enabling them to remain in their home. However, as these measures are temporary and apply for a short period of time, should a victim not have succeeded in completing the necessary legal steps to transfer the joint tenancy, the perpetrator is able to return once the exclusion period has lapsed.

The current legal mechanisms by which a victim can apply to the family court for an order to permanently transfer the tenancy to themselves under the Matrimonial causes Act (1973), Children's Act (1989) and Family Law Act (1996) are all most effective in achieving positive outcomes for survivors of domestic abuse. However, these processes are complex, expensive and lengthy, with cases often taking over a year to resolve. The drawn out processes can often be gruelling and burdensome for victims, resulting in some experiencing feelings of despair and reluctant to pursue with proceedings, especially where children are involved. This can be exacerbated by the outcome of court proceedings being dependent on victims and their ability to provide a sufficient amount of evidence.

The cost of accessing legal routes to transfer a joint tenancy can also be a significant barrier for victims who may not have the funds readily available or have been subject to economic abuse by their perpetrator. Additionally, the application process for legal aid is subject to a means test which is extremely restrictive, leaving many people without basic access to justice³. We welcome the government's plans to carry out a review of the means test for legal aid taking into consideration the experiences of domestic abuse victims and their circumstances.

³ [Denied justice: How the legal aid means test prevents victims of domestic abuse from accessing justice and rebuilding their lives](#), Oct 21

Although legal mechanisms can result in positive outcomes in transferring a joint tenancy to victims of domestic abuse, further scrutiny is required to guarantee legal routes are streamlined, accessible and designed with the wellbeing of all victims in mind.

Fixed term tenancies

Fixed term tenancies can leave victims of domestic abuse at the risk of being trapped in a tenancy with their abuser due to the requirement that all joint tenants must be in agreement to end a fixed term tenancy early. Should a victim decide to leave the property to flee abuse, they remain legally liable for rent and any damages caused by the perpetrator even if they no longer live in the property.

Perpetrators may use joint and several liability as a form of abuse by intentionally accumulating rent arrears and causing damages to the property. Consequently, this can negatively impact the survivor's finances as well as their ability to acquire a new tenancy as a result of negative references. The government could seek to establish guidance for social housing providers to include domestic abuse as a prerequisite to ending a tenancy, provided safeguards are put in place to ensure the tenancy cannot end without the survivor's consent and they can be allowed within the property under a new agreement.

To offer tenants greater security of tenure, a large number of housing providers have moved away from the practice of issuing fixed term contracts. While issues concerning fixed term tenancies may be declining within the social housing sector, it's still important that the issue is addressed.

Further considerations

While the case for change is clear, there are a number of secondary considerations and unintended consequences to be mindful of. For example, the resulting practicalities for housing providers and management staff in their ability to manage rent arrears at the end of a joint tenancy or, the limitations landlords face in their ability to address a perpetrator's behaviour whilst upholding the duty to act fairly and impartially.

The current legislation and guidance assumes the end of a relationship to be acrimonious, while this is likely to be the case where domestic abuse is involved, the challenges of ending a joint tenancy still apply outside this context highlighting the

need to address the issue more widely. Other considerations include potential implications of the Renter's Reform Bill seeking to enhance renters' security. A clear policy will need to be established and adopted by local authorities and registered providers to ensure that domestic abuse issues are tackled consistently across the board.

Furthermore, considerable steps to increase awareness of what constitutes as domestic abuse amongst housing professionals could be helpful in identifying early signs of abuse. For example, enabling wider recognition of the threat to ending a joint tenancy as a form of coercive and economic abuse. The NHF and our member housing associations work closely with diverse public agencies and specialist organisations such as the Domestic Abuse Housing Alliance (DAHA) to raise awareness of domestic abuse issues at a strategic level and promote a high standard of response across the housing sector.

To build on work already underway, we would recommend that the government consider specific funding to increase domestic abuse expertise and access to legal services within the housing sector with the purpose of providing improved and tailored support to victims of domestic abuse.

As well as address the barriers of the current legal processes to take into consideration the experiences of victims, it's also important to recognise the need to address wider challenges such as long-term specialist support and stability for victims through the provision of suitable accommodation by seeking to address the supply of affordable housing.

Conclusion

In our response, we have set out the barriers and limitations that exist for social housing providers in supporting victims of domestic abuse, and how some of these barriers can negatively impact and hinder a victim's ability to flee from domestic abuse. We welcome the consultation seeking views on how existing guidance and legal processes could be tailored and better geared to ensure positive outcomes for domestic abuse victims. We look forward to working with government, local authorities and partnership organisations in identifying straightforward means to better support victims and survivors of domestic abuse to find safety and rebuild their lives.