Name: Lucie Barnes

Address:

Baines Wilson LLP

2 Merchants Drive

Carlisle

CA3 0JW

Email: l.barnes@baineswilson.co.uk

All's fair in law and flexible tenancies

The Localism Act 2011 ("Act") is into its eight year. A tool, with which it was heralded could be used by those able to wield its power, to hurry up change. Hurry up change in local authority powers, in social housing, in solving the shortage of housing – period. What has come to fruition however, is a perennial thorn in the side of social housing providers ("Providers"), local authorities and those regions craving the power of devolved financial capability.

As a matter of course, fairness must have a benchmark with which to measure itself against or be measured. This essay takes the view that those in authority owe a duty of care to those not in authority, to act fairly. The desire of Government in the Act itself was to (amongst other things) create a more fluid and flexible housing market, where housing stock could be used more effectively. In the view of this essay, the most pronounced failure of fairness is shown by section 154 of the Act.

This essay will show that not only is section 154 inherently unfair, it is a cynical and morose piece of legislation, which has failed in any way to address the problem it was introduced to deal with.

It may not be appreciated by the reader that tenants of social housing have historically enjoyed lifetime tenancies. Section 154 of the Act introduced the concept of flexible tenancies into social housing, with a minimum term of 2 years. Nothing controversial in that, it might be said. However, the pillars of our democracy are not actually found in the two houses of our Parliament, a constitutional Monarchy and our beloved English legal system – they are in fact built on the very tangible social structures of free education, policing by consent, free healthcare and a social benefits system. Within the latter, is found the social housing structure. Without these tangible structures for us all to see and utilise, we do in fact roll back to Victorian times of health epidemics, illiteracy and no rights for women or minorities. Section 154 of the Act encapsulates not only an ignorant view of where we are as a society, it also serves to project a view that these very important democratic pillars of our society may persistently be eroded by those in authority. However, as those in the criminal justice system working in legal aid can attest to, those pillars may only take so much battering and abusing before they begin to fall away. It is more important than ever for us in the property industry, in so much as we are able to do so, to protect these tangible pillars.

The cry then is, "We agree with the premise, but tell us why section 154 is so wrong?" Here it is. Social housing is there to support those who need it most. Social housing protects our single parents, our

disabled, our grieving, our uneducated, our working families, our elderly, our poor. In truth, it protects our everybody. To suggest otherwise is to forget that we tell everybody they can achieve in our society, if they work hard enough. Social housing is not the whole story, but it forms a strong part of the picture painted above. It is part of the social construct we as a society have created, which we have decided our democratic pillars are based upon.

Lifetime tenancies afforded to social tenants is the reason why social housing is a part of the structure. Lifetime tenancies afford a safe place for all persons, which cannot and will not be taken away from a person. If taken away, a social housing tenant is left with little if no security, protection or network.

Some might say, well, we need to do something and do something quick, because we have failed to invest in social housing and crisis point has been reached. A valid point, but one which is not going to be solved by getting rid of lifetime tenancies. It seems redundant to say, but it should be said, the only way to solve it is to build more houses.

As it turns out, Providers are failing to implement flexible tenancies. L&Q Group announced on 21 September 2018 that they were ending the use of flexible tenancies and would move some 8,500 existing fixed term tenants onto 'open-ended tenancies'. Their research was conducted over 6 years and found that tenants suffered anxiety at renewal; and, flexible tenancies did not achieve the desired policy aim of the Act, because an arbitrary renewal date did not reflect individual circumstances. L&Q confirmed that they had renewed the "overwhelming majority" of their 8,500 flexible tenancies. Most importantly, in L&Q's view, flexible tenancies had in fact acted as a barrier to mobility in the social housing market (a key objective of the Act), stating they had found them to be a *"crude tool that have not fixed the problems they were created to address"*.[1]

Just from a practical perspective, it is easy to see why flexible tenancies in a social housing context are unworkable and no useful tool to help solve the housing crisis. Why would Providers want to employ teams of people and no doubt lawyers (in dealing with possession proceedings), to manage their flexible tenancy portfolio? What a waste of time and money for all involved, when it was having the opposite result of its intended purpose, by restricting the movement of people around the social housing system.

[1] See www.lqgroup.org.uk/about/media-centre/news/details/135

L&Q rightly highlighted that unnecessary anxiety was being caused to social housing tenants in the renewal process, compounded by the fundamental shift also going on at the time with the benefits payment system in the form of Universal Credit, the bedroom tax, and the creation of and rise in the use of food banks.

To the writer's mind, the only beneficial idea to come about has been implementation of the home-swap scheme, where social housing tenants can put themselves out as having a home they would like to swap with another tenant – whether that be because their children have grown up and there is a swap to be done with somebody who needs the space or, moving to a different town for work etc. Anecdotally, this seems to be working. The reason for this is twofold: Firstly, those persons involved are in charge of the situation and it absolutely meets their need. Secondly, there is no loser. Nobody being made homeless or charged extra or forced into rent arrears. For want of a better expression, it is a "victimless crime". As an aside, it also requires very little input, time or cost from the Provider. At the moment, much of the swap is done at a local level and even through social media. In the view of the writer, a regional or national register ought to be set up to facilitate the scheme.

As above, the boring answer to the problem is building more homes. There is much chatter of local authorities once again having the powers to build social housing themselves, to meet the need. It is questionable whether this is a cost-effective use of taxpayers' money. Predominantly so since we burnt down the village some time ago on that one. Regulation and industry standards have moved on. Providers such as L&Q and Curo are doing it well. L&Q in particular is a charitable housing association, which feeds into a view about the purpose and objective of social housing.

Local authorities would need guidance and support if that was the way we turn. The result, if we did, would be a commoditising of social housing, which cannot really be said would benefit, when one looks at the evidence in reference to how "affordable housing" quotas are managed. The evidence is simply not there to support a view of our private home developers coming into the social housing market in any structured-policy manner. However, the likes of Permission Homes do have their 'Westbury Partnerships' arm, which it could be argued may be brought on to develop and support an alternative home development scheme from our national homebuilders.

One also has to challenge the view of local authorities being social housing builders per se, because of their budget constraints. Fences and walls do not require painting every year, because the local authority has a budget for that. Perhaps this sounds flippant, but the picture is painted – or is that the

fence? In short, there is a lack of flexibility in the local authority model, which in no way lends itself to building houses.

The Government has recently said it does not intend at present to force Providers to impose flexible tenancies upon tenants.

Not only is section 154 of the Act unfair, it is not being utilised by industry and the issue is presently stayed by Government. Section 154 is a legacy of the culture of bedroom tax, Universal Credit and homelessness ignorance, which is leaving our statute books with a stonking hangover. It is a lame duck and it should go.