

Fixed term tenancies:



an effective
policy tool or
a crude stick?



BECAUSE HOMES MATTER



Conclusion and recommendations

The evidence suggests that FTTs are not an appropriate tool for the problems they are supposed to fix. They are a crude stick to try and change the behaviour of social housing tenants and create a bureaucracy that serves no purpose. If they were actively to be used to meet the stated policy objectives of generating mobility by ending tenancies they would create a situation of conflict with our residents and stakeholders.

The range of possible purposes to which FTTs could be put and the underlying problems they were supposed to solve haven't gone away. All of these can still be tackled by effective housing management practices within the framework of open-ended assured tenancies and a degree of service innovation. Specifically, we will need to:

- Make sure a new assured tenancy agreement has all the conditions we want within it to encourage positive behaviours
- Focus on effective use of probationary periods at the start of tenancies
- Create a mechanism for ongoing dialogue with customers about their housing needs and management of their tenancy
- Develop a greater range of mobility options.

For these reasons it was recommended that L&Q cease to use FTTs and use open-ended assured tenancies as their default tenancy type.

It was further recommended that we move existing FTT tenants onto open-ended assured tenancies. This may be immediately or as their tenancies come up for renewal, depending on the tenant's circumstances.

1. Background to the research

- 1.1. The ability for housing associations to use Fixed Term Tenancies (FTTs) was introduced through the Localism Act in 2011. The key driver, as the Housing Minister stated in introducing the bill was:

"The Government believes that it is no longer right to require that every social tenancy should be for life – regardless of the household's particular circumstances. The aim is to create a more flexible system so that scarce public resource can be focused on those who need it most."

This policy was influenced by work by the Policy Exchange think tank which had seen social housing as a blocker to social progress and a 'last resort' safety net. This was a significant shift to decades of policy where

security of tenure had been a requirement and the policy objective had been to create stable communities within social housing.

- 1.2. A number of other policy objectives were put forward for the use of FTT's and how they could support more effective housing and tenancy management. In the general debates about the introduction of FTTs in social housing since 2011, further justifications put forward for their use included:

- **Encouraging tenants to explore other housing options**, e.g. low-cost home ownership or the private rented sector
- **Supporting tenants in their wider aspirations**, e.g. gaining employment or training



- **Supporting tenancy sustainment**, for example helping vulnerable people or particular groups of people to develop the right skills they need to successfully manage a tenancy
- **Tackling specific housing management issues**, such as antisocial behaviour (ASB) and/or other breaches of tenancy
- **Maximising revenue for development**, by using fixed terms in conjunction with affordable rent.

- 1.3. In 2011, the L&Q Board approved the use of FTTs (to accompany the introduction of affordable rent) to try and manage under-occupation and housing needs more effectively on the following specific basis:

Offer a one-year starter tenancy (AST) followed by a fixed term (assured) tenancy fixed for five years.

- 1.4. Since 2011, L&Q has issued about 8,500 FTTs to social housing tenants. In contrast we currently manage around 41,000 lifetime assured tenancies. If we were to continue with the current tenure offer, over time FTTs would become the bulk of our tenancies.
- 1.5. The review was commissioned because: (i) we now had evidence of managing FTTs over their full lifecycle that we could evaluate; and (ii) following consultation with residents on L&Q's merger with East Thames, we identified a significant policy variance between the two organisations in this area. A commitment was given to involved residents to review the tenure position within the first year after merger.

The security of tenure we offer is one of the key building blocks of our relationship with residents.

2. Methodology

- 2.1. The L&Q policy team reviewed internal data, including an analysis of all tenant profile information. Data on FTT renewals and monitoring was also reviewed, and assessed against the stated strategic aim of allowing us to manage under-occupation and need. Feedback was gathered from staff focus groups and interviews, comparison with other organisations, external academic research and through a survey of residents who began their tenancy in 2012/2013.
- 2.2. In making recommendations the policy team sought to disregard any difficulties with the current FTT process and assumed that they can be fixed and/or automated. Instead the team focused on the inherent problems and/or benefits of the FTT product.

3. Summary of research findings

- 3.1. Up to 2017 there was a firm political drive towards FTTs backed by measures to start to make them compulsory. This is now being relaxed and most recently, in the social housing green paper, government proposed that the use of FTTs will remain discretionary as well as reversing the decision to make FTTs compulsory for Local Authorities. Academic research is starting to conclude that FTTs are not an appropriate tool for meeting the policy objectives set out above and in practice are just renewed. For example, see research undertaken by Suzanne Fitzpatrick and Beth Watts at Heriot Watt University.
- 3.2. The L&Q internal process evidence mirrors the findings of academics. In practice L&Q has so far renewed 97% of the FTTs that have expired. Those that have been ended

are for significant arrears – essentially when we would have been able to end an assured tenancy. No tenancies have been ended because of the under occupation of the resident.

- 3.3. The reality of using FTTs to ensure efficient use of stock would mean: (i) systematically ending tenancies or routinely threatening the end of tenancy to encourage residents to move; and (ii) having a mobility offer that could meet a range of needs. The first of these, even if we were able to end tenancies without substantial legal challenge, would put us in the situation of making people in housing need homeless which is something that runs contrary to L&Q's core purpose. It is also something that would create a negative relationship with our customers – forcing them to disrupt their lives at arbitrary time periods that suit us. In relation to the second – a mobility offer – a separate project is making recommendations on how L&Q can improve resident mobility, one of the findings here is that FTTs actually act as a barrier to mobility, as people don't want to move and believe they will lose their security of tenure should they be transferred to a FTT.
- 3.4. Aside from the fundamental matters above, FTTs also create potential problems for income collection and tenancy enforcement.
- 3.5. The customer evidence is not conclusive as to perceptions of FTTs. On measures relating to 'feeling secure, part of a community, etc' – there was no difference in feedback from assured tenants and tenants with FTTs. However, there was some degree of evidence about customer anxiety around the renewal process.

THE RESEARCH IN MORE DETAIL

1. Political context

- 1.1. The introduction of FTTs was largely ideologically driven. National and local drivers for L&Q to use FTTs have receded since their original introduction as an option for Housing Associations and local authorities in 2011/2012.
- 1.2. The Housing and Planning Act 2016 included provisions making FTTs mandatory for local authorities and other measures limiting tenure security – it was not possible to do this for Housing Associations as this would affect their status as private sector bodies but a clear expectation was set. However, these proposals were made pre-2017 general election, pre-European referendum and pre-Grenfell. The political climate and priorities have now shifted and most of the above provisions have either been publicly dropped or are yet to be implemented. Most significantly, the Social Housing Green Paper, published 14 August, removed the requirement for LAs to use FTTs on the following grounds:

“Since this legislation there has been a growing recognition of the importance of housing stability for those who rent.

“Many residents spoke about the benefits of security in their tenancies, saying that they created strong, supportive communities, and particularly enabled people with vulnerabilities to thrive. Some felt that residents were more likely to look after their property, their neighbours, and the community if they a lifetime tenancy. While some people thought it was right that residents should move out of social housing if they no longer needed it given the pressures on housing, many also had concerns about the uncertainty when fixed

term tenancies came to an end and the impact this could have on their families and communities.”

2. Local authorities and regulation

- 2.1. The regulator’s **Tenancy Standard** does not specify the type and length of tenancies Regulated Providers (RPs) should grant. Their requirement is that RPs “shall offer tenancies or terms of occupation which are compatible with the purpose of the accommodation, the needs of individual households, the sustainability of the community, and the efficient use of their housing stock”.
- 2.2. The majority of LA tenancy strategies were published to meet the requirements set out in the 2011 Localism Act and have not been updated since 2012. This compelled LAs to publish strategies which set out to registered providers in their district the kind of tenancies they should grant and renew, and the circumstances in which it would do so.
- 2.3. Having regard to the LA strategies is a legal requirement. It also effects the degree of co-operation in returning household to the local authority. In addition to its expectations related to tenure policies and procedures, the HCA’s Tenancy Standard also expects RPs to demonstrate how “they contribute to local authorities’ strategic housing function and sustainable communities”.
- 2.4. Of the ten LAs that L&Q work in the most, nine do not insist on RPs specifically operating a FTT regime. The majority favour lifetime tenancies which mirror their own regimes or request robust justifications for using FTTs. For renewals, the majority of LAs also have specific expectations on the thresholds for non-renewals. Some of the thresholds, for

“They should be longer term, or for life unless the situation changes.”

- Resident

example, require the RP to assess employment and volunteering progress (Waltham Forest) or allocating or renewing in reference to the demographic averages of the LA (Enfield). L&Q would be unable to apply these expectations on their expiring FTTs.

3. Academic research

- 3.1. Academic research has already started to question the validity of FTTs as a part of government’s welfare conditionality agenda.
- 3.2. The **Welfare Conditionality Project**, a six-year project from the Economic and Social Research Council studying conditional welfare in the UK concluded the following:
 - The FTTs policy framework should be abandoned. It has no discernible positive impact on tenant behaviour, nor is it likely to generate substantial additional lettings for households in need, given that the overwhelming majority of FTTs will in all likelihood be renewed. Its only achievement is to instil varying levels of anxiety in social tenants, and to cause real distress to some.
 - Housing associations that have already adopted FTTs should consider reversing this decision, and other social landlords contemplating this option should not pursue it given the weight of evidence regarding the relative costs and benefits doing so.

- 3.3. In July, a Heriot Watt University study¹ based on research from 51 local authorities and 8 housing associations found a very mixed picture in respect of the use of FTTs (including some misconceptions about their use) but no clear positive evidence of them meeting the different objectives for which they had been adopted. On tenancy reviews and renewals, a quarter of respondents have not adopted formal review policies and non-renewals were rare. One third of housing associations and one local authority have made non-renewal decisions.

4. The development and finance context

- 4.1. The introduction of FTTs was intimately associated with the creation of the Affordable Rent product. In theory, each time an FTT was renewed it was possible to rebase the rent to a higher level. However, this possibility was closed off in 2015 with the rent reduction regime. We have yet to have an announcement from government on details of the rent regime post 2020. However, for L&Q the possibility of rebasing FTTs was not a material factor in modelling for scheme viability.
- 4.2. In addition, there is also a theoretically higher valuation for finance raising purposes from using FTTs if a whole scheme uses FTTs and the scheme is not encumbered by planning restrictions. There is no evidence that this is anything more than a theoretical possibility or that it forms a part of our financing strategy.
- 4.3. These financing factors should not, therefore, sway the final decision on future tenure offer.

¹https://ihurerblog.files.wordpress.com/2018/07/ftt_report_july2018_web-2.pdf

"I would hope to one day be in a position to purchase my home."

- Resident

5. Internal process evidence

- 5.1. For L&Q, non-renewal decisions and successful possession after a non-renewal decision are extremely rare. From the data on current tenancies agreed for renewal, and if disregarding arrears, there is a 100% renewal rate.
- 5.2. L&Q's internal data shows 388 completed reviews, of which 378 (97%) will be offered a new FTT at the same property. Of the ten marked for non-renewals at the same property, nine are for rent arrears. Of the rent arrears cases, these cases were well over the threshold for mandatory Ground 8 possession and have court actions recorded – which means we would have similar rights of possession if the tenancy was an assured tenancy.
- 5.3. FTTs have also proven to be a hindrance in these cases where a court decision has been made, such as an order for Suspended Possession, as the only option would be to renew and invalidate the suspended order – it would be impossible to evict on a suspended order as the judge has already decided to not grant possession at that time.
- 5.4. Improved systems and processes to support the ending of tenancies more effectively would save some resources but not add much benefit because L&Q's priority will always be to avoid creating homelessness by unnecessary evictions. This means the thresholds will be high and the circumstances when a tenancy would

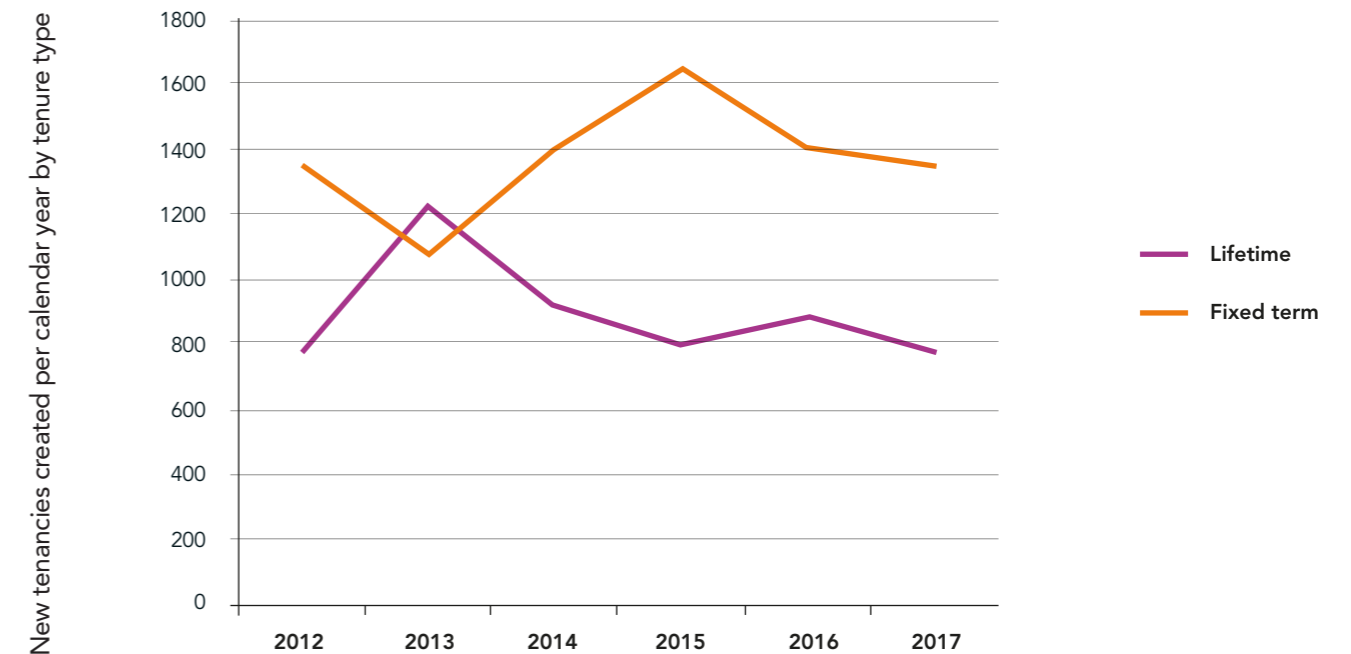
be ended the same as when we would seek possession under an assured tenancy.

6. Managing arrears

- 6.1. FTTs increase the volume of arrears and the proportion that are written off as former tenant arrears, which is an inherent problem with their use.
- 6.2. At each renewal, any arrears built up from the existing tenancy, any agreed payment plans or courts orders are immediately made invalid once a new tenancy agreement is signed. The arrears are then moved into a former tenant arrears account and are recoverable as a civil debt rather than under the tenancy agreement. There are legal devices to help make these arrears more recoverable but none are watertight. Cases have been rejected at court where action was taken on a renewed tenancy based on arrears and terms of the Suspended Possession Order from their previous tenancy. This is an insoluble consequence of FTTs as the regulatory Tenancy Standard makes it clear, to ensure tenants have certainty, tenancies must be renewed or terminated at the expiry of the fixed term.

7. Growth of FTTs

- 7.1. The information below sets out new tenancies created per calendar year by tenure type. Although our default tenancy offer is a fixed term, there are a number of exemptions (e.g. on the basis of age, vulnerabilities or previous tenancy status) which mean that we have continued to offer open-ended assured tenancies.
- 7.2. Overall, L&Q manage 8,363 fixed term tenants and 40,797 secure or assured



lifetime tenants. Because of the protections and exemptions given to new tenants or tenants already on lifetime tenancies, the proportions will only gradually move over time, meaning that there will continue to be two-tier processes in the long term.

8. Other housing management anomalies resulting from the nature of FTTs

- 8.1. Managing joint tenancy changes require agreement of all parties. Joint tenants in domestic abuse situations are at a disadvantage, as unlike assured tenancies, they cannot end their tenancy without seeking permission from their abuser or through the courts.
- 8.2. There is no legislative mechanism for many activities related to FTTs and housing management, such as the use of probationary periods, extension of

probationary periods and the actions available for abandonment. Because of this, policies, procedures and documentation, whilst triangulated and robust, are relatively untested by the courts.

- 8.3. It is also felt that occasionally, going through the Statutory Grounds route for anti-social behaviour enables better outcomes as it provides for better evidence gathering requirements and victim support.
- 8.4. Renewal decisions must be made and communicated in the last year of a FTT. Caveats are available to warn tenants that the landlord may change their mind if circumstances change in the final 12 months, however, if the tenant has been told that their tenancy will not be renewed, there is potential of further deterioration of behaviours, e.g. stop paying rent altogether.

9. Change of circumstances

- 9.1. One of the key justifications was to ensure that homes are supplied based on need. Under-occupation is the most common reason why a property is no longer suitable. However, this hasn't been relevant in our renewal decisions because:
- Few tenants' circumstances have changed in the six years
 - There is no evidence of support and mobility options throughout the fixed term
 - A lack of suitable alternative accommodation.

Tenants who are under-occupying will currently be offered a two-year fixed term contract on renewal on the basis that L&Q will offer suitable alternative accommodation within two years. If alternative accommodation is not provided, then the tenancy must subsequently be renewed for a full five years.

- 9.2. Under-occupation of larger properties would more likely happen to older tenants. However, the current tenure policy excludes tenants over 65 from fixed term tenancies. The exclusive benefits of FTTs to manage under-occupation was further eroded though the introduction of measured in the Welfare Reform Act 2012 that reduce benefit income for households under-occupying which creates incentives to move voluntarily.
- 9.3. The challenge in moving under-occupied households is the lack of available reasonable alternative accommodation, which is not tenure specific. This will be reviewed as part of our Mobility Project, in addition to reviewing downsizing incentives and improving the processes in facilitating downsizing.

“Having a life tenancy makes me feel secure, along with life tenancy neighbours, makes a lot of difference. We all have a lot of respect for each other.”

- Resident

- 9.4. FTTs in fact make moving to downsize harder rather than simpler. Feedback from the Mobility Project has indicated that tenants currently on lifetime tenancies are reluctant to consider moves if their security of tenure is lost. Although there are some protections (for example, under surrender and re-grant for mutual exchange), there are situations where a loss of lifetime security is inevitable (if downsizing to an affordable rent property, if mutual exchange was between a tenant with a lifetime tenancy after 2012).
- 9.5. For high earners, L&Q have not pursued the option of attempting to move tenants based on income. Reasons for this include limited access to verified financial information, ensuring mixed communities, modern working practices where income may fluctuate and to avoid de-incentivising work. L&Q considered and did not progress Pay to Stay for high income tenants on similar grounds in 2016.

10. Resident consultation

- 10.1. More than 200 tenants responded to a survey seeking to understand perceptions of tenure generally and engagement with landlord and community (a reason often cited against FTTs) it was found that:
- There were some differences in the length of time assured and fixed term tenant expected to stay in their home
 - 46% of fixed term tenants expected to live in their property for up to ten years from when they first moved in, compared to 13% of assured tenants (who assumed a longer period)
 - 40% of fixed term tenants expected to live in their property for life (64% for assured)
 - Fixed term tenants were less likely to report being happy in their properties and able to make it their home. (28% of fixed term tenants compared with 17% assured)
 - There were no significant differences in feelings of being part of the community and of their neighbours
 - There was also no difference in their connection with the landlord or wanting to be involved in reviewing landlord's services
 - Almost ten percent were not sure what tenancy type they had. This was reflected in some of the comments and in some email responses where tenants were querying the security of their tenure.
- 10.2. Tenants coming to the expiry of their fixed term were often uncertain about their tenure position. This is a concern as one of the objectives of law and regulation is to create certainty for tenants.



11. Moving to home ownership

11.1. One of the aims of FTTs was the intention that tenants move into home ownership if their circumstances improve. From the survey there were many comments relating to homeownership or right to buy, indicating an appetite for home ownership. This also reflects aspirations expressed during resident consultation on merger and the experience of demand for the right to buy pilot.

11.2. Moving tenants on to home ownership is not embedded into the current management of fixed term tenancies. However, any incentives or prioritisation

that can be offered to L&Q tenants who can afford, or can work towards affording moving into home ownership does not have to be tenure specific. The Social Housing Green Paper also makes a series of recommendations for social tenants moving into home ownership.

11.3. Consideration must also be given to affordability. The average household income for Shared Ownership is £52,000. The ONS Family Resources Survey data for London social tenant households returned only a small proportion of households who met this threshold and research from 2016 in L&Q suggested an average household income of around £14,000.

“Having a tenancy reviewed every five years leaves you apprehensive because you wonder if there will be a new legal reason to ask you to leave. I would love to have a lifetime tenancy, gutted I missed out on it by a few good months.”

- Resident





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