

**From:**  
**To:** [SLC info](#)  
**Subject:** Suggestions for new projects for law reform from Lady Clark of Calton  
**Date:** 30 June 2022 14:55:23

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Following the recent meeting with The Commissioners and their request for suggestions I would like to repeat my oral suggestions with a little more detail.

#### WILL MAKING

Scotland has a low percentage of will making and there is very little public effort to encourage and educate the public about this and the implications of intestacy.

I consider the abolition of holograph wills a big mistake as this allowed the simplest form of will making. In an ideal world obviously the involvement of a solicitor to advise and draft a will is better than holograph wills but for many people costs and lack of access mean they end up with no will even although they may have strong views about the disposal of their property. And some people wish to make frequent changes and to do so privately. Requiring the formality of a witness is no advantage and merely discourages will making.

This is a very important area of social and legal policy which needs readdressed to find a simple solution and allow people to express their wishes in a will in the way that best suits them. And a public campaign with some useful information about how to make a will and the main consequences of intestacy would be a good use of public money.

#### THE TENEMENTS (SCOTLAND) ACT 2004

There is very little judicial interpretation of this legislation so its complexity remains a mystery to be faced by anyone who has the misfortune to consult it. Worse it is not at all clear when it is to apply. It would be very helpful to have some post legislative scrutiny of the application of this Act.

One problem which is obvious is the imbalance and lack of protection for minority owners particularly where there is an inbuilt majority of owners in the same tenement. This may apply where one owner has bought multiple properties in the same block perhaps for holiday lets but even worse may be the lack of balance, power and funding between local authorities and private owners of ex council properties. This imbalance will never change so long as the policy is not to sell off more council properties. So in many authorities and many tenements there may be a minority of private owners and the majority of flats owned by the local authority. In such a case the model of the 2004 Act makes no sense and there is inevitably no meaningful voting and the complicated judicial scheme is a paper remedy. It is very unlikely that a private owner of a local authority flat will have the massive funds required to challenge in Court a publicly funded local authority in relation to an Act which is difficult to interpret and unclear in many respects.

Best wishes  
Lynda Clark