



Llywodraeth Cymru
Welsh Government

PUBLICATION

Regulatory Board for Wales performance report: March 2022

Progress on how the social housing regulator and sector are performing.

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Section 1: The independent Regulatory Board for Wales' (RBW) annual report to the Minister

In January 2016 the Welsh Government (WG) established an independent board, comprising an independent chair and six independent members, by a written Cabinet statement. The Board's terms of reference are set out in Section 5. Briefly, RBW advises the relevant minister on the performance of the regulated housing sector, that of the government's housing regulator, and on related matters.

Dear Minister:

Chair's foreword/Executive summary

Thank you for the opportunity to submit our annual report. We would highlight the following issues based on the sections that follow (section 2: housing associations; 3: the housing regulator; 4: other related issues and looking ahead).

1. Covid has been and remains an unprecedented challenge. Housing associations (referred to as registered social landlords, RSLs) responded well and in particular have displayed good partnership working on homelessness. The regulator has also responded well with a proportional programme of Interim Judgements and Business Continuity Surveys.

2. Governance in the sector appears to have strengthened with just two associations presently on non-standard judgements and a new code issued by their representative body. We feel that the RSL sector and the regulator have done well in recommending the new regulatory Framework agreed by you recently.

3. Tenant/customer services have inevitably been impacted by the pandemic

and the Business Continuity Surveys have assisted us to understand how well the RSL sector is responding. These surveys were introduced as a new way of working as a direct result of Covid 19 and we welcome that an evolution of the survey will continue alongside the new regulatory Framework. We welcome the publication of the feedback on social housing conditions and disrepair following a request for information from all social landlords (RSL and local authority) in Wales. We hope the regulator will consider consequent actions to improve customer service. We are grateful for the ongoing work of Tenant Participation Advice Service (TPAS) Cymru in helping to inform regulation from a tenant perspective, though we believe there is a strong argument for strengthening the voice of tenants not only in relation to regulation but in terms of highlighting local tenant and customer concerns. We are also interested in understanding and recognising the role the RSL sector fulfils in tackling homelessness and we would welcome more frequently published sector-specific data on this subject.

4. Affordable rents have come into focus because the Consumer Prices Index at the material timing (September 2021) ended at 3.1%. Given the challenges of rising inflation, higher energy costs and increasing pressures on the cost of living for many households, we are encouraged that you have reviewed the maximum rent increase which can be applied by RSLs for 2022-23 and kept the focus on affordability by tenants.

5. Financial viability of associations is reportedly strong. However, we feel that the opportunity apparent through borrowing, reserves and market conditions could be examined.

6. Stakeholders have continued to make significant contributions to a collaborative approach to housing regulation in Wales, not least through the work of the Regulatory Advisory Group (RAG). Their work has been invaluable in providing a sounding board for the housing regulation team, a channel of communication to the sector and to tenants and service users and in providing advice to RBW. Their work in helping to shape the revised regulatory Framework has been of critical importance. In our own advice to you on the Framework

review we noted that consultation had been positive, though we argued that future consultations could be opened up to a wider range of interests, given that the topic concerns so many in Wales.

7. Decarbonisation has become an important priority for WG and for all RSLs especially around further improving the social housing stock and tackling climate change. We applaud you for decisions taken so far including funding for the next three years but RSLs would gain from even greater clarity on funding and timing.

8. Threats and risks: The pandemic has changed the potential challenges faced by RSLs in Wales, in ways which nobody could previously have foreseen. When also considered alongside the urgent need to decarbonise, there is a clear need to review the sector risk guidance, last updated in March 2020. We have been assured by officials that the updated guidance will be published in early 2022.

9. Information for regulation: We think co-regulation in Wales is showing maturity. However, for even greater assurance we recommend examination of what other sources of information could be appropriate. We look forward to your attending an RBW meeting to discuss this report and our broader work.

Chair: Deep Sagar

Members: Kevin Lawrence, Jane Mudd, and Huw Thomas 25/3/2022

Section 2: Performance of the RSL sector

1. Covid: The Covid 19 pandemic highlighted the value to people of a safe, sound, and secure home and good quality housing services. Over the last 12 months the RSL sector continued to work with WG, local authorities, third-sector

organisations and others to meet housing needs. In what has been a very difficult time RSLs responded positively to the challenges posed, working to ensure a continuation of services and to develop solutions, particularly for those who are vulnerable or at risk. Partnership working between RSLs and across the housing sector resulted in positive results in managing homelessness.

2. Governance: As a board we have previously emphasised the importance of high-quality governance publishing our own thematic review in 2018, *The Right Stuff: Improving Housing Association Governance in Wales* (<https://gov.wales/sites/default/files/publications/2019-02/improving-housing-association-governance-in-wales-2018.pdf>). Indications are that opportunities have been taken to strengthen governance across the sector and we welcome the publication of Community Housing Cymru's (CHC)* revised Code of Governance (June 2021) and their support for improving governance across the sector. We note that just two associations have a non-standard judgement from the regulator.

3. Tenant services (see also section 3): In 2019 RBW published a thematic review on tenant engagement in Wales, *The Right Stuff: Hearing the Tenants' Voice* (https://gov.wales/sites/default/files/publications/2019-07/hearing-the-tenants-voice_0.pdf). We continue to collaborate with TPAS Cymru and value the information they provide on tenants' priorities and perceptions. We have noted their recent survey of some tenants who have expressed dissatisfaction with quality of their housing. Shelter Cymru** released a survey suggesting many tenants consider their housing unsafe. WG's publication of housing associations' tenant satisfaction data in May 2021 suggested six RSLs had satisfaction below 70% for repairs and maintenance. (We are advised to treat the latter findings with caution for methodological reasons). The Welsh Public Services Ombudsman reported receiving about 200 complaints and suggested that many RSLs required consideration of a complaint over three stages before the customer could approach the Ombudsman. He has recommended this be made easier and quicker. We welcome the publication of feedback on social housing conditions and disrepair by WG (February 2022). We hope the regulator

considers examining whether there is scope for additional actions to ensure good-quality customer services.

4. Affordable rents: We believe that it is important RSL rents remain affordable, particularly for those on relatively low incomes. Through RAG we benefited from being updated by CHC of their Rent Affordability Tool, designed to help associations with interrogating affordability data and making decisions on rents. We were also advised by WG that 26 RSLs applied the full 2.7% increase in 2020-21 and 16 applied the full 1.5% increase in 2021-22. However, we noted that for 2022-23 Consumer Prices Index was outside the 3% policy envelope, and you have reviewed the rent policy for next year. We are encouraged that you have kept affordability by tenants uppermost in your thinking.

5. Financial viability: Financial viability of RSLs is fundamental to the well-being of the sector. We welcomed the publication of the 2020 Financial Statements of Welsh Housing Associations (CHC and WG). The results demonstrated the sector's strong balance sheet and its capacity to attract investment. However, we would like better evidence that all the financial opportunities are being taken. We understand 15 associations have not borrowed money on the market at all while renewed stock valuations could make even more borrowing available on top of balances not being used. We noted that the average interest cost was more than 4% when the base rate has been low for 13 years. Lastly, RSLs do have some reserves and have shown cost increases. We hope the scope for generating better value for customers through financing is examined.

*CHC is the representative body for all Welsh housing associations.

**Shelter Cymru is a charity and reported helping 16,547 people last year on housing issues.

Section 3: Performance of the Regulator

1. Interim Judgements: In March 2020 the impact of the Coronavirus pandemic necessitated the redirection of regulatory focus to take into account the added burdens on RSLs. An Interim Judgement process was brought in with a more targeted focus on tenant/service user safety, financial resilience and viability. It is important to acknowledge that the regulation team was only able to do this as it had produced at least one regulatory Judgement for all RSLs in the previous 12 months. From November 2020 to November 2021 a total of 34 Interim Judgements had been issued. The programme was risk-based, considering each of the following:

- organisational size
- complexity
- development growth rate
- regulatory intelligence
- financial capacity and management.

Given the ongoing challenges being faced by both the regulator and RSLs, the board believes that taken together with the Business Continuity Surveys accurate and up-to-date information about RSLs at this time has been provided.

2. Business Continuity Surveys: Introduction of Business Continuity Surveys was an innovative approach to maintaining a grasp on issues relating to tenant safety and financial viability. RBW received five summary reports during 2020-21 and was reassured that RSLs were coping with the unprecedented challenges being faced. By March 2021 the Business Continuity Survey showed a much-improved situation across most of the health and safety issues reported, compared with 12 months previously*.

3. Stakeholders: Stakeholders have informed RBW that the risk-based approach has been positively received by the sector and demonstrated an

understanding of “what RSLs were really going through”. RBW believes that the current model of co-regulation and the self-evaluation** approach ensured that regulation could adapt and continue in a meaningful way during this national crisis. RBW commends the regulation team for the manner in which it adapted its regulatory procedures to ensure it focused on what mattered most and did not overburden the sector being challenged by the emerging crisis. RBW would also like to thank the regulatory team for its hard work, dedication and innovative thinking during the last 12 months.

4. Advice and comment: RBW always welcomes hearing the views of stakeholders and during the past year this has been even more important. As part of the engagement on the review of the regulatory Framework some stakeholders expressed a desire for an additional narrative explaining the justification/reasoning behind the regulatory Judgements. We can advise this is a matter we have discussed as a board and it is important to stress regulatory Judgements are “exceptions reports” and there are no significant regulatory concerns if a regulatory standard is not listed in the Judgement and so the only regulatory Judgements that do not contain detail on improvements required are those where all regulatory standards have been met. As such these regulatory Judgements should be self-explanatory and an accompanying narrative is not considered necessary. Nevertheless, every RSL is required to publish its regulatory Judgement in full on its website (on the same day it is published by WG) and clearly sign-post its self-evaluation document. This details an organisation’s governance, service delivery and financial viability, together with any material changes (relating to those aspects) since the last Judgement was issued. We believe this process continues to provide stakeholders with the necessary context for regulatory Judgements, if one is required. On a separate but related issue, we would suggest that following future consultations, the Regulator should publish a consultation report on its website which includes (where permission has been given) specific answers to what are determined to be the critical questions. We did note the recent publication of a summary of the Framework Review consultation.

5. Framework: Over the last year particularly, the revision of the regulatory Framework has been a major element of the work of both the Regulator and the RBW. We appreciated the co-operation with the sector through which the revised Regulatory Framework and Judgements were put out to consultation. We have commented separately on the consultation responses for the Ministerial submission. However, reflecting upon the evolution of regulation here in Wales it is evident that the revised regulatory Framework and Judgements reflect a maturity of the relationship between the Regulator and the sector. This is underpinned by the principles of co-production and firmly bedded upon a foundation of constructive challenge, openness and transparency.

6. Resources: As we emerge from the pandemic, RBW strongly supports the resumption of 'normal business' whenever possible, so we may once again resume face to face meetings that were sorely missed during the last 24 months (we understand the need to comply with WG guidance on this issue). As the regulatory team work towards implementing the revised regulatory standards, we would reiterate comments made in previous reports that there is a continued need to ensure that the function is adequately resourced in order that early resumption can be made to paused initiatives and interaction with the sector. Any additional work commitments should also be adequately resourced.

*Improvement in "emergency repairs" was less evident and possibly aligns with an emerging picture regarding issues being experienced with RSLs' repairs and maintenance during the last financial year. This, in great part, may be explained by difficulties experienced as a result of the pandemic, but sources include:

- TPAS Cymru's first Annual All Wales Tenant Survey on Tenant Perceptions conducted in July/August 2021. This identified that the highest level of dissatisfaction amongst both social and private tenants was around energy efficiency and damp and mould.
- The Public Services Ombudsman for Wales. He informed the RBW in August 2021 that repairs and maintenance (together with anti-social behaviour) formed the majority of closed complaints in the previous financial

year.

- Social landlords: tenant satisfaction survey (WG, May 2021). This showed that although satisfaction rates with repairs and maintenance remained fairly high (above 61%) there was a significant variation across all RSLs. However, we are advised to treat the survey findings with caution. We eagerly await the next publication in April 2022 which we are advised will be a more robust and standardised survey.

****RSLs are trusted to evaluate their own performance against performance standards set under section 33A of the Housing Act 1996. These are known as “delivery outcomes”. Self-evaluation is expected to be robust and of sufficient quality and standard to provide evidence of each RSL’s effectiveness (Housing Association Circular RSL 02/15). We understand this circular is now superseded.**

Section 4: Other related issues and looking ahead

1. Decarbonisation: We have appreciated the WG’s announcement of 20,000 new social homes for rent which would meet the net zero requirement, the strategy publication in October 2021 and a further £150m for the optimised retrofit programme. However, it will be important for regulation to consider the planning which RSLs are doing and their capacity for maintaining and improving their housing to retrofit the stock. Since this issue is a clear concern for most RSLs it would help for WG to continue to make even clearer the support available to RSLs and its timing.

2. Threats and risks: The WG’s housing sector risks guidance for RSLs has not been updated since March 2020. We have been assured by officials that updated guidance will be published early in 2022. However, whilst we have argued that the sector in Wales has performed well under the challenges of Covid 19, other issues are emerging. There are increasing expectations on

RSLs, not only in terms of contributing to the provision of additional social housing but also in relation to the decarbonisation agenda and climate related issues. There are also other threats which RSLs are facing, for example in terms of access to raw materials, the need to attract and retain skilled staff (as well as labour shortages in the wider economy), increased costs and supply chain disruptions. As recent research in Wales from Chartered Institute of Housing (CIH) Cymru's Tyfu Tai Cymru project (<https://www.cih.org/policy/tyfu-tai-cymru>) has noted these developments are likely to impact on all RSLs in terms of the provision of new homes, retrofitting existing stock and day-to-day maintenance.

3. Homelessness*: We recognise the positive work by WG and others on homelessness during Covid. We are also interested in understanding and recognising the role the RSL sector fulfils in tackling homelessness and we would welcome more frequently published sector-specific data on this subject. We would welcome greater clarity on the contribution which individual RSLs are making through their lettings policies to addressing homelessness and that housing allocations support the WG's wider objective of ending homelessness in Wales. We suggest that WG encourages closer liaison between officials to encourage best practice and collaborative working in relation to both preventing and tackling homelessness.

4. Information for regulation: We have noted the value of the Business Continuity Survey in illustrating some of the challenges which RSLs have been facing. The Regulator has learned from this data but needs to continue to reflect with the sector whether it has access to all the appropriate data which it needs for effective regulation (what one stakeholder has referred to as "data with purpose and proportionality"). We received some feedback from stakeholders on the need for better information on financing capability/needs and tenant/customer service on repairs, maintenance and anti-social behaviour. We applaud continuing co-regulation and consultation with RSLs and other stakeholders; for greater assurance of regulatory outcomes, we suggest that the Regulator considers what third-party sources of information it could consider officially in its methodology. Examples include data from the Ombudsman,

lenders, tenants and wider evidence.

5. Tenant/customer's voice: Until 2016 the Board had access to a Tenant Advisory Panel (a group of tenants) who gave customer-focused feedback. In recent years, RBW has depended mainly on the regulator and TPAS Cymru for information on tenant/customer interests. TPAS Cymru does its job valiantly but it has been pointed out that tenants/customers could be fully in control within a new structure or format. We hope WG seriously considers the plea made to it recently by two consultants that it support a new tenants'/customers' voice. We would refer also to RBW's recommendation in 2019 (<https://gov.wales/sites/default/files/publications/2019-05/regulatory-board-for-wales-performance-report.pdf>).

6. Regulation's future: In 2019 RBW highlighted the “inequity” of outcomes for tenants of local authorities and RSLs given the present regulation arrangements. Since then, we understand WG has undertaken some early work towards considering so-called ‘domain regulation’ on tenant services for both RSLs and local authorities. We also urge WG to continue to keep the resources necessary for regulation under review to ensure it remains effective and that housing regulation in Wales is able to deliver the revised regulatory Framework and continue to evolve to enhance further assurance and improvement.

7. RBW's capacity: We have carried two independent member vacancies since February 2021. We recommend that recruitment to fill all member vacancies is completed as soon as possible.

*In ‘Inside Housing’ of 27/1/2021 the Welsh social housing Regulator was asked, “What are the biggest ‘risks’ in the sector right now?” Emma Williams, director of housing and regeneration for WG, cited homelessness and the ‘vital’ role landlords have to play in providing support to tenants.

Section 5: Terms of Reference of RBW (approved

by RBW and WG on 13/4/2021)

The purpose of the Board is:

- to examine the regulatory performance and activity of the Welsh Government, and the sector, by way of considering an annual report, and other reports and guidance from the Regulator, and other publications on the performance of the sector;
- to seek additional advice/perspective on the performance of the sector from a broad range of organisations, as considered necessary; and
- to use that information to:
 - advise the Minister on the performance of the regulator and the sector,
 - advise the Minister on related policy implications,
 - advise the Minister on changes to the regulatory framework, and
 - advise the Minister on the need for additional research, as considered necessary.

Note: We thank all who have helped in this report and in particular Bob Smith (former board member), CHC, CIH Cymru, Crisis, Housing Quality Network, Shelter Cymru, The Housing Finance Corporation, TPAS Cymru, Tai Pawb, Welsh Local Government Association and UK Finance.

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