



Llywodraeth Cymru
Welsh Government

The Regulatory Board for Wales

Report to the Minister for Housing
and Local Government

May 2019



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Introduction to the report from the RBW Chair

Our homes form the cornerstone of our lives, providing a platform for good health, well-being and happiness and there is no doubt that access to a good quality, safe, affordable home unlocks many opportunities in life. The role of regulation can often feel distant from this rhetoric. However, as Chair of the RBW I am passionate about the role housing regulation plays to support, enable and encourage the housing association sector to thrive.

A well-regulated sector provides assurance to tenants, investors and other stakeholders about the quality of homes provided, and about the resilience of housing associations to deliver great services to existing and new tenants.

The Regulatory Board quite rightly wanted this report to do more than advise the Minister on the retrospective performance of Housing Associations in Wales. That is why we have not shied away from highlighting some of the future challenges and debates needed to further strengthen existing regulatory arrangements and governance. I look forward to being part of these debates in the future.

I would like to thank Regulatory Board Members, Regulatory Advisory Group and the Regulation Team who have shared my vision to realise the greater role regulation can play in the provision of affordable homes in Wales. I would also like to thank tenants and Housing Associations who have welcomed us, and shared passionately, not only the amazing work being done, but also the challenges they face for the future.

Helen White

Executive Summary

The Regulatory Model is working well

- The current co-regulatory model, underpinned by annual regulatory judgements and a robust self-evaluation approach, remains a robust, appropriate and modern model for the housing association sector. It is providing a strong balance between assurance and improvement and is consistent with the overall direction for regulation nationally and internationally.
- The Regulatory Framework is also underpinned by a commitment to put tenants at the heart of regulation. RBW remain committed to improving how this is implemented in practice and recognises that current arrangements do not go far enough to address this commitment.
- The current regulatory approach and focus is re-establishing confidence and credibility in the overall regulatory framework with the sector, lenders and other stakeholders. There is a broad range of activity designed both to provide the formal assurance through the public judgements required by the framework, alongside the local and national sector support work that is responding and adapting to the ongoing dynamic nature of the sector. It is responding to the recommendations of the Public Accounts Committee review, and the framework is being adapted positively to respond to significant external factors such as the Office for National Statistics (ONS) reclassification.

Sector Performance is encouraging but must improve

- Regulatory judgements to date suggest most of the sector generally demonstrates effective governance, financial management and viability, and strong delivery of services to tenants and service users.
- There remains too many specific instances of significant governance failings that have given rise to both intervention and a wide

range of additional regulatory involvement. RBW are also concerned that self-reporting of regulatory matters to the Regulator is not happening consistently across the Sector.

- Regulatory activity in the future will need to continue with a strong focus on these governance matters and other trends of concern within the sector. The need to provide timely support to the sector as it adapts and responds to external challenges and the shifting policy environment will continue, not least adapting as necessary to any changes and regulatory implications emerging from recommendations in the *Affordable Housing Supply Review* in Wales.

Regulatory Resources need urgent review

- The RBW believes regulatory resources are below the minimum level needed to continue to deliver the existing framework safely and adapt to regulatory needs and demands. The current level of core activities and the levels of regulatory intervention are both much higher than was ever anticipated when the framework and regulatory team were established. The Regulator does not have the capacity to continue to deliver some of these functions in the long term or respond effectively to support involvement in intervention or enhanced regulatory support where it is needed at individual Associations. This clearly enhances the risk both of compromising core work and compromising the Regulator's ability to identify governance and financial concerns quickly.
- A more fundamental debate is now needed about the nature, form and functionality of regulation the Welsh Government may wish to see in the future and which it would be prepared to resource with the necessary skills and capacity. Modern regulatory frameworks are increasingly being resourced to provide the appropriate capacity to deliver not only regulatory judgement and reporting and intervention but also other related functions.

- The RBW believes it has a role to stimulate this debate, and which will necessarily introduce national discussion about how that model of regulation of the sector could be resourced going forward, including a fee-based model.

The nature of Housing Regulation in Wales needs to reflect modern approaches elsewhere in the UK

- Linked to framework development, there is also an increasingly-recognised inconsistency and inequality in the nature of housing regulation between the local authority and housing association sectors, increasingly seen as disadvantageous to local authority tenant participation and access. Again the RBW believes it has a role to stimulate that debate and discussion about “*domain regulation*” more commensurate with approaches to housing regulation elsewhere in the UK.
- Statutory and operational independence of regulatory, audit and inspection bodies, and the perception of this independence, is a fundamental tenet of any framework. The ability to make unfettered judgements both about regulatory focus and sector performance provides credibility to any approach and public reporting arrangements, and enhances national and local accountability and transparency. The RBW believes arrangements in Wales do not reflect modern developments and practices put in place across the rest of the UK.

Main Report

Introduction

Regulation of the Housing Association sector in Wales, with its strong tenant focus, and its regular evaluation of local governance and management performance, and its financial viability, provides a valuable platform for independent assurance to tenants, lenders, investors, government and other key stakeholders.

Regulation in Wales is guided by the Welsh Government's *Regulatory Framework for Housing Associations in Wales*. gov.wales/housing-associations-registered-wales-regulatory-framework The approach to this statutory regulation is built around a model of *regulated self-assurance*. This means the association holds primary responsibility for assuring itself effectively that it is meeting legal obligations, performance and quality standards. The regulatory role is to assess and report on the adequacy and effectiveness of those self-assurances.

A robust, evidence based, challenging local self-evaluation is therefore a fundamental element of the overall expectation on organisations, alongside the completion of an *Annual Board Statement of Compliance*. This is a statement by the Board that it is satisfied it meets all of the Performance Standards or, if compliance cannot be fully demonstrated, can set out an explanation and a summary of actions it will take to improve compliance which the regulator will appraise. The Compliance Statement is one of the most important documents a Board will sign each year. The statement, backed up by the regulators ongoing engagement, forms the basis of the regulatory judgement.

Annual regulatory judgements are published for all regulated organisations. These judgements reflect the regulator's view of the housing association's performance and capacity to improve, and its financial viability.

The RBW believes these approaches reflect modern models for regulation developing across the UK and internationally. It remains an appropriate approach to regulation of the housing association sector in Wales.

The Regulatory Board for Wales (RBW)

The RBW, established in its current format in 2016, is an Advisory Board to the Minister. It is a wholly independent advisory board, with board members appointed through the public appointments process in Wales.

The Board provides an important oversight of that regulatory function, allows it to use regulatory information to help shape independent perspectives and advice on the performance of the sector and the challenges it faces. It also reflects on overall regulatory developments across the UK more widely, and considers their relevance or impact on arrangements in Wales.

The RBW is itself supported by a Regulation Advisory Group (RAG). The RAG is a stakeholder forum that provides an opportunity to raise, share and learn from issues relating to regulation, and to advise the RBW accordingly. It is an important mechanism to help promote an inclusive approach, based on the founding principle of co-regulation and a forum welcomed by the RBW.

The RBW receives regular reports from Tenant Participation Advisory Service (TPAS) Cymru on understanding and hearing the views of tenants of Housing Associations, ensuring tenants' concerns and interests are reflected in RBW discussions. This is an important source of information for the RBW and will be further strengthened by the implementation of the current thematic review of tenant engagement.

Membership of both the RBW and the RAG are shown for information at Appendix 1 to this annual report.

Purpose of this report

This report to the Minister is the primary mechanism for the RBW to provide assurance and perspective on the broad range of regulatory and sector issues emerging from the delivery of the framework. It covers the following key areas:

- **Section 1** – The performance and activity of the regulator;
- **Section 2** – Developing the regulatory framework and responding to current challenges;
- **Section 3** – The performance of the sector; and
- **Section 4** – Developing the Regulatory Board for Wales

Section 1

The performance and activity of the regulator

The RBW is satisfied that the current regulatory approach and focus is re-establishing confidence and credibility in the overall regulatory framework with the sector, lenders and other stakeholders. There is a broad range of activity designed both to provide the formal assurance through the public judgements required by the framework, alongside the local and national sector support work that is responding and adapting to the ongoing dynamic nature of the sector.

This is very encouraging and the RBW recognises the commitment and output from the regulation team in delivering this broad range successfully within the resources available. That said, the fundamental issues and risks surrounding existing resources and functions for the regulation function going forward, remains a key concern for the RBW.

Key regulatory activities include;

- Delivering regulatory judgements;
- Involvement with serious cases of regulatory concern and interventions;
- Supporting the wider sector;
- Providing a tenant focus to regulation; and
- Responding to national issues.

Regulatory judgements

The regulatory framework was adapted in 2017 to introduce formal annual regulatory judgements for each housing association. These judgements are publicly reported and reflect the regulator's view of the housing association's performance and capacity to improve, in terms of governance and its financial management and viability.

Every housing association in Wales, covered by the framework, has now had a formal judgement delivered locally, and publically reported. Table 1 below shows an analysis of those judgements.

Table 1: analysis of formal regulatory judgements

Judgement category	Governance judgement (including landlord services)	Financial Viability judgement
<p>Standard – Governance Identifies and manages new and emerging risks appropriately</p> <p>Standard – Financial Viability Meets viability requirements and has the financial capacity to deal with scenarios appropriately</p>	32	35
<p>Increased – Governance A risk, or combination of risks, are presenting a significant challenge to the RSL and increased regulatory oversight is required</p> <p>Increased – financial viability Meets viability requirements but has limited financial capacity to deal with adverse scenarios effectively and increased regulatory oversight is required</p>	5	3
<p>Intervention – Governance A significant risk (single or combination) has not been effectively managed and regulatory intervention is required to effect necessary change</p> <p>Intervention – financial viability Does not meet viability requirements and regulatory intervention is required to improve its financial capacity</p>	2	1
<p>Statutory action – governance A significant risk (single or combination) has not been managed and statutory action is required to effect necessary change</p> <p>Statutory action – financial viability Does not meet viability requirements and statutory action is required to effect necessary change</p>	0	0
Total	39	39

This is a snapshot of the position today. In addition four ‘in year’ reviews were carried out where associations had completed or made substantial improvements to their compliance with Performance Standards and a revised judgement was deemed appropriate.

Currently, **seven** associations have non-standard judgments. They breakdown as follows:

- 3 **increased** – governance and financial viability
- 2 **increased** – governance
- 1 **intervention** – governance and financial viability
- 1 **intervention** – governance

It is very encouraging to the RBW that the full programme of initial formal judgements has been delivered. They have become, in the board’s view, an accepted and integral part of the framework across the sector, and also vital for lenders, tenants and other stakeholders interested or invested in the performance of individual organisations or the sector as a whole.

They also provide transparent and important insight and stimulus for both for local improvement and national perspective.

Initial RBW perspectives about the performance of the sector, drawn from the judgements, are reflected upon in Section 3 to this report.

Serious cases and interventions

Intervention judgements

The regulator has been involved in a range of formal interventions and additional enhanced regulatory oversight and support work at a number of associations over the last 2 years. Issues have been identified through proactive co-regulatory work and also through whistleblowing.

Of the seven associations with non-standard judgements, two have had intervention judgements. One is an intervention for governance and the other is an intervention

for both governance and financial viability. Intervention judgements are the most serious, other than a statutory action.

The key issues identified which led to the intervention judgments included;

- lack of board oversight and control,
- inadequate leadership and culture,
- non-compliance with regulatory requirements and the law,
- inadequate landlord health and safety management,
- inadequate financial capacity including financial planning and ensuring funding is in place to ensure the organisations viability.

“Increased” judgements

The range of issues identified within increased judgements have included poor governance practices such as not complying with adopted governance code, non-compliance with regulatory requirements, poor health and safety management and poor decision making due to a lack of financial controls and poor risk management.

Publishing a non-standard judgement has significant resource implications for the team in terms of ensuring the regulatory intelligence is robust enough to evidence the judgement and in supporting and undertaking the required regulatory oversight as the association works to make the necessary improvements.

Serious cases pose significant risks to the sector, tenants and to the regulator and their management has to be a top priority. However, managing serious cases diverts resources from routine regulatory work. It has the greatest impact on senior staff who have the necessary experience to undertake what is complex work with serious consequences.

The RBW role

The RBW, as part of its functions, are regularly kept apprised of current or potential regulatory actions in these circumstances. The RBW is confident that regulatory actions considered

necessary and taken in each of the specific circumstances were correctly focussed, appropriate and proportionate, and that governance and management improvements, and procedural improvements have been clearly made at the organisations involved with the regulator in these instances.

Learning the Lessons

Learning any lessons from complex cases, both for the sector more widely, and for the regulator, is a key part of stimulating improvement. It remains one of the fundamental good practice principles of a modern regulatory approach. In 2018, the regulator published the first **Lessons Learnt** report relating to *Cardiff Community Housing Association*, prepared in collaboration with the organisation involved in the intervention. This report has proved successful and has been well-received. It identifies wider lessons learned for the sector and the regulator, based on the local intervention experience. It reflects upon potential governance warning signs and allows for wider comparison and contrast opportunities for boards and management teams across Wales in the future.

In agreement with the sector, lessons learned reports will be produced each time there is a published judgement in the intervention or statutory action categories.

They also provide opportunity publically to reflect on scope that exists for regulatory improvement in these serious case circumstances, and the RBW recognises important changes being made to regulatory arrangements, not least around:

- Clarifying approaches to whistleblowing;
- Strengthening regulatory risk assessment arrangements;
- Improving governance culture and behaviours as well as structures;
- Formalising Board assurance approaches;
- Improving approaches to managing landlord Health and Safety; and
- Improving data integrity.

Supporting the wider sector

The use of available intelligence and information obtained naturally through the regulatory process at individual organisations, to help provide timely support and advice to the wider sector, is another fundamental principle of a strong regulatory framework.

The RBW has recognised the increasing range of wider sector support that has been provided by the regulator, alongside specific initiatives put in place by the RBW itself. Collectively, these have included:

- **Specific sector publications**, including:
 - the regulator’s annual sector-wide *Risk Overview report* designed to highlight national and emerging themes and support local board’s and executive teams strategic planning; and
 - the annual *Global Accounts* publication for the sector (jointly with Community Housing Cymru [CHC]) that provides a range of comparative financial and performance data
- **National thematic reviews.**

The RBW, when considered relevant to developments locally or nationally, commissions specific national thematic reviews. These reviews are undertaken collaboratively typically involving the regulation team, other key stakeholders and specialists, and result in specific national reports and other support products. Feedback to the RBW suggests these are well received and have chimed with current national developments and concerns. However, we recognise that to be effective the implementation of the review findings requires appropriate resourcing. These thematic reviews to date have covered:

- **Value for Money (VFM).** A national report was published in 2017 which has resulted in the production of an agreed suite of sector-wide VFM measures for local comparison and planning support, a wider sector recognition of the benefits of an effective VFM approach and its

value culturally as a core element of good governance locally, and the inclusion of VFM more distinctly within the Welsh Government's revised Performance Standards.

- **Governance.** Published in 2018 this review reflected the RBW's clear view that quality governance underpins a safe and successful housing association sector. The review focussed on establishing a robust view of the current quality of governance across the sector and a better understanding of the attitudes and behaviours that support good governance. In 2018, the RBW's published its own vision of good governance – *The Right Stuff*, designed to complement the CHC's new *Code of Governance*. These governance aids have been well received and provide important platforms for governance improvements.
- **Tenants at the Heart of Regulation.** The RBW has always wanted to ensure that its approach, and that of the Regulator, to hearing the tenants' voice, is as robust as possible and that it reflects the realities of the modern housing environment. For that reason, the RBW has commissioned a review, due for publication in July 2019 aiming to ensure the tenant voice is heard by challenging housing associations to reconsider traditional approaches to tenant engagement and develop new thinking and innovative and effective ways of involving tenants in decision making. This is an ambitious and high level strategic review, involving all key stakeholders in Wales, in a current climate that is very receptive to addressing how better to understand the views of tenants and develop meaningful ways of engagement.

Providing a tenant focus to regulation

Hearing the tenant's voice

The Regulatory Framework is underpinned by a commitment to put tenants at the heart of regulation. To ensure this, the Framework

places clear expectations on Housing Associations to demonstrate tenants are involved and shape services and decisions taken by associations and how services provided are of a high quality and improving. It is therefore a core aspect of the work of the regulator and of the judgement deliberations.

Understanding and hearing the views of tenants of Housing Associations is therefore also an important aspect of the work of the regulation team and of the RBW, ensuring tenants' concerns and interests are reflected. To facilitate this, the RBW and the Regulation Team work with TPAS Cymru, who use a range of ways for tenants to be engaged. These include gathering tenants' views at regional tenant networks and events, focus groups and forums to discuss specific issues. TPAS Cymru has also run '*Tenant Pulse*' – a survey community where tenants can give their views by email or post.

RBW and the regulator meet quarterly with TPAS Cymru to consider evidence of tenants' views on priority concerns and to ensure these are conveyed to the sector, regulation managers and RBW.

Responding to national issues

A significant aspect of the regulation team's work, and its oversight by the RBW, has crystallised around a number of key national developments, in particular:

i) Landlord Health and Safety

The emerging lessons from the Grenfell tragedy, together with serious concerns regarding the governance of health and safety that emerged as part of a regulatory intervention in Wales, prompted the regulator to require every housing association in Wales to provide a full assurance report on its landlord health and safety arrangements.

This was an important review that allowed the Regulator to analyse these reports for the whole sector and provide a timely sector-wide summary overview with a wide range of recommendations for associations.

The recommendations provided an opportunity for Boards and executive teams to reflect on whether their current arrangements are adequate and learn from current practice across the sector. Responsibility for a robust approach to landlord health and safety lies with the Boards of associations.

This report has been well received by the sector, but more importantly, has driven improvements to Health and Safety in a number of organisations.

The RBW was pleased to see that Regulation Managers have also been working closely with individual housing associations to assess the quality of their Board assurance around landlord health and safety, highlighting, where necessary, where more robust assurance is required. This approach to targeted assurance reports is one which the RBW supports and is keen to see replicated for other areas of regulatory concern.

ii) The Public Accounts Committee (PAC), and other independent reviews

The National Assembly's PAC undertook an *inquiry into the regulatory oversight of housing Associations* – and reported its findings in August 2017. The Chair of the RBW and civil servants, alongside a range of stakeholders provided evidence to the PAC as part of the review.

Overall the PAC report concluded that *“Generally we found governance and regulation within the housing sector to be working well enough for housing associations to be granted more autonomy”* and that *“...the new Regulatory Judgements are a step in the right direction”*.

The report set out a range of recommendations, most notably around openness and transparency issues, which the RBW and regulatory team have been responding to and which the RBW is satisfied have been actioned or form part of ongoing delivery plans for the board and regulatory team.

In 2018, as part of the ongoing development of the framework and its oversight, the RBW also commissioned its own stakeholder review of the framework.

A broad range of involved Stakeholders were surveyed about the effectiveness of the Framework overall, as well as views on all the key component areas of the regulatory process. Again the RBW was pleased the review concluded that there was broad agreement from respondents that the Framework and its various components were fit for purpose.

iii) Office of National Statistics (ONS) review

Following the significant decision of the ONS to reclassify housing associations in Wales into the public sector, it became a priority to legislate to achieve the regulatory reform necessary to allow ONS to classify the sector back into the private sector.

The regulation team, with RBW support, was instrumental in helping to create the *Regulation of Registered Social Landlords (Wales) Act 2018* that became law in Wales in June 2018.

The legislation reduces central and local government controls over housing associations and allowed the ONS to announce housing associations debts in Wales would be removed from the public sector balance sheet and borrowing would not score against public debt in future. As a result of these changes, the current funding arrangements for housing associations will be maintained and allows them to continue to access private sector borrowing to enable them to build new social housing.

iv) The Welsh Government's 2019 Affordable Housing Supply Review

In April 2018, the then Minister for Housing and Regeneration announced a review of affordable housing supply. The terms of reference for the independent review were wide ranging, and the review has been managed through a broad range of work-streams involving a range of sectors and stakeholders.

The Regulation management team has been involved with the Review. RBW submitted its own evidence to the review in September 2018.

RBW will evaluate the recommendations emerging from the review, reflect on the potential implications for the regulatory framework and its core functions, consider the resource and procedural implications, and advise the Minister as appropriate.

Section 2

Developing the regulatory framework and responding to current challenges

Resourcing Regulation

The role and benefits of a strong regulatory function

The RBW is of the view that regulatory resources are below the minimum level needed to continue to effectively deliver the current framework and provide an effective overall assurance approach for the Government.

This resource shortfall will potentially increase the risk of governance failures remaining unidentified and unresolved for too long, with consequent impact on lender and government confidence, the quality of services to tenants, and an increased inability of a Housing Association to maximise its resources and deliver on strategic national policy. A regulatory function that creates strong lender confidence impacts directly on lending rates and therefore available resources locally.

Historically, under-resourced regulatory functions across the UK, increasingly rely on local whistleblowing as a key mechanism for spotlighting governance and management failures. We have seen an increase in whistleblowing in Wales and are concerned about the direct link to the under resourcing of the regulatory function. This practice is at odds with a model of co-regulation and self-reporting.

There is a strong correlation between the effectiveness of properly-resourced, effective external regulation function, and the performance of those being regulated. This in turn directly impacts the ability of any sector to deliver on strategic government priorities and policies.

The existing regulation of the Housing Association sector, with its focus on evaluating governance and financial arrangement arrangements, and promoting VFM, provides a crucial balance between assurance and

improvement. The current co-regulatory model, underpinned by an annual regulatory judgement and a requirement for a robust self-evaluation by the Housing Association approach, remains a robust, appropriate and modern model for the sector. It is consistent with the overall direction for regulation nationally and internationally.

This regulatory approach and focus is re-establishing confidence and credibility in the overall regulatory framework with the sector, lenders and other stakeholders.

Regulatory resources

The co-regulatory approach in Wales, when it was established after the Essex review in 2009, was predicated on highly skilled regulators. This was specifically to help allow more credible local evaluation of often complex governance and financial management arrangements, and support a more proactive identification of any emerging governance problems. It also depended upon close communication between the sector and the regulator, and a two-way trust.

Since that time a number of important factors have significantly impacted on existing resources;

- There has been a consistent and significant dilution of the level of relevant sector skills and experience mix within the regulatory team;
- The extent of senior input and oversight into individual judgements has been significantly compromised as a consequence;
- A wide range of additional functions have been absorbed into the overall workload of the team without additional resource to compensate;
- There is an increased extent of whistleblowing to the regulator;

- The extent of governance failures requiring regulatory intervention or enhanced support is significantly higher than anticipated.

Regulatory support and intervention have been consistently effective in putting improvements in place but are extremely resource intensive and impact significantly on the regulation teams' ability to maintain high quality co-regulation across the whole sector.

It is important to reflect here that managing serious cases is currently estimated to take up 20-25% of the team's overall resource capacity. The resource requirement is demand-led by nature and can result in up to 80-90% of the most senior staff time being spent on serious cases for very significant periods. This has a consequential impact on day to day work, including support to other staff and on other work areas, as serious case management requires the highest priority – **given the local and sector wide reputational and delivery risks involved**.

The RBW remains concerned that the necessary resourcing of these serious cases, alongside the key need to react to issues such as Health and Safety has led to a number of significant, and ongoing, delays in other critical areas of regulatory work.

These include for example, the 2019 sector risk overview publication which is not yet published, there has been little consideration of the future strategy for regulation and Phase 2 of the data transparency project has not yet commenced. Work on improving the global accounts and implementing recommendations from the governance review has not advanced as quickly as anticipated.

PAC expectations

The PAC review of 2017 recognised the important role the RBW has in *“reflecting on the current skills and capacity of the regulatory team, which in the spirit of co-regulation will enable other stakeholders to then scrutinise the Welsh Government's ability to regulate”*. The RBW understands the challenges for the Welsh Government around existing resources, external recruitment and finding scope for additional resource, **however, the current**

arrangements are unsustainable. This is reflected both in terms of the available time to undertake the core judgement work (and the skill mix ratio which underpins it) as well as the resource to effectively deliver the increasing demands on additional functions – which are a necessary function of the overall modern regulatory approach.

The RBW has an important role to bring to the attention of the Minister the fragility of existing resources and these potential increased risks that current resource levels carry to the delivery of strategic priorities. It will look to continue that dialogue with senior management within Welsh Government and will work with the regulation team also to increase existing resource. Currently other regulators operating in Wales have more autonomy in dealing with resourcing challenges and as currently the Regulator is not able to recruit externally, this impedes the ability for specific skills and experience to support delivery of the framework.

The RBW has welcomed some planned changes to the structure of the regulation team and the approach to implementing the framework. An additional senior post has been created and, moving forward, there will be a small team leading on serious cases and also leading on governance assessments and related work.

Whilst this change is welcome, RBW does not consider that the fundamental issue of under resourcing is in any way resolved particularly in the context of the changing external environment. If further resource **cannot** be made available, it will be incumbent on the RBW to consider the options for potentially significantly reducing or stopping some of the current regulatory activity to reflect a **more realistic limited range of functions**.

Developing the overall regulatory approach in Wales

Regulatory activity in the future will continue to ensure it has a strong focus on governance matters and other trends of concern within the Housing Association sector, and ensure it provides support to the sector as it adapts

and responds to external challenges and the shifting policy environment it operates within.

That said, modern regulatory frameworks, regardless of the sector, need to continually reflect on regulatory developments and approaches elsewhere, and consider their relevance and applicability to their own arrangements.

The RBW believes it has a role to stimulate these debates, and this annual report provides some initial perspectives for ongoing national discussion, concerning:

- Regulating across both the Housing Association and Local Government sectors (Domain Regulation);
- Regulatory activities and the resourcing/funding of regulator; and
- The independence of the regulator.

a) Regulating across both the Housing Association and Local Government sectors (Domain Regulation)

Tenants should expect the same high standard of service, and engagement, regardless of whether their landlord is a Housing Association or a local authority. In England and Scotland, that basic principle is supported by the regulation of both sectors housing services being undertaken by one agency under a common approach – “*domain*” regulation.

In Scotland, the Scottish Housing regulator has responsibility for both sectors:

- Housing Associations – regulated under its own framework and assessed against governance and management, finance standards and the Social Housing Charter standards; and
- Local Government housing – assessed against the Social Housing Charter standards as part of a joint risk assessment approach with other statutory LG regulators, for example, Audit Scotland, HMIE and Social Work Inspection Agency.

In England the HCA regulates both Housing Associations and local government housing under one common set of consumer standards. The current housing *Green Paper* in England is also seeking to explore options for extending regulatory influence further into local government too.

In Wales, regulation of housing services are completely separated with little interaction between the two. Housing Associations are assessed by Welsh Government regulators against existing Performance Standards covering governance, finance and service delivery with a strong focus on tenant participation and engagement. Local Government housing is regulated as part of the wider Wales Audit Office (WAO) responsibilities for Annual Improvement Assessment. Any review of housing services specifically, within that remit, will be dictated by a council’s own improvement priorities and the WAOs risk assessment processes each year.

There are currently no established national performance standards for local government housing upon which local service provision can be planned or shaped, or upon which regulatory judgements can be formed.

The RBW believes there is an increasingly-recognised inconsistency and inequality in the nature of housing regulation between the local authority and Housing Associations sectors. This is increasingly seen as disadvantageous to local government tenant participation and access.

RBW believes this is an important area for debate in Wales regarding the concepts, options and practicalities of a “domain” or more coordinated cross-regulator approach to housing regulation – commensurate more with approaches to housing regulation elsewhere in the UK.

Recommendations arising from the ongoing independent review of *Affordable Housing Supply* in Wales may also provide a catalyst for developing thinking around a domain led approach to housing regulation.

b) Regulatory activities and the resourcing/funding of the regulator

Activities

Modern regulatory frameworks across different sectors UK -wide are increasingly being resourced to provide the appropriate capacity to deliver not only regulatory judgement and reporting and intervention, but also other related functions such as research and national data/performance management and reporting, good practice databases and portals, and national thematic reporting – in order to improve clarity and simplicity of sector performance information and improvement support and stimulation – alongside the accountability and assurance aspects. These are functions evident in the approaches to Housing Association regulation elsewhere in the UK – working alongside other improvement and data capture agencies.

It is interesting to note that in England the current Ministry of Housing, Communities and Local Government's (HCA) green paper *A New Deal for Social Housing* strongly advocates improved tenant empowerment and sees a new national set of key performance indicators (KPIs), **managed by the housing regulator**, as a mechanism for helping that empowerment. No such national KPI framework exists in Wales.

Financing regulation

Regulatory functions across public sectors in Wales and across the UK are typically resourced from either direct central government funding, or a fee-based system, as well as specific additional fee-based funding for intervention cost recovery – or a combination of all of those.

For HA regulation, the following arrangements exist:

- In Wales, regulation is funded entirely by Welsh Government;
- In Scotland and Northern Ireland too, funding is entirely from the Scottish and NI Governments only; and

- In England, the HCA introduced a fee-based charging system from October 2017 with funding a mixture of registration fees, annual assessment fees, and grant aid for intervention costs and local government work. Fees are based on social housing unit thresholds, and fees are subject to an annual consultation process.

The RBW believes there are important choices for the Welsh Government concerning the nature and functionality of the regulator in the future. It also believes that any debate around future activities, and current resources and skills mixes needed to effectively deliver the existing framework, will by necessity need potentially to explore all resourcing options available, **including the concept of a fee-based model.**

c) The independence of the regulator

Statutory and operational independence of regulatory and audit and inspection bodies (and the perception of it) is a fundamental tenet of any regulatory framework. The ability to make unfettered judgements both about regulatory focus and sector performance, and being seen to do it, provides credibility to any approach and public reporting arrangements, and enhances national and local accountability and transparency.

In Wales, regulatory and audit/inspection bodies such as Estyn, Care Inspectorate Wales, and the Wales Audit Office are subject to specific legislation, and whilst fully or partly funded by Welsh Government, have transparent governance and operational arrangements, and reporting and accountability lines independent of central government.

Housing Association regulation in England, Scotland and Northern Ireland have clearly defined independence and accountabilities.

In Wales, housing regulation is a responsibility of the *Education & Public Services Group* within Welsh Government which includes housing policy, operations, and regulation within its remit. Accountability and budget lines for the regulation function are included within that department and can appear more opaque than elsewhere.

Regulatory independence and transparency of accountability and funding streams remains a key ongoing issue across the UK. It is interesting to note that in England, the importance of transparent independence of the regulator has been recently recognised by legislation enabling the housing regulator to become a separate Non-Departmental Public Body (NDPB) outside of the structures and accountabilities of the Homes and Communities Agency and more accountable to Parliament.

In Northern Ireland, where housing regulation traditionally formed a part of the wider Dept. of Communities, the increased importance of transparency and independence has been recognised and regulation is now a quasi-independent function, **separated more clearly** from housing policy and operations.

Arrangements in Wales now seem behind developments elsewhere in the UK and the RBW believes current independence arrangements for housing regulation in Wales need further discussion and examination, both as a comparison with other regulatory arrangements in Wales, and recognising the emerging trend to look to enhance transparency and independence, and accounting and funding clarity, across public and other sector regulation. This would be particularly important in the context of any discussions around a fee-based system and the need to 'ring-fence' funding.

Section 3

Sector performance

This section of the annual report provides high level analysis and emerging common themes concerning the performance of the sector, drawn from the information gathered through the regulatory process.

The analysis of formal regulatory judgements to date (See table 1) – which covers the whole of the regulated Housing Association sector in Wales suggest most of the sector generally demonstrates effective governance, financial management and viability, and strong delivery of services to tenants and service users.

However, as already noted in this report, there remain too many specific instances of governance failings within parts of the sector that have given rise to either formal intervention or increased regulatory risk, or a wide range of additional regulatory involvement and support. Many of those who receive enhanced regulatory input are able to address the issues identified, whilst this is a positive indication co-regulation is working well, it does not enable an accurate external view of how regulators time is being spent as these cases are not made public.

Out of the 39 Housing Associations that have received a formal judgement to date, in effect the whole of the regulated sector, seven organisations have been determined to have needed increased regulatory activity or a formal intervention leading to an adverse judgement.

For a small regulated sector, RBW believes that is a concerning proportion.

This is exacerbated, in part, in that ongoing early identification of challenges locally and responsive support from the regulator is a core platform on the co-regulatory approach in Wales, and preventative, up-front work is no doubt a factor in reducing the potential for further non-standard judgements.

The lessons learned exercises put in place as part of the overall regulatory work consistently highlight where interventions have been necessary with poor local governance and management practices as the most common re-occurring factor, notably:

- The quality of performance assurances given to and taken by the non-executive board, and lack of formal board assurance frameworks;
- The over-reliance on inaccurate or flawed data;
- The over-reliance on internal audit assurances that were not robust and not challenged;
- Organisational culture and complacency; and
- Poor organisational responses to the regulatory concerns.

These remain key concerns for the RBW. The sector and CHC recognise these concerns. The CHC *Code of Governance* launched in 2018 articulates a set of principles and recommended practice to support effective governance and management. The move towards a focus on organisational cultures rather than processes should be seen as a positive step to address some of the common themes noted above and recognises that the responsibility to shape appropriate and robust governance arrangements rests with each association.

This, alongside the RBW's own complementary publication and vision of good governance – *The Right Stuff*, published in 2018 provide potentially important platforms for governance improvements, if they are invested in locally.

In addition of course, ongoing regulatory activity across the sector and the formal judgements, continue to highlight challenges

for the sector in adapting and responding to national and local issues, alongside common emerging themes that will constantly require strong local governance and regulatory awareness.

The RBW will take a keen interest in ensuring that regulatory activity in the future will continue to have a strong focus on these governance matters and other trends of concern within the sector, ensuring the regulatory function provides timely support to the sector as it adapts and responds to external challenges and the shifting policy environment it operates within.

Section 4

Developing the Regulatory Board for Wales

Alongside the oversight and involvement in the regulatory activities highlighted in this report, the RBW has been keen to continue to increase its profile and its engagement with the sector, tenants and sector stakeholders – as well as continuing to develop and improve the RBW’s own governance and management arrangements.

This has included, for example:

- The Chair attending, chairing and speaking at a range of national and local sector events;
- The board attending key events and having a strong visible presence;
- The chair regularly writes or contributes to housing publications and articles on governance and regulatory issues;
- All RBW meetings being conducted at Housing Associations locations, providing the opportunity for the association’s own board and staff to showcase local initiatives, and discuss issues and current topics with the RBW;
- The Board conducting its own review of how it is perceived by different stakeholders;
- The distribution of a personal letter from the RBW chair, following each board meeting, outlining key board discussions and decisions;
- The introduction of a bi-annual summit between the RBW and the board of the CHC, to share perspective and agree potential areas of collaboration;
- The establishment of a *Thought Leadership Group*, made up of a mix of experienced individuals from a wide range of backgrounds. The group will provide strategic thinking and advice to both the RBW and the CHC in planning future regulatory approach, and wider policy considerations;
- In line with good advice to the sector, the RBW has adopted its own *Board Assurance Framework*, allowing it to more effectively monitor the assurances provided by the regulator on delivery of the regulatory framework, and to support the monitoring of its own output and arrangements; and
- In 2019, the RBW will also commission its own review of current RBW skills and development needs to further support improvement and enhancement of the board’s governance arrangements.

Appendix 1

Membership of the Regulatory Board for Wales: 2018/19 – including those members who left the Board in 2018

- Helen White (Chair) [01/02/16 – Present]
- Bob Smith [01/02/16 – Present]
- Doug Elliott [01/02/16 – Present]
- Jane Mudd [01/09/18 – Present]
- Kevin Lawrence [01/09/18 – Present]
- Ceri Victory-Rowe [01/02/16 – 31/01/19]
- David Roberts [01/02/16 – 31/01/19]
- Ron Dougan [01/02/16 – 30/06/18]
- Claire Russell-Griffiths [01/02/16 – 31/03/18]

The Regulation Advisory Group (RAG)

The RAG is chaired by a member of the RBW, and includes representatives from:

- Community Housing Cymru (CHC) and member representatives
- Welsh Local Government Association (WLGA)
- Tenant Participation Advisory Service (TPAS) Cymru
- Lender representatives
- Tai Pawb
- Chartered Institute of Housing (CIH) Cymru
- Shelter Cymru
- The housing regulation team