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The Regulatory Board for Wales
**Report to the Minister for Housing and Local
Government - November 2020**

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Introduction

Regulation of the Housing Association sector in Wales is guided by the Welsh Government's [Regulatory Framework for Housing Associations Registered in Wales](#). This modern approach to regulation of the sector has a strong tenant focus, and a regular evaluation of local governance and management performance, and financial viability. It is a model of regulation that provides a valuable platform for independent assurance to tenants, lenders, investors, government and other key stakeholders.

This briefing draws on the extensive information available from that regulatory work to provide the Minister with the Regulatory Board for Wales (RBW) overall perspectives on:

- the performance of the sector and the work of the regulator during this last year;
- the sector's response to the Covid-19 pandemic and the role of the regulator during this ongoing period; and
- Learning from the pandemic, and the strategic opportunities that exist to reshape existing regulatory approaches in Wales.

This short briefing paper should be read in conjunction with the Housing Regulation – Performance Assurance Report 2019/20 which provided a more detailed precis of their work, and its conclusions about the sector's performance.

We intend to further reflect on the performance of the sector and the work of the regulator during the Covid-19 pandemic in next year's report.

The performance of the sector and the work of the regulator during this last year

i) Existing regulatory judgements

The regulation team aims to publish at least one formal regulatory judgement each year for every housing association in Wales. These judgements, which cover both governance arrangements and financial viability are now a core element of the regulatory framework and a key barometer of performance for a range of stakeholders. In this second cycle of judgements since their introduction, 36 were published, which has been a commendable achievement.

The significant majority of judgements (over 90%) were again rated as "standard" – similar to the previous cycle. The RBW again believes this evidences a healthy sector overall, which is generally meeting regulatory requirements and demonstrating it is effectively meeting the required statutory Performance Standards that cover governance, financial management/viability and service delivery .

Whilst there has also therefore been little change in the number of “non-standard” judgements over the two cycles, it is important to note that during the last year, only two housing associations were newly assessed with non-standard judgments compared to four in the previous year and there has also been a reduction of around 20% in the number of issues raised in regulatory assurance letters.

The RBWs report to the Minister in 2019 was positive about the overall sector performance, but also highlighted that there remained too many instances of governance failures that gave rise to both interventions and a wide range of additional regulatory involvement. Whilst judgement trends this year signal a positive direction of travel, we would still like to see improvements in aspects of overall governance, landlord health& safety, risk management and financial planning in particular. The RBW strongly believes that the improvements in the regulatory approach to assessing an Association’s performance, including evaluating governance arrangements - as part of longer term adaption of the framework noted later in this report - will provide a platform for further improvements in these areas.

ii) 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 focus during this unprecedented current period will naturally crystallise around Covid-19 support and intelligence-sharing, but the RBW has also recognised the range of wider sector support that has been provided by the regulator, alongside specific initiatives put in place by the RBW itself. These have included:

a) National thematic reviews. The RBW commissions periodic specific national thematic reviews, when they are considered relevant to developments locally or nationally. 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.

Last year, the Board published its strategic review of tenant engagement, [The Right Stuff: Hearing the Tenants’ Voice](#) (as well as two other independent pieces of research commissioned to inform the review). The Covid-19 crisis has given greater emphasis to digital communication and whilst there will need to be a balance between different forms of communication, we should continue to look to ensure that tenant engagement is being delivered effectively, in the right ways and at the right time. The RBW and the regulation team are continuing to work with TPAS Cymru to seek the views of tenants as to what information they would find it useful to have about the performance of their landlord. It is hoped this will then inform work to

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improve transparency and publication of data. A strong tenant voice in regulation is important, not least in ensuring customer-focused services.

b) Specific sector publications

These have included:

- the Regulator's annual sector-wide Risk Overview Report: challenges, risks and regulatory expectations, designed to highlight national and emerging themes and support local board's and executive team's strategic planning; and
- the annual [Global Accounts](#) publication for the sector (jointly with the CHC) that provides a range of comparative financial and performance data.

c) Supporting national reviews

The Covid-19 pandemic has reinforced the importance of good quality, safe and secure housing. The evidence is that supply continues to fall well short of need. In September 2018 we submitted the RBW's contribution to the [Independent Review of Affordable Housing Supply](#) and welcomed its wide-ranging report published last year. We have continued to engage with the work being done by Welsh Government and other stakeholders to implement the recommendations of the Review. In addition, as a Board we shall continue to ensure that delivering value for money in all aspects of associations' work remains at the heart of assessing regulatory performance.

The sector's response to the Covid-19 pandemic, and the role of the regulator during this ongoing period

The housing sector in Wales faces unprecedented risks and challenges as a result of the ongoing pandemic. As a Board, we recognise that Housing Associations are working very hard to manage and mitigate the impacts that Covid-19 is having on their operations in order to safeguard their tenants and staff.

In such exceptional circumstances, properly risk-focused regulation can play a very important role in both providing continued assurance about the sector's responses, and providing timely advice and information to the sector about emerging challenges and practices. The Board is working closely with Welsh Government officials and the wider sector to ensure that high quality services continue to be delivered and that regulation looks to learn and evolve to meet those changing requirements.

i) The regulatory approach and immediate challenges

Since the beginning of the pandemic, routine regulatory work has been pared back, and the publication of individual regulatory judgements temporarily suspended. During this period, the Housing Regulation Team continues to work closely with individual associations, developing a bespoke, risk-based and proportionate approach to regulation. This new temporary approach has focused fundamentally on the impact that the coronavirus has had on Association's operations, with a strong emphasis on:

- The safety of tenants and service users;
- Ongoing financial resilience and viability; and
- Business continuity.

The RBW has fully supported this interim approach as one that recognises the impact of the pandemic and the key assurances needed.

In addition, since May this year a monthly Business Continuity Survey has been issued to Associations in Wales to help provide accurate, up-to-date information about how they are coping with many of the current and emerging operational challenges.

To date, the results of the surveys have been comforting and encouraging suggesting that whilst Associations are reporting some increased pressures, none are suggesting that there are any unmanageable issues in any aspects of their business. Income is currently holding up reasonably well, although there is an expectation that arrears may increase significantly as financial support mechanisms such as furlough taper off and end. Associations are actively stress-testing their business plans and monitoring financial performance very closely. The regulation team is discussing any performance outliers with any association concerned to agree appropriate actions.

The regulation team, consulting with the sector and other stakeholders, and the RBW, are also implementing an interim judgement programme. The RBW believes this can be an important transitioning step that builds on the pandemic regulatory approach, in anticipation of a potential resetting of the framework in 2021.

Learning from the pandemic, and the strategic opportunities that exist to evolve existing regulatory approaches in Wales.

Evolving and rethinking the future regulation of the sector

Regulatory approaches continually need to be re-evaluated where necessary of course, to ensure they reflect modern models for regulation developing across the UK and internationally. They also need to respond and adapt to policy shifts and issues emerging from relevant national reviews and initiatives.

Learning from new regulatory approaches that have, by necessity, needed to be adapted to sector circumstances arising from the pandemic, now provide significant additional scope to rethink methodologies.

The independent review of the Regulatory Framework planned for later in 2020 also plays to that important need for ongoing regulatory currency. That review, for example, will consider the introduction of a separate additional judgement around the role and engagement of tenants and potentially plays well into developments in that key area.

The RBW believes that there are also a number of potentially fundamental changes to the regulatory approach that are relevant here too, and need national consideration – raised initially, in the main, in our report last year to the Minister and which are gathering further momentum now.

i) “Domain regulation”

Social housing tenants in Wales, whether their landlord is a housing association or a local authority, face many of the same challenges in terms of holding their landlord to account for the quality of services they receive, as well as the engagement they have with their landlord. In our report to the Minister last year, we argued that there were inconsistencies and inequalities in the nature of housing regulation between the housing association and local government sectors in Wales. We are very pleased that Welsh Government, in collaboration with TPAS Cymru, the Welsh Local Government Association, Community Housing Cymru and the Wales Audit Office, has commissioned a small piece of independent research to look at the regulatory and accountability arrangements and performance requirements for tenant services across social housing in Wales. The RBW will take a close interest in the responses to this research in 2020, and the intention is that this work will help to inform debates about the potential for any closer alignment of the accountability regimes for social housing in Wales.

ii) Improving the assessment of governance

This report has already highlighted the RBWs concern that governance problems still dominate those performance challenges emerging from the regulatory judgements.

To help develop understanding and more prompt identification of local governance issues, Campbell Tickell was commissioned by Welsh Government to provide expert governance support services to the social housing regulation team. The focus of the collaborative work was to:

- Further develop the regulatory approach to assessing governance;
- Provide training and development around good governance; and
- Maximise the chances of identifying problematic governance issues as early as possible in order to respond effectively and resolve issues on a voluntary basis.

It became clear early in the project that as governance underpins all aspects of an association's business, what was actually being developed was a new way of assessing regulatory performance - a new assessment model. It is intended that this new assessment model will also incorporate learning from the Covid -19 experiences and will be piloted at a small number of associations before full introduction planned for 2021.

Next key steps

The next twelve months signal a period of significant challenge for housing associations as they continue to respond to the pandemic pressures. Likewise, significant challenges will face the regulation team as it continues to adapt its approaches in order to respond, and provide a regulatory function that both assures and provides timely support.

Alongside that are the potentially fundamental regulatory changes noted above. Domain regulation, the framework review and possible new judgement criteria and assessment model are not mutually exclusive considerations and thorough integrated consultation and debate will be necessary.

These discussions will also inevitably need to reflect on existing regulatory resources and the impact and resource pressures as a result of any changes to the framework and approach. Our report to the Minister in 2019 made a robust case that existing regulation team resources were unsustainable given both the additional work commitments and the historic dilution of skill mix and staff numbers. This remains a fundamental concern of the RBW. Any changes to eventual resources need also to

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be built upon a strong, evidenced-based approach to resource management and planning, and is an area where the Board remains keen to see improvement.

In the view of the RBW, these discussions will necessarily need to reflect also on funding streams and the potential in the future for a fee-based system. They will also provide the opportunity to reflect on the location and independence of the regulatory function going forward – again a debate the RBW believes has significant merit.

New Board Appointments

Earlier this year, following recommendations from the appointing panel and Ministerial approval, the Board has been able to welcome two new independent members, Karen McArthur and Huw Thomas. Although as a Board we have been meeting virtually since March (something we expect to continue for the foreseeable future), these new appointments have strengthened the work of RBW. Whilst the subsequent suspension of public appointments has meant we have not yet got a new Chair of RBW, we hope that such an appointment will be made soon which will enable us to help push forward some of the key issues facing housing regulation and the sector in Wales.