



Interim Evaluation of the Regulatory Framework for Housing Associations in Wales

Research commissioned by the Welsh Government on behalf of the Regulatory Board for Wales

Research Summary

Social research

Number: 33/2013

The aim of the study was to provide information for the Regulatory Board for Wales (RBW) as to the process by which the Regulatory Framework for housing associations registered in Wales has been implemented, and to provide an early indication of its impact.

The research was undertaken by staff in Cardiff University and Shelter Cymru between November 2012 and April 2013.

Background

1. The current Regulatory Framework for housing associations registered in Wales was developed following recommendations set out in the 2008 Ministerial Review of Affordable Housing in Wales. This review (commonly referred to as the Essex Review) recognised that the existing system of regulation was weak (and in many senses failing. For example, it was argued that associations had lost faith in the systems of both regulation and inspection and that lenders were becoming concerned that Wales was a regulation-free zone); and that, whilst individual associations were making important steps forward, there was little drive for improved performance across the sector as a whole; that its full potential was not being realised; that there was a need for a stronger focus on real outcomes (rather than just outputs) and a higher degree of accountability to residents.

2. The Essex Review also noted that across the whole landscape of social housing regulation was changing, that major reform was required in relation to regulation of housing associations registered in Wales and that the Welsh Government needed to increase the resources devoted to housing association regulation. At the time the Essex review was undertaken, there was a reliance on the Wales Audit Office (WAO) process of housing inspection as the primary tool for regulation and improvement within the sector. In addition, the Essex Review recognised that the housing association sector in Wales was growing (partly as a result of the stock transfer of council housing in many parts of Wales) and that the challenges which individual associations, and the sector as a whole, were likely to face were both changing and increasing. The evolving context in which housing associations are now operating (and the changing demands and expectations placed upon them) has reinforced the significance of the new Regulatory Framework in

ensuring that housing associations in Wales are well governed, financially viable and well managed, delivering high quality resident-centred services.

3. Following publication of the Essex Review, an implementation framework was put in place based upon a co-production approach between the Welsh Government, Community Housing Cymru (CHC), the Welsh Local Government Association (WLGA) and a number of other stakeholders. These organisations shared ownership of the development of a new regulatory framework, something of a departure from the traditional approach used to take forward recommendations made by independent policy reviews.

4. The current Regulatory Framework has been established for housing associations, which not only places new responsibilities upon the Welsh Government as the Regulator but also raises expectations that individual associations (both staff and boards of management) will assess their own performance

honestly and challenge themselves to drive their own continuous improvement. The Framework also requires both the Welsh Government and the housing association sector to develop constructive relationships around regulation: with local authorities, with tenants, with other stakeholders and (perhaps most critically) with each other. The overall purpose of regulation of housing associations in Wales is to ensure their on-going provision of high quality, affordable housing; to promote effective governance; to underpin their financial viability (protecting public investment and maintaining the confidence of lenders), and to support high quality and improving housing and related services. Underlying these objectives are principles of openness, transparency, accountability, the proportionality and targeting of resources, consistency (as to how regulation is applied), the maintenance of the independence of individual housing associations and the placing of service users at the heart of regulation. This interim evaluation of the current

Regulatory Framework should be seen in this context.

Key Findings

Principles and Approach to Regulation

5. The overwhelming view from the study is that the principles underpinning the Regulatory Framework are the right ones – that service users should be at the heart of regulation; that individual housing associations should be responsible for their own actions; that regulation should be open, transparent, consistent and proportionate; and that close collaboration should underpin regulation. However, there are strong views that practice often differs from theory, particularly in relation to consistency and proportionality.
6. There is also a view amongst a number of associations that, despite evidence of effective relationships between individual associations and the regulator, there has been a significant move away from the concept of co-regulation.

7. There is a clear perception that, over time, there has been a move away from some of the principles underpinning regulation towards more of an inspection approach (this perception is particularly marked amongst those associations who have been through the HARA process) and that this is not what the majority of associations expected or want.
8. Furthermore, there is a view within the housing association sector that, in the current environment (which has clearly become more challenging for associations since the Regulatory Framework was first introduced), the balance of regulation should become more risk-based, that there should be greater emphasis within regulation on issues of governance and finance, and that this would help strengthen and enhance customer services.
9. The study has shown there is a need for an increased emphasis on learning from regulation: for individual housing associations, for boards of management and for the Regulator. There is welcome support for additional training (currently being provided by CHC and other stakeholders, and supported by the Welsh Government), for example in encouraging best practice in relation to self assessment and in developing and evidencing delivery outcomes.
10. There is a growing expectation that regulation will focus not only on promoting continuous improvement within individual associations, through the HARA process and ongoing relationship management and regulatory engagement, but that resources will be deployed to promote the dissemination of positive practice and develop stronger cross sector learning and improvement. This might be done, in part, by the Regulator drawing together lessons from regulation in respect of particular elements of the Regulatory Framework and different aspects of housing associations' operations. This is also an area where other organisations (e.g. CHC, TPAS Cymru, Welsh Tenants and others) might have an enhanced role to play.

11. Whilst there is a recognition of the problems faced by the Welsh Government in terms of resource constraints, as well as changes over time in the make-up and responsibilities of staff within the Housing Regulation Team (and the time taken to fill vacancies), the consensus view revealed by the research is that the Welsh Government should focus on considering how the current resources might best be organised and deployed to deliver the different elements within the Regulatory Framework.

Implementing the Regulatory Framework

12. There are differences of opinion as to whether the delivery outcomes are really outcomes (some are; some rather less so). There is a perception that, from the outset, there was a lack of clarity about the nature of the delivery outcomes (and the supporting demonstration points) and that the concept of outcomes is not fully understood across the housing sector. There is a strong view that there is scope for revising and refining the delivery

outcomes, removing duplication and making some of the demonstration points (below the level of the delivery outcomes) less prescriptive.

13. The move to outcomes (rather than outputs or activities) is widely supported, but requires a different approach by housing associations in Wales. It must also be recognised that associations are not all starting from the same base, and that some are finding it more difficult than others to develop and evidence outcomes and impacts. It is clear that some associations have been able to deploy greater resources than others to do this. However, there are concerns that some externally verified evidence has not been accepted or has been otherwise disregarded within the regulatory process.

14. There is general acceptance that self assessment should be fundamental to any organisation and not just part of the Regulatory Framework. Self assessments produced so far have been of variable quality (and there are views from the Regulator that some do not meet

the requirements of RSL circular 33/09). Some housing associations have devoted considerable resources to self assessment and have ensured board and service user engagement. Other self assessments are less robust and have a weaker evidence base. Some need to be more self critical (and some boards may need to be more challenging, which raises questions as to whether all housing association boards in Wales have the appropriate skill sets in the current environment).

15. In seeking to build a baseline database for regulation, the Welsh Government Housing Regulation Team has put in significant work with a number of individual housing associations to improve the quality of self assessments. However, this has had implications in terms of delivering the broader Framework.

16. The research has shown that housing associations engage with service users in a number of different ways. However, from the small number of tenant focus

groups undertaken in this study, service users find it difficult to distinguish between broad issues of engagement and participation and involvement in processes of regulation. In some cases, associations need to engage with service users at more strategic levels, if they are to ensure that residents are at the heart of regulation.

17. Effective relationship management (the development of relationships between the Housing Regulation Team and individual housing associations) is seen as a very important element of the Regulatory Framework. Overall, the housing association sector in Wales is keen to see regulation not only as a collaborative venture, but also one which is proactive rather than merely reactive. There are perceived benefits in associations working with the Housing Regulator to identify issues and risks on a timely basis, with regulation playing a preventative role rather than an enforcement one.

18. Such relationships depend upon a high level of interpersonal skills

and appropriate experience, particularly on the part of Senior Regulation Managers (SRMs). The research suggests that the approach to relationship management has, to date, been variable and that in practice relationship management is mixed (some relationships are very good, some much less so). Of course, it must be recognised that there are risks in relationship management. A collaborative approach to regulation should be about the Housing Regulation Team engaging with associations as a critical friend. It is also important that checks and balances are in place to ensure regulators remain impartial. In addition, it is vital that individual housing associations are honest and open in their relationships with the Regulator.

19. The research evidence suggests that delivering continuing effective relationship management is, in some cases, proving difficult, not least because of resource constraints, staff changes and the ways in which available resources are currently being deployed. It

seems to have been made more difficult because of the depth of work being undertaken within the HARA programme, which is diverting available resources away from ongoing relationship management. The research has identified examples of very positive and productive relationship management, but also evidence of very limited relationship management and inconsistencies in the ways in which this aspect of the Regulatory Framework is being implemented.

20. There are also tensions in some of the relationships between the Welsh Government Housing Regulation Team and the housing association sector. Some of the individual relationships are working well, but others much less so, and effective working relationships are critical to the success of a collaborative approach to regulation. Despite a shared commitment to the principles of the Regulatory Framework, within both the Welsh Government and the housing association sector there appear to be significant

differences of opinion as to the direction which regulation is or should be taking and the relative priorities within the regulatory process.

21. In addition, the research highlights evidence of poor and sporadic communication, a lack of transparency and an absence of trust and mutual respect between some in the housing association sector and some members of the Housing Regulation Team. There is a challenge for everyone concerned to develop greater clarity around the purpose of regulation and a better understanding of a shared approach to the process, as well as improvements in the nature and quality of two-way communication between the Housing Regulation Team and the housing association sector in Wales.

Regulatory Assessment

22. The programme of Housing Association Regulatory Assessments (HARAs) is proving very resource intensive. There has been a degree of surprise

within the housing association sector that, through the HARA process, the approach to regulatory assessment seems to have metamorphosed in to one more concerned with checking compliance, not only in relation to each of the 10 broad delivery outcomes but against each and every one of the detailed demonstration points. This has given rise to a feeling amongst some housing associations that there has been a shift towards a much more inspection- and audit-based approach within regulation, with an emphasis on compliance, and that this is not in keeping with the ethos underpinning the Regulatory Framework.

23. There are also views that the HARA is not always focusing on the right issues (and that significant parts of the business of individual associations – e.g. development activity, progress towards the Welsh Housing Quality Standard, the work of individual organisations within group structures etc. are seen as outside of the Regulatory Framework). There are also dangers that the current

approach to regulatory assessment is undermining the key principles of proportionality and consistency.

24. The implementation of the HARA process in its present form is seen as distorting the use of resources within the Housing Regulation Team and also reinforcing a degree of disconnect between the Regulator and the housing association sector. As a result of the resources devoted to individual HARAs, insufficient time is available to spend on developing effective relationship management with individual associations, on continuing regulatory engagement or on considering and disseminating the lessons from regulation.

25. The value of the published HARAs is viewed by many as questionable. They are perceived as fairly bland, as insufficiently strategic and as not providing a clear picture of how individual associations are performing. A number of respondents have commented that it is not entirely clear from reading many of the published reports how a

judgement has been reached as to the level of future regulatory engagement.

26. The Financial Viability

Judgements (FVJs) are seen as a fair reflection of the financial strength of housing associations and provide for valuable dialogue between associations and the finance team within regulation. However, they too are seen as rather bland and it is argued that they could be tailored more to individual associations. There is little evidence that lenders place reliance upon them in making their decisions. There is also an argument for going beyond FVJs to examine financial priorities and the effectiveness of financial management within housing associations.

27. There is a widespread view that the use of “high”, “medium” and “low” future regulatory engagement is not very informative or helpful, and the tendency for the majority of associations to be classified as requiring “medium” future regulatory engagement is considered counter-intuitive. There is a lack of transparency

as to what “future levels of regulatory engagement” means in practice and what might be the relationship between level of future regulatory engagement and perceived risk. A small number of associations feel that their assessment of future regulatory engagement is already inappropriate and there is a case for consulting the housing sector in Wales over the nature and timing of future regulatory assessments.

28. It has already been noted that there are doubts as to the value of some of the published outputs from regulation in their present form (e.g. HARA final reports). However, in the interests of openness and transparency there are other outputs from regulation (e.g. individual self assessments) which could be disseminated more widely, and associations could be encouraged to make these available to service users and other local stakeholders (some already do). The (non-confidential) papers of the Regulatory Board for Wales (RBW) might also be placed in the public domain.

29. There is as yet no clear position as to when reassessment might take place. The opinions gathered from this research suggest differences of view: that it might be every 2-3 years; that it could be risk based; or that it should be a continuous (but different) process based upon ongoing relationship management, with a focus on those areas previously identified for improvement.

Overseeing Regulation

30. The Regulatory Board for Wales (RBW) is perceived to have worked relatively well in holding the Regulator to account. However, there is a view that the Board needs to raise its external profile and to do more to deliver on its wider mandate in respect of the health of the housing association sector and the risks and threats which it faces. This suggests that the Board (and the Regulator) needs to be more strategic and find time to consider the wider issues facing the sector (welfare reform, managing risk, the changing nature of funding/borrowing, linking

regulation to wider policy change etc.). It is not clear that any lessons from regulation at a national or strategic level are being used to inform policy development.

31. There are less clear views as to the membership of the Board. There is a degree of support for increasing the independent membership of the Board, and many housing associations are not convinced that two separate tenant-focused organisations (TPAS Cymru and Welsh Tenants) should both be represented. In terms of stakeholder membership, opinions expressed during the research are not clear cut as to whether this should be (as at present) paid officers or elected members of the representative bodies. It was suggested by some respondents that the Tenant Advisory Panel (TAP) might, at the very least, have observer status on the Board.

32. The perception in most quarters of the Tenant Advisory Panel (TAP) is that it is also working fairly well and has provided valuable feedback to the

Regulatory Board for Wales (RBW), particularly on consumer issues. There is evidence of strong commitment from members of the Panel to improving the regulation of housing associations and ensuring that this is “tenant focused”. However, the Panel has limited resources, which has made it difficult to raise its profile within the housing association sector and engage with individual associations, their tenants and other stakeholders. There have also been acknowledged problems of recruiting to the Panel in some regions of Wales.

Issues for Future Consideration

33. The research draws a number of conclusions from the key findings and offers suggestions for how the Welsh Government, the Regulatory Board for Wales (RBW), the housing association sector in Wales and other stakeholders might take forward regulation and the development of the Regulatory Framework.

34. There is a challenge to develop greater clarity around the purpose of regulation and the approach which should be taken. The Welsh Government and the Regulatory Board for Wales may wish to consider reinvigorating the Regulatory Advisory Group, which could not only assist in the evolution of the Regulatory Framework but also help to address some of the current criticisms of regulation, improve communication and provide a bridge between the Housing Regulation Team and the housing association sector, helping to strengthen the co-regulatory approach.
35. Given the importance of continuous improvement and the increasing challenges facing the social housing sector in general, it is important that cross-sector learning from regulation is prioritised and not left until the completion of the first cycle of HARAs. In our view this needs to be done through the dissemination of thematic, sub-sector and geographic studies of aspects of regulation, both in published short report form and through conferences, workshops and training events. The Welsh Government and its Housing Regulation Team need to work closely with other primarily national level organisations in Wales to promote effective learning from regulation.
36. If regulation is to be more risk based then consideration needs to be given as to the balance to be achieved between issues of governance, finance and housing services. In the current economic climate there may be a case for reviving the Financial Advisory Group in order to strengthen the financial aspects of regulation.
37. There is widespread support for housing association performance being assessed through delivery outcomes. However the Welsh Government, in conjunction with the housing association sector, needs to consider refining the present delivery outcomes (and demonstration points), so that the former are more outcome-focused and the latter less prescriptive.
38. Given the variable quality of housing association self

assessments, the research would suggest there is also a case for a more detailed analysis of individual self assessments, with a view to identifying positive practice and raising overall standards.

39. In the light of the findings of this research the Welsh Government and the Regulatory Board for Wales should consider what resources are devoted to different elements of regulation. This may mean a reconsideration of the HARA process and outputs so that adequate resources can be devoted to relationship management, promoting learning from regulation and continuing regulatory engagement. In addition, urgent consideration might be given as to how HARA reports could be made less detailed and more strategic and focused.

40. The continued use of the categories of future regulatory engagement should be considered as a matter of priority. It may be appropriate to tailor future regulatory engagement more clearly to improvement planning rather than offering a

simple measure of future regulatory engagement.

41. The Welsh Government and the Regulatory Board for Wales should give further thought to the future nature and timing of regulatory assessment. Improved self assessments, the refining of delivery outcomes, increased emphasis on learning from regulation, strengthening relationship management and continuing regulatory engagement might suggest that detailed regulatory engagement in the future should be limited to where there is clear evidence of failure in relation to key delivery outcomes.

42. In due course, the membership of the Regulatory Board for Wales and the resources available to the Board and the Tenant Advisory Panel need to be revisited.

Summary of Research

Methods

43. The research was undertaken using a number of different research methods. These included:

- documentary analysis
- semi-structured interviews with key informants
- an online self-completion questionnaire to housing association chief executives and board chairpersons. This achieved response rates of 100% from chief executives and 83% from board chairpersons across the 37 housing associations which at the time of the research were subject to full regulation in Wales
- focus group discussions with members of a number of key representative organisations and networks
- three in-depth case studies with housing associations where the HARA process had been completed and the report published. This involved interviews with a range of senior staff, further documentary analysis, and two focus groups in each organisation with small groups of Board members and informed tenants.

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