

Public Accounts Committee

Inquiry into Regulatory oversight of Housing Associations

August 2017



National Assembly for Wales
Public Accounts Committee

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The Committee was established on 22 June 2016 to carry out the functions set out in Standing Orders 18.2 and 18.3 and consider any other matter that relates to the economy, efficiency and effectiveness with which resources are employed in the discharge of public functions in Wales.

Current Committee membership:



Nick Ramsay AM (Chair)
Welsh Conservative
Monmouth



Mohammad Asghar AM
Welsh Conservative
South Wales East



Neil Hamilton AM
UKIP Wales
Mid and West Wales



Vikki Howells AM
Welsh Labour
Cynon Valley



Neil McEvoy AM
Plaid Cymru
South Wales Central



Rhianon Passmore AM
Welsh Labour
Islwyn



Lee Waters AM
Welsh Labour
Llanelli

The following Member was also a member of the Committee during this inquiry:



Mike Hedges AM
Welsh Labour
Swansea East

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Chair's foreword

Since the establishment of the National Assembly for Wales in 1999, Housing Associations have received nearly £1.5bn of grant funding from the Welsh Government. These independent bodies are not governed by the Welsh Ministers but are regulated by them. The decision in September 2016, by the Office for National Statistics to reclassify Welsh Housing Associations as part of the public sector for accounting purposes, raised questions about the nature of the relationship, and the efficacy of the current governance arrangements.

The Public Accounts Committee of the fifth Assembly decided to hold its first committee led enquiry into the sector to test whether the current regulatory arrangements are effective and efficient. In particular we wanted to examine whether the stated aim of putting tenants 'at the heart' of the regulation regime was being achieved.

With responsibility for a considerable portion of social housing in Wales no longer in the hands of local Councils, but instead under the control of newly established social landlords, the relationship between the government and registered social landlords has not been entirely clear.

The Committee took extensive evidence from tenants and the sector to inform this report. Our inquiry considered how housing associations are governed by their boards, what works well and what can be improved.

Generally we found governance and regulation within housing sector to be working well enough for housing associations to be granted more autonomy, but in return we think they should do more to be open and transparent in their decision making.

Our report makes a number of recommendations aimed at each of the different actors involved in the regulatory relationship.

We think the Welsh Government should be equipping itself better to deal with the sector by having the right skills in its regulation team and being open about how they exercise their oversight.

We think that housing associations need to consistently apply the Community Housing Cymru code of governance and admit where that not is working well enough. They need to be open about the investment risks they are taking, and have the confidence to be self-critical and encourage challenge.

And we think tenants should be empowered with easily accessible information and the tools necessary to use that to scrutinise their housing associations and hold them to account.

Both the Welsh Government and the sector should embrace "the wisdom of the crowd". The housing sector in Wales needs support to be high-performing; making more information easily available is just the first step, they need to empower their tenants to scrutinise their performance. The Welsh Government and the sector not only need to be more open, but in exchange for greater freedom for the sector they need to do more to enable citizens to scrutinise and influence the way the sector is run in Wales.

Conclusions and recommendations

Conclusion 1. The Committee welcomes steps to make housing association regulation more open, transparent and accessible to all stakeholders, including the public at large. Information about performance needs to be both publicly available and easily accessible. The new Regulatory Judgements are a step in the right direction but more can be done, particularly to empower tenants so they can hold housing association boards to account. We welcome the Welsh Government’s commitment to undertaking a review of the effectiveness of the most recent changes in 2018 and request that a copy of the report is provided to this Committee..... Page 14

Recommendation 1. Given the significant amount of public money invested in the sector, and the reliance placed on effective regulation by lenders, we recommend that the Welsh Government’s regulation team is routinely permitted to recruit externally and that the Welsh Government give consideration to how it might achieve the most appropriate balance of skills on its regulatory team. Page 17

Recommendation 2. Furthermore, in the interests of transparency we recommend that in its Annual Report to the Cabinet Secretary for Communities and Children, the Regulatory Board for Wales, should reflect 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. Page 18

Recommendation 3. The Regulatory Board for Wales should provide effective challenge to the Welsh Government’s regulation team. Given the sensitive nature of some matters discussed by the Board, it was difficult for the Committee to determine how effective that challenge has been. The Committee recommends that the Welsh Government and the Regulatory Board for Wales consider how more openness and transparency can be brought into how they work together. Page 19

Recommendation 4. We recommend that the Welsh Government make provision for the availability of clear and comparable data sets to assist tenants in determining and challenging the position and policies of their Housing Association. We were impressed by the approach taken in this regard by the

Scottish Housing Regulator and would urge the Welsh Government to take a similar approach. Page 29

Recommendation 5. Given the reliance on self-evaluation within the regulatory process and having heard feedback from tenants that the system is not always robust or accurate, we recommend the Welsh Government provide reassurances that it is satisfied that tenants' views will be adequately captured and reflected in the future and closely monitors the new tenant engagement arrangements being undertaken by TPAS Cymru. Page 29

Recommendation 6. We recognise the importance of making a clear distinction between transparency and scrutiny, with the former being necessary but not sufficient to achieve the latter) and we recommend that the Welsh Government should place a requirement on each Housing Association to be able to demonstrate to the Regulatory Team how they empower their tenants to scrutinise their performance. We believe this should go beyond simply publishing information and enable different Housing Associations to react to their local circumstances requiring them to be proactive in their approach. These steps should be integral to demonstrating effective and appropriate tenant involvement as part of the Performance Standards. Page 29

Recommendation 7. We note the Welsh Government's consideration of the payment of board members as part of its wider view of regulation. We recommend that Welsh Government give considerations to enabling housing associations to determine whether they pay their board members or not, and housing associations are given responsibility for setting that pay in a manner that is open and transparent. Payment to Board Members should also be appropriately disclosed in the Annual Accounts of Housing Associations. Page 29

Recommendation 8. We welcome the forthcoming review of governance within the sector and would urge the Welsh Government to work closely with Community Housing Cymru as it updates its Code of Governance in light of the review's findings. Page 29

Recommendation 9. We recommend that Welsh Government consider putting in place mechanisms for regular reporting and benchmarking of performance information to provide assurances on how well the sector is performing. We

- further recommend that this information should be available from a central website, along with other datasets as noted in Recommendation 4. Page 30**
- Recommendation 10. We recommend that any deregulation of the sector necessary to reverse the ONS decision is proportionate and ensures the Welsh Government, as Regulator, still has sufficient powers to protect the interests of stakeholders, in particular tenants..... Page 32**
- Recommendation 11. We note the potential benefits of diversification. We believe that while diversification is needed to cross-subsidise affordable housing, there are serious risks to the sector if this is not managed effectively. While the ONS re-classification decision would warn against further Welsh Government control of how housing associations run their own affairs, we think there is a need for greater clarity on how the Welsh Government oversees diversification. This is particularly the case where it is undertaken by a non-registered social landlord subsidiary..... Page 36**
- Recommendation 12. We recommend that the Sector Risks and Regulatory Expectations document should provide further detail on the Welsh Government’s legitimate interest in non-RSL subsidiaries and outline scenarios that would cause concern to the Regulator..... Page 36**
- Recommendation 13. We further recommend that the Welsh Government carry out a review of current levels of diversification within the sector - the findings of which should be published. Page 36**
- Recommendation 14. We have concerns regarding the impact the rise in interest rates would have on the housing sector in Wales. We recommend that the Regulator carries out an assessment of all housing associations capital and their level of exposures to risk and summarise their findings..... Page 36**
- Recommendation 15. Given the Welsh Government has no powers with regard the setting of senior management pay in the housing association, we recommend that Welsh Government re-emphasise and endorse importance of openness and transparency in relation to the setting of senior management pay across the public sector. We recommend the Welsh Government implements measures to ensure its Regulation Team has a key role in ensuring that the pay setting process is robust and that there is appropriate disclosure in the Annual Accounts of Housing Associations of senior management pay..... Page 38**

01. What this report is about

1. Housing associations provide more than 158,000 affordable homes and house around 10% of the Welsh population.¹ They offer a range of housing solutions, including traditional social rented housing, low cost home ownership schemes, specialist social housing for the elderly, disabled and those with additional needs.

2. They also provide a wide range of other support services for tenants and residents in their communities. Housing associations are regulated by Welsh Government's housing regulation team on behalf of Welsh Ministers and their work is overseen by the Regulatory Board for Wales.

3. Housing associations make a significant contribution to the Welsh economy, and are estimated to have directly and indirectly contributed over £2 billion in 2014-15.² Although regarded as third sector organisations, housing associations receive significant public funding (around £1.5 billion from the Welsh Government since 1999) and discharge some public functions. For example, those relating to homelessness where they have a statutory duty to co-operate with local authorities. Housing associations also access substantial amounts of private finance and currently have borrowing in excess of £2 billion.

4. We heard that there were 92 associations registered as social landlords, with 34 of those are significant providers of social housing. Eleven associations have been created following a ballot of local authority tenants who supported a stock transfer. The sector is diverse, with some small associations focused on their local area, and other much larger associations with interests across Wales.

5. We agreed to undertake an inquiry into the regulatory oversight of housing associations. The aim of the inquiry was to examine:

- The effectiveness of the current Regulatory Framework for Housing Associations registered in Wales;
- The effectiveness and quality of governance arrangements;
- Whether the current regulatory regime is effective in managing and mitigating sector wide risks;
- The effectiveness of the co-regulatory approach in practice; and
- The remuneration of senior executives of housing associations.

6. Our work has been undertaken against a backdrop of on-going change affecting the housing sector including the Office for National Statistics (ONS) decision to reclassify Welsh housing associations as part of the public sector for accounting purposes;³ the Welsh Government's commitment to develop 20,000 affordable homes over the fifth assembly term which housing

¹ Written evidence, [Consultation Response HA6](#), January 2017

² Community Housing Cymru, [Socio-Economic Impact Report](#), 2016

³ [Statistical classification of registered providers of social housing in Scotland, Wales and Northern Ireland](#), September 2016

associations will play a key role in delivering; on-going welfare reform and changes being made to the Regulatory Framework by the Welsh Government.⁴

7. We took evidence from a number of witnesses during formal committee meetings, details of which can be found at Annex A. In addition, we held a stakeholder event on 5 December 2016 with housing association tenants, to discuss a range of issues including tenant involvement in how housing associations are run and regulated; whether tenants know enough about how their housing association is performing; the extent to which tenants are able to influence and challenge the way that housing associations work, the decisions housing associations take and whether tenants have confidence that their interests are being protected by housing association boards and the Welsh Government as regulator.

8. To further complement our work we published an online survey to which we received 59 responses from a wide range of stakeholders including tenants, board members, housing association employees and a mixture of volunteers, interested citizens and participation workers. The findings of our work are set out in this report.

⁴Welsh Government - [Launch of a revised and improved approach to delivery of housing regulation](#) - December 2016

02. Changes made by the Welsh Government to the regulation of housing associations should bring greater transparency to the sector by highlighting good performance and ensuring problems are addressed at an early stage.

9. The Welsh Government has recently made a number of changes to how they regulate housing associations. A new 'judgement framework' was launched in December 2016, and a new Regulatory Framework, incorporating new performance standards formally replaced the 2011 Regulatory Framework from 1 June 2017.

10. The Committee heard from a range of stakeholders about the importance of effective regulation. Stuart Ropke, Chief Executive of Community Housing Cymru (CHC) told us:

“...good regulation can actually add value to the organisations being regulated, and can help improve performance.”⁵

11. Peter Hughes, Director of Commercial Lending at the Principality Building Society, also emphasised the importance of regulation, noting that one of the questions lenders ask before lending to housing associations is, “What is the competence and confidence we have in the regulator?”⁶ Mr Hughes confirmed he was happy with the direction that regulation was heading in.

12. However, we also heard some concerns regarding a lack of consistency across Wales in how regulation is applied with Grŵp Cynefin informing us:

“...there were a variety of experiences and a lack of consistency in relation to methods of regulation across Wales. Experiences in some parts of Wales were very different to what you had in other parts. And I think that’s what has had specific attention, to ensure consistency now. And that gives us some security and assurance as a sector in relation to what to expect from the regulator, and that is putting in a firm basis, hopefully, for an open relationship.”⁷

13. Housing associations appear to be unique amongst organisations in Wales that receive significant public funding in that they are directly regulated by the Welsh Government. Other parts of the broader public sector are regulated by either independent bodies such as the Wales Audit Office or arms-length regulators, for example Estyn and Care and Social Services Inspectorate Wales (CSSIW). Housing associations do not rely entirely on public funding. They access significant amounts of private finance. We heard in oral evidence that Pobl Group alone has borrowings of £0.5 billion.⁸

14. The Welsh Government is the regulator of housing associations that are registered with it under Part 1 of the Housing Act 1996. These landlords are formally known as Registered Social Landlords, or RSLs. Since the Regulatory Framework for Housing Associations Registered in Wales

⁵ Public Accounts Committee, Record of Proceedings (RoP), 30 January 2017, paragraph 8

⁶ RoP, 30 January 2017, paragraph 180

⁷ RoP, 13 February 2017, paragraph 223

⁸ RoP, 13 February 2017, paragraph 65

was formally launched in December 2011,⁹ there has officially been a policy of “co-regulation”. Co-regulation is discussed further in Chapter 3.

15. The Committee notes that one of the most significant of the recent changes to regulation is housing associations being given two public ‘judgements’ on a four point scale with one rating being given for governance and service delivery, and the other for financial viability.

16. Under the previous system, a judgement was only provided for financial viability. The intention is that the new system will provide a clearer statement of the Welsh Government’s opinion of a housing association’s performance, and this in turn will ensure the landlord takes improvement action. It will also provide stakeholders with clearer information about the landlord’s performance.

17. We heard that there will be a new requirement for housing associations to provide an annual statement of compliance with the new performance standards to the Welsh Government.¹⁰

18. Ian Williams, Deputy Director, Sector Development, Welsh Government set out a number of new systems that had been introduced in the last 6 – 9 months to improve regulatory effectiveness. John Howells, Director of Housing and Regeneration, Welsh Government added that the new judgement framework, and shorter regulatory reports with a clear judgement, would help transparency. He confirmed that next year, all 34 housing associations that are significant providers of social housing would be subject to regulatory judgements and financial viability judgements, which will be an increase on previous years.¹¹ The Committee heard that in 2014-15 only 4 Regulatory Opinions were issued.¹² Mr Williams concluded that he would wish to see how the recent changes to regulation ‘plays out for 12 to 18 months’ before a new approach is tried.¹³

19. The changes made to regulation in 2017 should make it clearer what the Welsh Government is saying about an individual housing association. We heard some criticism of the procedures in relation to the previous Regulatory Opinions, in particular the style of the reports and lack of a clear judgement. Newport City Homes suggested that “Feedback from residents suggests that the presentation of the Regulatory Opinion does not necessarily meet their needs”.¹⁴ TPAS Cymru also questioned the value of the Regulatory Opinions stating that they “do not appear to be widely used or relied upon by tenants”.¹⁵

20. Helen White, Chair of the Regulatory Board for Wales, described the new Regulatory Judgements as “shorter but much clearer and unambiguous”.¹⁶

21. Many witnesses made reference to changes to the regulatory framework from January 2017 although, from the evidence we heard, it was not initially clear what deficiencies these changes sought to address. However, this became clearer as we took further evidence. A number of housing association chief executives were involved in the development of these changes. Steve Jones, Chief Executive of Tai Ceredigion, told us that chief executives had some input into these changes in the summer of 2016. He noted:

⁹ [The Regulatory Framework for Housing Associations registered in Wales](#), May 2017

¹⁰ RoP, 13 March 2017, Paragraph 126

¹¹ RoP, 13 March 2017, paragraph 109

¹² RoP, 13 March 2017, paragraph 119

¹³ RoP, 13 March 2017, paragraph 210

¹⁴ Written Evidence - [Consultation Response HA7](#) - January 2017

¹⁵ Written Evidence - [Consultation Response HA5](#) - January 2017

¹⁶ Written evidence - [Consultation Response HA8](#) - January 2017

“I think what you see now in the end result in January is a result of that co-working between the regulation team and the leadership within registered social landlords in Wales, and local authorities as well. So, I’m very optimistic. I think what we had prior to January was effective, given the best of wills from all sides. I think what’s now been put into place since January—I’m very optimistic that that’s a further improvement.”¹⁷

22. The new co-regulatory status judgements will reflect the degree of regulatory oversight or intervention that is required. The four-point scale will range from standard (which would indicate only routine levels of regulatory oversight) to statutory action (which would indicate that statutory action is required from the Welsh Government to deal with a significant problem at the housing association). Welsh Government ‘testing’ of the new system suggested that most housing associations would be rated as “standard”. This new system is similar in some respects to the one used by the Homes and Communities Agency to assess housing associations in England.¹⁸

23. The new system is now in operation and the first judgement, relating to Taff Housing Association, was published in February 2017.¹⁹ Its co-regulatory status was:

- Governance and Services: Standard - Identifies and manages new and emerging risks appropriately.
- Financial Viability: Standard - Meets viability requirements and has the financial capacity to deal with scenarios appropriately.

24. The Committee heard that a number of Regulatory Judgments have since been published, and not all associations have received a ‘standard’ judgement.

25. Mike Wiseman, formally chair of the Tenants Advisory Panel, questioned how much this new information tells tenants about the performance of their organisation and, while he noted it was too early to comment fully, he told us:

“...some of the feedback that I’ve had since that Taff Housing Association report was put out was, ‘Well, where’s the detail? What are these people doing?’ We don’t know. So, it’s now practically in the hands of the housing association to say, ‘This is why we’ve arrived at this report’, and I’m not sure that that is the right approach.”²⁰

26. New performance standards were formally issued in June 2017, following an earlier consultation. These performance standards are set by Welsh Ministers under Section 33A of the Housing Act 1996. There is a new requirement for associations to provide an annual statement of compliance with these performance standards to the Welsh Government. However, it is not yet clear how the provision of compliance statements will differ materially from current self-evaluation arrangements, particularly in terms of transparency.

¹⁷ RoP, 27 February 2017, paragraph 215

¹⁸ Homes and Communities Agency - [A guide to regulation of registered providers](#) - May 2015

¹⁹ Welsh Government - [Taff Housing Association: Regulatory Judgement](#) - February 2017

²⁰ RoP, 27 February 2017, paragraph 132

Conclusion 1. The Committee welcomes steps to make housing association regulation more open, transparent and accessible to all stakeholders, including the public at large. Information about performance needs to be both publicly available and easily accessible. The new Regulatory Judgements are a step in the right direction but more can be done, particularly to empower tenants so they can hold housing association boards to account. We welcome the Welsh Government's commitment to undertaking a review of the effectiveness of the most recent changes in 2018 and request that a copy of the report is provided to this Committee.

03. Housing association regulation is based on the principle of co-regulation with a strong focus on associations undertaking robust self-evaluations of their own performance.

27. The Cabinet Secretary for Communities and Children defined co-regulation in his written evidence to the Committee:

“Co-regulation involves setting out the respective responsibilities of associations and the [Welsh Government] Regulation Team to achieve robust and effective regulation, with both parties agreeing to work together to offer the best protection for tenants and the public funds invested in housing in Wales.”²¹

28. Under co-regulation, each party has a responsibility to challenge performance in relation to risk management, governance, finance and to promote service improvements. Ian Williams explained that co-regulation added value in terms of the board sharing lead responsibility and the Welsh Government providing an independent assessment of the role those boards were playing. Evidence to the committee also suggested that the success of a co-regulatory approach relied on operating in an environment of openness and honesty.

29. Witnesses welcomed a co-regulatory approach with Wendy Bourton, Chair of Pobl, explaining:

“You want a regulation that fits a modern governance, and very much the stance that the regulation officers and departments are taking is clearly doing that: open, honest discussions between us, recognising our respective positions, but, at the same time, being prepared to have those difficult decisions should we not be meeting the business objectives, the performance standards and our commitment to compliance that we’ve said. Now, that’s something we take very seriously. Really, it should chime, and it does chime, with us at Pobl group, because we’re very much about being in partnership across government, but, at the same time, exercising our responsibilities in terms of governance.”²²

30. We asked Welsh Government officials whether the co-regulatory approach was the right model to provide reassurance and challenge. John Howells stated:

“I think it manages to do those three different jobs, and in a way that strikes me as pretty lean and mean.”²³

31. Written evidence from the Welsh Government highlighted that a lack of adherence to a co-regulatory approach and the failure to share information can be a warning sign of potential issues. We were told that this had been a factor in the more complex cases, such as those occurring at Family

²¹ Written Evidence, [Consultation response HA4](#), January 2017

²² RoP, 13 February 2017, paragraph 16

²³ RoP, 13 March 2017, paragraph 165

Housing Association where the Welsh Government was required to intervene.²⁴ The Committee reflected on the need for there to be mutual responsibility for the failure to share information in a co-regulatory environment and Welsh Government officials supported this view.²⁵ Mr Howells explained:

“...one of the core challenges of the co-regulation approach: that we need to find a way of encouraging and supporting boards to be open with an external organisation when human nature would always suggest that we’re all above average and excellent, and sometimes we’re inviting boards to address less than excellent performance, which is tricky.”²⁶

32. The Committee heard a number of other positive aspects of the co-regulatory approach, including higher levels of engagement between residents and landlords, and between Welsh Government and landlords. This appeared to be preferable to the previous inspection based approach. We heard support from witnesses for a co-regulatory approach with Nicola Evans, the Chair of Merthyr Valleys Homes, stating:

“We fully support the co-regulatory approach and we believe that the new approach will focus on the big issues, like financial stability, and focus on risks as well.”²⁷

33. Sharon Lee, Chair, Wales & West Housing Association also reflected positively on the co-regulatory approach stating:

“I think co-regulation, for us as a board, has helped us to be sharp. It’s strengthened us in terms of our focus on governance. We developed our self-evaluation and we’ve sort of styled it in a Wales & West way. So, we’ve made it a continuous living process, which, again, as a board, is wonderful for us because we get regular, updated information. That is good.”²⁸

Capacity within the Welsh Government Regulatory Team

34. The Deputy Director for Sector Development in the Welsh Government has responsibility for the regulation team which, since June 2016, has had two branches:

- Operations – Regulation Managers, who engage directly with housing associations, delivering regulation on the ground (8 people); and
- Learning and prevention – finance and housing specialists with a particular focus on the provision of strategic policy and sector analysis and currently producing financial analysis, thematic reviews, lessons learned exercises and considering options to address issues arising from the recent reclassification of housing associations (4 people).²⁹

²⁴ RoP, 13 March 2017, paragraphs 168 - 169

²⁵ RoP, 13 March 2017, paragraphs 168 - 169

²⁶ RoP, 13 March 2017, paragraph 184

²⁷ RoP, 27 February 2017, paragraph 354

²⁸ RoP, 13 March 2017, paragraph 335

²⁹ Written Evidence, [Consultation Response HA4](#), January 2017

35. A number of witnesses referred to the capacity and skills of the regulation team. Stuart Ropke informed us, “As the environment becomes more complex, different skills are needed”.³⁰ Pobl Group Chief Executive, Amanda Davies said that capacity of the Welsh Government’s regulation team was more of an issue than skills.³¹

36. Capacity of the Welsh Government’s regulation team was also raised by Steve Jones, Chief Executive of Tai Ceredigion Housing Association, who stated in his written evidence that:

“I believe that a lack of capacity within the Housing Regulation Team has hampered the level of intervention or speed of response in some individual cases; and a comparison pro rata of the level of resources employed in England, as well as the seniority of the equivalent roles, does lead to the conclusion that the Wales housing regulation team has not been adequately resourced.”³²

37. Merthyr Valleys Homes Chief Executive, Michael Owen, suggested that the Welsh Government could struggle to deal with “multiple events” because of resources, and also the ability of staff. He suggested that the “pay grades are insufficient to manage the risks being regulated and proposed a comparison with the cost of other regulators such as rail or telecoms”.³³

38. Welsh Government informed us that there are eight people within the regulation team who engage directly with housing associations and deliver regulation on the ground. They added that although Welsh Government had been able to undertake some recruitment from outside the civil service recruitment pool it was important to retain some civil servants in the team to “keep the corporate memory”.³⁴

39. Mr Howells told us that he thought the regulation team was making a very effective contribution:

“...but we are on a journey and there are further improvements that we’d like to make before I’m in a very happy place. I’m struck by the positive response we’re receiving from tenant groups to the new regulatory framework. I’m encouraged by the confidence expressed by lenders. Our performance indicators are looking much healthier.”³⁵

40. We note that there are challenges in ensuring that the Welsh Government’s Regulatory team has the correct blend of skills and experience to regulate an increasingly diverse sector. We also note a lack of clarity around recruitment processes, such as when vacancies are filled by specialists from outside the civil service. However, while we appreciate the need to balance the need for a broader skill set while retaining corporate memory and experience, the important guiding principle should be appointing the right person with the most relevant skills for the task.

Recommendation 1. Given the significant amount of public money invested in the sector, and the reliance placed on effective regulation by lenders, we recommend that the

³⁰ RoP, 30 January 2017, paragraph 118

³¹ RoP, 13 February 2017, paragraph 85

³² PAC(5)-07-17 Paper 5, 27 February 2017

³³ PAC(5)-07-17 Paper 7, 27 February 2017

³⁴ RoP, 13 March 2017, paragraph 238

³⁵ RoP, 13 March 2017, paragraph 109

Welsh Government’s regulation team is routinely permitted to recruit externally and that the Welsh Government give consideration to how it might achieve the most appropriate balance of skills on its regulatory team.

Recommendation 2. Furthermore, in the interests of transparency we recommend that in its Annual Report to the Cabinet Secretary for Communities and Children, the Regulatory Board for Wales, should reflect 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 Regulatory Board for Wales

41. The Regulatory Board for Wales (RBW) supports the work of the regulation team and provides advice and “challenge” to the Cabinet Secretary for Communities and Children. It is a non-statutory body, reconstituted in April 2016 and made up of independent members with sector expertise.

42. The Chair and Members of the RBW are appointed by the Cabinet Secretary for Children and Communities following a public recruitment exercise. The term of office is three years. The RBW receives advice from sector representatives through the Regulatory Advisory Group. Previously, it also received advice from the Tenant Advisory Panel (TAP). TAP no longer exists and this is discussed in paragraphs 69 - 79 of this report.

43. In written evidence, the Chair of the Regulatory Board for Wales, Helen White, addressed the issue of whether the Regulator itself should be separate from the Welsh Government, stating that the Board had concluded that this “would not be beneficial at this time”. Her evidence noted:

“The co-location of the investment and regulation functions [within Welsh Government] enables joined up policy, encouraging shaping of regulation which facilitates supply side ambitions, supporting smart and integrated investment and regulation decisions.”³⁶

44. Ms White went on to explain that the current system was providing effective regulation and:

“...we’re going to build on that in terms of having sharper regulatory opinions that are very clear in term of how housing associations are performing. We will have the judgement framework, which will be different to how the old system worked, and also we’ll be looking much more at the association’s ability to improve, the capacity to improve, and also asking that they sign up to a compliance statement.”³⁷

45. We were also told that there were examples of changes in the course of action that the regulator has taken because of advice and challenge that the regulatory board has given.

46. Mr Williams added that the changes made to the regulatory board last year strengthened independence adding:

“I think the system in Wales benefits from having as slick an operation as we can manage without needing separate headquarters and corporate support

³⁶ Written evidence, **Consultation Response HA8**, January 2017

³⁷ RoP, 27 February 2017, paragraph 107

functions that are provided as part of the current arrangements in Wales, but it's something that we've got to keep under review.”³⁸

Recommendation 3. The Regulatory Board for Wales should provide effective challenge to the Welsh Government's regulation team. Given the sensitive nature of some matters discussed by the Board, it was difficult for the Committee to determine how effective that challenge has been. The Committee recommends that the Welsh Government and the Regulatory Board for Wales consider how more openness and transparency can be brought into how they work together.

Regulatory Interventions

47. The difficulties experienced by Newcastle Emlyn based housing association, Tai Cantref, have received considerable attention, particularly in west Wales.

48. An inquiry into Tai Cantref was commissioned by the Welsh Government in mid-2015 following unspecified allegations about the Association. In March 2016, the then Minister for Communities and Tackling Poverty announced that the report into Tai Cantref, prepared by independent consultants Campbell Tickell, would not be published as to do so, “would be likely to prejudice commercial interests”.³⁹

49. Tai Cantref has since merged with Cardiff based housing association, Wales and West.

50. The Committee was provided with additional written evidence from the Welsh Government setting out a summary of events following the Statutory Inquiry at Tai Cantref. This stated that the Statutory Inquiry report was completed in October 2015 and found multiple instances of mismanagement and misconduct. It made no recommendations or commentary on possible ways forward.

51. The additional evidence from the Welsh Government also explained that Tai Cantref's Board was given until 13 November 2015 to set out a credible response and plan to deal with the findings of the inquiry. The Welsh Government Regulation Team considered that the initial response was inadequate in both the association's acceptance of the findings and its intentions and commitment to tackling the issues raised.

52. We heard during oral evidence that a statutory inquiry into the affairs of a housing association could, in itself, break the covenants of a loan. Steve Jones, Chief Executive of Tai Ceredigion Housing Association, suggested to us that speculation within the sector was that the statutory inquiry into Tai Cantref Housing Association “triggered a default”.⁴⁰ We also received evidence from Merthyr Valleys Homes that a regulatory intervention can result in increased borrowing costs for associations stating:

“The Committee need to review the potential risk of a revision to a funding covenant when a regulation intervention does occur. A regulatory intervention is usually grounds for a funder to revise the cost of a loan; in essence the funders reprice their loan to reflect the new risk. The cost of this revision is a commercial decision for the funders and information on that revised loan cost

³⁸ RoP, 13 March 2017, paragraph 197

³⁹ National Assembly for Wales, [Written Assembly Questions tabled on 18 March 2016 for answer on 25 March 2016](#)

⁴⁰ RoP, 13 March 2017, paragraphs 292 - 301

is not made public. A marginal increase in the cost of a loan can have a very big consequence over the life of a 30 year business plan and rumours from England are that covenant breaches have cost some organisations in excess of £10m.”⁴¹

53. We were also told of the importance of early intervention with Mr Williams explaining that this was particularly the case when Welsh Government sense that boards may be ‘in denial’ about poor governance.⁴²

54. We were keen to determine what if any actions the Welsh Government had taken in response to the issues arising from events at Tai Cantref and in additional evidence provided to us by the Welsh Government, we were made aware that a number of approaches had been taken with regard to strengthening regulatory practice in Wales. The evidence set out that a number of changes were made to regulatory practice as a result of issues which have emerged from the events at Tai Cantref and other complex regulatory cases. These included:

- a revised Regulatory Framework which facilitates a defined response to regulatory concerns and poor performance with a clear public judgment on the Regulator’s view of an RSL. The revised framework also responds to the changing operating and legal environment, particularly the Office for National Statistics Reclassification decision;
- improvements in the early identification of Boards and executive teams where there is evidence of poor functioning and performance; and
- early engagement with funders.

55. Under the new Regulatory Framework, when the Regulator has significant concerns about an association, once the facts had been established, a revised judgement will be published with an outline of the issues in question. This will have the effect of putting the Board and executive on public notice that they are required to tackle serious issues. Funders and other stakeholders would be immediately alerted and the Board and executive would be publicly accountable for inaction and not resolving the issues.

56. The Welsh Government have informed us that the new Regulatory Framework ensures a consistent, public regulatory response when Boards are not managing risk properly, leading to swifter resolution of issues before they become irrecoverable.

Boards and executive teams which are performing or functioning poorly

57. In additional evidence provided to us, the Welsh Government sets out that under the new framework, the Regulation Team focusses on the Board’s responsibility to discharge its primary function of ensuring the organisation is run effectively. It relies less on assurance from the executive team with a view to making it more likely Boards have the necessary information and assurance they need to carry out their role effectively. Furthermore, we have been told that the relationship between the Welsh Government Regulatory Team and the Board provides the opportunity to:

“...understand the Board, its dynamics and effectiveness and therefore to more easily identify signs of poorly functioning Boards at an early point and instigate

⁴¹ PAC(5)-07-17 Paper 7, 27 February 2017

⁴² RoP, 13 March 2017, paragraph 119

action through the framework. Despite this focus on Board responsibility, the more open relationship also means the Regulator has an ability to assess the relationship between the Board and the executive team and identify issues as early as possible.”⁴³

58. Finally where there are problems at an association, , rather than assuming discussions between CEO, Chair and Regulator are reflected up to full Board, the Regulator should now addresses the whole Board.

Early and full engagement with funders

59. The Welsh Government have provided us with details of changes made to improve engagement with lenders. It was explained that:

“Prior to Cantref, there was a sector agreed protocol which meant associations were responsible for managing their lender relationships. Regulation could only interact through the Council of Mortgage lenders and with written permission from the association. Cantref refused permission for the Regulator to speak with their lenders, when it was clear they needed to be involved, and relented only after senior representations were made.

As a result the Regulator has worked to develop strong, direct relationships with the key lending institutions. The requirement for written permission and contact via CML has been removed and direct conversations on matters of concern are now a part of routine Regulation.”⁴⁴

Conclusions and Recommendations

60. On balance, to date, we believe that co-regulation is working well and our evidence highlighted a number of benefits arising from this approach including integrated decision making and a degree of independent assessment of housing associations performance by Welsh Government. However, we believe that some improvement to the co-regulatory approach is needed.

61. We note that since the Regulatory Framework for Housing Associations Registered in Wales was introduced in 2011 there have been a number of changes to regulation, culminating in a new Regulatory Framework being issued in June 2017. We also note the Welsh Government’s view that the challenges and risks facing the sector have evolved over time, the Regulatory Framework also needs time to evolve so it can continue to provide robust assurance to all stakeholders.

62. However, it seems that these changes have often been in response to one approach not working and another one being tried. We believe that this can give an impression amongst stakeholders that Welsh Government is not clear on what it is trying to achieve, leading to a lack of confidence in Welsh Governments management and no clear audit trail of how these conclusions are reached. We note the involvement of the sector in developing the most recent incarnation of the Regulatory Framework and hope that this ‘buy-in’ from the sector will result in more effective co-regulation. We welcome the Welsh Government’s commitment to reviewing how effective the most

⁴³ Written Evidence, Welsh Government, July 2017

⁴⁴ Written Evidence, Welsh Government, July 2017

recent changes to regulation have been in 2018. We further note that Helen White of the Regulatory Board for Wales confirmed a thematic review of governance in the sector is also taking place.

63. We note that regulation has been subject to a number of changes since 2011, and there have also been changes to the structure of the Welsh Government's Regulation Team. It is clear that regulation must change over time to address new risks and challenges. It is also clear that the pre-2017 system of regulation was not as effective as it could be. These issues we believe have been exacerbated by limited public information on performance, risks and quality of services. Where information is made available, it should be easily accessible to all interested parties.

64. However, we also recognise that the Welsh Government is in a difficult position in terms of finding the right balance between respecting the independence of associations and providing adequate regulatory oversight. We found it difficult to ascertain what the role of Welsh Government should be. We note the Welsh Government's Director of Housing and Regeneration saw the purpose of regulation as providing reassurance to three key stakeholders: tenants, lenders and the Welsh Government itself, which invests significant sums of public money in the sector each year.

65. With regard to the current Regulatory Framework for Housing Associations registered in Wales, we explored whether the Regulatory Board for Wales is working well enough and whether there is a case for an independent regulator. We don't believe that an independent regulator is necessary at this time. We welcome the reconstitution of the Board in 2016 as an independent body and hope that this independence will allow the Board to effectively challenge the Welsh Government's Regulation Team. We welcome the thematic review of governance in the sector being undertaken at present and also that a review of the Regulatory Framework will be undertaken in 2018. We would call for the review of the Regulatory Framework to be fully independent.

04. There is scope for improvement with regard the openness and transparency of regulation and governance within the housing association sector.

While there are excellent examples of tenant engagement at some housing associations we have concerns that not all tenants have clear information on how their association is performing

66. Tenants must be at the heart of regulation. We met with housing association tenants, and their representatives, and found the level and impact of engagement varies between associations. The Committee took evidence from Welsh Tenants and the Tenant Participation Advisory Service (TPAS) Cymru as well as holding a stakeholder event attended by over 50 housing association tenants from all over Wales.

67. During our inquiry it was confirmed that the Tenant Advisory Panel (TAP) was to close. TPAS Cymru will feed tenants' views into the regulatory process in future using a variety of modern consultation methods.

68. The Welsh Government has always emphasised that tenants are at the heart of regulation and that regulation aims to:

- Protect the interests of current and future tenants and other service users; and
- Ensure good quality social housing, in terms of the Welsh Housing Quality Standard, services which meet tenants' needs, value for money, and financial viability.

69. At our stakeholder event, attendees felt awareness of regulation amongst tenants was generally low. Many also told us that it was not always easy to find information about regulation and, where information was available, some of the technical language used made it difficult to understand.

70. While many housing association have tenants serving on their boards, places are not always reserved for tenants (particularly in traditional housing associations that were not created following stock transfer). Where tenants are on a board, it is often because of their skills and experience, not just because they were a tenant. Welsh Government informed us that they did not believe there was a single housing association without tenant representatives on it, including the Regulatory Board for Wales.⁴⁵

71. At our stakeholder event, many attendees discussed the roles of boards, and how tenants contribute to good governance. Most, if not all, housing association boards appear to have tenant board members. In the case of housing associations created following stock transfer, there would normally be a requirement that a proportion of board members are tenants. Some positive examples were given of landlords providing training to tenants interested in becoming board members and tenants being allowed to observe board meetings. Some tenants who attended our stakeholder event were also members of tenant scrutiny panels.

72. Welsh Tenants suggested that having tenants as board members does little to improve how the board functions compared with other models and suggested that having tenants in a "challenge"

⁴⁵ RoP, 13 March 2017, paragraph 305.

role would be more effective, “not equipping them to become ‘the landlord’ with the collective board responsibility this entails”.⁴⁶

73. Ms White referred to the variation in engaging tenants with some tenants being very engaged, wanting to be involved in regulation from a regulatory board point of view, and also from their own housing association, most associations have a menu of participation, so tenants can be involved through reading a newsletter, following their housing association on social media, or become a board member - the options are there.⁴⁷

74. These views were echoed in evidence received during our stakeholder event where we heard that there was a broad consensus that there was no one single way to inform tenants about regulation. Indeed, it was recognised that many tenants were unlikely to be interested in regulation. Many stakeholders queried whether there should be an expectation that they must be interested. Some stakeholders felt there was a risk that only a few tenants, often the same individuals, engage fully, with many tenants only making their voice heard on issues they feel will directly impact on their lives, for example, rent increases and repairs or improvements.

75. Some tenants told us they did not know enough about how their association was performing. The Welsh Government acknowledged that there were deficiencies in the way in which performance data on housing associations was made available to tenants. Mr Howells explained that:

“...we should be developing our data sets to make it more straightforward for tenants in one locality to be able to compare and contrast. I also think we should put more of a focus on tenants locally, rather than trying to make sense of the Wales picture, which always strikes me as a more diffuse, less immediate issue for people concerned about their homes to get their teeth into.”⁴⁸

76. Mr Howells also referred to the importance of providing tenants with information to challenge and ‘locate’ where they are within the wider housing sector and that this was an important aim for the regulation team over the coming period.⁴⁹

Board members

77. Board members must have the correct skills and knowledge to ensure their association complies with regulatory requirements and manages risk appropriately.

78. John Howells added that “standards of governance in certain associations are not at the level we would expect them to be”.

79. The Committee received substantial evidence on the role of housing association boards and the importance of good governance. Many witnesses referred to the Community Housing Cymru (CHC) Code of Governance which was launched in 2015.⁵⁰

⁴⁶ Written Evidence, **Consultation Response HA12**, January 2017

⁴⁷ RoP, 27 February 2017, paragraph 141

⁴⁸ RoP, 13 March 2017, paragraph 296

⁴⁹ RoP, 13 March 2017, paragraph 306

⁵⁰ **Community Housing Cymru (CHC) Code of Governance**, February 2015

80. We considered in detail how the current approach to good governance is not clearly demonstrated with an upfront statement. We heard from the Regulatory Board for Wales that the Community Housing Cymru (CHC) governance code is an importance part of governance stating:

“...the best associations will look to that as a starting point, and will almost go to a kind of CHC plus or Nolan plus in terms of how they act and how they operate.”⁵¹

81. Housing Associations are each governed by an unpaid voluntary board. Proposals to remunerate board members in Wales were not taken forward by the Welsh Government following a public consultation in 2014.

82. Board members cannot currently be paid. We heard evidence from Community Housing Cymru, calling for this to be changed and the Council of Mortgage Lenders (CML) also touched on this issue commenting:

“Paid executives should be an option for boards, particularly if there are challenges for the particular association in attracting or retaining the skills and experience needed for excellent governance.”⁵²

83. A number of witnesses suggested that allowing housing association board members to be paid would improve the quality of governance suggesting that payments would allow more people with the right skills to join boards. In written evidence, the Regulatory Board for Wales stated that boards themselves ‘should be at the helm’ when making these types of decisions.⁵³ Merthyr Valleys Homes also expressed a view that it should be possible to pay board members in view of the demands, in particular the time commitment, made of them.⁵⁴

84. On the issue of payment to board members, Welsh Government did not have a view but said the matter was being considered as part of a wider review of regulation, alongside whether discretion should be given to boards to make their own decisions on whether to pay board members.⁵⁵

85. We considered the overall transparency of housing regulation which we believe to be crucial to good governance alongside a clear definition of the purpose of regulation. We asked Welsh Government officials for a clear definition of the purpose of housing association regulation and were told:

“...it is intended to provide reassurance to tenants that their landlords are thinking about their interests in the way they deliver their business. It is intended to provide reassurances to lenders that these are well managed organisations that it is safe to lend money to – there’s £2.5 billion being borrowed [by] to the sector in Wales. And it is designed to provide reassurance to Welsh Ministers that it is safe to invest significant sums of money on what

⁵¹ RoP, 27 February 2017, paragraph 109

⁵² PAC(5)-04-17 Paper 2, 30 January 2017

⁵³ Written Evidence, **Consultation Response HA8**, January 2017

⁵⁴ PAC(5)-05-17 Paper 7, 27 February 2017

⁵⁵ RoP, 13 March 2017, paragraphs 222-225

we consider to be a really important house building programme, where the RSLs are key delivery agents.”⁵⁶

86. We asked the Chair of the Regulatory Board for Wales the same question and Ms White explained:

“The purpose of regulation is to ensure that we have a sound and strong sector, a credible sector, that’s playing its part within the wider range of services that are delivered here in Wales. So, it needs to be credible to the stakeholders, but also other stakeholders, in particular lenders. They need to understand that the sector is strong and robust, particularly in terms of the sector’s aspirations and what they want to deliver in terms of new homes, where there are going to be some significant lending requirements.”⁵⁷

87. We considered many concerns around the overall openness and transparency of regulation and governance within the housing association sector. Evidence from tenant groups suggested that there appeared to be a lack of openness and transparency within the current regulatory system stating:

“...it is not just about the regulation that they do, but how you know about it and how you challenge that.”⁵⁸

88. While there is relatively little information about Welsh Government regulatory interventions in the public domain, Welsh Government has discussed its involvement with Swansea based Family Housing Association. The Welsh Government has accepted that it should have intervened earlier in that instance.⁵⁹ At a Chartered Institute of Housing Cymru Conference held in December 2016, the Welsh Government highlighted a number of areas where they could have acted differently, including:

- being less risk averse;
- take decisive action much more quickly;
- 2 co-optees on the board were not enough to make a difference;
- greater clarity on role of co-optees;
- be clear on the fundamental issues and concentrate on those; and
- get close to the funders much more quickly.⁶⁰

89. During questioning by the Committee, Mr Howells stated:

“One of the cases where we have been sharing with the sector our learning was in relation to Family housing association. Family were happy for us to share our experiences of that case with the sector more generally, and one of the

⁵⁶ RoP, 13 March 2017, paragraph 152

⁵⁷ RoP, 27 February 2017, paragraph 94

⁵⁸ RoP, 16 January 2017, paragraph 19

⁵⁹ CIH Cymru, Big Picture conference, 20 October 2016

⁶⁰ CIH Cymru, Big Picture conference, 20 October 2016

issues in relation to that case was the speed with which the board felt able to respond to the external challenge coming from the regulators.”⁶¹

90. Helen White, told us that commercial sensitivity prevented her giving examples of complex cases discussed by the Regulatory Board for Wales.

91. We questioned some witnesses on whether they thought the Welsh Government dealt promptly with issues and problems as they arose. Steve Jones said:

“...they are very quick to react when there’s need for quick reaction, and very supportive when you tell them there is a problem or make them aware of a problem.”⁶²

92. He later commented:

“I can’t think of any examples where the Welsh regulation section haven’t effectively intervened appropriately where necessary, either in a very supportive, early role or in a firmer, more intervention role.”⁶³

93. He added that he had seen some “very proactive and very pragmatic approaches from the regulatory team”.⁶⁴

94. Ian Williams confirmed that Value for Money Indicators have been developed, and these will allow for comparisons between associations and, to some extent, benchmarking.⁶⁵ David Wilton, from TPAS Cymru described what transparency should mean, from a tenant perspective:

“...who they are doing it for and who knows about it...it’s also about the fact that, if landlords are self-evidencing with the regulator, fine, but do the tenants see that? Where do the tenants get involved in that? It’s a very mixed bag across Wales.”⁶⁶

95. We heard from witnesses that the regulation website is ‘pretty appalling’ in terms of finding current documents. Regulatory Opinions (prior to 2017) were found to be a narrative and not providing much evidence for tenants to be able to determine how well their association is performing. These are areas that are important in terms of empowering tenants in scrutinising their associations.

Public reporting and benchmarking of performance and housing associations activity is limited and does not provide sufficient assurance on how well the sector performs or how well major risks are addressed.

96. Given the reliance within the regulatory system on self-evaluation/self-assessment (including newly introduced compliance statements) by housing associations, this limited published (or

⁶¹ RoP, 13 March 2017, paragraph 167

⁶² RoP, 27 February 2017, paragraph 217

⁶³ RoP, 27 February 2017, paragraph 254

⁶⁴ RoP, 27 February 2017, paragraph 254

⁶⁵ RoP, 13 March 2017, paragraph 230

⁶⁶ RoP, 16 January 2017, paragraph 19

accessible) data and open transparent reporting on performance and other issues makes judging the effectiveness of regulation (including the co-regulatory approach) extremely difficult.

97. Steve Jones of Tai Ceredigion suggested:

“The performance data are there, because we use them. The board use them; they need them to do their assessment to keep us accountable. More of those should be published. So, some guidance on that from Welsh Government or from the regulator, I think, would be welcome.”⁶⁷

98. Ian Williams confirmed that Value for Money indicators have been developed that will allow comparisons between associations and, to some extent, benchmarking.

99. The results of the Committee’s online survey highlighted that tenants felt there was a need for more openness and transparency. Suggestions to achieve this included:

- ensuring independent scrutiny of housing associations;
- having a tenants scrutiny panel;
- involving tenants more actively; and
- a website comparison of all RSLs on certain key factors.

100. Our evidence suggests that changes to the regulatory system appear to be well communicated to housing associations but less so to tenants and those outside of the system.

Conclusions and Recommendations

101. Our evidence suggests that although the Welsh Government has stated that its intention to place tenants at the heart of regulation, reality does not always reflect this intent. We heard that the extent and effectiveness of tenant engagement varies considerably between associations with unequal stakeholder influence and limited assurances for the public that the system is working.

102. We recognise the importance of tenants being involved in the regulatory process in that engagement enables tenants to hold their housing associations to account. However, our evidence suggests a variation between what housing associations offer tenants and we note the Welsh Government’s concerns that there are deficiencies in the data sets that are available to help tenants compare and contrast the performance of their association with others.

103. TPAS Cymru highlighted the information on performance made available by the Scottish Housing Regulator on its website.⁶⁸ It allows tenants (or any interested party) to access individual information about a landlord, and also comparisons with other landlords.

104. We note and agree with the Welsh Government’s position that tenants should be at the heart of regulation. Now that the Tenant Advisory Panel no longer exists in its previous form, TPAS Cymru will be the conduit for tenants’ views to inform the Regulatory Board. When we took evidence from

⁶⁷ RoP, 27 February 2017, paragraph 234

⁶⁸ www.scottishhousingregulator.gov.uk/find-and-compare-landlords

TPAS Cymru in January 2017 details of how they would work with tenants were still being finalised.⁶⁹ We hope that the new arrangements will facilitate rigour and expertise in challenging performance.

105. We acknowledge that individual housing associations are expected to engage with tenants as part of the regulatory process and the Welsh Government’s statement that this involvement should be “effective and appropriate”. However, our evidence suggests it is not always easy for tenants to access information about their landlord, and even more difficult, if not impossible, to judge how well their landlord is performing compared with other landlords.

Recommendation 4. We recommend that the Welsh Government make provision for the availability of clear and comparable data sets to assist tenants in determining and challenging the position and policies of their Housing Association. We were impressed by the approach taken in this regard by the Scottish Housing Regulator and would urge the Welsh Government to take a similar approach.

Recommendation 5. Given the reliance on self-evaluation within the regulatory process and having heard feedback from tenants that the system is not always robust or accurate, we recommend the Welsh Government provide reassurances that it is satisfied that tenants’ views will be adequately captured and reflected in the future and closely monitors the new tenant engagement arrangements being undertaken by TPAS Cymru.

Recommendation 6. We recognise the importance of making a clear distinction between transparency and scrutiny, with the former being necessary but not sufficient to achieve the latter) and we recommend that the Welsh Government should place a requirement on each Housing Association to be able to demonstrate to the Regulatory Team how they empower their tenants to scrutinise their performance. We believe this should go beyond simply publishing information and enable different Housing Associations to react to their local circumstances requiring them to be proactive in their approach. These steps should be integral to demonstrating effective and appropriate tenant involvement as part of the Performance Standards.

Recommendation 7. We note the Welsh Government’s consideration of the payment of board members as part of its wider view of regulation. We recommend that Welsh Government give considerations to enabling housing associations to determine whether they pay their board members or not, and housing associations are given responsibility for setting that pay in a manner that is open and transparent. Payment to Board Members should also be appropriately disclosed in the Annual Accounts of Housing Associations.

Recommendation 8. We welcome the forthcoming review of governance within the sector and would urge the Welsh Government to work closely with Community Housing Cymru as it updates its Code of Governance in light of the review’s findings.

106. From our evidence it would appear that there are some concerns around public reporting and the benchmarking of performance and housing associations activity is limited. It is unclear how existing data provided assurances on how well the sector performs or how well major risks are addressed.

⁶⁹ RoP, 16 January 2017, paragraph 50

Recommendation 9. We recommend that Welsh Government consider putting in place mechanisms for regular reporting and benchmarking of performance information to provide assurances on how well the sector is performing. We further recommend that this information should be available from a central website, along with other datasets as noted in Recommendation 4.

107. Our evidence indicates that the recent regulatory approach has been one of reacting to problems as they arise rather than preventing them arising.

108. We also note that although the new Regulatory Judgement reports have only just been implemented, a number of non-standard judgements have now been made. We would like assurances from the Welsh Government that the new four point grading system is sufficiently transparent.

05. There is a potential risk posed to the sector arising from the ONS re-classification decision particularly in relation to accessing private finance

109. In September 2016, the Office for National Statistics (ONS) decided to reclassify Welsh Housing Associations as part of the public sector for accounting purposes. The ONS decision was taken primarily because of the amount of public sector control over housing associations. The housing association sector believes this reclassification could pose a threat to investment if HM Treasury seeks to impose controls on housing association borrowing. In particular, the sector believes this could threaten the delivery of new affordable housing.

110. The Welsh Government has said it will work with the sector to ensure the decision is reversed and will bring forward legislation to achieve this in due course. By necessity, this will result in some deregulation. The Welsh Government's consultation on *Regulatory Reform of Registered Social Landlords*, which addresses the ONS concerns, closed on 3 July 2017.⁷⁰ The First Minister announced on 27 June 2017 in his statement on the Legislative Programme, that a Bill would be brought forward in the next twelve months.⁷¹

111. A number of witnesses have highlighted the potential risk that the ONS re-classification decision poses to the sector, particularly in relation to accessing private finance.

112. In oral evidence, Mr John Marr, Senior Policy Adviser, Council of Mortgage Lenders, commented that any move to restrict diversification could make reversing the ONS decision more difficult as it would imply even greater control by the Welsh Government.⁷² He also stated that the CML was broadly comfortable with the deregulatory measures taken in England to address re-classification, if there were similar measures in Wales they would give the same response commenting:

“I think that is a major area of risk for the sector and for Government, because it will be quite important from the funder's perspective that you get that right. Essentially, that will be about striking a very fine but very correct balance between deregulating, between loosening Government's influence and control, but still allowing the regulator to be effective and to have teeth, so that the regulator can provide the required confidence for funders.”⁷³

113. Gavin Smart, Deputy Chief Executive of the Chartered Institute of Housing, gave an overview of the changes and emphasised that the reason for the ONS decision was not primarily about the volume of information requested by the Welsh Government from housing associations, but about the independence of the sector.

114. The Auditor General asked Ms White about ONS reclassification highlighting that one of the reasons for the ONS decision was the extent of government control of the sector. She said that

⁷⁰ Welsh Government consultation, [Regulatory Reform of Registered Social Landlords](#) - (closed 3 July 2017)

⁷¹ First Minister Plenary statement, [The Legislative Programme](#), 27 June 2017

⁷² RoP, 30 January 2017, paragraph 259

⁷³ RoP, 30 January 2017, paragraph 243

action was being taken to ensure there was sufficient independence in how regulation takes place to address the ONS concerns.

115. In written evidence, the Cabinet Secretary for Communities and Children to the Committee stated (paragraph 26):

“The Regulation Team is responding to reclassification by developing a comprehensive set of proposals aimed at addressing those aspects of the current regulatory regime which has caused ONS to reclassify housing associations as public sector organisations. The need for legislative changes is being considered as part of this work. Welsh Ministers have made clear that they will make the changes necessary to allow the ONS to reclassify the sector back into the private sector.”⁷⁴

Conclusions and Recommendations

116. We considered whether the current regulatory regime is effective in managing and mitigating sector wide risks and note the challenge presented to the Welsh Government in determining the most appropriate balance of having too much influence or too little oversight. Given the number of public regulatory interventions we heard about in evidence, including those at Merthyr Valleys Homes, Tai Calon, Family Housing, Tai Cantref, we believe there are areas of regulation where the Welsh Government needs to enhance its oversight and control, despite the need to reverse the ONS decision.

Recommendation 10. We recommend that any deregulation of the sector necessary to reverse the ONS decision is proportionate and ensures the Welsh Government, as Regulator, still has sufficient powers to protect the interests of stakeholders, in particular tenants.

⁷⁴ Written Evidence - [Consultation Response HA4](#) - January 2017

06. There are a number of potential risks associated with diversification and the movement from within the sector away from ‘traditional’ housing association ventures

117. A key issue arising from our evidence were the potential risks associated with diversification and the movement from within the sector away from ‘traditional’ housing association ventures. There has generally been less diversification amongst associations created following stock transfer as their initial focus was on improving the condition of their housing stock and achieving the Welsh Housing Quality Standard.

118. Some housing associations had taken a conscious decision not to diversify. The Committee heard evidence from Merthyr Valleys Homes that it would not be diversifying because its Democratic Body did not want it to.⁷⁵

119. Current examples of diversification include the provision of student accommodation, commercial premises (such as retail units) and market-housing. Recent examples of diversification in Wales include:

- Pobl Group providing student accommodation in Aberystwyth, Bangor, Cardiff and Swansea and accommodation for nurses in other areas;
- Wales and West having established an independent repair and maintenance service – Cambria Maintenance Services – which is an independent subsidiary of the association providing provides services to both Wales and West and other landlords; and
- Linc Cymru development of residential, retail and business opportunities in Cardiff City Centre, part of the St David’s redevelopment.

120. Stuart Ropke of CHC highlighted the benefits of diversification, as well as some of the risks - such as housing associations losing focus on providing housing for vulnerable people. He stated that diversification is “...to be welcomed, as long as the risks are managed”.⁷⁶

121. Mr Ropke also pointed to pressures on capital funding provided by the Welsh Government, although this compared favourably to the position in England. He suggested that diversification helped spread public money more widely by allowing surpluses generated from this non-traditional activity to be reinvested in developing new housing and new services for tenants. He also said “stress-testing” was a key part of effective governance, and CHC regularly discuss this with their members, particularly as interest rates are likely to rise at some point in the future.⁷⁷ The Committee heard that the Welsh Government has recently introduced a regulatory requirement on stress testing.⁷⁸

122. The Welsh Government has produced its assessment of the main risks facing the sector which is updated periodically.⁷⁹ This includes governance risks (such as poor governance), financial risks

⁷⁵ RoP, 27 February 2017, paragraph 109

⁷⁶ RoP, 30 January 2017, paragraph 20

⁷⁷ RoP, 30 January 2017, paragraph 37

⁷⁸ RoP, 13 March 2017, paragraph 110

⁷⁹ Welsh Government, Sector risks and Regulatory Expectations, June 2017

(including welfare reform and other risks to income) diversification, the recent ONS re-classification decision and the impact of leaving the EU.⁸⁰

123. Written evidence from the Cabinet Secretary for Communities and Children outlined some of the Welsh Government’s expectations in terms of how associations’ deal with risk. For example, the expectation that housing associations put in place Asset and Liability Registers and carry out robust stress testing with mitigation arrangements by 31 March 2017. Experience clearly indicates that the major risks to the sector are in governance and finance, so Welsh Government Regulation Manager resources have been refocused on the critical elements of these risk areas. The paper also states that the effectiveness of risk management is a key judgement factor in the new regulatory judgement framework and performance standards.⁸¹

124. During evidence, Ian Williams explained:

“...in terms of some of the systems that we’ve been introducing over the last six to nine months that can improve our regulatory effectiveness, maybe an example would be putting a regulatory requirement on stress testing—meaningful stress testing—on business plans, and also enforcing the assets and liabilities. I know these sound like maybe dull and technical issues, but they form the bedrock of financially viable organisations. So, we’ve been enforcing those over the last nine months as well. So, I think that will create additional effectiveness.”⁸²

125. Mr Williams went on to assure us that:

“...each organisation—the very first piece of stress testing they do—it’s the most de rigueur one—is that they work out at what interest rates their business breaks. So, they’ll all be different. So, that one certainly gets done. Inflation rate is the other one and there are a few others. What we were saying earlier is I think we’re getting to the more nuanced level for stress testing as well.”⁸³

126. Helen White informed us that the level of increased risk arising from diversification did not concern her unless that risk was not appropriately mitigated and dealt with at board level adding:

“I think it’s the housing association’s role to develop their own approach to risk, so that they’ve got appropriate risk assurance frameworks in place. And that becomes more complex as they diversify, because it’s not just a single risk - it could be the cumulative impact of a number of risks as they diversify across a number of fields.”⁸⁴

127. She added:

“What the regulator needs to be considering is how they deal with that diversification in terms of it not having an adverse impact on their core purpose

⁸⁰ Welsh Government, [Sector risks facing housing associations in Wales](#) - March 2016

⁸¹ Written Evidence, [Consultation Response HA4](#), January 2017

⁸² RoP, 13 March 2017, paragraph 110

⁸³ RoP, 13 March 2017, paragraph 136

⁸⁴ RoP, 27 February 2017, paragraph 64

- going back to that original core purpose of providing good - quality homes and services to tenants. But I think there's real value in exploring the role that housing associations can play in really creating sustainable communities and better outcomes for people in Wales - they can really add value to that. Diversification that supports that, I think, should be welcomed.”⁸⁵

128. CHC's director of policy, Clarissa Corbisiero-Peters, said that where diversification was happening (in terms of new types of development, not just social rented accommodation), it was not a case of one model of development being favoured over others. There would be a range of products considered and each housing association board will determine whether to pursue such activity. We note the emphasis within the new Performance Standards on new business and development opportunities, and the associated risks these ventures may present.

129. Peter Hughes, from the Principality Building Society, suggested that while Welsh Government had previously been risk averse when it came to diversification, it was now “risk aware”. He explained that where there is diversification, lenders would look for relevant experience amongst board members as one factor in their lending decision.⁸⁶ We noted that neither the CML nor Principality Building Society referenced assurance being sought from Welsh Government Regulatory Team in oral evidence but appreciate informal discussions occur on a regular basis.

130. The Welsh Government's assessment of risks facing the housing association sector (published in June 2017) highlights risks associated with diversification noting:

“Diversification can be an important way in which RSLs meet the changing needs of their communities and / or generate income to cross subsidise their core social housing business and purposes.

In order to diversify successfully an RSL must ensure that the decision making process to invest in a new activity is robust. There have been a number of examples in recent years where the failure to understand a new area of operation, in particular the demand for the service, has resulted in significant reputational and financial losses. This can lead to impairment of the property value held in the accounts and, unless appropriately managed, trigger a covenant breach.

Boards need to understand the potential benefits and risks of undertaking a new activity.”⁸⁷

131. They go on to highlight that the risks will be mitigated with:

“The Regulator will seek assurance RSLs are effectively managing diversification, while providing enough assurance that tenants are protected, social housing assets are not put at risk, the public value within them is

⁸⁵ RoP, 27 February 2017, paragraph 174

⁸⁶ RoP, 30 January 2017, paragraph 247

⁸⁷ Welsh Government - [Sector risks facing housing associations in Wales](#) - March 2016

protected and the sector continues to attract private finance at advantageous rates.”⁸⁸

132. In written evidence to the Committee, the Cabinet Secretary for Communities and Children acknowledged that there is some pressure on housing associations to diversify:

“Housing associations are also under increasing pressure to diversify and to take a wider role in addressing community issues, partly as a consequence of reductions in local authority finances.”⁸⁹

133. In oral evidence, John Howells stated:

“New financial vehicles that offer jam today pain tomorrow need to be scrutinised very carefully by boards. New construction techniques need to be scrutinised very carefully. And, we’re not building enough homes. The housing associations are under pressure to respond to that really and I guess that might tempt some into pushing the boat out too far.”⁹⁰

Conclusions and Recommendations

Recommendation 11. We note the potential benefits of diversification. We believe that while diversification is needed to cross-subsidise affordable housing, there are serious risks to the sector if this is not managed effectively. While the ONS re-classification decision would warn against further Welsh Government control of how housing associations run their own affairs, we think there is a need for greater clarity on how the Welsh Government oversees diversification. This is particularly the case where it is undertaken by a non-registered social landlord subsidiary.

Recommendation 12. We recommend that the Sector Risks and Regulatory Expectations document should provide further detail on the Welsh Government’s legitimate interest in non-RSL subsidiaries and outline scenarios that would cause concern to the Regulator.

Recommendation 13. We further recommend that the Welsh Government carry out a review of current levels of diversification within the sector - the findings of which should be published.

Recommendation 14. We have concerns regarding the impact the rise in interest rates would have on the housing sector in Wales. We recommend that the Regulator carries out an assessment of all housing associations capital and their level of exposures to risk and summarise their findings.

⁸⁸ Welsh Government - [Sector risks facing housing associations in Wales](#) - March 2016

⁸⁹ Written Evidence, [Consultation Response HA4](#), January 2017

⁹⁰ RoP, 13 March 2017, paragraph 268

07. Transparency in the setting of senior management pay is essential.

134. The salary of a housing association’s highest paid member of staff, normally the chief executive, is made available through annual accounts which are generally available on associations’ websites. The number of full time equivalent staff within each band in increments of £10,000 from £50,000 upwards should also be available. However, the amount of easily accessible information varies between associations and can be limited.

135. In oral evidence, Jim Mckirdle, Housing Policy Officer, Welsh Local Government Association reflected on the importance of transparency with regard to senior management pay stating:

“I think transparency is important, married with the responsibility that the board has for oversight, and the suggestion we’ve made is that housing associations may wish to use the pay policy statement model, where there’s a public and a publicly available statement of the principles that they will use, some of the ratios involved in terms of making decisions about pay and other matters, and I think, if transparency is something that we’d like to see delivered, then I think that is one suggestion about how that might be assisted.”⁹¹

136. In written evidence, CHC noted that it is common practice for a remuneration committee, sitting separately from the main board, to take decisions on salaries. They go on to comment that decisions “will often be informed by independent benchmarking, and tenant involvement in the salary setting process”. CHCs own benchmarking survey found that the median ratio of Chief Executive Salary compared to the rest of the workforce is 4:1. They went on to note that:

“Each of our members produces an annual report and finance statement, which sets out key performance indicators. Our members publish details of their highest paid member of staff in these accounts.”⁹²

137. The Regulatory Board for Wales’ written evidence highlights the responsibility for Boards in determining senior officer pay. As independent bodies, there is little that the Welsh Government as Regulator can do to influence individual remuneration packages, particularly when there appears to be UK-wide demand for chief executives. However, one of the key themes of this inquiry has been a perceived lack of openness and transparency; both issues that can be addressed by regulation. John Howells acknowledged this division of responsibility:

“This is a question for individual boards. I think that, broadly speaking, there does seem to be a correlation between the size of organisations and the remuneration awarded to the chief executive. But that assessment needs to be made by boards or remuneration committees, based on professional advice,

⁹¹ RoP, 16 January 2017, paragraph 321

⁹² Written Evidence, [Consultation Response HA6](#), January 2017

and the regulation team tends to take an interest in those matters and to ensure that that process is robust.”⁹³

138. Steve Jones noted in written evidence that tenants were heavily involved in his appointment and were “fully aware of the advertised salary package”. He added that the Tai Ceredigion’s housing association board takes “independent, external advice on remuneration issues”. He suggests that there could be more openness and transparency regarding salaries and these could be included within annual reports so that tenants and leaseholders could locate the information more easily.⁹⁴

139. At our stakeholder event some attendees drew attention to the pay of the chief executives of housing associations created following stock transfer, which they felt was significantly higher than former local authority staff had received prior to the transfer.

140. During the fourth Assembly our predecessor Committee undertook a Committee led inquiry into Senior Management Pay and published its findings in November 2014. The report made a number of recommendations to the Welsh Government aimed at eradicating the inconsistencies in reporting and ensuring accountability to taxpayers. The recommendations aimed to bring consistency to reporting on senior management pay, make information more accessible to the public and provide for greater levels of transparency regarding organisational decision-making across the whole public sector. The report’s recommendations also aimed to make the information of use to as wide an audience as possible and allow for thorough scrutiny by those with an interest in this area.⁹⁵

141. The Welsh Government accepted all of the reports 23 recommendations and in its response to the report highlighted its intention to implement a number of the recommendations, namely those relating to definitions, guidance, and senior pay policies by taking them forward as part of work to develop a Welsh Public Sector Pay Policy.⁹⁶

142. The initial focus of this work would be extended to pick up and develop the additional senior management pay guidance, best practice and governance arrangements highlighted in the report. The work would also look to bring together existing pay related principles adopted by the Welsh Government and its sponsored bodies into a wider set of “umbrella” arrangements that would cover devolved public services. However, the Welsh Government’s power to require organisations to conform is not uniform across the public sector and precludes senior pay within housing associations.

Recommendation 15. Given the Welsh Government has no powers with regard the setting of senior management pay in the housing association, we recommend that Welsh Government re-emphasise and endorse importance of openness and transparency in relation to the setting of senior management pay across the public sector. We recommend the Welsh Government implements measures to ensure its Regulation Team has a key role in ensuring that the pay setting process is robust and that there is appropriate disclosure in the Annual Accounts of Housing Associations of senior management pay.

⁹³ RoP, 13 March 2017, paragraph 307

⁹⁴ PAC(5)-07-17 Paper 5, 27 February 2017

⁹⁵ Public Accounts Committee (Fourth Assembly), **Senior Management Pay**, November 2014

⁹⁶ Welsh Government **Response** to the Public Accounts Committee (Fourth Assembly) Report on Senior Management Pay

Annex – Witnesses

The following witnesses provided oral evidence to the Committee on the dates noted below.

Transcripts of all oral evidence sessions can be viewed in full at:

<http://senedd.assembly.wales/mgIssueHistoryHome.aspx?Ild=15048>

The following witnesses provided written evidence to the Committee and copies of written evidence

can be read in full at: <http://www.senedd.assembly.wales/mgConsultationDisplay.aspx?id=235>

Date	Name and Organisation
16 January 2017	Steve Clarke – Managing Director, Welsh Tenants David Wilton – Director, Tenant Participation Advisory Service Jim McKirdle – Welsh Local Government Association Neil Howell – Torfaen County Borough Council Gavin Smart – Chartered Institute of Housing (CIH) UK
30 January 2017	Stuart Ropke – Community Housing Cymru Clarissa Corbisiero-Peters – Community Housing Cymru John Marr – Council of Mortgage lenders Peter Hughes – Principality Building Society
13 February 2017	Anne Hinchey – Wales & West Housing Association Sharon Lee - Wales & West Housing Association Walis George - Grŵp Cynefin John Arthur Jones - Grŵp Cynefin Amanda Davies – Pobl Wendy Bourton – Pobl Ceri Doyle – Newport City Homes Jane Mudd – Newport City Homes
27 February 2017	Michael Owen – Merthyr Valleys Homes Nicola Evans - Merthyr Valleys Homes Steve Jones – Tai Ceredigion Derek Lassetter – Tai Ceredigion Helen White – Regulatory Board for Wales Mike Wiseman – Tenant Advisory Panel
13 March 2017	John Howells – Welsh Government Ian Williams – Welsh Government
8 May 2017	John Howells – Welsh Government Ian Williams – Welsh Government