

Cynulliad Cenedlaethol Cymru / National Assembly for Wales
Y Pwyllgor Cyfrifon Cyhoeddus / Public Accounts Committee
Ymchwiliad i drefn reoleiddio Cymdeithasau Tai / Inquiry into Regulatory oversight of Housing Associations
Ymateb gan Denantiaid Cymru / Evidence from Welsh Tenants

Welsh Tenants is a representative voice for tenants formed in 1987 but with a longer campaigning history. Our mission is to ‘enhance and promote the rights, representation and standards for people whom rent their homes in Wales’. We have over 500 registered groups and associates in Wales.

Welsh Tenants served almost 6 years on the Regulatory Board for Wales until the board changed to an independent structure in 2015/16. During this time we helped develop and manage and facilitate the Tenants Advisory Panel throughout this period. We are the only tenant representative body to currently sit on the RAG (Regulatory Advisory Group). We undertook a mapping exercise of tenant scrutiny among HAs in 2015.

This response relates to:

National Assembly for Wales

10th Jan 2017.

Public accounts committee response to the enquiry on the effectiveness of the current Regulatory Framework for Housing Associations Registered in Wales;

1. The effectiveness and quality of governance arrangements;
2. Whether the current regulatory regime is effective in managing and mitigating sector wide risks;
3. The effectiveness of the co-regulatory approach in practice;
4. The remuneration of senior executives of housing associations.

1. Quality of governance arrangements

- 1.1. The focus on governance has been a key area of regulatory activity. The Regulatory Board Wales commissioned a review of governance in Wales 2013¹. The comprehensive research of HAs in Wales stimulated sector discussions on how governance can be improved. As a consequence a new code² was adopted in 2015 with a 'comply or explain' approach adopted by the regulator.
- 1.2. In our view the representative body for the sector CHC (Community Housing Cymru) undertakes its role diligently and with professional competence delivering a number of governance specific events to share and discuss emerging risks, provide workshops, discussions on strategic and policy issues for boards that address the full range of emerging risks and challenges for the sector.
- 1.3. Boards are always balanced by pushers and pullers. Those wanting to race ahead expand and diversify and those who want to stay grounded in their localism in both traditional and non-traditional models. However, the regulator reports there are some associations still presenting cause for concern' that require closer regulatory monitoring.
- 1.4. We are confident that work undertaken by the regulator in a co-production, co-regulation approach has enabled the sector to improve board governance however this is a dynamic process.

Issues raised by tenant representative group

- 1.5. Executives as board members – There is significant tenant and stakeholder resistance to executive officers being on boards of HAs with voting rights. The executive is accountable to the board not a member of it. We believe this model should be confined to the

¹ <http://gov.wales/statistics-and-research/sector-study-governance-housing-associations-registered-wales/?lang=en>

² http://chcymru.org.uk/uploads/events_attachments/Code_of_Governance.pdf

private sector. If the board has concerns about understanding executive proposals, it should seek independent support and advice.

- 1.6. Paid board members – The sector has a diverse range of highly professional persons on their boards. Individual HAs can determine whether to remunerate board members with a an explanation to the regulator. Tenants are generally not in favour of ‘paid board members’. We are however sympathetic to encouraging young professionals to gain board experience through compensating employers for time off to encourage younger profiles into the role.
- 1.7. Tenants as board members – The majority of boards recruit tenants to join their boards from ‘within’ and ‘outside’ of their voluntary TP (tenant participation) structures. There is no mandatory requirement among traditional housing associations to place tenants on boards. Landlords do so, as a part of their TP strategies. There are a range of practices including arrangements for ‘election’ and ‘selection’, although increasingly moving to selection only. We are not convinced, and there is little evidence to suggest otherwise, having tenants as board members improves the board function, compared to other models such as wider range of ‘consumer advice’ professionals. Although there are many tenants who are very experienced and provide a valuable contribution, our preference would be to see tenants in a ‘challenge role’ not equipping them to become ‘the landlord’ with the collective board responsibility this entails. Given the practical limitations on board size, we would rather see the emphasis on meeting other skill gaps such as consumer rights, health and wellbeing, older / young person champions etc.
- 1.8. Scrutiny and challenge – Welsh Tenants are supportive of properly structured and adequately resourced tenant scrutiny and challenge. Our view is that tenants should be empowered to monitor and

evaluate 'service delivery performance' particularly the effectiveness, efficiency, economic and equitability of service delivery. In this way challenge and scrutiny provides a useful accountability tool for boards. According to a survey conducted in 2015 "Mapping tenant scrutiny among HAs" [2015], conducted by the Tenants Advisory Panel and Welsh Tenants, there are around 1500 tenants participating with housing associations, with a small number undertaking scrutiny and challenge roles. Effective tenant involvement has been assessed as providing significant savings annually to HAs (DCLG commissioned research³ suggest savings per tenancy between £28 and £94 per property or over £20m annually to Wales if implemented, evaluated and evidenced correctly). This can be best achieved through comprehensive involvement structures with external support at local, regional and national levels. The process enables the regulator to focus on governance and financial viability while utilising local tenant scrutiny and challenge of service delivery to account for their "service delivery performance".

- 1.9. Golden share – The sector is supported by the addition of 11 LSVT (Large Scale Voluntary Transfer) organisations that range from fully and partially mutual to traditional LSVT HA models. LSVT boards are mainly comprised of a third tenants, councillors and independents. The golden share (councillors) maintain the link with local authority accountability providing localised assurances. There's been much discussion about removing this contingent. Welsh Tenants view is that the make-up of governance arrangements for LSVTs were determined by tenant ballot as outlined by the "offer" and "business plan". This included reassurances concerning structures and make-up of boards. Tenants voted on the whole package. A 30 year business plan, a WHQS delivery offer and accountability structures. These measures ensure concerns of anti-stock transfer bodies such

³ <https://nationaltenants.files.wordpress.com/2015/03/tlc-an-investment-not-a-cost.pdf>

as Defend Council Housing and in particular the criticisms of “privatisation of council housing” were allayed. We believe that any fundamental change should be subject to re-ballot and full consultation in line with ‘Gunning principles’. If councillors are withdrawn from LSVT boards, one suggestion is for local authorities to have powers to call to account the boards and their CEO’s to a public hearing to explain their performance should issues arise.

- 1.10. Social housing sector changes across the UK mean that many involved tenants have concerns about the ability of the sector to continue to provide rented accommodation for low income earners, the disabled and the elderly who can least afford market rents. In the near future, increasing commercialisation of HAs is an inevitability to maintain and even subsidise their current sector niche.
- 1.11. Mergers – Some tenants have raised concerns by the push for increased merger activity. While we understand the necessity to address ‘governance issues’, mergers are an extreme solution to poor board performance or other risks as reported by the regulator. We are mindful of some views that mergers are politically motivated and produce no tangible long term savings. If mergers are to be extended, we would like to see full meaningful consultation arrangements put in place, as with the stock transfer process with independent tenant advisors appointed, including opportunities to be balloted, with tenants having some say on the appropriateness of merger partners.
- 1.12. AGMs – Annual General Meetings are the primary event to convey annual performance to shareholders and stakeholders. They are we feel, much more inclusive affairs than 5 years ago. These are often supplemented by annual tenant conferences that market the association’s collaborative work and allow tenants to understand

the breadth of partnership working undertaken. The changes have been widely welcomed by many.

- 1.13. Shareholders – Shareholders act as guardians of the constitution, vision and values and meet up annually, being invited to attend the AGM. However their role is largely an advisory one to the appointed board. The shareholder role, as well as a recruiting ground for potential board members, could also be better utilised to better understand and provide more effective challenge / accountability of boards. We are pleased to see some HAs develop as ‘fully mutual’ with inclusive tenant and staff shareholding being developed. However our general view is that the role of shareholders is largely misunderstood and largely underutilised among the majority of HAs.
 - 1.14. Transparency – We are mindful that HAs provide the Welsh Government with a great deal of data. We are also mindful of the need to ensure best value is achieved in reporting processes and transparency for tenants and the public to understand the sector. We appreciate the sector provides a valuable ‘public service function’ as non-public bodies. Due to the vital public impacts on the supply of affordable homes, we would wish to see HAs being subject to FOI (Freedom of Information) requests to improve transparency for the public and stakeholders. We understand that Scotland has also resolved to consult on the same issue for largely similar reasons and due to the ONS reclassification.
2. Whether the current regulatory regime is effective in managing and mitigating sector wide risks;
- 1.2. Generally, under the co-regulation regime it is for the sector to identify and manage their risks and put in place plans to mitigate their impacts. The regulator provides ‘a judgment’ as to how well the

association performs across these functions and whether they have the competence and confidence to do so. However, the regulator does identify, through the 'relationship management process' emerging risks and can request evidence as to how the association is managing these.

- 1.3. Sector risks are also identified by regulators themselves, the sector and stakeholders coming together to consider emerging risks and challenges, these cover a very broad range including; lender confidence, devolved and non-devolved matters such as social security / housing benefit, social, technological, earnings risks, aggregates – to mention a few. Thematic reviews are also commissioned.
- 1.4. In our view the co-regulatory approach encourages HAs to be open with the regulator in raising issues of risk confidentially through the 'relationship management process', and requires the provision of 'self-evaluation' evidence of business models with plans to mitigate high value risks and 'Delivery standard' performance. It is seen as being more useful than routine inspections of pre-set criteria.
- 1.5. With increasing number of complicated group structures and the broad range of diversified businesses associations operate within, regulation also crosses sector boundaries including health, wellbeing and social services. Soft and hard intelligence is therefore critical in the gathering of evidence to make informed judgements. We understand that the Welsh government as regulator has critical links to other regulatory bodies to understand the nature of these risks through various networks.
- 1.6. The regulatory structure also includes RAG (Regulatory Advisory Group) consisting of stakeholder representative bodies to advise the regulatory board on sector wide risks.
- 1.7. Over several years a number of high level risks have been identified. Most if not all RSLs appear to have comprehensive risk inventories and

are improving their ability to respond to current and emerging risks. This is a dynamic process.

3. The effectiveness of the co-regulatory approach in practice;
 - 3.1. The term 'co-regulation' in effect means housing providers self-regulate in a transparent manner, subject to resident, stakeholder and partner scrutiny and challenge. As one HA states “The aim of co-regulation ensures associations take full responsibility for their actions and how they operate, thereby enabling a reduction in direct, central regulation” (Wales & West HA). This means, demonstrating confidently that housing associations are able to undertake their obligations within the co-regulation relationship diligently. This also means being transparent and open with the regulator, tenants and stakeholder partners regarding performance.
 - 3.2. Some housing associations are better equipped to deliver a co-regulation approach than others. This does depend on the culture and quality of staff and their knowledge and competence to deliver a best value approach and a commitment to the principles of co-regulation. Co-regulation requires extraordinary levels of trust on behalf of the regulator and we would suggest a less transparent, some would say “cosy” model of regulation, however the chosen model has yielded improvements in governance arrangements, identifying emerging risks. This can be evidenced through ‘closer monitoring’ with several associations and has stimulated sector wide collaborative responses to help mitigate them.
 - 3.3. While Welsh Tenants fully accepts the need to focus on governance and financial viability we would welcome better ‘service deliver judgements’ to triangulate governance and financial viability. With more meaningful transparent reporting on how well housing

associations deliver service performance commitments and accountable tenant involvement to demonstrate its effectiveness.

- 3.4. Registered Social Landlords as providers of social housing fulfil a vital public service function in society. There is much confusion regarding landlords obligations, and tenants' rights, relating to being informed, consulted and to participate in changes to housing management, including on issues such as rent and service charges, common housing registers, housing management and mergers. Section 104–106 of the 1985 housing Act guaranteed secure tenant rights to be informed, consulted and to participate and has been the fundamental principle used by successive governments in Wales to encourage and support housing authorities and RSLs to participate with tenants. As registered social landlords with assured tenancy agreements the statutory rights are now more confused particularly with a non–public body providing essentially a public service. It is our firm belief, that the principle of tenant involvement and consultation as outlined in the Gunning principles⁴ would be better served through the development of a consolidated statutory right to be informed, consulted and participate – as in Scotland to safeguard opportunities for accountability, representation and involvement not least to tenants who are not involved.

4. The remuneration of senior executives of housing associations.

- 4.1. Remuneration of senior executives has not been an issue raised by tenants, apart from concerns about potential remuneration of board members. Most may not be unaware of the salary and enhancements attached to senior executive remuneration packages. This further reinforces the need for more transparency of final package schemes.

⁴ <http://www.wlga.gov.uk/publications-improvement-and-governance/the-law-of-consultation>

- 4.2. The comparative salaries prevalent in HAs in England is however it would seem are beginning to feature among top earners here, with a steady stream of executives being attracted to Wales potentially forcing prices upwards.
- 4.3. We are concerned about reports of staff members having to pay for their own 'inferior tools' and having to take out loans and 'salary sacrifice' to pay for them and other such conditions/terms which may not be subject to higher earning grades suppressing earnings for some.
- 4.4. Salary bands including full disclosure of enhancements/benefits/pensions, are not universally transparent. In the interest of transparency, we would welcome annual published ratios of earnings among all staffing levels in the summarised and full accounts of HAs.

5. Other concerns

- 5.1. The Office of National Statistics (ONS) has within its remit the ability to determine decisions regarding accountancy practices and the power to determine whether a body is classified as 'public' or 'non-public' institutions. The ONS Economic Statistics Classification Committee (ESCC), considered the classification of registered social landlords (RSLs) and housing associations in England, which concluded in 2015. This was undertaken in the context of international rules laid out in the European System of Accounts (ESA) 2010 and the accompanying Manual on Government Deficit and Debt 2016 (MGDD 2016) and determined the private registered providers (PRPs).

- 5.2. In the June 2016 Classifications Forward Work Plan, the ONS undertook a further review of the statistical classification of registered social landlords and housing associations in Scotland, Wales and Northern Ireland and concluded that registered providers of those administrations are ‘public, market producers’ and as such they will be reclassified to the Public Non-Financial Corporations (S.11001) sub-sector for the purpose of national accounts and other ONS economic statistics.
- 5.3. For Wales this classification applies with effect from 24 July 1996; the date of the Housing Act 1996.
- 5.4. As a consequence of the ONS decision, Welsh Tenants are concerned that the loan debt carried by the sector in Wales will become ‘public debt’ and seriously undermine the ability of the sector to deliver on the planned 20,000 homes recently announced, as the debt required to service new borrowing will be capped by Welsh government borrowing powers and/or restrict the borrowing potential of the sector. We would support urgent legislation that would reverse this decision without serious detriment to accountability and transparency of the sector.
- 5.5. Further issues of concern raised by tenants, is that the sector will utilise the opportunity of the ONS decisions to seek a number of changes and powers of the regulator and Welsh Government.
 - a) the sector could place demands on Welsh government not to intervene in its affairs restricting effective regulation in the interest of tenants (tenants at the heart) including restricting any impositions of scrutiny and challenge
 - b) concerns that landlords will increasingly focus on commercial and market rent activities and not meet the needs of people unable to access or afford open market rents the number of social housing rent properties as a proportion of homes provided by the social housing

sector may further diminish with fewer powers of the regulator to intervene, specifically to meet a mandate to provide homes for those in greatest need

- c) that Welsh Government requested data gathered by HAs and used by the public through ONS data gathering and or FOI (Freedom Of Information) requests will be further reduced leading to less transparency
- d) that existing properties or new properties not funded directly or indirectly by social housing grant and or surpluses generated by HA activity will be used to provide 'market rent properties' that lay outside of the 'common housing register' and thereby excluding tenants from the ability to transfer / downsize to these newly acquired homes

Conclusion

These are demanding times for the sector and for the provision of genuinely affordable homes being harder to access, potentially eliciting fundamental changes in social housing provision for existing and new entrants. Generally the sector is well governed and aware of risks and collaboratively tackle them. There are significant strengths in the co-regulation approach but we are mindful that this could be undermined by the ONS decision and the level of 'back-off' required to address the reversal of the reclassification.

We are under no illusion as to the challenges the sector face. We do however need to maintain a viable social housing sector that may aspire to focus on commercial activities. Wider risks particularly non-devolved matters and the ability to respond effectively to them, particularly social security changes and supply of genuinely affordable homes means that significant stresses remain.

Shortfalls in the Shared accommodation rate will impact on All Broad Market Assessment Areas in Wales with the exception of one in Wrexham (West Cheshire) with the shortfall being in excess of £14 per week. While spare subsidy system (bedroom tax) continues to impact on thousands of tenants

with the opportunity to move to smaller affordable social housing being diminished with the longer term pressures on the Discretionary Housing Payment system and common register changes. While housing management costs are rising steadily as a result of additional work by housing professionals to support tenants. In some areas housing associations are increasingly using section 21 notices (used during the tenancy probationary period) to evict tenants who are struggling to pay rent, placing further pressures on Local authorities (Shelter Cymru research).

The sector has responded well to the pressures, but no doubt is set for significant change as pressures continue. Having an effective regulatory process that embraces collaborative solutions is therefore vital to also holding in check those pushers who may want to diversify away from a high cost social housing sector.

New models of supply through for example modular build and we would suggest self-management to reduce management costs may be required to hold rent costs down. We must however continue to be innovative in finding and funding effective collaborative solutions.