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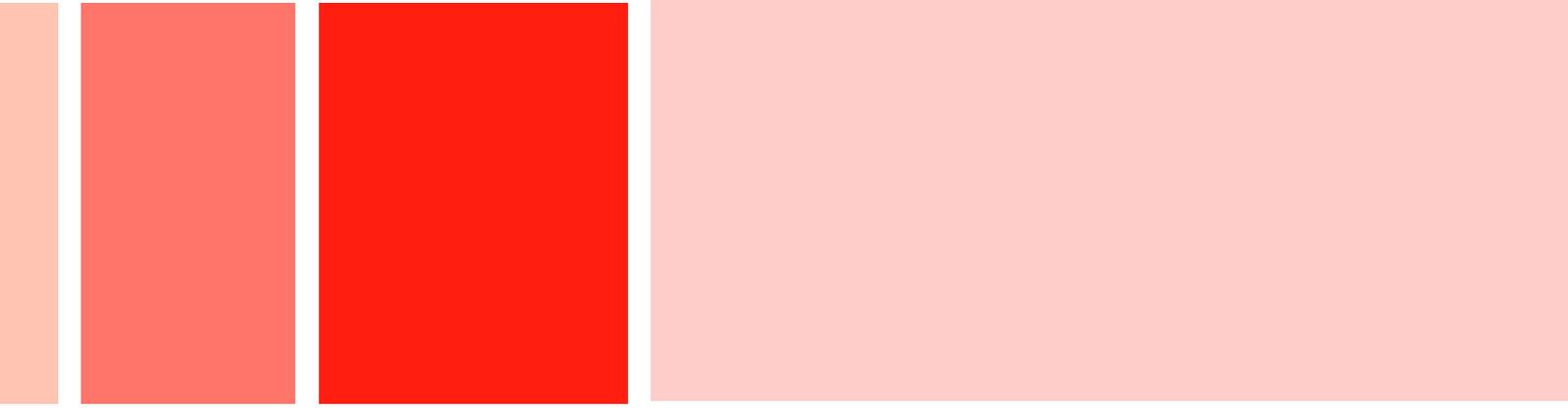


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# Interim Evaluation of the Regulatory Framework for Housing Associations in Wales

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



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Views expressed in this report are those of the researchers and not necessarily those of the Welsh Government

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## **Glossary of acronyms**

CEO	Chief Executive Officer
CHC	Community Housing Cymru
CML	Council of Mortgage Lenders (Cymru)
DO	Delivery Outcome
FVJ	Financial viability Judgement
HA	Housing Association
HARA	Housing Association Regulatory Assessment
HCA	Homes and Communities Agency
RBW	Regulatory Board for Wales
RSL	Registered Social Landlord
SA	Self Assessment
SRM	Senior Regulation Manager
SMT	Senior Management Team
TAP	Tenant Advisory Panel
TPAS	Tenant Participation Advisory Service (Cymru)
TSA	Tenant Services Authority
WAA	Whole Association Assessment
WAG	Welsh Assembly Government (now Welsh Government)
WAO	Wales Audit Office
WERU	Welsh Economy Research Unit (Cardiff University)
WG	Welsh Government
WHQS	Welsh Housing Quality Standard
WLGA	Welsh Local Government Association

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# 1 Background to the Study

## Setting the Scene

- 1.1 The concept of regulation refers to the efforts of one organisation to control, hold to account or modify the behaviour of another. The dominant approach in the UK has been for public or quasi public agencies to exercise a degree of vertical “command and control” over other agencies in the public interest, usually as a quid pro quo for a degree of public funding. Until the 1980s regulation was perhaps not a particularly strong feature of the housing association sector in the UK (Mullins, 1997; Malpass, 2000; McDermont, 2010), although the former Housing Corporation (and subsequently Tai Cymru/Housing for Wales and, post devolution, the Welsh Assembly Government) all had considerable powers to intervene in the affairs of individual housing associations and responsibilities for providing regulatory guidance and oversight (see, for example, Welsh Assembly Government, 2006a).
- 1.2 However, over the last 25 years the UK housing association sector has become a much larger set of growing, dynamic and typically highly professional social businesses and is now responsible for more than half of all social housing provision. The sector has been expected to manage risk, increase financial reporting, develop an enhanced performance culture and (for many) diversify their activities and improve efficiencies and effectiveness. These pressures have given rise to changes in governance, funding, management, culture, organisational structures, collaborative ventures, and partnerships with other organisations as well as growth. In addition, there are rightly enhanced expectations of increasing accountability to customers and other stakeholders as well as the taxpayer. This growth and diversification, together with new sets of further challenges on the horizon (not least welfare benefit reform), has also highlighted the need for changes in the nature of regulation itself. This has been reinforced post 1999 by political devolution in the UK, and

taken together these forces represent a significant reworking of the regulatory landscape for the housing association sector in the UK.

- 1.3 In England changes to housing association regulation were introduced by the Housing and Regeneration Act 2008, designed to implement recommendations from the Cave review of social housing regulation that had proposed a co-regulation approach with a strong emphasis on tenants' interests to cover all types of social housing (Cave, 2007). The Tenant Services Authority (TSA) was set up in December 2008 and took over the Housing Corporation's regulatory role and planned to champion the aspirations of tenants within the social housing sector. The new regulatory framework for associations in England was published in April 2010 (TSA, 2010) but the shift in government at Westminster in May 2010 signalled a change in the regulatory context for housing associations in England. The TSA has subsequently been wound up and from April 1st 2012 regulation of housing associations rests with an independent housing regulation committee within the Homes and Communities Agency (HCA, 2012a).
- 1.4 In Wales a new Regulatory Framework has been established for housing associations which not only places new responsibilities upon the Welsh Government as the Regulator but also raises expectations on individual associations (both staff and Boards of management) to honestly assess their own performance and challenge themselves to drive their own continuous improvement. The Framework also requires both the Welsh Government and the housing association sector to develop constructive relationships around regulation; with local authorities, with tenants, with other stakeholders and (perhaps most critically) with each other. It is accepted that such relationships will take time to develop, but this research offers an opportunity to begin to evaluate the processes involved in the implementation of the new Regulatory Framework and its early impacts, achievements and limitations.
- 1.5 The Regulatory Framework for Housing Associations Registered in Wales (Welsh Government and Community Housing Cymru, 2011) came in to effect in December 2011 and was issued under part 1 of the

Housing Act 1996. It replaced the March 2006 Regulatory Code for housing associations registered in Wales (WAG, 2006a). This evaluation is therefore taking place after little more than a year, although the Framework was developed over a three year period from late 2008, before it was formally introduced.

- 1.6 The purpose of the Regulatory Framework is to ensure that associations registered in Wales provide good quality homes and service to tenants (and others) by ensuring that each association is:

Well governed

Financially viable

Delivering high quality services

- 1.7 The Welsh Government regulates housing associations registered in Wales and a Housing Regulation Team within the Housing Policy Division is responsible for undertaking regulation. The Regulatory Framework also benefits from an advisory board (The Regulatory Board for Wales - RBW) which reports on the ways in which the Welsh Government carries out its work on regulating housing associations, which itself is supported by a Tenant Advisory Panel (TAP), comprising housing association tenants from across Wales.

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

- 1.9 The Essex Review also noted that across the whole landscape of social housing regulation was changing, that major reform was required in relation to regulation of housing associations registered in Wales and that the Welsh Government needed to increase the resources devoted to housing association regulation. At the time the Essex review was undertaken there was a reliance on the Wales Audit Office (WAO) process of housing inspection as the primary tool for regulation and improvement within the sector. In addition, the Essex Review recognised that the housing association sector in Wales was growing (partly as a result of the stock transfer of council housing in many parts of Wales) and that the challenges which individual associations, and the sector as a whole, were likely to face were both changing and increasing. The evolving context in which housing associations are now operating (and the changing demands and expectations placed upon them) has reinforced the significance of the new Regulatory Framework in ensuring that housing associations in Wales are well governed, financially viable and well managed, delivering high quality resident-centred services.
- 1.10 In summary, the overall purpose of regulation of housing associations in Wales is to ensure the on-going provision of high quality, affordable housing, to promote effective governance, to underpin their financial viability (protecting public investment and maintaining the confidence of lenders) and to support high quality and improving housing and related services. Underlying these objectives are principles of openness, transparency, accountability, the proportionality and targeting of resources, consistency (as to how regulation is applied), the maintenance of the independence of individual housing associations and the placing of service users at the heart of regulation. This interim evaluation of the current Regulatory Framework should be seen in this context.

### **Objectives of the Research**

- 1.11 The Regulatory Framework emphasises the importance of partnership and close working to ensure good regulation and many of the recommendations from the Essex Review were taken forward through a

number of work streams (including one on regulation), each of which involved stakeholders from a variety of different organisations as well as Welsh Government civil servants. A subsequent review of “Essex” (Welsh Assembly Government, 2011) noted that the implementation process had been successful overall in engaging different stakeholders but, specifically in relation to the review of housing regulation, concluded that whilst good progress had been made more remained to be achieved. This is an opportunity to see what further progress has been made and to identify achievements, barriers, limitations and positive practice.

1.12 The overall aim of the study has been to provide information for the RBW as to the process by which the Regulatory Framework has been implemented in Wales and to consider its early impact.

1.13 The research has set out to evaluate:

- the extent and effectiveness with which the Welsh Government has implemented the principles and key features set out in the Regulatory Framework
- the extent and effectiveness with which housing associations have implemented the principles set out in the Regulatory Framework
- the extent to which the principle of working together, especially in terms of relationship management, has been achieved
- the extent to which the resources allocated to regulation are sufficient to deliver and sustain effective regulation of the housing association sector in Wales, including maintaining appropriate levels of regulatory engagement and, where necessary, enforcement action
- the extent to which associations have communicated their self assessments, financial viability judgements and regulatory assessments to tenants, service users and other stakeholders and the degree to which they are being used to involve tenants and other stakeholders in improvement planning

- the extent to which other stakeholders (tenants' representatives, service users, local authorities, lenders etc.) find the financial viability judgements and regulatory assessments helpful in evaluating the quality of governance, financial robustness and quality of services provided by individual associations
- the effectiveness with which the findings of Welsh Government regulatory assessments are being communicated to different audiences
- the extent to which other stakeholders understand the concepts of "high", "medium" and "low" regulatory assessment (and what this might mean for a future programme of regulatory assessments) and the extent to which this assessment is perceived as a measure of "risk"
- the views of stakeholders as to when regulatory reassessment should be carried out and what should be the nature of the reassessment
- the extent to which the results of the regulatory assessments are being used to inform positive practice within the housing association sector in Wales
- the extent of knowledge transfer and the dissemination of intelligence and emerging positive practice
- the extent to which the RWB and the TAP are achieving their objectives
- the extent to which other key stakeholders are contributing, at a national level, to the effective implementation of the Regulatory Framework
- how the Regulatory Framework might be further developed, strengthened and improved

## Research Methods

1.14 In our view these ambitious objectives could only be met through a combination of different yet closely interrelated research methods, each of which has been designed to address a number of the issues set out above. The study was undertaken over a period from November 2012 – April 2013.

### *Documentary analysis*

1.15 Initial work concentrated on looking back at a range of documentary evidence including the Essex Review recommendations, papers from the post Essex regulation work stream , consultation papers issued during the development stage of the Regulatory Framework (and many of the responses to these consultation papers), further subsequent guidance as to how the Framework is expected to operate in practice (including Regulation Updates from the Welsh Government), conference presentations on the Regulatory Framework and board papers of meetings of the RBW (these have included minutes of the TAP). The analysis of this documentation has been set within a broad understanding of the changing frameworks for housing association regulation across the UK (though it is outside the scope of this evaluation to consider the frameworks for housing association regulation elsewhere in the UK), the evolving shape of the housing association sector in Wales and an understanding of the shifting policy context (at both a Wales and UK level) within which housing associations are having to operate.

1.16 In terms of published documentation we have also been able to examine the individual published Housing Association Regulatory Assessment (HARA) reports which have been issued to date and the March 2012 Financial Viability Judgements (FVJs) for all 37 housing associations in Wales (a further set of judgements was published in late March 2013; too late to be considered within this study). In addition, as part of an online survey of the 37 associations (see below) we asked individual housing association chief executives if they would be willing to provide

us (in confidence) with copies of their most recent self assessment documents. Where associations had completed the regulatory assessment process (and a HARA had been published) chief executives were also asked if they would be willing to give us sight of their agreed HARA conclusions document (a more detailed analysis of the assessment and the basis for future improvement) and six did so.

### *Interviews with Key Informants*

- 1.17 At the second stage of the research (during December 2012 and January 2013) the research team conducted a number of interviews with key informants in relation to developing a national perspective on the Regulatory framework. Interviews were undertaken with members of the RBW (the two independent members, the representative members from Community Housing Cymru, TPAS Cymru, The Welsh Local Government Association (WLGA) and the Welsh Tenants and the Welsh Government's ex-officio member of the Board), with the outgoing chairperson of Community Housing Cymru (CHC's) National Council, with the former Interim Head of Regulation, with the chairperson of CHC's Regulation Network Group and with the special policy advisor for housing to the then Welsh Government's Minister for Housing, Regeneration and Heritage.
- 1.18 In addition, individual face-to-face interviews were conducted with the Head of Regulation, all four Senior Regulation Managers (SRMs) and the Senior Financial Analyst, all of whom are members of the Housing Regulation Team within the Welsh Government. Details of survey participants are provided in appendix one. The semi-structured interview proforma for the discussions with key informants is provided in appendix two.
- 1.19 Focus groups were also held with members of the Council of Mortgage Lenders Cymru (this chaired by their representative on the RBW), with members of the TAP and with representatives from Community Housing Cymru's Regulation Network Group. In addition, we received a written submission of views from one individual member of the TAP and one

lender who was unable to attend the CML Cymru focus group. At an early stage in the research one member of the research team was also able to attend a meeting of the CHC Regulation Network Group to present an outline of the proposed research and listen to feedback.

*Online survey of all housing associations in Wales*

- 1.20 As a third element of the research we undertook an online survey of the 37 registered housing association subjected to full regulation under the current Framework. Detailed questionnaires were prepared to elicit the views of individual housing association chief executives and board chairpersons in Wales. These were discussed and agreed with members of the research steering group and all chief executives and Board chairs were emailed with a link to the online questionnaire and asked to complete these by 21st December 2012. Early in the New Year follow up calls were made to those associations where questionnaires had not been completed.
- 1.21 Eventually we were able to secure 37 responses from chief executives (a 100% response rate) and 30 responses from Board chairpersons. In addition, in the case of one association, rather than asking the chair of that association (who is also a member of the research team) to complete an online questionnaire, arrangements were made for another member of the research team to conduct a face-to-face interview with the vice-chair of that association. Thus the response rate from association board chairpersons was over 80%.
- 1.22 The questionnaire to the chief executive of each association included sections on how the association had approached self assessment, the role of the board, the development of delivery outcomes, how they had sought to involve tenants in these processes and place them at the heart of regulation, views of the regulatory process and - for those associations who had gone through the entire process (and where the regulatory assessment had been published at the time of this element of the study) - a section dealing with their views of their experiences of the whole process. A number of questions provided essentially quantitative

information, but the majority of the questions were open-ended and allowed respondents to provide detailed individual responses. This qualitative information has provided a rich data which has enabled the research to explore many of the key issues in considerable depth.

1.23 In addition, two members of the research team had the opportunity to outline the research at the Chief Executives Conference in West Wales in early February and to elicit the views of those in attendance. This session was attended by 24 chief executives and 3 staff of CHC.

### *Case Studies*

1.24 We also undertook three in-depth case studies during February 2013, selected from those organisations where regulatory assessment has been completed and reports published. These were chosen to provide a mix of different types of association; thus one traditional housing association operating in a single local authority was selected, together with an association with a group structure and a more recently established large scale voluntary transfer association. These were also drawn from within the different portfolios of south-east Wales, south-west Wales and north Wales, in order to give an element of geographical spread. All three case studies were selected from within the majority group of associations where future regulatory engagement had been assessed as “medium” rather than to select the outliers of “low” and “high” future regulatory engagement.

1.25 Within each of the selected case studies we undertook:

- Follow up interviews with senior staff (e.g. Chief Executive, Director of Finance, Director Of Housing Services, Senior Manager responsible for scrutiny/audit)
- Further examination of some of the documentation prepared for regulatory assessment
- A focus group with a small number of Board Members ( a mix of tenant and non-tenant, and where appropriate of independents, local authority representatives and tenant Board members)

- A focus group with a small number of informed tenants (non board members), drawn from tenant groups or tenant panels within each of the selected organisations

### **Structure of the Report**

1.26 The structure of the remaining chapters of the report is as follows:

- Chapter two presents the key findings from the research.
- Chapter three draws on the literature and documentary evidence that was reviewed to provide a context for the study. It presents a brief description of the housing association sector in Wales, a consideration of the changing nature of housing association regulation in Wales and outlines how the context within which housing associations are now operating is changing.
- Chapters four to seven present and consider the findings from the survey and interview elements of the research. Chapter four considers the outline of the Regulatory Framework for housing associations registered in Wales, the key principles which underpin the Framework, the approach taken to regulation, opportunities for learning from regulation and Welsh Government resources devoted to housing association regulation.
- Chapter five considers the implementation of key aspects of the Regulatory Framework, including the development of delivery outcomes, housing association self assessments, the ways in which housing associations have involved service users, the development of relationship management between the regulator and individual housing associations and the approach of housing associations to involving other stakeholders in regulation. It also considers issues of communication and the management of the regulatory process.
- Chapter six examines the approach to HARA, in terms of the HARA process, the outputs of regulatory assessment (including a consideration of the annual Financial Viability Judgements – FVJs) and future regulatory engagement.

- Chapter seven looks at the role of the RBW and the TAP.
- Finally, chapter eight draws a number of conclusions from the study and suggests areas where the Welsh Government, the RBW and housing associations might address the opportunities for improvement identified by the research.

## **2 Key findings from the study**

### **Principles and Approach to Regulation**

- 2.1 The overwhelming view from the study is that the principles underpinning the Regulatory framework are the right ones; that service users should be at the heart of regulation, that individual housing associations should be responsible for their own actions, that regulation should be open, transparent, consistent and proportionate, and that close collaboration should underpin regulation. However, there are strong views that practice often differs from theory, particularly in relation to consistency and proportionality.
- 2.2 There is also a view amongst a number of associations that, despite evidence of effective of effective relationships between individual associations and the regulator, there has been a significant move away from the concept of co-regulation (referred to in an earlier consultation on the regulatory framework – see WAG, 2010 - but a term not used in the actual Regulatory Framework document - see Welsh Government/CHC, 2011). There is a clear perception that over time there has been a move away from some of the principles underpinning regulation, towards more of an inspection approach (this perception is particularly marked amongst those associations who have been through the HARA process), and that this is not what the majority of associations expected or want.
- 2.3 Furthermore, there is a view within the housing association sector that in the current environment (which has clearly become more challenging for associations since the Regulatory Framework was first introduced) the balance of regulation should become more risk-based, that there should be greater emphasis within regulation on issues of governance and finance, and that this would help strengthen and enhance customer services.
- 2.4 The study has shown there is a need for an increased emphasis on learning from regulation; for individual housing associations, for Boards of Management and for the Regulator. There is welcome support for

additional training (currently being provided by CHC and other stakeholders, and supported by the Welsh Government), for example in encouraging best practice in relation to self assessment and in developing and evidencing delivery outcomes.

- 2.5 There is a growing expectation that regulation will focus not only on promoting continuous improvement within individual associations through the HARA process and ongoing relationship management and regulatory engagement but that resources will be deployed to promote the dissemination of positive practice and develop stronger cross sector learning and improvement. This might be done in part by the Regulator drawing together lessons from regulation in respect of particular elements of the Regulatory Framework and different aspects of housing associations' operations. This is also an area where other organisations (e.g. CHC, TPAS Cymru, Welsh Tenants and others) might have an enhanced role to play.
- 2.6 Whilst there is a recognition of the problems faced by the Welsh Government in terms of resource constraints, as well as changes over time in the make-up and responsibilities of staff within the Housing Regulation Team (and the time taken to fill vacancies), the consensus view revealed by the research is that the Welsh Government should focus on considering how the current resources might best be organised and deployed to deliver the different elements within the Regulatory Framework.

### **Implementing the Regulatory Framework**

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

demonstration points (below the level of the delivery outcomes) less prescriptive.

- 2.8 The move to outcomes (rather than outputs or activities) is widely supported, but requires a different approach by housing associations in Wales. It must also be recognised that associations are not all starting from the same base and some are finding it more difficult than others to develop and evidence outcomes and impacts. It is clear that some associations have been able to deploy greater resources than others to do this. However, there are concerns that some externally verified evidence has not been accepted or has been otherwise disregarded within the regulatory process.
- 2.9 There is general acceptance that self assessment should be fundamental to any organisation and not just part of the Regulatory Framework. Self assessments produced so far have been of variable quality (and there are views from the Regulator that some do not meet the requirements of RSL circular 33/09). Some housing associations have devoted considerable resources to self assessment and have ensured Board and service user engagement. Other self assessments are less robust and have a weaker evidence base. Some need to be more self critical (and some Boards may need to be more challenging, which raises questions as to whether all housing association Boards in Wales have the appropriate skills sets in the current environment).
- 2.10 In seeking to build a baseline database for regulation the Welsh Government Housing Regulation Team have put in significant work with a number of individual housing associations to improve the quality of self assessments. However, this has had implications in terms of delivering the broader Framework.
- 2.11 The research has shown that housing associations engage with service users in a number of different ways. However, from the small number of tenant focus groups undertaken in this study, service users find it difficult to distinguish between broad issues of engagement and participation and involvement in processes of regulation. In some cases, associations

need to engage with service users at more strategic levels, if they are to ensure that residents are at the heart of regulation.

- 2.12 Effective relationship management (the development of relationships between the Housing Regulation Team and individual housing associations) is seen as a very important element of the Regulatory Framework. Overall, the housing association sector in Wales is keen to see regulation not only as a collaborative venture, but also one which is proactive rather than merely reactive. There are perceived benefits in associations working with the Housing Regulator to identify issues and risks on a timely basis, with regulation playing a preventative role rather than an enforcement one.
- 2.13 Such relationships depend upon a high level of interpersonal skills and appropriate experience, particularly on the part of Senior Regulation Managers (SRMs). The research suggests that the approach to relationship management has, to date, been variable and that in practice relationship management is mixed (some relationships are very good, some much less so). Of course, it must be recognised that there are risks in relationship management. A collaborative approach to regulation should be about the Housing Regulation Team engaging with associations as a critical friend. It is also important that checks and balances are in place to ensure regulators remain impartial. In addition, it is vital that individual housing associations are honest and open in their relationships with the Regulator.
- 2.14 The research evidence suggests that delivering continuing effective relationship management is, in some cases, proving difficult, not least because of resource constraints, staff changes and the ways in which available resources are currently being deployed. It seems to have been made more difficult because of the depth of work being undertaken within the HARA programme, which is diverting available resources away from ongoing relationship management. The research has identified examples of very positive and productive relationship management, but also evidence of very limited relationship management

and inconsistencies in the ways in which this aspect of the Regulatory Framework is being implemented.

2.15 There are also tensions in some of the relationships between the Welsh Government Housing Regulation Team and the housing association sector. Some of the individual relationships are working well, but others much less so, and effective working relationships are critical to the success of a collaborative approach to regulation. Despite a shared commitment to the principles of the Regulatory Framework, within both the Welsh Government and the housing association sector, there appear to be significant differences of opinion as to the direction which regulation is or should be taking and the relative priorities within the regulatory process.

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

### **Regulatory Assessment**

2.17 The programme of HARAs is proving very resource intensive. There has been a degree of surprise within the housing association sector that through the HARA process the approach to regulatory assessment seems to have metamorphosed in to one more concerned with checking compliance, not only in relation to each of the 10 broad delivery outcomes but against each and every one of the detailed demonstration points. This has given rise to a feeling amongst some housing associations that there has been a shift towards a much more inspection and audit approach within regulation, with an emphasis on compliance,

and that this is not in keeping with the ethos underpinning the Regulatory Framework.

- 2.18 There are also views that the HARA is not always focusing on the right issues (and that significant parts of the business of individual associations – e.g. development activity, progress towards Welsh Housing Quality Standard, the work of individual organisations within group structures etc. are seen as outside of the Regulatory Framework). There are also dangers that the current approach to regulatory assessment is undermining the key principles of proportionality and consistency.
- 2.19 The implementation of the HARA process in its present form is seen as distorting the use of resources within the Housing Regulation Team and also reinforcing a degree of disconnect between the Regulator and the housing association sector. As a result of the resources devoted to individual HARAs, insufficient time is available to spend on developing effective relationship management with individual associations, on continuing regulatory engagement or on considering and disseminating the lessons from regulation.
- 2.20 The value of the published HARAs is viewed by many as questionable. They are perceived as not sufficiently strategic, fairly bland and as not providing a clear picture of how individual associations are performing. A number of respondents have commented that it is not entirely clear from reading many of the published reports how a judgement has been reached as to the level of future regulatory engagement.
- 2.21 The Financial Viability Judgements (FVJs) are seen as a fair reflection of the financial strength of housing associations and provide for valuable dialogue between associations and the finance team within regulation. However, they too are seen as rather bland and it is argued that they could be tailored more to individual associations. There is little evidence that lenders place reliance upon them in making their decisions. There is also an argument for going beyond FVJs to examine financial priorities

and the effectiveness of financial management within housing associations.

- 2.22 There is a widespread view that the use of “high”, “medium” and “low” future regulatory engagement is not very informative or helpful and the tendency for the majority of associations to be classified as requiring “medium” future regulatory engagement is considered counter intuitive. There is a lack of transparency as to what future levels of regulatory engagement means in practice and what might be the relationship between level of future regulatory engagement and perceived risk. A small number of associations feel that their assessment of future regulatory engagement is already inappropriate and there is a case for consulting the housing sector in Wales over the nature and timing of future regulatory assessments.
- 2.23 It has already been noted that there are doubts as to the value of some of the published outputs from regulation in their present form (e.g. HARA final reports). However, in the interests of openness and transparency there are other outputs from regulation (e.g. individual self assessments) which could be disseminated more widely, and associations could be encouraged to make these available to service users and other local stakeholders (some already do). The (non confidential) papers of the RBW might also be placed in the public domain.
- 2.24 There is as yet no clear position as to when reassessment might take place. The opinions gathered from this research suggest differences of view; that it might be every 2-3 years, that it could be risk based, or that it should be a continuous (but different) process based upon ongoing relationship management, with a focus on those areas previously identified for improvement.

### **Overseeing Regulation**

- 2.25 The RBW is perceived to have worked relatively well in holding the Regulator to account. However, there is a view that the Board needs to raise its external profile and to do more to deliver on its wider mandate in respect of the health of the housing association sector and the risks and

threats which it faces. This suggests that the Board (and the Regulator) needs to be more strategic and find time to consider the wider issues facing the sector (welfare reform, managing risk, the changing nature of funding/borrowing, linking regulation to wider policy change etc.). It is not clear that any lessons from regulation at a national or strategic level are being used to inform policy development.

- 2.26 There are less clear views as to the membership of the Board. There is a degree of support for increasing the independent membership of the Board and many housing associations are not convinced that two separate tenant-focused organisations (TPAS Cymru and Welsh Tenants) should both be represented on the Board. In terms of stakeholder membership, opinions expressed during the research are not clear cut as to whether this should be (as at present) paid officers or elected members of the representative bodies. It was suggested by some respondents that the TAP might, at the very least, have observer status on the Board.
- 2.27 The perception in most quarters of the TAP is that it is also working fairly well and has provided valuable feedback to the RBW, particularly on consumer issues. There is evidence of strong commitment from members of the Panel to improving the regulation of housing associations and ensuring that it is “tenant focused”. However, it has limited resources, which has made it difficult to raise its profile within the housing association sector and engage with individual associations, their tenants and other stakeholders. There have also been acknowledged problems of recruiting to the Panel in some regions of Wales.

### **3 The Changing Regulatory Context**

#### **The Housing Association Sector in Wales**

- 3.1 The housing association sector is well established and generally stable in Wales – but relatively small compared to England or Scotland. However, since political devolution there has been a growth in the sector, not only in terms of the number of homes which it owns and manages but also in terms of the number of organisations in the sector (particularly as a result of processes of voluntary housing stock transfer from local authorities to newly established housing associations). The Welsh Government is responsible for regulating 37 registered social landlords (RSLs) in Wales, 11 of which are organisations created as a result of large scale voluntary transfer, with others being group structures incorporating within the parent association a number of individual organisations delivering housing and/or related services. In addition, it oversees a number of other smaller associations, which individually provide and manage small numbers of homes.
- 3.2 At the end of March 2012 housing associations in Wales owned and/or managed over 148,000 homes, the vast majority of which were self-contained dwellings. At this point in time housing associations accounted for 63% of all the social housing stock in Wales and in half of the Welsh local authorities they owned all of the social housing (Welsh Government, 2012). The average weekly rent for a self contained housing association property in Wales during 2012-13 was £73.60 per week, ranging from £64.63 per week for a one bedroom flat to £90.04 per week for a 4 bedroom house (with variation by local authority as well as housing association). At present housing association rents in Wales are subject to a “rent benchmark” system for different property types and locality, although the current system is at present under review.
- 3.3 However, housing associations are concerned with much more than just bricks and mortar, and have a major impact on the Welsh economy. In 2011-12 they spent an estimated £951M (up 18% from the previous year), with 80% of that money retained in Wales. The amount spent

regenerating Welsh communities reached £424M, including almost £236M on the repair, maintenance and improvement of existing homes and £162M on brown field construction (WERU, 2012)

### **The Changing Nature of Housing Association Regulation in Wales**

3.4 The Affordable Housing Task and Finish Group (often referred to as the Essex Review) was tasked in 2007-08 not just with considering the need for additional affordable housing in Wales but also in looking at the ways in which housing requirements were assessed, homes funded and delivered and social housing organisations regulated. Indeed, although its remit was broadened, its origin was with a concern with housing association regulation in Wales (Williams, 2009). The report, published in June 2008, made 43 recommendations, of which the following were relevant to providing a clear and appropriate regulatory framework for housing associations in Wales:

3.5 Recommendation 13 said:

“The Regulatory Framework for housing associations in Wales must be urgently revised and updated to ensure it is fit for purpose”.

3.6 This was the priority recommendation from Essex in respect of regulation, from which others were developed, most notably:

- a requirement for the Welsh Government to take a more prominent role in overseeing the health and performance of housing associations in Wales;
- the establishment of regulatory co-ordinators and financial expertise within the Welsh Government – serving to increase the expertise and capacity to regulate the sector;
- a requirement for housing associations to undertake robust and honest self assessment;
- implementation of detailed changes to the way in which inspection and auditing is employed to assist in a more risk based regulatory approach;

- the establishment and appointment of a Regulatory Board to receive and discuss reports on regulatory activity and the performance of the housing association sector.
- 3.7 The Essex Review made its recommendations, having concluded on the basis of the evidence and wide consultation that the then system of regulation for housing associations in Wales was weak and failing, that it lacked credibility, that it offered no spur to improvement and that within the Welsh Government the regulatory function was seriously under-resourced and the focus of work was on inspection (just one element of regulation), and which itself was sub contracted to the Wales Audit Office (WAO), rather than regulation more broadly defined. In essence it was not fit for purpose.
- 3.8 Following publication of the Essex Review an implementation framework was put in place based upon a co-production approach between the Welsh Government, Community Housing Cymru (CHC), the Welsh Local Government Association (WLGA) and a number of other stakeholders. These organisations shared ownership of the development of a new regulatory framework; something of a departure from the traditional approach used to take forward recommendations made by independent policy reviews.
- 3.9 A work stream specifically concerned with regulation was established, its membership including Welsh Government civil servants, housing association and local authority representatives, TPAS Cymru, the Welsh Tenants' Federation (as it was then) and nominated representatives from a number of other national bodies (Chartered Institute of Housing Cymru, Cymorth Cymru, Wales Audit Office, All Wales Chief Housing Officers Panel etc.), with further detailed work being undertaken by a sub-group. It appears from reading many of the papers and minutes of these meetings there was, from the outset, a good deal of agreement as to the desired outcomes in terms of a revised regulatory framework. These included the Welsh Government developing an appropriate and accurate perspective of what an effective housing association should look like in broad terms, and the housing association sector in Wales

achieving an improved quality of governance and delivering high quality services to tenants and residents through effective governance, transparency and financial stability.

3.10 The Welsh Government first consulted on its proposals in the spring of 2009 (Welsh Assembly Government, 2009). These included a strengthening of approaches to self-assessment, developing a new performance measurement framework and bespoke standards, the introduction of Whole Association Assessments (WAAs), stronger financial management and control and the creation of a RBW. The responses were broadly positive with many of the proposals in the intended framework fully endorsed. However, a number of respondents argued that self assessment should not be unduly prescriptive and whilst it was important to develop clear service standards to underpin self-assessment the approach should reflect local circumstances. Feedback also emphasised the importance of a financial focus (viability and management) within the self assessment and the WAA processes, the importance of evaluating associations' engagement with broader local housing and community strategies and that any performance measurement should be strategically focussed. The initial consultation exercise also recognised, in the light of Griffiths' work on governance in the housing association sector in Wales (Griffiths, 2008), the need to develop the capacity of housing association boards (to drive self-assessment) and for the Welsh Government to strengthen its own capacity, skills and relationships to ensure better regulation. It was also recognised that following the completion of the Wales Audit Office's programme of housing association inspections (WAO, 2009), that once more robust self assessment procedures had been put in place, there should be a shift towards risk-based inspection on an exceptions basis.

3.11 In many respects the current Regulatory Framework has taken forward most of the recommendations of Essex and the post Essex regulation work stream. In general, the shared expectations of the new Regulatory Framework were of an approach to regulation that would be risk-based, place more emphasis on the effectiveness of governance and the

financial viability and management of associations (since it has been shown across the UK that when serious problems have occurred in these areas there can be catastrophic consequences), and be underpinned by stronger critical housing association self-assessment and the development of an appropriate evidence base from which it would be possible to draw agreed conclusions which could drive continuous improvement.

3.12 The bedrock for such an approach would be appropriate capacity, skills and experience within both the sector and the regulatory function within the Welsh Government, a collaborative approach involving regular and open dialogue and communication, constructive challenge and opportunities for learning from positive practice. This posed a number of challenges for both associations themselves (Boards and staff) as well as the Regulator in buying in to such a change of approach. It would be naive in the extreme not to accept that bedding in such change would take time and effort on all sides and that any Framework would need to evolve to take account of the changing context in which housing associations are now operating.

3.13 In the next section we highlight some of the wider challenges, threats and risks faced by the sector which in many ways make it even more expedient to evaluate the strengths and weaknesses, limitations and achievements of the Regulatory Framework for housing associations in Wales at this time. Then, from chapter 4 onwards we will seek to evaluate the extent to which the Regulatory Framework (and its different elements) has been and is being implemented in practice, the degree to which it is meeting expectations and the impacts that operationalising the Framework is having.

### **A changing context for Housing Associations in Wales**

3.14 It is now more than four years since the publication of the Essex Report with its recommendations for the establishment of a new Regulatory Framework for housing associations in Wales, and almost a year and a half since the framework document was published. We have noted

above that the housing association sector in Wales has grown and changed over recent years, and the Regulatory Framework has to be sufficiently robust to adapt to that change. However, many of the changes which are occurring in the sector are now taking place, since the financial crisis and the subsequent economic recession, in a less benign environment which is placing new pressures on not only housing associations but their service users and many of their partners.

- 3.15 In terms of a changing context, housing associations in Wales are facing a growing demand for additional affordable housing (in various forms and from a wide spectrum of households, often with different housing and support needs), the requirement to meet and then sustain Welsh Housing Quality Standard (WHQS), policy change specific to Wales and those being introduced at Westminster by the UK Coalition Government (of which welfare reform is perhaps the most threatening, in terms of its potential impacts upon tenants and landlords).
- 3.16 All of these changes pose significant challenges for the governance and financial health of housing associations in Wales and for the nature and quality of services to tenants and residents. Good governance underpins the ability of housing associations to meet many of these changes and to drive the continued provision of additional affordable housing and high quality and improving services. This raises questions which are outside the scope of this study, in terms of whether housing association Boards have the appropriate skills and experience to discharge their responsibilities and whether the mechanisms are in place to ensure Board members are properly inducted, trained and appraised and that associations have policies to ensure Board membership renewal and succession planning. However, good governance is also about accountability; to tenants, residents and service users (and potential service users), to other stakeholders (local authorities, lenders etc.) to government (as the Regulator) and to the taxpayer, given the continued support of public funding for social housing activities. The researchers are aware that an independent study of housing association governance in Wales has recently been commissioned.

- 3.17 Good governance in the housing association sector is critical. It is about providing strong and effective leadership, setting the organisation's strategic goals and direction (and monitoring performance against these). An understanding of the nature, ethos and values of the individual organisation, its staff who manage and deliver the services, the needs and expectations of those who use the services provided and the changing context in which associations are operating are all essential for effective governance, and individual Boards need a good mix of skills, experience and knowledge, as well as the ability to scrutinise and challenge. For all of these reasons it is appropriate that the Regulatory Framework should have a strong focus on governance issues, since effective governance is a prerequisite for the delivery of excellent services and positive outcomes for tenants and service users.
- 3.18 However, the financial health of individual housing associations is also essential if they are to deliver positive outcomes for current and future service users. This is about financial viability (insolvent associations will not be able to deliver beneficial outcomes for tenants and others), but it is also about ensuring associations have effective business planning, a strong risk culture (this does not mean associations being entirely risk averse), sound treasury and financial management, a focus on operational efficiency and effective control of their costs. In the current financial climate it is critical that individual associations achieve an appropriate and sustainable level of financial headroom which allows them to service their borrowing, repay their debts, manage risks and deliver high quality and improving services. These are very considerable challenges, and are evolving in a context in which direct public funding is becoming more limited, the costs of borrowing are rising, organisations are diversifying and developing new and often more complex funding mechanisms and business models and in which they are experiencing new cost pressures (e.g. inflation, impacts of welfare reform on revenue streams etc.). Understanding these increasing financial challenges is itself a key part of good governance and there is a strong argument to suggest that the Regulatory Framework for housing associations in

Wales should now be placing greater emphasis on financial regulation. In the failure of regulation and early intervention in the lead up to the banking crisis in the UK and the failure of Ujima Housing association in England are lessons that need to be learned. More recently, the Homes and Communities Agency (HCA) in England downgraded the governance and viability judgement of Cosmopolitan Housing Group to reflect serious problems with its governance, risk management and financial viability (HCA, 2012) Then just earlier this year (February 2013) the rating agency Moody's downgraded the credit ratings for all English housing associations, citing a "weaker regulatory framework" among its reasons for this decision (Hollander, 2013). Thus, in considering how the Regulatory Framework for housing associations in Wales may need to change, it will be worth considering, in terms of a changing financial environment, whether there is a case for giving more emphasis to governance and appropriate financial regulation within a revised Framework.

- 3.19 This is in no way to deny the importance of regulating housing services, or to deny that housing associations face further challenges in this respect in terms of changes to the profile of tenants and residents and rising customer expectations. It remains important that housing associations continue to develop and maintain homes to high standards, that properties are let (or sold) in a fair, transparent and effective manner, that repairs are undertaken in efficient, timely and effective ways and that housing and neighbourhood services are delivered efficiently and effectively. However, good governance and sound financial management are the two key pillars which underpin good services to tenants and others (and the failure of either is likely to have very significant impacts on - and outcomes for - service users). Therefore, in taking forward the Regulatory Framework for housing associations in Wales it is appropriate to give greater emphasis to issues of regulating governance and finance, in order to ensure quality services are delivered to tenants.

## 4 The Regulatory Framework for Housing Associations in Wales

### Key Principles

- 4.1 There are three main principles which underpin the Regulatory Framework. Firstly, that tenants (or more broadly, service users) are at the heart of regulation; secondly, that individual housing associations are required to take full responsibility for their own actions and the ways in which they operate and thirdly that the regulatory framework is based upon close working relationships between Welsh Ministers (and the Welsh Government more broadly), housing associations, their tenants and service users and their own key partners.
- 4.2 Within this study survey responses showed that a majority of housing association chief executives (almost three fifths) thought that the main elements of the Regulatory Framework provided a robust platform for effective self-assessment and regulation of the sector in Wales, compared with only 16% who did not (almost a quarter were unsure). The figures are similar (actually more positive) in relation to the views of Board chairs, where two thirds thought the Framework provided a robust platform, compared with less than a fifth who did not.
- 4.3 Housing association chief executives in Wales were asked if there were aspects of the Framework which they considered required amendment. Although many identified specific aspects of the framework which they felt required amendment, and these are considered in more detail in later chapters, very few thought that the Framework required a substantial rethink.

### The Approach to Regulation

- 4.4 The Regulatory Framework makes it clear that in its approach to regulation the Welsh Government is committed to:

**Proportionality:** taking an approach that is based on risk and which takes into account local circumstances, local challenges and the track record of individual associations. It is not a one size fits all approach to

regulation and that the extent of regulation at each individual association will vary.

**Transparency and openness:** being clear on how regulatory decisions are made and action taken, and working in ways that encourage the sharing of information in an open and constructive manner.

**Consistency:** ensuring that action and decisions are consistent across the housing association sector whilst taking into account local circumstances; and

**Promoting Improvement and Learning:** providing insight and challenge to help individual associations to improve and sharing learning from regulatory activity to promote improvement by associations as a whole.

- 4.5 In addition, from the outset there was a shared commitment to developing good, regular relationship management, with a view to achieving a “no surprises” approach to regulation. From the perspective of the housing association sector there was an expectation that associations would apply “citizen-centred” principles not only to their business planning but to all their activities, that they would undertake robust self appraisals and engage in open and honest dialogue with the Regulator. They are also expected to ensure effective stakeholder engagement and to have a clear commitment to continuous improvement and challenge.
- 4.6 There are differences of opinion within the sector as to the extent to which regulation has been transparent, open, proportionate and consistent. The survey of chief executives showed that well over half (59%) thought that regulation was open and transparent; although over a quarter of them disagreed. The split in views as to the extent to which they considered it proportionate was exactly 50:50, although a minority (more than one in ten) strongly disagreed with the view that it was proportionate, only one respondent strongly felt that regulation was proportionate. However, there are interesting differences of view when you separate out those associations which had been through the HARA

process at the time of the survey and those which had not. Although only just over a third of associations (13 associations) had been through the HARA process at the time of the online survey, it would seem that this experience has shaped the views of some chief executives. Amongst those whose association had not been through the HARA, almost half of respondent chief executives (10 out of 22) thought regulation was proportionate, compared with two-fifths who thought it was not. However, where the HARA had been undertaken (13 respondents) a significant majority of these chief executives (more than three-fifths) disagreed with the view that regulation was proportionate, compared with less than two-fifths of chief executives who thought it was proportionate.

- 4.7 In terms of consistency less than one in eight chief executives thought that regulation was consistent, compared with over half who either disagreed or strongly disagreed with the statement that regulation had to date been consistent. Once again associations which had been through the HARA process had expressed more negative views. More than three-fifths of these chief executives did not consider regulation consistent, compared with only 15% who thought it was.
- 4.8 The evidence from the survey of housing association board chairs was broadly similar, with over half (54%) agreeing that regulation was an open and transparent process, compared with 23% who thought it was not. Over two fifths (43%) of Board chairs thought regulation was proportionate, although 28% either disagreed or strongly disagreed with this view. In terms of the consistency of approach over a third of Board chairs thought it was consistent, compared with just over a fifth who disagreed (although on this issue more than two fifths of respondents were unable to formulate a view).

### **Learning From Regulation**

- 4.9 It was noted above that the Regulatory Framework has been designed to encourage improvement and learning within associations. Almost two-fifths of chief executives agreed that it had done so, though a fairly

similar proportion of chief executives disagreed with this view. However, in this case amongst those associations which had undergone the HARA a higher proportion of chief executives (seven out of thirteen) acknowledged that regulation had encouraged learning and improvement in their own organisation. (Amongst Board chairs the balance was also positive; with half agreeing that the regulatory approach had encouraged improvement, compared with a third who thought it had not). However, there are also issues about sharing the lessons from regulation in terms of learning and improvement.

4.10 The survey of chief executives indicates that some feel that there have been opportunities to learn from regulation, for example by sharing self assessments and reading the published HARA reports. However, there are also strong views that more needs to be done to disseminate good practice more widely and consistently so that lessons can be learned from the regulation experience.

4.11 Housing association chief executives reported that they had learned (often informally) from the experiences of others, from reading HARA reports and from CHC regulation and governance events. Others have reported learning “not very much”. Individual comments from chief executives have included:

”We’ve learnt that there are a few hot topics (e.g. value for money) and that everybody then scrambles to comply. It’s not the best and most effective way to approach matters.”

“There seems to be a degree of inconsistency between reports that distracts from the potentially more positive aspects that this system could deliver”.

4.12 However, concerns have been expressed by individual chief executives that there has not as yet been sufficient identification and endorsement of “good practice” through regulation. As one chief executive remarked:

“I don’t think we have been able to learn very much from others. I am not aware of any examples of best/good practice or

innovation. Feedback on evidence and experience to date has, in my opinion, been confusing and at times contradictory”.

- 4.13 There is a need for an increased emphasis on learning from regulation; for individual associations, for Boards of Management, for the sector overall (and its representative body) and a range of other stakeholders, as well as for the Regulator. There is welcome support for additional training (currently being provided by CHC and other stakeholders and supported by the Welsh Government), for example in encouraging best practice in relation to self assessment and in developing and evidencing delivery outcomes.
- 4.14 There is a growing expectation that regulation will focus not only on promoting continuous improvement through the HARA process but that resources will be deployed to develop cross sector learning, perhaps by the Regulator drawing together lessons from regulation in respect of particular aspects of housing association operation. Again, in a spirit of co-regulation, there is a role for other organisations in promoting sector wide learning.
- 4.15 In a report to the RBW (January 2013) a number of key themes emerging from the completed regulatory assessments are identified, highlighting areas for improvement. These include:
- Governance and leadership;
  - Difficulties in understanding, developing and evidencing outcomes;
  - Improving self assessments;
  - Improving the understanding of current and potential service users needs and aspirations and how services can be tailored to meet these;
  - A need to embed robust frameworks for monitoring, evidencing, promoting and implementing policies in relation to equality and diversity;
  - A need to demonstrate how value for money (VFM) is achieved in relation to the delivery outcomes.

- 4.16 However, when considered as part of this research it was found that many of these are rather broad brush and whilst they concentrate on areas of common improvement identified in a number of the HARAs they give no feel for examples of positive practice within the sector or how these improvements are to be taken forward on a sector wide basis. Some of the other key themes may require much greater specification (e.g. what is meant by the term “value for money”? Is this about benchmarking costs against other providers or is it about achieving the right balance between costs and quality or is it about efficient and effective procurement?) Some of the other issues may also need to be narrowed down in scope (e.g. the needs and aspirations of current and future service users for particular aspects of housing services, rather than the service as a whole).
- 4.17 Whilst it is clearly part of regulation to identify common issues for further investigation where necessary, it is also part of the role of regulation to identify, through regulatory activity, innovation and positive practice within the sector. However, although there is evidence that, on an ad hoc basis, regulation staff through regulatory engagement are able to point to examples of positive practice in one association that may benefit another association the research found that there has, as yet, been little evidence of regulation identifying positive practice within the sector and sharing this more widely. This has not yet been recognised as a priority in the work of the Housing Regulation Team. There is a need for regulation to drive strategic level improvement in governance, financial management and service delivery across the sector, and for sector wide studies of particular important issues ( based on anonymised case studies, drawn from evidence collected through the regulatory process) to be used to highlight different experiences and relative strengths and weaknesses. In this way the sector as a whole might get “added value” from regulation.
- 4.18 Evidence from regulation should shape the focus and adaptation of the regulatory framework, inform policy development and promote learning and improvement across the sector (and not just within individual

associations). However, the mechanisms for capturing positive practice from regulation appear as yet to be very limited. There is little evidence to suggest that the early lessons from regulation relevant at a national level are feeding through to inform policy development (for example, through the RBW) or that examples of localised good practice (for example, in relation to engaging tenants or in particular aspects of service delivery) are being disseminated across the sector.

4.19 Whilst the process of regulation can identify innovation and good practice it may be that its dissemination and promotion is something that could be jointly promoted by the Regulator and the sector, for example through its representative body, Community Housing Cymru (CHC). There is considerable work to be done in this area, in terms of sector wide studies of activities and aspects of service delivery and using different mechanisms (reports, development of a good practice website etc) to promote continuous improvement across the sector and not just within individual organisations. Although it is relatively early days in terms of the Regulatory Framework, the expectations are that it is not too early to learn the lessons of regulation and it is the responsibility of all who are involved in the regulatory process to take this forward.

### **An Evolving Framework**

4.20 A major theme emerging from the study however is that regulation needs to adopt a more risk-based approach, whilst at the same time acknowledging the individuality of associations. A number of key informants and other respondents also raised the question as to whether within the Regulatory Framework there was the right balance between governance, financial viability and service delivery, or whether there should be more emphasis placed upon the first two of these. As one chief executive commented:

“I think it is based on a premise that a process can provide a robust platform. At present, I don’t think that it is engaged with the real issues currently facing the sector. The effective split

between finance/governance and service delivery regulation ignores the way that an association actually runs”.

4.21 There were also views from survey respondents and the case studies that the approach being taken to regulatory assessment is contrary to the spirit of the process set out in the published Regulatory Framework document and that the way it is being implemented is flawed. Again, to quote one of the chief executive respondents:

“I am a little concerned that the attention to operational detail and the requirement for a strategy document for everything is somewhat missing the point, when the financial and future viability of associations is going to be tested to the extreme (due to Welfare Reform) over the next three to five years. A good Board will be considering its financial position and securing its existence, not checking whether performance against every one of 49 bullet points can be evidenced”.

4.22 The development of the Regulatory Framework was based on principles of co-regulation. The initial consultation on the regulatory framework (WAG, 2009a) highlighted the importance of a strong consensus and support across the housing sector in order to build a platform for reform. It also argued for an approach to regulation which was more strategic and less resource intensive for both the housing association sector and the regulator. In addition to highlighting the need for a regulatory framework which was open, transparent, consistent and proportionate (strongly linked to risk) it also indicated a need for the framework to;

- Drive strong accountability (for both associations and the regulator)
- Provide a citizen-focused approach
- Retain independence (for both associations and the Regulator)
- Inform policy review and development
- Promote effective governance and planning, improvement and shared learning

- Drive a strategic rather than a resource intensive approach to regulation

4.23 Responses to the initial consultation generally supported the view that the core principles would provide the necessary focus to support a robust regulatory framework (WAG, 2009b). It was also argued that the addition of more explicit principles relating to financial viability and governance would encourage investment in affordable housing.

4.24 In July 2010 the Welsh Government consulted further on the proposed approach to regulatory assessment and performance judgements within an overall regulatory framework (WAG, 2010). This envisaged a framework characterised by:

- Robust, evidence-based self assessment;
- A wide ranging emphasis within self assessment on governance arrangements, financial viability and management and service delivery;
- A new risk-based and proportionate HARA by the Regulator at each housing association;
- A new relationship management approach between regulators and housing associations;
- A more transparent approach to any regulatory responses understood by all parties, linked clearly to the outcomes from a HARA, based on risk and proportionate to local circumstances;
- Streamlined, less bureaucratic processes designed to minimise “regulatory burden”.

4.25 The Welsh Government also noted that there was strong support for a co-regulatory approach across stakeholders and that key platforms were either in place or emerging (WAG, 2010). These included:

- A model for self assessment that placed the primary responsibility for performance evaluation, evidence gathering and improvement action firmly with the housing association itself;

- An emerging broad suite of performance standards linked to governance arrangements, finance management/viability and core landlord activities, that provide a frame for self assessment;
- Streamlined regulatory and housing association processes.

4.26 However, although many chief executives and Board chairpersons pointed to positive relationships with the regulator, and it should be acknowledged that not every individual association may be fully signed up to co-regulation, there is a view in some quarters that the co-regulatory approach has been lost (and that it should be reclaimed). This was highlighted in a number of the in-depth interviews with key informants, through the case studies and in the online survey of individual housing associations. For example, as one chief executive commented during the course of this study:

“Developing the Regulatory Framework should be based on a partnership approach, but so far it has not felt like that”

4.27 The Welsh Government also set out its approach to risk-based, proportionate regulation (WAG, 2010) arguing there would be no “one size fits all” approach to regulation and that risk-based regulation was a means to prioritise regulatory activities and to use resources to best effect linked to the performance of individual associations. The approach would be driven by:

- The effectiveness and robustness of the approach to self assessment, how it links to outcomes, its conclusions and the improvement planning that emerges from the process;
- The quality of the evidence base that supports these conclusions;
- The Regulator’s own hard and soft intelligence.

4.28 These are issues explored in further detail in the next chapter. However, before this, consideration is given to the resources within Welsh Government given over to housing association regulation.

## **Welsh Government Resources for Housing Association Regulation**

4.29 It was noted in the April 2009 consultation that a significant restructuring of the Welsh Government's then Housing Division was already underway, creating a considerable increase in both senior and overall capacity within the Housing Regulation Team (WAG, 2009a).

4.30 At the time of this research the Welsh Government's Housing Regulation Team, which is now part of the Welsh Government's Housing Policy Division, comprised the Head of Regulation, four Senior Regulation Managers (SRMs), two based in North Wales (an additional SRM was allocated to the team in the North to cover a period of maternity leave, although this post is currently resourced only until the end of March 2014) and two in the South, three regulation managers (one of whom joined the team during the period of the research), a Senior Financial Analyst and (within the financial team) three other officers; a financial analyst, a financial planning analyst and a consents officer. This is a team of 12 people (11 full time equivalent staff and one fixed term appointment), although it should be recognised that not all of the time of each individual member of the team is devoted entirely to housing association regulation. Over and above regulatory work, the team also handles other issues, including Ministerial and other Government business including policy, programme and corporate governance matters. For example, the team is responsible for consents work and the financial analyst's team also provide support for the assessment of local authority housing business plans.

4.31 During the course of the study an additional fixed term SRM post was advertised, to concentrate on the delivery of the HARA in order to free up time for the south Wales based SRMs to focus on other tasks within the Regulatory Framework. This is being made possible by deploying existing resources in such a way as to allow the post (which is to cover maternity leave) to assist the Housing regulation team to manage pressures on delivering the programme of assessments.

- 4.32 Given the importance of the regulation function and the pressures emerging from the programme of HARAs, the housing regulation team has been protected from cuts in posts within the Housing Policy Division. In addition, it is understood that some non-regulation responsibilities which were originally allocated to the team have been removed to free up resources.
- 4.33 The 37 registered housing associations in Wales are organised in to three portfolios, each within the responsibility of a SRM. At the present time 14 associations are within the south east Wales portfolio, 14 within the south west Wales portfolio and 9 within the North Wales portfolio (geographically this last portfolio covers north and mid Wales and also includes responsibility for around 40 deminimus associations (each with less than 250 units) which are subject to regulation).
- 4.34 Over the course of the last three years there have been changes of membership of the Housing Regulation Team as well as changes in responsibilities within the Housing Regulation Team; e.g. the departure of the Interim Head of Regulation and the appointment of a new Head of Regulation, staff changes amongst the SRMs (and changes in responsibilities for relationship management within the group of SRMs), and at certain times gaps in the staffing structure (e.g. at times no Regulation Manager to support a SRM). There are also different backgrounds, skills and experiences within the Housing Regulation Team and as the process of regulatory assessment has developed, some gaps in knowledge and skills have been identified and work is being undertaken to address these, and in particular to bring those relatively new to housing and regulation up to speed.
- 4.35 Opportunities have also been used to take people on secondment from the housing association sector in to the Housing Regulation Team. However, evidence from several of the interviews with key informants, from the online survey of chief executives and from the case studies indicate that there are opinions in a number of quarters that despite individual strengths, overall the Housing Regulation Team does not have the full set of appropriate skills, experience or mindset and has not fully

bought in to a co-regulatory approach. One chief executive commented (perhaps rather harshly):

“Equipping regulation staff with relationship management skills would be a good start, as would an understanding of the vision we signed up to as the Framework was being developed”.

Another chief executive commented:

“Their understanding of the Association through engagement; their contact with staff, Board, tenants, stakeholders; drawing relevant conclusions from information sent; the engagement so far has been superficial....Interaction, getting to know us and the business all need to be improved”.

A third argued that, over the last two years regular meetings with the association and their SRM had helped improve the regulator’s knowledge of the business and the association’s understanding of regulation requirements. They concluded:

“Unless the Regulator understands the business then it is difficult to see how regulation will work”,

One of the case study respondents argued that staff in the Housing Regulation Team were assuming knowledge of the (housing association) business which they don’t have.

4.36 A number of respondents suggested that that there was a need for more capacity within the Housing Regulation Team. However, the prevailing view expressed by key informants and other respondents was that the current number of staff within the team (12) should be sufficient. What was seen as more important was to ensure that resources are deployed in the most effective manner to ensure that all elements of the Regulatory Framework are delivered in an appropriate and timely way.

## 5 Implementing the Regulatory Framework

### Delivery Outcomes

5.1 The “delivery outcomes” are a key feature of the Regulatory Framework. They focus on two areas:

Part A: Governance and financial management

Part B: Landlord services – how we deliver efficient and effective services.

*‘It is for an organisation to decide locally, working with tenants and other service users, how it will achieve those outcomes’ (Welsh Government and CHC, 2011:9).*

5.2 There are ten “delivery outcomes” and around fifty subsidiary demonstration points. The ten “delivery outcomes” are as follows (Welsh Government and CHC, 2011:18-21)

#### **Part A: Governance and Financial management**

- We place the people who want to use our services at the heart of our work – putting citizens first.
- We live public sector values, by conducting our affairs with honesty and integrity, and demonstrate good governance through our behaviour.
- We make sure our purpose is clear and we achieve what we set out to do – knowing who does what and why
- We are a financially sound and viable business
- We engage with others to enhance and maximise outcomes for our service users and the community

#### **Part B: Landlord service – how we deliver efficient and effective landlord services**

- We build and renovate homes to a good quality
- We let homes in a fair, transparent and effective way

- We manage our homes effectively
- We repair and maintain homes in an efficient, timely and cost effective way
- We provide fair and efficient services for owners

5.3 Overall, the use of delivery outcomes that focus attention on the impact of services rather than the process of delivery was welcomed. Among those chief executives who responded to the survey (35) only just over a third (12) said that they found the delivery outcomes as currently constituted useful. A further 10 (29%) found them not useful and the remainder (13) found them neither useful nor not useful. Among the organisations that had been through the HARA process, 42% (5) of respondent chief executives found the delivery outcomes neither useful nor not useful, 42% (5) found them useful and 2 (16%) found them not useful or not useful at all.

5.4 The delivery outcomes were first published in 2010 after consultation and with strong sector endorsement (Welsh Government/CHC, 2010). They were designed to be bespoke for Wales and were based upon the core One Wales citizen-centred principles and the Making the Connections agenda (Welsh Assembly Government, 2006b). The delivery outcomes were designed to provide a structure for self assessments and their review by the Regulator, to improve accountability to tenants and service users and to drive upwards the quality of services. Of course, this does not necessarily determine how precisely the delivery outcomes are implemented in practice.

5.5 There was a strong feeling among interviewees (both key informants and case study), CEO questionnaire respondents and members of the Regulation Network focus group that there is no clear and consistent understanding of the term “delivery outcomes” by either housing associations or the regulatory team. One key informant interviewee felt that some organisations had become caught up in the debates around the definition of delivery outcomes rather than concentrating their effort

on adapting their organisations to the reflective, self aware approach of the Regulatory Framework.

- 5.6 It was acknowledged by HAs (through CEO questionnaire responses and case study interviews) and the regulatory team that not all of the delivery outcomes are outcomes and this has led to some confusion among housing associations. It is, however, recognised across the research that it is difficult to specify outcomes in some areas, particularly in the area of governance. In some cases, it is argued, what is specified as an outcome is an organisational requirement for good governance:

“Delivery outcomes numbers 1, 2 and 5 are more difficult to understand and explain. The bullet points do not clearly relate to the overall statement, particularly for number 2 ‘living public sector values’. It would help to understand better what the regulator thinks are the outcomes it is seeking within these.”  
(CEO questionnaire)

- 5.7 There is recognition among key informant interviewees and CEO questionnaire respondents that housing associations may have contributed to the perceived prescriptive nature and extent of delivery outcomes and, particularly, the demonstration points by continually seeking clarity and guidance on the self-assessment process and output.

“There are too many delivery outcomes and the thinking is at risk of becoming quite prescriptive in terms of the outcomes the regulator is seeking. It’s a tricky area as many RSLs are seeking clarity and consistency which inevitably pushes a more prescriptive approach.” (CEO questionnaire)

- 5.8 Some participants, including a number of CEO questionnaire respondents and members of the Regulation Network focus group argued that the perceived prescriptive nature of the delivery outcomes (and demonstration points) is working against the concept of flexibility and the recognition of local context that underpin the framework.

“It is vital that organisations are self aware and listening to customers. I believe that the primary driver for delivery outcomes should be what our customers want. Again this pulls against a prescriptive framework.” (CEO questionnaire)

5.9 Questionnaire respondents, case study interviewees and Regulation Network participants argued that a lack of clear and consistent guidance from the Regulator on how housing associations demonstrate and provide evidence that they meet the delivery outcomes and demonstration points has created a shift towards compliance rather than flexibility and relationship building. The perception of a shift towards compliance was reinforced for those (case study interviewees and Regulation Network focus group participants) that had been through the HARA process by the format of the detailed final conclusions document. This document is approximately 50 pages in length and it addresses every demonstration point rather than those relevant to individual associations (See chapter 6 for further discussion).

“Greater consistency in what the self assessment should be against (48 statements or the 10 overarching delivery outcomes). We have consistently been told that the 10 delivery outcomes are the focus yet the feedback from HARAs is that the focus is on the 48, thus driving a tick box approach. More dissemination and discussion of key findings and their importance.” (CEO questionnaire)

5.10 From the questionnaire returns and the Regulation Network focus group, it appears that some organisations, who may have been less confident in the self-assessment process, have resorted to attempting to evidence that they have met all the demonstration points rather than select those demonstration points that reflect the organisation’s own priorities and the priorities of their tenants. Others have been more confident in doing this:

“We have reviewed all our key service systems and engaged with residents to understand the purpose of the system from their perspective and what matters to them in terms of “value” . It

is this process that has informed the outcomes we are seeking to deliver. In essence this is our operational self assessment though not in the form “prescribed” or against the specific points that the regulatory framework states. That said I believe the points are covered.” (CEO questionnaire)

5.11 Case study interviewees and a number of the questionnaire respondents felt that the regulatory team did not always recognise the diverse nature of housing associations, the context within which they operate and the different places from which they start. It was suggested that this understanding should develop through relationship building when the regulatory team supports organisations through the development of self-assessments and through the HARA process itself.

5.12 There is also evidence from both case study interviews and the Regulation Network focus group that the extent to which flexibility in meeting the delivery outcomes (and demonstration points) and the recognition of local and organisational context is acknowledged by the regulatory team differs by organisation and possibly by regulatory personnel. It was felt that the extent to which relationships with organisations have been developed pre-HARA and during the HARA process itself has led to a perception of “mission drift” from relationship management to compliance and audit. One chief executive commented:

“The process has developed into a quasi inspection regime and has failed to assess many more than ten associations in three years. The obsession with publishing a grading for each HARA has led to the inevitable middle ground being occupied by most (a normal distribution curve)...In its current form the HARA process is too detailed, too similar to inspection and too difficult to deliver within existing Welsh Government resources. As initially promised, the HARA should be the result of an ongoing relationship between the landlord and the regulator, not a one-off exercise”.

5.13 Organisations have used a great number of sources of evidence to demonstrate how they have met the delivery outcomes (CEO questionnaires and case studies). In questionnaire responses organisations listed various types of internally produced and externally produced and verified information that they used for their self assessments (e.g. tenant satisfaction surveys, stakeholder surveys, Board reports, internal audit reports, staff surveys, performance statistics etc.). Other questionnaire respondents argued strongly that delivery outcomes were and should be embedded in their business planning cycle:

“For the process to have a meaningful value it must be integrated into a HA’s business planning process. There can [be] iteration between the two, but unquestionably the latter [business planning process] should lead the former [Delivery Outcomes (DOs)]. This is the approach we have taken i.e. by attempting to set a sensible corporate plan, based on the delivery of outcomes, we should implicitly be able to demonstrate achievements of the DOs. If there is to be a genuine partnership between the regulator and the HA it cannot work any other way as you would be left with a business geared to the whims of the regulator and not to its customers; this is the poorest form of bureaucracy.” (CEO questionnaire)

5.14 Questionnaire responses and case study interviewees suggested that tensions between the perceived prescriptive nature of the delivery outcomes and demonstration points and the need for flexibility arise when organisations attempt to align their own corporate priorities with those of the Regulator. It is at this point, it is argued, that the ideal of the Regulatory Framework recognising local context and organisational priorities is under greatest challenge.

“the delivery outcomes don't encompass the whole business and don't align very well to our corporate priorities and we have aligned self assessment to corporate priorities. So the relationship is there but will never work that well whilst we are

expected to align our self assessment with WG outcomes rather than our own” (CEO questionnaire)

- 5.15 Evidenced gathered from the case study organisations and the Regulation Network focus group suggest that resources required by housing associations to produce appropriate evidence for each demonstration point can be considerable. Evidence from the survey of chief executives suggests the shift from a performance indicator regime to an outcome-focused framework has been challenging for some, although not all organisations. The Regulation Network felt that smaller organisations may not have the staff resources required to incorporate the required shift in evidence base and questions of proportionality and “regulatory burden” have been raised (Regulation Network focus group). Among the 13 CEO questionnaire respondents that have been through the HARA process, nearly three-quarters (eight) strongly disagreed or disagreed with the statement that the approach to regulation was proportionate. Less than third of (five) respondents agreed that the approach to regulation was proportionate.
- 5.16 It has taken some organisations time to understand the requirements of them and ensure that their management information systems can produce the evidence that is required. A number of organisations who responded to the questionnaires use or are currently considering a “results based accounting” system to help them collect outcome-focused evidence.
- 5.17 It is not only organisations that have resource issues in this area. It was felt, by case study organisations and participants in the Regulation Network focus group that the amount of time the regulatory team spends chasing and checking evidence for each demonstration point can mean that the team have less time for other aspects of their role, e.g. relationship management and regulatory engagement post-HARA. While it is recognised by housing associations that delivery outcomes have to be backed up by evidence, the case study organisations felt that the amount currently produced and the forms that it takes needs to be reviewed. There was significant disquiet among the case study

organisations and the participants of the Regulation Network focus group that externally verified evidence (e.g. independent tenant surveys, independent stakeholder surveys, Investors in People) had not been accepted or had been disregarded by the regulatory team.

### **Self Assessment**

*“All housing associations are expected to carry out a regular self assessment which evaluates their performance on service delivery, governance, and finance, and proposes improvement action. Detailed requirements and expectations are set out in the Welsh Government Circular RSL 33/09 and its related cover note. The Welsh Ministers expect housing associations to publish their self assessments in a way that is readily accessible to tenants.*

*Self assessment is the core evidence used in the regulatory assessment. A robust, evidence based, challenging self assessment is thus an important element of the Regulatory Framework.*

*There is no prescribed format for self assessment. Each housing association may tailor its approach to meet its own needs and those of its tenants, service users and partners.” (Welsh Government and CHC, 2011:9-10)*

- 5.18 Questionnaire respondents see self assessment as fundamental to any organisation that needs to reflect and act on its priorities and those of its tenants, and not just part of the Regulatory Framework. Some organisations already had a self assessment process embedded within their business planning and performance monitoring processes prior to it being a regulatory requirement but for others it is a new way of working that has taken some time to understand and implement. This may be reflected in the variable quality of housing association self assessments, with some, it is claimed by the Regulator, not meeting the requirements of RSL Circular 33/09. This circular sets out the guiding principles for a self assessment. Housing associations who responded to the questionnaire identified this as an area where some timely dissemination of good practice would have been appropriate and welcomed.

5.19 Concerns were raised by some chief executive responses that the self-assessment process and the need to evidence delivery outcomes can or has the potential to push organisations in directions that may not be best for their local context and priorities. As one commented:

“The self assessment does encourage you to be more outcome focused and strip back unnecessary processes that may not necessarily have a positive impact to the lives of tenants..... However, where each delivery outcome may not always be relevant to all associations at specific points in time it is important the relationship between self assessment and the delivery outcomes does not become one where an association is dictated to in the direction chosen for their mid to long term business planning.”

5.20 Despite there being no prescribed format for the self assessment many organisations have taken the delivery outcomes and demonstration points as a template and attempted to address each point (see 5.4 – 5.8 above). Other organisations have developed their own formats, or even not produced a self assessment with the agreement of their Senior Regulatory Manager, but there remains a concern that this may not be looked on favourably during their HARA. This is one of the points of inconsistency in the relationship with the regulatory team identified by the Regulation Network focus group and questionnaire respondents. It is claimed that organisations have been given different information on what is required in the self assessment document. Not only has the guidance provided been inconsistent between Senior Regulation Managers (Regulation Network focus group and case study organisations) but also information provided by the Regulator at public events has varied and at times been contradictory. This has compounded feelings of confusion amongst staff, board members and tenants.

“...as referred to above, whilst the Association believes it is doing the right thing, almost every time staff attend some regulatory training this faith is shaken as confusing and different messages appear to be given.” (CEO questionnaire)

5.21 All housing association Boards have been involved in the process of self assessment to a greater or lesser degree (CEO and Chair questionnaires). There is an expectation within the Regulatory Framework that Boards should take “ownership” of the self assessment but there are diverging views on what this means for involvement of board members and at what level they should operate:

“Board is there to be responsible for the Association's strategic direction, not to administer a WG bureaucratic process.” (CEO questionnaire)

5.22 The skills of individual board members and the time commitment required can have an impact on the level, extent and nature of involvement. Some organisations who responded to the questionnaires have incorporated the self assessment into their normal business planning process and aligned the self assessment with corporate plans and objectives.

“....we have tried to involve the Board in the process of shaping and defining a business strategy, rather than in the process of Self-Assessment; however, by doing the former we should achieve the latter.” (CEO questionnaire)

5.23 For other organisations, the Board involvement was much more “hands on” with board members working closely with the executive team to consider the approach taken and the evidence gathered:

“The Board of Management has been fully involved in developing our approach to self-assessment. Early in 2010 we had a Board Development Session with the Senior Regulation Manager leading to a discussion on the Regulatory Framework to set the scene for the work to come. Later in the year we had a number of workshops with board members to scope out the parameters and then in 2011 we involved staff and Board members in working groups to reviewing and scrutinising the information we were collating to demonstrate how we met the delivery outcomes.” (CEO questionnaire)

5.24 Again, according to the questionnaire responses involvement of tenants in the self assessment process varies widely and doesn't always reflect the "putting tenants at the heart of what we do" ethos of the Regulatory Framework. Some organisations rely on tenant surveys and focus groups as ways in which tenants views are fed into the self assessment. Others use their tenant board members as conduits of tenant views and preferences, although they may also use other methods to engage tenants in producing and scrutinising service delivery standards, which feed into the self assessment and the delivery outcome evidence. Others organisations argued that tenants are the focus of all that they do and are involved at every level of their business and are offered numerous ways in which to get involved. One chief executive argues that:

".....if we are doing our job properly and being the best landlord we can be, then tenants would not feel a need to engage over the specifics of Self Assessment." (CEO questionnaire)

5.25 Few housing associations have made their self assessment available to tenants. Many felt that the original document was not in a format that was accessible to tenants. It was felt that the work required to produce something meaningful would be prohibitive in terms of time and resource, especially as much of the relevant information contained within it is available in other forms. It was felt that tenants are not interested in the level of detail required of the self assessment document (case study organisations and Regulation Network focus group).

### **Working with Service Users**

5.26 Housing associations engage with their service users in a number of different ways. Evidence from the survey of chief executives shows that all housing associations undertake tenant satisfaction surveys, 86% focus groups, 75% estate walkabouts, 61% road shows, 56% tenant led surveys, 47% outcome focused evaluations of tenant participation and 50% mystery shopping. This demonstrates that most organisations strive

to give service users a choice in the type and level of engagement available to them.

- 5.27 It is clear from questionnaire responses that each association takes an individual approach and engages with tenants in a way that seeks to address their tenants' needs. Nevertheless, some associations do state that tenant engagement is an area in which they need to do more in the future.
- 5.28 Tenants who took part in the case study focus groups and the TAP focus group on the whole felt that engagement with their housing associations had improved through the self assessment process but some feared that this would decline once the HARA had been completed. This was not a view held by all tenants as some were very complimentary about the quality and quantity of engagement available to them.
- 5.29 Each of the case study tenant focus groups identified communication with their Association as a problem. They felt that they were being asked to give their opinions on many areas of activity, e.g. repairs services, allocation and lettings policies, but there was little feedback on the changes that had been made in light of their comments. This, they felt, led to dissatisfaction and disgruntlement and eventually to a lack of willingness to be involved. A number of focus group participants identified falling numbers at engagement events as a problem.
- 5.30 Participants in the case study tenant focus groups found it difficult to distinguish between involvement in the regulatory process, e.g. the development of the Association's self-assessment and the HARA, and other forms of participation and engagement, e.g. scrutiny panels, task and finish groups. At least one member of each of the focus groups was aware of the new regulatory regime and had had some level of contact with both the regulatory team and their Association but not all focus group members were aware of either the self-assessment or the HARA process. Most focus group participants were aware of the HARA report although not all had seen a copy of their Association's report.

5.31 A number of tenant focus group participants felt that their Association's HARA report did not reflect the way that they experienced tenant involvement and engagement. The general feeling from each of the case study focus groups was that tenants had very little understanding of the Regulatory Framework and their role within it. There had been some involvement with the Association and with the regulatory team but this had been superficial and sporadic. They felt that they had had little feedback from the Association on the tenants' input and on the HARA report. Many focus group participants felt that they couldn't comment on the outcome of the HARA process as they had not seen any improvements in service delivery yet.

### **Relationship Management**

5.32 The Regulatory Framework makes it clear that partnership and close working relationships are essential to good regulation. In particular it argues that the Welsh Government will develop strong working relationships with housing associations based upon openness, trust and challenge and highlights the benefits that this relationship will bring. These include:

- regular dialogue with housing association boards, staff, tenants, service users and partner organisations;
- a full and rounded understanding of each individual housing association, its local activities, risks, priorities and circumstances;
- early identification of actual or potential risks;
- a proactive approach which allows issues and problems to be tackled at an early stage and prevents things getting worse;
- timely support and sharing of good practice to help ensure continuous improvement.

5.33 Effective collaborative working and good relationship management need to be at the core of the Regulatory Framework. Good relationship management, although only one element of the Framework, is a critical one. However, the evidence as to how this collaboration is working in

practice, and how relationship management has developed, is varied. Whilst the survey of the views of chief executives found that almost half thought that the process of working together between their association and the Regulator had been effective to date, a third argued that it had not been effective. Specifically asked about relationship management arrangements over half of the chief executives thought this was, in relation to their own association either effective (41%) or very effective (16%) but over a quarter (27%) thought it was not effective. The results from the analysis of Board chair responses are broadly similar. Individual comments from chief executives varied considerably. One chief executive reported:

“So far, our contact with the regulator has been positive and productive. We have a quarterly meeting with a clear agenda which is agreed in advance. I like the fact the Regulation Manager asks us to set the agenda, which puts the ball squarely in our court to ensure the time is used to the best advantage of the business. We recognise that the time with the regulator is a limited resource and it needs to be used effectively. When there have been matters to deal with which required action I have found the response to be timely and professional”.

However, another housing association chief executive commented:

“The concept of relationship management, to genuinely understand the operating context, strengths and areas for improvement of the organisation, is an important and fundamental part of the regulatory approach. Focusing on this would improve the quality and perception of regulation and ensure that decisions and action were based on robust understanding as opposed to a snapshot. To date too little relationship management has occurred”.

5.34 Elsewhere through the research it has been possible to identify examples of where relationship management has worked well. A number of chief executives have highlighted, often in the period prior to

regulatory assessment, positive relationships with their (Senior) Regulation Managers, and the benefits of the Regulator getting to know the individual business (and vice versa). In addition, a recent conference presentation from a chief executive highlighted the significance and value of the intervention of a member of the Housing Regulation Team in identifying and helping to resolve a very difficult and major issue within the organisation (“Regulation worked -it was appropriate, challenging and supportive - and saved the organisation”); a case of timely and proactive regulation and very positive relationship management. There are other examples which have been identified, particularly through some of the case study interviews, where Senior Regulation Managers have provided constructive challenge and guidance and have influenced and helped improve service delivery. These are all encouraging developments, which are likely to continue where they are based on mutual trust and respect and a two-way, timely and transparent process.

5.35 However, for a number of reasons relationship management has not always been as effective as it might have been. The capacity of the Welsh Government Housing Regulation Team was set at the outset and has been constrained by budgets. However, even within budgetary constraints the Team has rarely been operating at full resource and has experienced changes in personnel and significant delays in recruitment and replacement, all of which have not helped in the development of effective relationship management. A number of respondents (both through the online survey of the views of chief executives and the case studies) have also highlighted inconsistencies in approach between different members of the Housing Regulation Team, where responsibilities have changed hands. This highlights perhaps one of the weaknesses in the model of regulation.

5.36 It can also be argued that the capacity to develop effective relationship management has been undermined by the need to devote more resources than had been anticipated to other aspects of regulation; for example testing the robustness or otherwise of housing association self assessments. The resources which are currently being devoted to

completing the programme of HARAs - see chapter 6 below - are undoubtedly taking resources away from the ongoing development of relationships between staff in the Housing Regulation Team and individual associations within the sector.

### **Working with stakeholders**

5.37 Housing Associations engage with stakeholders in a number of different ways. Their activities are generally part of their on-going business relationships with their partners although some organisations have involved partners in specific regulation focused activities. Others consider that this is not appropriate:

“We have not actively engaged others in terms of Regulation. We have a principle that we do not do anything for Regulation - our activities should be focused on the operation of the business and if we are focusing on doing things that only have an outcome or benefit for the Regulator then we should seriously question why.” (CEO questionnaires)

5.38 Many organisations who have responded to the questionnaire have undertaken stakeholder surveys, either as part of the self assessment process or as part of regular performance monitoring processes. A few organisations that have undergone the HARA were disappointed that little account was taken of the findings by the regulatory team. Other engagement activities include one to one meetings with local authority and local health board partners; using partners as critical friends or to bench mark services and using partners as part of service reviews (including delivery outcome reviews); and the provision of information including Financial Viability Judgments, the HARA decision and report and annual and corporate/business reports. Regular dialogue with local authority partners is seen as essential, by questionnaire respondents and case study organisations, for priority setting and performance monitoring purposes.

“We have regular dialogue with our LA partners to understand what their priorities are and how we can support them. We seek

feedback from them on our performance and what we could be doing differently. Our approach is a face to face dialogue and not an anonymous survey. We feel our relationships are sufficiently mature for this and it provides much richer info.”  
(CEO questionnaire)

5.39 While some organisations acknowledge that they need to do more work in the area of stakeholder engagement, there are examples of good practice:

“We have undertaken an external stakeholder survey, from which we created an action plan for improvement. We will shortly repeat this exercise, as we have completed the actions suggested for improvement by our external stakeholders, in order to seek further improvement suggestions.” (CEO questionnaire)

“We have held an external stakeholder open day, and we regularly circulate our updated Promise Tracking Document to a wide range of external stakeholders, in order that they can both track our progress, and engage in areas of mutual interest.”  
(CEO questionnaire)

We are engaged effectively with a wide range of strategic and operational partnerships, from the Local Service Board, to the local Regeneration Partnership, the Genus Consortium and Communities First.” (CEO questionnaire)

## **Relationships and Communication**

5.40 Thus far it has been argued that implementing the new Regulatory Framework requires an appropriate level and deployment of resources, the development of appropriate skills sets and an approach which is collaborative, not only between the regulator and the housing association sector but also at the level of the individual association between Board and staff, between associations and their service users and between associations and a variety of local stakeholders. It was noted in chapter one that the Framework has only formally been in

operation for 16 months and it is acknowledged that this will all take time, effort, resources and considerable commitment on the part of many individuals and groups. It is also important that the process of regulation is used not only to inform continuous improvement within individual organisations but that lessons are learned and shared for the benefit of the sector as a whole.

5.41 Chapter four highlighted the process of co-production by which the Regulatory Framework was developed. As a whole, the housing association sector remains supportive of the Framework, the principles which underpin it and is desirous of an approach which is broadly collaborative (co-regulatory, not cosy regulation) and proactive, in which risk is identified in a timely manner. However, concerns have been expressed through the research by a number of key informants, by individual comments from chief executives and in the detailed case studies that relationships between the Welsh Government (as regulator) and the housing association sector as a whole with regard to regulation appear to have deteriorated over the recent past and that dialogue is not as constructive as it could be. It was suggested by a number of research respondents that there is a degree of distrust and, on occasion, a lack of mutual respect. Of course, it would be naïve not to recognize that there are always tensions between regulators and regulated, and to acknowledge (in the words of one of the key informants) that “many housing associations in Wales felt bruised by the previous inspection regime”, but nevertheless some of the optimism evident in the development of the Regulatory Framework appears to have dissipated.

5.42 At the end of chapter four the resources which have been secured within the Welsh Government to undertake housing association regulation were outlined. It was also acknowledged that there has been a degree of change of personnel and responsibilities within the staffing of the Housing Regulation Team, and that a number of individuals are relatively new in post. Staff changes have disrupted the relationships between the Regulator and some individual associations and delays in recruitment have often meant that the Housing Regulation Team has not

been fully resourced. A number of housing association chief executives are able to point to very positive, constructive and beneficial relationships with their (Senior) Regulation Managers, which has helped to develop a shared understanding of both the regulation process and the nature of the housing association. As one chief executive commented:

“For us relationship management has been crucial as it is vital our SRM understands our business as it is very niche. Our own personal experience has been very positive”.

Another commented:

“It has been very effective as we have had a consistent Senior Regulation Manager from the outset. However, from discussions with colleagues they have had either no regulation manager or constantly changing managers, which, makes relationship management very difficult”.

5.43 However, other responses from individual chief executives reported long periods of non-contact and limited feedback, inconsistencies between regulation managers, and a lack of “relationship management” skills appropriate to the job. One chief executive commented:

“For us, they have failed to sufficiently engage with the association, despite us offering numerous opportunities to meet and get to know us, our tenants and stakeholders and documentation sent has not been read or understood. In some cases the same document has been sent several times and clearly not read as further copies have later been requested”.

5.44 In recognising the resource constraints under which the Housing Regulation Team is operating, the ways in which governments and large organisations often operate and the shifting context within which regulation is being implemented, then a balance has to be struck between the different elements of the Regulatory Framework; relationship management, regulatory assessment (including assessment of financial viability), - and within this the degree of audit, scrutiny and

compliance checking against individual delivery outcomes and demonstration points, ongoing regulatory engagement with associations post HARA, and promoting learning from regulation so far. Realistically, there are not sufficient resources (and nor is it likely there will be in the foreseeable future) to do all of these to the level of detail which might be desirable, and therefore decisions have to be made about the deployment of resources to different aspects of regulation, bearing in mind that the process should be proportionate, consistent and risk-based.

- 5.45 The research has identified tensions in some of the relationships between the Welsh Government Housing Regulation Team and the housing association sector. Some of the individual relationships are working well, but others much less so, and, it has been noted elsewhere in this report that effective working relationships are critical to the success of a collaborative approach to regulation. In both the Welsh Government and the housing association sector there appear to be differences of opinion as to the direction which regulation is or should be taking and the relative priorities within the regulatory process. There is a need for a more focused, consistent and shared approach to regulation, as well as improvements in the nature and quality of two-way communication between the Housing Regulation Team and the housing association sector.
- 5.46 The nature of the Regulatory Framework places considerable pressures upon the role of the Senior Regulation Managers (SRMs) and Regulation Managers (RMs). The role encompasses evidence gathering, regular dialogue and contact with individual associations (and developing a good knowledge of the business of these associations) as well as regulatory assessment. It is beyond merely that of being information recipients and analysts to one in which they are expected to develop ongoing relationships which allow for constructive challenge and encourage openness, trust and the sharing of information between associations and the Regulator.

5.47 Staff within the Housing Regulation Team have a range of skills and experiences. However, it is difficult without a good understanding of housing issues and the nature of the sector and the ways in which it operates to play the regulatory role effectively. In some cases this does appear to be lacking in relation to more strategic issues. There was a concern expressed by some of the key informants and in the responses of a number of housing association chief executives that where the range of skills, experience understanding or confidence to challenge is lacking, there may be a natural and understandable tendency for regulation to revert to detailed inspection, audit and compliance checking around aspects of service delivery, rather than in relation to other aspects of the Regulatory Framework. Therefore, any shift in the balance of regulation towards issues around governance and finance, which might have beneficial impacts on service delivery, would clearly require a refocusing of the balance of knowledge, skills and experience within the Housing Regulation Team.

5.48 It is noted in the next chapter of this report that there are questions as to the value of some of the published outputs from regulation in their present form (e.g. the published HARA reports). However, some chief executives have raised issues as to the use of inappropriate and potentially damaging language in written reports and an absence of trust and a lack of transparency and mutual respect between the sector (and some individual associations) and some members of the Housing Regulation Team. One housing association chief executive commented:

“There appears to be (almost across the sector) a loss of faith in the regulator – not in terms of integrity – but certainly in terms of capacity – work load and intellectually – to both understand and convey the message;”

5.49 In part, these are issues of style, with communication on occasion being viewed as either very defensive or rather high handed. One chief executive commented:

“A more grown up and less nit picky approach by the regulator. I’m happy to have a robust dialogue with the regulator over things that are wrong in the association, but when the debate becomes centred on the minutiae it becomes counter-productive. Unfortunately, this happens when the regulator isn’t confident about their bigger judgements and prefer to fall back upon detail which is more likely to be “right” or “wrong”.

5.50 It is also fair to say that the problems are not one sided, and that some individual housing associations need to step up to the plate and be less defensive and for there to be more give and take in the relationships. Nevertheless, some chief executives have indicated that is on occasion a lack of respect for the views of associations, for example in discussing detailed issues in draft HARA conclusions documents. One chief executive commented:

“We experienced some dispute and frustration over the wording of the draft report. Praise was very grudging and negative issues were emphasised. It did not match the feedback given to staff and Board members and we had to negotiate (successfully) changes to the report”.

Another chief executive commented:

“We spent a lot of time “mopping up”, both in our response to the 50 page detailed first draft and in reassuring staff”.

5.51 From the outset the development of the Regulatory Framework was dependent upon effective collaborative working between the Welsh Government and the housing sector in Wales (and not just the housing association sector). A number of survey respondents (key informants and chief executives) have commented as to the work done firstly by the post Essex regulation work stream and subsequently by the Regulatory Advisory Group, which does not appear to have met for some considerable period of time. This provided high level strategic inputs in to the delivery of the Regulatory Framework and according to a number

of research respondents this thinking power appears to have been lost, to the detriment of the delivery of regulation.

5.52 There is also an expectation of more open, regular and informative communication between the Regulator and the sector through newsletters, meetings and conferences. Further thought needs to be given as to how issues of communication and mutual understanding could be made much more effective in relation to regulation.

## 6 Regulatory Assessment

### The Housing Association Regulatory Assessment

- 6.1 In July 2010 the Welsh Government set out for consultation its proposed approach to regulatory assessment within the framework (WAG, 2010). This argued for a two stage incremental approach with the emphasis in year one (2010-11) on the implementation of robust local self assessments and the delivery of initial Financial Viability Judgements (FVJs) and then from year two (2011-12) the delivery of a full annual regulatory assessment for each housing association in Wales. The aim was to deliver a first comprehensive HARA for every housing association by March 31st 2012 (WAG, 2010).
- 6.2 The intention was that the HARA would:
- Summarise the key strengths and areas for development for a particular housing association;
  - Confirm the published formal judgement on an association's financial viability;
  - Outline the level and type of regulatory contact required for a particular association for the forthcoming year, specifying a "low", "medium" or "high" level of regulatory contact;
  - Describe the nature of that contact (i.e. ranging from increased scrutiny of the self assessment or financial submissions through to inspections or other more formal interventions).
- 6.3 In terms of reporting arrangements the language at that time was of short summary reports and, "in essence a portmanteau of letters, reports, observation, email exchanges etc. over a period, rather than a detailed single report on performance at a point in time typical of inspection based reporting" (WAG, 2010, p15).
- 6.4 In making a regulatory assessment the Welsh Government indicated that it expected to draw upon a range of information and intelligence both "hard" (e.g. self assessments, financial information, other external judgements, performance information, other Welsh Government

evaluations and audits, complaints and whistle blowing) and “soft” (e.g. ongoing contact with associations and stakeholders, knowledge transfer within the Welsh Government and testing of service delivery).

- 6.5 Further Welsh Government consultation issued in late October 2011 (Welsh Government, 2011) broadly reiterated the approach to regulatory assessment (with self assessment highlighted as core evidence). Following this exercise the Regulatory Framework was published at the beginning of December 2011 (Welsh Government/Community Housing Cymru, 2011).
- 6.6 In 2011-12 the Welsh Government began a process of HARAs, based upon pilots undertaken in 2010 involving Pennaf, RCT Homes and Seren Housing Group. In January 2012, following publication of the Regulatory Framework, the intention was that the programme would be completed by the end of March 2013 (although the Framework suggests that a HARA will be produced annually for each association). With hindsight this timetable was probably too demanding and unrealistic.
- 6.7 At the present time 18 HARAs have been published, 7 in relation to associations in South-East Wales, 6 in relation to South-West Wales and 5 in relation to North Wales. At the time the research commenced only 10 HARAs had been published. The current timetable indicates that all Welsh HARAs will not be completed until February/March 2015, which means there is a real danger that a programme of regulatory assessment, originally intended to be undertaken on an annual basis, will take more than three and a half years to complete in a first cycle (evidence gathering for the first HARA began in the summer of 2011). Concern was expressed by members of CML Cymru that this is a long period of time, potentially leading underperforming associations with poor governance undetected.
- 6.8 As part of the survey of housing association chief executives in Wales (but not Board chairs) a small number of questions were asked of those who (at the time of their response to the survey) had been through the HARA process to the point of publication. There were 13 responses to

this part of the questionnaire, with mixed views on a number of issues. Over half thought the HARA provided an appropriate mechanism for reporting the Regulator's opinions on the governance, financial management and quality of services provided by associations. However, more than one third (38%) did not. Where chief executives considered the HARA process was not proportionate, individual comments pointed to inadequate guidance at the outset, a lack of prior engagement and clarity as to expectations. One chief executive commented:

“The new regime was supposed to be based upon relationship management and not inspection. Inspection was what we got, along with an attention to detail that is beyond the scope of high level governance”.

- 6.9 Almost half of respondents (46%) reported that managing the HARA process was difficult, compared with only 22% who thought it was relatively easy. Whilst eight out of thirteen thought the outcome of regulatory assessment was a fair reflection of their association's performance against the delivery outcomes (only one reported the assessment as not fair), there were mixed views as to the value of the feedback from the process. Almost two-fifths (39%) thought feedback was effective; 30% thought it was not effective. Whilst almost half were unsure as to the value of the assessment of future regulatory engagement, 38% thought it was not a useful form of assessment. These are issues we explore in further detail later in the chapter.
- 6.10 However, in addition to the evidence from the survey of chief executives, as indicated in chapter one (research methods), the research has been able to explore the views of a number of associations in greater detail through our case studies of three associations where regulatory assessment has been completed and where future regulatory engagement has been assessed as “medium”. In these three associations the study has included more detailed interviews with members of the senior management team (4 individuals in two organisations, 7 individuals in the other) regarding the process and outcomes of the HARA process, as well as a focus group with a number

of Board members and a separate focus group with a small number of what we have termed informed tenants. In considering the HARA process and outputs, the research also been able to draw upon many of the one-to-one interviews undertaken with key informants.

### **The HARA Process**

- 6.11 At the outset it would appear that for each HARA a three month timetable was allowed for planning, evidence gathering and reporting. However, the practice would suggest there has been significant variation in the time taken to undertake and finalise each individual HARA. In part this is explained by the fact that this is first cycle of HARAs, that there is a need to build a baseline of data regarding individual associations (and the sector as a whole) and because the quality of self assessments is variable (and many are not as well developed or evidenced as might have been expected from the outset by the Regulator). Time also has to be allowed for dialogue between individual associations and the Housing Regulation Team to consider further evidence and comments on draft conclusions as well as agree and finalise HARA reports.
- 6.12 The evidence from the three case studies suggest that the HARA process is seen as manageable by associations but that it should be more proportionate and risk-based and less focused on housing services. There are also criticisms that on occasion insufficient planning by members of the Housing Regulation Team goes in to agreeing the programme and timetable for an individual HARA, which is clearly important given the number of people and organisations involved during HARA visits. The survey of chief executives identified some who found the process very time consuming and the benefits not proportionate to the resource input. As one chief executive noted:

“There was very little information about what was going to happen in advance, we were unclear about what we needed to provide. There appeared to be very little planning, timescales slipped and it all felt very disorganised. The onus fell on us to get some shape into the process”.

- 6.13 There was also a concern expressed by a number of chief executives and in two out of the three case studies that, because of the growing diversity of many housing associations, then for some the HARA only focused on a small proportion of the overall business (as one of the case studies noted, only a third of the organisation was considered through the HARA process). There was often little evidence that the delivery outcomes (and demonstration points) were assessed in terms of their relative priority within organisations. Although associations are assured that the approach is not that of “one size fits all”, the approach does seem to be to seek to regulate against each and every one of the demonstration points, no matter what the nature of the individual association. Some respondents expressed concern as to the relative priority given to different delivery outcomes and demonstration points. Several chief executives of fairly recently established stock transfer housing associations expressed surprise that in early drafts of HARA reports there was no reference to WHQS, which they regarded as their main policy priority (and one of the key policy priorities of the Welsh Government).
- 6.14 As part of the HARA process a wide range of evidence is collected to build a comprehensive picture of the association as a whole. This is both “hard” information and “soft” information. However, the intention is that the individual association’s own self assessment and an evaluation of the achievement of the Delivery Outcomes are at the core of the HARA. Associations are trying to ensure that the self assessment is not merely an exercise to inform regulation (and satisfy the regulator) but that it is at the heart of their business planning, and many accept that there is a need for self assessments to improve, and many are not as well developed or evidenced as they might be. However, there is a view that there was a lack of clarity from the outset as to what would be required to evidence delivery outcomes. As one chief executive commented:

“We have used the evidence from our self assessment to shape delivery outcomes going forward. However, there isn’t enough

clarity that this is acceptable – as the regulation team are clearly looking for evidence based on the published delivery outcomes”.

Another commented:

“It has become more clear that the development of the delivery outcomes is crucial but unfortunately this was not as clear when we began the self assessment process. This has led to a situation where we feel we have never completed our self assessment and perhaps we shouldn’t. Perhaps it should be a dynamic process”.

- 6.15 Towards the conclusion of the HARA process a draft conclusions document is prepared (by the appropriate Senior Regulation Manager) and these are then (usually) subject to internal peer review within the Housing Regulation team to ensure both a degree of internal challenge and an appropriate level of consistency across the different HARAs. The agreed document is then fed back to the individual association for comment and response and for agreeing the appropriate level of future regulatory engagement: “low”, “medium” or “high”.
- 6.16 The HARA programme is a very resource intensive programme; much more so than was originally envisaged. This evolution appears to have occurred because of a view from the Regulator that many of the individual housing association self assessments were not sufficiently self critical or evidence-based, or that there was insufficient evidence of Board scrutiny or challenge. As a result Welsh Government resources have been devoted to building the evidence base and assessing the delivery outcomes, although clearly it is not the responsibility of the Regulator to resource these activities on behalf of associations, but rather to facilitate the process. Nevertheless, it does suggest there is a case for identifying what are perceived as good self assessments which are strongly evidence based.
- 6.17 There are a number of consequences of this approach; the concentrated time and effort devoted to regulatory assessment by the Regulator can seem rather like an inspection or audit to associations, with an undue

emphasis on compliance checking. To quote one chief executive: “the new regime was supposed to be based on relationship management and not inspection. Inspection was what we got”. Another commented:

“I think it would be good to get to a position where the regulatory focus is not on the HARA, Where the regulator is more relaxed about stepping away from the detail. I believe regulatory assessment is a continuous thing and should not be a snapshot at a point in time. Are we over reliant on the HARA?”

6.18 It appears that the resources required to deliver such intensive regulatory assessments are taking away the capacity of the Housing Regulation Team to undertake other elements of the regulatory process, in particular developing ongoing relationship management. In some cases the very nature of the concentrated regulatory assessment, and the subsequent comments as to housing association performance against delivery outcomes, may be undermining the process of future relationship management. As one chief executive commented:

“The way they are doing HARAs, and the fact that they are putting so many associations into the medium category, is going to cause more and more of a serious resourcing issue”.

6.19 However, what seems clear is that the continuing HARA programme (which is timetabled to run for another two years) is taking up so much of the resources of the Housing Regulation Team that insufficient resources are available for ongoing relationship management and future regulatory engagement. At the same time, a degree of thought (and consultation) needs to go in to shaping regulatory assessment beyond the current cycle of HARAs to ensure that the process is much more risk based in the future and that detailed inspection becomes the exception rather than the norm.

### **HARA Outputs**

6.20 The HARA process provides a detailed conclusions document confidential to the individual housing association. This provides the view of the Welsh Government as to the areas for development and

improvement in relation to individual delivery outcomes and demonstration points. There is an opportunity for an association to comment on the draft conclusions document before this is finalised.

6.21 Several associations expressed concerns that within this document their own acknowledgement of limitations were being played back to them as failings and that little account was taken of the degree of ambition or progress being made. Critical comments have also been made about some of the use of language within reports. Senior staff in one of the case studies expressed concern that initial wording suggesting the association's allocations policy did not adequately address issues of equality and diversity was naive and could have damaged relationships with local stakeholders. One chief executive in the online survey commented:

“We also experienced some dispute and frustration over the wording of the draft report. Praise was very grudging and negative issues were emphasised. It did not match the feedback given to staff and board members and we had to negotiate (successfully) changes to the report. The regulator was naturally frustrated by our nit picking but it was important to us. We were happy with the final report but the need for negotiation could have been avoided by a more balanced writing style”.

6.22 A relatively short HARA report provides a summary of an association's perceived strengths and areas for improvement, in relation to landlord services, governance and financial viability (and reaffirms the most recent financial viability judgement – see below). Whilst there is no formal judgement in relation to governance or service delivery there is an assessment of future regulatory engagement (“low”, “medium” or “high”). However, the evidence gathered from the online survey of chief executives and the three case studies indicates that this assessment is perceived in many quarters as a judgement on the association and as an assessment of regulatory risk. To quote one chief executive:

“The perception within the sector is that if an association is high regulatory engagement they are probably high risk. Whilst we understand this is not necessarily the case and we ourselves are considered medium engagement and low risk, this is not clear to all stakeholders”.

Another chief executive expressed their own confusion:

“We were given a message from the regulator that led us to believe that we would be low regulatory risk (based on the Board’s involvement in self assessment, strong governance, good tenant input, no major performance issues etc.) yet we are medium. The regulator has limited resources – why waste them on high engagement with a low risk HA?”

6.23 Lenders also suggested that this terminology inferred a correlation with the level of exposure to risks and standards of governance. They felt that a “medium” assessment may lead to lenders and other stakeholders taking the view that overall credit quality is impaired.

6.24 Unsurprisingly it can be a matter of considerable contention if an association feels that the assessment which is being made is a harsh one (and is no doubt contributing to the ongoing debate between the Regulator and individual associations, often taking up disproportionate amounts of time and resources to reach an agreement, potentially damaging relationships).

6.25 Where associations had undergone the HARA at the time of the online survey chief executives were asked what actions had been taken to report the findings of the regulatory assessment to tenants, residents and other stakeholders. As well as publishing the final HARA report on their websites individual associations reported using their annual report, press releases, tenant and resident newsletters, distribution to key funders, their own staff and local authority partners as well as face-to-face briefings with key groups and individuals. However, a number of individual comments suggest that the published findings have had little external impact. One chief executive commented:

“The website is available to everyone. We issued a press release drawing attention to it and summarising the headlines. It was also summarised in our annual review and at our AGM. Newsletter, Facebook, Twitter – the feedback has been deafening in its silence which is potentially an issue to consider”.

Another chief executive remarked:

“We wrote to our funders who were underwhelmed by receiving the report”.

- 6.26 In analysing the published HARA reports to date it is sometimes difficult in comparing these documents to see why different associations have been given the same level of regulatory engagement. It would seem that, given the majority of assessments have thus far concluded a need for “medium” level future regulatory engagement there is a wide variety of different performance within this category, but no indication whether, for example, individual associations are on the cusp of “low” engagement – or alternatively at the “high” end of medium.
- 6.27 The Regulatory Framework states that the published HARA will provide a simple, clear, and easy to understand independent view of an association’s performance. Some of the evidence from respondents which has been gathered as part of this research would suggest that the published HARAs are not as clear and easy to understand as they might be, that they do not provide a clear view as to how an individual association is performing, that insufficient emphasis is given to highlighting what are the relative priorities for improvement, that they are too bland (and often rather similar in their highlighting of particular issues), and that they could be more concise, informative and focussed. There is a clear tension between providing HARAs which are consistent but nevertheless highlight the strengths and limitations of individual associations. However, many of the survey respondents have questioned whether the published HARA reports, which seem to place rather more store on consistency than in highlighting the strengths and weaknesses of individual associations, are of any real value to

associations themselves, their tenants and residents or other stakeholders.

### **Financial Viability Judgements**

- 6.28 The financial element of the regulatory assessment is undertaken throughout the year and culminates in a Financial Viability Judgement (FVJ) issued at the end of March each year. There are three categories of financial judgement: “pass”, “pass with closer regulatory monitoring” and “fail”.
- 6.29 In terms of the process by which the FVJs are produced each year, this involves discussions between members of the financial analysis group within the Housing Regulation Team and the appropriate Senior/Regulation Manager and the analysis of background and performance information. This generates a financial risk assessment (“high”, “medium” or “low”) and based on this assessment, a detailed review of financial data (statutory accounts, half yearly management accounts, an association’s latest management letter from its external auditors and its private finance return), together with a review and sensitivity testing of an association’s 30 year financial forecast. The question is then asked as to whether this raises a “financial distress trigger condition” (FDTC) –an event in the forecast model which, if it occurred, would place the association in serious financial difficulties. If there are acceptable plans in place to avoid or mitigate this event then a judgement is made as to whether the FVJ should be a “pass”. If there are no appropriate plans in place and the event is considered “more likely than not”, then the judgement may be “pass with closer regulatory monitoring” or (in extreme cases) “fail”. Thirty four associations in 2011-12 were given a “pass” FVJ and three “pass with closer monitoring”. Where the latter judgement is made, additional work and scrutiny is required to provide stronger assurance on financial viability.
- 6.30 Internally within the Housing Regulation Team the financial viability judgements are seen to be working well (and the financial analysis team linking well with the (Senior) Regulation Managers). The move to BRIXX

software, in line with that used by around 90% of associations in Wales, has simplified the process. However, it is accepted within the Housing Regulation Team that (within limits) the FVJ reports could be made more user friendly, and that other data analysis might be included (e.g. quarterly rather than half yearly accounts, some key performance data, for example evidence of arrears).

- 6.31 Chief executives were asked whether the FVJ was a fair reflection of their Association's financial viability and strength. The vast majority (80%) agreed it was, compared with only 9% who disagreed. However, only just over half (52%) thought it provided adequate feedback as to the organisation's financial strength, compared with almost a third (32%) who thought it was not effective. Over a third of chief executives (37%) argued that the publication of the FVJs did not help to improve the financial health of the housing association sector in Wales, compared with just under 30% who thought it did (the remainder were unsure as to whether it was helpful or not). As one chief executive commented: "the real value of the FVJ is in the dialogue between associations and the Welsh Government finance team".
- 6.32 The view of lenders was that the FVJs were broadly on the right lines, although little reliance seems to be placed upon them in shaping lending decisions. They were seen as a little bland and there was some surprise that they do not report in more detail on associations meeting financial covenants. They have also noted that, whilst comments on financial viability in HARA reports can provide reassurance, the use of stock phrases can leave validity unclear. Others have questioned whether annual FVJs are sufficient in the current economic climate.
- 6.33 It has also been argued, both by housing associations themselves and private lenders, that financial issues are rather detached from the HARA process, that the FVJ is about financial viability and there is a case for regulation going beyond this to examine financial priorities and whether finance could be used more effectively. It can also be argued that the FVJ is fairly straightforward where housing associations are concentrating on the traditional core business of providing rented homes

to meet general needs, but where associations have diversified their activities there is a need for the FVJ to be tailored more closely to the organisation.

6.34 During the case study interviews it was also noted that there used to be a Financial Advisory Working Group, comprising a small number of financial directors from within the sector which provided advice to the Regulator on the wider financial aspects of regulation. However, this no longer appears to meet on a regular basis.

### **Future Regulatory Engagement**

6.35 It has been noted above that, where associations have gone through the regulatory assessment process, that only a minority of housing association chief executives reported finding the judgement of future regulatory engagement useful, and that over a third (38%) suggested that the value of the judgement on future regulatory engagement was not all that useful (and almost half were not sure as to its value). A number of association chief executives made the point that they were not unhappy with the outcome in terms of “medium” future regulatory engagement (there may be a degree of comfort in being in the vast majority), although some clearly are. In a number of instances associations have recognised that, either because they are relatively young organisations or because of the diversity of their activities, that their “medium” level of engagement was appropriate (although they may not feel it should remain as medium in the longer term; as one of our case study respondents commented, it may have been the right assessment at the time, but a year on it’s probably not the right judgement). However, although there are significant doubts as to the value of the assessed level of future regulatory engagement, there is a clear consensus as to overall value of continuing engagement. As one chief executive commented:

“To be effective in practice, the Framework needs to be better supported through higher quality regulatory engagement by

regulators with a stronger understanding of the “business” of housing associations”.

6.36 The Regulator considers that the categorisation of future regulatory engagement is based upon its assessment of regulatory risk (which may not be seen as the same as an association’s own assessment of the risks which it faces), and that “high” future engagement should not in itself be seen as equating with poor performance. The team also argue that “medium” or “high” future regulatory engagement should be tailored to the needs of individual associations and to improvement planning and to addressing the issues identified in the HARA conclusions document. Whilst this is eminently sensible, there does seem to be a lack of clarity in the feedback to individual associations as to what they might expect in terms of a level or regularity of future regulatory contact (and how this might be initiated) and that at the present time post HARA regulatory engagement is being squeezed by other work pressures on the Housing Regulation Team. As one chief executive remarked:

“HARAs are meant to be annual. It is clear they will not be and therefore they are not dynamic enough. Our HARA was almost a year ago – are we still medium or have we done enough to move to low or are there new issues that push us to high? This risks reputational damage to HAs that have addressed issues and to the Regulator if things are going badly wrong and the HARA judgement is not being reviewed, It’s quite possible for a low engagement to change overnight (what if its SMT leave or a major project fails without warning?)”.

6.37 It is also argued that some associations are not very proactive in encouraging continuing engagement. There are a small number of housing association chief executives who feel that the Regulator should be kept at arm’s length and the Board and staff left to run the organisation. There is also a lack of clarity as to how (and when) an association’s level of future regulatory engagement might be reassessed and made public.

- 6.38 Questions have also been raised through the research as to the value of the HARA and the assessment of future regulatory engagement to other stakeholders. As one chief executive commented, “it didn’t add a lot of value back to the organisation”. However, as one of the case study respondents argued, in some cases it may offer reassurance to the Board and to local authority partners. Nevertheless, there is little evidence that it has much relevance to tenants and residents or that much reliance is placed upon it by lenders
- 6.39 There is also a lack of clarity amongst housing associations and other stakeholders as to how individual associations seek reassessment (and, for example, seek to move from “medium” regulatory engagement to “low” regulatory engagement). However, this again might suggest the value of the assessment of future regulatory engagement is not only unhelpful but actually counterproductive.
- 6.40 There is also a lack of clarity as to the forward route map for regulatory assessment. It is unclear what happens beyond March 2015 (when the first cycle of HARAs is due to be completed). It has been suggested that the failure to deliver an annual assessment for the whole sector has undermined the value and credibility of reports, since they are fixed in time and soon out of date. There is also a degree of surprise that Wales Audit office inspection reports (now very dated) are still available on the WAO website.
- 6.41 There are differing views as to the nature and timing of reassessment. Some association chief executives have suggested this should be on the basis of assessed risk, others that that it should be every two or three years and others have indicated that it should be ongoing, based upon relationship management, with a focus mainly on the areas previously identified for improvement.

## 7 Overseeing Regulation

### The Regulatory Board for Wales

*The Regulatory Board, set up by the Welsh Government, has a dual purpose within the regulatory framework. It oversees the operation of the Regulatory Framework and reports on how the regulation team carries out its work. It also reports to Welsh Ministers on the performance of housing associations and on the regulatory functions of the Welsh Government (Welsh Government, 2011:4).*

*There are two independent Board members, one being the Chair, and five further members representing various organisations, i.e. Community Housing Cymru, the Welsh Local Government Association, Welsh Tenants, the Tenant Participation Advisory Service and the Council of Mortgage Lenders (Welsh Government and CHC, 2011:4).*

- 7.1 Overall, the view from key informant interviews, questionnaire responses and case study interviewees is that the RBW has worked fairly well over the period of operation. The Board is seen as an independent challenge to the regulator but it is recognised that this may be limited by the resources available to the Board. There were, however, a range of issues that were consistently raised throughout the research.
- 7.2 It was felt that there was a need for the RBW to raise its visibility amongst the sector and to raise its external profile. While most chief executives and Chairs of housing associations were aware of the Board and its role, this was not the case for board members, tenants and other stakeholders. As one case study board member said:

“I wasn’t aware of the Regulatory Board for Wales”

- 7.3 The role of the RBW was well understood by the majority of chief executives, although among questionnaire respondents greater emphasis was placed on the “holding the Regulator to account” aspect of the dual role rather than reporting “the health of the sector” to the Minister. There was a general feeling that there was a lack of information

available on the RBW's role, how this was being performed and the impact it was having on the regulatory process.

- 7.4 Only 6% of chief executives agreed that the RBW has been effective in contributing to the development and implementation of the Regulatory Framework, 45% disagreed or strongly disagreed. The high percentage (49%) who neither agreed nor disagreed probably reflects the need for the RBW to raise its profile amongst the housing association sector and provide greater information on the outcomes of its oversight of the regulatory process.
- 7.5 A major concern about the effectiveness of the Board stemmed from the lack of published information relating to their activities.

“There has been very little feedback on what they are doing. Personally I have no idea what outcomes they have achieved and no sense of what has changed as a result of their existence. Their accountability appears to be internal (to the Welsh Government) rather than externally (to the sector and stakeholders) but even so there is an information vacuum that does not give me confidence in their role.” (CEO questionnaire)

Concerns were also raised by questionnaire respondents and case study interviewees that while there was some evidence that the Board was holding the Regulator to account it was felt that this could be a more robust process. It was argued that the lack of reporting of findings to both the sector and the Minister, particularly around areas of internal and external risk, fails to recognise the increasingly difficult context within which housing associations operate. Some key informant interviewees argued that the RBW should be more strategic in its approach rather than mainly focus on the operation of the process. It was felt by key informant interviewees and case study interviewees and some CEO questionnaire respondents that there is an important role for the Board to fulfil in engaging with the sector to understand the risks and challenges currently faced by housing associations, e.g.

financing development, welfare reform and potential increased rent arrears, and how these feed into the regulatory process.

- 7.6 The majority of chief executives (57%) and Chairs (70%) were unsure whether the membership of the RBW was appropriate. Some didn't know who were members and others felt that they didn't have enough information about the Board to comment. However, a number of issues were identified. The imbalance between independent board members and representatives of organisations of different interest groups was identified as a potential weakness in Board membership. It was felt that this could potentially lead to inadequate challenge of vested interests:

“... a body set up to hold the regulator to account is made up of representatives from the self interest groups who will naturally and justifiably argue points from their own viewpoint and in the interests of their constituents...” (CEO questionnaire)

- 7.7 There was some challenge to the appropriateness of the organisations that were represented on the Board. Do they reflect the whole sector, which is becoming more diverse and complex? A number of alternative or additional organisations were suggested, including: the Chartered Institute of Housing, an organisation representing those seeking housing and a representative of supported housing providers.

“The stakeholder representatives could change, for example CHC could be represented by a council member rather than an officer and TPAS could have a tenant as representation. The Board could also have representation from potential tenants such as Shelter. As a sector we should be looking to improve standards for all and we could be missing this opportunity if we don't include the potential tenants, as tailoring services to potential service users is part of the delivery outcomes and this may aid in this” (CEO questionnaire)

- 7.8 The need for two organisations representing tenants, i.e. Welsh Tenants and TPAS Cymru was questioned, especially in light of the lack of involvement of TAP, which has a remit to represent the views of all

tenants. A number of key informant interviewees were concerned that the voice of tenants could be diluted or be given less priority than the views of the organisations representing them. A counter view put forward by a small number of questionnaire respondents was that tenants may have too strong a voice and this potentially disadvantaged those that are in housing need:

“Are the needs of people without a home being properly considered? ..... Further improvement could result in more resources being used for those in a relatively privileged position, and those who need a home having less chance of getting one. The powerful tenant advocates on the Board could perpetuate this position unless this issue is redressed” (CEO questionnaire)

7.9 Issues around whose views and interests were being represented by the membership of the Board also fuelled debate around organisations being represented by paid officials rather than elected members of each organisation. This was not necessarily a widely held view but one strongly held by some (key informant interviewees) who felt that the concerns of the sector about the Regulatory Framework and its implementation were not reaching the Board through the formal channels.

7.10 As a counter to the concerns around vested interests, it was suggested that the number of independents should be increased and that consideration should be given to inviting non-housing independents who have experience in other sectors that are highly regulated, e.g. education and health.

“...do the independent members have appropriate skills? Would it be better to have someone from outside the sector e.g. education - an area which seems to have very robust regulation/assessment?

Are they both actually independent or too many contacts with

the sector? The housing sector itself is well represented CHC, etc.” (CEO questionnaire)

7.11 When asked about ways in which the RBW could be improved in the future, a number of suggestions were put forward by questionnaire respondents and interviewees (key informant and case study). It was suggested that the RBW should adopt a more strategic approach focusing on the risks and challenges faced by the sector as a whole rather than on the operation of the Regulatory Framework. The publication of the results of their work and how this has contributed to the development and improvement of housing associations in the areas of governance, financial management and landlord services was identified as being particularly welcome.

7.12 Other suggestions were concerned with the membership of the Board. There was a relatively strong sense that there should be more independent members on the Board to help counter the perceived “vested interests” of the housing sector representatives. Some questionnaire respondents and interviewees thought that organisations should be represented by elected members rather than paid officials. This was felt particularly strongly in regard to tenant representation where it was suggested that there should only be one tenant representative body on the Board. There was even an argument put forward that a tenant should sit on the Board rather than WT and TPAS Cymru. However, this was not a widely held view. A few respondents argued that the membership should be widened to include organisations that represented other groups that are part of the housing sector, particularly those representing homeless households and supported housing. Finally, there was relatively strong feeling among interviewees (key informant and case study) and that TAP should have at least an observer place on the Board. The TAP focus group supported this view.

### **The Tenant Advisory Panel**

*“The Regulatory Board for Wales is supported by the Tenant Advisory Panel. The Panel comprises fifteen housing association tenants from*

*across Wales. The Panel ensures that tenants' views, their concerns and their interests are reflected in the Board's work, thus helping to ensure that tenants are at the heart of the Regulatory Framework.*

*Members of the Panel actively seek the views of tenants across Wales by attending local and national events, meetings and conferences. This enables as many tenants as possible to be involved which, in turn, helps form a fuller picture of tenants' views." (Welsh Government and CHC, 2011: 4)*

7.13 Among those interviewed there was a general feeling that TAP was working well and had developed its role as support to the RBW well. There is evidence of a strong commitment from TAP members to improving regulation. There was a less clear picture on the success of TAP in collecting tenants' views more widely. While knowledge of the role of TAP among organisations who are members of the RBW was high and TAP's contribution was seen in a positive light, there is less evidence that many in the wider sector, chief executives, Chairs, board members or tenants have extensive knowledge of the TAP, its membership, role and activities.

"I don't know what the TAP does as again there is no information published that I have seen on their work." (CEO questionnaire)

"Not specific to the membership question but feedback from our tenants on the TAP recruitment process and indeed the role of the TAP as presented to them at various events has been underwhelming and there seems to be a need to improve their image and profile with tenants" (CEO questionnaire)

7.14 Part of the remit of TAP is to seek the views of tenants by engaging at events, conferences and meetings at a local and national level. Evidence of such engagement is patchy, with many organisations having no or limited contact. Where contact has been made with Boards of housing associations or individual tenants groups it has generally been through a TAP member who is a tenant of the organisation or indeed a tenant board member.

“A member of our board is an active member of TAP, and consequently we have a good understanding of how TAP influences the Regulatory Board for Wales and the Regulatory Framework” (CEO questionnaire)

7.15 TAP members were very willing to engage with tenants and housing association boards but they have to be invited to do so. Therefore, there is a need to raise the profile of the Panel among individual HAs and among tenant groups. Where there had been engagement feedback was generally positive.

“The TAP do very valuable work and one of our Board members is a member of TAP. The Board has received a presentation on TAP’s work” (CEO questionnaire)

7.16 There was little awareness of TAP amongst participants in the case study tenant focus groups. Where there had been some contact there were claims that promised follow-ups had not taken place. There was also some uncertainty as to who should instigate contact; should it be the tenants, the Association or TAP.

7.17 The reliance on Welsh Tenants and TPAS Cymru for support and the TAP being chaired by officers of both organisations rather than a TAP member was questioned, with concerns from some about independence, transparency and getting TAP’s voice heard at the RBW. This may be compounded by the lack of representation on the RBW.

7.18 Members of TAP felt that the work that they would like to undertake is restricted by the lack of a dedicated budget. Travel and accommodation costs to TAP meetings, conferences and other event have to be met by an individual’s housing association. This limits the amount of work that they can be done and can be a barrier to membership.

“I am aware that there was some difficulty in recruiting to the North Wales representative roles. Is there a case for a regional Panel to reflect the difficulties and costs of travelling?” (CEO questionnaire)

7.19 Currently there are fifteen places on the TAP which are allocated on a geographical basis. Members, who are all housing association tenants, are recruited through an open, competency based application process. The members are selected not elected. At no time has the Panel been at full complement with particular problems in recruiting and retaining members from North Wales. At the time of the research two places allocated to North Wales were vacant and not likely to be filled until the next selection round in June 2013. As most meetings of TAP take place in Merthyr Tydfil there are considerable cost and time implications for those members travelling from North Wales. The TAP focus group participants felt that the imbalance that this situation creates could potentially lead to claims of bias towards South Wales. There may be a number of reasons for the recruitment difficulties including the visibility and engagement of the TAP. There is a need to raise the profile of the TAP and improve engagement with tenants.

“Not specific to the membership question but feedback from our tenants on the TAP recruitment process and indeed the role of the TAP as presented to them at various events has been underwhelming and there seems to be a need to improve their image and profile with tenants” (CEO questionnaire)

7.20 Participants in the TAP focus group and a small number of questionnaire respondents also argued that the provision of a dedicated budget would improve administration so that communication with Panel members and potential members can be more consistent.

“There appears to have been difficulty in getting tenants to come forward for appointment. One of our tenants was told he had been appointed but said he has never been contacted since. There needs to be better administration and stronger relationships - say through a nominated contact within the Panel member's Housing Association - to help maintain an effective relationship with the tenant that has been appointed” (CEO questionnaire)

7.21 Other improvements suggested by respondents, interviewees and focus groups include: the appointment of a TAP member as Chair of the panel; splitting the TAP into two regional panels (north and south Wales) to widen the potential member pool, reduce costs and time commitment for members; and representation, as an observer, on the RBW.

## **8 Conclusions and Issues for the Future**

- 8.1 This report has presented the findings of an interim evaluation of the Regulatory Framework for registered housing associations in Wales. It was noted at the outset that the Framework has only been in place since December 2011, and only about half of the HARAs have yet been completed and final reports agreed and published. However, the Framework has been in development for more than four years and the context in which housing associations are operating has become much more challenging. It is therefore appropriate that this research should have been undertaken at this time.
- 8.2 The Regulatory Framework has been developed through a co-regulatory approach between the Welsh Government and the housing association sector in Wales, with inputs from other stakeholders. It has replaced a system which was almost entirely based upon an inspection regime, undertaken on behalf of the Welsh Government by the Wales Audit Office (WAO), which was considered not fit for purpose. However, regulation is a process; a journey for both regulator and regulated, and we should not expect the implementation of the Regulatory Framework to be unproblematic. At the same time, as the housing association sector in Wales changes, and the context in which associations operates also becomes more challenging, then we should expect the Regulatory Framework to be independently reviewed and to evolve accordingly.
- 8.3 This study has found that the principles underpinning the Regulatory Framework are generally considered to be the correct ones. However, there is also a view that there has been a shift away from the concept of co-regulation which underpinned the development of the Framework (though a term not actually used in the Regulatory Framework document itself) and that in practice there are differences within the Housing Regulation Team in the approach to regulation which are undermining some of the key elements within the Framework, most particularly consistency and proportionality.

- 8.4 There are positive examples of where tenants and service users are central to regulation, but there are also instances where it seems that associations are merely paying lip service to tenant engagement, certainly at strategic levels. Some boards are exercising a high level of control and challenge, but in other cases this is less clear. Thirdly, although there is a strong rhetoric around collaboration, and there are a number of cases where this has worked well, there are also a number of barriers which are undermining effective collaborative working.
- 8.5 There is a challenge for both the Welsh Government and the housing association sector in Wales to develop more clarity around the purpose of regulation and the approach to regulation which should be taken. There are tensions in some of the relationships between members of the Housing Regulation Team and the housing association sector and some individual associations. There are also concerns that communication (both ways) is not as effective as it should be, and that there are issues of trust, mutual respect and transparency which need to be addressed.
- 8.6 Without undermining the work of the RBW and the TAP (and without duplicating the work of the CHC Regulation Network, which provides an invaluable opportunity for information exchange) the Welsh Government and the RBW may wish to consider reinvigorating the Regulatory Advisory Group. This group, properly constituted, could not only help develop the evolution of the Regulatory Framework, but also defuse some of the current criticisms of regulation, improve communication and provide a bridge between the Housing Regulation Team and the housing association sector, in the interests of strengthening the co-regulatory approach.
- 8.7 There is also a strong view that regulation needs to be more risk-based and that within the Regulatory Framework, and given the changing environment within which housing associations are operating, more emphasis needs to be given to issues of governance and finance, which in turn would enhance the quality of tenant services. In the current economic climate, and given developments around different models of private finance, there may be a case for reviving the Financial Advisory

Group (including representation from the lending industry) which could play a valuable role both in relation to the FVJ process and in strengthening the financial aspects of regulation more generally.

- 8.8 There is a growing expectation that there will be a greater emphasis on learning from regulation and that more resources (from both the Welsh Government and the housing sector more generally) will be devoted to drawing together and disseminating the lessons from regulation for the benefit of the sector as a whole. Thus far, the outputs from regulation seem to have focused on internal housing association improvement with very little evidence that the information collected through regulation has been used to identify, share and encourage positive practice across the housing association sector in Wales. In our view this needs to be done through the dissemination of thematic, sub sector and geographic studies of aspects of regulation, both in short published report form and through conferences, workshops and training events. In this regard the Welsh Government and its Housing Regulation Team need to work closely with other primarily national organisations in Wales to promote effective learning from regulation. Given the importance of continuous improvement and the increasing challenges facing the social housing sector in general it is important that cross-sector learning from regulation is prioritised and not left until the completion of the first cycle of HARAs.
- 8.9 There are concerns as to whether the Housing Regulation Team has sufficient resources to deliver the Regulatory Framework in its entirety. However, the prevailing view amongst our research respondents (key informants and individual housing association chief executives) is that the current full complement of staff within the Regulation Team should be sufficient if they are deployed appropriately. In light of the findings of this study the Welsh Government need to consider the share of available resources devoted to different elements of regulation. This may mean a reconsideration of the HARA process and HARA outputs so that adequate resources can be devoted to relationship management, promoting learning from regulation and continuing regulatory engagement.

- 8.10 There is widespread support for the idea that housing association performance should be assessed through delivery outcomes and that these should focus on the impacts that associations are seeking to achieve, rather than merely activities or outputs. However, there is a perception that the concept of outcomes is not fully understood across the housing association sector, that some of the delivery outcomes set out in the Regulatory Framework are not really outcomes and that the level of detail below the delivery outcomes (the demonstration points) is too prescriptive. There is a need to refine the delivery outcomes (some are not outcomes, and this should be recognised) and make some of the demonstration points less prescriptive.
- 8.11 Regular self-assessment is at the heart of the Regulatory Framework and the expectation is that self assessments should be based upon the delivery outcomes, although it is accepted that individual associations should be able to decide, in collaboration with service users and local stakeholders, how these outcomes are best delivered. Although self assessment is fundamental to the work of all associations, not all of them are starting from the same point or have the same resources to devote to self-assessment. Those produced so far have been of variable quality, some excellent – some less comprehensive and robust, and some associations have found it challenging to provide the appropriate evidence base. There may be a case for the Welsh Government, the RBW and others to consider how to promote more effective self-assessments. The research would suggest there is a case for more detailed analysis of individual self assessments with a view to identifying positive practice and raising overall standards.
- 8.12 Effective collaborative working and good relationship management are seen as key to the process of regulation. However, the evidence of the extent of relationship management and how it has developed are very patchy. The research has identified some positive examples of how this is working in practice, and how early intervention by the Regulator has enabled important issues to be identified and resolved. In some cases, however, associations have highlighted very little contact with the

Housing Regulation Team prior to regulatory assessment. This has made it more demanding when the HARA has been undertaken, since in such circumstances insufficient time has been available to understand the nature, history and context of the individual organisation.

8.13 The HARA process is ongoing. It commenced in 2011 but is not due to be completed until the spring of 2015. It is proving very resource intensive and there is a strong view from those associations that have gone through the assessment process that it is more concerned with audit, inspection and compliance checking than with an approach to regulation based on risk. There is also a perception that it is not focusing on the right issues and that the HARA process is damaging relationships between the Regulator and the housing association sector, as well as distorting the use of resources. Given the current level of staffing within the Housing Regulation Team it is difficult to see how the level of resources currently being devoted to the HARA process can continue in the long term. However, a more focused approach to delivery outcomes, enhanced self assessments and stronger ongoing relationship management should reduce the need in the future for a HARA based primarily upon detailed inspection.

8.14 The study suggests that the value of some of the published reports from the process of regulatory assessment is limited. The published HARA reports, for example, are seen as rather bland and insufficiently strategic and don't give a very clear picture as to how individual associations are performing. The value to tenants, lenders and other stakeholders is questionable and there is little evidence to suggest they are being widely used beyond organisations themselves or that others find either the HARA or the FVJ of great value in evaluating the effectiveness of the governance, financial viability or quality of services provided by individual housing associations. The Welsh Government and the RBW should give urgent consideration as to how HARA reports could be made more strategic and focused.

8.15 There is also a widespread view that the use of "high", "medium" and "low" future regulatory engagement is not very informative and the

current pattern of judgements is somewhat counter intuitive. The “medium” category is very broad and encompasses those associations who might be closer to “low” and others which are the higher end of perceived regulatory risk. It may be appropriate to tailor future regulatory engagement more clearly to improvement planning rather than offering a simple measure of future regulatory engagement. The continued use of the categories on future regulatory engagement should be considered as a matter of priority.

8.16 There is also a lack of clarity as to the nature and timing of reassessment. Within the housing association sector there is a view that a second round of comprehensive regulatory assessment should be unnecessary. Some survey respondents suggested a regulatory assessment every 2-3 years whilst others suggested that ongoing relationship management should, in most cases be sufficient, with future regulation being more activity based rather than organisational. The Welsh Government and the RBW should give further thought to the future nature and timing of regulatory assessment. Detailed regulatory assessment should be limited to where there is clear evidence of failure in relation to key delivery outcomes.

8.17 The RBW is seen as needing to raise its profile. It is perceived in broad terms as holding the Regulator to account, but needing to do more to consider the wider health of the housing association sector in Wales and the risks and threats which associations face. There are mixed views as to the appropriateness or otherwise of its membership, though there is a degree of consensus that the independent membership of the Board could usefully be increased. The TAP is seen as providing valuable feedback to the Board on consumer issues but it too will require additional resources if it is to raise its own profile and engage more widely with tenants in the housing association sector. In due course, the membership of the Board and the resources available to both the Board and the TAP need to be revisited.

8.18 The Regulatory Framework for housing associations in Wales is still in the fairly early stages of becoming established and in many senses is

still bedding in. This interim evaluation has sought to highlight how the Welsh Government, the housing association sector in Wales and other stakeholders have to date implemented the core principles and different aspects of the Framework and with what early impacts. It has identified positive aspects of regulation, but also a number of limitations or shortcomings which need to be addressed, not only by the Regulator but by the housing sector more generally. It has also suggested that the Framework needs to be sufficiently flexible both to evolve in relation to changing circumstances and to ensure a robust regulatory regime which is effective in delivering good governance, sound financial management and high quality and improving services for housing association service users.

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## **Appendix 1: Research Respondents**

### **Individual Key Informants**

Nick Bennett	RBW Member (CHC)
Ceri Breeze	RBW Member (Welsh Government, ex officio)
Peter Cahill	Immediate Past Chairperson, CHC Council
Steve Clarke	RBW Member (Welsh Tenants)
John Drysdale	RBW Member (TPAS Cymru)
Doug Elliott	Ex-Interim Head of Regulation, Welsh Government
Antonia Forte	Chairperson, CHC Regulation Network
Nick Gerrard	Housing Regulation Team, Welsh Government
Peter Griffiths	Housing Regulation Team, Welsh Government
Naheed Hussain	Housing Regulation Team, Welsh Government
Gayna Jones	RBW Member (Independent)
Carol Kay	Housing Regulation Team, Welsh Government
Sarah Laing	Housing Regulation Team, Welsh Government
Darshan Singh Matharoo	Head of Regulation, Welsh Government
Jim McKirdle	RBW Member (WLGA)
Tamsin Stirling	Special Policy Advisor: Housing, Welsh Government
Hugh Thomas	RBW (Independent Chairperson)

### **Focus Groups**

CHC Regulation Network  
CML Cymru  
Tenant Advisory Panel

### **Case Study Housing Associations**

Cadwyn Housing Association  
Cartrefi Conwy  
Grŵp Gwalia

**Other Individual Respondents**

Individual housing association chief executives

Individual housing association board chairpersons (one vice-chair)

## **Appendix 2: Examples of Questionnaires and Interview Schedules**

Questionnaires were sent to the chief executive (or other nominated person) of the Housing Association. The questions that the chief executives were asked are illustrated in the below link:

<https://docs.google.com/spreadsheet/viewform?formkey=dGZaNWVNNU4T0NQQUMwVkfUSzRMU2c6MQ#gid=0>

Questionnaires were sent to the chair of the board of the Housing Association. The questions that the chairs were asked are illustrated in the below link:

<https://docs.google.com/spreadsheet/viewform?formkey=dDRQenY5b29pVExwVndiVEINRDh6RGc6MQ#gid=0>

## **Example Interview Schedule**

**Cardiff University**

**School of Planning and Geography**

and

**Shelter Cymru**

**Study for Welsh Government/Regulatory Board for Wales**

**Interim Evaluation of the Regulatory Framework for Housing Associations Registered in Wales**

**Semi Structured Proforma**

**Interviews with Key Informants**

**Name of Interviewee:**

**Date of Interview:**

**Key Issues:**

### **1. Principles of Regulation?**

- In your view what are the core principles behind the Regulatory Framework for housing associations in Wales - what do you think it is trying to achieve and how?
- Do you think these are the right principles for effective regulation?
- Are they sufficient to ensure robust regulation?
- Do you think the principles need amendment or to be added to in order to ensure the Framework fulfils its purpose?

### **2. Self Assessment?**

- What makes for effective self assessment by housing associations?
- What do you see as the strengths and/or the achievements of the sector to date with regard to self assessment?
- What (if any) are the weaknesses and/or limitations of the sector's approach to self assessment?

### **3. Standards of Performance?**

Delivery Outcomes are key features of the Regulatory Framework:

- To what extent is there a clear and consistent understanding of Delivery Outcomes both within the housing association sector and amongst other stakeholders?
- Do you think there is an issue with the definition of Delivery Outcomes?
- Do you feel the Delivery Outcomes should be more or less detailed and prescriptive?
- How effectively do you think housing associations have been so far in complying with and providing evidence for Delivery Outcomes?

#### **4. Tenants at the Heart of Regulation?**

- To what extent do you think housing associations have placed the views and needs of service users at the heart of self assessment and the regulatory process?
- To what extent do you think the Regulator has placed the views and needs of service users at the heart of Regulation?
- In what ways do you think the views of service users could be captured more effectively by housing associations?

#### **5. A Collaborative Approach to Regulation?**

The Regulatory Framework makes it clear that partnership and close working are essential to good regulation.

- How effective are the relationships between individual housing associations and the Welsh Government Housing Regulation Team (**Relationship Management**)?
- Where you think there is room for improvement - how do you think this might be achieved?
- How effectively do you think housing associations are in working with other stakeholders at a local level? How might this be improved?
- How effectively is cross sector learning taking place? How might this be improved?

#### **6. Role of the Regulatory Board for Wales?**

The Regulatory Board for Wales is an advisory board which oversees the operation of the Regulatory Framework and reports on how regulation is carried out.

- How effectively has it fulfilled these roles to date?
- Do you have any views as to the current constitution and membership of the Regulatory Board for Wales?
- Do you think it could be made more effective? If so, how might this be achieved?

## **7. Role of the Tenant Advisory Panel?**

The RBW is supported by the Tenant Advisory Panel to ensure tenants' views and concerns are reflected in the work of the Board.

- How effectively do you think the TAP has fulfilled its role to date?
- Do you think it could be made more effective? If so, how might this be achieved?

## **8. Resources for Regulatory Assessment?**

- Do you think that the housing association sector and the Regulator have both the necessary level of resources and the appropriate skills to ensure effective regulatory Assessment? If not, how might these issues be addressed?
- In your opinion to what extent is Regulation outcome-focused, risk-based and proportionate? If it's not, how could this be improved?
- Do you have any views as to the relationship between the resources which are being devoted to regulation (both within the Welsh Government and at the level of individual associations) and the value of the benefits coming from enhanced Regulation?

## **9. The HARA Process**

- What are your views as to the effectiveness of the HARA process as the mechanism for reporting of the Regulator's opinions as to the governance, financial viability and the quality of housing services provided by individual associations?
- Do you have any views as to the value and appropriateness of the assessment of future regulatory engagement?
- Are there any (other) specific issues with regard to the HARA which you think need to be addressed?

## **10. Overall Issues?**

- What do you see as the main challenges to effective regulation of housing associations in Wales?
- Are there any final comments you wish to make in relation to the operation of the Regulatory Framework so far?

**THANK YOU FOR YOUR CO-OPERATION**