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Impacts of Housing Policy Implementation in Wales for Housing Associations in the Capacity of Voluntary Housing Organizations

Submitted to the University of Wales in fulfillment of the requirements for the Degree of Doctor of Philosophy by Simon Paul Hoffman.

Submitted: February 2007

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**For
Ivy Gweneira Evans
and
George Cecil Evans**



Abstract

This study examines some of the impacts of engagement by housing policy on housing associations in Wales. The research concentrates on: housing associations as voluntary housing organizations operating within the Wales voluntary sector; and, the relevance of policy implementation by Wales-national policy institutions for associations acting in this capacity. A background is developed through discussion of accounts of the voluntary sector that provide an insight into: definitional criteria and structural/operational norms for non-profit enterprise; the sector's societal function(s); operational frameworks (i.e. relevant to legal form, regulation, funding and accountability); and weaknesses that arise through the non-profit sector's reliance on government funding. In addition this study discusses aspects of the Wales voluntary sector distinct from the sector in the United Kingdom as a whole. An account is provided of the Wales voluntary sector and its role in public policy implementation, and the statutory framework supporting the sector's operation at Wales-national level. To establish a context for discussing housing associations in Wales there is a review of housing policy, focusing on the period post 1960, including a review of policy implementation in Wales. The primary research for this study is carried out on policy documents relevant to housing policy toward housing associations post 1989 (to include documents published by Tai Cymru as well as the National Assembly for Wales), and by a survey conducted on housing associations and local authorities. The findings from the survey provide insights into the relevance of housing policy and policy engagement on attitudes amongst relevant stakeholders toward housing association status within the Wales-voluntary sector, their role or roles, issues of accountability, and, the influence of Tai Cymru and the National Assembly in these areas. The survey also provides data from housing associations on the relevance and impact of policy implementation under Tai Cymru in three key operational areas, these are: development; rent setting; and, the allocation of housing. The primary research carried out allows conclusions to be drawn on the significance of housing policy implementation by policy institutions in Wales on housing associations having regard to their independence and capacity for operational discretion, and, of the relevance of accounts of the non-profit sector that highlight weaknesses arising from its engagement by public policy.

Declarations and Statements

1. This work has not previously been accepted in substance for any degree and is not concurrently submitted in candidature for any degree.
2. This thesis is the result of work undertaken by Simon Paul Hoffman except where otherwise stated or acknowledged in footnotes and referenced in the accompanying Bibliography.
3. I hereby consent to this work being available, if accepted, for photocopying and for inter-library loan, and for the title and summary to be made available to outside organizations.

Signed _____ Simon Paul Hoffman

Date 18/5/07

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Welsh Office	<i>Reminding councils of their powers to support housing associations providing accommodation similar to municipal housing</i>	64/67
Department of the Environment	<i>Explaining the Housing Act 1974</i>	170/74
Welsh Office Circular	<i>Reminding councils of the role of housing associations alongside local authorities</i>	274/74
Department of the Environment	<i>Requiring local authorities to cooperate consider assistance to be offered to housing associations</i>	14/75
Housing Corporation	<i>In the Public Eye</i>	3/78
Housing Corporation	<i>Encouraging housing association sales to tenants</i>	11/80
Housing Corporation	<i>Requiring associations to notify qualifying tenants of the right to buy</i>	12/80
Housing Corporation	Tenant Selection for Fair Rent Schemes	16/80
Housing Corporation	Criteria for Registration of a Housing Association	27/88
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Tai Cymru	Shared Ownership	4/89
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Tai Cymru	Transfer of Local Authority Capital Allocation	12/89
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Tai Cymru	Rehabilitation	17/89
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Tai Cymru	Remuneration of Committee Members	19/96
Tai Cymru	Local Authority Nominations/Referrals to Tenancies with Registered Social Landlords	1/98
Tai Cymru	A Strategic Approach to Information to Tenants, Tenant's Views and Tenant Involvement	6/98
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Abbreviations

(Used in text and/or footnotes)

ACG	-	Acceptable Costs Guidance
ADB	-	Approved Development Body
ADP	-	Approved Development Programme
CAF	-	Charities Aid Foundation
CHA	-	Community Housing Agreement
CIHW	-	Chartered Institute of Housing Wales
CWD	-	Council of Welsh Districts
DETR	-	Department of the Environment, Transport and the Regions
DOE	-	Department of the Environment
DTI	-	Department of Trade and Industry
DTLR	-	Department of Transport, Local Government and the Regions
GNAW	-	Government of the National Assembly for Wales
HACAS	-	Housing Association Consultancy and Advisory Service
HAG	-	Housing Association Grant
HFW	-	Housing for Wales
HNI	-	Housing Needs Indicator
ICSNS	-	International Comparative Study of the Non-Profit Sector
IHW	-	Institute of Housing Wales
LCHO	-	Low Cost Home Ownership
NCFH	-	National Consultative Forum on Housing
NCVO	-	National Council of Voluntary Organizations
NFHA	-	National Federation of Housing Associations
NFHS	-	National Federation of Housing Societies
NHF	-	National Housing Federation
ODPM	-	Office of the Deputy Prime Minister
PUS	-	Public Utility Societies
RSL	-	Registered Social Landlord
SAP	-	Special Allocations Policy
SCVO	-	Scottish Council of Voluntary Organizations
SHG	-	Social Housing Grant
TPAS	-	Tenant Participation Advisory Service
VSPC	-	Voluntary Sector Partnership Council
WAG	-	Welsh Assembly Government
WCVA	-	Wales Council for Voluntary Action
WFHA	-	Welsh Federation of Housing Associations
WHAC	-	Welsh Housing Associations Committee
WLGA	-	Welsh Local Government Association
WNSLF	-	Wales National Social Landlord's Forum
WPI	-	Wales Programme for Improvement

INTRODUCTION AND CHAPTER SUMMARY

Introduction

In the United Kingdom the voluntary sector, or non-profit sector, is established as a significant institutional provider of goods and services. In the welfare field non-profit organizations have an important role alongside the public sector and private enterprise in delivering a wide-range of services to vulnerable people, and to those who lack sufficient resources or influence to be able to secure services in a discriminatory market, i.e. where access is prioritized according to an individual's ability to pay, and where availability is often determined by the needs of the majority. Non-profit organizations represent a resource that may be accessed by individuals and families in need, and as a collective the voluntary sector provides an alternative to the state, and to a lesser extent the market, as an institutional provider of social welfare services. In addition to assistance to vulnerable groups the voluntary sector also benefits government as a resource for the implementation of public policy in the welfare field. The sector's utility in political context is emphasized as differentiation from the state and the market holds an ideological attraction. For the political right this is as an alternative to the public sector, and for the political left as an alternative to private business as a partner to deliver government funded public services. In the United Kingdom political recognition of the voluntary sector's potential to contribute socially useful services has benefited non-profit organizations; as government has provided financial support to facilitate service delivery, including in discrete voluntary sectors operationalized in different areas, e.g. health, housing. This has advantaged organizations operating in funded industries, as increased support from the state has been accompanied by growth. However, over-reliance on public funding, and the proximity of voluntary organizations to government and the public sector (i.e. as an inevitable consequence of their involvement with implementation of public policy) have raised concerns of an adverse impact on

the nature of voluntary enterprise. These concerns are most often articulated as anxieties over the extent to which non-profit organizations are able to maintain operational integrity and independence in an operating environment subject to manipulation by government. It is also significant in this context that as voluntary organizations become more visible in the public domain (as they take over service delivery responsibilities from the public sector) there have been demands for greater scrutiny of the way in which voluntary sector services are organized and delivered. Contemporary voluntary organizations, particularly those in receipt of public funds, are required to demonstrate that they are properly and publicly accountable, placing pressure to act in accordance with expectations established in public policy by ministers. The concern for the voluntary sector is that financial weakness, sometimes allied to submission to the jurisdiction of a state appointed regulator, has the potential to undermine independence, and that pressure for public accountability offers the opportunity for government to exercise control over voluntary organizations.

This study seeks to investigate the impacts of policy engagement empirically by focusing on the experience of voluntary organizations operating in a discrete non-profit industry, i.e. the voluntary housing sector. Housing is an industry in which the United Kingdom voluntary sector has come to be regarded as an important provider, specifically of housing as a welfare service to those in housing need. Housing associations - which are the legal embodiment of the voluntary housing movement in the United Kingdom - feature in housing policy as developers of new housing for rent and for sale, and as managers of social rented housing. Although for long periods in the history of housing policy in the United Kingdom voluntary housing operated in the shadow of local authorities, housing associations emerged to play a key role in the development and management of social housing in the late twentieth century.

The housing association movement has been provided with substantial capital resources by the Treasury to undertake particular roles identified in housing

policy, suggesting that it might be vulnerable to external prioritization and manipulation by government in pursuit of policy objectives. This is emphasized by the fact of regulation by a state appointed body, which has been a feature of the operating environment for housing associations since 1974. In Wales control and supervision of housing associations through regulation has been decentralized from Westminster and has been the responsibility of Wales policy institutions since 1989. This gives the opportunity for study of the impact of housing policy implementation on housing associations in Wales as a discrete voluntary sector. Notwithstanding their convenience for research purposes there is no available in-depth study of the impact of policy engagement on housing associations in Wales *qua* voluntary organizations. In fact, the academic literature in Wales is lacking published research on the relevance of policy implementation for voluntary organizations, i.e. focusing on its impact on structural norms and values; this is the case generally and not just at industry level. This lacuna is surprising as the Wales voluntary sector is delineated geographically from its English and Scottish counterparts, and the Wales housing association movement by the supervisory, regulatory and policy implementation responsibilities given to Welsh policy institutions. This study seeks to address the research deficit by investigating the impact of policy implementation at Wales-national level on housing associations as a discrete sub-set of the Wales voluntary sector. As such it is an addition to the literature on housing and the literature on the voluntary sector in Wales. In contemporary context insights are provided into the relevance of policy institutions responsible for the implementation of housing policy.

Chapter Summary

Chapters in Part One

The chapters set out in Part One, i.e. chapters one to five, establish the background for discussion and examination of housing associations as part of the Wales voluntary sector in Part Two and Part Three of this study, as well as setting out the methodology. Chapter One provides some perspectives on the

voluntary sector and voluntary enterprise generally, however, it is not a detailed account of the non-profit sector globally or in the United Kingdom, as this would be beyond the scope of this study. Rather, it develops a background for research on housing associations as voluntary organizations by discussing the nature and essential characteristics of non-profit enterprise, as well as composite definitions of a voluntary organization whose supposed utility is to determine membership of the voluntary sector, and theories of the sector that explain its societal function. Chapter One also discusses the sector in political context to draw attention to the relevance of government policy to the work of welfare orientated voluntary organizations, and the functions of voluntary organizations as contemplated in public policy. Chapter Two deals with the operating environment for voluntary organizations in the United Kingdom - an aspect of which is the common law system of legal administration - as providing an explanation for the sector's development and entrenchment as a distinct social institution. Also discussed in Chapter Two is the structuring of the non-profit sector as a corporate sector, providing a context for a more focused account of the operating environment established for housing associations by housing policy, and its implementation at Wales-national level by policy institutions in Wales, in Chapter Four. Chapter Two also deals with funding regimes for the voluntary sector, in particular the use of contract and grant as modes of public funding, and the opportunities they provide for government to manipulate voluntary organizations in pursuit of policy objectives; as well as accountability and modes of accountability of voluntary organizations involved with providing public services. Chapter Three provides an account of the Wales non-profit sector as a distinct Wales-national institution. This is partly a corrective to the assumption often made in the literature on the UK-national voluntary sector that the non-profit sector in Wales is co-extensive and undifferentiated from its counterpart in England, but also to complete the context for discussing housing associations as part of the Wales voluntary sector. Chapter Three first considers how voluntary organizations are defined and regarded in Wales within the policy community, the roles conceived for the Wales voluntary sector, and the policy responsibilities of the National Assembly for

Wales. The chapter then deals with how the Wales voluntary sector is financed and the framework for engagement with policy institutions. Chapter Four shifts the focus away from the voluntary sector in general to concentrate on voluntary housing and housing associations as non-profit housing organizations. Housing associations are discussed in the context of housing policy, i.e. government policy on housing. Adopting a historical perspective Chapter Four focuses on policy for England and Wales post 1979 before providing an account of housing and housing policy in Wales, and its relevance for housing associations. Chapter Four also discusses housing associations' structural connections with the wider voluntary sector, the statutory definition of a housing association, and the regime for registration of a housing association. Finally in Part One, Chapter Five sets out the methodology used in Part Two and Part Three of this study including: an explanation of the research strategy; the use of research objectives relevant to a survey carried out with housing associations and local authorities; the methods of data acquisition used; how the survey data is collated and analysed; and, the use of semi-objective and subjective data.

Chapters in Part Two

Part Two, i.e. chapters six to eight, sets out findings from research carried out on policy documents and from the survey carried out with housing associations and local authorities. The approach taken in these chapters is to discuss the impact of housing policy implementation in Wales on housing associations in broad perspective. Chapter Six considers the issue of housing association status. It first seeks to establish the relevance of status in policy context by reference to policy documents, before considering attitudes on this issue amongst housing associations and local authorities. Findings from the survey discussed in Chapter Six provide an insight into the significance of engagement by housing policy, and its implementation in Wales, on the most fundamental of assumptions for housing associations, i.e. their membership of the voluntary sector. Chapter Seven deals with expectations for housing association roles in Wales. The chapter discusses roles contemplated in policy documents before considering the evidence from

housing associations and local authorities on relevant functions for the movement in Wales, how these should be determined, and the extent to which the regulator has exerted an influence in this context. Chapter Eight considers modes of accountability relevant to housing associations in Wales, with a particular focus on the regulatory framework and its impact on discretion. The survey examines attitudes toward issues of accountability amongst housing associations and local authorities.

Chapters in Part Three

Part Three, i.e. chapters nine to eleven, adopts a narrower perspective than in Part Two by concentrating on housing association operational issues, and the relevance of policy implementation in Wales. For reasons explained in the Methodology (Chapter Five), the research carried out for Part Three is primarily concerned with policy implementation under Tai Cymru, and the survey data discussed in relevant chapters is limited to findings obtained from housing associations.¹ Chapter Nine discusses Tai Cymru's policy on development, and its use of policy instruments to impose priorities on housing associations, as well as the National Assembly for Wales's approach to housing association development.² The survey findings provide an insight into the impact of Tai Cymru's policy agenda on housing association development in the 1990's. Chapter Ten deals with the relevance of rents policy to the way in which housing associations set rent levels. The chapter first discusses the priorities for rents policy as established by Tai Cymru and the National Assembly, before considering findings from the survey on the impact of rents policy as implemented under Tai Cymru, for housing associations. Chapter Eleven discusses how housing association accommodation in Wales is allocated amongst those in housing need, and the priorities for distribution of housing as a resource as set out in relevant policy documents. The findings from the survey

¹ Tai Cymru was the regulator appointed for housing associations in Wales between 1989 and 1998. See: Chapter Four.

² Post devolution the National Assembly for Wales is responsible for the regulation of housing associations. See: Chapter Four.

establish housing association priorities for allocation and the influence of Tai Cymru in this area.

The research carried out for this study assists with an understanding of the impact of housing policy implementation in Wales by Wales-national policy institutions on housing associations, in particular on their capacity to exercise operational discretion and to undertake independent action. The final chapter, Chapter Twelve, sums up the research and offers some conclusions on the relevance of policy implementation for housing associations *qua* voluntary organizations in Wales.

PART ONE

CHAPTER ONE

PERSPECTIVES ON THE VOLUNTARY SECTOR: THE UNITED KINGDOM VOLUNTARY SECTOR

Introduction

The voluntary or non-profit sector in the United Kingdom is a significant provider of goods and services, including in the field of housing. However, studies of the housing association movement in the United Kingdom almost invariably proceed from a housing studies perspective and tend to ignore the relevance of housing policy implementation for housing associations *qua* voluntary organizations.¹ In so doing they overlook an important aspect of housing associations and what the experience of voluntary housing can offer to study of the non-profit sector. The purpose of this chapter is to develop a context for discussing associations as voluntary organizations by considering accounts of voluntary enterprise to establish: the nature and characteristics of non-profit organizations (housing associations have robust connections to the non-profit sector and, for reasons explained in Chapter Four, are *prima facie*, to be regarded as voluntary organizations); and, to consider the relevance of government policy to the work of voluntary organizations, as well as the role of non-profit enterprise in public policy.² This will provide a background for discussion of voluntary housing organizations in housing policy in Chapter Four, but also for analysis of the impact of housing policy on housing associations at a broad structural and functional level in Part Two, and at a narrow operational level in Part Three. The chapter begins by discussing the nature of voluntary organizations and the use of composite definitional criteria to determine membership of the non-profit sector, before turning briefly to consider theories of the voluntary sector that offer an explanation for the sector's growth and entrenchment as a social institution, and its role within a

¹ For reasons arising from the importance of housing and the housing market to the United Kingdom economy and to society generally, housing policy is most often equated with public or government policy. See: Chapter Four, n.1. This is the sense in which the term is used in this study.

² In this study the term public policy should be read as referring to the policies of central government.

three-sector model of service provision, i.e. public, private and voluntary.³ This is followed by discussion of the voluntary sector in political context in the United Kingdom - focusing on the period after 1945 - to draw attention to the relationship between government decision-making and policy implementation, and to the work of welfare-orientated voluntary organizations. The final part of this chapter focuses on the role or roles of voluntary organizations, particularly those contemplated for voluntary enterprise by politicians and government and which are reinforced in public policy. This is relevant to housing associations as they provide housing as a welfare resource within a system of social rented housing, which is itself a concern of government.⁴

The United Kingdom Voluntary Sector

Describing the Voluntary Sector

Composite definitions of a voluntary organization

The voluntary sector is polymorphous and extensive in the United Kingdom and globally, and accounts of the sector often note its diversity and heterogeneity on many levels.⁵ This diversity presents difficulties in describing a collective of organizations delineated from the private and public sectors (that are otherwise dominant in the provision of goods and services). The problem is made worse by use of a mixed and loose terminology giving rise to ambiguities as to organizational status, and uncertainty as to the boundaries of the voluntary sector.⁶ As a collective non-profit organizations are often referred to as the third or non-profit sector in substitution of the voluntary sector, and may be described in terms that suggest similarities between enterprises operating in the public and private sectors, such as *quasi-public* or

³ Despite the importance of the voluntary sector, in particular as a service-providing institution, the public and private sectors are often seen as representing the dominant modes of provision in the United Kingdom and globally. These two sectors have been referred to by Salamon and Anheier as *'two grand complexes of organizations - two broad sectors'*: Salamon and Anheier, (1992), at p.126.

⁴ The distinction between the system of social rented housing and the wider housing market is explained in Chapter Four.

⁵ Accounts introducing the voluntary sector include: Salamon and Anheier, (1992); Kendall and Knapp, (1996); and, Kendall, (2003).

⁶ Or by emphasizing particular structural aspects of member organizations that may lead to other features being ignored: Salamon, (1992).

quasi-private.⁷ To interpolate a voluntary sector into an otherwise dominant dichotomous model of service provision it is necessary to resolve these ambiguities, and to establish unique characteristics relevant to describe voluntary organizations.⁸ An approach widely adopted to the problem of description and status is to apply criteria that reflect common structural and operational characteristics of voluntary organizations as a composite definition.⁹ The selection of criteria is determined in advance and necessarily involves a subjective assessment of relevant characteristics.¹⁰ Although there are several commonalities inevitably the selection of, and weight attached to different criteria is discretionary.¹¹ As a result the boundaries of the voluntary sector are imprecise - as in practice membership is not a matter for objective assessment. Notwithstanding, certain criteria are ubiquitous to describe a voluntary organization. These are set out for the purposes of an international comparative research project on the non-profit sector coordinated by the Johns Hopkins University. For the purposes of this research a voluntary organization is defined as: private in nature; non-profit-distributing; and, self-governing.¹² In the United Kingdom application of these criteria without modification leads to inclusion within the sector of organizations that do not meet with intuitive conceptualizations of non-profit enterprise at UK-national

⁷ References to the voluntary sector as *quasi-public* are common in the literature on the sector in the United Kingdom, although references to the sector as *quasi-private* appear less often. Leat refers to voluntary organizations as *semi-private* in: Leat, D., *Are voluntary agencies accountable?* in Billis and Harris (eds.), (1996), at p.61.

⁸ The diversity of the non-profit sector at all levels raises doubts about whether or not it is practical to attempt to define a voluntary organization at all. This point is made by several commentators, see for example: Kendall and Knapp, (1996), at pp.16-17.

⁹ A more straightforward approach is to distinguish between the non-statutory voluntary sector and public bodies established by statute. This is suggested by, for example: Johnson, (1987). However, this is inadequate to delineate the non-profit sector and voluntary organizations from the private sector as neither voluntary organizations nor private organizations are established by statute, and both derive legitimacy from the presumption of freedom of association under the common law (discussed in Chapter Two).

¹⁰ This is a point made by, for example, the National Council of Voluntary Organizations: NCVO, (1996). Others argue that voluntary organizations do not share any essential characteristics, see for example: Hatch, (1980).

¹¹ The content of any definition and the selection of relevant criteria may be dependent on context: Johnson, (1981); and, NCVO, (1996). Kendall and Knapp argue that the identification of appropriate criteria is '*virtually obligatory*' when discussing the voluntary sector: Kendall, J., and Knapp, M., *A loose and baggy monster, boundaries, definitions and typologies*, in Smith *et al* (eds.), (1995), at p.85. See also: Gutch *et al*, (1990), at Appendix 3, on definitions.

¹² The study is referred to as the International Comparative Study of the Non-profit Sector (ICSNS). For an overview see: Salamon and Anheier, (1996). Website: <http://www.jhu.edu/%7Ecnpl/>

level.¹³ To resolve this difficulty Kendall and Knapp suggest using a modified definition that excludes bodies not generally regarded as voluntary organizations in the United Kingdom. This approach identifies a narrow voluntary sector more sympathetic to understandings of non-profit enterprise at UK-national level¹⁴ Absent from these criteria is any requirement that a voluntary organization should provide a public benefit, notwithstanding that this is a characteristic often associated with non-profit enterprise - particularly in the United Kingdom where the charitable voluntary sector is long-established to the benefit of society at large.¹⁵

Limiting the voluntary sector: the requirement of a formal constitution

To ensure that the voluntary sector remains manageable for research purposes the requirement of formal constitution is often applied to limit membership. Formal constitution may arise through the adoption of legal form (discussed in Chapter Two), or through the use of a written document setting out, for example, the duties and powers of a board of management or trustees. This excludes from the non-profit sector individuals who provide services to family members, as well as associations or informal alliances of similarly concerned or interested individuals coming together spontaneously in support of a particular one-off cause or campaign, usually at local level.¹⁶ In this study, unless otherwise indicated in the text or footnotes, references to the voluntary sector from this point forward are to be read as references to the collective of formally constituted voluntary organizations. Similarly reference to a voluntary organization is to a formally constituted body.

¹³ For example: trades unions, educational trusts, and, health trusts.

¹⁴ Kendall and Knapp distinguish between: [1] a Broad Non-profit Sector whose membership is determined by the application of the criteria used to define a non-profit organization for the purposes of the ICSNS; [2] a Broad Voluntary Sector from which are excluded religious congregations and political parties; and, [3] a Narrow Voluntary Sector comprising organizations otherwise meeting the criteria for membership of the broad voluntary sector but excluding those organizations not traditionally considered for membership of the voluntary sector in the United Kingdom: Kendall and Knapp, (1996).

¹⁵ This is often seen as fundamental for the institutional voluntary sector. For example, Beveridge argues that voluntary organizations are established to promote social advancement: Beveridge, (1948).

¹⁶ The work of informal voluntary organizations is however recognised in public policy in the United Kingdom, see for example reference to a community sector in: Great Britain, (1998).

Classification of voluntary organizations

Classification assists with ordering and making sense of the way the voluntary sector is structured globally and in the United Kingdom. At operational level voluntary organizations may be classified according to the industry in which they operate, for example: health; leisure; education; or, housing. These classifications tend to mirror those used in the private sector.¹⁷ Alternatively functional distinctions may be made between service-providing and campaigning organizations.¹⁸ Service-providing organizations operate to confer benefits directly on individuals, whilst campaigning organizations provide indirect benefits - often to minority or disadvantaged groups.¹⁹ Voluntary organizations may be further classified by reference to the source of their funding. In particular according to whether or not they are financially autonomous, or dependent on external financial support, i.e. resource dependent organizations.²⁰ Classification as a resource dependent organization focuses attention on a particular weakness of particular voluntary enterprises, i.e. the need to secure finance and resources to maintain services means that they are vulnerable to external prioritization. In this context it is also useful to distinguish between those organizations wholly or partly funded by government, and those that receive their funding from other donative or trading sources.²¹ Where organizations receive their funding primarily from government this raises the possibility that operational priorities will be established by government policy and ministers, and that independence will be compromised.

¹⁷ The classificatory system used for the purposes of the ICSNS is intended to encapsulate the breadth of voluntary enterprise at the level of area of operation/field of activity, or industry, in those countries that participate in the study. References are to primary industries such as health, social services and education. To this extent the ICSNS system mirrors classificatory systems used in the private sector with no account taken of wider non-service related functions that non-profit organizations often perform, or of the non-service related institutional role of the voluntary sector: Kendall and Knapp, (1996).

¹⁸ Brenton, (1985); and, Knight, (1993).

¹⁹ This distinction is not always maintained as some voluntary organizations will discharge a service-providing and a campaigning function, demonstrating the sector's complexity.

²⁰ Chanan, G., *Local voluntary sectors: the hidden dynamic*, in Saxon-Harrod and Kendall (eds.), (1994); and, Hatch, (1980).

²¹ Gutch *et al*, (1990).

Voluntary Sector Defining Criteria

Non-profit distribution as an operational norm

In a seminal account of the non-profit sector Hansmann defines a voluntary organization by placing a limit on how profits generated by a relevant organization may be distributed, i.e. to exclude payments to those individuals in a position to exercise operational control over a particular enterprise.²² This is often restated as requiring an organization to operate on a not-for-profit basis, which although convenient, is misleading. Hansmann's limitation refers to profit distribution without any restriction on profit acquisition. In application the criterion does not prevent an organization from generating a financial surplus, the caveat is that any profits must: [1] be returned to the organization; or, [2] be used to cross-subsidise other activities; or, [3] be invested to the benefit of individuals not in a position to exercise operational control.²³ The non-profit distribution criterion does not prohibit voluntary organizations from engaging in trading activities that generate an income or that give rise to a revenue surplus, nor does it prevent profits being used to pay salaried employees or to purchase services from other agencies. It follows that a voluntary organization may employ staff to undertake management or service-providing functions.²⁴ Non-profit distribution is fundamental to the definition of a voluntary organization, in particular to distinguish voluntary enterprise from organizations operating as profit-making concerns in the private sector. Where the criterion is met a social benefit is provided as revenue is more likely to be re-invested in core services, and available funds are not reduced through payments to shareholders. This offers an explanation for support provided for voluntary enterprise in public policy (discussed below).

Voluntary organizations should be independent and self-governing

A theme that endures in the literature on the voluntary sector is that voluntary organizations should be independent and self-governing. As a criterion for membership of the sector this most often requires that an organization should

²² Hansmann, (1980).

²³ Hansmann, (1980).

²⁴ In the case of larger structurally and operationally complex bodies, it would be impossible for these organizations to function unless operational matters were put in the charge of salaried employees with relevant skills.

be detached from government, more particularly from the control of the state, and that it should operate free from the influence of for-profit private organizations. It is a criterion that is ubiquitous in accounts of the non-profit sector to establish voluntary organizations as constitutionally independent, with the capacity to act on their own initiative and discretion.²⁵ Independence as an aspect of voluntary status is highly valued by the non-profit sector in the United Kingdom. The representative body of voluntary organizations in England, the National Council for Voluntary Organizations (the 'NCVO'), has described its members as independent by inclination and by constitution,²⁶ suggesting that independence should be seen as a philosophical as well as a structural concern (i.e. by reference to constitution). Similarly, the Wales Council for Voluntary Action (the 'WCVA'), as well as the Scottish Council for Voluntary Organizations both refer to the capacity for independent action and decision-making in their respective definitions of a voluntary organization.²⁷

Voluntary organizations should benefit from the contribution of volunteers

The criterion of voluntarism requires that an organization should derive some benefit from the input of volunteers, and is regarded by some commentators as the key defining characteristic of voluntary enterprise.²⁸ As in the case of non-profit distribution, the criterion need not extend beyond those individuals or corporate bodies that exercise operational control, enabling voluntary organisations to employ staff for many purposes. It is a common misconception of the non-profit sector that voluntary organizations are necessarily reliant on volunteers to carry out their service-providing functions.²⁹ Non-profit organizations may act as employers and are not required to rely on volunteers to undertake day-to-day management or service-providing tasks. What is required is that an organization should benefit to a meaningful degree from voluntary participation, for example through

²⁵ For example: Salamon and Anheier, (1992); Kendall and Knapp, (1996); and, Kendall, (2003).

²⁶ NCVO, (1979/80).

²⁷ WCVA, (2003a), see further Chapter Three; SCVO, website at: www.SCVO.org.uk (information download - December/05).

²⁸ See, for example: Prashar, U., *Introduction*, in NCVO, (1991).

²⁹ Noted by: Marshall, T.F., *Can we define the voluntary sector?* in Billis and Harris (eds.), (1996).

volunteer involvement in service provision, or in the governance/overall management of an organization.³⁰ In the case of professionally staffed voluntary organizations this criterion is most often met by retaining strategic management as the responsibility of a board of management or trustees who will be responsible for issues of governance, and accountable for all decisions and actions taken by the organization.

Theories of the Voluntary Sector

Theories of the voluntary sector - referring to the global as well as the UK-national sector - offer the opportunity to focus on the sector's role or roles in society, and in public policy, and often begin by discussing the failure of the public sector and/or the private market to make available goods or services - usually to the disadvantage of particular social groups. Inevitably this provides a derivative account that establishes non-profit enterprise by reference to the state and the market.³¹ It is an approach that may be criticized for focusing on the inadequacies of the public and private sectors rather than on positive values associated with voluntary enterprise.³²

Private Sector Failure

The emergence of the non-profit sector may be seen as a response to the market's failure to make available goods or services to those without adequate resources. This theory of the voluntary sector pre-supposes that: [1] the consumer is unable to exercise choice in the marketplace and has no option but to rely on non-market solutions;³³ and/or, [2] he or she is deterred from entering the market through mistrust of bargain and contract as a means

³⁰ Salamon and Anheier, (1992).

³¹ The assumption that underpins derivative/residual accounts of the sector is that in general the market will operate to effectively and efficiently distribute goods and services and, where this is not the case, that government will intervene to ensure the supply of, primarily, social welfare services. In this context the growth of the voluntary sector is often attributed to a demand for services that remains unmet by the private market or the public sector: i.e. the public and private sectors are regarded as complimentary and the voluntary sector assumes the status of supplementary provider. See, for example: Beveridge, (1948).

³² For example: Leat, (1986).

³³ Weisbrod, B. A., *Towards a theory of the nonprofit sector*, in Phelps (ed.), (1975). See also: Best, R., *Foreword*, in Dunn (ed.), (2000).

of distributing goods or services.³⁴ In either case the intervention of the voluntary sector as an alternative to the private market is seen as empowering the consumer to make decisions free from constraints imposed by limited personal resources, and based instead on individual preferences.³⁵ However, in many cases poverty and disadvantage brought about by low income, in combination with a scarcity of institutional alternatives, means that the consumer of welfare services often does not exercise choice in any meaningful way.³⁶

Public Sector Failure

The intervention of the state and the public sector to provide goods and services to those in need is regarded primarily as a response to a failure by the private sector to make these available to those unable to meet the market price.³⁷ From this perspective public services are those services that the market cannot (or will not) undertake to provide,³⁸ and are determined by the priorities of government.³⁹ These are usually provided as universal services necessitating a substantial bureaucracy giving rise to criticism of the public sector as over-bureaucratic, inefficient, detached from the individual and the community, inflexible, and unable to respond or adapt to meet local need.⁴⁰ A

³⁴ It is argued that the use of contract as a means of distributing goods and services in a commercial environment operates against the consumer's interests by limiting the capacity for informed choice - as information on goods or services delivered under the control of the supplier remains with the supplier who has an interest in maintaining his or her bargaining advantage by withholding relevant information. Theorizing the voluntary sector from this perspective means that non-profit organizations mitigate the market's distributive inequity as not requiring the consumer to make an assessment of the quality of goods or services under supply. In short the sector's non-profit orientation means voluntary organizations are more likely to be regarded as trustworthy: Hansmann, (1980).

³⁵ Anheier, H.K., and Seibel, W., *Sociological and political sciences approaches to the third sector*, in Anheier and Seibel (eds.), (1990).

³⁶ Marshall, T., *Can we define the voluntary sector?* in Billis and Harris (eds.), (1996).

³⁷ An assumption often made is that the market does not supply public (welfare) goods: Williams, (1992, Spring).

³⁸ Bamforth makes a similar point concerning public services but in a different context, i.e. to distinguish between the public and private sectors for the purpose of determining amenability to judicial review and the relevance of public law, see: Bamforth, N., *The public law-private law distinction: a comparative and philosophical approach*, in Leyland and Woods (eds.), (1997).

³⁹ In general services delivered by the public sector as a response to market failure are universal and distributed on equitable principles, and, access is determined by relatively broad criteria that, once established, guarantee entitlement.

⁴⁰ As noted by, for example: Berger and Neuhaus, (1977); Hatch, (1980); Hadley and Hatch, (1981); Gladstone, (1979); Wolch, (1990); and, Faulkner, D., *Public services, citizenship and the state - the British experience 1967-97*, in Freedland and Sciarra (eds.), (1998).

further criticism of the public sector is that priorities are established by reference to national and not local need. In this context, prioritization of resources may be subject to decisions made by elected politicians influenced by the needs of the median voter to the disadvantage of minorities, or those seen as undeserving.⁴¹ In contrast, the voluntary sector is seen as an alternative to the state as provider; offering a flexible, responsive and non-judgmental service, and voluntary organizations as having the capacity to respond to local need.⁴²

Non-derivative Accounts of the Voluntary Sector

The voluntary sector has long been identified as an important provider of goods and services,⁴³ alongside and in addition to the public and private sectors.⁴⁴ Positive theories of the sector emphasize its non-derivative institutional function and its role as a mediating institution relevant to the individual and his/her relationship with government.⁴⁵ These positive functions of the voluntary sector are regarded by some commentators as amongst its most relevant and enduring features.⁴⁶ In particular the sector's mediating function is seen as bridging the gap between the individual and government, so that the former's detachment from the state - brought about by its apparent complexity, bureaucracy and overarching authority - is made less significant through the intervention of voluntary agencies.⁴⁷

⁴¹ As politicians are subject to consumer choices articulated through the ballot box: Kendall, (2003).

⁴² See for example: Kendall, (2003); Knight, (1993); Berger and Neuhaus, (1977); Hatch, (1980); and, Hadley and Hatch, (1981).

⁴³ See contributions in: White (ed.), (1981). Further: Savas, (1982); and, Weisbrod, (1972)

⁴⁴ De Laat, (1987); and, Van Til (1987).

⁴⁵ See: Salmon, L.M., *Partners in public service: the scope and theory of government-nonprofit relations*, in Palmer and Sawhill, (eds.) (1984); and, Ostrander, (1987), for discussion of the voluntary sector's relationship with, in particular, the public sector, but also the private sectors (including the extent of interdependence).

⁴⁶ See, for example: Wuthnow, R., *The voluntary sector: the legacy of the past, hope for the future?* in Wuthnow (ed.), (1991).

⁴⁷ Crossman argues that a combination of volunteer effort and professional skill has the effect of humanizing service delivery: Crossman, R., *The role of the volunteer in modern social services*, in Halsey (ed.), (1976).

The Voluntary Sector in Political Context in the United Kingdom

Welfare Services: The Voluntary Sector and the State

The voluntary sector holds an attraction for government as a resource, but also as an alternative provider to the public sector - usually in the form of local government - and the market. The sector's capacity as a service-providing institution is particularly relevant in the field of social services: an area in which the state is seen as having a responsibility to ensure delivery and access.⁴⁸ Voluntary organizations are valued as having a contribution to make in the welfare field, as the non-profit sector as a whole benefits from a perception that services provided under its direction and control provide a social benefit, and are socially useful, giving a justification for political support.⁴⁹ In the United Kingdom the policies of the main political parties have been, and remain, highly significant to the work of voluntary organizations, particularly at industry level; impacting on the growth and development of the voluntary sector and discrete, industry based, non-profit sectors.⁵⁰ This was particularly evident as support for collectivism and universal provision underpinned the growth of the welfare state after 1945,

⁴⁸ The tendency in the United Kingdom to regard social services as the responsibility of the state: Johnson, (1987); and, Titmuss, (1963).

⁴⁹ However, it has been argued that by focusing on the assumed benefits of voluntary provision politicians and others are distracted from requiring non-profit organizations to establish their value objectively, see: Moss Kanter, R., Summers, D.V., *Doing well while doing good: dilemmas of performance management*, in Powell, (ed.), (1987).

⁵⁰ In this context ideology has been highly influential in shaping the policies of the main political parties toward the voluntary sector. The political left has tended to regard voluntary action as the preserve of social elites and as institutionally maintaining the powerlessness of the working classes. From this perspective the beneficiaries of voluntary services - who are often poor and/or socially disadvantaged - as seen as having little control over services. Kendall and Knapp argue that '*charities were regarded [by the political left] as ... responsible for freezing social inequalities, contributing to the subservience and powerlessness of the disadvantaged*': Kendall and Knapp, (1996), at p.6. The Labour Party has tended to offer its support to voluntary organizations representative of working class interests, for example, trades unions or friendly societies. On the relationship between the political left and the voluntary sector generally see: Whelan, R., *Involuntary action*, in Whelan (ed.), (1999). Brenton, (1985), at at p.21, notes that Richard Crossman, an influential Labour Member of Parliament between 1945 and 1974, once described voluntary organizations as an '*odious expression*' of social oligarchy. Rodgers characterizes the history of charity as the history of the attitudes of the rich toward the poor, offering an insight into why it is that the political left has found it difficult to accept a role for the voluntary sector in the provision of welfare services: Rodgers, (1949). The left's mistrust of the voluntary sector persisted well into the 20th Century; this despite the publication of a report on voluntary action, which was generally supportive of the sector, by the architect of the welfare state, Lord Beveridge: Beveridge, (1948). The political right, in contrast, has been more supportive of voluntary action, seeing it as offering the opportunity for individual self-improvement though voluntarism or philanthropy: Kendall and Knapp, (1996), at p.6.

which in turn affected the capacity of the welfare orientated voluntary sector to operate alongside an increasingly dominant institutional provider in the form of the public sector.⁵¹ Support for the welfare state may be seen as arising from a desire to introduce collectivist solutions to enduring social problems in the post war era: although it has also been suggested that it was a response to the inability of the voluntary sector to make services available on a universal basis.⁵² In any event, after 1945 the state was positioned as the main provider of welfare services⁵³ excluding the often fragmented, locally based, non-universal, and selective services provided by the voluntary sector.⁵⁴ In fact some commentators argue that the welfare state at this time represented a threat to the sector's continuance,⁵⁵ and that its dominance was such that it had the effect of relegating the non-profit sector to the role of '*junior partner in the welfare firm*', or subcontractor to the state.⁵⁶ In recent decades the scale of the welfare state has gradually reduced against a background of criticism of the public sector as a service-providing institution. Notwithstanding, a lasting legacy of the public policy in the 1950's and 1960's is that welfare services are often associated with provision by the public sector, so that a role for non-profit organizations cannot be accommodated unless the state is seen as

⁵¹ The term welfare state is a convenient shorthand referring to the raft of policies and legislative initiatives that were introduced in response to the changes that took place in socio-economic context in the mid 1940's, such as: the Education Act 1944; the National Health Service Act 1946; the National Insurance Act 1946; and, the National Assistance Act 1948. Earlier legislation had already begun the process of establishing collective services under the control of the state, i.e.: the Old Age Pensions Act 1908 and the National Insurance Act 1911. The growth of the welfare state may be seen as a response to an increased demand for equality and social welfare rights in post war society underpinned by widespread support for the provision of collectivist solutions to chronic social problems, described by Sullivan as a '*collectivist impulse*': Sullivan, (1996), at p.48. See also: Rooke, (1968); and, Johnson, (1987), on the growth of the welfare state and social services.

⁵² Titmus argues that services provided by the voluntary sector in the United Kingdom during the early decades of the twentieth century were '*scattered*' with the consequence that universal coverage became the responsibility of the state: Titmuss, (1963), at p.21. Some argue that the voluntary sector failed to provide universal coverage and that it actively discriminated against certain groups such as women and the low paid, see for example: Deakin, *Involuntary Action*, in Whelan (ed.), (1999).

⁵³ By 1979 the welfare state had become the '*biggest area of non-market activity in the British economy*': Le Grand and Bartlett, *Introduction*, in Le Grand and Bartlett (eds.), (1993), at p.1.

⁵⁴ Deakin, N., *Voluntary Action*, in Whelan, (ed.), (1999).

⁵⁵ See, for example: NCVO, (1988). Some claim that it was the aim of the political left in the post-war period to make the voluntary sector redundant, see: Brenton, (1985). It was argued in the late 1940's that the role of the voluntary sector was to fill the gaps left by the public sector. Beveridge's view was that the sector existed to meet the '*needs that remain in a social services state*': Beveridge, (1948), at p.222. This suggest a more benign approach toward the sector.

⁵⁶ Owen, (1965), p.527. See also: Whelan, R. *Involuntary Action*, in Whelan (ed.), (1999).

extending beyond government or government agencies - a consequence of which is that the welfare state and welfare services in many instances are regarded as one and the same.⁵⁷ The welfare state may therefore be seen as intruding into the institutional terrain occupied by the voluntary sector: at the very least the boundaries between state activity and voluntary sector activity are blurred, raising as a possibility that the welfare orientated non-profit sector has lost its identity and independence, and highlighting the need to consider its role within a mixed economy of welfare.⁵⁸ This issue is relevant in contemporary context as welfare orientated voluntary organizations have assumed a more prominent role in welfare services so that the non-profit sector is '*no longer marginal within the ideology of provision*',⁵⁹ making differentiation from the public and private sectors essential for the purposes of allocating responsibility, establishing accountability, and in many cases, distributing public finance.

The Voluntary Sector and the Conservatives after 1979

Following the 1979 general election the newly elected Conservative government embarked on a programme designed to make welfare services more effective and efficient. It sought to introduce the values of a market economy and competition to the delivery of welfare services by establishing quasi-markets in which private and voluntary bodies are able (and are encouraged) to compete to deliver public services.⁶⁰ The Conservatives in the 1980's saw the private and voluntary sectors as alternatives to the state as institutional vehicles for the provision of public services - including welfare services.⁶¹ Local authorities, as well as other public bodies, were encouraged to obtain services from independent providers through negotiation and

⁵⁷ Carrier and Kendall, (1986).

⁵⁸ This difficulty is highlighted by reference to the report of the Nathan Committee on Charitable Trusts which equated voluntary action with state action and saw a distinction only in scope and scale: Great Britain, (1952).

⁵⁹ Leat, D., *Are voluntary agencies accountable?*, in Billis and Harris (eds.), (1996), at p.63.

⁶⁰ On the introduction of quasi-markets in different social welfare fields see the contributions in: Le Grand and Bartlett, (eds.), (1993). See also: Ascher, (1987); and, Sullivan, (1992), at pp.217-218.

⁶¹ Sullivan argues that the Conservatives under Margaret Thatcher made concerted attempts to '*shift the frontier*' between the public and private sectors of the economy and had as an objective in the field of welfare services to reduce the state to a residual role and to promote the private sector as the primary service delivery institution: Sullivan, (1996), at p.97. See also: Wolch, (1990), in particular at p.901.

agreement, and the use of contract.⁶² However, despite its obvious utility in this context the Conservatives failed to provide more than rhetorical support for the voluntary sector in the early 1980's.⁶³ There was no sustained financial or policy commitment to the sector, with attention focused instead on developing the private sector, limiting the influence of local government, and on introducing market values into the public sector (although housing provided an exception⁶⁴). The voluntary sector in the 1980's was encouraged to adopt values linked by government with the private sector and business, i.e. those of efficiency and value for money,⁶⁵ and to adopt a market orientated approach to service delivery.⁶⁶ Gradually the sector became more involved in delivering services previously provided directly by local authorities, including in the welfare field,⁶⁷ as the role of local government was modified from that of service-provider to one of coordinator facilitating the work of other agencies.⁶⁸ One consequence of this change was that closer attention was paid to the work of non-profit organizations and their contribution to the implementation of public policy. In 1990 a government report, *Efficiency Scrutiny of Government*

⁶² Ascher discusses the growth of contracting out under the Conservatives after 1979: Ascher, (1987), at pp.11-14. See also the contributions in: Le Grand and Bartlett, (eds.), (1993). In the welfare field the rationale advanced to support the use of contract was that it would lead to cutbacks in costs, increase efficiency and provide greater choice for service users, see: Taylor, M., *The social welfare environment*, in CAF, (1997); and, De Hoog, (1984).

⁶³ The NCVO argued at the time that government had not done enough to ensure the stability of the non-profit sector; it gives as an example the failure to insulate the voluntary sector from the impact of financial cutbacks in the public sector resulting in the withdrawal of local government funding to some voluntary organizations: NCVO, (1979/80).

⁶⁴ Discussed in Chapter Four. A further exception was in the employment field where the voluntary sector was an important contributor of employment opportunities under the government's Community Programme, which provided public funds to support organizations offering employment opportunities. However, Deakin argues that this commitment was superficial, with the true purpose being to reduce the overall employment figures by creating low skilled part-time employment, an exercise in which the sector unwittingly became engaged: Deakin, N., *The perils of partnership*, in Smith *et al*, (eds.), (1995).

⁶⁵ Faulkner, D., *Public services, citizenship and the state - the British experience 1967-97*, in Freedland and Sciarra, (eds.), (1998).

⁶⁶ A change in the mode of delivery of local services noted by several commentators, see for example: Wilson, D.C., *The voluntary sector in the 1990s and beyond*, in Saxon-Harold and Kendall, (eds.), (1994).

⁶⁷ Noted by: Morris, D., *Paying the piper: the 'contract culture' as dependency culture for charities?*, in Dunn, (ed.), (2000); and, Taylor, M., *The social welfare environment*, in CAF, (1997).

⁶⁸ Jessop argues that support for partnership that features as an aspect of current Labour social policy was noticeable during the 1980's as an alternative to marketization, though the tendency is to regard privatization at this time as supporting market based ideology: Jessop, B., *Governance failure*, in Stoker (ed.), (2000). Leigh and Taylor make similar points: Leigh, I., *The legal framework for community involvement*, in Dunn, (2000); and, Taylor, M., *The social welfare environment*, in CAF, (1997).

Funding of the Voluntary Sector,⁶⁹ noted the sector's capacity to assist in meeting public policy objectives and emphasized the need for voluntary organizations to meet central government departmental objectives in return for ongoing financial support.⁷⁰ This instrumentalist approach to the voluntary sector was tempered to some extent on publication, in 1992, of a White Paper that recognized the sector's wider societal functions: *The Individual and the Community*.⁷¹ This document identified a role for the non-profit sector in providing individuals and communities with opportunities to take a measure of responsibility for devising and delivering local services.⁷² As a consequence the voluntary sector grew in significance during the 1990's as government consulted its representatives over policy decisions,⁷³ and non-profit organizations became actively engaged in the policy process.⁷⁴

New Labour and the Voluntary Sector

Overview

Although traditionally the political left had been mistrustful of voluntary enterprise this changed during the 1980's and 1990's. A review conducted by the Labour Party in 1987, and a consultation on the sector undertaken in 1990⁷⁵ saw it emerge as relevant to the policy agenda of New Labour in the 1990's as a service-providing institution offering an alternative to the market.⁷⁶ By the late 1990's the Labour Party was asserting positive values for voluntary enterprise, these included: that voluntary organizations are innovative and flexible in the way they develop and deliver services; and, that voluntary

⁶⁹ Home Office, (1990).

⁷⁰ Home Office, (1990), at pp.7-8.

⁷¹ Home Office, (1992).

⁷² Home Office, (1992), at p.6.

⁷³ This was emphasized as government departments were urged to consult with voluntary organizations on policy and to have regard to the consequences for the sector, or discrete voluntary sectors, of policy decisions. In April 1991 the Ministerial Group on the Voluntary Sector issued a guidance note in which these issues were raised: Ministerial Group on the Voluntary Sector, (1991).

⁷⁴ This was recognized by the Commission on the Future of the Voluntary Sector in 1996. The Commission concluded that having regard to the increased relevance of the voluntary sector to public services it should be closely involved in policy decision-making and that voluntary organizations ought not to stand aloof from debates concerning the content of social policy - particularly having regard to the state's withdrawal from welfare service provision: Commission on the Future of the Voluntary Sector, (1996), at p.2.

⁷⁵ Labour Party, (1990).

⁷⁶ Discussed by: Jessop, B., *Governance failure*, in Stoker, (ed.), (2000). See also, *ibid* n.68.

enterprise has the potential to facilitate community regeneration in deprived areas.⁷⁷ This support was again apparent in 1998 when, following Labour's election success in 1997 the government published a Green Paper, *Modernizing Local Government: Local Democracy and Community Leadership*.⁷⁸ This sought to promote partnership between the voluntary sector and local authorities (acting as community leaders) to improve local communities.⁷⁹ Under Labour the voluntary sector is firmly established as a partner to local government in tackling chronic social problems, and is seen as discharging a complementary role alongside the public sector in the development and delivery of public services.⁸⁰

Social enterprise

As an aspect of New Labour's policy approach toward the voluntary sector it has sought to introduce the term social enterprise to describe trading profit-acquiring voluntary organizations. As a policy construct this does not require composite definitions of a voluntary organization to be set aside but is an attempt to achieve a synthesis between the voluntary sector and private enterprise. In 2002 the Department of Trade and Industry described a social enterprise as:

'... a business whose surpluses are to be re-invested for the benefit of the business or the community, without the need to generate profits for shareholders.'⁸¹

As trading profits are re-invested without distribution to shareholders a social enterprise will meet with Hansmann's criterion of non-profit distribution,

⁷⁷ Labour Party, (1990). Whilst recognizing positive benefits of service provision by the voluntary sector the Labour Party in opposition nevertheless promised that local authorities would be re-vitalized and that their role in the promotion of the social, economic and environmental well-being of communities would be recognized and supported: Labour Party, (1995).

⁷⁸ Great Britain, (1998).

⁷⁹ Local authorities were given responsibility for coordinating and facilitating the work of other agencies active in the community: Great Britain, (1998). This role was confirmed by section 4 of the Local Government Act 2000, requiring local authorities to discharge a strategic planning function through the preparation of a Community Strategy.

⁸⁰ The voluntary sector is at the heart of the Labour's social policy agenda, an approach that has resulted in initiatives such as the setting up of an Active Communities Unit at the Home Office, and a policy review in 2002 aimed at strengthening the voluntary sector and enhancing its role: HM Treasury, (2002); and, Great Britain, (2002).

⁸¹ DTI, (2002), at p.8.

however, their business orientation means that conceptually they may be seen as hybrid organizations, occupying a territory between the private sector and the voluntary sector.⁸² As a concept social enterprise is an attempt to recognize, in policy context, the differences, but also the similarities that exist between organizations operating in the voluntary sector and in the private sector.⁸³ For government, as a policy construct social enterprise offers the opportunity to combine the benefits of efficiency and innovation often associated with private enterprise, with the spirit of service and philanthropy often seen as aspects of the voluntary sector.⁸⁴ Also, the assumption that profits will be re-invested means that additional resources are made available for communities and local services. Therefore, as is the case for traditional voluntary organizations, social enterprises may be seen as providing a public or social benefit.⁸⁵

Voluntary Sector Roles

As has been noted, the voluntary sector represents a resource for government. In this capacity the sector, and non-profit organizations, may contribute to policy implementation through the discharge of a number of different functions/roles. The following sections refer to two significant aspects of the voluntary sector: its service-providing function, and its community-building function.

⁸² This is emphasized by the assumption that a social enterprise will produce an operating profit which is not assumed for traditional voluntary organizations. On social enterprise, see: Conaty, (2001).

⁸³ This is similar to the approach adopted by Paton who disregards sectoral distinctions in favour of a model of a social economy that refers to similarities between different organizations in terms of scale, structure and motivation: Paton, R., *The social economy: value based organizations in the wider society*, in Batsleer et al (eds.), (1990). This approach serves to highlight not only similarities but also differences between organizations operating within the same industry.

⁸⁴ Beveridge for example, saw voluntary action as a means by which individuals motivated either by philanthropy or by a desire for mutual benefit could express themselves and give effect to what he characterized as a spirit of service: Beveridge, (1948).

⁸⁵ In 2001/02 social enterprises earned £8.9 billion from fees for goods and services in the United Kingdom, representing over 1/3rd of the non-profit sector's total income of £20.8 billion in the same period: NCVO, (2004).

The Voluntary Sector's Service-providing Role

Since about the 1970's service-providing non-profit organizations have become increasingly relevant and significant as vehicles for the delivery of public services, as the role of the state in this respect has reduced - in particular after 1979 as the Conservatives sought to limit the influence of the welfare state. The growth of the sector in the public services is explicable partly as a consequence of the withdrawal of government, particularly local government, from service delivery, but also because the sector is seen as offering benefits over the public sector as a service-providing institution. In this context qualities often attributed to service-providing non-profit organizations are: a capacity to act innovatively in order to deliver new services;⁸⁶ responsiveness to local need; cost-effectiveness; and, having a community focus.⁸⁷ In addition, in contrast to a bureaucratic and remote public sector, service-providing voluntary organizations are regarded in political context as flexible and inclusive in their approach to service delivery, offering an opportunity for service-users and communities to input into service development, particularly as regards minority groups. This was highlighted by the Office of the Deputy Prime Minister in 2003 in guidance to local authorities on the preparation of community strategies. This noted that:

'... the voluntary and community sectors ... are often best placed to reach and involve those sections of the community that the mainstream public sector may find hard to reach.'⁸⁸

For all these reasons the voluntary sector, as a service-providing institution, has an appeal for government as an alternative to the perceived bureaucracy

⁸⁶ Beveridge argued in 1948 that the voluntary sector's innovation role was of particular benefit to service users and more widely to society as a whole: Beveridge, (1948). Similarly, Hind suggests that '*society at large needs an effective charity (voluntary) sector ... to innovate, experiment and challenge in a way which is simply not possible for organizations constrained by the philosophies of the public and commercial sectors*': Hind, (1995), at xvi. In 1998 the Home Office described the role of the non-profit sector as that of a '*pathfinder*', giving a lead in the development of socially desirable services: Home Office, (1998), at paragraph 6. Similarly, Knight argues that the sector has a record of innovation in service delivery: Knight, (1993).

⁸⁷ For claims made on the sector's behalf see: NCVO, (1988); Labour Party, (1990); Home Office, (1990); Home Office, (1992); Labour Party, (1997a); DTI, (2002); Home Office, (1998); and, HM Treasury, (2002). Marshall suggests that these serve to provide the sector with an unique characteristic and are used to promote voluntary enterprise: Marshall, T.F., *Can we define the voluntary sector?* in Billis and Harris (eds.), (1996).

⁸⁸ ODPM, (2003), at paragraph 48.

and detachment of the state and the public sector, and politicians are provided with a justification for engaging the voluntary sector in the delivery of public services.

The Voluntary Sector's Community Role

The voluntary sector has, since at least the late 1970's, been regarded as having a contribution to make toward community-building through development and regeneration. In 1978 the Wolfenden Committee, which was established to look into the work of the United Kingdom voluntary sector, noted the sector's contribution to the regeneration and revitalization of communities, i.e. its community-building function.⁸⁹ This role for the voluntary sector and non-profit organizations has become increasingly significant in policy context, as under Labour the sector has been engaged as a vehicle to improve and regenerate deprived communities. Since its election in 1997 New Labour has, through its social policy, contemplated and promoted a community-building role for the non-profit sector as part of its agenda to tackle social disadvantage and social deprivation - what is termed social exclusion.⁹⁰ Central to the government's social policy agenda is the promotion of social justice and social regeneration to reverse social exclusion and to support disadvantaged communities.⁹¹ The voluntary sector, with its capacity to discharge a community regeneration function, has come to be regarded as a key partner to local and central government in pursuit of policy objectives focused on reversing social decline in deprived communities.⁹² In this context

⁸⁹ Wolfenden, (1978).

⁹⁰ In contemporary political discourse on social deprivation and poverty, terminology such as: the poor, the disadvantaged and the vulnerable, is often replaced by the use of the term socially excluded to describe those in greatest need. The terminology is vague, variously referring to a lack of individual or group integration into social networks, individual or group powerless, or, the denial of opportunities to participate in society. On social exclusion see: Room, (1995); and, Perri, (1997). The Labour government established a Social Exclusion Unit in 1997 (becoming the responsibility of the Office of the Deputy Prime Minister in May 2002). The unit uses empirical indices such as levels of reported crime and housing conditions to identify social excluded communities: Social Exclusion Unit, (1998). It is argued that a lack of resources imposes severe challenges on socially excluded individuals and communities in areas such as: employment, housing, health, income maintenance etc.: ODPM, (2004).

⁹¹ See, for example: ODPM, (2004).

⁹² See for example: Blair, (1998); Labour Party, (1997b); DTLR, (2001); and, DTI, (2002). Also discussed in this context is civil renewal, which is described as *'people and government, working together to make life better ... with more people being able to influence decisions*

community regeneration refers to physical improvement and regeneration as part of building viable and sustainable communities,⁹³ whilst community-development means involving individuals and communities in the process of devising and delivering local services.⁹⁴ This last function reflects New Labour's support for a stakeholder society in which individuals and groups contribute to the revitalization of communities through voluntary action and involvement as part of civil society.⁹⁵

Synthesis

This chapter began by commenting on the diversity of the voluntary sector and by discussing criteria relevant to composite definitions of a voluntary organization. These provide an insight into the characteristics and nature of voluntary enterprise. It is apparent that the application and satisfaction of

about their communities, and more people taking responsibility for tackling local problems, rather than expecting others to.: www.odpm.gov.uk (information download, August, 2006).

⁹³ The meaning of sustainable communities and sustainability is far from clear in policy context. The government, in a consultation on sustainable development suggests that it is evidenced by: maintenance of high levels of economic growth; social progress; protection of the environment; and, prudent use of natural resources: DETR, (1998). The ODPM has defined a sustainable community as one in which '*people want to live and work, now and in the future, and meeting the diverse needs of existing and future residents, are sensitive to their environment, and contribute to a high quality of life*': www.odpm.gov.uk (information download, August, 2006).

⁹⁴ The Community Development Network has defined community development as '*building active and sustainable communities based on social justice and mutual respect*': www.cdx.org.uk (information download, August, 2006).

⁹⁵ Where civil society is represented by the institutions operating between the state and the market: Smith, (2001). The Labour Party's 1997 election manifesto spoke of an independent and creative voluntary sector as central to its vision for Britain, and committed the party to support voluntary activity as an expression of citizenship: Labour, (1997b). When in opposition the Labour Party was keen to promote communitarian values and a role for the voluntary sector as an aspect of developing civil society. Tony Blair, as leader of the Party made plain his desire to see social need met through the voluntary sector and partnerships with the public sector: Blair, (1998). See also: Harrison, B., *Civil society by accident? Paradoxes of voluntarism and pluralism in the nineteenth and twentieth centuries*, in Harris, (ed.), (2003), on Labour's support for voluntarism. Support for civil society is not confined to the Labour Party, Prochaska argues that '*by the early 1990s, all the political parties ... [had] rediscovered the intermediary institutions of civil society... as a counterbalance to the effects of state and market*': Prochaska, (2005) (page references not given). In government the Labour Party has maintained its support for a civil society role for non-profit enterprise. In 1998 the Home Office declared that the voluntary sector had '*a vital role in society ... its contribution to community and civil life is immense, invaluable and irreplaceable*': Home Office, (1998), *Joint Foreword*, J.Straw and K.Stowe. The sector's role in civil society is emphasized as the delivery of public services has become fragmented amongst various agencies, described by Stoker as a shift from local government to local governance, as noted by: Stoker, G., *Introduction*, in Stoker, (2000) at p.3. On the removal of public services from the public sector and the fragmentation of local government, see: Rhodes, (1996); Hoggett, (1996); and, contributions in, Hoggett and Hambleton (eds.), (1997).

structural and/or operational criteria referring to non-profit distribution, independence, and, voluntarism are seen as fundamental to establish claims to membership of the voluntary sector. In this way voluntary organizations are marked out, and differentiated from private enterprises and public bodies. The use of defining criteria therefore underpins and maintains distinctions between the voluntary sector and the private and public sectors as service-providing institutions. Theories of the voluntary sector are complementary and provide a rationale and justification for, and explanation of, the sector's societal function and entrenchment as a service-providing institution.

In this chapter discussion of the political context has drawn attention to the relevance of the voluntary sector to the priorities of government, and of government policy to the work of non-profit enterprises. The state has an interest in the non-profit sector as a service-providing institution because it provides a resource, and an alternative to the public sector and the market. Support in the political realm has led to the voluntary sector becoming significant as a vehicle for the implementation of public policy, and for the delivery of public services in many areas. This is particularly relevant in the field of welfare services as the welfare state has been reduced in favour of fragmented service-delivery by non-governmental bodies. In this context the voluntary sector's service-providing function is highly significant, and its utility to government emphasized by the criterion of non-profit distribution that increases available funds for investment in service delivery. More recently, the sector's function beyond its service-providing role, i.e. as a resource for community-development and community-regeneration, has been highlighted as government has sought to make use of voluntary sector capacity to contribute to tackling social decline and social disadvantage. Support for the sector in political context is underpinned primarily by its non-profit orientation as supplementing resources available to government, but also by its independence, which insulates non-profit organizations from the sort of criticism previously directed at public sector service-providing institutions. From the perspective of the voluntary sector it is therefore highly relevant to maintain the independent status of voluntary organizations as a fundamental

and valued characteristic, but also to preserve the sector's support in the political realm.

The next chapter will consider how government support for the voluntary sector is given effect through the implementation of structural frameworks to underpin the work of welfare orientated voluntary bodies. Also discussed is how manipulation of these frameworks can impact on voluntary organizations through modification and change of the operating environment. This will be further considered in Chapter Four from a housing perspective, focusing on the operating environment for housing associations.

CHAPTER TWO

THE UNITED KINGDOM VOLUNTARY SECTOR: THE OPERATING ENVIRONMENT

Introduction

This chapter describes the operating environment for voluntary organizations in the United Kingdom. It begins by discussing an aspect of the voluntary enterprise that is often overlooked when introducing the non-profit sector, i.e. the relevance of the common law system of legal administration. It is through the liberalism of the common law that individuals are given freedom to form alliances and organizations, including for the purposes of providing services to others. It is this freedom that offers an explanation for the development of both the private and voluntary sectors as service-providing institutions: this chapter therefore considers how voluntary enterprise may be distinguished from private business. The common law is also relevant to the non-profit sector as it allows government discretion to make rules to determine the legal and regulatory frameworks within which voluntary organizations in the United Kingdom are required to operate. This chapter considers the relevance of statutory frameworks to structure a registered corporate non-profit sector for the operation of voluntary enterprise in England and Wales, and provides a background for a more focused account of the operating environment established for housing associations by housing policy, and its implementation at sub-national level by policy institutions in Wales, in Chapter Four.

As an aspect of the operating environment funding mechanisms feature as the means by which government provides financial support to the voluntary sector, as well as delivering opportunities for departments of state, ministers, and government agencies to exert an influence over resource dependent voluntary organizations in receipt of state subsidy. This chapter discusses the funding relationships between government and the non-profit sector, focusing on the distribution of finance by contract and grant. Also discussed are issues of independence and accountability identified as relevant for voluntary organizations as arising from their engagement in policy implementation. The

focus is on modes of accountability available for voluntary organizations to include judicial review. For convenience, this chapter also discusses judicial review as relevant to housing associations.

The Voluntary Sector in the United Kingdom: Relevance of the Common Law

Freedom of Association: Voluntary Association

Voluntary association and the common law

In the United Kingdom benefits provided by the liberalism inherent in the common law system of legal administration include: its lack of legal restraint on group association, and its presumption in favour of individual freedom. This gives the opportunity to interested or concerned individuals to form groups or societies to work toward particular goals or objectives to benefit individual or group interests, or for the betterment of the social or economic conditions of others. The common law's presumption in favour of freedom of association creates 'social space' in which voluntarism and voluntary organisations can form and develop.¹ Further, the flexibility of the common law to recognize and adapt to new kinds of social association has allowed voluntary organizations to grow and evolve to meet particular social needs. This offers an explanation for the diversity noted as a feature of the non-profit sector in the United Kingdom in Chapter One.² The position is likewise for profit-orientated, i.e. private sector organizations, where individuals may form businesses primarily with the purpose of producing a profit to be retained and distributed for the benefit of owners and/or shareholders.

A consequence of the common law's presumption in favour of freedom of association is that the voluntary and private sectors both derive legitimacy under the common law, and both may be distinguished from the public sector as neither requires to be authorised to act by statute.³ Structural distinctions

¹ Kendall and Knapp, (1996), at p.15. Kendall and Knapp argue that in the United Kingdom a combination of political decentralization and the common law legal system has allowed voluntary organizations to flourish.

² Chapter One, n.5 and accompanying text.

³ Johnson's definition of a voluntary organization is as a non-statutory body: Chapter One, n.9.

between the private and voluntary sectors are irrelevant to the application of common law rules. The identification and delineation of a voluntary organization as a distinct legal entity is not a concern for the courts at common law. This adds to the ambiguity surrounding voluntary enterprise, with little to distinguish - in legal context - a voluntary organization acting in the public good from a private enterprise acting for profit. This contrasts with the position in civil law jurisdictions where status is relevant to the application of legal rules.⁴ In civil law jurisdictions private organizations providing a public benefit '*tend to be closely allied with the state*', with shared values and similar organizational structures, and subject to similar legal constraints.⁵ This has resulted in many countries in the development of the institution of public-law corporations that function within the bounds of public law.⁶ In the United Kingdom, under the common law system, there is no special status accorded where an organization acts in the public good. Nor is it the case that where an organization provides a public benefit it will necessarily be seen as part of the state apparatus. Common law courts are not therefore concerned to define or distinguish a voluntary organization either by reference to function and/or values – regardless of whether or not these are shared with the public sector. In consequence, in the United Kingdom the common law system of legal administration reinforces the independence of the voluntary sector from the state by not requiring voluntary organizations to adopt operating values or structures relevant to the public sector. The position generally may be contrasted with that of voluntary organizations providing welfare services, where the dominant role of the state in the provision of social services raises the possibility that non-profit organizations will be seen as operating as part of the public sector.⁷ This is highlighted as the common law has not sought to

⁴ As in, for example, France or Germany. In France the state is seen as responsible for the promotion of common social purposes. Private organizations that perform public functions must approach the French administrative court (the Conseil d'Etat) to be recognized as an organization operating within the *economie sociale*. In Germany public institutions are established to serve public purposes and are regarded as distinct from private organizations for legal purposes: the German civil code recognizes that some private organizations discharge public service functions. For a brief discussion of the distinctions between common-law and civil law jurisdictions in this context see: Salamon and Anheier, (1994).

⁵ Salamon and Anheier, (1992), commenting at p.131.

⁶ Noted by: Graham and Prosser, (1991).

⁷ See: Chapter One, n.56 and accompanying text.

identify a distinct voluntary sector to which particular legal rules are to be applied.

The relevance of voluntary acts to distinguish voluntary organizations

Whilst the common law does not pay attention to the status of voluntary organizations for the purposes of applying legal rules, distinctions are made between a private act and a voluntary act. The courts have sought to distinguish voluntary transactions between individuals and/or organizations from other transactions. Authorities establish the nature of a voluntary act as: an act carried out other than for material consideration; non-compulsory; and, gratuitous.⁸ These distinctions are not however criteria applied by the courts to establish the status of a voluntary organization, or to distinguish non-profit organizations from profit-making concerns. Notwithstanding, they are indirectly relevant to support differences between voluntary enterprise and private business. The courts have established that acts performed or carried out by individuals in pursuit of either a private or a voluntary enterprise may be non-compulsory, but in the case of voluntary organizations acts relevant to the control and management of an organization at strategic level are required to be gratuitous. It follows that for voluntary organizations the input of volunteers, i.e. absent financial reward, may properly be described as voluntary under the common law.⁹ Whereas for private organizations contributions made by individuals may be without compulsion but are unlikely to be gratuitous.

Government Discretion to Legislate

The United Kingdom lacks a formal written constitution allowing government the freedom to exercise its legislative discretion relatively unconstrained by legal rules (subject only to Parliamentary process). Further, the United Kingdom lacks a developed concept of state to which informal constitutional

⁸ See: *The Overseers of the Poor and Chapelwarden of the Royal Precinct of the Savoy in the County of London v The Art Union of London* [1896] AC 296; *Attorney General v Ellis* [1895] 2 QB 466; and, *Battersea BC v British Iron and Steel Research Association* [1949] 1 KB 434.

⁹ It is arguable that in legal context the criteria of non-profit distribution and voluntarism are as one: the common law regards a voluntary act from a perspective that emphasizes the gratuitous nature of voluntarism.

constraints may be applied.¹⁰ This is significant as it provides government with the opportunity to establish legal regimes, and allows for statute to be used instrumentally, including to further political objectives. This was apparent as legislation was introduced after 1945 to implement a welfare state: i.e. based on a political ideology that favoured national and local government having a significant role in welfare service delivery.¹¹ In the United Kingdom, in the welfare field, the use of statute to structure welfare industries has therefore been significant since the 1940's: the growth and entrenchment of the welfare state confirms that government interest in social services is well-established. More recently, in the 1980's and 1990's the Conservative government was able to operate '*remarkably free of legal constraints in ... policy-making*'¹² as it sought to introduce market disciplines to the public services through the introduction of quasi-markets. The freedom given to government by the common law therefore facilitated the growth of the welfare state but also its subsequent partial dismantling in favour of a policy agenda that sought to place a greater emphasis on service delivery by the voluntary and private sectors in many areas. It has further allowed government to establish formal regimes structuring the operation of non-profit organizations reliant on Treasury support in particular industries, such as in housing.

Structuring the Voluntary Sector: Corporate Form and Regulation

Corporate Form

Statute structures and supports a corporate (formal) voluntary sector through the provision of legal form, the selection of which is a matter left to the trustees or board of management of individual voluntary organizations (adoption of a corporate legal form is non-compulsory save in the case of charities). The board of management of an organization may opt for a form or

¹⁰ The state is probably best described as a composite of government, its departments and off-shoots. For discussion of the nature of the state in the United Kingdom, see: Rhodes, (1988); and, Dyson, (1980). In judicial context see: *Ross v Lord Advocate* [1986] 1 WLR 1077.

¹¹ Motivated by a collectivist political ideology the post-war government introduced legislation designed to load the burden of social services and income maintenance onto the state. In the course of less than half a decade the welfare state attained institutional form and became entrenched as the dominant welfare providing institution in the United Kingdom.

¹² Graham and Prosser, (1991), at p.1, considering the impact of constitutional and public law constraints on the privatization initiatives of the Conservative government in the 1980's.

structure best suited to the purposes determined by the board or by an organization's membership. Among the options available is registration and incorporation as a friendly society under the *Friendly Societies Act 1992*,¹³ or alternatively as an industrial and provident society (I&P society) under the *Industrial and Provident Societies Act 1965*.¹⁴ For friendly societies and I&P societies registration provides recognition of a social purpose: friendly societies are required to be established for social or benevolent purposes,¹⁵ and amongst the permitted purposes of an I&P society is to carry on of business for the benefit of the community.¹⁶ It should be noted that incorporation as either a friendly society or an I&P society is a voluntary act, and the adoption of legal form (whether to facilitate the discharge of a social purpose or not) is a matter of election for the board or trustees. If the board decides to incorporate as a friendly or I&P society this has the potential to increase trust amongst an organization's membership as well as the public, politicians, and service users, through recognition of a socially beneficial function. In many cases registration also gives the *bona fides* necessary to gain access to public and other funding resources, and is often used by government to distinguish organizations entitled to apply for public subsidy from those not so entitled. A third option available to voluntary organizations is incorporation as a company under the *Companies Act 1980*. This provides limited liability for the membership without any assumption as to a social purpose. In 2002 the government's Strategy Unit raised the possibility of updating the corporate forms available to the non-profit sector to facilitate the work of social enterprises. It proposed adding to the number of legal forms, and to place an emphasis on public benefit as a criterion for registration. As a result, since the 1st July 2005 voluntary organizations, more particularly social enterprises, have had available the option of registering as a Community Interest Company, whose purposes are recognized as being in the community

¹³ Previously friendly societies were registered under the Friendly Societies Act 1974. Incorporation was not available under the 1974 Act but friendly societies previously registered may now opt for incorporation under the 1992 Act.

¹⁴ Incorporation is under the 1965 Act. The Industrial and Provident Society Acts 1965, 1968, 1975 and 1978 all deal with I&P societies but are to be construed as one act.

¹⁵ Section 7(2)(b)(i) of the Friendly Societies Act 1992 gives as amongst the legitimate purposes of a friendly society, '*social or benevolent activities*'.

¹⁶ As provided for by section 1(2) of the Industrial and Provident Societies Act 1965.

interest.¹⁷ Although the criterion of public benefit emphasized in the corporate structuring of the non-profit sector is often disregarded in composite definitions of a voluntary organization, support for the benefits provided by non-profit enterprise is strong in the political realm. This is recognized through the provision of friendly and I&P societies, but also in the institution of a charitable non-profit sector.¹⁸

Unincorporated associations

In the United Kingdom registration and incorporation for voluntary organizations is non-compulsory, and despite the advantage of limited liability, and benefits that accrue to an organization generally through increased trust, a board of management or trustees may elect to remain unincorporated. If the board, or trustees, decides on unincorporated and unregistered status an organization will remain an unincorporated association. Unlike in the case of formal incorporated associations, where the discretion of the board of management will be limited by a memorandum of association - or similar document - formal unincorporated associations are governed by mutual contractual undertakings, and in the case of a trust, by a trust deed.¹⁹ The exception to the non-compulsory nature of registration is in the case of organizations operating as charities: unless exempt a charity is required to be registered with the Charity Commissioners.²⁰

¹⁷ Community Interest Companies were introduced in policy context in: Great Britain, (2002). Community Interest Companies are established under Part Two of the Companies (Audit, Investigation and Company Enterprise) Act 2004.

¹⁸ Registration as a charity has advantages for voluntary organizations, these include a positive perception amongst the public, not least because charities are required to provide a public benefit. Organizations applying for registration as a charity must satisfy the Charity Commissioners that they provide a public benefit. In *Commissioners for Special Purposes of Income Tax v Pemsel* [1891] AC 572, a public benefit was held to comprise trusts for: the advancement of education; the advancement of religion; the relief of poverty; or, any other purpose beneficial to the community. A government review of charities and voluntary action concluded that the list should be updated and extended: Great Britain, (2002). In the determination of a public benefit the decision of the Charity Commissioners, subject only to review by the High Court, is final. The approach of the Commissioners and the courts on this issue has been controversial with some commentators arguing that these institutions have failed adequately to reflect contemporary notions of charity and public benefit: Brenton, (1985); and, Wolch, (1990). In *Inland Revenue Commissioners v Baddeley* [1955] AC 572, at p.589, Viscount Simmonds described the determination of what constitutes a public benefit as the '*most difficult of the difficult problems*' encountered in charity law.

¹⁹ In the case of an unincorporated association the membership will share responsibility for an organization's liabilities: *Conservative and Unionist Office v Burrell* [1982] 1 WLR 522.

²⁰ Section 3, Charities Act 1993

Registration and Regulation of Voluntary Organizations

The courts supervisory jurisdiction over unincorporated voluntary organizations is the same as for private bodies: unless registered with an industry regulator they will not be subject to any extended jurisdiction. This contrasts with the position of formally constituted voluntary organizations that have adopted a corporate form. In the case of the corporate voluntary sector a statutory and regulatory framework has been introduced whose relevance is to provide government with a means by which to exercise control over registered non-profit bodies. The process of registration of itself limits the permissible objectives of a registered organization, with registration as a charity, friendly society or I&P society requiring submission to the jurisdiction of a regulator. The Charity Commissioners and Financial Services Authority are appointed to supervise charities and friendly/I&P societies respectively, and are responsible for ensuring that these organizations act in conformity with purposes set out in statute.²¹ For the corporate non-profit sector the imposition of a regulatory jurisdiction has the potential to interfere with independence, in particular where the regulator is given powers to ensure compliance with relevant statutory requirements, or to make and implement regulations.²² Regulation may also be relevant where, in addition to registration for the purposes of incorporation, a voluntary organization is required to register with, or submit to the authority of, an industry based regulator or supervisory body. This may be a precondition of applying for public funding in discrete industries such as housing. Whilst regulators appointed to scrutinize charities, friendly, and I&P societies, are concerned

²¹ In the case of friendly societies and I&P societies the Financial Services Authority is the relevant regulator. Under section 1 of the Friendly Societies Act 1992 the authority is charged with ensuring that societies act in conformity with the purposes of friendly societies legislation. The Financial Services Authority was substituted for the Friendly Societies Commission as the regulator of friendly societies, and appointed regulator of I&P societies by the Financial Services and Markets Act 2000 (Mutual Societies) Order 2001, SI 2001/2617. For the general responsibilities on the Financial Services Authority as regulator see, sections 2-6 of the Financial Services and Markets Act 2000.

²² Under section 1 of the Charities Act 1993 the Charity Commissioners are under a duty to promote the effective use of charitable resources and to encourage the development of better methods of charity administration. The Commissioners' powers are strong and include the power to close an enterprise by establishing a scheme of administration under section 18 of the Charities Act 1993. Powers of regulation and enforcement in relation to friendly societies are given under section 1, section 52 (power to apply to court for winding-up order), and section 54 (power to supervise activities), of the Friendly Societies Act 1992.

with the conduct of registered organizations operating across many fields, those established by industry are concerned with conduct in particular areas, and as such regulation is likely to be more narrowly focused on achieving specific industry-relevant objectives. In these circumstances there is greater potential for regulatory interference with operational discretion and for the independence of industry based voluntary organizations to be undermined. This issue is examined further for its relevance to the field of voluntary housing in later chapters.

Engaging the Voluntary Sector: Contract and Grant

Contract and Formal Relations

Contract: re-structuring public services

In the 1980's the Conservatives embarked on a programme of reform and privatization of the public services. This agenda was implemented partly through the relaxation of state monopolies over public services - an intended consequence of which was the removal of public services into the private and voluntary sectors - and partly through an increase in the use of contract and contracting-out to engage other organizations in service delivery.²³ These reforms were given impetus by the introduction of compulsory competitive tendering for prescribed public services as operated by local government in the late 1980's.²⁴ In addition, fundamental structural changes were made in discrete areas of provision to facilitate the involvement of the private and voluntary sectors.²⁵ For example, in the welfare field legislation introduced reforms in the areas of: education,²⁶ health and social care,²⁷ and housing.²⁸ These reforms established quasi-markets in which voluntary and private organizations were and are encouraged to compete for service delivery contracts, and are highly significant for the non-profit sector as providing the

²³ Heald and Morris, (1994); and, Ascher, (1987).

²⁴ Compulsory competitive tendering was introduced by the Local Government Act 1988 and extended by the Local Government Act 1992.

²⁵ Freedland suggests that the privatization initiatives of the 1990's resulted in the development of a public services sector, with non-public sector bodies operating in regulated industries providing services in the nature of public services: Freedland, M., *Law, public services and citizenship - new domains, new regimes?* in Freedland and Sciarra (eds.), (1998).

²⁶ Education Reform Act 1988.

²⁷ National Health Service and Community Care Act 1990.

²⁸ Housing Act 1988.

opportunity, and the mechanism, for voluntary organizations to become more involved in the delivery of public services. Contract is significant as introducing a changed environment for the voluntary sector, and an operating ethos reflecting a market orientated and commercial approach to service delivery, including in welfare services. Another consequence of significance for voluntary organizations is that the use of contract to commission public services has resulted in a formalization of relations with commissioning authorities, usually a local authority. The use of contract has precipitated an environment in which local authorities and voluntary organizations are required to negotiate the terms of a formal agreement.²⁹ As a result rights and responsibilities are now established by way of a negotiated agreement, giving rise to a form of regulation by contract, with the service purchaser in a position to hold the service provider to account.

Contract and resource dependency

For professionally managed voluntary organizations the negotiation and management of contracts and/or service agreements with government at central or local level is part of the day-to-day management process.³⁰ Despite familiarity with the process of negotiation, resource dependent voluntary organizations in competition for central government or local authority contracts may be put under pressure to compromise their objectives in order to secure a particular contract, with the possibility that independence will be undermined.³¹ In fact this was raised as a concern by the voluntary sector in 1996 in evidence to the Commission on the Future of the Voluntary Sector.³² Whilst statute imposes limitations on the discretion of local authorities to negotiate contract terms by prohibiting the imposition of non-commercial terms,³³ this does not prevent conditions being introduced into formal

²⁹ This was an inevitable as an aspect of contracting out of public services: Ascher, (1987); Batsleer, J. Paton, R., *Managing voluntary organizations in the contract culture*, in Kendall and Perri, (eds.), (1997); and, Lewis, (1995).

³⁰ Batsleer, J. Paton, R., *Managing voluntary organizations in the contract culture*, in Kendall and Perri, (eds.), (1997).

³¹ A point made by several commentators, see for example: Morris, D., *Paying the piper: the 'contract culture' as dependency culture for charities?*, in Dunn, (2000).

³² Commission on the Future of the Voluntary Sector, (1996).

³³ The imposition of non-commercial terms is made unlawful by section 17 of the Local Government Act 1988. Non-commercial terms include: reference to the political or industrial

agreements that might require a voluntary organization to engage in activities beyond the scope of its objectives.³⁴ It follows that central government, local authorities or other government agencies may seek to introduce onerous or inappropriate terms into formal agreements by taking advantage of resource dependency as a weakness. For registered voluntary organizations the consequence of any compromise will be significant if they are required to carry out activities outside of their aims and objectives, as these will be *ultra vires*. Resource dependency also has the potential to impact on the relationship between the commissioning body and the voluntary organization after the contract is entered into. From the perspective of resource dependent voluntary organizations the threat of non-renewal of a contract is likely to act as a deterrent to arbitrate any dispute through the neutral office of the courts, making it more likely that contract will be used as a mode of control rather than as a means of holding organizations to account - with power firmly in the hands of the funding/commissioning body.³⁵

Grants to the Voluntary Sector

The voluntary sector represents a resource available to both central and local government as part of a community of providers that the state may draw upon to deliver public services. Government may engage with the voluntary sector through the use of contract to secure service provision, alternatively by funding non-profit organizations through grants, including via local authorities.³⁶ The power of grant is largely in the discretion of the funding body and unlike in the case of contract, local authorities are not confined to

affiliations of contractors; reference to the employment conditions of contractor's employees; and, reference to a contractor's involvement in irrelevant fields of government policy such as defence. Section 19 of the Local Government Act 1998 empowers the Secretary of State to specify activities which do not qualify as non-commercial activities.

³⁴ Provided these are commercial activities.

³⁵ The difficulty is compounded as once there is a contract the courts are prepared to intervene to uphold contractual obligations, even if onerous, so that the common law is prepared to intervene to uphold almost any contract term: Harlow, C., *Public services, market ideology and citizenship*, in Freedland and Sciarra (eds.), (1998). This is mitigated to some extent in cases where a voluntary organization has a monopoly on service provision, or is able to draw on multiple funding sources. In these circumstances the issue of non-renewal of a contract/funding is less likely to impact on the relationship between purchaser and provider.

³⁶ The power to make grants is derived from section 111 and section 137 of the Local Government Act 1972.

commercial criteria when setting eligibility conditions for grant funding.³⁷ The strategic decision-making of councillors and officers concerning the use of local authority resources will be reflected in the funding made available to voluntary organizations. Grants from government to the voluntary sector via other intermediary agencies may similarly be subject to discretionary allocation. In addition to the capacity to fund voluntary organizations directly, local authorities may influence the provision or withholding of funds by other agencies - particularly where a local authority is charged with planning and coordinating the use of locally available resources. In determining how resources are to be allocated local authorities and other public bodies are prohibited by the courts and public law from acting unreasonably or irrationally in determining grant criteria, or in the exercise of their discretion to impose conditions on the use of grant funding.³⁸ This is significant as resource dependency will often mean that the relationship between a voluntary organization and its funding body will be characterized by a lack of financial autonomy on the part of the former.³⁹ As in the case of contract, where a voluntary organization is reliant on public subsidy to finance its operations, wholly or in part, the potential to undermine long-term relations if there are disputes over funding decisions is likely to deter it from challenging local authorities or other funding bodies through the courts.

³⁷ Care must be taken in describing the relationship between voluntary organizations and local government as contractual or non-contractual. The nature of the relationship will be determined by the substance of the agreement between a local authority and its voluntary organization partner and not by the description applied by the parties: Osbourne and Waterson, (1994).

³⁸ See for example: R. v. Liverpool CC, ex parte Secretary of State for Employment [1988] 154 LGR 118 in which the Divisional Court held that a local authority cannot threaten the withdrawal of grant aid as a means of coercing an organization; R v Barnet LBC ex parte Johnson [1991] 89 LGR 581, in which the Court of Appeal refused to uphold a council's imposition of grant conditions that were so vague and uncertain as to meaningless. On the issue of access to council resources (non-financial) see: Wheeler v Leicester CC [1985] AC 1054.

³⁹ Leigh refers to weaknesses in the voluntary sector to describe the relationship between local authorities and the sector by reference to the degree of subservience and autonomy, and dependence and independence, i.e. relevant to both institutions: Leigh, I, *The legal framework for community involvement*, in Dunn (ed.), (2000).

Voluntary Sector Engagement by Public Policy: Issues Arising

Erosion of Independence

Voluntary organizations are ostensibly independent: they operate as non-statutory bodies and are established as distinct legal entities. Their decision-making structures are centered on a board of management or trustees with responsibility for issues of governance. Independence is a fundamental characteristic and a relevant defining criterion. But there are concerns that the voluntary sector's independence is under threat and/or is being eroded in the United Kingdom as government seeks to impose its policy agenda on non-profit enterprises operating in areas where the state, its ministries or agencies, have an established interest.⁴⁰ This is often anticipated by accounts of the voluntary sector dealing with its relationship with the state: these concerns are most often articulated as a fear that the state will exert influence over the non-profit sector by manipulating the structural frameworks governing the conduct of voluntary organizations through the exercise of its legislative discretion and its influence over regulators appointed to make regulations relevant to voluntary organizations operating in discrete industries, as well as through control of the distribution of public funding on which many voluntary organizations rely.⁴¹ This is a significant issue for voluntary organizations and the non-profit sector as independence is highly valued, but also because the justification for a distinct third sector is that it provides an alternative not only to the market but also to government. The relevance of the voluntary sector as a social institution in political context is that it has the capacity to deliver services in a way that mitigates perceived weaknesses in both the public and the private sectors. Where the work of the non-profit sector is subject to the direction and control of government there is the potential that they will be seen as part of the public sector. Further the imposition of priorities established by

⁴⁰ The influence of government over resource dependent voluntary organizations is a recurring theme in many accounts of the voluntary sector in the United Kingdom (as well as globally), see, for example: Morris, D., *Paying the piper: the 'contract culture' as dependency culture for charities?* in Dunn (ed.), (2000); Brenton, (1985); James, E., *The nonprofit sector in comparative perspective*, in Powell (ed.), (1987); Beckford, J.A., *Great Britain: voluntarism and sectoral interests*, in Wuthnow (ed.), (1991); Wolch, (1990); Piles, A., *The political environment*, in CAF, (1997); Russell *et al*, (1996); and, Whelan, R., *Involuntary action*, in Whelan (ed.), (1999).

⁴¹ See, for example: Brenton, (1985); Wolch, (1990); and, Whelan, R., *Involuntary action: how voluntary is the voluntary sector?* in Whelan (ed.), (1999).

public policy, and roles given by policy, may prevent voluntary organizations from meeting their own priorities and discharging their preferred social functions, thereby limiting their capacity to contribute and innovate socially useful services beyond those selected by government.

State funding for the voluntary sector

In many instances, particularly in the case of voluntary organizations operating in the social welfare field, where service users may be seen as undeserving, there are few alternatives to public funding to support and maintain services in the voluntary sector. The level of government funding for the non-profit sector in the United Kingdom is significant. In 2004 the sector received 37 per cent of its income from funds provided by central or local government: representing the single largest contributory source of voluntary sector finance.⁴² This suggests that government (central or local) may be in a position to exercise considerable influence over the work of publicly funded voluntary organizations, i.e. by establishing contract or grant conditions, and raises the possibility of external prioritization by these bodies, weakening claims to independence and putting in doubt voluntary status. Although private businesses, as well as private individuals, also provide funds for voluntary organizations, the threat to independence from the private sector in the United Kingdom is not as significant as from government.⁴³ This is because its financial contribution toward the non-profit sector is less than from central or local government, contributing just 4.3 per cent of the voluntary sector's income in 2004.⁴⁴

Resource dependency and welfare services

Resource dependency is particularly acute in the area of welfare services. State funding of welfare orientated voluntary organizations provides the finance to support service delivery, and has underpinned the non-profit

⁴² NCVO, (2004).

⁴³ In the case of individual voluntary organizations it may be argued that resource dependency arises from dependency on a primary funder without reference to status: Hatch, (1980); and, Wilson, (1994).

⁴⁴ NCVO, (2004).

sector's growth in the area of social services.⁴⁵ Dependency on public funding carries a risk that pressure will be applied for voluntary organizations to adopt social policy objectives, with the possibility that operational discretion will be compromised in favour of priorities determined by ministers, or their officials. This point is made by Lewis in the context of social services, she argues that:

'... for agencies that are funded largely by government, it is difficult to see how the balance of power can ever rest with the voluntary agency ... purchasers 'call the shots'.⁴⁶

The concern is that the operational priorities of non-profit organizations, particularly in the field of social and welfare services, will eventually be determined by what politicians, as political paymasters, are prepared to pay for.⁴⁷ In the early 1980's anxiety amongst voluntary organizations led the NCVO to voice concerns about the growing influence of government over voluntary organizations, and to encourage its members to consider the impact of public subsidy on operational integrity.⁴⁸ The fear for the non-profit sector is that it runs the risk of being '*neutered by subsidy*', and that it will be reduced to an agent of the state.⁴⁹ In fact some commentators have suggested that the voluntary sector's independence has already been compromised by public subsidy to the extent that it should now be described as the non-profit sector and not the voluntary sector, focusing attention on the reduced scope for organizations to act on their own discretion.⁵⁰ Others maintain that the sector remains independent but call for clarification of the terms on which voluntary

⁴⁵ Noted by several commentators, for example: Prochaska, (2005); Knapp, M., *Public money, voluntary action: whose welfare?* in Anheier and Seibel (eds), (1990); and, Lewis (1995)

⁴⁶ Lewis, (1995), at p.157. See also: Brenton, (1995); Wolch, (1990); Beckford, J., *Great Britain: voluntarism and sectional interests*, in Wuthnow, (ed.), (1991); Powell, W., and Friedkin, R., *Organizational change in nonprofit organizations*, in Powell, (ed.), (1987).

⁴⁷ Taylor, M., *The social welfare environment*, in CAF, (1997). See also; Whelan, R., *Involuntary action*, in Whelan, (1999).

⁴⁸ Drawing attention to the influence of the Conservative government on the operationalization of voluntary sector: NCVO, (1983a). Also, referring to concerns of NCVO members about government influence: NCVO, (1983b); and, discussing the impact of public subsidy on voluntary organizations, NCVO, (1984).

⁴⁹ Whelan (ed.), (1999), at p.20. See also: James, E., *The nonprofit sector in comparative perspective*, in Powell, (ed.), (1987), choosing to describe government funded agencies as quasi-governmental. More generally: Wolch, (1990); and, Brenton (1985).

⁵⁰ See: Rae, J., *What is the nonprofit sector*, in CAF (1997), at pp.105-107.

organizations interact with the state.⁵¹ The issue is made more significant through the increased use of contract to engage non-profit enterprise in the delivery of public services. The emphasis on bargain and negotiation in contractual transactions provides the opportunity for government to exert an influence on voluntary organizations to undertake the delivery of services that are not deemed a priority by the board, or which are outside of the objectives of a particular enterprise.⁵² In this context it may be argued that to avoid devaluing voluntary enterprise public policy should not only support the non-profit sector's operations financially, but in addition should offer it protections.⁵³ To some extent this has been realized under New Labour with the introduction of concordats (compacts) in the late 1990's between government and the voluntary sector in each of the nations of the United Kingdom. In Wales the introduction of a statutory scheme to govern relations between the voluntary sector and the National Assembly for Wales provides a further safeguard for the sector's institutional integrity (discussed in Chapter Three).

Protecting voluntary sector interests: voluntary sector compacts

Partly in recognition of the potential imbalance in the contractual and funding relationship between the state and the voluntary sector the Labour government has, since its election in 1997, sought to emphasize its commitment to working in partnership with the sector, and has introduced a Voluntary Sector Compact in each of the nations of the United Kingdom.⁵⁴ The intention behind the compacts is to develop '*... a new approach to partnership between government and the voluntary and community sector*'

⁵¹ For example: Deakin, *Voluntary inaction*, in Whelan (ed.), (1999). The Commission on the Future of the Voluntary Sector called for a concordat between the State and the voluntary sector setting out the terms of the relationship between them: Commission on the Future of the Voluntary Sector, (1996).

⁵² The Charity Commission has raised the issue of independence and the impact of government funding through contract: Charity Commission, (1998). Research by the Charity Law Unit has shown that charities in general believe that contract culture has resulted in an erosion of independence, and is referred to by: Morris, D., *The contract culture as dependency culture for charities*, in Dunn, (2000), at p.124.

⁵³ Berger and Neuhaus, (1977).

⁵⁴ Home Office, (1998); Scottish Office (1998); Northern Ireland Office (1998); and, Welsh Office, (1998a).

and to provide a framework for effective relations.⁵⁵ These compacts refer to a shared commitment from government and the voluntary sector to work in partnership. They set out the responsibilities of government and non-profit organizations. Referring to the importance of maintaining an effective independent sector they provide recognition that the voluntary sector should remain distinct from the state through a commitment by government to respect its institutional integrity and discretion - including where operational activities are supported by public subsidy.⁵⁶ Although not legally binding the compacts derive a degree of authority from the fact that they are endorsed by government and representatives of the voluntary sector.⁵⁷

Voluntary Organizations and Accountability

Areas of accountability relevant to voluntary organizations

An aspect of heightened visibility in public policy is that voluntary organizations are increasingly subject to demands for accountability. In this context Leat has identified four areas in which accountability arises, these are: finance or fiscal accountability; procedure or process accountability; quality or programme accountability; and, the relevance of work carried out or accountability for priorities.⁵⁸ She suggests that accountability in these areas is on a spectrum from strong to weak, and is at its strongest where censure is provided through sanctions: these might include withdrawal of funding, the instigation of disciplinary proceedings, or by order for the payment of compensation. There is weak accountability where sanctions are not available, but there remains the possibility that an organization may be required to provide an explanation for its conduct.⁵⁹ If an explanation has to be given in public, for example to a government department or to a regulator, the effectiveness of explanatory accountability is enhanced. In these circumstances the public nature of the explanation, which may lead to express

⁵⁵ Home Office, (1998), *Joint Foreword*, J.Straw and K.Stowe.

⁵⁶ For example: Home Office, (1998), paragraphs 8.2. and 9.1.. The government sought to emphasize its commitment to the voluntary sector as part of its 2002 strategic review of the sector's role in service delivery; it recommended steps be taken to implement the compacts: HM Treasury, (2002).

⁵⁷ Home Office, (1998), at paragraph 2.

⁵⁸ Leat, D., *Are voluntary agencies accountable?* in Billis and Harris (eds.), (1996).

⁵⁹ Leat, D., *Are voluntary agencies accountable?* in Billis and Harris (eds.), (1996); and, Leat, (1988).

disapproval by a regulator, or adverse or critical comment by a relevant authoritative body, reflects on public perceptions of the voluntary organization concerned. Accountability is at its weakest where a non-profit organization is not liable to sanction and cannot be compelled to provide an explanation for its conduct. In these circumstances accountability is a matter entirely within the discretion of the trustees or board of management.⁶⁰

Regulation and accountability: discrete voluntary sectors

As has been noted, regulation has developed as a feature of service delivery for some industry based voluntary sector organizations, so that the regulator is able to establish standards or expectations for non-profit organisations operationalized in discrete industries, such as in housing. These standards may be applied to modify or regulate the ordinary activities of registered voluntary organizations, and may be enforceable through sanctions provided by statute, or by the withdrawal of subsidy where this is under the control of the regulator. A voluntary organization operating in a particular industry may be made subject to regulatory requirements imposed as a consequence of its function as a service-providing organization in that industry, or as a precondition of applying for public funding.⁶¹ In the area of welfare, voluntary organizations providing social and other welfare services are heavily regulated.⁶² The introduction of regulation establishes expectations for non-profit organizations, and through enforcement by the regulator, provides accountability. Where the regulator is provided with powers to sanction registered or regulated bodies, or to withdraw or limit funding, accountability is strong. Even in cases where the regulator has limited powers, or chooses to refrain from imposing sanctions, disapproval expressed in public may still be an effective form of accountability - especially in industries where lowered levels of trust or confidence will very likely impact on funding relationships.⁶³

⁶⁰ Rochester, C., *Voluntary agencies and accountability*, in Billis and Harris (eds.), (1996), at p.192.

⁶¹ The regulation of relevant service providing voluntary organizations is distributed amongst several regulators. For practical reasons it is not proposed to discuss the regulatory regime applicable to discrete voluntary sectors other than in housing.

⁶² Newman, (2001).

⁶³ The effectiveness of the regulator is dependent on a commitment to act, and on the regulator being provided with adequate powers of enforcement.

Accountability and contract

Contract offers the opportunity to hold organizations to account in accordance with the terms of any agreement, enforceable by the application of relevant legal rules.⁶⁴ In many cases however there will be aspects of the service relationship relevant to the service user that are not covered by the contract between the individual user and the service-providing non-profit organization.⁶⁵ Also, those affected by the decisions and actions of service-providing voluntary organizations will not be party to any contract entered into between the voluntary organization and its commissioning body, e.g. a local authority.⁶⁶ Where this is the case the interests of individuals or the community will be protected only where the commissioning body acts on their/its behalf. Notwithstanding, contract offers the opportunity to ensure: fiscal, process, and programme accountability through the inclusion and enforcement of relevant terms.⁶⁷ Accountability for priorities is in part delivered in the negotiation stage of any contractual transaction: it is also an aspect of performance of the contract, and may be facilitated by the publication of service standards or performance expectations linked to a contract document that structures and limits residual discretion.⁶⁸ However, in all cases of services delivered under contract with a commissioning body accountability is indirect to service-users, and is dependent on the commissioner discharging its regulatory or supervisory functions appropriately.⁶⁹

⁶⁴ Accountability in contract is strong as individuals and organizations may seek the assistance of the courts to enforce contract terms, and the remedies available for non-compliance or breach mean that sanctions may be imposed.

⁶⁵ An example is provided in the case of housing. Where there is a tenancy the occupation agreement is ordinarily limited to terms covering the use of residential property without reference to the wider conduct of the landlord.

⁶⁶ For example: care services provided by private or voluntary organizations are often delivered under contract with a local authority and not with the recipient.

⁶⁷ This supports contract as a form of constitution governing inter-organisation relations, but issues of efficiency limit the extent to which contract can influence the exercise of residual discretion - as not all contingent situations may be covered by contractual terms: Harden, (1992); and, Craig, (1994).

⁶⁸ Harden, (1992).

⁶⁹ Harden, (1992). Contract cannot assist individuals who are dissatisfied with a service where the commissioning body is not prepared to intervene in disputes between service users and service-providing organisations, even if the matters in dispute are referred to in a contract or in associated documents.

Voluntary organizations, accountability and judicial review

In the United Kingdom the protection of individual rights is primarily a responsibility entrusted to the courts.⁷⁰ Where the issue of rights is referable to the exercise of, or failure to exercise, a statutory power by a public body the courts have a supervisory jurisdiction. In the area of welfare and social services in the United Kingdom judicial review provides a mode of accountability for public bodies for the manner in which services are delivered, and is integral to the legal framework for accountability in the public sector.⁷¹ In this context the court's supervisory jurisdiction over the public sector is exercised to ensure that local authorities act in accordance with normative values of openness, fairness, participation, impartiality, accountability, honesty and rationality.⁷² This suggests a similar role for the courts in supervising the activities of the welfare orientated voluntary sector where non-profit organizations have assumed responsibility for service delivery.⁷³ This is particularly significant as the vulnerability of service-users is highlighted by their lack of personal resources and choice in the service market. Traditionally amenability to judicial review is determined by the application of the *ultra vires* doctrine to limit the exercise of power by organizations that derive their legitimacy from statute or the Royal Prerogative,⁷⁴ with jurisdictional boundaries determined by analogy with decided cases.⁷⁵ It follows that voluntary organizations are ordinarily not subject to judicial review, as they derive authority from the common law. In the late 1980's this was modified, so

⁷⁰ Amato, G., *Citizenship and public services - general reflections*, in Freedland and Sciarra (eds.), (1998), commenting on the historical position in common law jurisdictions.

⁷¹ Lyon, A., *Judicial review of voluntary bodies*, in Dunn (2000).

⁷² Described as the purpose of judicial review by: Taggart, M., *The province of judicial review determined?* in Taggart (ed.), (1997), at p.3. The courts have demonstrated a reluctance to interfere with the decisions of local authorities on issues concerning the prioritization of services (accountability for priorities), see, for example: *R v Gloucestershire CC ex parte Barry* [1997] 2 All ER 1, in which the House of Lords upheld the authority's decision to reduce services provided to a disabled person on financial grounds (taking into account the authority's resources). But see also: *R v Sefton MBC ex parte Help the Aged* [1997] 4 All ER 535, where the Court of Appeal ruled that whilst a local authority is entitled to take into account its own resources in determining whether or not to provide residential accommodation to an elderly person it is not entitled to do so where a statutory duty is established.

⁷³ In any event, judicial review may be appropriate because of the availability public funds (or significant public funds): Leat, D., *Are voluntary agencies accountable*, in Billis and Harris (eds.), (1996).

⁷⁴ For example, local authorities, statutory bodies or ministers.

⁷⁵ Beloff, M., *The Boundaries of Judicial Review*, in Oliver and Jowell (eds.), (1988).

that now a court may take into account whether or not there is public element associated with the exercise of a particular power⁷⁶ (except where submission to authority is consensual,⁷⁷ for example, in cases where powers are contractual in nature⁷⁸). However, the courts have encountered difficulties in determining the nature of a public element. The developed position is that before an organization may be subject to judicial review it must be established that its actions are referable to the actions, actual or contingent, of government.⁷⁹ This has limited the application of judicial review to voluntary organizations,⁸⁰ and as a result the courts have failed to enhance the public

⁷⁶ R v. Panel on Takeovers and Mergers ex parte Datafin [1987] QB 815. Donaldson MR at p.838. Lloyd LJ, at pp.847-848, like Donaldson MR, regarded the nature of an organization's power as a factor relevant to the jurisdictional issue and rejected an argument that the source of a power in statute should be the sole determinant of amenability.

⁷⁷ [1987] QB 815, Donaldson MR at p.838.

⁷⁸ The distinction may be seen as between matters of public governance where, for example, local authorities act without necessarily obtaining the consent of those individuals against whom powers are exercised; and mutual governance, where individuals submit to authority: Morritt V-C, in *Aston Cantlow and Wilmcote with Billesley Parochial Church Council v Wallbank* [2001] 3 All ER 393 at p.401. A slightly different approach is suggested by, Taggart, M., *The province of administrative law determined*, in Taggart, (ed.), (1997), referring to self-regarding (private law concern) and other-regarding (public law concern) behaviour, at pp. 4-5.

⁷⁹ As in: R v Chief Rabbi of the United Hebrew Congregation ex part Wachmann [1992] 1 WLR 1036. Pannick suggests that the decision in Datafin represents a high water mark from which there has been a steady retreat: Pannick, D., *What is a public authority for the purpose of judicial review*, in Oliver and Jowell (eds.), (1988). Bamforth describes the determination of a public element as one of the '*unresolved and unexplained*' questions arising from Datafin, the other being how the public element test fits with the source of power test previously applied: Bamforth, (1993), at pp.240-241.

⁸⁰ An approach described as formalistic and narrow, and one which has been criticized for not reflecting the flexibility inherent in contemporary modes of public service delivery as involving public, private and voluntary organizations: Maclaughlan, H.W., *Public service law and the new public management*, in Taggart (ed.), 1997, at p.118. See also: Hunt, M., *Constitutionalism and contractualization*, in Taggart, (ed.), (1997), who bemoans the fact that the courts have asserted their supervisory role against the state at a time when the state itself is beginning to disappear in consequence of privatization. Harlow argues that by maintaining demarcation between the private and public spheres of social activity the courts have failed to reflect the organisation of public service delivery in contemporary society: Harlow, (1980). The dichotomy between the public and private sectors is rigidly maintained by the judicial review procedure so that different substantive principles (based on private and public law distinctions) are applied to govern the conduct of relevant organizations despite there being similar functional responsibilities: Craig, P., *Public law and control over private power*, in Taggart (ed.), (1997). The application of the common law to determine individual rights and interests arising from service delivery by non-public sector organizations is a '*typical feature of administrative law*' by: Amato, G., *Citizenship and public services - some general reflections*, in Freedland and Sciarra (eds.), (1998), at pp.149. See: Carss-Firsk, (2002), for a critical commentary of the approach post Wachmann *ibid* n.79); and, Bamforth, (1993), for a general analysis of the scope of judicial review.

accountability of voluntary sector service-providing organizations,⁸¹ particularly in areas where there is a monopoly over service provision.⁸²

Housing associations and judicial review

Housing associations, in common with other voluntary organizations, are not ordinarily subject to the supervisory jurisdiction of the court at judicial review. The Court of Appeal has rejected the argument that housing associations are public bodies by reason of their reliance on government funding and submission to the jurisdiction of a statutory body (at the time this was the Housing Corporation, under the *Housing Act 1964*), preferring instead to focus on the non-statutory functions carried out by housing associations, i.e. the provision of housing for let as a commercial or private function.⁸³ The approach of the courts has been to confirm that the housing functions of housing associations are not public functions and that therefore housing associations are not ordinarily subject to judicial review.⁸⁴ However, where a housing association is established to manage housing stock transferred to it from a local authority there is the possibility that a close assimilation will arise between the functions of the local authority and those of the housing association concerned. This may have the effect of rendering the association liable to judicial review.⁸⁵ However, this analysis cannot be extended to cover situations in which a housing association merely provides assistance to a

⁸¹ Alder argues that the judiciary's inflexibility cannot be justified as the courts have traditionally exercised a supervisory jurisdiction over private organizations, as in the case of implied terms to regulate contractual relations: Alder, J., *Obsolescence and renewal: judicial review in the private sector*, in Leyland and Woods (eds.), (1997). However, Cane argues that the remedies available at judicial review are limited and restricted by technical requirements in any event: Cane, P., *The constitutional basis of judicial remedies in public law*, in Leyland and Woods (eds.), (1997). In this context Austin, argues that judicial review is unsuitable to deal with issues of efficiency and effectiveness: Austin, R., *Administrative law's reaction to the changing concepts of public services*, in Leyland and Woods, (eds.), (1997).

⁸² In *Nagle v Fielden* [1966] 2 QB 633 the court recognised a role for the judiciary in protecting individuals from oppression and to prevent the abuse of monopoly power, see, Salmon LJ at p.654. Under private law the judiciary have long recognized a role for the court in controlling the exercise of monopoly power. In this context public law in the United Kingdom is challenged by the issue of how to respond to government by contract and the fragmentation of public services. See generally the contributions in: Taggart (ed.), (1997); and, Freedland, R., *Law, public services and citizenship - new domains, new regimes*, in Freedland and Sciarra (eds.), (1998), referring to privatization as producing a 'kind of crisis in legal analysis', at p.6.

⁸³ *Peabody Housing Association v Green and others*, [1979] P&CR 644.

⁸⁴ *Donoghue v Poplar Housing Association*, [2001] EWCA 595.

⁸⁵ This was the case in *Donoghue*, *ibid* n.84.

local authority,⁸⁶ in these circumstances it is less likely that it will be subject to the judicial review jurisdiction.⁸⁷

Synthesis

This chapter has discussed aspects of the operating environment for voluntary organizations in the United Kingdom. It has noted the support provided for freedom of association by the common law system of legal administration; allowing voluntary organizations room to develop and deliver services, and to diversify to meet social demand and social need. It has also noted how the voluntary sector is supported by government in that the statutory legal framework underpinning the operationalization of voluntary enterprise facilitates a corporate non-profit sector, which in most cases emphasises the socially beneficial aspects of service delivery by the non-profit sector. The corporate structuring of voluntary enterprise is also significant as establishing formal voluntary organizations as distinct legal entities, i.e. as constitutionally independent from the state. Although corporate form emphasises delineation from the public sector, the imposition of regulation by the state or one of its appointed agents as an aspect of registration, including at industry level, has the potential to undermine operational discretion and independence - in particular where the regulator is given powers to impose a regulatory regime and sanctions. This is highlighted as a concern for the registered voluntary sector where individual organizations are in receipt of public funding, and in particular by the use of contract and grant as modes of accessing voluntary organizations to public finance and public subsidy. These give the opportunity for government at central or local level directly, or indirectly via its appointed agents, to manipulate resource dependent voluntary organizations to meet with expectations established in public policy. As a consequence the threat of external prioritization is significant -

⁸⁶ In *R v Servite Houses ex parte Goldsmith* [2001] 33 HLR 35, leave for judicial review was refused notwithstanding that the housing association in that case had provided assistance to a local authority with the discharge of its statutory duty.

⁸⁷ Under the section 47 of the National Health Service and Community Care Act 1990. Moses J accepted that a functional test, which would have taken account of the nature of the services provided, might have produced a different outcome. However he rejected this as the correct approach and refused to impose public law standards on a housing association. On the introduction of the Human Rights Act 1998, and its relevance to the status of housing associations as public authorities in legal context, see: Morgan, (2003).

particularly in industries where government has established clear policy objectives. There is the potential that via regulation voluntary organizations will be required to submit to the will of a regulator whose priorities are determined by government. This chapter has discussed issues of accountability in this context. Whilst regulation provides a mode of accountability for the voluntary sector, therefore enhancing its legitimacy as a service-providing institution in the area of public services and *bona fides* for funding and other purposes, it provides further opportunity for the exercise of control and influence over the operational priorities and objectives of individual voluntary organizations. From this perspective contract and regulation represent a weakness in the structuring of the voluntary sector notwithstanding their relevance to deliver public accountability. Taken together with resource dependency these aspects of the operational framework of the voluntary sector lend weight to accounts that cast doubt on the maintenance of independence where there is proximity to government or its agencies. The extent to which this is relevant to, and has impacted on, the housing association movement in Wales, i.e. as a regulated non-profit sector, is considered in broad perspective in Part Two, and in operational context relevant to the day-to-day activities of housing associations in Part Three.

CHAPTER THREE

THE WALES VOLUNTARY SECTOR

Introduction

This chapter discusses the Wales voluntary sector,¹ partly to complete the context for discussing housing associations in Wales, i.e. assuming that they form part of a wider Wales non-profit sector, but also to take account of differences in the way that non-profit organizations are dealt with in policy context at Wales-national level post devolution. In addition, this chapter is a corrective to the assumption, often made in the literature, that the Wales-national voluntary sector is co-extensive and undifferentiated from the sector in the United Kingdom generally. As elsewhere, the voluntary sector in Wales is extensive and diverse,² however its geographical base serves to distinguish Wales non-profit enterprise at sub-national level within the United Kingdom.³ This is further emphasized by the policy responsibilities of the National Assembly for Wales, which is required to devise and implement policy toward the non-profit sector pursuant to the *Government of Wales Act 1998*.⁴

This chapter first considers the relevance of the definitional criteria discussed in Chapter One to describe voluntary organizations in Wales before briefly considering the functions, structure and economic impacts of the Wales voluntary sector. Attention then turns to how the sector is financed: this to highlight weaknesses arising generally from resource dependency. Finally,

¹ The term Wales voluntary sector (Wales non-profit sector) is used to describe the collective of non-profit enterprise in Wales in preference to the Welsh voluntary sector. This is intended to reflect the institutional autonomy of the sector in Wales. For a discussion of the relevance of terminology to Wales political institutions, see: Elis-Thomas, (2005).

² The Wales Council of Voluntary Associations estimates that the Wales voluntary sector is made up of approximately 30,000 voluntary organizations including informal associations that choose not to register with the WCVA; Just over 25,000 voluntary organizations were registered with the WCVA in 2003: WCVA, (2003a). The sector is characterized by its diversity on many levels including: service providing organizations, advisory agencies, and educational and training bodies. The WCVA uses a system of classification that categorizes voluntary organizations by reference to 21 industry defined 'forums'; within each forum there are sub-divisions reflecting a range of services provided. The WCVA classificatory system differs from the ICSNS, although the differences are in the methodology and are not substantial, i.e. in the way industries are grouped together within general classifications.

³ In this study the Wales voluntary sector refers to voluntary organizations that have their offices located in Wales and provide services in Wales.

⁴ Under section 114 of the Government of Wales Act.

the chapter discusses the framework for engagement between the sector and policy institutions in Wales to include the National Assembly's Voluntary Sector Scheme.

Perspectives on the Wales Voluntary Sector

Voluntary Organizations in Wales: Definition

Overview

For the purposes of engaging the Wales voluntary sector in its policy agenda the National Assembly has published a Voluntary Sector Scheme (the 'Scheme') setting out how it will work with non-profit enterprise.⁵ The Scheme refers to the Wales voluntary sector in broad terms as:

'...voluntary organisations, community groups, volunteers, self-help groups, community co-operatives and enterprises, religious organisations and other not for profit organisations of benefit to communities and people in Wales.'⁶

This description of the voluntary sector is supplemented by a composite definition of a voluntary organization. This is set out in the National Assembly's *Code of Practice for Funding the Voluntary Sector*.⁷ Relevant criteria are: independence from the state and the market; self-governing; non-profit distributing and primarily non-business; benefiting from voluntarism; and, providing a public benefit.⁸ In this context the National Assembly regards an organization as independent if it is not under the control of the state, nor under the direct control of a profit-making concern.⁹ For the Assembly's purposes the first is demonstrated where an organization has a majority of non-statutory (i.e. non-public authority) general members or board appointees.¹⁰ In addition to criteria ubiquitous to describe a voluntary organization, the National Assembly insists that a voluntary organization should provide a public benefit. This confirms that in the political realm in

⁵ NAW, (2000a).

⁶ NAW, (2000a), at paragraph 2.1.

⁷ NAW, (2001a).

⁸ NAW, (2001a), at pp.4-5. See also, Commission to Review the Voluntary Sector Scheme, (2004), at p.23, confirming the relevance of the definition used by the National Assembly to describe the Wales voluntary sector.

⁹ NAW, (2001a).

¹⁰ NAW, (2001a).

Wales the voluntary sector is seen as a socially beneficial institution. In this context the National Assembly identifies the provision of a public benefit where services are made available to as wide a group as possible, and where an organization operates in an open and inclusive manner.¹¹ The criteria used by the National Assembly to define a voluntary organization are supported by the representative body of the non-profit sector in Wales, the Wales Council for Voluntary Action. In 2003 it defined a voluntary organization in much the same terms as the National Assembly. Although the requirement to provide a public benefit was only adopted by the WCVA in 1997,¹² together with the requirements of non-profit distribution and independence it is now regarded as a key criterion in the definition of a voluntary organization, and is highly relevant to describe a voluntary organization in Wales.¹³ The only significant difference between the WCVA and the National Assembly is that the latter includes informally organized groups without a governing constitution as part of the Wales voluntary sector. As a consequence the diversity of the sector is enhanced, ranging from informal community groups to formally constituted professional organizations.¹⁴ Although informal associations are not excluded from coverage under the Voluntary Sector Scheme they are likely to be regarded as community groups.

Both the National Assembly and the WCVA provide for specific exclusions to the definition of a voluntary organization. These are similar to those made by Kendall and Knapp to support a narrow voluntary sector in the United Kingdom.¹⁵ The exclusions applied by the National Assembly and the WCVA refer to Assembly sponsored public bodies such as the Arts Council for Wales, the Higher Education Council, the Library Council and the Sports Council for Wales, which would not ordinarily be considered part of the independent voluntary sector in the United Kingdom.¹⁶ National Assembly exclusions are: trades unions; political parties; universities; further education

¹¹ These are seen as public benefits by the National Assembly: NAW, (2001a).

¹² In 1996 the WCVA defined a voluntary organization in terms that did not include provision of a public benefit: WCVA, (1996).

¹³ WCVA, (2003a), pp.15-16.

¹⁴ WCVA, (2003a), at p.15.

¹⁵ See: Chapter One, n.13 and n.14 and accompanying text.

¹⁶ For a list of National Assembly sponsored public bodies see: WCVA, (2002a).

institutions; NHS trusts; sports clubs not for public benefit; charitable independent and grant maintained schools; professional associations; and, trade associations.¹⁷ In addition to those identified by the National Assembly WCVA exclusions are: exempt charities; quasi-autonomous non-governmental organizations; places of worship; and statutory charities.¹⁸

The National Assembly and social enterprise

The National Assembly and its executive the Welsh Assembly Government (the 'WAG') have sought to describe aspects of the Wales voluntary sector from an economic perspective by application of the social enterprise construct. In its consultation on a proposed social enterprise action plan the WAG defined a social enterprise as a non-profit distributing business with primarily social objectives.¹⁹ In Wales, as in the United Kingdom, the significant feature that differentiates social enterprise from the wider voluntary sector in policy context is that a social enterprise will have a business orientation, by engaging in a trading function. Having regard to the criteria of a voluntary organization used for the purposes of the funding code, the voluntary sector and social enterprise sector in Wales may be seen as having similar structural characteristics. Although a social enterprise will be distinguished within the wider non-profit sector because of its capacity to generate a trading surplus, and its proximity to business, there is no reason to exclude such enterprises from coverage under the Voluntary Sector Scheme.

Funding the Wales Voluntary Sector

Public Subsidy for the Wales Voluntary Sector

The WCVA argued in 1996 that the Wales voluntary sector had suffered from under-funding.²⁰ In the early 1990's the level of local government funding for the Wales voluntary sector was less than in any other region in the United Kingdom.²¹ During the 1980's and early 1990's the Welsh Office was

¹⁷ See: www.wales.gov.uk and links to voluntary sector for an up-to-date list of excluded bodies.

¹⁸ WCVA, (2003a).

¹⁹ WAG, (2003b).

²⁰ Noted by: Kendall and Knapp, (1996), at p.155. See also: WCVA, (1996).

²¹ One percent of public expenditure compared with 1.5 percent in England, 1.8 percent in Scotland and 3.3 percent in Northern Ireland: Kendall and Knapp, (1996), Table 5.3.

responsible for one-quarter of the sector's grant funding, with the remainder being the responsibility of local government. It appears therefore that the under-funding affecting the Wales voluntary sector at that time is likely to have been mainly attributable to a lack of local authority support. Notwithstanding, the Welsh Office was in a position to influence local government decisions on grants to the sector because of its overall control over public expenditure in Wales, and efforts were made to encourage councils to work with voluntary organizations. This appears to have benefited the non-profit sector in the mid 1990's as increased financial support was made available to voluntary organizations:²² with funding increasing by an average 15 percent per annum to reach a peak in 1996/97.²³ Notwithstanding, there remained a disparity between funding levels for the voluntary sector in Wales and its counterpart in England, which was better supported. In 1998/99 the local authority financial contribution to the Wales voluntary sector was £29 million, equivalent to £10 per head of population: by comparison local authorities in England spent the equivalent of £25 per head on funding voluntary organizations.²⁴ Despite increases in local authority funding the amount of government support at all levels for the non-profit sector in Wales fell gradually during the 1990's recovering only after 1998.²⁵ This general under-funding was worse in the welfare field: in 1998/99 local authority social services departments in Wales spent the equivalent of £3.3 per head funding voluntary organizations compared with £12 per head in England.²⁶

Resource dependency and the Wales voluntary sector

Despite seemingly valid claims of relative under-funding of the Wales voluntary sector the amount of public subsidy provided to non-profit

²² About £27 million in total in 1991/92: Kendall and Knapp, (1996), Table 5.3. Williams discusses the influence of the Welsh Office over expenditure on the voluntary sector in Wales in the 1980's: Williams, (1984).

²³ WCVA, (2001); and, WCVA, (2003a).

²⁴ WCVA, (2001).

²⁵ WCVA, (2003a), Table 3.6. Between 1994/95 and 1997/98 the Wales voluntary sector's income from all sources fell by 15 percent. This is explained primarily by a reduction in the level of central government funding of housing associations. If reductions in housing association income are disregarded the reduction in income was 5 percent for the remainder of the sector: WCVA, (2003a).

²⁶ WCVA, (2001). The overall picture masks differences between local authorities where the pattern of spending was far from uniform, the amount spent by local authorities in 1998/99 varies from £2.73 to £19.01 per head of population: WCVA, (2001), (figures are for 1998/99).

organizations has been, and remains significant. Government subsidy for the Wales non-profit sector - which includes finance provided by the National Assembly for Wales, local authorities, health authorities, central government and European sources - made up 34 percent of the sector's income in 2001, compared with just one percent provided by businesses in Wales.²⁷ In 2001-2002 the sector received £42.5 million direct from the National Assembly, with a further £18 million provided by the Assembly via local government.²⁸ Available information does not give the number of voluntary organizations wholly or partly dependent on National Assembly financial support, but in a survey conducted jointly by the WCVA and the Welsh Local Government Association (the 'WLGA') on local authority support for the Wales voluntary sector it was estimated that about 3,000 voluntary organizations were in receipt of local authority funding in 1998/99 (over ten per cent of the 25,000 voluntary organizations registered with the WCVA).²⁹ It is reasonable, therefore, to conclude that the Wales voluntary sector as a collective is dependent on the National Assembly and local government for a large proportion of its income: although the extent to which individual voluntary organizations are resource dependent must be assessed having regard to particular funding arrangements applicable to discrete non-profit sectors, and the level of funding provided to individual voluntary organizations.

Funding the Wales Voluntary Sector: The Impact of Housing Associations

Funding arrangements for housing associations generally and in Wales are considered in later chapters. This section discusses the significance of housing association income to the Wales voluntary sector as a whole. The Wales voluntary sector's income from government sources in 2001 was £215.1 million; if housing association income is discounted this reduces to £145.9 million.³⁰ The Wales housing association movement therefore

²⁷ WCVA, (2003a), Figure 3.2. The other main source of the sector's income in Wales is the public. In 2001 donations from the public contributed 34 per cent of the Wales voluntary sector's finance (this includes National Lottery funds), the remainder being: internally generated income, 24 per cent; National Lottery, 5 per cent; voluntary sector sources, 2 per cent; and business, 1 per cent: WCVA, (2003a).

²⁸ WCVA, (2002a); NAW, (2002).

²⁹ WCVA, (2001); *ibid* n.2.

³⁰ WCVA, (2003a), Table 3.6.

accounts for a large proportion of the Wales non-profit sector's overall income (32 percent in 2001). Further, housing association rents contribute a large proportion of the sector's internally generated income. In 2001 this was £154.4 million, of which over 75 percent - £131.4 million - was made up of housing association rents.³¹ Housing associations in Wales also receive a disproportionate amount of the Wales voluntary sector's overall funding. Voluntary housing organizations (of which housing associations are the large majority) receive over 25 percent of the sector's income from all sources, although just under 3 per cent of voluntary organizations in Wales are active in the field of housing or housing related activities.³² This data suggests that the Wales voluntary housing movement may be differentiated from the Wales voluntary sector more widely. Firstly, because of the amount of public subsidy that voluntary housing receives. Secondly, by reason of the capacity for voluntary housing organizations to generate an income from rent. This perhaps was influential on the WCVA when in 1996 it described the voluntary housing movement as '*almost autonomous*' within the Wales voluntary sector.³³ In this context, that housing associations may be delineated within the Wales voluntary sector is confirmed as the WCVA has adopted the term social enterprise to refer to associations when describing the Wales non-profit sector.³⁴ However, neither the WCVA nor the National Assembly has sought to exclude housing associations from the Wales voluntary sector, or the ambit of the Voluntary Sector Scheme.

The Wales Voluntary Sector in Political Context

Political Rhetoric on the Wales Voluntary Sector Post Devolution

There is a high and enduring level of support for the Wales voluntary sector in the political realm in Wales. This is apparent from the election manifestos for the main political parties published for the National Assembly elections in 1999 and in 2003. In 1999 the Welsh Labour Party drew attention to the sector's potential to contribute to social and economic regeneration in

³¹ WCVA, (2003a), Table 3.6.

³² WCVA, (2003a), Table 2.1.

³³ WCVA, (1996) at p.7.

³⁴ WCVA, (2003a), at p.78. Although the WCVA continues to regard housing associations as part of the wider voluntary sector for descriptive purposes.

Wales,³⁵ a theme maintained in its 2003 manifesto.³⁶ Plaid Cymru in 1999 included in its manifesto a commitment to provide the Wales voluntary sector with an input into policy decision-making.³⁷ In 2003 Plaid Cymru sought to focus on what it saw as the particular contribution voluntary housing organizations are able to make to tackling and reversing social decline.³⁸ Similarly the Conservatives and the Liberal Democrats have offered support for the Wales voluntary sector and have emphasized its potential to contribute resources in areas of public services such as education and social care.³⁹ By the time of the 2003 elections the Conservatives were strongly in favour of a greater role for the voluntary sector in service provision, primarily involving public services, in Wales.⁴⁰ Support for the Wales voluntary sector is also strong at the National Assembly, where debate on the non-profit sector has tended to emphasize positive aspects of its operationalization in Wales. In July 1999 the First Minister referred to the '*vital contribution*' made by the voluntary sector to improving communities in Wales, and to its positive social and economic impacts.⁴¹ In addition the Minister drew attention to the voluntary sector's role in empowering individuals to take part in social and political life.⁴² Following this lead, debate on the Wales voluntary sector at the National Assembly has to-date been non-partisan. Assembly Members have sought to draw attention to the perceived benefits of service delivery by the Wales voluntary sector, and have supported public funding of non-profit organizations; members have also argued for the voluntary sector to be closely engaged in policy decision-making and implementation.⁴³ Unsurprisingly, positive conceptualisations of the non-profit sector in the political realm are reiterated and reinforced by the WCVA, which has sought to portray the sector and voluntary enterprise in Wales as inherently flexible and innovative, and as having the capacity to devise and implement practical

³⁵ Labour Party Wales, (1999), *Foreword*.

³⁶ Labour Party Wales, (2003), see pp.10-11.

³⁷ Plaid Cymru, (1999), at paragraph 1.6.

³⁸ Plaid Cymru, (2003), section 4.

³⁹ The Welsh Conservative Party, (1999); the Welsh Liberal Democrats, (1999).

⁴⁰ Welsh Conservative Party, (2003), see, p.27 and p.35.

⁴¹ NAW, Record, 21st June 1999.

⁴² NAW, Record, 21st June 1999.

⁴³ See for example the debates on the sector in NAW Record: 21st June 1999; 5th July 2000; 25th April 2002; and, 30th September 2003.

solutions to long-term social problems, and as responsive to community need.⁴⁴

Voluntary Sector Roles and the National Assembly

During the 1980's the Welsh Office, as the focus for public policy implementation in Wales, formed a close working relationship with the voluntary sector. The relationship that developed, i.e. as between the Welsh Office, those organizations in receipt of direct Welsh Office funding, and the WCVA, was characterized by some working in the voluntary sector as '*close and cosy*', and research carried out in the mid 1990's noted that those outside of this triangular relationship felt excluded from the policy process.⁴⁵ The advent of devolution in 1998 has seen the Welsh Office's policy responsibilities pass to the National Assembly. Post-devolution the Assembly has been focused on inclusion and partnership with non-statutory bodies, including voluntary organizations, as an aspect of its policy-making and implementation responsibilities. This has presented the Wales voluntary sector as a whole with greater opportunities to become involved in a working relationship with Wales-national policy institutions centrally and at local level.⁴⁶ Since 1999 the Wales voluntary sector has played an important role in the public policy agenda established by the National Assembly, and in the delivery of public services, so that in 2004 the Chief Executive Officer of the WCVA commented that:

'... increasingly, public services are being provided by voluntary organizations and public policies are being shaped by consultations that involve the sector.'⁴⁷

This may be seen as a positive impact of what Sullivan and Drakeford have characterized as a new type of politics in Wales, offering the opportunity for greater participation by civil society organizations as an aspect of the Labour

⁴⁴ See for example: WCVA (1993), at p.3. The WCVA has also promoted the sector as a contributor toward civil society in Wales: WCVA ,(2004).

⁴⁵ Kendall and Knapp, (1996), at p.156.

⁴⁶ The WCVA has referred to the '*opportunities and challenges*' presented by devolution': WCVA, (2002b), at p.15.

⁴⁷ Benfield, G., *Foreword*, in Collis and Garfield, (2004), at p.5.

agenda UK-nationally, as well as in the devolved administrations.⁴⁸ In practice the National Assembly has sought to engage the voluntary sector to help achieve its objectives of alleviating poverty, improving the quality of life in Welsh communities and re-engaging socially excluded groups and communities in the social policy agenda.⁴⁹ Both the National Assembly and the WAG see a role for voluntary organizations in the implementation of public policy in Wales and in the delivery of public services, with a particular focus on meeting community needs.⁵⁰ This is based on the principle, adopted by the Assembly, that service delivery should be the responsibility of those organizations offering the best and most appropriate service.⁵¹ Against this background, the role conceived for the voluntary sector is distinct from and complementary to the Assembly, local government and the private sector: although it is apparent from policy documents that the Wales voluntary sector is very much seen as a resource available to the National Assembly and local authorities to meet strategic objectives.⁵² In this context the WCVA has advised its membership of the opportunities to work in partnership with the public (statutory) sector and of the potential to work strategically with government - adopting a position generally supportive of the National Assembly's policy agenda as first set out in *Better Wales*⁵³ in 2000.⁵⁴ This was replaced by the Assembly's *Plan For Wales* in 2001 setting out the then Assembly Government's objectives of enhancing public services, promoting social inclusion, and cementing the strategic planning function of local government.⁵⁵ The role given to the Wales voluntary sector in *Plan for Wales* was to undertake service delivery in areas such as health and education, with the intention of making use of the sector's resources and its capacity to work with local government.⁵⁶ This was emphasized when the Assembly Government published its strategic plan for 2003-2007, *Wales: a Better*

⁴⁸ Sullivan and Drakeford, (2004).

⁴⁹ Williams, (2002). See also: NAW, (2000b), at p. 32; and, NAW, (2001a), at p.2

⁵⁰ GNAW, (2001); and, WCVA, (2002b).

⁵¹ I.e. on the principle of 'who does what best', NAW, (2000b), section, *Guiding themes and values*.

⁵² NAW, (2000b), at p.5; NAW, (2001a), at p.2.

⁵³ NAW, (2000b).

⁵⁴ See, for example: WCVA, (2002b), at p.15.

⁵⁵ GNAW, (2001).

⁵⁶ See for example: GNAW, (2001), at *Modern government*, p.21.

Country.⁵⁷ This lists policy objectives in seven areas, these are: children; the economy; culture; the built and natural environment; social justice; health; and promoting openness and participation in government.⁵⁸ In his introduction to *A Better Country* the National Assembly First Minister states that the Assembly Government will seek to deliver its objectives jointly by working with the voluntary sector (amongst others).⁵⁹ As an aspect of engaging with the voluntary sector the National Assembly and the WAG have sought to focus attention on the potential benefits that social enterprise can deliver in Wales. These are identified in the WAG's *Social Enterprise Action Plan*, which identifies a dual role for social enterprises: first, to provide an inspiration to public authorities on new ways of delivering public services; and, second, to contribute to the regeneration of local communities in Wales.⁶⁰ In this context the National Assembly describes community-building activities as those that encourage community development or that encourage individuals to work together to initiate change and improvement through collective action.⁶¹

The Voluntary Sector Scheme

Overview

Immediately prior to the *Government of Wales Act 1998* and devolution in Wales the Welsh Office and the WCVA together produced a Compact setting out principles to govern the relationship between government and the Wales voluntary sector.⁶² The role anticipated for voluntary organizations by the Compact is to complement the public sector in the delivery of public services, with an emphasis on promoting citizenship and re-establishing a sense of community.⁶³ The Compact was made relevant to the development of a framework for engagement between the voluntary sector and the National Assembly having regard to the Assembly's duty under section 114 of the *Government of Wales Act 1998* to:

⁵⁷ WAG, (2003a).

⁵⁸ WAG, (2003a), at p.4. The WCVA similarly identifies these as areas in which the Wales voluntary sector can contribute to policy development: WCVA, (2004).

⁵⁹ Other organizations included are: local government, businesses, and the trades unions: WAG, (2003a).

⁶⁰ WAG, (2001).

⁶¹ NAW, (2000b), at paragraph 6.1.

⁶² Welsh Office, (1998a).

⁶³ Welsh office, (1998a), *Foreword*.

'... make a scheme setting out how it proposes, in the exercise of its functions, to promote the interests of relevant voluntary organizations.'⁶⁴

Following Labour's success in the election for the first Assembly its administration set about developing a voluntary sector scheme informed by the Compact.⁶⁵

The Principles of the Voluntary Sector Scheme

The National Assembly published its Voluntary Sector Scheme in 2000 establishing a set of broad principles and what are termed '*shared values*' to govern and inform the relationship between the Assembly and the Wales voluntary sector.⁶⁶ These principles, which underpin the Scheme, reflect attitudes in the political realm toward the sector's social contribution, and promote and enhance the Wales voluntary sector's role in tackling social exclusion. The values established by the Scheme include: promoting equality of opportunity and inclusiveness to enable individuals to participate in economic, social and cultural activities; community participation in development; and, general support for voluntary action to enhance local democracy.⁶⁷ The Scheme also supports the independence of the Wales voluntary sector through recognition that:

'... voluntary and community organisations are independent organisations which determine their own priorities and manage their own affairs.'⁶⁸

As noted in Chapter One, the maintenance of organizational and sectoral independence is a priority for the voluntary sector - as a criterion for determining membership, and as a philosophical concern.⁶⁹ The recognition

⁶⁴ For the purposes of making a Scheme relevant voluntary organizations are defined in the 1998 Act, in terms, as organizations that operate on a not-for-profit basis for the benefit, directly or indirectly, of the whole or part of Wales: section 114[2], Government of Wales Act 1998.

⁶⁵ As foreshadowed in its manifesto: Labour Party Wales, (1999).

⁶⁶ NAW, (2000a), paragraph 2.3.

⁶⁷ In this context volunteering is seen as an important expression of citizenship and is regarded as an essential component of democracy: NAW, (2000a), paragraphs 2.7 and 2.10. See also n.71 below.

⁶⁸ NAW, (2000a), paragraph 2.10.

⁶⁹ See: Chapter One, at n.26 and accompanying text.

given to the importance of an autonomous non-profit sector by the Voluntary Sector Scheme is a significant bulwark of the sector's independence in Wales. This is further emphasized as the Scheme recognizes the role of voluntary organizations to represent the interests of the communities they serve;⁷⁰ and is enhanced by the promotion of partnership working with the National Assembly as part of the operation of the Scheme.⁷¹ The Voluntary Sector Scheme identifies different levels of partnership by reference to degrees of control. Non-profit organizations are said to have '*joint ownership*' or equal partnership with the public sector in the decision-making processes on policy development and resource allocation. The effect of this should be to provide voluntary organizations with influence over the terms of reference of any working partnership and the policies established by the partnership, and equal access to its (i.e. the partnership's) resources. In the context of the Scheme, partnership is seen as providing the voluntary sector with an equal say with the National Assembly about the arrangements under which the Assembly and the sector will work together. To support the voluntary sector's involvement in the policy process the National Assembly has implemented a Voluntary Sector Partnership Council as a forum for sector representatives to raise issues of concern with the Minister for Social Justice and Regeneration.⁷² Unique in the United Kingdom the Voluntary Sector Scheme is recognition accorded to the Wales voluntary sector in public policy context through the imposition of statutory obligations on the government of Wales in the exercise of its policy-making function. The Wales voluntary sector's engagement in and with the policy process in Wales is not a matter left entirely to the discretion of politicians: it is guaranteed to the sector by statute.

⁷⁰ NAW, (2000a), at paragraph 2.10.

⁷¹ NAW, (2000a), at paragraphs 3.3 and 3.4 and, Annex A. The Scheme also supports voluntarism, by stating that volunteering is seen as '*an important expression of citizenship and as an essential component of democracy. It is the commitment of time and energy for the benefit of society and the community and can take many forms. It is undertaken freely and by choice, without concern for financial gain*', the Assembly has sought to demonstrate its commitment to the voluntarism by establishing a number of objectives which include improving access to volunteering by individuals from all sections of society, and making it easier for individuals to participate in volunteering: NAW, (2000a), at paragraphs 5.1 and 5.1-5.2.5.

⁷² Minutes of meetings between the Minister and the WCVA and other voluntary sector representatives on the VSPC may be downloaded from:
<http://new.wales.gov.uk/topics/housingandcommunity/voluntarysector/partnership/?lang=en>.

The Relationship with Local Authorities

In the early 1990's the WCVA characterized the relationship between local government and voluntary organizations in Wales as *ad hoc* and based on personal or organizational networks.⁷³ An exception given by the WCVA was in the case of special needs housing providers, for example housing associations providing housing for disabled persons, where formal working relations developed as housing associations came to be regarded as experts in the field.⁷⁴ This lack of formality may be seen as reflecting the lower level of contracted-out local authority services in Wales in comparison with the other nations of the United Kingdom.⁷⁵ In contemporary context, more significant than contract to the relationship between the public sector and the voluntary sector in Wales is the community leadership function given to local authorities by the *Local Government Act 2000*. The unitary system of local government and the local base of the majority of voluntary organizations in Wales means that most will operate within a strategic framework devised by a single authority (this will also be the case for regional or national voluntary bodies when operating at local level). This emphasizes the need for good working relations. In this context the National Assembly has sought to promote community strategies as central to the modernization of the role of local government in Wales,⁷⁶ and through guidance on their preparation it has sought to persuade local authorities to involve community organizations in the development of strategic priorities.⁷⁷ In general local authorities are expected to encourage collaborative working and to develop an integrated approach to policy formulation that fosters inter-organisational working, and partnership.⁷⁸ In response the voluntary sector is expected and encouraged to work together with local government.⁷⁹ The entreaty is one to which the Wales voluntary sector, through the WCVA, has responded positively, emphasising the importance of local government to the work of the voluntary sector at

⁷³ WCVA, (1993).

⁷⁴ WCVA, (1993).

⁷⁵ WCVA, (2003a).

⁷⁶ Local Government Modernization Division, (2001).

⁷⁷ NAW, (2001b).

⁷⁸ NAW, (2001b); and, Williams, (2002).

⁷⁹ 'The voluntary sector is expected and encouraged to become more involved in partnership working with local authorities ...': Local Government Modernization Division, (2001), at p.1.

community level.⁸⁰ In this spirit of partnership the National Assembly has sought to portray community strategies not as local authority strategies but as jointly prepared documents.⁸¹ Against this background in 2002 the Assembly Minister responsible for local government sought to draw attention to the need for local authorities and the voluntary sector to meet jointly identified priorities.⁸²

Whilst an approach based on partnership means that the voluntary sector should be given an input into strategic planning in local authority areas, much will depend on the attitude of individual councils to the sector's role and to the benefits to be gained from engaging voluntary organizations in meeting local need. The Wales voluntary sector has expressed a concern that local authorities are not responding to the new strategic agenda, and that local government has failed to appreciate the potential contribution from voluntary organizations.⁸³ This may be seen as a failure on the part of local government, in particular having regard to the requirement on local authorities to improve the performance of their statutory functions under the *Local Government Act 1999*.⁸⁴ In Wales the National Assembly implemented its Wales Programme for Improvement (the 'WPI') in April 2002,⁸⁵ requiring local authorities to engage in a process of continuous self-assessment with a view to improving the quality of local services.⁸⁶ The WPI is linked to community strategies, compacts between local authorities and the voluntary sector, and policy agreements between local government and the National Assembly, with the purpose of ensuring that objectives established in community strategies

⁸⁰ See, for example: WCVA, (2003b).

⁸¹ NAW, (2001b), paragraphs 2.7-2.10.

⁸² The Minister commented that community strategies should be seen as '*... shared documents that should be prepared and implemented jointly by local authorities and their partners – the voluntary and private sectors, the Assembly-sponsored public bodies and local communities. ... local authorities and voluntary organisations [are expected] to work more and more closely with each other in shaping community strategies and in doing whatever is necessary to deliver the priorities they identify*': WCVA, (2002c), Foreword by Edwina Hart AM.

⁸³ WCVA, (2001). The concern is shared by National Assembly department responsible for local government modernization within the National Assembly: Local Government Modernization division (2001).

⁸⁴ Replacing compulsory competitive tendering from the 2nd January 2000.

⁸⁵ The national Assembly is established as the lead authority by section 29 of the Local Government Act 1999.

⁸⁶ For a discussion on aspects of the WPI see: Boyne *et al*, (1999).

are turned into effective action.⁸⁷ The voluntary sector's significance at local level is confirmed as local authority performance is in part to be measured by the effectiveness of partnership agreements with non-profit organizations.⁸⁸

Synthesis

Criteria and definitions of voluntary enterprise used by the National Assembly and the WCVA are similar to those used in the United Kingdom and elsewhere, and include independence and voluntarism as key characteristics. In Wales however both the primary policy making institution and the representative body of voluntary organizations apply the criterion of public benefit to describe non-profit organisations. The criterion is relevant for the purposes of maintaining political support but also to establish eligibility for public funding: its use to determine status reflects on the importance of the Wales voluntary sector as a public service providing institution and on its societal function. It is significant for later chapters that neither the WCVA nor the National Assembly see housing associations as excluded from the Wales voluntary sector - although the former has identified differences between housing associations and other non-profit organizations in Wales, very likely because of the level of funding made available to housing associations.

The Wales voluntary sector has the support of the National Assembly and the WAG, and is well-regarded in the political realm. A consequence is that the Wales voluntary sector benefits from the provision of significant amounts of public funding. Whilst it is apparent that the way in which the sector is funded and the level of public funding means that it may be described as resource dependent, the potential for this to impinge on the sector's independence is to an extent mitigated by the Voluntary Sector Scheme, and the partnership agenda pursued by the Assembly, which supports independence. In addition to the Voluntary Sector Scheme the policy agenda in Wales engages the non-

⁸⁷ For information on the WPI see:

<http://new.wales.gov.uk/topics/localgovernment/partnershipworking/?lang=en>, and links to WPI and guidance.

⁸⁸ The WAG has published guidance for local government to be used to assess effectiveness across all functions - including direct service provision as well as services purchased or funded through partnerships or service agreements with non-profit organizations: Welsh Assembly Government Circular, 28/2005.

profit sector through an emphasis placed on community strategies as planning documents at local level, and the involvement of the voluntary sector as partners to local government. The National Assembly contemplates a strategic agenda that is the responsibility of local government to devise and implement in consultation and cooperation with representatives of the Wales voluntary sector. The effectiveness of this approach is likely to depend in part on the attitude of local authorities toward involving the sector, and possibly discrete voluntary sectors, in the preparation and delivery of community strategies. In this context it will be relevant to consider what role local authorities see voluntary organizations as having at local level, and the extent to which this is facilitated as part of a local strategic agenda. It will also be influenced by attitudes toward discrete voluntary sectors based on perceptions as to the role of voluntary organizations operating in particular industries at local level, and the historical patterns of relationships between non-profit service-providing bodies and local authorities. In this context, attitudes amongst local authorities toward housing associations' role(s) at local level are investigated as part of the research conducted for Part Two of this study.

The framework established for the operation of the Wales voluntary sector by the National Assembly and the WAG is supportive of an independent sector, and is of benefit to the voluntary sector as preserving its integrity and that of individual non-profit organizations. Having regard to the general operating environment for voluntary organizations in Wales, an issue raised is the extent to which frameworks established with regard to the Wales voluntary sector are relevant and/or support discrete non-profit sectors, such as in housing. In particular; whether or not public policy relevant to discrete industries, and the manner of its implementation, is of greater significance to industry based voluntary sectors as impacting on issues of independence and discretion. These issues are investigated for housing associations as an aspect of the research undertaken for the purposes of Part Two and Part Three of this study.

CHAPTER FOUR

VOLUNTARY HOUSING AND HOUSING POLICY: VOLUNTARY HOUSING IN WALES

Introduction

This chapter introduces voluntary housing and voluntary housing organizations. It discusses housing associations as non-profit enterprises operating in the housing field, providing and managing social housing alongside local authorities. It is first established what is meant by the term social housing, before discussion turns to voluntary housing in the context of housing policy, which for the purposes of this study is to be regarded as government policy on housing.¹ Housing policy is then discussed from a historical perspective, focusing on the role of voluntary housing organizations, with particular attention being paid to modern housing policy post 1974. It should be noted however that this chapter does not provide a full account of housing associations' role in housing policy, which would be beyond the scope of this study.² The chapter includes a section on housing policy in Wales and its relevance for voluntary housing and housing associations - this is not an area that has been paid much attention in accounts of social housing or housing policy relevant to the United Kingdom, or to Wales. Finally, to complete the context for Part Two and Part Three, housing associations' structural connections with the wider voluntary sector are discussed, including the statutory definition of a housing association, and the regime for registration of a housing association (applicable to the United Kingdom as a whole).

¹ In the United Kingdom housing policy is most equated with public or government policy on housing, this is noted by several commentators, for example: Malpass and Murie, (1999), at p.6; and, Hill and Bramley, (1986), at p.1. Housing policy developed out of public health policy in the nineteenth century and emerged distinct from health policy when responsibility for housing matters was given to the Local Government Board at the start of the twentieth century. There are many accounts dealing with housing policy in the United Kingdom, for example: Merrett, (1979), on council housing; Malpass, (2000), on housing associations; Harloe, (1985), on private renting; Harloe, (1995), on social housing; Donnison and Ungerson, (1982), on housing policy generally; Needleman, (1965), on the economics of housing; and, Donnison, (1965) on housing and government.

² Malpass provides the most comprehensive historical account of the growth of voluntary housing and housing associations in the United Kingdom: Malpass, (2000). Cope, and Baker, also provide accounts: Cope, (1999); and, Baker, (1976).

Voluntary Housing, Housing Associations and Housing Policy

Social Housing in the United Kingdom

The United Kingdom housing market discriminates between individuals on the basis of ability to pay, with those unable to afford the cost of housing often denied full access. In the United Kingdom housing is highly regarded as a tradable commodity. Its value as an asset makes it difficult for those on low incomes to gain access - as this is determined in a market in which providers seek to obtain the best possible price.³ To ensure some form of housing remains available to those on low incomes the state has elected to subsidize the housing costs of resource poor individuals and families. This has led to the development of a housing system distinct from the housing market, to provide homes for vulnerable individuals and families who might otherwise be homeless, or left to live in poor quality housing:⁴ the housing system is therefore established as a welfare resource.⁵ Housing built and provided for use within the housing system is referred to as social housing, or where this is let on a tenancy, social rented housing.⁶ In the case of social rented housing, subsidy is usually provided to supplement the income of resource poor individuals or families to assist with rental costs i.e. by rent rebate; or by making grants and/or loans available to housing developers to help meet capital costs, for example: planning and design costs, building costs, or both, so that future rents may be kept as low as possible.

Social housing and the voluntary housing sector

As was discussed in Chapter One, a justification for the voluntary sector is that it operates to meet the needs of those unable to obtain goods or services

³ The market price for housing is represented by total purchase costs for freehold or leasehold owner-occupied property, or rent for accommodation occupied under a short-term lease/tenancy. On the economics of housing, see: Needleman, (1965).

⁴ This is differentiated from the housing market that caters to demand for housing from those able to make choices having regard to suitability, location, cost etc. As an aspect of housing policy it is generally accepted that government is responsible for maintaining the supply of subsidized rented housing: Merrett, (1979); and, Lansley, (1979).

⁵ A distinction noted by several commentators, for example: Needleman, (1965); and, Malpass and Murie, (1999).

⁶ The term social rented housing (or social housing) is nowadays a convenient term to describe subsidized housing but only came into common use following the implementation of the Housing Act 1996, and references to social housing in section 18.

from the private market.⁷ In this context a role is suggested for the non-profit sector in the United Kingdom as a developer and manager of social housing, and as will be seen in the discussion that follows below, it is a role that the sector has sought to discharge. However, in the absence of subsidy the cost of borrowing from the private sector to fund development inevitably leads to rents being set at a level beyond the means of those in greatest housing need, i.e. the least well-off - this is often referred to as the affordability problem.⁸ Voluntary housing organizations have been provided with government subsidy to allow rents to be set at a level that is affordable to those on low incomes, so that access to housing may be determined by reference to need and not wealth.⁹ Social rented housing is, therefore, housing made available at a price (rent) not principally determined by profit, where allocation is according to need and, political decision-making as to the priorities for Treasury funding is a greater influence on supply than market forces.¹⁰ In the United Kingdom private individuals and private housing developers are not greatly involved in building or managing social rented housing; the main institutional vehicles for its provision are local authorities, and the voluntary housing sector, in particular housing associations.¹¹ It is through the operation of housing policy designed to meet housing need, and the provision of subsidy, that the voluntary housing movement has been engaged in housing policy as a development and letting vehicle for social housing.

Voluntary Housing and Housing Policy: A Historical Perspective

Overview of housing policy to the 1960's

Housing policy emerged at about the end of the nineteenth century as an aspect of public health policy, as government sought a solution to the

⁷ Chapter One, at n.37 and accompanying text.

⁸ For a general introductory account of the affordability problem in the context of housing studies see: Maclennan and Williams, (1990).

⁹ Social rented housing is a decommodified welfare resource, and development relies on subsidy: NFHA, (1990), at p.36; and, Lansley (1979), chapter 1.

¹⁰ Harloe, (1985).

¹¹ Bramley describes social rented housing by reference to its provision by socially responsible organizations that allocate accommodation in accordance with some form of charter or guarantee: Bramley, G., *Quasi-markets and social housing*, in Le Grand and Barlett, (1993), at p.155.

problems of poor sanitation and poor health arising from overcrowding as industrialization attracted workers to the major cities.¹² At this time voluntary housing organizations represented practically the only alternative to the private housing market for those in housing need.¹³ In the mid-nineteenth century these were often formed as Model Dwelling Companies. Although Model Dwelling Companies were reliant on private investors for capital investment their innovation was to persuade investors to accept limited dividends.¹⁴ The state offered some assistance at this time as voluntary housing was provided with capital subsidy in the form of government loans made available to registered non-profit housing organizations known as Public Utility Societies ('PUS').¹⁵ In addition local authorities were empowered to offer financial assistance to PUS's under the *Housing and Town Planning Act 1909* by way of loans.¹⁶ Notwithstanding, deteriorating housing conditions meant that state intervention in the housing market, via local authorities, became inevitable toward the end of the nineteenth century as the voluntary sector failed to ameliorate housing need.¹⁷ This was highlighted as the nation went to war in 1914 leading to a housing shortage brought about primarily by

¹² Gaudie provides an account of overcrowding and housing conditions at the end of the eighteenth: Gaudie, (1974). There are numerous accounts dealing with the development of housing policy in the United Kingdom, for example: Bowley, (1945); Donnison and Ungerson, (1967); Burnett, (1978); Holmans, (1987); Birchall (ed.), (1992); and, Hughes and Lowe, (1995).

¹³ Accounts of voluntary housing suggest that voluntary housing organizations have been providing housing for the poor since at least the sixteenth century, see for example: Baker, (1976); and, Malpass, (2000).

¹⁴ Model dwelling companies sought to keep rents low (affordable) by limiting returns to investors. On the work of model dwelling companies see: Cope, (1999); Baker, (1976); and, Malpass, (2000). Baker, (1976), at p.4, describes the work of model dwelling companies as a '*breakaway from the prevailing outlook on economics in the period*'.

¹⁵ PUS were required by section 4 of the Housing and Town Planning Act 1909 to be registered under the Industrial and Provident Societies Act 1893.

¹⁶ Under section 72 of the Housing and Town Planning Act 1909, and with the consent of the Local Government Board.

¹⁷ But there was resistance to local authorities becoming involved in the housing market. In 1875 it was argued in the House of Commons that '*... nothing could be more unfortunate and mischievous than to permit local authorities to become proprietors of dwellings for the working classes in competition with private landlords*': C.E. Cawley, MP, Hansard's Parliamentary Debates, (1875) v.223, at p.32. In contrast M'Cullagh Torrens, MP, a prominent nineteenth century housing reformer, commented during debate on the 1st reading of the Artizans and Labourers' Dwellings Bill that '*... it is futile to rely on voluntary effort*', Hansard's Parliamentary Debates, (1866), v.181, 818-821 at 821. Local authorities were given powers to improve housing conditions, these included powers to: demolish unfit housing, to build new housing, and, to improve housing standards through the making and enforcement of byelaws under the Artizans' and Labourers' Dwellings Acts of 1868 and 1875, and the Public Health Act 1875 (these had to be sold within 10 years of construction to ensure that local authorities did not become involved in the long-term management of rented housing).

prioritization of resources toward the war effort.¹⁸ In the post-war period central government turned to local authorities to help tackle the housing crisis. In 1919 it imposed a duty on local government to carry out house-building for which subsidy was provided.¹⁹ Although PUS's were seen as having the capacity to assist with this task by developing housing in specialist areas, and were given access to government loans for this purpose, it was local authorities that were regarded as the main providers of subsidized housing between the wars,²⁰ and they were encouraged to undertake a substantial building programme.²¹ However, despite this support for the public sector in housing there was little political consensus as to how government should intervene in the housing market (particularly as regards subsidy).²² After 1945 this changed as the post-war Labour government, intent on introducing a welfare state, gave local authorities the task of building subsidized housing.²³ Housing policy maintained a role for voluntary housing and government consulted with the voluntary sector on its role.²⁴ Notwithstanding, its contribution to tackling the housing problem remained secondary to that of

¹⁸ The housing problem became one of general undersupply when house-building and house-maintenance slowed as resources were diverted toward the war effort: Merrett, (1979).

¹⁹ Local authorities were required to put into effect building schemes approved by the Local Government Board under the Housing and Town Planning Etc. Act 1919.

²⁰ The work of voluntary housing organizations was supported through the provision of loans in areas in which they specialized, for example, loans for reconditioning work under section 20 of the Housing and Town Planning Etc. Act 1919. With the aid of subsidy local authorities built 170,000 dwellings by 1921: Merrett, (1979). But PUS managed just 5,000 dwellings in the same period: Malpass, (2000).

²¹ Merrett, (1979)

²² Subsidy to local authorities was withdrawn by the Housing and Town Planning Act 1921. The Conservative Chancellor, Neville Chamberlain, first proposed suspension of subsidies payable under the Housing and Town Planning Act 1919 to local authorities in the year of its introduction: Wilding, (1970), discussed at p.182. However, the reality was that there remained an unmet housing need and subsidy for local government house-building was re-introduced by the Conservative government under the Housing Act 1923.

²³ After 1939 the demand for housing increased. The government set a target of providing 300,000 new dwellings over a two-year period in 1945 the government estimated that 750,000 family dwellings needed to be built: Ministry of Reconstruction, (1945). See also: Holmans, (1987), for an historical overview. Local authorities provided government with the opportunity for policy implementation via a predictable and reliable agency so that housing policy in the decade after 1945 was both instrumental and centrally directed: Sullivan, (1996).

²⁴ In 1944 the Central Housing Advisory Committee recommended closer working between housing associations and local authorities and the Ministry of Health consulted with the representative body of housing societies, the National Federation of Housing Societies: Ministry of Health, (1944).

local government.²⁵ The growth of the welfare state meant that housing associations (which had replaced PUS after 1935), like other voluntary organizations operating in the welfare field, were pushed to the margins of social policy.²⁶ Voluntary housing's predicament was such that Beveridge, the architect of the welfare state, remarked in 1945 that government should '*make up its mind whether it wants housing societies or not*'.²⁷ However, by the 1950's housing policy and attitudes toward subsidy were changing as central government became reluctant to continue to subsidize local government house-building.²⁸ This meant that policy was soon re-focused on promoting home ownership,²⁹ and, significantly for the voluntary housing movement, developing private renting.³⁰

The 1960's, housing associations and cost-renting

In the 1960's the Conservatives made use of voluntary housing in an experiment which was designed to increase investment in private renting. The *Housing Act 1961* made loans available to housing associations for the construction of rented housing, with the intention of encouraging private investment in the build-to-let housing market.³¹ It was a loan condition that the rent charged on such housing would be an economic or cost-rent, so that private speculators would be able to gauge the profitability of rented housing as an investment.³² One consequence of this was that many charitable housing associations were prevented from participating in cost-rent schemes as rents had to be set beyond the means of the poor in order to meet interest payments.³³ Notwithstanding, the cost-rent scheme was seen as a success by government and in 1964 the *Housing Act 1964* set up the Housing

²⁵ Subsidy was extended under section 94 of the Housing Act 1936, but only to those housing associations that could demonstrate a need not met by local authorities: Bevan, A., MP, House of Commons Debates, 22nd November 1945, v.416, 584.

²⁶ Glennerster, (1995).

²⁷ Beveridge, (1948), at p.292

²⁸ Partly motivated by a belief that many occupiers of local authority housing were in a position to be able to afford housing without subsidy: Great Britain, (1961), at paragraph 7.

²⁹ Ministry of Housing and Local Government, (1953), at paragraph 7.

³⁰ Ministry of Housing and Local Government, (1953), at paragraphs 14 and 91.

³¹ Great Britain, (1961), at paragraphs 41-44. See also: Needleman, (1965), at pp.124-126.

³² £25 million was made available: Great Britain, (1961), at paragraph 44..

³³ Already established associations made little use of the money available under the 1961 Act but new societies were set up to develop cost-rent housing: Dykes, J.R., *The development and role of housing associations*, in Millward (ed.), (1977).

Corporation to oversee and regulate the work of cost-rent housing societies in England and Wales, and to administer a higher level of government funding to the sector.³⁴ However, support for cost-renting began to lessen as the private rented market continued a decline that had been evident since at least the beginning of the twentieth century.³⁵ By the early 1970's it was apparent that the cost-rent experiment was not going to revive the private rental housing market. Cost-rent housing societies, whose support in the political realm was diminishing, also faced the difficulty of how to make their accommodation affordable to those on lower incomes without grant subsidy.³⁶ The *Housing Finance Act 1972* put an end to cost-renting by making all housing association rents fair rents as assessed by the Rent Officer.³⁷ the norm in the private sector since 1965.³⁸ The 1972 Act also extended the lending powers of the Housing Corporation to housing associations other than cost-rent societies, giving traditional housing associations access to Corporation loans.³⁹

Increased support for housing associations: the Housing Act 1974

The mid to late 1970's saw support for local authority social rented housing lessen as the consensus around the welfare state began to break-down.⁴⁰ It was a period of change in housing policy during which the voluntary housing movement sought to make government aware of its full potential. In 1970 the National Federation of Housing Societies (the 'NFHS'), the representative body of voluntary housing, published *Housing to Let by Non-profit Organizations*⁴¹ in which it argued for housing associations to be provided with financial support to enable them to build and let housing on a not-for-

³⁴ Government proposed to increase the number of cost-rent societies and to establish a body to administer loans: Great Britain, (1963). A change to a Labour administration shortly after the Corporation was set up did not affect its role or its objectives: £100 million was committed to the Corporation to be used to provide loans to housing associations: Housing Corporation 1965.

³⁵ On the private sector in rented housing, see: Harloe, (1985).

³⁶ Housing Corporation, (1989), see pp.7-12 for a review of cost-renting.

³⁷ A system of rent rebates was introduced to assist occupiers with their housing costs and housing association tenants were included in the rent rebate system. This was as proposed in: Great Britain, (1971), at paragraph 71.

³⁸ Pursuant to the Housing Act 1965.

³⁹ This followed a recommendation to this effect by the Central Housing Advisory Committee: Central Housing Advisory Committee, (1971), at p.101.

⁴⁰ Pierson, (1994). See also: Sullivan, (1996).

⁴¹ NFHS, (1970).

profit basis. It is significant that the NFHS accepted that there would be a need for some form of restriction on housing association discretion and freedom to operate through regulation as a *quid pro quo* for increased financial support.⁴²

In 1973 the Conservative government published two White Papers, *Widening the Choice: The Next Steps in Housing*⁴³ and *Better Homes: The Next Priorities*,⁴⁴ heralding a move away from the local authority monopoly of subsidized rented housing.⁴⁵ The second White Paper contemplated a greater role for housing associations primarily to facilitate choice in the rented market. Despite a change of government in 1974 the *Housing Act 1974* - which had been prepared as a bill under the Conservatives - was introduced and passed through Parliament. It implemented an enhanced finance regime for housing associations,⁴⁶ making subsidy available for the development of new and refurbished housing. This subsidy, known as Housing Association Grant ('HAG'),⁴⁷ significantly improved the financial position for associations. The HAG regime provided grants toward the cost of developing housing, with housing associations able to borrow money from the Housing Corporation to finance capital costs not covered by grant. The problem of affordability was resolved as HAG was calculated to take account of interest costs and an association's capacity to meet liabilities from rent revenue.⁴⁸ Grants to housing associations averaged about 85 per cent of costs per scheme with

⁴² NFHS, (1970).

⁴³ Great Britain, (1973a).

⁴⁴ Great Britain, (1973b).

⁴⁵ Great Britain, (1973a), generally at Part IV.

⁴⁶ The 1974 Act was described by the Department of the Environment as a charter for housing associations: DoE, Circular 170/74.

⁴⁷ Under Part III of the Housing Act 1974.

⁴⁸ Rent levels were determined in advance by a Rent Officer whose assessment of a fair rent was used to calculate the amount of interest which could be repaid from rental income (allowing for standard deductions such as bad debts and voids calculated over 30 or 60 years depending on whether the project was rehabilitation or new build). Working backwards from the Rent Officer's assessment provided the amount of loan that a housing association could be expected to repay solely by relying on its income from rents. HAG was then calculated to make up the difference between the total capital costs of a given project and the amount of loan finance available repayable from rents. HAG subsidy was confined to eligible costs but these were determined in advance as guideline costs and covered the usual expenditures associated with house-building.

loans available from the Corporation to cover the majority of residual costs.⁴⁹ The subsidy regime also provided for certain revenue deficits to be met by grant,⁵⁰ which, together with HAG, insulated associations from risks inherent in developing and letting housing.⁵¹ Enhanced subsidy for housing associations after 1974 led to an increase in the amount of development finance available to housing associations.⁵² This corresponded with an increase in housing association building activity, i.e. building starts and building completions. Output went up from just under 10,000 completions in 1974 to over 44,000 in 1977.⁵³ Public expenditure cuts after 1976 had an impact on building capacity as the amount of development finance was cut, so that by 1979 completions had fallen to less than 38,000.⁵⁴ Notwithstanding, it is obvious that capacity within the housing association movement had been increased as a result of government subsidy. After 1980 the pattern of housing association development reflected the level of public investment, which in turn influenced the number of approvals given by the Housing Corporation for individual housing association building schemes.⁵⁵

As anticipated by the NFHS, the benefits of HAG came at the cost of a stricter registration regime, and regulation by the Housing Corporation,⁵⁶ subjecting associations to greater scrutiny and control.⁵⁷ During the 1970's a number of scandals involving housing association financial mismanagement led to calls

⁴⁹ Local authorities were also instructed to cooperate and make loans available to with housing associations: DoE, Circular (14/75).

⁵⁰ Under Part III of the Housing Act 1974.

⁵¹ A detailed explanation of the HAG calculation is given by Cope: Cope (1999), in chapter 5.

⁵² The Housing Act 1974 increased the Housing Corporation's borrowing limit to £500 million.

⁵³ Malpass, (2000), at Table 7.1 and 8.2.

⁵⁴ Housing Corporation, (1977); and, Malpass, (2000), Tables 7.1 and 8.2. Cuts in public expenditure at this time are discussed by, Hogwood: (1992). The effect on housing associations is discussed in: Housing Corporation, (1989).

⁵⁵ Housing Corporation, (1981).

⁵⁶ Housing associations were required to register under Part II of the Housing Act 1974. Under section 1 of the 1974 Act the Housing Corporation was required to exercise supervision and control over associations. Associations that had received HAG were not allowed to de-register. Registration was intended to deter speculators, see: Crossland, A., MP, Secretary of State for the Environment, Hansard Parliamentary Debates, 5th Series (1974), 873, 48.

⁵⁷ The Central Housing Advisory Committee had suggested better controls on housing associations: Central Housing Advisory Committee, (1971), at paragraph 7.

for even greater scrutiny.⁵⁸ A Parliamentary report published in 1979 concluded that more needed to be done to make housing associations effective and accountable, and government became concerned to ensure that the benefits of Exchequer financial support should be enjoyed by properly managed and accountable organizations operating toward housing policy objectives.⁵⁹ This was significant for housing associations, which as resource dependent organizations, were vulnerable to prioritization by government.

Into the 1980's: a period of 'benign neglect' for housing associations

1977 saw the publication of a Green Paper, *Housing Policy*.⁶⁰ This offered support for growth in the housing association movement, but also proposed reform of the subsidy system. The *Planning Bill 1979* sought to implement some of these proposals but fell with a change of government in 1979. The election of a reforming Conservative government, with a deep seated antipathy toward local authorities, might have seen housing associations feature more significantly in housing policy. The Conservatives were not supportive of local authorities as housing providers; this was not mitigated by adverse criticism of public sector authorities as housing developers and housing managers by the Audit Commission and others in the mid 1980's.⁶¹ However, initially the Conservative government failed to provide anything other than rhetorical support for the non-profit housing sector. Langstaff suggests that between 1979 and 1987 housing associations were subject to a form of benign neglect as local authorities bore the brunt of housing reform.⁶² A possible explanation is that priorities were focused on other policy areas such as defence and policing.⁶³ Therefore the *Housing Act 1980*, which was the new government's first major piece of reform in housing, by and large retained the *status quo* for housing associations, in particular the system of

⁵⁸ The problems experienced by housing associations and the Housing Corporation at this time are discussed in: Housing Corporation. (1989), at pp. 35-37.

⁵⁹ Committee on Public Accounts, (1979).

⁶⁰ DoE, (1977).

⁶¹ Audit Commission (1986a); and, Audit Commission (1986b). Criticism also came from academic sources as part of the wider critique of local government, see for example: contributions in, Boddy and Fudge (eds.), (1984); and, Henney, (1984).

⁶² Langstaff, M., *Housing associations: a move to centre stage*, in Birchall, (1992).

⁶³ Housing was considered less important resulting in cuts in expenditure in this area: Cole and Furbey, (1994); and, Malpass, (1990).

funding based on HAG was left unchanged. On the issue of overall investment, in 1980 the Prime Minister, Margaret Thatcher, informed the Chair of the National Federation of Housing Associations ('NFHA'), which had taken over the role of the NFHS, that before more could be invested in voluntary housing the country would need to earn more.⁶⁴ Notwithstanding, public expenditure on housing associations was gradually increased between 1979-80 and 1987-88.⁶⁵ This additional funding was channeled through the Housing Corporation, a body with government appointees under the direction of ministers. This gave government control over the priorities for distribution of HAG, and the discretion to establish objectives for housing association development. As a result housing association priorities in the early and mid 1980s gradually came to reflect those of government, which included, for example: the provision of housing for the elderly,⁶⁶ and, schemes designed to access more people to home-ownership.⁶⁷ Housing associations were also recruited to assist local authorities with their housing functions, i.e. toward those in housing need, and homeless persons.⁶⁸ This was made a statutory requirement under section 72 of the *Housing Act 1985*: if a local authority requested assistance from a housing association with the discharge of its homelessness functions it was expected that the association would provide assistance to the extent that this was reasonable in the circumstances. For some housing associations in the 1980's the movement's role in policy, and the extent of external prioritization, was a cause for concern: as the fear grew that government, via the Housing Corporation, was attempting to force associations to work toward housing policy objectives, thereby undermining their independence.⁶⁹

⁶⁴ Letter to Peter Naish, Chair, NFHA, from the Prime Minister, quoted in: Housing Corporation, (1989), at p.42.

⁶⁵ Great Britain, (1984); and, Great Britain, (1989).

⁶⁶ Housing Corporation, (1981).

⁶⁷ On the level of expenditure on home-ownership initiatives for housing associations: Great Britain, (1984).

⁶⁸ Local authorities duties toward housing applicants are set out in Part VI of the Housing Act 1996 as amended by the Homelessness Act 2002. Local authorities duties to provide accommodation to the unintentionally homeless stem from Part III of the Housing Act 1985 and are now set out in Part VII of the Housing Act 1996, as amended by the Homelessness Act 2002.

⁶⁹ Wolmar, (1982).

The Housing Act 1988

The most radical changes in modern housing policy affecting housing associations took place after 1989. From the 15th January 1989, and the implementation of the *Housing Act 1988*, changes to the system of funding were introduced so that associations began to receive a greater proportion of their capital finance as loans from the private sector. This was achieved by a gradual reduction of the proportion of HAG finance provided for individual schemes, from an average of 75-80 percent in 1988-89 to 54 percent in 1999-2000.⁷⁰ In Wales, after 1989, HAG funding was administered by a newly established statutory body, Housing for Wales or Tai Cymru, with board members appointed by the Secretary of State for Wales.⁷¹ Despite these changes the Treasury continued to provide housing associations with substantial funds via the Housing Corporation/Tai Cymru so that associations become heavily reliant on a mix of funding, i.e. from the Treasury via HAG, and the private sector by way of secured loans.⁷² To enable housing associations to meet the cost of borrowing from the private sector a new housing tenure was introduced giving flexibility to set rents at a level sufficient to meet interest payments. This tenure, known as the assured tenancy regime, remains the tenure for new housing association tenants as well as for tenants in the private sector.⁷³

The reforms discussed in this section were part of a policy shift intended to position housing associations as the main development vehicles for new subsidized housing,⁷⁴ as foreshadowed in a 1987 White Paper, *Housing: the Government's Proposals*.⁷⁵ As part of the government's reforms local

⁷⁰ For England: Cope, (1999). In 1993 a Parliamentary Committee warned against a reduction in the overall grant rate below 67% to avoid jeopardizing development: Environment Committee, (1993). HAG rates in Wales are discussed in Chapter Nine.

⁷¹ An overview of the work of Tai Cymru after 1989 is given in an explanatory paper summarizing its various functions and achievements: Housing for Wales, (1997).

⁷² The introduction of mixed-funding was facilitated by changes to Treasury accounting conventions that allowed housing association borrowing to be disregarded for the purposes of calculating the Public Sector Borrowing requirement.

⁷³ Rents on assured tenancies are set by housing associations without the possibility of limitation by the Rent Officer; although the rent officer still has a role in setting market reference rents which are used by local authorities to calculate housing benefit.

⁷⁴ Malpass, P., *Housing policy and the disabling of local authorities*, in Birchall (ed.), (1992).

⁷⁵ Great Britain, (1987).

authorities were to be removed from housing provision into an enabling role, with the intention that:

'the provision of housing by local authorities should gradually be diminished ... [l]ocal authorities should increasingly see themselves as enablers who ensure that everyone in their area is adequately housed, but not necessarily by them.'⁷⁶

This of course was consistent with the Conservative government's overall approach to the delivery of public services. Also consistent with public policy generally was the introduction of a commercial ethos into the process of housing association development, as associations were required to bid against each other for government funds leading to the gradual introduction of a form of quasi-market in social housing.⁷⁷ The rationale behind these reforms was that the injection of market disciplines would lead to greater efficiency and effectiveness, more competent management, and greater independence.⁷⁸

The 1990's

As housing policy entered the 1990's housing associations continued to play a significant role as housing providers. In 1995 the government published a White Paper, *Our Future Homes: Opportunity, Choice, Responsibility*.⁷⁹ This was significant as it included amongst the objectives of housing policy, to provide diversity in the housing market, and to increase home-ownership. In this context housing associations were expected to contribute new housing to the rental market and to provide housing for sale. In addition to identifying a role for housing associations in housing policy, the White Paper was also significant as it established as a priority for associations that rents should be

⁷⁶ Great Britain, (1987), at p.3. On the enabling role of local authorities see: Goodlad, (1993); Fraser, (1991); and, Bramley, G., *An enabling role for local housing authorities: a preliminary evaluation*, in Malpass and Means (eds.), (1993). This was part of the reform of public services more widely as local authorities were removed from their role as providers and given the role of enablers.

⁷⁷ Bramley, G., *Quasi-markets and social housing*, in Le Grand and Bartlett, (eds.), (1993). Malpass argues that the system of bidding for HAG meant that a quasi-market was already in operation in any event: Malpass, (2000), at p.188.

⁷⁸ DoE, (1987), at paragraph 6.

⁷⁹ Great Britain, (1995); and, Welsh Office, (1995).

kept at below market levels.⁸⁰ This was despite the freedom given to housing associations under the assured tenancy regime to set rent levels to meet their revenue requirements. Government was able to specify these objectives for housing associations as, despite the introduction of mixed-funding, the movement continued to be heavily reliant on public subsidy. As Malpass has observed:

'Provision of a significant proportion of housing association development finance, through the grant system, gives government powerful levers of control over the total amount, type and location of development undertaken by [housing associations]. For government the grant system is the main mechanism by which it steers housing associations towards particular policy goals.'⁸¹

In 1996 further reforms were implemented with the introduction of the *Housing Act 1996*. For housing associations the 1996 Act introduced a new terminology as HAG was replaced by Social Housing Grant ('SHG'), although the funding system was left largely unchanged. Further, the Act introduced the concept of a Registered Social Landlord ('RSL') as a vehicle for developing social rented housing, to enable organizations other than housing associations to have a role in building and letting subsidized housing.⁸² The *Housing Act 1996* also confirmed that RSL's would continue to have a role in providing assistance to local authorities with their housing functions. Under the 1996 Act it is a requirement that RSLs should cooperate in offering accommodation to people with priority on a local authority's housing register,⁸³ and in relation to homeless persons, they are expected to render such assistance as is reasonable in the circumstances.⁸⁴ Following implementation of the 1996 Act all registered housing associations were automatically registered as RSLs.⁸⁵ In practice the terminology is interchangeable: in this study housing association is preferred although RSL may be used in context.

⁸⁰ Great Britain, (1995), at p.26.

⁸¹ Malpass, (2000), at p.200.

⁸² Section 1, Housing Act 1996.

⁸³ Section 170, Housing Act 1996.

⁸⁴ Section 213, Housing Act 1996.

⁸⁵ The commencement date of the Housing Act 1996 is the 1st October 1996. Section 1(2) of the 1996 Act (since repealed by the schedule 18 of the Government of Wales Act 1998) made

Housing associations and New Labour

When New Labour was elected in 1997 housing associations were established as the main providers of new social rented housing, and significant stockholders of existing housing.⁸⁶ Although this was a dramatic change from 1979 when Labour left power, the new administration did not seek to change the *status quo* as regards housing associations' role as housing developers, rather, it encouraged local authorities to work in partnership with housing associations.⁸⁷ Under New Labour, the movement's function as a development vehicle for new social rented housing is maintained in housing policy, alongside which there has been an expansion of its wider societal function as greater attention has been paid to the impact of poor housing on the maintenance of social deprivation, and on the positive impact of improved housing conditions on levels of deprivation and social exclusion.⁸⁸ Under Labour housing priorities have become centred on meeting the needs of socially excluded groups, the poor and those without the means or resources to access services. In this context, the provision of good quality affordable housing is seen as a way of combating social disadvantage and regenerating run-down areas, i.e. to the benefit of socially disadvantaged individuals, families, and communities.⁸⁹ For this reason Labour regards the voluntary housing movement as an important provider and contributor to its policy agenda, and housing associations have been given a role in tackling housing related disadvantage.⁹⁰

provision for all registered housing associations registered with Tai Cymru immediately before commencement of the Act to be registered as RSLs on that date.

⁸⁶ In 1996 housing associations in England and Wales had nearly 1 million dwellings, an increase of over 100% from 1981: Wilcox, (1997/98), Table 16a.

⁸⁷ See for example: DETR, (2000a); and, ODPM, (2005).

⁸⁸ See for example: DETR, (2000a); DETR, (2000b); and, ODPM, (2005).

⁸⁹ Klienman, (1996), at p.177. See also: DETR, (2000b). In this context the Social Exclusion Unit, established by Labour, has identified a number of indices pointing at neighbourhood social exclusion, these include poor housing: Social Exclusion Unit, (1998).

⁹⁰ Objectives set out in housing policy include: to raise the quality of all social housing; to provide affordable housing; to improve access to housing; and, to introduce a fairer system of rents. See: DETR, (2000b).

Perspectives on Housing Policy and Housing Associations in Wales

The Administration of Housing Policy in Wales

Presently in England housing policy is administered by the Office of the Deputy Prime Minister,⁹¹ in Wales this is decentralized to the National Assembly.⁹² Decentralization of housing policy administration to Wales has been a feature of housing policy since the Welsh Board of Health took over the housing functions of the Ministry of Health in the 1920's.⁹³ In 1951 a Wales office of the Ministry of Local Government and Planning, later the Ministry of Housing and Local Government, was established in Cardiff to oversee the administration of housing policy in Wales. In 1964 the post of Secretary of State for Wales was established,⁹⁴ and in 1965 the Welsh Office took over a range of functions from other departments of state, including responsibility for housing policy implementation,⁹⁵ with the Secretary of State given considerable discretion to implement housing policy within a legislative framework established by central government.⁹⁶ This move toward decentralization also saw the Housing Corporation set up a regional office in

⁹¹ In 1919 housing became one of the functional responsibilities of the Ministry of Health and since that date has been included as a subject responsibility of different departments of state - although historically responsibility for housing policy is given to a single department. In 1951 housing became the responsibility of the Ministry of Local Government and Planning passing shortly afterwards to the Ministry for Housing and Local Government. In 1970 the Department of the Environment became responsible. In 1997 the task of developing and implementing housing policy was given to the Department of Environment Transport and the Regions. In 2002 responsibility passed to the Office of the Deputy Prime Minister.

⁹² Pursuant to the Government of Wales Act 1998 and the accompanying Transfer of Functions Order SI 1999/672.

⁹³ Following implementation of the Ministry of Health Act 1919. Notwithstanding, some argue that the trend in modern housing policy has been for central government to reduce the scope for local government discretion, i.e. favouring an approach limiting the opportunity for housing institutions to depart from housing policy objectives. A number of commentators argue that this reflects a general tendency for central government to retain control over policy implementation: Rhodes, (1979); Bulpitt, (1983); and, Stoker, (1988). In housing context see: Dale, J., *Class Struggle, Social Policy and State Structure: Central-local relations and Housing Policy 1991-1939*, in Melling (ed.), (1980).

⁹⁴ There was considerable resistance to the post of Secretary of State for Wales. See, for example, the comments of the Prime Minister in 1957, refusing request by the Council of Wales and Monmouthshire to establish the post of Secretary of State: Great Britain, (1957).

⁹⁵ The Welsh Office notified relevant authorities of the change by circular in 1965: Welsh Office, Circular (1/65). Based in Cardiff the Welsh Office opened a London office to liaise with other Whitehall departments. For some the appointment of the office of Secretary of State for Wales marks a watershed in housing policy in Wales, see, for example: Harmer, M., Runnett, S., *The changing nature and role of Welsh social housing*, in Smith *et al* (eds.), (2000); and, Smith, R., Williams, P. *The changing nature of housing policy in Wales*, in Smith (ed.), (1995) (2nd Supplement to: Smith, (1989)).

⁹⁶ The incumbent was able to allocate public funds to individual programmes within Wales from the block grant provided by the Treasury giving the Secretary of State considerable discretion to establish the priorities for policy implementation at local level.

Cardiff in 1965. However, it was not until 1989, and the establishment of Housing for Wales/Tai Cymru under the *Housing Act 1988*, that Wales gained a distinct Wales-national policy institution responsible for the control, supervision, promotion and regulation of housing associations. Following devolution, the National Assembly for Wales took over responsibility for the housing functions of the Secretary of State and of Tai Cymru in July 1999 - although a merged housing department made up of the Welsh Office Housing Department and Tai Cymru had been operational since January 1999.⁹⁷

Historical Perspectives

Early housing policy in Wales: a marginal role for voluntary housing

At the end of the eighteenth century many people in Wales were living in poor housing as growth in urban areas led to overcrowding and poor sanitation and, following the industrial revolution, the incidence of slum-dwelling increased in areas such as: Merthyr Tydfil, Cardiff, Swansea and Newport.⁹⁸ As Welsh urban conurbations grew in size by population so housing conditions worsened.⁹⁹ It is difficult to find mention of the work of voluntary housing organizations in Wales at this time. It appears that unlike in England, the non-profit housing sector was not well developed. Part of the reason for this may be that nineteenth century Wales had relatively few wealthy individuals willing to build social housing for the working classes.¹⁰⁰ Also model dwelling companies do not seem to have had the impact in Wales as they did in England: schemes were established in Gwynedd, the Rhymney Valley and in the Ebbw valley, and there appears to have been some sporadic development by co-partnership societies (which financed house-building on the basis of equal shareholdings by tenants), but the voluntary housing movement's contribution to tackling the overall problem of poor housing

⁹⁷ Ibid n.92, and Welsh Office, (1998b).

⁹⁸ There are few accounts that deal with the housing position in Wales pre-industrialization, for examples see: Smith, (1975), and, Peate, (1946).

⁹⁹ Fisk has noted that at the beginning of the twentieth century: '*... housing and environmental conditions throughout the industrial parts of Wales worsened, the flow of in-migrants being accommodated, at least in part, by huts, cheap hotels, common lodging houses and the sharing of dwellings with lodgers. This, and the inadequacy of sanitation and water supplies, meant that there were frequent outbreaks of disease*': Fisk, M.J., *Historical perspectives on housing development*, in Smith *et al*, (2000), at p.19.

¹⁰⁰ Noted by: Fisk, (1996).

seems to have been almost negligible.¹⁰¹ Although the *Housing and Town Planning Act 1909* did prompt some voluntary sector initiatives, as organizations such as the Welsh Town Planning and Housing Trust became involved in the management of PUS's, setting up a number of garden city type housing projects,¹⁰² this work was short-lived and output modest, with PUS's completing just 1,559 houses by 1914.¹⁰³ In contrast, the *Housing and Town Planning Act 1919* gave a boost to local authority house building in Wales with councils building over 21,000 houses between 1919 and 1927.¹⁰⁴ Although this slowed as the Depression took hold in the valleys and industrial towns in the inter-war period the contribution of local authorities to the housing stock was substantial.¹⁰⁵ Whilst the evidence is scant, it is probably safe to conclude that voluntary housing organizations made little impact on the housing problem in Wales in the first half of the twentieth century. Local authorities were the main providers of mass subsidized housing, a position maintained after the Second World War, as the welfare state became established in Wales. Local authorities added nearly 120,000 new council houses to their stock between 1945 and 1959, with municipal housing representing the bulk of new development in many areas.¹⁰⁶ By comparison the output of housing associations in Wales was negligible, contributing far fewer dwellings to Wales's housing stock: between 1949 and 1959 housing associations and new town corporations together built just 5,529 dwellings.¹⁰⁷ As the 1960's

¹⁰¹ Accounts which contain some reference (albeit limited) on the work of model dwelling companies in Wales, and other voluntary housing schemes include: Ashworth, (1954); Owen, (1965); Gaskell, (1986), Fisk, M.J., *Historical perspectives on housing development*, in Smith *et al* (eds.), (2000), at p.23; and, Malpass, (2000), at p.68. The lack of housing provision led many to turn to owner-occupation and building-clubs as the solution to housing need: Daunton, (1987), at p.72. See also: Fisk, M.J., *Historical perspectives on housing development*, in Smith *et al*, (2000), at p.22.

¹⁰² The Trust was established with assistance from the Public Works Loans Board and money provided by the Great Western Railway. The work of PUS in Wales is mentioned by: Malpass, (2000), at p.85; and, Fisk, M., *Historical perspectives on housing development*, in Smith *et al* (eds.), (2000), at p.25.

¹⁰³ Charles, (1936).

¹⁰⁴ Charles, (1928).

¹⁰⁵ However Morgan notes that less than 1,500 dwellings were completed by local authorities and the private sector in Wales in 1931: Morgan, (1982).

¹⁰⁶ Welsh Office, (1970a). Balchin notes that 90 per cent of the housing built in the Swansea area (excluding Swansea itself and Bridgend) was council housing: Balchin, (1971).

¹⁰⁷ For completions by new towns and housing associations between 1949 and 1959, see: Welsh Office, (1975). From 1958 the number of completions for housing associations and new-towns is separately recorded showing housing association completions for the years

approached it is apparent that housing associations were marginal within the system of subsidized housing in Wales with local authorities the dominant provider.

The 1960's: the beginnings of a housing association movement in Wales

The growth of the voluntary housing movement into a significant provider of housing in Wales has taken place as a relatively recent occurrence.¹⁰⁸ Housing associations did have some stock in the 1930's, and continued to develop housing in the 1940's and 1950's, but this was limited in scale and mostly confined to South Wales.¹⁰⁹ It was not until the 1960's and the introduction of cost-renting that voluntary housing organizations, as a movement, began to make an impact. The *Housing Act 1961* was a spur to the formation of new societies as the cost-rent scheme was well received by local authorities - such as Cardiff, Swansea and Conway - some of whom were willing to make land available for development despite doubts about whether or not cost-renting could be made affordable in Welsh towns.¹¹⁰ By the end of March 1966 a total of 6 cost-rent societies had entered into development agreements with the Housing Corporation in Wales with nearly £500,000 made available as loans.¹¹¹ Housing Corporation reports show that to year end March 1966 approval had been given for cost-rent schemes to provide 321 dwellings - mainly located in the Cardiff area.¹¹² In fact throughout the period of the cost-rent experiment development was mainly focused in and around Cardiff, although by 1968 schemes were approved or under consideration in the South Wales Valleys and mid Wales.¹¹³ The Housing Corporation reported in 1968 that *'with minor exceptions schemes approved*

1957 and 1958 as just 8 and 2 compared with 363 and 447 completions for new-towns in the same years: Welsh Office, (1980).

¹⁰⁸ Activity before 1935 being mostly based on experimental models of housing provision, for example, garden city and co-partnership developments: Fisk, (1997). As a collective, the work of voluntary housing organizations in Wales before 1935 is not well documented.

¹⁰⁹ For a brief commentary on the work of housing associations in the 1940's and 1950's see: Fisk, M.J., *Historical perspectives on housing development*, in Smith *et al*, (2000).

¹¹⁰ Housing Corporation, (1966), at paragraphs 6 and 10.

¹¹¹ Estimates predicted a loan take-up of £2.4 million to fund cost-rent schemes: Great Britain, (1996-67).

¹¹² These are figures for approvals and not output: Housing Corporation, (1966), at Appendix IIIa.

¹¹³ Housing Corporation, (1968), at paragraph 32.

*for Wales are concentrated in Cardiff and district*¹¹⁴ Of the 21 cost-rent societies that were operational by the end of March 1967 only 5 were developing outside of the Cardiff area with 3 in North Wales, 1 in mid-Wales and 1 in Swansea.¹¹⁵ The demise of cost-renting in Wales came about as increased interest rates and building costs made cost-rents unaffordable and the experiment ended in the late 1960's. The Housing Corporation reported in 1969 that traditional low rent areas such as West and mid Wales rents had been particularly harshly affected by rising housing costs.¹¹⁶ Its projections in 1970 show that it did not anticipate the development of any new cost-rent housing in 1970/71 or 1971/72.¹¹⁷ It is difficult to gauge the success of the cost-rent scheme in Wales in output terms. Aggregate statistics show that between 1965 and 1973 housing societies in Wales sponsored by the Housing Corporation built 876 dwellings.¹¹⁸ Not all of these dwellings were for cost-renting, as some development also took place on co-ownership terms. This was sponsored by the Housing Corporation under the 1961 Act and continued to be supported by the Corporation under the Housing Act 1964.¹¹⁹ The ratio of cost-rent schemes to co-ownership being about 2:1 in 1967 but closer to 50:50 by 1968.¹²⁰

Housing associations in Wales in the 1970's

During the 1960's and early 1970's housing association building activity was concentrated in England with very little development in Wales.¹²¹ Concerning cost-rent societies this is unsurprising as Wales received the lowest level of Housing Corporation finance in comparison with the English regions, i.e. 11% of overall funding compared with 14% for the Midlands which received the

¹¹⁴ Housing Corporation, (1968), at paragraph 30.

¹¹⁵ Housing Corporation, (1967).

¹¹⁶ Housing Corporation, (1969), at paragraph 25.

¹¹⁷ Housing Corporation, (1970), at paragraph 2.

¹¹⁸ Welsh Office, (1973), Table 54.

¹¹⁹ Housing Corporation annual reports between 1965 and 1972 (covering cost-renting) refer initially to dwellings provided until in 1968 the reference is to units provided: there is no explanation for the change in terminology although it is apparent from the reports that the information refers to dwellings (Housing Corporation annual reports 1965-1972, references are given by year in the Bibliography).

¹²⁰ Not all of these dwellings were for cost-renting as some development also took place on co- Housing Corporation, (1967), at p.19; and, Housing Corporation, (1968), at p.8, Table II.

¹²¹ Malpass, (2000) pp.150-151.

next lowest allocation of funds.¹²² It is less understandable for voluntary housing in general as the Welsh Office was supportive and encouraged local authorities to work with housing associations in the 1960's.¹²³ By the mid 1970's it had come to regard associations as a resource available to local authorities to meet the housing needs of particular social groups.¹²⁴ The Welsh Office also saw housing association provision as an alternative to large-scale development by local authorities. In 1974 it commented that housing associations had the capacity to:

'Maintain or inject small-scale management into situations where the management of socially owned rented housing is becoming increasingly large and remote.'¹²⁵

Notwithstanding, housing association development remained relatively modest until about 1977 when the impact of the *Housing Act 1974* began to be felt in Wales. The Act had the affect of encouraging the formation of new housing associations to provide housing at a fair rent as set by the Rent Officer¹²⁶ - which in Wales had come to be regarded as an affordable rent.¹²⁷ As a result output in the housing association sector increased noticeably after 1974, from 176 completions in 1974 to 1,072 in 1978, and 1,016 in 1979.¹²⁸ House production was an average of about 616 completions per annum between 1975 and 1988.¹²⁹ The housing association movement was given a further boost in 1976 when the NFHA established the Welsh Housing Associations Committee ('WHAC') to promote the growth of voluntary housing in Wales. The NFHA noted in 1983 that:

'In 1976 the NFHA brought together all the registered housing associations in Wales ... to form the Welsh Housing Association Committee. Unlike the English regions which contained well-

¹²² Housing Corporation, (1968).

¹²³ The Welsh Office issued a circular reminding councils of their powers to support associations providing accommodation similar to municipal housing: Welsh Office, Circular (64/67).

¹²⁴ Welsh Office, Circular (274/74).

¹²⁵ Welsh Office, Circular (274/74).

¹²⁶ WHAC, (1985).

¹²⁷ Fair rents are described as affordable rents in: WHAC, (1977).

¹²⁸ Welsh Office, (1998c).

¹²⁹ This compares with an average of just 145 completions per annum between 1958 and 1974: Welsh Office, (1980); and, Welsh Office, (1998c).

established housing associations who were brought together to provide a forum, the motivation behind setting up WHAC was to encourage the growth of the voluntary housing movement in Wales. Indeed apart from the activities of a few housing associations concerned with co-ownership housing, very little activity by housing associations dealing in Fair Rent housing has taken place in Wales.¹³⁰

This confirms the lack of an established housing association tradition in Wales before the 1970's. The NFHA initiative was a success with 16 new associations formed between 1976 and 1983.¹³¹ Further, it appears that the movement was vitalized and prompted to develop housing: in 1974 only one housing association was involved in development sponsored by the Housing Corporation,¹³² however by 1983 there were 41 associations in Wales with active development programmes.¹³³

Housing associations in Wales in the 1980's and 1990's

The late 1970's was a period of growth for the housing association movement in Wales. After 1978 housing associations were able to make significant progress in providing accommodation for rent.¹³⁴ The movement was growing in confidence so that by 1977 the WHAC was arguing that associations had the capacity to make a contribution to the regeneration agenda in Wales.¹³⁵ But there were factors that limited their ability to work toward meeting housing need at this time. Firstly, housing associations tended to be small operations and therefore lacked the capacity to take on large scale development,¹³⁶ and, secondly, the problem of high building costs presented difficulties in planning schemes to be let at affordable rents.¹³⁷ It was also the case that in Wales

¹³⁰ NFHA, (1983a), at p.89.

¹³¹ The WHAC came together with the Housing Corporation to form the Secondary Housing Association for Wales to offer development, architectural and managerial services to associations as members of SHAW in advance of their becoming independent: NFHA, (1983a).

¹³² Brookes, (1984), at pp.229-231. .

¹³³ This despite attempts by the Housing Corporation to limit the number of registrations of new associations to avoid stretching available resources: Brookes, (1984).

¹³⁴ Housing Corporation, (1986); and, Jones, (1981).

¹³⁵ WHAC, (1977).

¹³⁶ It was doubted even within the Housing Corporation that the housing association movement could make any significant contribution in development terms: Housing Corporation, (1970), at paragraph 27.

¹³⁷ Welsh Office, (1970b).

local authorities continued to dominate as providers of social rented housing. Even the WHAC supported local government as the body primarily responsible for meeting housing need. In 1977 it argued for housing associations to be given a specialist housing role to complement the general function of local authorities.¹³⁸ The position changed during the late 1970's, and in particular during the 1980's, as the housing association movement grew in size following the introduction of mixed-funding. But the way in which housing policy was put into practice in Wales meant that this growth was not uniform.¹³⁹

The introduction of mixed-funding in Wales

The mixed-funding regime was piloted in Wales under the Challenge Funding programme in 1987/88 when the Housing Corporation allocated 6 percent of funds from its Approved Development Programme to be used to finance housing development in St. Mellons, Cardiff. The amount of HAG available to support the development was limited and the cost of the scheme was part financed with monies provided by the private sector.¹⁴⁰ The success of the St. Mellons' experiment meant that mixed-funding was implemented as the finance regime for housing associations in England and Wales after 1989. Despite a reduction in the amount of HAG available for individual development schemes, i.e. lowered from an average of 75 percent in 1989-90 to 65 percent in 1992,¹⁴¹ the introduction of private finance together with an increase in overall public subsidy meant that housing association building completions went up after 1989, allowing associations to move to a position of

¹³⁸ For example, to provide accommodation to workers in small towns where the Development Board for Rural Wales was working to revive local industry: WHAC, (1977).

¹³⁹ For example, in the early 1980's the NFHA and WHAC became concerned that a freeze on housing association finance at 1981/82 levels would put at risk the development activities of new associations formed specifically to take advantage of the funding available from government. Discussions with the Housing Minister led to an additional £10 million being made available in excess of the planned budget for housing associations in Wales for 1982/83. This resulted in the building programme for 1982/83 increasing from an anticipated 300 new build and 765 rehabilitation starts, to 510 and 1280 starts respectively, but in contrast in the following year (1983/84) there was a shortfall on the finance required to fund the development programme leading to a restriction on the number of tenders for development: NFHA, (1983); and, NFHA, (1985).

¹⁴⁰ HAG and private finance was used to build 260 dwellings in St. Mellons in Cardiff to be let on assured tenancies, remaining Corporation funds were used to build fair rent housing (88 percent) and LCHO schemes (6 percent): Housing Corporation (1987).

¹⁴¹ See: Tai Cymru Circulars, 5/91, 24/92, 1/94, 19/94, for HAG rates under Tai Cymru.

dominance as providers of new social housing in Wales (discussed further in Chapter Nine). The introduction of mixed-funding therefore heralded an era in which associations in Wales emerged from the shadow of local authorities as the main developers of social rented housing.¹⁴² This process was facilitated by government housing policy hostile to local authorities as housing providers and managers, including the introduction of the right-to-buy that saw increased sales of council housing to tenants.¹⁴³ A gradual decline in the size of local authority housing stock in Wales in the 1980's and 1990's through housing sales contributed to a significant shift in the stock balance between the public sector and housing associations. In 1981 local authorities controlled over 96 percent of all subsidized rented housing in Wales and housing associations just over 3.5 percent; by 1997 housing associations managed 25 percent of all social rented housing in Wales.¹⁴⁴ Equally significant was that by 1989 housing association completions had overtaken local authority completions and associations had replaced local councils as the main development vehicles for subsidized rented housing in Wales. In 1989, the first year in which housing associations completed more new dwellings than local authorities, there were 1,663 completions by associations and 630 by local authorities.¹⁴⁵

Housing associations and political prioritization in Wales in the 1990's

In 1991 the Welsh Office published *Housing in Wales: An Agenda for Action*¹⁴⁶ establishing priorities for housing policy in Wales. It supported home-ownership but also recognized a continuing need for rented accommodation. To encourage the private rented sector housing associations were to act as a conduit to attract private finance into the housing market and were to be responsible for providing new subsidized rented housing,¹⁴⁷ with

¹⁴² Harmer, M., and Runnett, S., *The changing nature and role of Welsh social housing*, in Smith *et al*, (eds.), (2000), at p.125.

¹⁴³ Under the Housing Act 1980.

¹⁴⁴ Welsh Office, (1981); Welsh Office, (1998c).

¹⁴⁵ Welsh Office, (1998c).

¹⁴⁶ Welsh Office, (1991).

¹⁴⁷ Welsh Office, (1991), at pp.3-4, and p.15.

local authorities acting in an enabling capacity.¹⁴⁸ *Agenda for Action* was short-lived as a statement of policy as the priorities of central government over the Welsh Office were re-asserted with the publication of a White Paper, *Our Future Homes: Opportunity, Choice, Responsibility*.¹⁴⁹ This gave as amongst the aims of housing policy in Wales to provide diversity in the housing market and to support home-ownership.¹⁵⁰ Against this background the main priority for Tai Cymru and housing associations in Wales during the 1990's became to ensure diversity in the rental market, one significant consequence of which was that Tai Cymru became focused on increasing the output of new housing.¹⁵¹ The impact for housing associations is discussed further in Chapter Seven (roles), and Chapter Nine (development).

Housing Associations and Housing Policy in Wales after 1999

The National Assembly for Wales took over responsibility for housing associations in July 1999.¹⁵² Although limitations are imposed by the Assembly's lack of primary law-making powers the government of Wales is able to make and implement policies that reflect Wales-national housing priorities.¹⁵³ To this end it has sought to devise and implement a housing strategy for Wales: although the initial focus of attention for the National Assembly was on health, education, social inclusion, developing partnerships and providing effective government.¹⁵⁴ This caused some to doubt that the housing objectives of the National Assembly would be any different from those established for United Kingdom generally, and to query whether

¹⁴⁸ As signaled in: Great Britain, (1987). On the changing role of local authorities see: Fraser, (1991); and, Goodlad, (1993)..

¹⁴⁹ Great Britain, (1995); and, Welsh Office, (1995).

¹⁵⁰ For example, the White Paper sought to promote increased home-ownership; although the Welsh Office had already published a guide to the options available for those seeking to become owner-occupiers: Welsh Office, (1993).

¹⁵¹ Williams, (1998).

¹⁵² Pursuant to: SI 1999/672.

¹⁵³ The National Assembly must determine its strategy on housing to take account of, for example: tenure regimes for rented housing established under the Housing Act 1985 (local authority secure tenancies), the Housing Act 1996 (local authority non-secure and introductory tenancies), and the Housing Act 1988 (housing association assured and assured shorthold tenancies); the system of finance for local government and housing associations; the law on anti-social behaviour as it applies to social housing and social housing providers under the Housing Act 1996 as amended by the Anti-social Behaviour Act 2003; and the statutory responsibilities on social housing institutions set out in homelessness legislation under the Housing Act 1996 as amended by the Homelessness Act 2002.

¹⁵⁴ First Minister, National Assembly Record of Proceedings, 17th June 1999.

sufficient resources would be made available to tackle the housing problem in Wales.¹⁵⁵ Notwithstanding the significance of the National Assembly housing function is such that in this study reference will be made to Wales-national housing policy when discussing the Assembly's housing policy, reflecting the strategic role of the Wales-national government.

The development of a Wales-National housing policy

When the National Assembly took over from Tai Cymru housing associations were working in an operating environment shaped by the mixed-funding regime, and by the priorities established by its predecessor, i.e. focusing on high output. Unlike Tai Cymru, the National Assembly is responsible for housing policy across all sectors and as such it has sought to develop a strategy having regard to all tenures and sectors relevant to both the housing system and the housing market. Work on a strategy document setting out the Assembly's policy began under the Welsh Office, which in 1998 set up a National Consultative Forum on Housing (the 'NCFH').¹⁵⁶ Its aim was to gather the views of interested parties on the development of a strategy and policy.¹⁵⁷ Housing associations were given an input via their representative body the Welsh Federation of Housing Associations (the 'WFHA'),¹⁵⁸ particularly as regards operational matters.¹⁵⁹ The NCFH presented the National Assembly with a *Framework for a National Housing Strategy in Wales*¹⁶⁰ shortly after devolution. This document stressed the importance of partnership between local authorities and organizations able to make an impact on housing and

¹⁵⁵ For example, John Puzey, Director of Shelter Cymru in 1997, expressed doubts that additional resources would be made available for housing given the dominance of health and education on the policy agenda: Puzey, (1997).

¹⁵⁶ The first meeting was in February 1998.

¹⁵⁷ Noted in: NCFH, (1998a).

¹⁵⁸ The WFHA came together with the Welsh Local Government Association to form the Wales National Social Landlord's Forum ('WNSLF'). The WNSLF agreed to make recommendations to the National Consultative Housing Forum and to begin to set out the principle elements of the framework document. Although the WFHA was quick to emphasize that the recommendations made were for consideration as part of the framework and not the framework itself: NCFH, (1998-2004), No.2 and No.3.

¹⁵⁹ Associations have an ongoing input into the policy process through representation on the forum, although this is primarily on operational rather than strategic issues, confirmed by the NCFH's terms of reference: NCFH, (1998a).

¹⁶⁰ NCFH, (1999a).

housing conditions.¹⁶¹ Continuing the process of developing a strategy the National Assembly published a Consultation Paper, *Better Homes for People in Wales*,¹⁶² in 2000. This set out its proposals for a Wales-national housing policy as broader than the mere provision of housing. The consultation document gave the purpose of the Assembly's housing policy, *inter alia*, as:

'... [to] make a real contribution towards reducing social disadvantage and provide the framework within which we can develop thriving and vibrant sustainable communities.'¹⁶³

And made a connection between housing policy and wider social policy:

'Poor housing can have consequences for our health, educational attainment and access to employment, and is often directly linked with social exclusion and disadvantage. Decent housing, where people have access to jobs, services, transport and local amenities, is fundamental to ensuring that our communities are sustainable and our people are not socially disadvantaged.'¹⁶⁴

The National Assembly's housing strategy for Wales was adopted in the form of a final policy document in July 2001 as *Better Homes for People in Wales: A National Housing Strategy for Wales*.¹⁶⁵ It establishes as overarching aims of Wales-national housing policy: to maintain the supply of good quality affordable housing; and, to provide a choice of housing tenure in Wales.¹⁶⁶ Further objectives that the Assembly has set for itself in this context are: to provide a strategic role for local authorities;¹⁶⁷ to meet housing need and

¹⁶¹ NCFH, (1999a), at p.5. The Assembly then set up four task groups to deal with specific issues, and to develop policy proposals for consideration by the National Assembly having regard to its devolved powers and the funding available under the Treasury's block allocation: NCFH, (1999b). The areas dealt with by the Task Groups were: Task Group 1; Identifying and meeting housing requirements in the context of community infrastructures and local planning systems, Task Group 2; Creating efficient and accessible private housing markets with good quality accommodation, Task Group 3; Sustainable social housing for the 21st century; Task Group 4, Ensuring decent housing for all - meeting the requirements for vulnerable households. The task groups reported to the National Assembly via the NCFH in April 2000: NAW, (2000c).

¹⁶² NAW, (2000d).

¹⁶³ NAW, (2000d), *Foreword* by Edwina Hart AM, Minister for Finance, Local Government and Communities, at p.1.

¹⁶⁴ NAW, (2000d), at p.21.

¹⁶⁵ NAW, (2001c).

¹⁶⁶ NAW, (2001c), *'Our vision for housing in Wales'*, at p.8.

¹⁶⁷ NAW, (2001c), at Chp. B.

demand;¹⁶⁸ to improve the quality of Welsh housing;¹⁶⁹ to make housing affordable;¹⁷⁰ and, to regenerate communities.¹⁷¹

Implementing the National Assembly's Housing Strategy

Responsibility for implementing the National Assembly's strategy in housing is given to the Assembly Minister for Social Justice and Regeneration who is a member of a National Assembly subject committee¹⁷² serviced by a Housing Directorate within the Assembly.¹⁷³ The Directorate was made operational on the initiative of the Secretary of State, as a Welsh Housing Department within the Welsh Office in January 1999.¹⁷⁴ In seeking to implement its housing policy the National Assembly has recognized the contribution of the housing association movement as the provider of most of the new social housing in Wales - described as public housing.¹⁷⁵ Although the lead role in assessing and meeting local housing need is given to local government, the National Assembly requires local authorities to publish local housing strategies, and anticipates that these will indicate how authorities will work in partnership with other agencies, including housing associations.¹⁷⁶ In this context, guidance on the preparation of local housing strategies issued by the WAG emphasizes

¹⁶⁸ NAW, (2000c), at Chp.D.

¹⁶⁹ NAW, (2001c), at Chp. G.

¹⁷⁰ NAW, (2001c), at Chp. G.13.

¹⁷¹ NAW, (2001c), at Chp. C.

¹⁷² This Committee has been given the task of considering housing issues affecting the whole of Wales and makes recommendations to the Minister on matters arising in relation to housing policy. The Committee is established to comply with section 57 of the Government of Wales Act 1998.

¹⁷³ The functions performed by the Directorate include those previously performed by the Welsh Office Housing Department and Tai Cymru.

¹⁷⁴ This followed publication of proposals for rationalizing housing policy process by the Welsh Office in 1998: Welsh Office, (1998b). The housing department became operational in January 1999 and now discharges its functions as the Housing Directorate. The Directorate has several units each responsible in different policy areas, these are: construction and domestic energy; housing management and homelessness; the private sector; social housing regulation and investment; strategy research and information; and, supported housing (information given by the Housing Directorate in 2005 and reflects the organization of the Directorate at that time. The organization of the department is subject to change and re-organization at the direction of the Minister). The department was set up with the purpose of increasing accountability to Ministers and the Assembly; but also to provide a more coordinated approach across departments dealing with social policy and planning functions and to deliver financial savings: NCFH, (1998b).

¹⁷⁵ NAW, (2000d), at p.30.

¹⁷⁶ NAW, (2001c), Chp. B.

that housing associations should play a key role in meeting local need.¹⁷⁷ To enhance the strategic role of local government the WAG anticipates that housing associations will enter into Community Housing Agreements ('CHAs') with local authorities to cover operational matters such as: the development of new social housing; allocation of housing; tenant participation; and, tackling anti-social behaviour as part of a regeneration agenda.¹⁷⁸ The WAG has suggested that CHAs should establish and set out shared objectives, particularly in areas such as the development and rehabilitation of housing for people on low incomes.¹⁷⁹

Housing Associations: A Structured Voluntary Sector

The following sections complete the background for discussing housing associations in Wales by considering how the movement is structured, and its connections with the wider voluntary sector.

The Relevance of Voluntary Housing

Housing associations: a registered voluntary housing sector

To overcome the imprecision inherent in references to voluntary housing for the purposes of subsidy distribution statute has established a formal registered non-profit housing sector. Since 1935 housing associations have been the statutory vehicle by which government has engaged with the voluntary housing sector. The definition of a housing association is set out in section 1 of the *Housing Associations Act 1985*. It defines a housing association as:

'A society, body of trustees or a company [a] which is established for the purpose of, or amongst whose objects or powers are included those of, providing, constructing, improving or managing, or facilitating or encouraging the construction or improvement of, housing accommodation and [b] which does not trade for profit or whose constitution or rules prohibit the issue of capital with interest or dividend exceeding such a rate as may

¹⁷⁷ The collaborative approach is stressed in the national housing strategy and in guidance on the preparation of local housing strategies: WAG, (2002).

¹⁷⁸ WAG, (2002); and NAW, (2001c), at paragraph B.5.

¹⁷⁹ WAG, (2002); and, NAW, (2001c) at paragraph B.5..

be determined by the Treasury, whether with or without distinction between share and loan capital.¹⁸⁰

This definition is current, non-prescriptive and its use is not restricted in law; any organization may refer to itself as a housing association. The definition is relevant to limit the distribution of public subsidy and eligibility for government financial assistance to an identifiable and registered non-profit housing sector.¹⁸¹ It is significant as it raises the possibility of registered housing associations being seen as a voluntary sector response to housing policy, i.e. as the statutory embodiment of a formal non-profit housing sector.¹⁸² Whilst the utility of the statutory definition is primarily to serve the purposes of government, along with further statutory restrictions on payments that may be made to board members, it maintains links between housing associations and the voluntary sector through the prescription of voluntarism at board level.¹⁸³ This is re-enforced through guidance from the regulator specifying the types of payments allowed to be made to board members.¹⁸⁴ The combined effect of statute, regulation and guidance means that housing associations are reliant on volunteers to discharge a governance function, and it is at board level that links with the non-profit sector via voluntarism are preserved in the housing association movement.¹⁸⁵ Notwithstanding, whilst voluntary governance provides a strong link with the voluntary sector the extent to which associations may claim reliance on voluntarism is put in doubt by the scale of their operations.¹⁸⁶ Despite this voluntarism remains fundamental to

¹⁸⁰ The first statutory definition of a housing association was given in the *Housing Act 1935* and has remained largely unchanged.

¹⁸¹ Section 1 of the *Housing Act 1996* establishes a register housing associations. The regulator is required to establish criteria for registration: section 5, HA 1996. These requirements were previously imposed by section 3 and section 5 of the *Housing Associations Act 1985*.

¹⁸² For example: Alder and Handy, (1997).

¹⁸³ Under section 15 of the *Housing Associations Act 1985*; and now, schedule 1 of the *Housing Act 1996*.

¹⁸⁴ *Housing Corporation*, (2004); *NAW*, (2006a); and, *NAW*, (2006b). *Tai Cymru* published its guidance in the form of circulars: *Tai Cymru Circular*, 11/90 and 3/96, explaining the practical effect of statutory limitations on payments to members and shareholders; and, *Tai Cymru Circular* 19/96, offering guidance on remuneration of board members, and 17/96 dealing with the position post-implementation of the *Housing Act 1996*.

¹⁸⁵ Cope, (1999).

¹⁸⁶ Doubts are raised by some commentators concerning the extent to which volunteer directors can be expected to exercise real control over strategy and operations in large-scale housing associations: *Malpass*, (2000); and, *Cope* (1999).



the way in which associations are governed, and is a characteristic that the movement UK-nationally is determined to preserve.¹⁸⁷

Housing associations: an independent movement

It is apparent that the growth of voluntary housing in the United Kingdom represents a voluntary sector response to housing need, and the development of cost-rent societies and housing associations may be seen as direct consequence of housing policy - as many associations were formed to take advantage of funding provided by the Treasury to assist with house building.¹⁸⁸ However, as voluntary housing pre-dates housing policy, and housing associations are not reliant on statutory authority to legitimize their housing function, the housing association movement is distinct from the public sector and independent of local government and the welfare state in housing.¹⁸⁹ Structurally and constitutionally voluntary housing is *prima facie* independent of the state, and to this extent meets with the key criterion of independence to define a voluntary organization. In common with other voluntary organizations the characteristic of independence is highly valued by the non-profit housing movement and housing associations. In 1994 the Chair of the NFHA's inquiry into housing association governance commented that associations should be:

'Independent of party politics and pressure groups. Independent of ministers, government departments and local authorities. Answerable principally to their own values and objectives. They should be no-one's agent or subordinate.'¹⁹⁰

The inquiry committee also noted that independence might be seen as advancing the social purpose of the housing association movement.¹⁹¹ Also, the voluntary housing movement is set apart from the market as a delivery vehicle for a range of housing and housing related services, as: non-profit distribution and voluntarism feature as significant for all voluntary housing

¹⁸⁷ This was one of the observations of the Hancock Committee: NFHA, (1995), at p.39.

¹⁸⁸ Malpass, (2000); Cope, (1999).

¹⁸⁹ As in the case of voluntary organizations generally, the liberalism of the common law provides an explanation for the diversity of voluntary housing as noted by, for example: Raynsfod, (1980); Malpass, (2000); and, Cope, (1999).

¹⁹⁰ NFHA, (1995), at p.5.

¹⁹¹ NFHA, (1995), at p.12.

organizations; and, the provision of social rented housing may be seen as a response to market failure.

Registration and regulation of housing associations

To qualify for government financial support housing associations in England and Wales must register with either the Housing Corporation in England, or in Wales with the National Assembly (prior to 1999 registration was the responsibility of Tai Cymru).¹⁹² Since the 1st October 1996 registration has been as an RSL under the *Housing Act 1996*. As was the case under the *Housing Associations Act 1985*, the 1996 Act prescribes the permissible functions of a housing association, these include: building and improving housing; building housing for sale; letting housing; and, providing services in the nature of maintenance services¹⁹³ (these also feature as mandatory requirements on registration¹⁹⁴). The Secretary of State, and in Wales the National Assembly, may add to the list of permissible objectives allowing government to specify roles for housing associations in housing policy.¹⁹⁵ In 1999 the Secretary of State made use of this power to extend the permissible objectives for RSLs to enable housing associations to engage in community regeneration activities as part of the Labour Government's social justice and regeneration agenda.¹⁹⁶ It follows that government is provided with the legislative discretion to establish and/or limit the purposes and objects of housing associations in accordance with the aims of housing policy.

Submission to a regulatory jurisdiction

Registered housing associations will usually adopt the form of a charity which is a housing association, an I&P society or a company.¹⁹⁷ For housing associations registration involves submission to the jurisdiction of an industry

¹⁹² Grants available to subsidize building activities are only payable to registered social landlords under section 18 of the *Housing Act 1996*.

¹⁹³ Section 2(4), *Housing Act 1996*.

¹⁹⁴ See for example: *Housing Corporation Circular, 27/88*.

¹⁹⁵ Section 2(7), *HA 1996*.

¹⁹⁶ *SI. 1999/1206* untitled.

¹⁹⁷ Although there is no requirement for a voluntary housing organization to be formally constituted, and an association may be established as unincorporated association, registration criteria ensure that some form of formal constitution is unavoidable, see: *Tai Cymru Circular 27/88*; *Housing Corporation, (2004)*; *NAW, (2006a)*; and, *NAW, (2006b)*.

regulator able to exercise coercive powers given by statute.¹⁹⁸ These include: the power to remove a director or trustee from the board if he or she is disqualified or is found to be impeding the proper management of an association;¹⁹⁹ and, the discretion to apply for a winding up order where a housing association is failing to carry out its purpose or objects.²⁰⁰ In addition the regulator may establish an inquiry into a housing association if it suspects misconduct or mismanagement, and may remove any officer or employee found to have acted improperly.²⁰¹ These provide for a strong regulatory regime with sanctions available.

Along with the responsibility to ensure that registered housing associations meet with statutory requirements on registration and at all times thereafter, the regulator is required by statute to exercise supervision and control over associations.²⁰² To this end the regulator is given powers under the *Housing Act 1996* to issue guidance on the conduct of registered housing associations, in particular dealing with: the housing demands for which provision should be made and the means of meeting those demands; the allocation of housing accommodation between individuals; the terms of tenancies and the principles upon which levels of rent should be determined; standards of maintenance and repair and the means of achieving those standards; the services to be provided to tenants; the procedures to be adopted to deal with complaints by tenants against a landlord; consultation and communication with tenants; and, the devolution to tenants of decisions concerning the management of housing accommodation.²⁰³ The extent to which a housing association is acting in compliance with any guidance issued may be taken into account by the regulator when considering whether to exercise its supervisory powers.²⁰⁴ This gives the regulator considerable leverage over associations and provides

¹⁹⁸ Under schedule 1, Housing Act 1996.

¹⁹⁹ Under paragraph 4 of schedule 1 of the Housing Act 1996, a person may be disqualified under the Company Directors Disqualification Act 1986, the Insolvency Act 1986 or the Charities Act 1993. The regulator may also make appointments to the board under schedule 1.

²⁰⁰ Under paragraph 14 of schedule 1 of the Housing Act 1996.

²⁰¹ Under paragraphs 20 and 24 of schedule 1 of the Housing Act 1996.

²⁰² Under section 75 of the Housing Associations Act 1985 as amended by paragraph 5 of schedule 3 of the Housing Act 1996.

²⁰³ Under section 36 of the Housing Act 1996.

²⁰⁴ Section 36(7), Housing Act 1996.

a mechanism by which it can influence and direct the activities of registered housing associations in key operational areas such as development, rent setting and allocation.

Regulation and Guidance in Wales

In Wales guidance is provided to housing associations in the form of regulations and circulars, as well as occasional publications dealing with discrete operational issues.

Regulation

Tai Cymru first issued *Performance Expectations for Housing Associations* in 1990, these were revised and re-published in 1992, 1995 and 1997.²⁰⁵ The WAG published a revised *Regulatory Code for Housing Associations in Wales* in 2005.²⁰⁶ Relevant regulations are discussed in context in following chapters. Although regulation represents a potential threat to housing association discretion Tai Cymru was explicit that regulation would not be used as a coercive device. In its *Regulatory Requirements for Registered Social Landlords* published in 1997 Tai Cymru gave the purpose of regulation as to promote good practice. Similarly, in the introduction to the WAG's *Regulatory Code* it is stated that:

'The Code is intended to allow innovation and responsiveness to local circumstances, and focuses as far as possible on outcomes, not processes, to allow associations to achieve objectives in the way most suitable to them and their customers.'²⁰⁷

However, the publication of regulations represents the exercise of a statutory duty to control and supervise housing associations.²⁰⁸ It is therefore an expectation that housing associations will comply with regulatory requirements. This was specifically pointed out to housing associations in

²⁰⁵ Tai Cymru, (1990a); Tai Cymru, (1992a); Tai Cymru, (1995); and, Tai Cymru, (1997a).

²⁰⁶ WAG, (2005a). This followed consultation on increasing the effectiveness of powers to regulate registered social landlords instigated by the Office of the Deputy Prime Minister in 2003: Welsh Assembly Government/Office of the Deputy Prime Minister, (2003).

²⁰⁷ WAG, (2005a).

²⁰⁸ Under section 75 of the Housing Associations Act 1985 as amended by paragraph 5 of schedule 3 of the Housing Act 1996.

regulations published by Tai Cymru.²⁰⁹ In its approach to regulation the WAG has set out a series of '*fundamental obligations*' with which associations must comply (discussed as relevant in following chapters).²¹⁰ In addition the Code includes a number of targets for housing association performance to be used as indicators, which the WAG has confirmed it will use to measure regulatory compliance.²¹¹

Circulars

During its tenure Tai Cymru issued numerous circulars dealing with operational matters: these are discussed in context in following chapters. Although compliance with guidance is not of itself obligatory, this was one of the measures by which performance against regulatory requirements was assessed under Tai Cymru.²¹² To this extent meeting expectations set out in circulars was virtually mandatory. Similarly, the WAG's *Regulatory Code* refers to compliance with good practice guidance as a measure of housing association performance.²¹³ Under both Tai Cymru and the National Assembly compliance with guidance is therefore an operational imperative, however, the use of circulars as policy instruments under Tai Cymru was far more significant than under the Assembly. During its tenure Tai Cymru issued a total of 195 circulars on operational matters, whilst to August 2006 the Assembly's Housing Directorate had issued just one (although its predecessor's circulars remain extant).²¹⁴ Whilst the use of circulars may have decreased, suggesting a relaxation of overt control over housing associations, the National Assembly has required associations to comply with expectations established by its Best Value regime.²¹⁵ From October 2001 housing associations, similar to local authorities, have been expected to deliver

²⁰⁹ Tai Cymru, (1990a), at p.1; Tai Cymru, (1992a), at p.3; Tai Cymru, (1995), at p.2; and, Tai Cymru, (1997a) at pp.2-3.

²¹⁰ WAG, (2005a) at p.1.

²¹¹ These are set out under the heading 'What We Will Look For': WAG, (2005a).

²¹² Tai Cymru, (1997a), *Introduction*.

²¹³ WAG, (2005a), at p.1.

²¹⁴ The Housing Directorate intends to re-issue all relevant Tai Cymru circulars, however, as at October 2006 this had not been carried into effect (information provided by the Housing Directorate, May 2006). Information correct: January 2007.

²¹⁵ NAW, (2001d).

ongoing improvements to their services.²¹⁶ Although this is likely to feature as an aspect of housing management in any event, associations are required to monitor and report on their performance against measurable targets established in advance by the Assembly.²¹⁷ This gives the Assembly the discretion to set expectations for housing associations in areas not covered by regulation. However, the Assembly Minister responsible for implementation of the Best Value regime has made clear that it is not the intention to introduce increased regulation for housing associations via Best Value.²¹⁸

Synthesis

This chapter has drawn attention to housing associations' role in the provision of social rented housing alongside local authorities. What is apparent is that as the priorities for housing policy have changed and modified this has influenced the part played by housing associations in its implementation. Up until about the 1960's, the focus was on local authorities as the main development vehicle for social rented housing. However, as the welfare state has gradually reduced in scale housing policy has offered housing associations greater opportunities to become engaged in service-delivery. This process has been facilitated as successive governments have made finance available to fund housing development by voluntary housing organizations, and more particularly by registered housing associations. As a result housing associations have become closely engaged with the implementation of housing policy in their capacity as developers and managers of social rented housing. In this context it is reasonable to suggest that support for voluntary housing in the political realm is partly responsible for the housing association movement's success as a housing institution - the link between subsidy and capacity to develop new housing is obvious, and without some form of capital allowance it is unlikely that associations would have been able to overcome the problem of affordability. In Wales housing policy may be seen as highly significant for voluntary housing. Finance provided by the Treasury via the Housing Corporation and Tai Cymru has underpinned

²¹⁶ NAW, (2001d), at paragraph 1.5.

²¹⁷ NAW, (2001d), at paragraph 10.

²¹⁸ NAW, (2001e).

growth in the voluntary housing sector in Wales, but it is also the case that unlike in England, housing policy after 1961, and especially after 1974, may be seen as providing the impetus for the movement to become established as a provider of social housing. Housing associations in Wales lack the tradition of their English counterparts and the cost-rent experiment of 1961-1972 provided a spur to the formation of new housing societies, representing the genesis of the modern housing association movement in Wales. In this context, post 1974 the availability of HAG enabled the movement to grow but also led to the formation of a number of new development associations, so that after 1989, and the introduction of mixed-funding, the housing association movement was able to firmly establish itself as a vitally important provider of subsidized rented housing in Wales. Against this background it is arguable that the housing association movement in Wales should be seen not as voluntary sector response to housing policy but as a vehicle for the delivery of policy objectives - notwithstanding structural similarities with the wider voluntary sector. If this analysis is correct it would likely have implications for perceptions of housing associations within the Wales voluntary sector, and for assumptions that arise as a result. Independence, which is highly valued by the non-profit sector, would be put in doubt where priorities are established not by the board of management but by housing policy. In addition, the perceived advantages of service-delivery by the voluntary sector may be negated for housing associations if they are seen as part of a government apparatus for the delivery of its policy objectives. Any assessment of the impact of housing policy in this context will have to take account not only of the way in which the housing association movement in Wales is structured, and how it has developed alongside housing policy, but also of how housing associations are perceived within the system of social rented housing in Wales, as well as their responses to policy implementation in different areas. Following discussion of the methodology in the next chapter this study will investigate these issues with housing associations and local authorities.

CHAPTER FIVE

METHODOLOGY

Introduction

This chapter sets out the methodology used in this study. It explains the research strategy including: selection of the research field; the rationale for limiting the study by industry, and geographically to Wales; the research aim; and, the conduct of a survey of housing associations and local authorities. Also discussed are: the use of research objectives to facilitate the structuring of the survey; the methods of data acquisition; collation and analysis of the research data; and, the use of semi-objective and subjective data.

The Research Strategy

Housing and Housing Associations as a Research Field

As criteria relevant to define and delineate non-profit enterprise from the public and private sectors are applicable - at least at the outset - to voluntary housing organizations, it is reasonable to regard housing associations as representative of the formal non-profit housing sector. In policy context housing associations are a paradigm of the state's relationship with the voluntary sector, and housing an exemplar of an industry in which policy implementation has had a significant and direct impact on a non-profit industry. Housing associations therefore provide the opportunity for empirical study of the impact of policy implementation at industry level on a discrete voluntary sector. The selection of housing associations as a field of study is facilitated by the fact of registration, so that housing associations may be readily identified and distinguished from the wider voluntary sector, as well as from other non-profit housing organizations. In addition to these practical considerations there are a number of factors that suggest housing and housing associations as a research field. First, housing, and the provision of adequate affordable housing, has long been a concern of government. Industry specific housing policy has engaged the non-profit sector in delivering government policy objectives since at least the nineteenth century. It is therefore reasonable to anticipate that the priorities of government will be

well developed in public policy, and that therefore housing associations may be regarded as representing the experience of a discrete voluntary sector closely involved with the implementation of well-established public policy. Second, government has sought to use voluntary organizations operating in the housing field as a resource to achieve its policy objectives, and has provided the non-profit housing sector with substantial financial assistance. It is reasonable to assume that the state will have an interest in ensuring its objectives are met, and that where policy is firmly implemented any vulnerability arising through resource dependency will be evident in housing associations' responses to policy implementation. Also, as housing associations have been provided with considerable financial support from the Treasury it is likely that there will be demands for strong accountability. Third, central government retains considerable discretion to pursue its objectives in the field of housing through legislation, through interference in housing markets and the housing system, through regulation, and by modification of the role of local government. But also priorities may be established through local level policy institutions concerned with housing, i.e. local government, and in Wales, Tai Cymru and now the National Assembly. This gives the opportunity to study the impact of policy implementation at Wales-national level.

A Wales Perspective

The academic literature in Wales is lacking detailed research on the impact of public policy implementation on Wales-national voluntary organizations at industry level, or that pays attention to the nature and essential characteristics of non-profit enterprise. Similarly, research into the impact of engagement by housing policy on housing associations in Wales is limited, and in any event, tends to focus on the housing aspect with very little research conducted from the perspective of housing associations as voluntary organizations.¹ Research which has been carried out with associations tends to be narrowly focused on issues of relevance to housing studies, reflecting general trends in areas such

¹ Preliminary research carried out for the purposes of this study suggests that there is no comprehensive published research that addresses housing associations from a voluntary sector perspective.

as: building output; subsidy levels; or, the type of accommodation provided.² This omission from the research is surprising as both the Wales voluntary sector and the Wales housing association movement are distinguished geographically from their English and Scottish counterparts, and the voluntary housing movement is further delineated by the supervisory, regulatory and policy implementation responsibilities given to Welsh policy institutions since 1989. This study seeks to address the research deficit and is an addition to the literature on housing and the literature on the voluntary sector in Wales.

The Aim of the Research

The primary aim of the research is to consider the relevance of housing policy implemented at Wales-national level by relevant policy institutions for housing associations in their capacity as voluntary organizations. Analysis of housing policy and its impact on housing associations might involve consideration of measurable or demonstrable impacts, i.e. assuming the use of quantitative indicators such as investment levels, or building output. An alternative is to consider the relevance of housing policy to confirm or modify assumptions about housing associations referable to their status as voluntary organizations. This study recognizes that housing associations are service-providing voluntary organizations meeting housing need, and that they operate within a housing market and housing system that is affected by industry relevant housing policy. Therefore the research carried out for Part Two and Part Three pays attention both to measurable impacts of housing policy, and the relevance of policy implementation for housing associations as voluntary organizations, i.e. having regard to expectations and norms established for voluntary organizations, and to issues arising for housing associations as voluntary organizations from their engagement by public policy, as identified generally in Chapter Two. The research seeks to establish the extent to which housing associations act in response to housing policy implemented at Wales-national level, and the relevance of these responses for voluntary sector norms. A secondary aim of the research is to provide a narrative of the experience of housing associations, and to a lesser extent

² Research carried out is discussed as relevant in following chapters.

local authorities, of housing policy implementation by Tai Cymru, a now defunct but highly influential quango. The period of Tai Cymru's tenure between 1989 to 1998 is significant as representing nearly a decade of the history of housing policy in Wales, a period during which the housing association movement grew out of the shadow of local authorities as a provider of social housing, and firmly established itself as the housing institution responsible for the development of new social housing in Wales. It is over 8 years since Tai Cymru's demise in favour of supervision and regulation of housing associations by the National Assembly for Wales. This study provides insights into the ways in which direct control by an authoritative institution has influenced otherwise independent organizations. This is relevant in contemporary context having regard to the policy responsibilities of the National Assembly for Wales.

Assumptions predicated on accounts of the voluntary sector

As was discussed in Chapter One, accounts of the voluntary sector establish structural and operational norms for voluntary enterprise, simultaneously characterizing the sector and voluntary organizations and providing an explanation for the sector's entrenchment as a service-providing institution within a three-sector model of service delivery. As was discussed in Chapter Two, these norms of the voluntary sector - and as a result voluntary status - may be undermined for resource dependent voluntary organizations reliant on public funding, or where they come under the control and direction of the state through regulation. This is significant for housing associations as heavily resource dependent organizations subject to a regulatory jurisdiction. It might be predicted that housing associations will be subject to manipulation by government as they seek to preserve their public funding, and that the priorities of government will be substituted for those of individual associations through the exercise of discretion to allocate public funding, and manipulation of regulation. This is what is suggested by the account of voluntary housing and housing policy in Chapter Four, which referred to the priorities of government alongside the work of housing associations. This study investigates this issue further, to consider the extent to which the housing association movement, and individual housing associations, are controlled

and directed by policy institutions in Wales, and to establish whether or not housing association status, and their assumed membership of the voluntary sector is undermined as a consequence of reliance on government funding and submission to the jurisdiction of a regulator. It is assumed for research purposes that where links with the voluntary sector are weakened then assumptions of independence and self-determination that accompany voluntary status will be set aside as an adverse impact of engagement with housing policy, and its implementation at Wales-national level, and that this will be evidenced by housing association responses to policy implementation generally, as well as in the findings from the survey.

Involving Local Authorities in the Research

Housing associations operate within a policy framework that sees local authorities given a significant role in establishing the strategic agenda for housing at local level. Local government is an important stakeholder in the housing system, and local authority housing departments are partners to housing associations in the delivery of social housing. As such local government is in a position to influence the extent to which housing associations in Wales are able to carry out their various functions by the identification and adoption of priorities through strategic planning. This is significant as the extent to which the local authority policy agenda accommodates and takes account of the contribution of housing associations, and/or reflects the priorities of the housing association movement, is likely to depend on attitudes toward associations amongst those working in local government. It is therefore relevant to understand how local authorities regard housing associations, the expectations established for housing associations at local authority level, and how these are influenced by housing policy, as these may be seen as impacts of housing policy. For this reason local authorities are included in the empirical research.

Research Objectives

In order to facilitate the collation and analysis of research data four research objectives were established in advance of preparing questionnaires and

interview questions. These research objectives were also relevant to the analysis of the research data as establishing themes for discussion.

Research objective [1]: to consider the status of housing associations in Wales with reference to housing policy as implemented by Tai Cymru, as well as the National Assembly for Wales

Accounts of the voluntary sector distinguish voluntary enterprise from the public and private sectors by application of relevant criteria that are ubiquitous to describe a voluntary organization. Proceeding on the assumption of voluntary status for housing associations the research in this area considers the extent to which voluntary sector operational norms and values are undermined or supported in policy documents published by Tai Cymru and the National Assembly, and in the way in which housing policy is implemented in Wales. The research in this area also examines perceptions of housing association status amongst housing associations and local authorities. The findings on this issue are relevant as confirmation and maintenance of voluntary status may be subjective where structural criteria are put in doubt by ambiguities relevant to housing associations, or by policy implementation. Further, support for voluntary housing in the political realm is underpinned by perceptions as to the benefits of service-provision by non-profit organizations. These may be undermined where housing associations are seen as differentiated from the wider voluntary sector. The findings from the research carried out relevant to this research objective are set out in Part Two, Chapter Six of this study.

Research objective [2]: to consider the role of housing associations in Wales having regard to the relevance of housing policy to the pre-determination of their functions

Housing policy has conceived a number of roles for voluntary housing organizations. This raises the possibility that where policy is explicit in its objectives housing association roles will be determined in advance, and may not reflect roles conceived for the voluntary sector more widely, or by housing associations themselves. The research in this area considers the function/s or role/s anticipated for housing associations in Wales by housing policy,

focusing on role expectations of Wales-national policy institutions, and the extent of role pre-determination. The research also examines the attitudes of housing associations and local authorities toward housing association roles, and considers the extent to which local authorities may influence these at local level. For housing associations the findings are significant as role pre-determination would tend to undermine claims to independence, and thereby weaken structural connections to the voluntary sector. In addition where roles are established by public sector policy institutions this would tend to suggest housing associations as vehicles for the implementation of policy. The findings of the research carried out relevant to this research objective are set out in Part Two, Chapter Seven.

Research objective [3]: to consider the impact of increased visibility in the political realm on housing association accountability and the relevance of public accountability

As voluntary organizations become more closely involved in delivering public services - alongside or in substitution for public authorities - the issue of accountability obtains greater significance. The research in this area focuses on the expectations of Wales-national policy institutions for housing association accountability and relevant modes of accountability as established in regulatory and other documents. The research also examines housing association and local authority attitudes toward housing association accountability. The research findings provide insights into how attitudes toward accountability reflect expectations of public accountability for housing associations, and the degree to which these expectations are supported by accountability frameworks and/or are imposed on associations. This last consideration is also relevant to the issue of discretion and the extent to which housing associations retain a capacity to act independently. The findings of the research carried out relevant to this research objective are set out in Part Two, Chapter Eight.

Research objective [4]: to consider the influence of housing policy on the work of housing associations in key operational areas

The research in this area considers the extent to which policy institutions exercise control over the way in which housing associations go about their day-to-day business of providing and managing housing. A distinction is made between housing association development and housing association management functions. Development functions are those that involve building new dwellings (newbuild), or the rehabilitation of existing housing (rehabilitation or regeneration); management functions are those associated with the management of housing. As the research deals with operational aspects of housing associations it is more narrowly focused and pays greater attention to detail in the implementation process, concentrating on policy implementation by Tai Cymru, and to a lesser extent the National Assembly, and the influence of these institutions on housing association priorities in the areas of: housing development; rents; and access to accommodation. The findings of the research carried out relevant to this research objective are set out in Part Three, Chapter Nine (development), Chapter Ten (rents), and Chapter Eleven (access and allocation).

Focusing on the Tai Cymru Era

Policy implementation toward housing associations in Wales has been the responsibility of policy institutions in Wales since the mid 1960's, and of Wales-national institutions since 1989. This study focuses primarily on the period post January 1989, as the date after which Tai Cymru became established as the body responsible for policy implementation toward housing associations. Informal discussion with several senior professionals from the housing association movement in mid 2004 suggested very strongly that at that time the National Assembly - as responsible for Wales-national housing policy from 1999 - was seen as having failed to assert its policy agenda relevant to housing associations. In particular the Assembly was described by a number of those contacted as weak in the area of regulation and audit of associations. The impression gained from these discussions was that in 2004 the National Assembly was very much operating to an agenda inherited from Tai Cymru whilst it carried out a review of its policy on housing association

regulation, development, and the allocation of housing subsidy. The timescale applicable to this research meant that the survey had to be commenced in early 2005. For this reason it was decided to focus primarily on policy implementation during the period of Tai Cymru's tenure in respect of Research Objective [4], so as to reflect a strong implementation agenda.

Data Acquisition

Overview

Data and evidence was obtained from policy documents and from a survey carried out with housing associations and local authorities. Self-completion questionnaires and semi-structured interviews were used for the survey to gather information on issues relevant to the research objectives. It was decided to use self-completion questionnaires for practical reasons, i.e. to allow the research to be carried out with housing associations and local authorities on an all-Wales basis, but also to include all general needs associations in the research. A further reason for selecting questionnaires as a mode of inquiry is that they provide the opportunity to acquire a large amount of research data. This was felt to be an important consideration having regard to the dearth of pre-existing data relevant to the research undertaking. The evidence from the questionnaires is supplemented by qualitative data from interviews. This assists with understanding the questionnaire findings but also provides an account of the experience of housing associations of policy implementation under Tai Cymru. Consideration was given to conducting the research via case studies involving a smaller number of housing associations. However, it was felt that this would not have yielded sufficient data of general relevance to all housing associations as other methods of inquiry.

The Survey Groups

Selection of housing associations and local authorities

Housing associations included in this study were required to be managing or developing general needs housing stock in one or more of the areas of the twenty-two unitary authorities in Wales, i.e. ordinary housing stock made available for letting to the general public (albeit that eligibility may be limited

by lettings policies), and to be registered with the National Assembly for Wales as a registered social landlord, and to have been previously registered with Tai Cymru. This meant that unregistered and therefore unregulated associations, and those associations specializing in housing particular groups, such as the elderly or those with physical or other support needs, were excluded from the research. These criteria were applied to provide a measure of heterogeneity to the surveyed housing associations; as the provision of general needs housing is an aspect of the work of the majority of registered housing associations in Wales. As at the 1st January 2005 the number of housing associations eligible for inclusion in the research was 34, these are listed in Appendix One. All of the 22 local authorities in Wales were included in the research, which was carried out with local authority housing departments. Local authorities in Wales are listed in Appendix Two.

Sampling

The small scale of the Wales voluntary housing sector, and the low number of local authorities, meant that sampling was only relevant to distinguish between those selected for interview and those surveyed by questionnaire. It was decided to interview approximately 1/3rd of participants from both survey groups. This was felt to be a large enough number of participants to provide sufficient interview data and a cross section of opinion from which conclusions might be drawn of general relevance. From the 34 general needs housing associations 11 associations were selected for interview - representing about one-third or approximately 32 percent of the registered general needs housing associations in Wales. These were selected so as to ensure a broad cross-section of small, medium and large associations (as indicated by the size of each association's housing stock); and, a mix of local or community associations (operating in one local authority area), and regional associations (operating in one or more local authority area). Preliminary discussion with several senior professionals from the housing association movement had suggested that differences in opinion relevant to the research objectives were most likely to arise between small/large associations, and local/regional associations. 6 local authorities were selected for interview, i.e. approximately 27 percent of authorities in Wales. These were authorities in South West and

South East Wales. Limitations on resources meant that the selection of local authorities was largely determined by convenience for travel purposes – notwithstanding the authorities selected represent a mix of predominantly rural, semi-rural/urban, and predominantly urban local authorities. Housing association interviewees are identified in Appendix One, local authority interviewees in Appendix Two. The remainder of housing associations and local authorities were surveyed by questionnaire.

Research on Documents

To ensure accuracy, authenticity and representativeness research on policy documents was primarily carried out on: [1] official documents, i.e. policy documents published by government (at central or local level); [2] documents published by Tai Cymru; [3] documents produced by the representative body of the Wales housing association movement, i.e. the Welsh Federation of Housing Associations; and, [4] other documents produced for, or endorsed by, any of the foregoing.³ Research was also carried out on regulatory and guidance materials published by the regulator. Although strictly these are properly described as policy instruments, in context they are referred to in this study as policy documents. A problem was encountered when researching the documentary evidence, i.e. not all the policy materials produced by Tai Cymru have been retained by the National Assembly centrally, and the availability of documents from other sources is limited. A further difficulty was the lack of an available database listing Tai Cymru publications. Materials were obtained from the National Assembly, the Housing Corporation and the National Assembly Housing Directorate, and from the personal collections of individuals involved with Tai Cymru between 1989 and 1998, or with the housing association movement.

Self-completion Questionnaires

Self-completion questionnaires were sent out to housing associations and local authorities. These were prepared following informal discussions with

³ Scott suggests limiting documents to official publications in order to ensure that policy themes are assessed accurately: Scott, (1990). For this study this has been expanded to include other documents due to the lack of available policy materials.

Chief Executive Officers from 4 housing associations and a policy officer from one local authority. These were officers from: Merthyr Tydfil Housing Association; Swansea Housing Association; Fairlake (Charter) Housing Association; United Welsh Housing Association; and, Swansea City Council. Each was informed of the aim of the research and the research objectives (as set out above). It became apparent during preliminary discussions that senior staff working in housing associations and local authorities were likely to hold firm views and opinions on issues arising relevant to the research objectives, and that in response to questioning at interview or by questionnaire respondents were likely to provide explanatory and expanded answers. With this in mind the questionnaires were designed using a Likert scale to allow for a wide range of responses, and for respondents to provide additional comments. Respondents were asked to indicate their agreement or disagreement with a number of statements and/or propositions relevant to the research objectives. Local authorities and housing associations were for the most part asked the same questions except that housing associations were asked certain additional questions, and local authorities were not questioned on the issue of rent setting. This last is because unlike in other operational areas local authorities do not have any formal input into how rents are established, nor are rents relevant to the working relationship between housing associations and local government.

Interviews

The interview questions were prepared following informal discussions with Chief Executive Officers from 4 housing associations and a senior policy officer from one local authority (as above). Again each was informed of the aim of the research and the research objectives, and asked to comment on a draft set of interview questions sent in advance. The interview questions were prepared as open questions to facilitate expanded answers. Interviews were carried out on a semi-structured basis with limited use of prompts. Local authorities and housing associations participants were asked questions covering the same themes, although the questions were not the same for both sets of interviewees - to take account of their different status and roles in housing policy. One significant difference is that to local authorities were not

interviewed on the issue of rent setting (see above in relation to the questionnaires).

Research Pilots

Draft questionnaires were sent to representatives: of Merthyr Tydfil Housing Association; Swansea Housing Association; Fairlake (Charter) Housing Association; United Welsh Housing Association; and, Swansea City Council. Representatives of these organizations later participated in the survey as interviewees and so the findings from the pilot questionnaires were disregarded for the purposes of data collation and analysis to avoid duplication. As a result of the pilot slight amendments were made to the questionnaires to make certain questions easier to understand. The questionnaires used in the survey are set out in Appendix Three (housing associations), and Appendix Four (local authorities).

Pilot interviews were conducted with Merthyr Tydfil Housing association and Bridgend County Borough Council. These confirmed the relevance of the research objectives and the initial assumption that interviewees would respond to questioning with detailed answers. Slight amendments were made to certain questions as a result of the piloting process but only to ensure that interviewees would be able to properly understand the questions being asked, and to avoid unnecessary prompting. At the conclusion of the pilot interviews the research objectives were discussed with the interviewees. When asked directly none proposed that there should be any amendment or addition to the interview questions. It became apparent during the pilot interviews that it would be necessary to limit the opportunity for interviewees to discuss technical detail on process or operational matters (as relevant to the particular association and not the wider research objectives). As a result all interviewees were contacted by telephone and by letter prior to interview and provided with an explanation of the purpose of the research, and each was sent a copy of the interview questions in advance, together with information explaining the purpose of the interview. The interview questions are set out in Appendix Five (housing associations), and Appendix Six (local authorities).

Confidentiality

The survey does not raise any obvious controversial or sensitive issues for housing associations or local authorities. However, in order to encourage participation all those contacted were informed that participants would not be identified by name, by housing association, or by local authority. Questionnaires included an option for respondents to indicate whether or not they had any objection to being identified. The majority of respondents failed to indicate whether or not they had any objection to being identified so confidentiality has been maintained for all questionnaire respondents. Interviewees were asked at the end of each interview if they wished to remain anonymous. The majority indicated that they had no concerns about being identified, however as some wished to remain anonymous confidentiality has been maintained for all interviewees.

Carrying Out the Research

Interviews were commenced with housing associations in January 2005 and continued over a period of three months. The majority of interviewees/survey respondents were Chief Executive officers, or where this was not the case, senior officers with management and/or policy responsibilities nominated by the Chief Executive. Self-completion questionnaires were sent to the remaining 23 housing associations in January 2005. Respondents were identified in advance and approached by telephone to agree to complete the questionnaire. These were either Chief Executive officers or officers with management or policy responsibilities nominated by the Chief Executive. Interviews were conducted with local authorities in May 2005. In all cases the head of housing declined to be interviewed. Most indicated that they did not consider themselves to have the experience of staff involved directly with housing associations, and instead nominated officers with policy responsibilities involved in working with housing associations. Self-completion questionnaires were sent to the remaining 16 authorities in June 2005. In each case the head of housing at the authority was contacted in advance by telephone and asked to complete the questionnaire. All agreed to participate or to nominate someone with appropriate responsibilities and experience to undertake the task.

Response rates

Of the 23 housing associations surveyed by questionnaire approximately 65 percent, (15 housing associations), returned completed questionnaires; 3 of these were completed anonymously. The response rate was similar from local authorities: of the 16 authorities sent questionnaires approximately 69 percent (11 local authorities) returned completed questionnaires; 2 of these were completed anonymously. In total 26 housing associations, i.e. approximately 76 percent per-cent of all registered general needs housing associations in Wales, participated in the survey by completing questionnaires or as interviewees; and, 17 local authorities participated as respondents or interviewees, i.e. approximately 77 percent of all local authorities.

Data Analysis

Analysis of Documents

Policy themes relevant to the research objectives were identified from reading policy documents and are referred to in following chapters. In assessing the significance of a policy theme consideration was given to the status of the document in which it is identified, and the strength of support for the policy to be implemented into practice as demonstrated by the policy institution concerned. Although the identification of policy themes is a process that is inherently subjective, this is supported by reference to relevant documents in the text or footnotes, and in some cases by select quotations.

Analysis of the Self-completion Questionnaires

The full data from the completed questionnaires is collated in tabular form in Appendix Seven (housing associations), and Appendix Eight (local authorities). Responses are shown using the following scale:

- 1 indicates strong agreement
- 2 indicates agreement
- 3 indicates no opinion on the issue
- 4 indicates disagreement
- 5 indicates strong disagreement

In the chapters that follow the findings are presented in tables in extracted form. Responses 1 and 2 (above) and 4 and 5 (above) are aggregated. Although it was decided to use a scale allowing respondents to indicate strong and weak agreement and disagreement the tables of extracted findings use the following scale:

Agreement – No Opinion – Disagreement

The complete results are shown in the tables in appendices seven and eight, and where relevant differences in the strength of opinion demonstrated by respondents are referred to in the text in following chapters.

In the full and extracted tables local authority is abbreviated to LA, housing association to HA, Tai Cymru to TC, and the National Assembly for Wales to NAW.

The Likert scale used provided respondents with opportunity to give a 'no opinion' answer. Having regard to the completed questionnaires, it is the case that for all respondents indicating a no opinion answer positive answers are provided elsewhere in the questionnaire. This suggests that where the median answer is selected this is a genuine as opposed to a convenient response. Further, having regard to the content of the questionnaires, a no opinion answer of itself provides some elucidation on the issue/s under consideration.

The questionnaire data is presented as numbers of respondents as well as in percentage form. Although the relatively low number of participants means that small numerical differences in the responses indicated for a particular question translate to a more significant percentage difference, this weakness was deemed acceptable because: [1] the reader is able to see for him/herself how the percentages are calculated; and, [2] the use of percentages assists in comparing the data from the two sets of participants.

Analysis of the Interviews

The interviews were recorded and a contemporaneous note taken. The recordings were reviewed three times. On the first occasion to prepare transcripts. These were edited so as to include only relevant comments and to exclude irrelevant or extraneous materials (for example: technical detail, repetition, background discussion not relevant to the research objectives). Relevant comments were identified having regard to the research objectives during the second review, and confirmed during the third review. Although this process is subjective an attempt has been made to structure the analysis through the use of an Assessment Framework. This established in advance one or more anticipated responses in respect of each of the interview questions, i.e. as relevant to the research objectives, and having regard to relevant background materials. Transcripts were read and where an interviewee's comment or comments suggested that he or she agreed with a particular response this was noted. It follows that only positive responses, or responses given in reply to direct questions are relevant. The findings from application of the Assessment Framework are set out in Appendix Nine (housing associations), and Appendix Ten (local authorities), and are referred to in the text where relevant. Where it is suggested that the interview data supports a particular analysis this may be illustrated by select quotation. All interviewees are referred to as masculine irrespective of gender.

Collated Data Not Used

The survey gathered questionnaire and interview data on housing association operational matters from local authorities. However, on analysis this was not considered sufficiently probative for reference to be included in the text. It is suggested that the reason for this is that local authorities have no direct experience of policy implementation under Tai Cymru. Notwithstanding, collated data from local authorities relevant to housing association operational areas (development and allocation) is included in the appendices for reference purposes, and is on occasion referred to in the footnotes.

PART TWO

CHAPTER SIX

HOUSING ASSOCIATION STATUS

Introduction

Structural connections between registered housing associations and other organizations making up the formal non-profit sector in the United Kingdom are robust. These include: a statutory prohibition on the distribution of profits, the relevance of which is to establish voluntarism and voluntary governance as a characteristic of the housing association movement; and, the adoption of corporate legal form guaranteeing constitutional independence. It would appear therefore that, *prima facie*, housing associations are to be regarded as voluntary organizations operating within the non-profit sector. There are certainly advantages if this is the case, not least that the movement will benefit from increased levels of trust amongst the public and politicians. Also, where voluntary housing and housing associations are seen as distinct from the public sector this allows resources to be targeted toward the housing association movement; and, where housing associations are seen as voluntary sector service-providing organizations their involvement in policy implementation will be justified by positive accounts of non-profit enterprise. Notwithstanding, resource dependency and submission to the jurisdiction of a regulator raise doubts as to the validity of housing association claims to membership of the non-profit sector.

This chapter considers the most fundamental of assumptions for housing associations in Wales, i.e. voluntary status. It begins by discussing the relevance of status in policy context by reference to policy documents, before turning to the findings from the survey carried out with housing associations and local authorities to examine how associations are perceived, and what factors are relevant to influence attitudes on this issue.

Housing Association Status in Wales: Context

As was noted in Chapter Four, housing policy has sought to engage voluntary housing as a development vehicle for social rented housing. Although administration of housing policy is decentralized to Wales-national policy institutions the priorities for housing policy are determined by central government. It is not the function of policy institutions in Wales to determine the role of either the public sector or the voluntary sector in housing policy, and policy implementation in Wales takes place against the background of a statutory and regulatory framework established to engage housing associations. It is therefore assumed in advance that the voluntary sector, as epitomised by housing associations, will have a role within the housing system in Wales. The following sections consider the relevance of status to housing policy implementation, and the extent to which this is recognized and supported by Wales-national policy institutions.

Under Tai Cymru

Voluntarism as an aspect of housing associations

Tai Cymru operated as the promotional body for housing associations for most of the 1990's. In this capacity it was concerned to establish the movement's *bona fides* to receive public funding, and to justify its role in the development and management of social rented housing. In this context Tai Cymru was keen to draw attention to the role of volunteers in housing association governance, and to emphasize the gratuitous nature of service as a board member.¹ Therefore, in 1990, shortly after taking over from the Housing Corporation, Tai Cymru's performance audit division published performance expectations for housing associations to include regulations dealing with payments to board members.² Housing associations were required to introduce formal procedures to give effect to section 15 of the *Housing Associations Act 1985*, which prohibited an

¹ For example, references to the work of '*voluntary unpaid committees of management*' in: Tai Cymru, (1989-90), at p.6; Tai Cymru, (1991-1992), at p.9. See also: Tai Cymru Annual Reports (1989-90) to (1997-1998).

² Tai Cymru, (1990a).

association from making a payment to any board member.³ In fact, regulations went further as Tai Cymru insisted on full disclosure by housing associations of all '*direct or indirect pecuniary or other interest which could influence judgment.*'⁴ In addition there was a prohibition preventing board members from '*gaining special advantage*' by virtue of their office.⁵ These regulations were supplemented by guidance, by way of a circular published in 1990, on the interpretation of section 15. This was restrictive and had the effect of limiting permissible payments, i.e. to relevant expenses incurred on housing association business.⁶ In 1992 amended regulations removed the requirement for a declaration of interest,⁷ although this was re-introduced in 1995⁸ and retained when Tai Cymru issued regulatory requirements for Registered Social Landlords in 1997 (referring to statutory prohibitions under the *Housing Act 1996*).⁹ Although aimed at ensuring probity, the combined effect of the statutory regime and regulation was that under Tai Cymru non-profit distribution and voluntarism were emphasized as features of the housing association movement. This served to highlight distinctions between housing associations and private businesses by focusing on the voluntary nature of governance (as noted in Chapter Two). It also confirmed housing associations as organizations operating in the public good managed by public-spirited individuals, ensuring that the movement was seen as suitable for public and private investment.

Support for independence

In addition to supporting voluntarism at board level, regulations published by Tai Cymru sought to ensure that the housing association movement remained independent as an institution. Its predecessor, the Housing Corporation, had

³ Tai Cymru, (1990a), regulation 6.5.3a.

⁴ Tai Cymru, (1990a), regulation 6.5.5a.

⁵ Tai Cymru (1990a), regulation 6.5.5d.

⁶ Tai Cymru Circular, 11/90.

⁷ Tai Cymru, (1992a), regulation 1.1.

⁸ Tai Cymru, (1995), regulation 3.2.

⁹ Tai Cymru, (1997a) regulation 1.2. These amended regulations also referred to the need for housing associations to comply with schedule 1 of the Housing Act 1996 restricting payments to board members.

issued registration criteria in 1988 making independence a prerequisite.¹⁰ Tai Cymru continued to emphasize the importance of this aspect of housing associations by requiring that the board of management should be in a position to make and implement operational decisions without being subjected to external interference. Therefore, in 1990 it was made a regulatory requirement that:

'The governing body of a registered housing association must be able to demonstrate that it is not under the control of, or subject to influence from other bodies, which could prejudice its independence, or prevent it from acting in the best interest of the association.'¹¹

The 1990 regulations sought to focus specifically on the relationship between local authorities and housing associations. This is understandable having regard to the structure of social rented housing in Wales in the early 1990's. Housing policy had established housing associations as the main development vehicle for new social housing, but local authorities remained influential as a consequence of their strategic function and their historical dominance within the housing system. Further, housing associations emerged as relevant to the provision of social housing in part as a result of dissatisfaction with local authorities as developers and managers. Against this background it is unsurprising that Tai Cymru sought to minimize local authorities' direct influence over housing associations to preserve their independence from the public sector, and support in public policy. The 1990 regulations therefore included a requirement that:

'No association should be subject to any undue influence from a public sector landlord or local authority or particular members or officers of such an organization. While local authority members or officers on positions of influence with a local authority may participate as full members of a governing body, generally they are not expected to be key office holders.'¹²

¹⁰ Housing Corporation Circular, 27/88, at paragraph 2(3).

¹¹ Tai Cymru, (1990a), regulation 6.4.1.

¹² Tai Cymru, (1990a) regulation 6.4.4.

This limited local authorities' influence over housing association management. However, in 1992 the requirement was omitted from revised regulations: these merely required housing associations to act '*independent from control or undue influence by any other body*'.¹³ Later regulations, published in 1995 and 1997, re-affirmed this expectation.¹⁴ A possible explanation is that by this time the housing association movement had become established as a housing institution distinct from the public sector. In addition, and as will be discussed in Part Three, Tai Cymru was increasingly able to assert its agenda for housing associations, giving confidence that in key operational areas priorities would not be dictated by local authorities.¹⁵

Under the National Assembly

The National Assembly's Voluntary Sector Scheme

Despite its responsibilities toward the voluntary sector under the *Government of Wales Act 1998*,¹⁶ the National Assembly has tended to overlook altogether the issue of status in its approach to Wales-national housing policy. Notwithstanding that housing associations are potentially an important part of the Wales voluntary sector, their status as voluntary organizations was not recognized for the purposes of operating the Assembly's Voluntary Sector Scheme until relatively recently. The Welsh Assembly Government, which is charged with implementing the Scheme, published its second annual report into its operation in 2002.¹⁷ Whilst this noted with approval the work undertaken by its Housing Directorate with voluntary organization partners working in the housing field such as Shelter Cymru,¹⁸ and Welsh Women's Aid,¹⁹ it failed to mention either the Welsh Federation of Housing Associations or housing associations as WAG/National

¹³ Tai Cymru, (1992a) regulation 3.1.

¹⁴ See: Tai Cymru, (1995), regulation 1.1; and, Tai Cymru, (1997a), regulation 2.1.

¹⁵ See: chapters in Part Three.

¹⁶ Discussed in: Chapter Three.

¹⁷ WAG, (2002a).

¹⁸ Shelter Cymru campaigns on housing issues in Wales. For information on Shelter Cymru see: www.sheltercymru.org.uk.

¹⁹ Welsh Women's Aid provides advice and assistance to women who have suffered domestic violence. For information on Welsh Women's Aid see: www.welshwomensaid.org

Assembly partners. The third annual report into the Scheme's operation referred to the work of voluntary organizations involved with, and contributing to the work of the National Consultative Forum on Housing²⁰ without reference to housing associations.²¹ These omissions were noted by the Commission to Review the Voluntary Sector Scheme in 2004. In a report on the implementation of the Scheme it commented on its relevance for voluntary housing organizations.²² In response the WAG 'reclassified' housing associations as voluntary organizations in 2004 specifically for the purposes of monitoring the Scheme.²³ In May 2005 the WAG's Department for Social Justice and Regeneration, in its fourth annual report on the operation of the Voluntary Sector Scheme belatedly identified housing associations for inclusion, referring to their membership of the Wales voluntary sector, as well as their contribution to policy in areas such as review of the National Assembly's *Housing Strategy*.²⁴

Status and regulation under the National Assembly

The WAG's recently published *Regulatory Code for Housing Associations in Wales* supports associations as non-profit enterprises. Regulations confirm the relevance of statutory prohibitions on payments to board members. Similar to the position under Tai Cymru, these emphasize voluntarism as an aspect of housing associations in Wales.²⁵ The WAG has also maintained as a regulatory requirement the expectation that the board of management of a housing association will act absent any undue influence.²⁶ However, the WAG has gone further than its predecessor to preserve housing association independence by regulating working relations with other organizations. In this respect the Code makes it a fundamental obligation that:

²⁰ The NCFH was set up to assist with the development of a National Housing Strategy (see, Chapter Four, n.156 and accompanying text), but has been continued by the National Assembly.

²¹ WAG, (2003f).

²² Commission to Review the Voluntary Sector Scheme, (2004).

²³ WAG, (2005c).

²⁴ WAG, (2005c).

²⁵ WAG, (2005a), regulation 2.4.5.

²⁶ WAG, (2005a), regulation 2.6.1, *'What we will look for'*.

'[Housing] Associations should maintain organisational independence and have appropriate working arrangements with other organisations.'²⁷

This requirement should be read having regard to the National Assembly's focus on partnership working - in particular between housing associations and local authorities. The *Regulatory Code* encourages the formalization of working relations between housing associations and other organizations - as formal contracting or partnering agreements are treated as evidence of regulatory compliance.²⁸ Further, as responsible for the overall administration of Social Housing Grant in Wales the National Assembly may be seen as a partner to housing associations in the process of developing new housing in Wales. In combination the *WAG Regulatory Code*, and the National Assembly's Voluntary Sector Scheme are relevant to the work of housing associations as providing safeguards for their independence.

Status and Wales-national housing policy

Under the National Assembly's *Housing Strategy* it is anticipated that housing associations will contribute toward achieving policy objectives in their capacity as providers of social housing, i.e. operating alongside local authorities as social housing landlords. In Wales-national housing policy any distinction between these two institutions for the purposes of policy implementation is as a consequence of the strategic role given to local government.²⁹ The approach is one that pays attention to the significance of housing associations as social housing stockholders and developers, and as a housing resource along with the public sector. In this context housing associations may be seen as closely allied to local authorities and the public sector as housing development and management agencies, so that links with the voluntary sector are overlooked for policy implementation purposes. This is highlighted as housing associations are

²⁷ WAG, (2005a), regulation 2.8.1.

²⁸ WAG, (2005a), regulation 2.8.1, *What we will look for*.

²⁹ For example, referring to the strategic role of local authorities and the contribution of housing associations to meeting housing need: NAW, (2001c), at B.4 and B.5.

treated separately from the wider non-profit sector for the purposes of implementing Wales-national housing policy. In 2001 a report published by the National Assembly on Local Authority local housing strategies made a distinction between the contribution of housing associations toward meeting housing need, and the input of other local voluntary organizations. In practice it recommended Compacts to cover the relationship between local government and the voluntary sector, and Community Housing Agreements ('CHAS') to be used between housing associations and local authorities. In addition the report suggested that it might be appropriate for local authorities and housing associations to develop shared objectives.³⁰ A similar recommendation was made by the National Assembly in its *Housing Strategy*: it suggested the use of CHAs to engage RSLs in meeting housing need at local level.³¹ This is significant as Compacts and CHAs differ in their purpose and effect: the first offer general guidance on working relations between local government and the non-profit sector; the second give rise to structured relations between local government and individual housing associations. CHAs set out operational expectations in advance, and a context for meeting housing need is established by a formal planning document. In general therefore the Assembly's approach to policy implementation at local level distinguishes the contribution of housing associations from that of the Wales voluntary housing sector both in documents and in practice. This last is confirmed by the WAG which in guidance to local authorities on the preparation of Local Housing Strategies in 2002 identified the contribution of the voluntary sector toward meeting housing need and tackling housing related issues as distinct from that of housing associations.³²

The approach adopted by the National Assembly to implementation of its *Housing Strategy* is one that delineates housing associations within the Wales-voluntary sector, possibly giving rise to ambiguities over their status. This was apparent from housing association responses to a consultation on audit

³⁰ NAW, (2001f).

³¹ NAW, (2001c) at paragraph B.5.

³² WAG, (2002).

arrangements for housing associations carried out by the WAG in 2003. It proposed to make the Audit Commission in Wales responsible for monitoring and review of housing association performance in the discharge of their housing functions. As the Commission's role is to report on the performance of public bodies this led some consultees to raise the concern that voluntary status might be undermined. In its report on the consultation the WAG noted that:

'The appointment of the audit commission to carry out inspections was felt to allow the perception that housing associations are public sector bodies ...'³³

It is apparent from the report that the maintenance of independence featured as a significant issue for several housing association consultees. It noted:

'... an overall concern from many housing associations and the Welsh Federation of Housing Associations that the independent, voluntary and not for profit status of housing associations should be clearly recognized and stated in [regulations].'³⁴

The WAG sought to address these concerns by providing a re-assurance to housing associations that it does not regard associations as part of the public sector in Wales.³⁵ Although it has implemented its proposal for audit by the Audit Commission, the WAG has also provided some safeguard for housing association independence in its *Regulatory Code* (above).

Housing Associations and Social Enterprise

As housing associations operate as non-profit distributing bodies with a social purpose, and have the capacity to generate an income from rents, they appear to be a paradigm of social enterprise. This seems to have been anticipated by Tai Cymru which, in its *Annual Report 1993-94*, claimed that housing associations had become '*multi-million pound businesses with a social aim*'.³⁶ This

³³ WAG, (2003c), *Introduction*.

³⁴ WAG, (2003c), *Introduction*.

³⁵ WAG, (2003c), *Introduction*.

³⁶ Tai Cymru, (1993-94), at p.4.

terminology would not out-of-place in contemporary policy documents to describe the social enterprise sector. The relevance of the social enterprise policy construct to housing associations was confirmed by the WAG during consultation in 2003 on its *Social Enterprise Action Plan*.³⁷ It suggested housing as one of the areas in which social enterprises might make a contribution toward growth in the Wales economy.³⁸ In 2004 housing associations were directly involved in a review of the social enterprise sector and the WAG's action plan,³⁹ and in 2005 the WAG gave housing associations as an example of a social enterprise in its *Social Enterprise Strategy*.⁴⁰ By their inclusion within the social enterprise sector in Wales housing associations are delineated within the wider non-profit sector. However, links with the voluntary sector at structural level are maintained by the definition of a social enterprise.⁴¹ In any event the WAG's *Social Enterprise Strategy* refers to voluntary organizations that derive an income from trading activities as within the Wales voluntary sector.⁴²

Housing Association Status: Research Findings

The Purpose of the Research

It is apparent from research on documents that both Tai Cymru and the National Assembly have provided support for key characteristics of associations as voluntary organizations. This would suggest that status is confirmed as a feature of housing policy implementation in Wales. However, the regulatory framework, whilst significant, is not the only aspect of housing policy implementation impacting on the assessment of status. Resource dependency, the proximity of housing associations to policy institutions, and housing associations' role in strategic context, may be seen as relevant. This chapter investigates perceptions of housing association status, and the influences on attitudes toward this issue. It seeks to establish whether or not status is in doubt, and if so, the reason/s why.

³⁷ WAG, (2003g).

³⁸ WAG, (2003b) at p.30.

³⁹ WAG, (2004a).

⁴⁰ WAG, (2005b), at p.6.

⁴¹ Discussed in: Chapter One.

⁴² WAG, (2005b), at p.7.

The research findings set out below are therefore relevant to Research Objective One, as set out in Chapter Five.

The self-completion questionnaire (the 'questionnaire') asked respondents to give their opinion on the status of housing associations, and on relevant factors. In addition housing association respondents were asked about housing association independence, and to identify methods of control used by Tai Cymru, and the National Assembly. Interviewees were asked to comment on the status of housing associations, and housing association interviewees were further asked to comment on the extent to which Tai Cymru sought to exert control over housing associations, and to contrast this with the approach of the National Assembly.

The Questionnaire Results: Findings for Housing Associations

Status and relevant factors

Table 6.1 below sets out findings on how housing associations are perceived amongst housing association respondents. The most obvious conclusion that may be drawn from the evidence is that for the majority of this group the assumption of voluntary status is confirmed. The data shows that 80 percent of respondents agreed that housing associations should be described as voluntary organizations. Reference to the full data shows that 46 percent of these indicated strong agreement.⁴³ These findings tend to suggest that despite doubts that may arise through resource dependency etc., housing association links with the voluntary sector remain strong, and that assumptions as to status are initially valid - at least within the housing association movement - although other data raises the possibility that there will be some ambiguity on the issue. This is because respondents were able to identify multiple descriptors applicable to housing associations.⁴⁴ Most significant in this context is the level of support for options implicitly or explicitly recognising links between the private sector and

⁴³ Table 1, Appendix Seven.

⁴⁴ The completed questionnaires show that most respondents opted for more than one descriptor.

housing associations. 53 percent of respondents agreed that housing associations should be described as private sector organizations, whilst 40 percent of respondents thought that housing associations ought to be seen as hybrid public/private organizations. In fact the data reveals that next after the voluntary sector the most favoured descriptor was that of a social enterprise: 63 percent of respondents thought that housing associations should be described as social enterprises. Reference to the complete data shows that 26 percent of respondents were in strong agreement with this suggestion.⁴⁵ These findings tend to suggest links between housing associations and private business - which are emphasized by structural similarities for the corporate non-profit sector. They also confirm housing associations' independence from the public sector: this is supported as the highest level of disagreement was for housing associations to be described as public sector organizations. 60 percent of respondents disagreed with the public sector descriptor, with just 13 percent in agreement.

Table 6.1⁴⁶
 Housing associations should be described as:

Response Options	In Agreement*	No Opinion*	Not Agreeing*	Response Rate (%)
Voluntary sector organizations	12 (80)	1 (6)	2 (13)	100
Public sector organizations	2 (13)	4 (26)	9 (60)	100
Private sector organizations	8 (53)	4 (26)	3 (20)	100
Hybrid public/private sector organizations	6 (40)	6 (40)	3 (20)	100
Social enterprises	7 (63)	5 (33)	3 (20)	100

* Refers: Number of response (percentage of total possible responses)

On factors relevant to the determination of status, the findings on this issue are set out in Table 6.2 below. 60 percent of respondents saw the provision of public subsidy as relevant to the issue of status, and 46 percent agreed that the level of control through regulation etc. should be taken into consideration. This is consistent with accounts of the voluntary sector which suggest that interference

⁴⁵ Table 1, Appendix Seven.

⁴⁶ This table shows extracted findings from Table 1, Appendix Seven.

from government has the potential to impact on perceptions of non-profit enterprise, raising the possibility that voluntary status will be undermined as housing associations come under the control of government or its appointees. However, the findings discussed above (Table 6.1) suggest that this is not necessarily applicable in the case of housing associations; i.e. having regard to the strength of support for the voluntary sector descriptor, and for other descriptors implicitly recognizing independence (private sector, social enterprise). What is apparent from the data is that other factors relevant to housing association structures and their role/s are significant to influence perceptions of status. In particular 80 percent of respondents identified constitution and non-profit orientation as significant to the determination of status: confirming structural connections between housing associations and other voluntary organizations. Further, 66 percent of respondents thought that housing associations' had a tradition within the voluntary sector. These findings offer an explanation for this group's support for the voluntary sector descriptor. In addition 86 percent of respondents saw housing associations' role in meeting housing need as relevant to the issue of status. This function is entirely consistent with housing associations as service-providing voluntary organizations meeting need as an alternative to the public sector.⁴⁷ Finally, 86 percent of respondents saw the level of investment from the private sector as significant to the issue of status, whilst 60 percent of respondents thought that housing association's capacity to generate revenue from rental income relevant. These would tend to emphasize links with private sector, and suggest housing associations as business operations.

⁴⁷As suggested by theories of the voluntary sector in Chapter One.

Table 6.2⁴⁸

Which of the following do you consider to be relevant to the determination of housing association status:

Response Options	In Agreement*	No Opinion*	Not Agreeing*	Response Rate (%)
The public subsidy HAs receive	9 (60)	1 (6)	5 (33)	100
The level of control exerted through regulation etc.	7 (46)	1 (6)	7 (46)	100
HAs' role in meeting housing need	13 (86)	2 (20)		100
The level of private sector investment in HAs	13 (86)	1 (6)		93
HAs' capacity to generate revenue from rents	9 (60)	3 (20)	3 (20)	100
HAs' constitution and non-profit orientation	12 (80)	3 (20)		100
HAs' traditional links with the voluntary sector	10 (66)	5 (33)		100

* Refers: Number of response (percentage of total possible responses).

Independence and control

As part of the research undertaken for this chapter it was decided to question respondents on control by the regulator: as this is likely to impact on independence as an aspect of housing associations. From the findings discussed above it is reasonable to assume that housing associations will see themselves as independent organizations. However, the data set out in Table 6.3 suggests that associations operate subject to control and direction from the regulator; in particular under Tai Cymru. Just 26 percent of respondents thought that under Tai Cymru housing associations were able to act as fully independent organizations, whilst 66 percent disagreed. These responses are, to some extent, anticipated, as it is inevitable in a regulated industry that there will be some limitation on discretion.⁴⁹ However, other data reveals that Tai Cymru was seen as exercising firm control and direction over housing associations: 80 percent of respondents agreed that this was the case, and reference to the full

⁴⁸ This table shows extracted findings from Table 2 , Appendix Seven.

⁴⁹ This is confirmed as several respondents made comments on the returned questionnaires suggesting, in terms, that full independence cannot be achieved in a regulated industry.

data shows that 26 percent of respondents were in strong agreement.⁵⁰ The same high proportion of respondents agreed that Tai Cymru placed unnecessary restrictions on housing association operational discretion. Taken together these findings raise the inference that Tai Cymru's control over the housing association movement went beyond what might otherwise be anticipated in a regulated industry. This provides a contrast with the data in relation to the National Assembly which suggests that the Assembly is seen as a less controlling body. Whilst a minority of 33 percent of respondents thought that under the Assembly housing associations are able to act as fully independent organizations, just 26 percent of respondents disagreed. Further, a minority of 26 percent of respondents agreed that the National Assembly exercises firm control and direction over housing associations, and just 6 percent agreed that it has placed unnecessary restrictions on housing association operational discretion. These findings are somewhat anomalous as the regulatory regime introduced by Tai Cymru was maintained until the WAG introduced its own *Regulatory Code* in 2005, and circulars issued by Tai Cymru remain extant. A possible explanation is provided by anecdotal evidence that the National Assembly is not yet seen as having asserted its agenda toward housing associations,⁵¹ and/or as a consequence of a reduction in the use of circulars as instruments of control under the WAG, as well as the relatively recent introduction of its revised regulatory regime.⁵² This is confirmed by the data set out in Tables 6.4 and 6.5 below.

(Table 6.3 overleaf)

⁵⁰ Table 3, Appendix Seven.

⁵¹ This was noted in Chapter Five, see: *Focusing on the Tai Cymru Era*.

⁵² Discussed in Chapter Four.

Table 6.3⁵³

To what extent do you agree or disagree with the following:

Response Options ▼	In Agreement*	No Opinion*	Not Agreeing*	Response Rate (%)
Under TC HAs were able to act as fully independent organizations	4 (26)		10 (66)	93
TC exercised firm control and direction over HAs	12 (80)		2 (13)	93
TC placed unnecessary restrictions on HAs' operational discretion	12 (80)		2 (13)	93
Under the NAW HAs are able to act as fully independent organizations	5 (33)	5 (33)	4 (26)	93
The NAW exercises firm control and direction over HAs	4 (26)	5 (33)	5 (33)	93
The NAW has placed unnecessary restrictions on HAs' operational discretion	1 (6)	5 (33)	8 (53)	93

* Refers: Number of response (percentage of total possible responses).

Table 6.4 below shows that circulars provided Tai Cymru with an instrument by which it was able to exercise control over housing associations: there was unanimous agreement that this was the case. Also, 93 percent of respondents agreed that Tai Cymru exerted its influence through regulation and audit (although audit may be seen as part of the process of regulation), and through guidance on operational matters. The relevance of funding for housing associations as resource dependent organizations is confirmed as 93 percent of respondents identified the exercise of discretion over the allocation Housing Association Grant and Social Housing Grant as a mode of control. These findings establish that Tai Cymru made full use of all policy instruments at its disposal to impose its agenda on housing associations, and confirm the relevance of operational frameworks to structure housing association discretion. In contrast the data set out in Table 6.5 below shows that under the National Assembly circulars are not as significant. None of the respondents identified circulars as a

⁵³ This table shows extracted findings from Table 3, Appendix Seven.

mode of control, with just 33 percent of respondents agreeing that control is exercised through guidance. The majority of respondents confirmed that under the National Assembly the primary instrument used to direct housing associations is the exercise of discretion over funding: 93 percent of respondents agreed that this is the case. There was also some support for the suggestion that control is exercised through regulation, i.e. 46 percent agreement. Finally, 14 percent of respondents disagreed that audit is a mode of control - this is unsurprising as at the time of the survey the process of audit of housing associations was under review by the Assembly.⁵⁴

Table 6.4⁵⁵

Tai Cymru exercised control over housing associations through:

Response Options ▼	In Agreement*	No Opinion*	Not Agreeing*	Response Rate (%)
The control of discretionary funding	14 (93)	1 (6)		100
Circulars on operational matters	15 (100)			100
Guidance on operational matters	14 (93)	1 (6)		100
Regulation	14 (93)	1 (6)		100
Audit	14 (93)		1 (6)	100

* Refers: Number of response (percentage of total possible responses).

Table 6.5⁵⁶

The NAW exercises control over housing associations through:

Response Options ▼	In Agreement*	No Opinion*	Not Agreeing*	Response Rate (%)
The control of discretionary funding	14 (93)	1 (6)		100
Circulars on operational matters		2 (13)	13 (86)	100
Guidance on operational matters	5 (33)	1 (6)	9 (60)	100
Regulation	7 (46)	1 (6)	7 (46)	100
Audit		1 (6)	14 (93)	100

* Refers: Number of response (percentage of total possible responses).

⁵⁴ This finding should be seen in the context of the WAG's recent review of the regulatory framework, and the appointment of the Audit Commission in Wales to monitor performance. This may lead to audit becoming more significant.

⁵⁵ This table shows extracted findings from Table 4a, Appendix Seven.

⁵⁶ This table shows extracted findings from Table 4b, Appendix Seven.

The Questionnaire Results: Findings for Local Authorities

Status and relevant factors

The findings in Table 6.6 below show attitudes toward housing association status amongst local authority respondents. It is immediately apparent that there is a significant difference in perception between housing associations and local authorities. A majority of local authority respondents supported the public sector descriptor for housing associations, with 63 percent of respondents in agreement. This was least favoured descriptor amongst housing associations. This disagreement is emphasized by other data showing that just 36 percent of respondents supported the voluntary sector descriptor: none of the respondents choose to describe housing associations as private sector organizations. There was though some support - although limited - for descriptors that suggest a private sector characterisation for housing associations: 8 percent of respondents agreed that housing associations are hybrid public/private organizations, and 27 percent of respondents saw them as social enterprises.

Table 6.6⁵⁷

Housing associations should be described as:

Response Options ▼	In Agreement*	No Opinion*	Not Agreeing*	Response Rate (%)
Voluntary sector organizations	4 (36)	3 (27)	3 (27)	90
Public sector organizations	7 (63)	1 (9)	2 (18)	90
Private sector organizations		6 (54)	4 (36)	90
Hybrid public/private sector organizations	2 (18)	5 (45)	3 (27)	90
Social enterprises	3 (27)	6 (54)	1 (19)	90

* Refers: Number of response (percentage of total possible responses).

An explanation for the different findings from the two survey groups is suggested by the data set out in Table 6.7 below. Local authority respondents were in full agreement that the provision of public subsidy is relevant to the issue of status; which is by far the most significant factor identified by this group. In contrast with

⁵⁷ This table shows extracted findings from Table 1, Appendix Eight.

findings from housing associations, other factors which suggest independence from the public sector did not feature as strongly. The evidence shows that the majority of respondents, i.e. 72 percent in each case, were indifferent as to the relevance of rental income, private sector investment, constitution, tradition, and control through regulation, to the issue of status. More significant for local authorities was housing associations' role in meeting housing need: 54 percent of respondents thought this a factor to be taken into account. As local authorities have themselves been provided with public subsidy to assist with meeting housing need it is predictable that for local government housing associations will be seen as discharging a welfare function as part of the public sector.

Table 6.7⁵⁸

Which of the following do you consider to be relevant to the determination of housing association status:

Response Options ▼	In Agreement*	No Opinion*	Not Agreeing*	Response Rate (%)
The public subsidy HAs receive	11 (100)			100
The level of control exerted through regulation etc.	3 (27)	8 (72)		100
HA's role meeting housing need	6 (54)	5 (45)		100
The level of private sector investment in HAs	3 (27)	8 (72)		100
HA's capacity to generate revenue from rents	3 (27)	8 (72)		100
HA's constitution and non-profit orientation	3 (27)	8 (72)		100
HA's traditional links with the voluntary sector	1 (9)	5 (45)	4 (36)	90

* Refers: Number of response (percentage of total possible responses).

⁵⁸ This table shows extracted findings from Table 2, Appendix Eight.

The Interview Findings for Housing Associations⁵⁹

References to percentages below are approximations from the data.

Status and relevant factors

In general the evidence from the interviews with housing associations suggests that there is likely to be a degree of uncertainty surrounding the determination of status. Almost all of the interviewees had difficulty resolving the issue absolutely, and there was a considerable resistance to the use of single descriptors - this is consistent with the questionnaire data. Although it might be assumed from the questionnaire findings that interviewees would tend to regard housing associations primarily as voluntary organizations this is not convincingly supported by the interview findings. Just 27 percent of interviewees asserted that housing associations should be regarded as voluntary organizations without qualification.⁶⁰ Whilst the majority of interviewees considered the voluntary sector descriptor relevant, doubts were raised as to its suitability having regard to aspects of housing association operations, and in particular their funding structures. In general there was considerable uncertainty surrounding the determination of housing association status amongst the interviewees. Comments included:

"I wouldn't say we're in the voluntary sector. We certainly have connections. But the problem is I see us as having connections with the private sector, and even the public sector. It's difficult to assert one way or the other that we are exclusively in the voluntary sector. ... The voluntary sector? Whilst I see the history of organizations as very important, the driver of this organization on a day-to-day basis is our public role both in terms of our customers our tenants and in relation to local authorities and its our private role in respect of our financial management."

HA Interviewee A

"Voluntary sector, yes; private sector maybe; public sector, I'd like to think not. I'd say voluntary sector if I had to chose. But then again I'd have to say that you could quite properly say that because

⁵⁹ Interview questions 3 and 5, Appendix Five.

⁶⁰ Table 5, Appendix Nine.

[names association] has so much private capital invested in it, and because we work so closely with the private sector, and we are very much businesses, the last thing we are is in the voluntary sector. I wouldn't agree, but it's a legitimate argument. As is the argument that we're in the public sector because we provide social housing. Again I wouldn't agree."

HA Interviewee B

A number of interviewees saw a link between housing associations and other voluntary organizations arising from shared traditions and shared values; again reflecting findings from the questionnaire with this group. However, even where ethical and ideological similarities were identified between housing associations and the other voluntary organizations this did not provide a complete solution to the issue of status.

In general the interviewees did not seek to identify structural characteristics to resolve the issue of status. This provides a contrast with the findings from the questionnaire, where constitution and non-profit orientation featured as significant. However, several interviewees pointed out the convenience of referring to voluntary sector norms to describe housing associations to other organizations. For example:

"I always state to any audience that I'm speaking to that we're in the voluntary sector. Why are we in the voluntary sector? Because the board of management, who are ultimately responsible for the activities of the association, are all volunteers. So we're in the voluntary sector."

HA Interviewee C

This interviewee, and others, commented that the choice of an appropriate descriptor may be dependent on context, and that selection of a terminology may be influenced by its utility in given circumstances, and by the expectations of others. Similar comments included:

"To be honest I decide which we're going to be by whichever suits the purpose. If it suits us to be a limited company because we get grants for business we're a limited company, if it suits us to be in

the voluntary sector we will be ... my view is that I would like us to be a social enterprise. I don't think we're quite there yet but I think that's the future for us."

HA Interviewee K

"It may be that we are in voluntary sector or the private sector, when you look at our board, our finances, everything that we do and how we operate. But what settles it is what do your partners think. When we talk about tenant participation or community focus we show our voluntary sector roots, because the sector has always been big on involving the community, but when we talk about millions of pounds of investment, business plans, investment plans etc. we talk the talk of the private sector. And this is fine because we need to be flexible enough to meet different expectations."

HA Interview G

These suggest an inherent flexibility in describing housing associations. The interview data tends to confirm the multiple influences relevant to the determination of status as highlighted by the questionnaire, but also the significance of context to the issue. This is not anticipated by accounts of the voluntary sector that draw attention to weaknesses in the structure of the voluntary sector to undermine status. The introduction of context as an additional factor can only add to the ambiguity surrounding housing associations. This is highlighted by the use of imprecise terminology by several of the interviewees. For example:

"... to me if you could draw a line, a continuum, between the public sector and the private sector I would see housing associations as moving along that line, we're some sort of odd quasi-public/private sector body. We have public responsibilities, we have private sector accountabilities, and the other way around."

HA Interviewee A

A number of interviewees commented on similarities between housing associations and both public and private sector organizations, and the difficulty this creates in regarding housing associations as a movement distinct from either

sector. However, neither the public sector nor the private sector were identified as entirely suitable descriptors.⁶¹

The questionnaire data suggests the funding structures of housing associations as amongst the most significant of factors relevant to the issue of status. This is confirmed by the interview findings. Several interviewees noted the introduction of private finance as responsible for moving housing associations closer to private enterprise without necessarily placing them within the private sector. In contrast, although housing associations in Wales receive the majority of their funding from public sources interviewees did not see this as bringing the movement into proximity with the public sector. Rather, the mixed-funding regime, and the housing association movement's partial reliance on private finance, were both suggested as good reasons for distinguishing housing associations from public authority housing providers. Some interviewees made the point specifically that this is the case even though housing associations may be seen as providing a public service. For example:

"I think we provide a public service but the problem is that we aren't seen as a public body because of our funding structures. I would look at us now, and the way we've developed, as a social enterprise."

HA Interviewee D

"OK we get public money, and we need it, or rather its needed if we are going to carry on doing what we do on a large scale. But does this make us a public body? I don't know but I don't think so. Lots of organizations get public money, including many private businesses. Our services are very similar to those of a local authority but we are not local authorities. My starting point is not, we get public money so we are public sector, its we get public money to provide housing, but we also get a whole load of private investment to do the same thing. To my mind you cannot ignore this."

HA Interviewee K

⁶¹ Table 5, Appendix 9.

What is suggested by the interview data is that partial reliance on private finance is highly relevant to delineate housing associations from the public sector. Some of the interviewees also suggested that the introduction of private finance to housing associations has had the consequence of distancing associations from the voluntary sector. For example:

"We have some voluntary managing agents and I said to them well we're a voluntary organization they'd be surprised ... the way in which we operate and the way in which we work is much more about a business focus than perhaps other voluntary organizations ... and a large part of that is because we use such a large amount of private finance. "

HA Interview J

In fact several interviewees noted a similarity between housing associations and business. Interestingly one interviewee suggested that because of the requirement for housing associations to register as a corporate body members of the public might regard housing associations as corporate businesses.⁶² Interviewees did not contemplate housing associations as within the public sector - despite several commenting that housing associations receive public subsidy and deliver services in the nature of public services. In general the interviewees were concerned to emphasize that housing associations should be seen as distinct and independent from the public sector. Some chose to make the point by contrasting the position of housing associations with that of local authorities, for example:

"Voluntary sector gives, to me, an impression of greater independence. Public sector I associate more with elected members and the local authority as an arm of the state. I guess I would be more inclined towards the voluntary sector."

HA Interviewee E

⁶² Whilst discussing how housing associations are perceived this interviewee commented: "... there's a big difference in public perception in terms of what the public think ... a lot of people think we're private companies because we are ... an I&P society who happen to use the term limited, but very much with a voluntary sector ethos, so there is scope for an awful lot of confusion": HA Interviewee C

What I say is that we cannot be in the public sector because we are independent, and very much so. As a movement we are different from local authorities and outside of the public sector in Wales, you'll probably find that this is a view shared by many of my colleagues."

HA Interviewee

Others simply noted the suitability of descriptors other than the public sector to describe housing associations. In this context a number of interviewees suggested the social enterprise descriptor as encapsulating housing associations' private sector traits as well as their ideological and structural connections with the voluntary sector. Analysis of the collated interview data shows that for the majority of interviewees, i.e. about 63 percent,⁶³ the concept of a social enterprise provided an acceptable alternative to other sectoral descriptors. These participants saw the utility of the social enterprise descriptor as being to take account of housing associations' business characteristics whilst recognizing their social purpose, non-profit orientation, and their voluntary constitution. For example:

"I feel quite strongly that we should not be described as a public organisation, as this is something that we are not. I suppose a description is required which will hopefully illustrate the commercial acumen that exists within the sector, also emphasising the community and social values that exist, and our connections with voluntarism in Wales."

HA Interviewee I

And on the suitability of the voluntary sector descriptor to encapsulate the work of housing associations:

"I would argue that we're social entrepreneurs to a great degree ... that's the nature of our activities at the moment, making things happen where other organizations are not placed so to do. I cannot think of a better description than a housing association but generally I consider [names association] to be a social entrepreneur as well as a social landlord."

HA Interviewee C

⁶³ Table 5, Appendix Nine.

In addition the terminology was supported as recognizing the differences that exist between traditional voluntary sector organizations and the large-scale enterprises that most housing associations represent. For example:

"I'm inclined to think that social enterprise is the better description in many ways. We're definitely not public sector organizations in any meaningful sense of the word, we're not private sector organizations because we're not distributing profits and all that sort of thing, and voluntary sector? This is the perception issue: can you describe an organization like ours which makes a million pound surplus as what you'd typically call a voluntary sector organization, you can't really ... we're operating in bricks and mortar and buildings which is quite unusual for the voluntary sector so I'm inclined to think we need some new description. Social business, social enterprise, social not-for-profit enterprise that sort of thing is probably a better description."

HA Interviewee G

Independence and control

Interviewees were relatively unconcerned about the impact of public subsidy and resource dependency on housing association status. In this context the majority of interviewees chose to disregard any weakening of independence that arises as a consequence of housing association funding and regulatory structures. One interviewee however did point out the relevance of subsidy in this context, commenting that:

"Inevitably if you receive the government's shilling for development your independence is blurred because the link between what you get and what you do is very, very strong."

HA Interviewee B

However, this was very much the exception. What is suggested by the findings from both sets of housing association participants is that the movement is likely to overlook the relevance of interference from the regulator when determining the issue of status. The interview data tends to confirm the anecdotal evidence (above) that the operating environment under the National Assembly is less claustrophobic than under the previous regime. When asked directly about the

degree of control exerted by Tai Cymru, and to contrast this with the National Assembly, a number of interviewees commented that control had noticeably diminished. It is apparent from the data that the majority of interviewees see the demise of Tai Cymru as having led to a less interventionist supervisory regime, and a reduction in the level of overt control through circulars and audit. Comments included:

"The National Assembly for Wales would say the housing association sector in Wales is one of the most heavily regulated sectors in the public sector and unlike when Tai Cymru said it, it would be untrue, because they don't do anything. One of the things that ground to halt when the National Assembly came into being was the whole process of audit and inspection ... the rhetoric is hands-on but the approach is hands-off. I don't think that's because they have any great belief in hands-off, quite the contrary, I think resources are completely inappropriate for the task in hand."

HA Interviewee A

It is suggested by this interviewee that a lack of resources is the reason that control has lessened under the National Assembly, i.e. rather than a shift in culture. This was also commented on by other interviewees who in addition noted that whilst the Housing Directorate has continued to operate systems inherited from Tai Cymru it has not sought to interfere with or regulate housing associations to the same extent as its predecessor. Comments included:

"Regulation, circulars, etc. under the National Assembly it's not happening. Since Tai Cymru we've seen hardly any circulars, a few letters from the Assembly and that's it. Regulation hasn't gone away but it doesn't feel like it did under Tai Cymru. Then it was tough, you had to be performing or you'd be picked up in an audit. You still have to perform but now it's more about justifying it to your board, or to your tenants. I don't feel that the Assembly has as strong a focus on what we're doing as Tai Cymru."

HA Interviewee D

"I would say through documents, performance expectations, regulatory requirements as well as circulars there was a significant amount of control and influence by Tai Cymru ... The difference with the National Assembly for Wales is in capacity. I don't believe

that the Assembly has the capacity to regulate housing associations in the same way. Because of the previous levels of control they're almost resting on their laurels and they've allowed housing associations to be self-regulating by default."

HA Interviewee E

Other interview data confirms Tai Cymru was seen as an authoritarian body: 91 percent of interviewees made comments suggesting that Tai Cymru exercised strong control over housing associations.⁶⁴ In contrast a minority of interviewees, i.e. 45 percent, commented that the National Assembly is exercising strong control over associations.⁶⁵ This is consistent with the findings from the questionnaire and suggests that housing associations were less independent under Tai Cymru than under the Assembly. Several interviewees made the point that Tai Cymru's approach to regulation and supervision was excessive, leading to over control. Comments included:

"The responsibility of Tai Cymru that the Assembly has inherited is one of promoting and policing housing associations. I never saw much in the way of promotion of housing associations by Tai Cymru but I saw lots of policing. A pretty thorough audit machine, a thought out process which whether you liked it or not was followed, a schedule which they stuck to ... a lot of attention on process as opposed to outcome but nonetheless an approach which was one that was - do as it [Tai Cymru] said ... they probably overdid it in terms of actual control, they were probably too Draconian."

HA Interviewee A

The impression gained from the interviewee evidence as a whole is that Tai Cymru established a strict framework for the operation of housing associations and that in so doing made full and effective use of all the modes of control available. Several of the interviewees referred to Tai Cymru's use of policy instruments in this context, for example:

⁶⁴ Table 3, Appendix Nine.

⁶⁵ Table 3, Appendix Nine.

"I would say through documents, performance expectations, regulatory requirements as well as circulars there was a significant amount of control and influence by Tai Cymru."

HA Interviewee E

"From the Housing Corporation days through to Tai Cymru circulars were holy writ, they had the force of law effectively as far as we were concerned."

HA Interviewee G

And on the impact of regulations and audit:

"Tai Cymru wanted to ensure that the housing association movement was a success ... So they exercised robust control across every activity that housing associations carried out. We were heavily regulated, often inspected and we had to be compliant with laid down standards. If we weren't compliant with laid down standards then we were for the high jump ... It was a case of 'thou shalt do as I say'."

HA Interviewee C

The Interview Findings for Local Authorities⁶⁶

References to percentages below are approximations from the data.

Status and relevant factors

As was the case for housing associations, local authority interviewees found it difficult to resolve the issue of housing association status without qualification. The differences between local authorities and housing associations apparent from the questionnaire data are confirmed by the findings from interview, in particular as none of the local authority interviewees chose to describe associations as voluntary sector organizations.⁶⁷ Highly significant in this context, and for this group, was the amount of funding received by housing associations. Several interviewees noted that housing associations may be differentiated from the traditional voluntary sector by reason of their funding structures, and the level of funding they receive. For example:

⁶⁶ Interview question 3, Appendix Six.

⁶⁷ Table 3, Appendix Ten.

"I think calling them voluntary sector is not a particularly accurate term, something that encompasses Mrs.Jones's charity funding body or the local scout troop doesn't particularly sit well with a housing association with possibly hundreds of employees and a multi-million pound turnover. "

LA Interviewee A

"Housing associations are immensely well-off compared to other voluntary organizations. I am thinking of those organizations supported by this authority, they work on a fraction of what housing associations have available. Of course they provide a different service but still, its difficult to see [names housing association] as in any way comparable with local environment groups, or tenants associations, for example."

LA Interviewee B

Although housing association interviewees raised similar points, the contrast with local authorities is that the latter identify funding as significant to distinguish associations from the wider voluntary sector. Having regard to the questionnaire data from local authorities it might be anticipated that interviewees would see the availability and provision of public funding as indicative of public sector status for housing associations: this was the case for some interviewees, for example:

"Housing associations were always the third arm of housing. I can see an argument to place them in the public category because of the significant, over 50 percent, funding that they get through social housing grant to develop, and I think anything over 50 percent must place them in public arena. However they are at liberty to go ahead and develop without social housing grant should their resources enable them to do, and in fact some housing associations do that, so in which case what you're talking about is an organization with a private arm."

LA Interviewee C

Surprisingly however a minority of just 33 percent of interviewees identified associations as within the public sector.⁶⁸ This finding is explicable as other interview data shows that the mixed-funding regime, and in particular the introduction of private sector funds, led to the majority of interviewees to

⁶⁸ Table 3, Appendix Ten.

differentiate housing associations from public bodies. Although none of the interviewees chose to describe housing associations as wholly private organizations,⁶⁹ a number referred to characteristics of private enterprise when describing associations: particularly in the conduct of their financial affairs where they were seen as businesses. This provides a contrast with the questionnaire findings from this group. In fact local authority interviewees, similar to housing association participants, but to a lesser extent, identified social enterprise as an appropriate descriptor: 33 percent of interviewees chose to describe housing associations in this way.⁷⁰ Comments included:

"...social enterprise ... may be a suitable term. You could class them as private because profit and loss, profit in charitable terms or the mutual terms is important. ... the history of the movement is that they are moving away from the committee of the great and the good that act in the community's interest to boards that have to make important and large financial decisions I would prefer to describe them as social enterprises.

LA Interviewee B

One interviewee, remarking on the relevance of the political agenda in Wales to the issue of status, suggested that housing associations may be differently regarded depending on the priorities of politicians and others in the political realm by commenting that:

"I don't feel that they are in the public sector. I don't think that they are particularly public or private. I mean different bodies will want to consider them to be public or private depending on their political agenda. For example, things like the Welsh Language Act, all of a sudden there's pressure being put on associations to be considered public sector bodies for the purposes of the Welsh Language Act."

LA Interviewee A

To some extent this reflects comments made by housing association interviewees and tends to confirm an inherent flexibility in describing housing associations, as well as the relevance of context.

⁶⁹ Table 3, Appendix Ten.

⁷⁰ Table 3, Appendix Ten.

Synthesis and Conclusion

Decisions taken by ministers in Westminster determine the priorities for housing policy, including the selection of voluntary housing as an implementation vehicle. In this context a concern of housing policy has been to confirm structural characteristics of housing associations relevant to voluntary sector norms. In consequence housing associations are required to operate as non-profit distributing organizations. As voluntary status is prescribed in advance the regulator is required to do no more than confirm that registered housing associations meet with statutory prescriptions. Notwithstanding, the regulatory framework introduced by Tai Cymru between 1990 and 1997 offered support for housing associations as voluntary organizations by regulating in favour of non-profit distribution and independence as operational norms. Similarly, under the National Assembly the regulatory framework continues to provide support for these aspects of housing associations. It is reasonable to conclude that the regulatory regime implemented for housing associations in Wales post 1989 has re-enforced the movement's structural connections with the wider Wales non-profit sector. This is contrary to what is anticipated by accounts of the voluntary sector that suggest regulation as an interference with discretion and therefore independence.

Following chapters will consider how the policy agenda under Tai Cymru (and to a lesser extent under the National Assembly), has impacted on issues on housing association independence and therefore status. For the purposes of this chapter it is relevant to note that the approach of the National Assembly to the implementation of its *Housing Strategy* has the potential to introduce uncertainty as to housing associations' continued membership of the Wales voluntary sector. Associations have been brought into proximity with local authorities as a consequence of their identification as a housing resource, but also because of the strategic agenda in housing that requires close cooperation with local government planners. In this context housing associations' utility in meeting housing need may be seen as having greater significance than their status as

voluntary organizations. To some extent this is mitigated by the inclusion of voluntary housing within the ambit of the WAG's Voluntary Sector Scheme, and by the introduction of social enterprise as a relevant policy construct in Wales. Although identification as a social enterprise highlights differences in funding structures between housing associations and other non-profit organizations, it nevertheless offers associations the opportunity to assume a distinct institutional identity that sets them apart from the public sector, whilst maintaining links with the voluntary sector.

The survey data confirms uncertainty as to the status of housing associations in Wales amongst key participants in the housing system. This is apparent from the findings from the survey groups, but also in contrasts between the findings from the two sets of participants - in particular from the questionnaire data. What emerges is that the determination of status in practice is not likely to be resolved by the application of definitional criteria, or by an objective analysis, but rather by subjective assessment of the relevance of operational factors applicable to the housing association movement. It is apparent that housing associations are much more likely to see themselves as within the voluntary sector, or as independent from the public sector. Local authorities however will be more inclined to see housing associations as within the public sector, or at least as differentiated from the voluntary and private sectors. Unsurprisingly, factors identified by survey participants relevant to the determination of status, and the weight given to these factors, support preferred descriptors. The evidence from housing associations suggests that the utility of structural criteria may be to raise an assumption of voluntary status with the possibility that this will be qualified by reference to other considerations. In this context the survey has identified funding structures as highly relevant: both survey groups noted the importance of funding to the determination of status. As funding regimes are established by housing policy it is concluded that an impact of housing policy for housing associations has been to influence perceptions of status. However, it is significant that housing associations and local authorities differ on the relevance of subsidy and

of private finance. It is suggested that this reflects on the differing priorities of these survey groups. Housing associations will have an interest in maintaining independence, and in particular independence from the public sector. It is predictable therefore that they will see the introduction of private finance as moving housing associations closer to the private sector: a consequence of this will be that independence is preserved as sectoral distinctions from the public sector are emphasized. In contrast local authorities, as strategists in housing, are provided with a justification for the manipulation of housing associations in pursuit of local level policy objectives where public subsidy underpins development.

The survey has drawn attention to the subjective nature of the assessment of housing association status. This is highlighted as housing associations have confirmed Tai Cymru as an authoritative body that was able to make full use of available policy instruments to exercise firm control over the housing association movement. From an objective viewpoint this is consistent with accounts of the voluntary sector that see interference from government - or its appointees - as undermining independence, and therefore voluntary status. As has been noted, the position under the National Assembly is less claustrophobic and may offer an explanation as to why housing associations are able to see themselves as independent from the public sector. Unfortunately this cannot be confirmed, as there is no comparable data on attitudes toward housing association status under Tai Cymru. However, following chapters, and in particular those in Part Three, will consider the extent to which housing associations were required to act in accordance with direction given by Tai Cymru so that a further assessment may be made as to the impact of its policy agenda on assumptions of voluntary status for housing associations.

CHAPTER SEVEN

THE ROLE OR ROLES OF HOUSING ASSOCIATIONS IN WALES

Introduction

Chapter Four drew attention to the relevance of housing policy for housing associations, and highlighted their role as housing providers alongside local authorities. Housing associations are nowadays integral to the housing system in the United Kingdom, and significant providers of accommodation to those in housing need. In addition to meeting general housing need housing policy has contemplated a role for associations as specialist providers, as developers of housing for sale, and, as vehicles for social regeneration. At Wales-national level these roles have featured as priorities for both the Housing Corporation and Tai Cymru. Post-devolution the roles anticipated for the housing association movement in Wales are dealt with in Wales-national housing policy under the National Assembly. In this context the content of housing policy specifying the roles contemplated for housing associations is significant as associations are dependent on government funding to underpin development (i.e. of affordable housing). In this circumstance there is the possibility that housing association roles will be determined as an aspect of policy implementation as government seeks to give effect to its objectives. This chapter discusses role expectations for housing association in Wales as established in policy documents. This is followed by a review of findings from the survey on housing association functions in Wales, how these are established, and the influence of policy institutions.

Housing Association Roles in Wales: Context

The Service-providing Role

It is apparent from Chapter Four that housing associations' primary function is as service-providing organizations within the housing system, developing and managing housing to let. Traditionally the housing association movement in the

United Kingdom has targeted housing services toward those in housing need.¹ In Wales, where the movement is more recently established, this has also been the primary aim of housing associations. The following sections consider how, following the demise of cost-renting in the early 1970's, the role of housing associations in Wales developed, and how it has been modified so as to reflect policy priorities in the 1980's and 1990's.

Support for the traditional housing function

The provision of subsidy has enabled housing associations to develop new and refurbished housing, allowing associations to set lower rents to facilitate access to those in housing need. In 1980 the Housing Corporation set out its expectations on the role of the housing association movement in a circular: this required registered associations in receipt of public subsidy to allocate their available housing to those in greatest housing need.² As many housing associations in Wales were set up to take advantage of capital grants administered by the Corporation under the housing acts of 1961 and 1964, as well as under the *Housing Act 1974*, this circular was highly relevant to establish the movement's function at that time.³ The Housing Corporation remained influential in this respect as the movement grew during the 1980's, as more associations became registered. The general housing function was confirmed in 1988 when the Corporation issued revised criteria for registration as a housing association. The primary purpose of housing associations was given as the construction, improvement or management of houses available for letting.⁴ This confirmed the statutory role of housing associations as anticipated by the *Housing Associations Act 1985*, which sets out these functions without reference to the expectation that associations will operate to meet housing need, i.e. in preference to demand. However, the Housing Corporation made it abundantly

¹ This assumption is unchallenged. In Wales the Welsh Federation of Housing Associations describes housing associations as providers of affordable housing: WFHA, (2002), at p.23.

² Housing Corporation Circular (16/80). This circular is no longer in force.

³ The importance of subsidy was such that the NFHA suggested that the growth of the housing association movement in Wales was in response to housing policy: NFHA, (1986).

⁴ Housing Corporation Circular (27/88), Appendix I (criteria for registration), at paragraph 1(4).

clear that registration was to take place within a strategic context reflecting need. Under the heading, *The Proposed Role of the Association*, registration criteria stated that for newly formed housing associations:

'... the Corporation will wish to consider the proposed role and scope of operation envisaged by the association in relation to the housing needs of the area in which it intends to work...'⁵

Therefore, whilst housing associations could be established for any housing purpose,⁶ the framework for registration implemented by the Housing Corporation ensured that only those associations set up to develop affordable housing were given access to public subsidy. The primacy of this housing function was confirmed when the Corporation issued a circular in 1988 setting out '*fundamental principles*' relevant to the work of the registered housing association movement. These included that:

'Registered associations are expected to provide housing and associated amenities for those who cannot obtain housing for themselves within the constraints of the private market.'⁷

The Housing Corporation took steps to ensure that its expectations were also established in the public domain. In 1988 it published a charter to all housing association tenants in the form of a *Tenants' Guarantee*,⁸ which gave the role of housing associations as that set out in the Corporation's 1988 circular.⁹

Tai Cymru and housing associations' housing function

When Tai Cymru took over responsibility for housing associations in Wales in 1989 the movement's role was firmly established in policy context. As developers and managers of social housing, housing associations were in a position to take

⁵ Housing Corporation, (27/88), Appendix I (criteria for registration), at paragraph 5. These criteria have since been replaced in England by: Housing Corporation, (2004).

⁶ Housing associations were also permitted to undertake to provide additional services provided these were incidental to the provision and letting of accommodation: Housing Corporation Circular (27/88), Appendix I (criteria for registration), at paragraph 1(5).

⁷ Housing Corporation (33/88), at paragraph 2.1.

⁸ Housing Corporation (1988).

⁹ Housing Corporation (1988). at paragraph A.1.

over from local authorities as the main providers of new social rented housing in the 1990's as the focus of housing policy on social housing shifted to voluntary housing. Against this background it is unsurprising that Tai Cymru did not seek to change or modify the movement's role. In fact it issued a circular to all registered housing associations in 1989 which confirmed that the '*... movement's primary purpose, of course, is to provide good quality housing for people in need.*'¹⁰ Throughout its tenure Tai Cymru was concerned to ensure that housing associations remained focused on meeting need as their primary function. In its *Annual Report 1989-90* Tai Cymru identified priority groups for housing to confirm the role of housing associations. The movement's role was given as:

'... [to] provide homes for people in housing need, who include families on low incomes, vulnerable single people, the elderly, the disabled and other groups with special housing needs.'¹¹

Tai Cymru was concerned to ensure that subsidy should be targeted at those in highest priority need for housing. To meet with this objective it sought to increase the supply of affordable accommodation.

As under the Housing Corporation, Tai Cymru sought to ensure that its expectations of housing associations' role were made known to the public, and were established in the public domain. In 1992 it issued a revised *Tenants' Guarantee* in which it confirmed that:

'The essential purpose of registered housing associations is to provide accommodation for those who are inadequately housed or homeless, and for whom suitable housing is not available at prices within their means, or at all, elsewhere in the local market.'¹²

¹⁰ Tai Cymru Circular (17/89), at paragraph 1.

¹¹ Tai Cymru, (1989-90), at p.6. Similarly, Tai Cymru's annual report for 1991-92 gives the role of housing associations as, to '*provide homes for people in housing need*': Tai Cymru, (1991-92), at p.9.

¹² Tai Cymru, (1992b), at paragraph A1. This was issued in September 1992 and was accompanied by a circular explaining its purpose: Tai Cymru Circular (17/92).

Also in 1992, in its investment policies for 1992-93, Tai Cymru adopted a mission statement which included the objective of '*increas[ing] the supply of housing for those unable to meet their housing needs through purchase or rental at open market prices*'.¹³ To meet with this objective Tai Cymru encouraged housing associations to build housing for let at affordable rents, a policy that led associations to increase development output,¹⁴ and to limit rent increases.¹⁵ Tai Cymru also took steps to ensure that housing associations were meeting with its agenda through regulation. In 1990 performance expectations gave the role of housing associations as:

'... to provide accommodation for those who are inadequately housed or homeless, and whose needs cannot be met, at prices within their means or at all, elsewhere in the local market. This is expected regardless of the source of funding for the scheme or type of tenure.'¹⁶

This confirmed the housing function of housing associations, and is significant as it was an expectation relevant to all registered housing associations - not just those with a development programme funded by Housing Association Grant. Later regulations published by Tai Cymru touching on the role of housing associations focused on arrangements for access to ensure that housing was targeted at those in greatest housing need.¹⁷

The National Assembly and housing associations' housing function

Post devolution the various roles contemplated for social housing institutions in Wales are discussed in the National Assembly's *Housing Strategy*. Prior to publication of this document the Assembly had sought to emphasize the importance of housing associations as providers of new social housing, and the movement's relevance to its strategic agenda during consultation.¹⁸ Therefore

¹³ Tai Cymru, (1992-1993), at p.4.

¹⁴ Discussed in Chapter Nine.

¹⁵ Discussed in Chapter Ten.

¹⁶ Tai Cymru, (1990a), at paragraph 3.1.

¹⁷ This is discussed as an aspect of allocation in Chapter Eleven.

¹⁸ Termed '*public housing*': NAW, (2000d), at p.30.

the Assembly's policy document confirms this function and anticipates that housing associations will make a contribution toward meeting local housing need within a strategic framework devised by the local authority.¹⁹ This expectation is re-enforced through regulation. The Welsh Assembly Government's *Regulatory Code* includes a requirement that housing associations should be:

'... committed to and primarily focused on, providing good and responsive housing and related services and amenities for those whose personal circumstances make it difficult for them to meet their housing needs in the open market.'²⁰

Unlike its predecessor, the National Assembly's revised *Guarantee for Housing Association Residents* published in 2004 does not include reference to the role of housing associations.²¹ However, as this is apparent from its *Housing Strategy*, which is a public document, the movement's role is established in the public domain.

Additional Housing and Housing Related Functions

The specialist housing role

In the early 1970's the Department of the Environment supported a role for housing associations in assisting local authorities with meeting the housing needs of, what were termed, special groups of people.²² This was very much a reflection of the marginal role of housing associations alongside local government in housing policy at that time. In 1974 the Welsh Office issued a circular in which it referred to the special expertise of housing associations in working with clients having particular housing needs, and encouraging local authorities to make use of the movement's capacities in this context.²³ Later, under *Tai Cymru*, it was anticipated that housing associations would provide a range of accommodation, not only to those in housing need through lack of

¹⁹ NAW, (2001c), at p.25.

²⁰ WAG, (2005a), at paragraph 1.

²¹ The Assembly's Guarantee is focused on its role as regulator: NAW, (2004a).

²² DoE Circular, (14/75).

²³ Welsh Office Circular (274/74).

resources, but also to the elderly and the vulnerable; and Tai Cymru became concerned to ensure that housing associations recognized a need to provide for particular social groups.²⁴

In 1990 Tai Cymru published *Social Housing for Older People in Wales: Future Provision by Housing Associations*.²⁵ This encouraged housing associations to build homes specifically for rent to older people. This specialist housing function for general needs housing associations was confirmed by way of circular in 1991 which stated that:

'... the provision of accommodation more suited to the needs of elderly people, who no longer need, or can (sic) [cannot] manage larger houses, has long been one of the mainstream activities of housing associations. Recent developments in the field point toward the need to provide this type of accommodation locally ...'.²⁶

To guarantee the supply of accommodation suitable for letting to elderly tenants the 1991 circular required housing associations to work within a multi-agency framework to identify types of housing suitable for the elderly, and the number of housing units required to meet local need, and that they should work closely with local authority social services departments in this area.²⁷ This function of providing housing for the elderly, although significant, was not the only specialist housing role that Tai Cymru contemplated. It also encouraged housing associations to consider the needs of those with learning difficulties, and to house people with mental health problems as well as those fleeing domestic violence, and, in 1990, it established a working party to look into the housing needs of young people.²⁸ As a practical measure to assist housing associations in their specialist housing role Tai Cymru introduced Special Needs Management

²⁴ Tai Cymru's 1990 annual report included the statement that '*... at a time of increasing prosperity we must not forget the housing needs of our growing number of elderly people and of the most vulnerable members of our society. That is why the housing association movement in Wales is so vital*'. Tai Cymru, (1989-90), at p.2.

²⁵ Tai Cymru, (1990b).

²⁶ Tai Cymru Circular (1/91), at paragraph 1.1.

²⁷ Tai Cymru Circular (1/91),

²⁸ Tai Cymru, (1991-92), at p.15.

Allowance as a payment to meet the additional costs incurred by housing associations offering assistance to those with special needs to live in the community.²⁹ In 1992 Tai Cymru went further to establish a specialist role for all general needs housing associations by issuing a circular requiring associations to devote a minimum 2.5 percent of their available accommodation to be let to tenants with special needs, whilst also identifying those requiring support to live independently, or leaving hostels or refuges, as eligible for assistance.³⁰

Housing for Sale

An aim of housing policy after 1979 was to increase the amount of owner-occupied housing.³¹ In support of this policy objective the Housing Corporation issued two circulars in the early 1980's encouraging sales to tenants, and requiring associations to notify qualifying tenants of their right-to-buy.³² In 1985 it insisted that Low Cost Home Ownership Schemes offering shared ownership options ('LCHO schemes') were to be regarded as a priority in accordance with the aims of government housing policy.³³ In the 1990's expansion of home-ownership also featured as a significant objective in housing policy in Wales, as was clearly set out in the Welsh Office's *Agenda for Action*.³⁴ Tai Cymru sought to ensure that the housing association movement contributed toward an expanded owner-occupied sector by encouraging associations to make housing for sale available as part of their subsidized housing stock. To this end Tai Cymru made the provision of housing for sale a priority. In 1989 it issued a circular reminding associations of the availability of relevant grants, and encouraging associations to make LCHO available to those otherwise unable to afford home ownership.³⁵ Later, in 1993, Tai Cymru went further in promoting a role for

²⁹ Tai Cymru, (1990-91). In 1996 the budget for SNMA was £11 million: Tai Cymru, (1995-96).

³⁰ Tai Cymru Circular (4/92).

³¹ See: Chapter Four.

³² Housing Corporation Circular (11/80); and, Housing Corporation Circular (12/80). These are no longer in force but are referred to by Hide: Hide, (1986).

³³ Housing Corporation, (1985).

³⁴ A target of 80 percent home-ownership was established for Wales: Welsh Office, (1991).

³⁵ Tai Cymru Circular (4/89). The LCHO scheme was not intended to allow people to 'go up-market': at paragraph 2.

associations in expanding home-ownership by publishing a circular on new developments which anticipated the inclusion of LCHO housing development in all housing association applications for Housing Association Grant funding, stating that:

'For any scheme proposal, [Tai Cymru] will expect to see that the scale, mix and tenure reflects identified housing need including those who wish to purchase their home but who currently cannot afford to do so.'³⁶

Tai Cymru also took steps to inform the public of LCHO options. In 1994 it followed a lead given by the Welsh Office and published a leaflet explaining assisted home-ownership via housing associations.³⁷ Under the National Assembly the emphasis for housing associations is on meeting housing need, and community regeneration (below), with LCHO less significant. However, associations are still expected to offer some assistance to those otherwise unable to afford home-ownership to purchase properties as owner-occupiers.³⁸

Community development and regeneration

Housing policy under New Labour has contemplated a role for housing associations in regenerating communities through refurbishment of run-down properties.³⁹ This was a function identified for the movement by Tai Cymru but was not significant in its overall policy agenda. In 1989 it issued a circular on housing rehabilitation that noted the potential for housing associations to contribute to urban renewal through new development, or by replacing or renewing unfit housing, and associations were encouraged to work with local authorities to identify suitable sites for rehabilitation.⁴⁰ However, as will be discussed in Chapter Nine (development), the way in which Tai Cymru allocated HAG made it difficult for housing associations to be involved in this type of

³⁶ Tai Cymru Circular (16/93), at paragraph 4.

³⁷ Tai Cymru, (1994a).

³⁸ In 2003 the WAG Housing Directorate published information on the operation of a 'Homebuy' scheme operated via housing associations offering LCHO options: Housing Directorate, (2003).

³⁹ See: Chapter Four.

⁴⁰ Tai Cymru Circular (17/89).

development: this had the effect of limiting their contribution. It was not until the late 1990's that the community development function obtained greater significance as part of Tai Cymru's policy agenda. This was manifest, for example, through the provision of grants in 1996 to enable housing associations to develop on inner city brownfield sites as a contribution toward urban regeneration: the stated purpose of public subsidy in this context was '*to enable social landlords to play a greater role in urban renewal*'.⁴¹ Toward the end of Tai Cymru's tenure it became more supportive of housing associations' community function through regeneration, so that by 1997 it had made urban regeneration a priority for associations - but only where this was identified as necessary by local authorities to meet local housing need.⁴²

Community development and social exclusion

An aspect of housing associations' role in community development arises in consequence of the impact that housing has on communities, and on quality of life issues. This became a concern for Tai Cymru in the mid 1990's as it sought to address problems arising from inappropriate or unnecessary housing development.⁴³ In 1993 it issued a circular that drew attention to the potential negative impact of over-large housing estates on communities, and the quality of life of estate occupiers. This circular, referring to research carried out in England, noted:

'There is a good deal of empirical evidence to suggest that the creation of over-large concentrations of social housing in one location may give rise to management difficulties and potentially detract from the quality of life of residents.'⁴⁴

Tai Cymru's approach to tackling these problems was to seek to limit the scale of individual housing association developments by giving the optimum size of new

⁴¹ Tai Cymru Circular (14/96), at paragraph 2.1.

⁴² Discussed further in relation to development in: Chapter Nine.

⁴³ This was most likely in response to a report on problems encountered in large-scale housing association developments identified in a study into housing association estates: Page, (1993).

⁴⁴ Tai Cymru Circular (16/93), at paragraph 2. The research referred to is: Page, (1993).

housing estates as between 50 and 60 units.⁴⁵ It also encouraged developing housing associations to take into account the impact of new housing on local communities.⁴⁶ It was not until the late 1990's that Tai Cymru adopted a more proactive approach through regulation focusing on housing management. In 1997 it required RSL's to '*help to safeguard their tenants' quality of life*',⁴⁷ anticipating that housing associations would take proactive measures to comply, for example, by making improvements to the physical environment, or by taking action to deal with socially unacceptable behaviour from tenants, their families and/or visitors.⁴⁸ Tai Cymru also involved itself with the People Building Communities Working Party, which was established to consider issues of social disadvantage and social exclusion in Wales,⁴⁹ and supported the Working Party's report, *Sustainable Communities for the Future*.⁵⁰ This noted the potential for housing associations to contribute to tackling social exclusion through development, as well as by providing economic benefits through employment, the introduction of resources to communities, and by working with other agencies to provide for sustainable communities.⁵¹ By the time the National Assembly took over responsibility for housing associations in 1998 the community development role, i.e. extending beyond regeneration, was becoming more significant for housing associations.

Social exclusion, housing, and the National Assembly for Wales

Housing associations' community function is well supported under the National Assembly. In fact its significance is such that in 2002 the Welsh Federation of Housing Associations commented that:

'It is clear ... associations are involved in much more than just the provision of housing, actively developing a portfolio of support

⁴⁵ Tai Cymru Circular (16/93), at paragraph 3.

⁴⁶ Tai Cymru Circular (16/93), at paragraph 3.

⁴⁷ Tai Cymru (1997a), at p.24, regulation 8.4.

⁴⁸ Tai Cymru, (1997a), at regulation 8.4.

⁴⁹ Along with the Welsh Local Government Association and representatives of the housing association and tenant's movements in Wales

⁵⁰ Tai Cymru, (1998).

⁵¹ Tai Cymru, (1998).

services and community development initiatives that empower and enhance the lives of housing association tenants in Wales.⁵²

In this context the National Assembly's *Housing Strategy* notes that:

'... people's homes and their environment are critical to the quality of their lives. For most people, they are the foundation upon which their everyday life is based'⁵³

Against this background it is unsurprising that post devolution the housing policy agenda in Wales has included the objective of dealing with social exclusion in housing.⁵⁴ In this context, the WAG, in a report on social justice in 2005, identified housing as an important contributor to the quality of life of individuals and communities.⁵⁵ Acting on a recommendation made by one of task groups set up to advise on its *Housing Strategy* the National Assembly has sought to take account of voluntary housing's capacity to revitalize and regenerate rundown communities by engaging housing associations in community regeneration activities.⁵⁶ As a result housing associations have become involved in regeneration schemes implemented by the Assembly, to include its People in Communities Programme. This has been with the objectives of: reducing homelessness; improving the quality of housing in Wales; reducing the number of empty properties; and, improving standards of security in housing - as indices of social exclusion.⁵⁷ Housing associations are also expected to act proactively to

⁵² WFHA, (2002), at p.23. This recognition of a wider community role for housing associations also saw the WFHA amend its mission statement to include the promotion of housing associations as vehicles for community regeneration: WFHA, (2002), at p.23.

⁵³ NAW, (2001c) at p.7.

⁵⁴ NAW, (2001c), at p.7. See also chapter C, referring to the need to regenerate socially disadvantaged communities.

⁵⁵ WAG, (2005d), at p.5.

⁵⁶ NAW, (2000c), at p.7 (recommendation no.3).

⁵⁷ NAW, (1999). For a review of the National Assembly's programmes in this area see: Clapham, D., *Social exclusion and community regeneration* in Smith *et al* (eds.), (2000). The People in Communities programme was launched in June 1998 with a budget of £750,000: NAW, (2000d). In 2001 a total of 16 projects were funded with expenditure totaling £1.75 million: NAW, (2001c). As at October 2006 information on People in the Communities, and Sustainable Communities programmes is given on the NAW website under: Social Disadvantage. The Sustainable Communities programme was launched in 1999-2000 and made funding available to RSL's for projects to encourage sustainability in social housing: NAW, (2001c).

try to tackle the consequences of social deprivation. In this context the WAG has sought to make clear its expectations through regulation. Its *Regulatory Code* requires associations to demonstrate that they are taking steps to tackle social exclusion,⁵⁸ and that they participate in community development and neighbourhood renewal and regeneration initiatives.⁵⁹ The Assembly has focused attention on combating anti-social behaviour to relieve housing stress in deprived communities. Its policy agenda anticipates that social landlords, which includes housing associations, will take action to tackle unacceptable behaviour in housing. For example its *Housing Strategy* states that:

'Social landlords are expected to apply and enforce conditions of tenancy which prohibit nuisance. They are also expected to provide advice and support to tenants to overcome problems with anti-social behaviour, including referral to other agencies ...'⁶⁰

In addition the Assembly anticipates that social landlords will develop strategies to deal with anti-social behaviour,⁶¹ and make use of relevant control powers provided by statute, i.e. injunctions against anti-social behaviour, and remedies against anti-social tenants.⁶² This expectation is reinforced through the WAG's *Regulatory Code* that requires associations to do all they can to tackle anti-social behaviour and neighbour harassment.⁶³ In addition the WAG has published guidance dealing with this issues in order to ensure that:

'... all social landlords in Wales meet a series of minimum standards in the way they manage and respond to incidents of anti-

⁵⁸ The National Assembly's proactive approach is supported by the Chartered Institute of Housing in Wales. The Institute has taken a lead in promoting tackling anti-social behaviour as an aspect of social landlords' functions. In 2001 it argued that: '*social landlords clearly have a role in tackling anti-social behaviour. ... Both the UK government and the National Assembly for Wales recognise the very important role that good housing provision and management has in tackling crime and anti-social behaviour ...*': CIHW, (2001), at p.9.

⁵⁹ NAW, (2005a), at paragraph 1.1.1.

⁶⁰ NAW, (2001c), at p.116.

⁶¹ NAW, (2001c), at p.116.

⁶² Following amendments made to the Housing Act 1996 and the Crime and Disorder Act 1998 by the Anti-social Behaviour Act 2003, giving associations the power to apply for anti-social behaviour injunctions (1996 Act), and Anti-social Behaviour Orders (1998 Act), against non-tenants.

⁶³ NAW, (2005a), at paragraph 1.4.2.

social behaviour that take place in and around their properties, and which involve or affect their residents.⁶⁴

Housing Associations' Role with Local Authorities

The housing function and local authorities

Nomination agreements providing access to housing association accommodation for local authority nominees have long been a feature of the relationship between local government and housing associations. As was discussed in Chapter Four, housing associations have a duty to offer assistance to local authorities in certain circumstances in any event.⁶⁵ In the 1970's the Welsh Office encouraged the Housing Corporation to make registered housing associations aware of their responsibilities to assist local authorities with their housing duties, and to promote nomination arrangements.⁶⁶ In the 1980's the Housing Corporation issued guidance on tenant selection that counseled against too many nominations as reducing choice, but it later endorsed compatibility between local authority policies on nominations and housing association policies for allocation.⁶⁷ Housing associations' function of assisting local government is significant as they represent an important resource, and are therefore relevant to the discharge of local authority strategic functions, as well as their statutory duties to assist those in housing stress.⁶⁸ After 1989 Tai Cymru sought to ensure that associations were providing assistance to local authorities with their various housing functions by making this a regulatory requirement.⁶⁹ To supplement regulations guidance was given to associations in the form of a circular in 1991 referring to a joint policy statement with the Welsh Federation of Housing

⁶⁴ WAG, (2005e), at p. 64.

⁶⁵ I.e under section 72 of the Housing Act 1985, and sections 170 and 213 of the Housing Act 1996.

⁶⁶ Welsh Office Circular (274/74).

⁶⁷ Housing Corporation Circular (16/80).

⁶⁸ In 1992 Tai Cymru's Chairman claimed that: '*... housing association activity is now not just the major part, but virtually the totality of new social housing provision in Wales*': Tai Cymru, (1991-92), at p.3.

⁶⁹ Tai Cymru, (1990a), at p.51.

Associations on local authority nominations to housing association housing.⁷⁰

The purpose of the circular was given as to ensure:

'... that associations work in a consistent manner with local authorities towards meeting housing need, ...to reflect the larger role housing associations are now playing in the context of a reduction in direct housing provision by local authorities'⁷¹

To this end Tai Cymru required housing associations to enter into nomination and referral agreements with local authorities, and to allow authorities access to an agreed percentage of housing association lettings. It is therefore a significant function anticipated for housing associations in Wales that they will assist local authorities with the discharge of their housing functions.

Local authorities' strategic function

In Wales, it has been apparent since at least the mid 1970's that housing associations are required to take account of local authority strategic agendas in their plans for development.⁷² In 1978 a circular issued by the Housing Corporation stressed the importance of local authority strategic priorities in this context.⁷³ Tai Cymru was similarly concerned to ensure that housing associations were operating within a local strategic framework. This was re-enforced; firstly, as part of its Tai Cymru's own development agenda; and, secondly, through guidance to housing associations on proposals for development.⁷⁴ In 1996 Tai Cymru's Deputy Chief Executive described the strategic role of local authorities as crucial to targeted investment, and bemoaned the lack of strategic housing agreements entered into between Tai Cymru and the then 37 local authorities in Wales.⁷⁵ This situation appears to have improved after local government re-

⁷⁰ Tai Cymru Circular (14/91).

⁷¹ Tai Cymru Circular (14/91), at A.6.

⁷² As housing associations were required to take account of the local authority's strategic agenda when submitting proposals for development of new housing: WHAC, (1977)

⁷³ Housing Corporation Circular (3/78).

⁷⁴ Tai Cymru (1989-90), at p.16. For example, by making rehabilitation work in the 1990s dependent on of partnership with local government: Tai Cymru Circular (17/89).

⁷⁵ Bader, (1996), at p.10.

organization in 1996, with 8 of the 22 unitary authorities in Wales entering into strategic housing agreements with Tai Cymru by August 1997.⁷⁶

Under the National Assembly the strategic role of local authorities is guaranteed by its *Housing Strategy*, this refers to local authority strategic plans as providing the framework for housing development.⁷⁷ In this context a link is established between strategic planning and the provision of development funding for housing associations; the Assembly's strategy states that:

'Registered social landlords are the main providers of new public (or social) housing in Wales. The allocation of Social Housing Grant to registered social landlords reflects the strategic priorities of the relevant local authority. It is particularly important, therefore, that local authorities and registered social landlords form effective partnerships to develop and deliver strategies for meeting local housing needs.'⁷⁸

The National Assembly, as might be anticipated of an institution having policy responsibilities across a number of areas, has adopted an overarching strategic approach to housing policy. This regards housing associations as a resource available to local authorities both for the provision of social housing and as a contributor to community regeneration and community development.⁷⁹ The responsibility for determining the role of housing associations in strategic planning to meet housing need at local level is therefore a responsibility given to local authorities.⁸⁰

⁷⁶ Welsh Housing Quarterly, (1997), at p.12.

⁷⁷ 'Local strategies and plans will provide the context for identifying both housing need and demand and formulating action to tackle those local needs and priorities': NAW, (2000d), at p.27.

⁷⁸ NAW, (2000d), at p.30.

⁷⁹ NAW, (2001c) at p.25.

⁸⁰ 'It is important that local authorities harness the contribution that registered social landlords can make to meeting local housing need and demand': NAW, (2001c), at p.25.

Housing Association Roles: Research Findings

The Purpose of the Research

It is apparent that housing associations in Wales are expected to discharge a service-providing function by developing and letting general and special needs housing, to provide housing for sale, to offer a resource to local authorities, and to act as a resource for community regeneration. The research carried out for the purposes of this chapter deals with role expectations for housing associations, and how roles are established. The research findings set out below are therefore relevant to Research Objective Two, as set out in Chapter Five.

The self-completion questionnaire (the 'questionnaire') asked respondents for their views on: the role of housing associations, how these roles should be determined, and, the significance of policy institutions in establishing housing association roles. Housing association interviewees were asked to identify housing association roles, and to discuss the impact of Tai Cymru's strategic agenda on their capacity to discharge the roles identified, and the influence of local authorities. Local authority interviewees were asked about the role of housing associations, and, the relevance of local authority strategic planning in this context.

Prior research/available data

A survey of housing associations in 1986 carried out by the National Federation of Housing Associations (the '1986 Report') confirms the relevance of the traditional service-providing function to housing associations in Wales in the mid 1980's, it noted that:

'Housing associations operating in Wales, in common with associations throughout the country, have a general policy of housing those in greatest need.'⁸¹

⁸¹ NFHA, (1986), at p.14.

This observation is supported by evidence showing that applicants for housing were more likely to be economically inactive or unemployed, to have household incomes below the national average, and to be reliant on housing benefit to meet housing costs.⁸² These are circumstances that limit the capacity for choice in the housing market and confirm the role of housing associations in assisting those unable to access other tenures. In a separate study, also carried out in 1986 (the '2nd Report'), a majority of housing associations with ongoing housing development programmes agreed that one of their aims was *'to provide decent accommodation for those in most need'*.⁸³ On other roles established for housing associations in housing policy, the 2nd Report suggests that general needs housing associations were not supportive of a specialist housing role: only 11 percent of housing associations with general needs housing stock saw this as a relevant function.⁸⁴ Despite this Tai Cymru annual reports between 1989 and 1997 show that a significant proportion of housing association newbuilds were to provide lettings for older people, or for special needs.⁸⁵ In 1991-92 housing for the elderly accounted for 20 percent of building starts for the period.⁸⁶ Although by 1992-93 this had reduced to 11 percent, housing for the elderly remained a significant part of the housing association building programme between 1993 and 1997.⁸⁷ Further, in the 1990's other special needs housing represented a small but important part of overall development activity, i.e. 10 percent of starts in 1990-91 reducing to 5 percent in 1992-93.⁸⁸ Tai Cymru annual reports for the

⁸² NFHA, (1986). In the mid-1980's housing associations were meeting the needs of those without resources to access other tenures: 52 percent of new tenants had income of less than £60 per week at a time when only 31 percent of the general population of England and Wales had incomes of less than £100 per week; 25 percent of new tenants were in employment with 76 percent expected to qualify for housing benefit: Ramsay and Smith, (1987), at 2.3 and Table 3.

⁸³ Hide, (1986). A total of 27 of the 35 developing associations in Wales at the time responded to Hide's survey (questionnaire and interview).

⁸⁴ Hide, (1986), Table 8. Just 11 percent of respondents gave as amongst their aims the provision of accommodation to particular groups; and 4 percent stated amongst their aims the provision of accommodation to the elderly.

⁸⁵ Tai Cymru, annual reports 1989-90 to 1997-98 (Bibliography by year).

⁸⁶ Tai Cymru, (1991-92). Tai Cymru's *Investment Policies and Plans 1992/93* included an initiative aimed at meeting the housing needs of the elderly: Tai Cymru, (1992-1993).

⁸⁷ Tai Cymru annual reports 1992-93 to 1997-98 (Bibliography by year).

⁸⁸ Tai Cymru, (1990-91); and, Tai Cymru (1992-93).

period 1992-1997 show that specialist provision continued to represent an important area of development throughout its tenure.⁸⁹

It is also relevant that the vast majority of general needs housing associations operating in Wales in 2005 had stock available for letting to the elderly, i.e. 29 out of 34 associations or approximately 85 percent; or to those with special needs, i.e. 26 out of 34 associations, or approximately 76 percent - see Table 7.1 below.⁹⁰ It appears from this data that attitudes were modified after 1986 in favour of providing specialist housing and/or housing for the elderly. This also seems to have been the case for the provision of LCHO schemes, an area not well-supported as a function for housing associations in the mid 1980's. The 1986 Report found that only 8 out of 47 surveyed associations were involved with LCHO schemes at that time, approximately 17 percent,⁹¹ whilst the 2nd Report shows that out of 25 respondent general needs housing associations only 3, about 12 percent, saw it as an aim of their association to provide housing for sale.⁹² This data is significant as demonstrating a low level of support for housing associations to be involved in LCHO schemes. Although there is no directly comparable data from later years, by 1993-94 housing association LCHO development represented 7 percent of all starts, and had risen to 10 percent by 1994-95.⁹³ By 1995-96 completions of LCHO schemes represented approximately 20 percent of housing association output.⁹⁴ It is significant that this increase took place at a time when Tai Cymru was seeking to encourage housing associations to provide housing for sale.⁹⁵ It is also significant that by 2005 a majority of housing associations were involved with LCHO schemes,

⁸⁹ Tai Cymru annual reports 1992-93 to 1997-98 (Bibliography by year).

⁹⁰ The Welsh Federation of Housing Associations claimed in 2003 that: *'Housing associations have for many years been in the forefront of providing housing to enable some of the most vulnerable groups in society to live in the community'*: WFHA, (2003), at p.4.

⁹¹ NFHA, (1986), at p.62.

⁹² Hyde, (1986).

⁹³ Tai Cymru annual reports 1992-93 to 1997-98, (Bibliography by year).

⁹⁴ Tai Cymru annual reports 1992-93 to 1997-98, (Bibliography by year).

⁹⁵ LCHO sales rose dramatically from 64 dwellings in 1993 to 846 dwellings in 1997.

Table 7.1 shows that 23 out of 34 associations, approximately 67 percent, as operating LCHO schemes.

Table 7.1

General needs housing associations (excluding abbeyfield societies and almshouses): whether providing sheltered accommodation for the elderly; special needs housing; or low cost home ownership options

	Housing Association	Sheltered Accommodation for the Elderly	Special Needs	LCHO
1	Aelwyd	Y		
2	Baneswell			
3	Bro Myrddin	Y	Y	Y
4	Cadwyn	Y	Y	
5	Cantref	Y	Y	Y
6	Cardiff Community	Y	Y	Y
7	Castle			Y
8	Charter	Y	Y	Y
9	Clwyd	Y	Y	Y
10	Clwyd Alyn	Y	Y	Y
11	Cynon Taff	Y	Y	
12	Dewi Sant	Y	Y	Y
13	Eastern Valley	Y	Y	Y
14	Eryri	Y	Y	Y
15	Family (Wales)	Y	Y	Y
16	Glamorgan and Gwent	Y	Y	Y
17	Gwalia Housing Group	Y	Y	Y
18	Gwerin (Cymru)	Y		Y
19	Hafan		Y	
20	Hafod	Y	Y	Y
21	Merthyr Tydfil	Y	Y	
22	Mid-Wales	Y	Y	Y
23	Newport Housing Trust			
24	Newtown HA			
25	Newydd	Y	Y	Y
26	North Wales	Y	Y	Y
27	Pembrokeshire	Y		Y
28	Pontypridd and District	Y	Y	Y
29	Rhondda	Y	Y	
30	Swansea	Y	Y	Y
31	Taff	Y	Y	
32	United Welsh	Y	Y	Y
33	Valleys to Coast	Y		
34	Wales and West	Y	Y	Y

Source: January 2005: www.welshhousing.org.uk

The Questionnaire Results: Findings for Housing Associations

Role expectations

The questionnaire findings from housing associations show strong support for the movement's primary role as anticipated by Tai Cymru and the National Assembly. As the data set out in Table 7.2 below shows, there was unanimous agreement that housing association functions should include the provision of affordable accommodation. The strength of support for this proposition suggests that the relevance of the policy agenda in Wales is to confirm the role of housing associations, rather than to determine the movement's primary function - reference to the full data shows that all of the respondents indicated strong agreement.⁹⁶ The data also reveals full agreement that housing associations should be involved in community regeneration, with 46 percent of respondents indicating strong support for this suggestion.⁹⁷ Although this is a role contemplated for the movement in Wales-national housing policy once again the strength of responses suggests it is a function that housing associations support in any event. This is confirmed by the finding 80 percent of respondents agreed with the proposition that housing associations should have a role tackling social exclusion, with just 1 respondent not agreeing. The implication of this last finding is that housing associations support a community function that extends beyond physical regeneration to include, for example, acting to reduce incidents of anti-social behaviour.

On other roles suggested for housing associations by the questionnaire: opinion was divided as to whether or not housing associations should have a role in providing a housing resource for local authorities: with 46 percent of respondents agreeing and 46 percent disagreeing. There was a higher level of support for housing associations to have a strategic function, as shown by other data set out in Table 7.2. 86 percent of respondents agreed that housing associations should have a role in implementing National Assembly housing policy, with the same

⁹⁶ Table 5, Appendix Seven.

⁹⁷ Table 5, Appendix Seven.

proportion of respondents agreeing that housing associations should work toward meeting housing need strategically at local level. The obvious conclusion is that as the majority of housing association funding is provided via the National Assembly the movement is concerned to meet with the Assembly's strategic objectives, including where these extend to providing a strategic resource for local authorities. The data also shows that 86 percent of respondents agreed that associations should have a specialist housing function. This confirms what is shown in Table 7.1, and highlights a change in the attitude of housing associations toward their involvement with the provision of specialist housing as a relevant function after 1986. Concerning the provision of LCHO, respondents were less than enthusiastic for housing associations to be involved in this aspect of housing provision. The data is equivocal as 26 percent of respondents disagreed, and 20 percent agreed, that this should be a function of housing associations, with the majority offering no opinion.

Table 7.2⁹⁸

The role of housing associations in Wales should be:

Response Options	In Agreement*	No Opinion*	Not Agreeing*	Response Rate (%)
To provide affordable housing	15 (100)			100
To engage in community regeneration	15 (100)			100
To tackle social exclusion	12 (80)	2 (13)	1 (6)	
To provide a housing resource for LAs	7 (46)	1 (6)	7 (46)	100
To contribute to meeting housing need strategically at local level	13 (86)	2 (13)		100
To implement NAW housing policy	13 (86)	1 (6)	1 (6)	100
To provide specialist housing	13 (86)	1 (6)		93
To provide housing for sale	3 (20)	6 (40)	4 (26)	86

* Refers: Number of response (percentage of total possible responses).

⁹⁸ This table shows extracted findings from Table 5, Appendix Seven.

Role determination

Save in the case of housing for sale the evidence discussed thus far tends to confirm that the roles anticipated for housing associations by housing policy are amongst those likely to be contemplated as relevant by the movement in any event. As expectations are for the most part congruent, the findings do not confirm the imposition of roles by policy institutions. However, the possibility remains that roles anticipated and established by the regulator are unchallenged by housing associations, or alternatively that attitudes toward housing associations roles are influenced over time by the content of housing policy and its implementation. The relevance of the strategic agenda in this context is highlighted by the findings set out in Table 7.3 below. These show that housing associations see the board as having the primary responsibility for determining the role of an association within a strategic framework: 86 percent of respondents thought that boards should exercise their discretion having regard to local housing need, but also to the policy agendas of local authorities and the National Assembly. However, what is also apparent is that the majority of respondents disagreed that housing association roles should be established by these policy institutions: 66 percent and 73 percent of respondents were against housing association roles determined by either the National Assembly, or by the local authority strategic agenda respectively. What these findings demonstrate is that housing associations anticipate autonomy for the board to determine relevant functions, whilst recognizing the significance of policy institutions to establish strategic priorities.

(Table 7.3 overleaf)

Table 7.3⁹⁹

To what extent to you agree or disagree with the following:

Response Options ▼	In Agreement*	No Opinion*	Not Agreeing*	Response Rate (%)
HA roles should be those anticipated by the strategic housing agenda of the NAW	3 (20)		10 (66)	86
HA roles should be those anticipated by the strategic housing agenda of LAs	2 (13)		11 (73)	86
HA roles should be established by the board having regard to LA and NAW housing agendas	13 (86)			86
HA roles should be established by the board having regard to local housing need	13 (86)			86

* Refers: Number of response (percentage of total possible responses).

The data set out in Table 7.4 below shows that a majority of 73 percent of respondents thought the need to provide a diverse rental market was a significant influence on housing association roles, whilst a majority of 60 percent of respondents identified the need to provide specialist housing for minority and vulnerable groups as relevant. These have featured as roles identified in housing policy, but are also relevant as aspects of housing associations as voluntary organizations operating within the housing market and housing system. In contrast just 20 percent of respondents thought that the need to increase owner-occupation was influential on housing association roles - notwithstanding the significance of this as an objective of policy implementation under Tai Cymru. Further, the same proportion of respondents identified the need to meet with policy expectations as influential to establish the role of housing associations. These findings would tend to confirm a degree of autonomy to housing associations to determine their functions. Aggregating the evidence discussed in this section it is suggested that housing policy, and the manner of its implementation in Wales, is consistent with expectations of housing associations as voluntary housing organizations. Although it is highly likely that policy

⁹⁹ This table shows extracted findings from Table 6, Appendix Seven.

institutions are influential in confirming the role of housing associations, and possibly in modifying attitudes toward particular functions, it cannot be concluded that roles are determined by either the regulator (Tai Cymru or the National Assembly), or by local authorities.

Table 7.4¹⁰⁰

What have been the influences on the role of housing associations in Wales?

Response Options ▼	In Agreement*	No Opinion*	Not Agreeing*	Response Rate (%)
The need for affordable housing	15 (100)			100
The need for a diverse rental market	11 (73)	4 (26)		100
The need for specialist housing for minority and vulnerable groups	9 (60)	5 (33)	1 (6)	100
The need to increase owner-occupation rates in Wales	3 (20)	1(6)	11 (73)	100
The need to meet objectives established in housing policy	3 (20)	3 (20)	9 (60)	100

* Refers: Number of response (percentage of total possible responses).

The Questionnaire Results: Findings for Local Authorities

Role expectations

As shown in Table 7.5 below, all of the local authority respondents to the questionnaire gave the primary role of housing associations as the provision of affordable housing. Respondents were also unanimous that associations should engage in community regeneration, and were very supportive of housing associations having a role in tackling social exclusion, i.e. 90 percent agreement, with no dissent. This is significant as local authorities, through the discharge of their strategic planning function, are in a position to influence the extent to which housing associations are able to carry out their various roles at local level - in particular where these are supported by public funding. If there is consensus on this issue the exercise of key functions is likely to be made easier. On housing association functions with local authorities: it is reasonable to assume that local

¹⁰⁰ This table shows extracted findings from Table 7, Appendix Seven.

authorities will regard housing associations as a housing resource taking into account their role as planners in housing at local level. This is confirmed as a high proportion of respondents, i.e. 90 percent, agreed that associations should provide a housing resource for local authorities, almost twice the proportion of housing association respondents supporting the proposition. The data also suggests that local authorities are likely to regard housing associations in wider strategic context, as 72 percent of respondents supported a role for associations in implementing National Assembly housing policy. On other roles identified: 72 percent of respondents saw it as a function of associations to provide specialist housing, again similar to the finding for housing associations. Respondents were though less supportive of associations being involved in LCHO schemes with just 36 percent of respondents agreeing that associations should provide housing for sale. This is marginally higher than amongst housing associations, possibly reflecting local authorities strategic overview, to include anticipating the demand for owner-occupation. Notwithstanding, support for this function remains relatively weak in comparison to support for roles in other areas.

Table 7.5¹⁰¹

The role of housing associations in Wales should be:

Response Options ▼	In Agreement*	No Opinion*	Not Agreeing*	Response Rate (%)
To provide affordable housing	11 (100)			100
To engage in community regeneration	11 (100)			100
To tackle social exclusion	10 (90)	1 (9)		100
To provide a housing resource for LAs	10 (90)			90
To implement NAW housing policy	8 (72)	3 (27)		100
To provide specialist housing	8 (72)	2 (18)		90
To provide housing for sale	4 (36)	6 (54)	1 (9)	100

* Refers: Number of response (percentage of total possible responses).

¹⁰¹ This table shows extracted findings from Table 3, Appendix Eight.

Role determination

On the issue of how housing association roles are to be established, local authority responses differ significantly from those from housing associations. The data set out in Table 7.6 below shows that 72 percent of respondents thought that housing association roles should be established by the board of management having regard to local authority and National Assembly strategic housing agendas. There was unanimous support for roles to be established by the board having regard to local need. Reference to the completed questionnaires shows that 3 respondents confirmed local need as need established by the local authority, i.e. in its housing strategy.¹⁰² This would tend to suggest that local authorities see the Wales-national and local policy agendas as highly relevant to determine the role of housing associations: this is confirmed by other data. 90 percent of respondents thought that roles should be those anticipated by the local authority agenda, and 81 percent thought that they should be established by the National Assembly's agenda. Although the view of local authorities cannot be seen as undermining the autonomy of housing associations to establish relevant functions, it is certainly confirmed that housing associations are seen in a strategic context by local government. A likely consequence is that housing associations will be expected to meet with local level objectives in housing, and that they will be seen as a resource for local authorities. This may cause difficulties where roles anticipated by the local authority differ from those established by the board.

(Table 7.6 overleaf)

¹⁰² As additional comments.

Table 7.6¹⁰³

To what extent to you agree or disagree with the following:

Response Options	In Agreement*	No Opinion*	Not Agreeing*	Response Rate (%)
HA roles should be those anticipated by the strategic housing agenda of the NAW	9 (81)	2 (18)		100
HA roles should be those anticipated by the strategic housing agenda of LAs	10 (90)	1 (9)		100
HA roles should be established by the board having regard to LA and NAW housing agendas	8 (72)	3 (27)		100
HA roles should be established by the board having regard to local housing need	11 (100)			100

* Refers: Number of response (percentage of total possible responses).

The Interview Findings for Housing Associations¹⁰⁴

References to percentages below are approximations from the data.

Role expectations

As might be anticipated, the evidence from interviews with housing associations confirms that meeting housing need within the housing system is a key role anticipated for housing associations: all of the interviewees mentioned the provision of affordable housing, or meeting housing need, as a relevant function.¹⁰⁵ Many of those interviewed saw this as the primary function of their association and of the movement as a whole, with several interviewees referring to meeting housing need as a fundamental objective, or core aim. There was also the suggestion from some interviewees that the development and letting of affordable housing should be seen as the traditional function of housing associations in Wales - despite the movement being relatively recently established in Wales. Comments included:

¹⁰³ This table shows extracted findings from Table 4, Appendix Eight.

¹⁰⁴ Interview questions 1,2 and 4, Appendix Five.

¹⁰⁵ Table 1, Appendix Nine.

"I think [housing associations] should do primarily what they were set up to do in the 1st place, which is providing affordable housing for those people who cannot access it through any other route, and obviously who cannot access owner-occupation, that should be their primary role."

HA Interviewee D

On other housing roles suggested by housing policy: interviewees failed to identify either a specialist housing function or involvement in LCHO schemes (referred to by just 1 interviewee) distinct from other housing functions.¹⁰⁶ It may be that these are assumed as part of the housing function generally. However this explanation is less likely in the case of LCHO schemes as several of those interviewed referred to housing associations specifically as managers of housing for rent.

In general the interview evidence confirms that housing associations are seen as having multiple roles, with the possibility of modification over time. For example, 91 percent of interviewees mentioned a community role for associations,¹⁰⁷ with several interviewees commenting that this is a function that has gained in significance post-devolution. A number of interviewees suggested that the function arises because of housing associations' responsibilities toward communities where social housing is located, i.e. emerging as an aspect of housing management. Others noted the importance of working with communities, and of housing associations taking an interest in communities in which they work, for example:

"I would argue, certainly latterly, [housing associations] provide services over and above that expected by a landlord. So that will include taking a wider interest in the communities in which we operate, not just to provide a house to live in ... but also as stakeholders in wider communities."

HA Interviewee C

¹⁰⁶ Table 1, Appendix Nine.

¹⁰⁷ Table 1, Appendix Nine.

"I think [our roles] need to be broader than just providing housing, certainly from a community housing association's point of view. Our vision is much more about using the associations' resources for regeneration ... good housing on its own not enough, especially where social deprivation is high, our estates suffer from problems of social exclusion. So five years ago we changed our mission statement changed to put community development into core business, we were saying then and we say now it is as important for us to engage in social and community regeneration as it is for us to collect the rent. "

HA Interviewee K

Although it is arguable that, having regard to the location of social rented housing, the community function has always been relevant, the suggestion from a number of interviewees was that the community role has only recently been recognized by the regulator. Several interviewees identified the National Assembly's agenda on social exclusion, and its recognition of housing as relevant to tackling social deprivation, as significant in this context.

From the interview evidence, and the questionnaire findings, it is apparent that the community regeneration function is highly significant for the housing association movement. The interview data gives an insight into what this might involve for individual housing associations, with several interviewees mentioning development as a contribution toward community regeneration, whilst others referred to the resources that housing associations can make available to communities and community groups. Significantly having regard to the National Assembly's policy agenda a number of interviewees commented that as part of community involvement housing associations have a responsibility to be proactive in tackling anti-social behaviour - usually as an issue to be addressed as part of their housing management function.¹⁰⁸ Comments included:

"Anti-social behaviour is an issue for us as it is for all people who work in a housing environment. I think we do have a responsibility there to address issues of that type when they occur. Either if our

¹⁰⁸ 36 percent of interviewees mentioned providing assistance with tackling social exclusion as a relevant role: Table 1, Appendix Nine.

tenants are victims of anti-social behaviour or where they are the perpetrators of anti-social behaviour and so whilst that might be an obligation which is wider than those which you might expect a landlord in the private sector to take on, I think as a result of our community based approach to housing ... I think it's most certainly a role we have and one which I actually think we should embrace."

HA Interviewee A

Similar to the questionnaire findings, a minority of 45 percent of interviewees saw a role for housing associations assisting local authorities with their housing duties, including the discharge of their strategic function.¹⁰⁹ This was supported either as an aspect of strategic working or where housing associations were seen as providing a resource for local authorities. It is apparent that housing association interviewees see the movement as having a responsibility to work with local authorities to meet housing need. Comments on this issue included:

"Local authorities are finding it increasingly difficult through lack of resources and through expectations and pressure to deliver on a housing agenda, and they need support and assistance from other organizations, such as housing associations that are now well established in communities ...and have a lot of resources which they can offer."

HA Interviewee E

The interview data also confirms that housing associations now see themselves as working within a strategic framework established primarily by the National Assembly, but also by the local authority.¹¹⁰ In this context several interviewees noted the diversity of housing association provision and the contribution the movement is able to make in different areas. For example:

"I don't think there's a single role. I suppose at the core you've got providing affordable housing to people that are needing it, that probably applies to everybody. Then you've got a whole range of stuff around meeting local authority strategic housing objectives, which might not be to do with affordable housing but might be to do with providing housing necessary for economic development, or

¹⁰⁹ Table 1, Appendix Nine.

¹¹⁰ Although just 18 percent of respondents saw it as a role for housing associations to assist the NAW with implementing its housing strategy: Table 1, Appendix Nine.

local regeneration, all that sort of stuff. Then you've also got the whole community regeneration agenda, in some areas in Wales you might have or a language agenda, or rural sustainability objectives in rural areas, and a lot of it's to do with urban regeneration."

HA Interviewee G

Role determination

When asked about Tai Cymru's influence on housing associations' capacity to carry out the roles identified, 45 percent of those interviewed commented that under Tai Cymru the opportunities to engage in community regeneration activities were limited,¹¹¹ and that Tai Cymru failed to support community regeneration as a function of housing associations. Several commented that under Tai Cymru the policy agenda was focused on meeting housing need through increased output of newbuild properties, and that this had had a detrimental effect on rehabilitation. Others suggested that Tai Cymru had not been concerned with community regeneration, and that it was not considered a priority within its strategic agenda, for example:

"As far as the whole notion of a wider community involvement of housing associations and responsibility for other areas of community well-being, and we do have that kind of role, I'm not sure it was particularly high on Tai Cymru's strategic agenda... But even more important than that, it seems to me initially Tai Cymru's concern was development. It was very much a unit led approach to housing so if there was a wider strategy linking it to the broader public agenda I don't think was one that was espoused very often. It was more about there is housing crisis in a particular area how can we make sure that we are maximising the outputs in terms of units and resources. I think theirs was a fairly orthodox approach."

HA Interviewee A

Although several interviewees commented on the importance of community regeneration as a function of housing associations under Tai Cymru. A point made by a number of interviewees was that Tai Cymru was not sympathetic to

¹¹¹ Table 2, Appendix Nine.

the notion that housing associations should engage with the community. For example:

"... Tai Cymru had no interest in the community agenda ... I think those associations that did try and engage tenants and the community, [were] seen as a bit unnecessary a bit 'bleeding heart'."

HA Interviewee B

It is apparent from the interviewee evidence that this is in contrast to the support given for housing association development: 81 percent of interviewees commented that Tai Cymru encouraged associations to act as developers.¹¹² As a consequence some housing associations were forced to re-prioritize their own objectives, as rehabilitation was made more difficult. Several interviewees mentioned that their housing association had moved away from rehabilitation as the main area of development. Comments on this issue included:

"Tai Cymru supported the community regeneration role when rehabilitation was well funded, but that became less of an acceptable option and so an organization like mine that grew out of action groups that were linked to Shelter that were committed to improving the environment, the physical and social environment, found that it was more difficult to do that, their direction was being steered away from rehab into new build."

HA Interviewee E

As will be discussed in Chapter Nine (development), funding for housing associations was so structured under Tai Cymru as to have the effect of discouraging development by rehabilitation. For many associations this meant a reduced emphasis on what had previously been a core activity. Comments on this issue included:

"[Under Tai Cymru] there was tendency to concentrate on the core activity. There was the shift from rehab to new build, which they presided over, this meant a shift for associations away from being specialist regeneration agencies in many cases to being mainstream housing providers of housing, and that was clearly their

¹¹² Table 2, Appendix Nine.

agenda. And that was quite a significant change for many associations, including this one and my previous association ... When you look at the motivation for setting up associations here was an agenda of homelessness and housing need, but there was also an agenda about area regeneration ... associations were a pantomime horse between those two things. When Tai Cymru killed off rehabilitation largely, associations had to make a choice and some people objected to it."

HA Interviewee G

These findings tend to suggest that Tai Cymru had a significant influence on the way in which housing associations were able to discharge their preferred housing functions. Several interviewees chose to contrast the approach of Tai Cymru with that of the National Assembly. The point made by these interviewees was that under the Assembly the wider community regeneration agenda receives greater support, making it easier for associations to engage in community development. For example:

"The way we worked with Tai Cymru is still in effect the way we work with the National Assembly ... but I think the wider agenda of government has encouraged people to think more extensively about what have been the outcomes of what we've done so far, what will be the outcomes in the wider social and economic sense of actions we'll take in the future. So if you like that broadening of that public agenda ... is something that I would associate with the National Assembly for Wales ..."

HA Interviewee A

Housing association roles and local authorities

In response to direct questioning 36 percent of interviewees agreed that a housing association's role at local level is determined by the local authority's priorities.¹¹³ Although a relatively low proportion of interviewees this still raises doubts about the capacity of the board to establish relevant functions. This is made more significant as 81 percent of interviewees commented that local authorities are able to influence housing associations' capacity to discharge their various functions, i.e. through their enabling function. Several interviewees made

¹¹³ Table 4, Appendix Nine.

the point that local authorities are in a position influence development in particular. Comments included:

"Let's face it, if you cant get planning consent then you're not going to do very much. ...The local authority has perhaps more of negative power than a positive power in some degree ... that makes a lot of difference in terms of your ability to deliver on the ground."

HA Interviewee G

"To what extent? [are roles determined by the local authority] I would say, to a very great extent. Particularly now with the local authority having the strategic enabler role. I think if you don't have an open dialogue with the local authority then you're buggered really ... if you don't have an understanding, a dialogue with planning departments then you can't get anywhere ... the National Assembly probably has a greater dialogue with the local authority and then relies on the relationship between the local authority and the housing associations. I think that does a disservice, I think there's an imbalance there that is quite concerning, you can get nowhere if you have a poor relationship."

HA Interviewee D

From these findings it is reasonable to suggest that policy institutions at Wales-national and local level are highly significant in influencing the extent to which housing associations are able to discharge their preferred functions - including their primary role of meeting housing need.

The Interview Findings for Local Authorities¹¹⁴

References to percentages below are approximations from the data.

Role expectations

There was unanimous agreement amongst local authority interviewees that housing associations should provide affordable housing.¹¹⁵ Further, 66 percent of interviewees identified the provision of specialist housing and LCHO as

¹¹⁴ Interview questions 1 and 2, Appendix Six.

¹¹⁵ Table 1, Appendix Ten.

relevant functions.¹¹⁶ There was also support for associations to have a community regeneration role: 66 percent of interviewees suggested this as a function for housing associations.¹¹⁷ Surprisingly, just 50 percent of interviewees mentioned a role for housing associations in assisting local authorities with the discharge of their housing functions.¹¹⁸ Having regard to the strategic function of local authorities it might be anticipated that there would be stronger support for this aspect of housing associations. It is possible that the provision of new social housing contributes to the strategic agenda in any event, and housing associations are seen as providing assistance to local authorities by acting as development vehicles. This is confirmed as a number of interviewees saw housing development as taking place within a strategic framework established by the local authority. Comments included:

"[Housing associations'] major role has been the provision of new build and refurbished social housing. They are now the major contributors to that and in doing so one of their roles would be to be responsive to the needs of the local authority area which they are zoned in."

LA Interviewee B

In this context a number of interviewees mentioned that housing associations should be responsive to need as identified by local authorities, and that they should act strategically to meet any gaps in provision, including by developing housing other than general needs housing. For example:

"At the risk of stating the obvious the main role of housing associations should be around the provision of good quality affordable housing ... They've also got a role subservient to that in terms of identifying niche markets and providing not just general needs housing ... but ensuring that any gaps that exist are identified and responded to within the framework of local authority strategic objectives."

LA Interviewee D

¹¹⁶ Table 1, Appendix Ten.

¹¹⁷ Table 1, Appendix Ten.

¹¹⁸ Table 1, Appendix Ten.

Role determination

When asked whether or not housing associations should work toward local authority strategic objectives interviewees were unanimous that they should.¹¹⁹ This is particularly significant having regard to the findings already discussed from housing association interviewees, which suggest that policy institutions, including local government, may influence the extent to which associations are able to discharge particular roles. Several interviewees commented that ultimately housing associations could be required to work toward local authority objectives, for example:

"If they don't work in line with the local authority strategic objectives they're not going to get very far are they because we're clearly not going to prioritize them for funding and I feel that the National Assembly ought to respect our strategic priorities as well in terms of where they put their funding. Having said which obviously associations are independent organizations and they've got to have their own agenda as well. But that might be about, a more subtle difference, about how they prioritise customer service over growth, or some associations may say we want to prioritize working with people with special needs, and another association will say we're more a general needs association and so on. That's perfectly valid that associations can specialize but obviously they need to know which side their bread's buttered and they ought to look at the strategic agendas of the local authority and fit in with that as far as they possibly can."

LA Interview A

There was also the suggestion from several interviewees that if housing associations fail to meet with expectations set out in local authority strategic documents, and/or fail to take fully into account the views of the local authority on the services required at local level, they should in any event be compelled to discharge their functions within the framework of local authority strategic planning. For example:

"I would hope that people would work together to support our strategic objectives, but where there are examples of where housing associations are ignoring the homelessness agenda locally

¹¹⁹ Table 2, Appendix Ten.

then an there should be an element of further requirement. Ultimately they should be required to work within that strategic framework."

LA Interviewee D

Where local authority priorities reflect those of housing associations difficulties are unlikely to arise. However, the possibility remains that housing associations may be inhibited in the performance of particular roles where these do not meet with local authority strategic priorities.

Synthesis and Conclusion

Chapter Four established that housing associations have a role within the housing system, i.e. as providers of housing to meet need. Tai Cymru sought to ensure that the housing association movement in Wales contributed toward meeting this expectation through role specification in regulations and circulars focusing on the provision of affordable housing. Similarly, the National Assembly has emphasized the importance of housing associations' general housing function as an aspect of Wales-national housing policy, and through regulation. But the provision of affordable housing is just one amongst several functions identified as relevant for housing associations by policy institutions in Wales. Under Tai Cymru role diversity was supported to the extent that associations were encouraged to provide specialist housing, and housing for sale. Under the National Assembly the community development function is significant amongst housing association functions, representing a modification from the position under Tai Cymru, and may be seen as an aspect of the National Assembly's wider policy responsibilities post-devolution. In general it is apparent that policy institutions have established a framework for the strategic operation of housing associations in Wales giving priorities and providing direction to associations on the functions that they ought to discharge.

The survey findings show that in key areas the priorities established by policy institutions for housing association roles reflect the movement's expectations in

any event. Key amongst these is the provision of affordable housing, which is fundamental for housing associations, and is central to the Wales housing policy agenda. In addition, the community development role, to include a role in tackling anti-social behaviour, is supported by housing associations and by the National Assembly. From this it may be argued that the framework of policy implementation in Wales supports housing association functions, and, that their roles are neither imposed nor determined by policy institutions. However, the evidence suggests that in some areas the influence of policy institutions may be significant, in particular having regard to specialist housing and LCHO schemes. It is certainly the case that there has been modification of attitudes toward the specialist housing function since the mid 1980's. The contemporary housing association movement supports diversity and housing provision for minority groups, and having regard to prior research, the strong policy focus on special needs housing cannot be discounted as an influence on attitudes toward the movement's role in these areas. Also, in the area of LCHO the general lack of support from housing associations for this function in the 1980's would tend to suggest that Tai Cymru was responsible for establishing the provision of housing for sale as a relevant function. Further, despite the evidence being equivocal on their role as a resource for local authorities, the questionnaire data establishes the strategic agenda as relevant to influence the board in the determination of housing association functions. Whilst housing associations may anticipate autonomy for the board to establish priorities in this area, the survey has shown that extent to which they are able to fully discharge their preferred functions will likely depend on the agenda of the regulator and the local authority.

It is concluded that whilst there may be correspondence between the roles identified for housing associations in housing policy and by policy institutions in Wales, these institutions are able to influence the housing associations to the discharge of particular functions. This is likely to be less significant where priorities are shared or similar; however, where housing association priorities differ from those of the regulator the adoption of certain roles may be seen as

reflecting external prioritization - as in the case of LCHO. Whilst there is a degree of autonomy for housing associations to establish their preferred functions, the extent to which they are able to discharge these functions is likely to depend on the support given by Wales-national policy institutions and local government. It cannot be concluded that this amounts to role determination, but it is certainly the case that housing association roles are influenced by policy implementation to the extent that this supports particular functions over others. It may be concluded that an impact of policy implementation in Wales has been to direct housing associations toward the discharge of functions deemed a priority by housing policy and policy institutions.

CHAPTER EIGHT

HOUSING ASSOCIATION ACCOUNTABILITY

Introduction

As a consequence of heightened visibility in public policy voluntary organizations are subject to increased scrutiny and accountability for their decisions and actions. The position is the same for housing associations, which as a *quid pro quo* for public subsidy, are required to submit to a regulatory jurisdiction imposed by statute. Further, housing associations' role as providers of social housing primarily as a welfare service means that they deliver services to vulnerable individuals whose interests need to be considered and protected. The need to demonstrate accountability was recognized by the National Federation of Housing Associations during its inquiry into housing association governance in the mid 1990's. The inquiry's report noted that:

'As [housing] associations have achieved a more central role in the delivery of social housing, their mechanisms of accountability have come under closer scrutiny.'¹

This chapter considers how housing associations are accountable to various stakeholders including tenants, the community, local and central government, and the regulator;² and, the modes of accountability relevant to housing associations in Wales. The findings from the survey provide an insight into attitudes toward accountability and its impact on housing associations.

Housing Association Accountability: Context

Overview

It is inevitable that as the provision of social rented housing was, until the mid 1970's, a responsibility primarily given to the public sector, and publicly

¹ NFHA, (1995), at p.10.

² The number of relevant stakeholders has expanded as a consequence of growth in the housing association movement: Morgan, (2003); and, Belcher, A., *Board responsibilities in the voluntary sector: the case of housing associations*, in Dunn, (2000), at p.61.

accountable local authorities, comparisons will be made between modes of accountability for local government and those relevant to housing associations. In this context, the housing association movement lacks the democratic accountability which is a feature of the public sector via elected ministers and local councillors, as well as extended legal accountability by judicial review.³ As priorities in housing are established over the long-term, i.e. to reflect predicted demographic or economic trends, this may be seen as a strength of the housing association movement, i.e. as mitigating the possibility that priorities will be dictated by short-term political expediency.⁴ However, it undoubtedly represents a significant weakness in housing association accountability. This is highlighted as housing associations have been criticized for failing to provide sufficient opportunities for participation by tenants and/or the community, and have been characterized as oligarchic and self-perpetuating.⁵ In order to address these issues the NFHA established an inquiry into housing association governance in 1994. Under the Chairmanship of Lord Hancock the Committee published its report, *Competence and Accountability*, in 1995.⁶ This emphasized the need for housing associations to be seen as properly accountable, stating that:

'Housing associations must be accountable. Properly accountable for their use of taxpayers' money. Responsible in separate and appropriate ways to their tenants and various local communities.'⁷

To assist housing associations to meet with this expectation the Committee published a *Draft Code of Governance* which included several recommendations on improving openness and tenant participation in management,⁸ and called for associations to act responsibly toward the communities in which housing is located.⁹ As well as identifying priorities for accountability the Hancock

³ As was noted in Chapter Two, in public law housing associations are not regarded as public authorities and are not ordinarily subject to judicial review.

⁴ Kendall, (2003).

⁵ Short (1982).

⁶ NFHA, (1995).

⁷ NFHA, (1995) at p.5.

⁸ NFHA, (1995), Annex 5 at paragraph 10.

⁹ NFHA, (1995), at p.24.

Committee also identified the areas in which housing associations may be held accountable for their performance, i.e. in the area of work carried out, for financial matters, for procedural correctness, and for the quality of services.¹⁰ Significantly, by recognizing housing association accountability to the community, and the need for openness, the Committee confirmed public accountability for housing associations. This public aspect of the housing association movement was re-iterated when the Nolan Committee on Standards in Public Life reported in 1996: it included housing associations within the scope of its inquiry as '*public spending bodies*', it made several recommendations on how to improve accountability for the movement.¹¹ These included: widening housing association membership; and, limiting restrictions on appointments to the board as an aspect of improving accountability to tenants and the community.¹² What is apparent is that despite their status as corporate bodies, and the assumption of accountability via the board,¹³ for contemporary housing associations it is unavoidable that accountability will extend beyond the board of management into the public domain.

Housing Association Priorities for Accountability

Accountability and regulation: accountability in operational context

In order to overcome weaknesses in housing association accountability, and to provide public accountability, statute has established the institution of a regulator, with powers to make and enforce a regulatory regime. From the outset Tai Cymru was determined to take a firm stance on the regulation of housing associations in Wales. A reason for this was the collapse of the Corlan Housing Association in the early 1990's, an association for which Tai Cymru was responsible as regulator. An inquiry into the affair in 1991 concluded that there had been general mismanagement, serious financial mismanagement, and

¹⁰ NFHA, (1995) at paragraph 5.3. These categories are similar to those identified by Leat for voluntary organizations discussed in Chapter Two: Chapter Two, n.58 and accompanying text.

¹¹ Nolan, (1996).

¹² Nolan, (1996), recommendations R36 and R37.

¹³ Accountability may therefore be seen as an aspect of corporate governance for non-profit organizations lacking democratic accountability. For a discussion of accountability in this context see: Greer and Hoggett, (1997).

irregular grant submissions.¹⁴ To avoid a repeat of the Corlan affair Tai Cymru sought to ensure that public funds were not wasted or put at risk, and that housing associations in Wales would provide value for money from Treasury investment. To these ends it established clear aims for regulation, i.e.: to safeguard public funds; to protect tenant interests; and, to ensure that housing associations attained high standards of probity, financial management and service delivery.¹⁵ To guarantee that these objectives were met in practice Tai Cymru had, by 1992, established a system of review of housing associations based on audit visits, with performance measured against quantifiable targets.¹⁶ This provided a transparent system of regulation with strong accountability supported by sanctions across many areas of housing association operations. Before it was replaced by the National Assembly as regulator Tai Cymru had not only established a system of audit and general inspection but had implemented a number of topic-specific audits to be carried out during each financial year,¹⁷ so that by the end of its tenure regulation had become the most significant mode of accountability for the housing association movement in Wales¹⁸ When the National Assembly took over from Tai Cymru in 1998 it inherited the regulatory framework set up by its predecessor. During consultation on the preparation of its *Regulatory Code* the Welsh Assembly Government gave the purpose of regulation as: to protect the interests of residents and customers; to protect public and private investment; and to promote quality and high standards from housing associations.¹⁹ In pursuit of these objectives the Code sets out regulations dealing with: housing association relationships with tenants and applicants;²⁰ finance management;²¹ and, quality standards.²² In addition, and in

¹⁴ HACAS, (1991).

¹⁵ Tai Cymru, (1996-1997), at p.20.

¹⁶ Tai Cymru, (1990-91), at p.17. To ensure that housing associations met with regulatory expectations Tai Cymru resolved to establish quantifiable targets wherever possible: Tai Cymru, (1992/93-1994/95), at p.1.

¹⁷ Tai Cymru, (1997-98), at p.14.

¹⁸ This is confirmed by reference to Tai Cymru's annual reports between 1989-1998, (Bibliography by year).

¹⁹ WAG, (2003d).

²⁰ WAG, (2005a), for example: section 1.4, '*Managing Housing*', dealing with security of tenure and quality of life issues for tenants; and, section 2.2, '*Relationship to Residents*'.

order to monitor housing association performance, the National Assembly has introduced audit of housing associations via the Audit Commission in Wales.²³

Board accountability

Collective board accountability is a feature of housing associations and is supported by regulation. Under Tai Cymru housing associations were expected to recruit board members possessed of the experience and expertise necessary to undertake a governance function.²⁴ In order to ensure that housing associations were taking seriously their responsibilities in this area Tai Cymru introduced regulations to emphasize the board's duty to: devise and implement policies appropriate to ensure proper management of an association; to manage staff; and, to be accountable for the finances and actions of the housing association.²⁵ Similarly, under the Welsh Assembly Government's *Regulatory Code* housing association boards are made responsible for matters of governance, and are required to exercise their functions so as to be accountable for their decisions and actions,²⁶ and to '*conduct all their affairs openly and accountably*'.²⁷

Accountability for priorities

Perhaps the most significant operational aspect of housing associations is their role as developers and managers of social rented housing. As a consequence of the regime established by Tai Cymru for the distribution of Housing Association Grant, and more recently by the National Assembly for Social Housing Grant, priorities for housing association development are determined within a strategic framework that pays attention to local need. This provides accountability for

²¹ WAG, (2005a), see: section 2.4, '*Financial and Risk Management*'.

²² WAG, (2005a), see: section 1.5 '*Maintaining Housing*'.

²³ WAG, (2003c).

²⁴ Tai Cymru, (1990a), at p.105.

²⁵ Regulations published in 1997 summarized the position: '*The board is expected at all times to act in the [association's] best interest and is responsible for controlling the [association's] affairs in an efficient and accountable manner*': Tai Cymru, (1997a), at p.6.

²⁶ WAG, (2005a), at paragraph 2.6.1.

²⁷ WAG, (2005a), at paragraph 2.1.1.

priorities via the institution of local government as the planning authority in housing. In 1997 the Wales Local Government Association (the 'WLGA') published a *Housing Manifesto*²⁸ in which it argued that local authorities are the only democratically accountable institution responsible for housing provision in Wales. The WLGA gave this as the justification for retaining overall responsibility for coordinating and prioritizing the provision of publicly funded housing services at local level within local authorities.²⁹ This was supported by Tai Cymru, and is consistent with the policy approach of the National Assembly. The strategic role of local government in housing undoubtedly mitigates the democratic weakness of housing associations. In this context it is unsurprising that Tai Cymru, as an un-elected and therefore undemocratic body, encouraged partnership working between housing associations and local authorities by placing an emphasis on the use of strategic housing agreements.³⁰ The position is different under the National Assembly, which as a directly elected policy institution has a mandate to determine Wales-national housing policy. Notwithstanding, the Assembly's *Housing Strategy*, emphasizes that at local level accountability for priorities remains via local authorities as strategic planning bodies.³¹

Accountability to tenants and the community under Tai Cymru

In 1978 the Housing Corporation issued a circular requiring associations to consult with their tenants on management issues.³² This circular was re-issued in 1988, and in the same year the Welsh Housing Associations Committee published guidance to housing associations on how to consult with tenants on services, performance, and other aspects of housing association management.³³ After 1989 Tai Cymru sought to promote and facilitate tenant participation as a

²⁸ WLGA, (1997).

²⁹ WLGA, (1997).

³⁰ Chapter Seven, n.75 and n.76 and accompanying text. Ultimately housing associations in the 1990's were accountable for their development priorities to Tai Cymru, however, as an institution it too lacked a democratic mandate offering a further explanation for the emphasis placed on strategic working.

³¹ 'Local authorities have a key strategic role, supported by effective local partnerships ...': NAW, (2001c), at p.24.

³² Housing Corporation Circular 3/78.

³³ WHAC, (1988).

mode of accountability by encouraging housing associations to make it easier for tenants to play a part in the governance of associations, including through regulation.³⁴ Notwithstanding housing associations were criticized in the early 1990's for failing to do enough to encourage tenant membership and representation at board level. A report prepared following an audit of housing association performance in 1991/92 noted that '*the vast majority of management committees do not include any tenant representation.*'³⁵ It noted the lack of general participation by tenants and the fact that '*... very few associations have a general membership which reflects the community they serve.*'³⁶ In 1992 Tai Cymru took steps to address the problem of tenant under-representation by issuing a circular incorporating a revised Tenant's Guarantee. This document included the expectation that housing associations would:

... make arrangements for consultation which take into account the views of the tenants affected ... [and] associations should help and encourage representative organizations ... [and] are encouraged to make arrangements or opportunities to enable tenants to participate in the management of the association ...³⁷

In 1994 Tai Cymru published guidance on how to facilitate tenant participation in conjunction with the Tenant Participation Advisory Service in Wales;³⁸ and gave guidance on how to measure tenant satisfaction that identified consultation with tenants as a key measure of overall performance.³⁹ The significance of this was emphasized as Tai Cymru issued a circular in 1995 on developing good practice in tenant participation which required associations to have due regard to relevant

³⁴ Tai Cymru, (1990a), at p.113.

³⁵ HFW, (1992), at p16. This contradicts to some by data from a study carried out in 1988 for the WHAC which surveyed housing associations on tenant participation at board level. Data collated for this survey showed a majority of the 25 association surveyed had at least one tenant board member. However, reference to this survey is in a guide to tenant consultation published by WHAC with few details given: WHAC, (1988).

³⁶ HFW, (1992), at p16.

³⁷ Tai Cymru Circular 17/92, incorporating a revised Tenant's Guarantee effective from the 28th September 1992; and, Tai Cymru, (1992b), at paragraphs F2-F4.2

³⁸ Tai Cymru/TPAS (1994).

³⁹ Tai Cymru, (1994b), at paragraph 1.15.

guidance in developing strategies for tenant involvement.⁴⁰ The 1995 circular also specified that associations were to prepare a strategy for tenant participation.⁴¹ Revised performance expectations, also issued in 1995, made clear that housing associations were required to be accountable to tenants for services, and that boards were to have a diverse membership committed to helping the community.⁴² In 1997 regulatory requirements for Registered Social Landlords dealt with the issue of tenant participation by making it a requirement that housing associations should:

'... be accessible to their tenants, provide tenants with good information, take account of tenants' views, and encourage tenants' involvement in their affairs.'⁴³

The 1997 regulations also required housing associations to encourage tenant involvement, in particular by assisting representative tenant organizations, and, by making arrangements to enable tenants to participate in the running of an association.⁴⁴ This was re-iterated by circular in 1998 that reminded housing associations of the requirement imposed by Tai Cymru to adopt a strategy on tenant participation, and of the need to consult annually with tenants on its implementation.⁴⁵ Tai Cymru's strong policy approach to tenant participation appears to have had a positive impact, so that by 1997 the proportion of tenant board members to non-tenant members of housing associations in Wales was about 1:8, and, more significantly, just over 50 percent of associations had an elected or co-opted tenant board member.⁴⁶

⁴⁰ Tai Cymru Circular 7/95.

⁴¹ Tai Cymru Circular 7/95.

⁴² Tai Cymru, (1995), at p.3 and p.15. This reflects the recommendation of the Nolan Committee that '*housing associations receiving public funds should be expected to secure tenant involvement in housing management ...*': Nolan (1996).

⁴³ Tai Cymru, (1997a), at p.14.

⁴⁴ Tai Cymru, (1997a), at regulation 6.4.

⁴⁵ Tai Cymru Circular, 6/98.

⁴⁶ I.e. 27 out of 50 registered social landlords: Hough, C., and Marlow, G., *The accountability of registered social landlords*, in Tai Cymru, (1997b), at p.20.

Accountability to tenants and the community under the National Assembly

Under the National Assembly tenant participation for all social landlords features as a significant aspect of its approach to social housing.⁴⁷ Whilst this provides accountability for housing associations the Assembly is also concerned to promote tenant participation as part of the movement's community development role more widely. In 2000 the Assembly Task Group on Sustainable Development commented that:

'... tenant participation should not just be seen as a way of improving management performance, but as a crucial means of empowering local people to achieve sustainable improvements to their communities. This is also consistent with the view of devolution as a process not an event, leading to the transference of power and influence to community level.'⁴⁸

For the National Assembly tenant participation provides accountability to communities, but also the opportunity to improve the quality of social housing. This is confirmed in its *Housing Strategy* which includes the statement that '*social housing works best where tenants are empowered to voice their views and contribute to decisions about their community*.'⁴⁹ The WAG has continued to emphasize accountability to tenants and the community via regulation. Its *Regulatory Code* encourages consultation with tenants and tenant participation.⁵⁰ This continued emphasis on participation as a mode of accountability appears to have resulted in increases in levels of tenant involvement in housing association governance. In 2000 a survey carried out by the Welsh Federation of Housing Associations showed that about 90 percent had tenant board members.⁵¹

⁴⁷ The WAG has encouraged local authorities to enter into tenant participation compacts as an aspect of the modernization of local government in Wales: NAW, (February 2000).

⁴⁸ NAW, (2000c), at p.27.

⁴⁹ NAW, (2001c), p.11.

⁵⁰ NAW, (2005a), at paragraph 2.

⁵¹ WFHA, (2000). This report was published with the intention of producing a training resource for tenant board members

Other relevant modes of accountability: the ombudsman, Best Value and Quality Standards

Before the 15th July 2005 tenants or others affected by the decisions or actions of housing associations could complain to the regulator. From this date complaints about the conduct of housing associations in Wales are referable to the office of the Public Services Ombudsman for Wales. This has the potential to provide accountability for priorities, process and quality. To date there are no reported decisions of the ombudsman in Wales referring to complaints against housing associations.⁵² An alternative to regulation as a mode of improving quality standards for housing associations is the National Assembly's Best Value regime. The objectives of Best Value in housing are: to promote continuous improvement in service delivery; to increase the influence of tenants on the delivery of services; and, to produce cost-effective, efficient and effective services.⁵³ Initially Best Value was applicable only to local authorities,⁵⁴ however, following a consultation exercise in 2000 Best Value principles and the Wales Programme for Improvement - which was implemented to deliver Best Value objectives - have been applicable to housing associations from October 2001.⁵⁵ Although, unlike in the case of regulation, there are no statutory powers to ensure that housing associations comply with the Best Value regime, it is an expectation established by regulation that associations will meet with relevant standards.⁵⁶ To this extent Best Value increases the accountability of housing associations for performance, but also enhances accountability to tenants as there is a requirement for associations to implement a Tenant Participation Compact, i.e. a formal document aimed at involving tenants in the process of

⁵² I.e. by January 2007. Information on the role of the ombudsman in Wales is available at: www.ombudsman-wales.org.uk

⁵³ NAW, (2001d), at paragraph 3.1.

⁵⁴ During consultation on its housing strategy the National Assembly commented: '*Best value provides a framework for improving the way in which housing and other services are provided by local authorities, and to make those services much more accountable*': NAW, (2001e), at p.54.

⁵⁵ This is limited to associations with in excess of 250 dwellings, although smaller associations are encouraged to comply with Best Value principles: NAW, (2001d), at paragraph 1.5. The introduction of Best Value was welcomed by the RSL movement generally: NAW, (2001d), at paragraph 3, in particular 3.1.

⁵⁶ This is an expectation established in the Regulatory Code: WAG, (2005a).

improvement.⁵⁷ Housing associations are also accountable for quality standards by the application of Welsh Housing Quality Standards and their imposition via regulation, so that housing associations are expected to bring all their properties up to approved standards, as determined by the Assembly, by 2012.⁵⁸ This provides program accountability measurable against fixed targets.

Housing Association Accountability: Research Findings

The Purpose of the Research

The purpose of the research carried out for this chapter is to develop an insight into housing association accountability, the priorities for accountability, and the impact of enhanced accountability for the housing association movement. The research findings set out below are therefore relevant to Research Objective Three, as set out in Chapter Five.

The self-completion questionnaire (the 'questionnaire') asked respondents for their views on the priorities for housing association accountability, the effectiveness of existing modes of accountability, how accountability might be enhanced, and the justifications for holding associations to public account. In addition housing association respondents were questioned on the impact of regulation - as the most significant mode of accountability. All interviewees were asked what is meant by accountability in the context of housing associations. Housing association interviewees were also asked about judicial review and tenant participation as relevant modes of accountability, and about the impact of regulation. Local authority interviewees were asked about the relevance of judicial review, the effectiveness of controls on housing association discretion, and about accountability to local government.

⁵⁷ The Chartered Institute of Housing in Wales has published a guide for landlords on tenant compacts: CIH, (1999). This suggests that compacts should cover areas such as: how landlords and tenants will work together; the services to be covered; the ways in which tenants can become involved; what support and resources tenants will get; what information will be provided and how meetings will be run; how progress will be measured; and, what to do if compacts are not working properly.

⁵⁸ WAG, (2003e).

The Questionnaire Results: Findings for Housing Associations

Priorities for accountability

The questionnaire identified a range of potential stakeholders to whom housing associations might be seen as accountable; these are shown in Table 8.1 below. As might be anticipated from service-providing organizations, respondents indicated strong support for accountability to service-users, i.e. tenants. 93 percent of respondents agreed that associations should be accountable to their tenants or prospective tenants. Reference to the full data shows the strength of opinion on this issue, with 86 percent of respondents in strong agreement that there should be accountability to service users.⁵⁹ Similarly, the data reveals high levels of support for associations to be accountable to local communities: 80 percent of respondents agreed that associations should be accountable in this way. This may be seen as an aspect of housing associations' community role as identified in Chapter Seven, but also as part of their responsibility to manage social housing effectively. It confirms public accountability for housing associations. This is also what is suggested by the high level of support for housing associations to be accountable to the National Assembly: 86 percent of respondents supported this proposition. There was also majority agreement for associations to be accountable to local government, i.e. 53 percent of respondents in agreement, again confirming public accountability.

The accountability relationships identified as significant so far may be seen as arising from housing associations' function within the housing system. Other data shows that 93 percent of respondents agreed that housing associations should also be accountable to private funders. This relationship comes about as a result of the introduction of private finance into the housing association movement in the early 1990's, and may be seen as a direct consequence of the change to mixed-funding after 1989.

⁵⁹ Table 8, Appendix Seven.

Table 8.1⁶⁰

Housing associations ought to be accountable to:

Response Options ▾	In Agreement*	No Opinion*	Not Agreeing*	Response Rate (%)
Tenants and prospective tenants	14 (93)			93
Local communities	12 (80)	2 (13)		93
LAs	8 (53)	2 (13)	4 (26)	93
The NAW	13 (86)			86
Private funders	14 (93)			93

* Refers: Number of response (percentage of total possible responses).

The relevance of public accountability, via the regulator and to the community, is confirmed by the findings set out in Table 8.2 below. Respondents were unanimous that associations should be publicly accountable, with the full data showing 93 percent in strong agreement.⁶¹ It appears from other data on this issue that housing associations see the primary justification for public accountability as the provision of public funding: 73 percent of respondents agreed with the proposition that associations should be publicly accountable because they receive public subsidy. This confirms the relevance of increased support in the political realm for issues of housing association accountability, and in particular the introduction of a public aspect. In this context it might also be anticipated that housing associations' involvement in the development and management of housing as a public welfare service would be a significant factor underpinning public accountability. The evidence supports this proposition as 66 percent of respondents saw housing associations as publicly accountable because they provide a public service, with no disagreement.

(Table 8.2 overleaf)

⁶⁰ This table shows extracted findings from Table 8, Appendix Seven.

⁶¹ Table 10, Appendix Seven.

Table 8.2⁶²

To what extent do you agree or disagree with the following:

Response Options ▼	In Agreement*	No Opinion*	Not Agreeing*	Response Rate (%)
HAs should be publicly accountable	15 (100)			100
HAs should be publicly accountable as they receive public subsidy	11 (73)	3 (20)	1 (6)	100
HAs should be publicly accountable as they provide a public service	10 (66)	5 (33)		100

* Refers: Number of response (percentage of total possible responses).

Enhancing accountability

Relevant data on how housing association accountability might be enhanced is set out in Table 8.3 below. There was a very low level of support for judicial review to be applied to housing associations: just 1 respondent thought it an appropriate mode of enhancing accountability, with 73 percent of respondents in disagreement. This finding might be anticipated having regard to the evidence from housing association respondents on status discussed in Chapter Six, and their rejection of public sector status (judicial review being a remedy appropriate to public bodies). However, it is anomalous when it is taken into account that respondents see a justification for public accountability as being that housing associations carry out a public service. As judicial review is a relevant to ensure local authorities act properly in the discharge of their public housing functions it would seem appropriate to extend this to housing associations.⁶³

On other modes of accountability: respondents were unanimous that this is enhanced through the maintenance of an effective system of regulation. This may offer an explanation for the lack of support for judicial review as relevant to housing associations: judicial interference may be seen as unnecessary where regulation is effective. Respondents disagreed with the suggestion that local authorities should have a direct role in the regulation of housing associations,

⁶² This table shows extracted findings from Table 10, Appendix Seven.

⁶³ Discussed in Chapter Two, n.72 and accompanying text.

with 80 percent of respondents rejecting this proposition. The same proportion of respondents disagreed that accountability would be enhanced by the appointment of a minimum number of local authority representatives to housing association boards. In fact, the data suggests that housing associations do not support enhanced democratic accountability via the institution of local government directly or indirectly; as 80 percent of respondents rejected the suggestion that boards should be subject to local election.

Table 8.3⁶⁴

How could housing association accountability be enhanced:

Response Options ▾	In Agreement*	No Opinion*	Not Agreeing*	Response Rate (%)
By making HAs subject to judicial review	1 (6)	3 (20)	11 (73)	100
By giving LAs a regulatory function	1 (6)	2 (13)	12 (80)	100
By making HA boards subject to local election	2 (13)		12 (80)	93
By maintaining an effective system of regulation	15 (100)			100
By requiring minimum LA representation on HA boards	2 (13)	1 (6)	12 (80)	100
By enhancing tenant participation in HA governance	11 (73)	1 (6)	3 (20)	100

* Refers: Number of response (percentage of total possible responses).

The impact of regulation

The data set in Table 8.4 shows that 86 percent of respondents agreed that one impact of regulation had been to make associations more accountable - suggesting that regulation in Wales is achieving one of its stated purposes. However, the data also reveals that regulation is seen as having had other, less positive impacts for the housing association movement. Although 53 percent of respondents thought regulation had made associations more efficient this is a slim majority, with 40 percent disagreeing. 60 percent of respondents thought regulation had made associations less independent. A slightly higher number of

⁶⁴ This table shows extracted findings from Table 9, Appendix Seven.

respondents, i.e. 66 percent, saw regulation as limiting housing association discretion. These findings are particularly significant when considered along with those from Chapter Six suggesting that housing associations saw themselves as lacking independence under Tai Cymru. Having regard to the data in Table 8.4, it is reasonable to suggest that this is likely to have been in part attributable to the firm regulatory regime implemented by Tai Cymru (the impact of which is considered in operational context in Part Three). Finally, 53 percent of respondents thought that regulation had had the impact of making housing associations less innovative.

Table 8.4⁶⁵

The impact of regulation for associations has been:

Response Options ▼	In Agreement*	No Opinion*	Not Agreeing*	Response Rate (%)
To make HAs more efficient	8 (53)	1(6)	6(40)	100
To make HAs more accountable	13 (86)	1 (6)	1 (6)	100
To limit HA discretion	10 (66)	3 (20)	2 (13)	100
To make HAs less independent	9 (60)	2 (13)	4 (26)	100
To make HAs less innovative	8 (53)	2 (13)	5 (33)	100

* Refers: Number of response (percentage of total possible responses).

The Questionnaire Results: Findings for Local Authorities

Priorities for accountability

Local authority respondents were unanimously agreed that housing associations should be accountable to their tenants and prospective tenants. The relevant data is set out in Table 8.5 below. This shows that in addition to tenants, 81 percent of respondents thought that housing associations should be accountable to local communities. These findings are similar to those for housing associations, however in other areas there were differences. Most apparent is that 72 percent of respondents thought that housing associations should be accountable to local authorities, with the same proportion agreeing that they should be accountable to the National Assembly. This is higher than indicated by

⁶⁵ This table shows extracted findings from Table 11, Appendix Seven.

housing association respondents - although the data from both respondent groups is consistent on the need for accountability to elected policy institutions. The higher level of support from local authorities is probably explicable as a consequence of their strategic role. As was suggested by the findings in Chapter Seven, local authorities are likely to regard housing associations as a resource and might therefore expect that they should be accountable at local level for the way in which they manage and develop social housing. A further difference between local authorities and housing associations is that just 45 percent of local authority respondents saw private funders as relevant stakeholders.

Table 8.5⁶⁶

Housing associations ought to be accountable to:

Response Options ▼	In Agreement	No Opinion	Not Agreeing	Response Rate (%)
Tenants and prospective tenants	11 (100)			100
Local communities	9 (81)	1 (9)	1 (9)	100
LAs	8 (72)	1 (9)	2 (18)	100
The NAW	8 (72)	3 (27)		100
Private funders	5 (45)	5 (45)	1 (9)	100

* Refers: Number of response (percentage of total possible responses).

The data set out in Table 8.6 below shows the strength of support for housing association public accountability amongst local authorities. There was full agreement that housing associations should be publicly accountable. 90 percent of respondents agreed that housing associations should be publicly accountable because they receive public subsidy. This is a similar finding as for housing associations, as is the finding that 63 percent of local authority respondents see the provision of a public service as a justification for public accountability. This confirms the relevance of housing policy in this area.

⁶⁶ This table shows extracted findings from Table 5, Appendix Eight.

Table 8.6⁶⁷

To what extent do you agree with the following:

Response Options ▼	In Agreement*	No Opinion*	Not Agreeing*	Response Rate (%)
HAs should be publicly accountable	11 (100)			100
HAs should be publicly accountable as they receive public subsidy	10 (90)	1 (9)		100
HAs should be publicly accountable as they provide a public service	7 (63)	4 (36)		100

* Refers: Number of response (percentage of total possible responses).

Enhancing accountability

On the issue of how housing association accountability might be enhanced, local authority respondents were moderately supportive of judicial review as a relevant mode of accountability. This is anticipated from the findings in Chapter Six which showed that local authority respondents were more inclined to regard housing associations as public sector bodies. But also because authorities are themselves subject to judicial scrutiny in the exercise of their housing function. 63 percent of respondents thought that housing associations should be subject to judicial review. Other data shows that respondents failed to support enhanced accountability through the agency of local government. A minority of 36 percent of respondents supported local authorities having a regulatory role, and just 18 percent thought that there should be a minimum local authority representation on housing association boards of management. The findings also reveal that just 36 percent of respondents supported making housing association boards subject to local election. This is understandable when it is considered that local authorities' democratic status provides a justification for their role as housing strategist at local level: this would be undermined if housing associations were provided with a similar mandate.

On other suggested modes of enhancing accountability, it is apparent that local authority and housing association respondents are agreed on regulation and

⁶⁷ This table shows extracted findings from Table 7, Appendix Eight.

enhanced tenant participation as most relevant in this context. There was full agreement on the maintenance of an effective system of regulation, whilst 81 percent of respondents supported increased tenant participation in housing association governance.

Table 8.7⁶⁸

How could housing association accountability be enhanced:

Response Options ▼	In Agreement	No Opinion	Not Agreeing	Response Rate (%)
By making HAs subject to judicial review	7 (63)	2 (18)	2 (18)	100
By giving LAs a regulatory function	4 (36)	4 (36)	3 (27)	100
By making HA boards subject to local election	4 (36)	3 (27)	4 (36)	100
By maintaining an effective system of regulation	11 (100)			100
By requiring minimum LA representation on HA boards	2 (18)	6 (54)	3 (27)	100
By enhancing tenant participation in HA governance	9 (81)	2 (18)		100

* Refers: Number of response (percentage of total possible responses).

The Interview Findings for Housing Associations⁶⁹

References to percentages below are approximations from the data.

Priorities for accountability

When asked what is meant by accountability for housing associations the approach taken by the majority of housing association interviewees was to seek to identify relevant priority groups. In fact 81 percent of interviewees indicated that housing associations should be accountable to a range of stakeholders.⁷⁰ Largely consistent with the findings from the questionnaire 91 percent of interviewees agreed that housing associations should be accountable to their

⁶⁸ This table shows extracted findings from Table 6, Appendix Eight.

⁶⁹ Interview questions 13-16, Appendix Five.

⁷⁰ Table 13, Appendix Nine.

tenants;⁷¹ several suggested that the first priority for accountability should be tenants. Once again this is anticipated for service-providing voluntary organizations. In addition to tenants interviewees identified a number of additional stakeholders, including, communities, and partner organizations. Comments included:

"From the top down as an organization there's accountability to the regulatory body for the monies that you receive, the public funding you receive, and how you spend that, and whether you use that in the best most effective way, down to accountability to the communities that you work within. That takes you through accountability to partner organizations, particularly with the local authorities, and accountability to your customers and accountability to the communities in which you work for the decisions that you take and the impact that you have on those communities."

HA Interviewee D

The majority, i.e. 63 percent of interviewees, identified local communities as a priority for housing association accountability.⁷² Amongst those supporting community accountability local housing associations were prominent, with proportionally lower levels of support from regional associations. For community based associations accountability was seen as arising because of housing associations' role as providers of a housing service and their impact at local level, comments included:

"As a community based association we have to be accountable to the communities that we have property in, which includes our own estates ... So we try to provide local solutions for community problems ... this means that we have to take account of issues arising at local level and deal with them. To my mind accountability arises because we own and manage property in a particular area and we should be responsible in the way we act toward the community. "

HA Interviewee K

⁷¹ Table 13, Appendix Nine.

⁷² Table 13, Appendix Nine.

In addition to identifying relevant stakeholders a number of those interviewed sought to establish the nature of accountability by drawing attention to the different areas in which associations may be held to account, to include accountability for priorities, but also fiscal and programme accountability, for example:

"We've got accountability to the Assembly in that we should be well managed well run organizations that are worth investing in, ditto to lenders because we have to be seen as a safe investment for the lenders. To the community, we need to be seen as taking a long standing interest in the communities where we provide housing, that we look after our schemes and that we are able to be contacted if things go wrong to put things right. To our local authority partners we need to be organizations that deliver in the locality homes and services they want consistent with their strategies. With regard to local members ... I would say to be accountable to local members we need to be accessible to them, we need to communicate openly with them and we need to be making the effort to involve members in our work so we're not seen as a strange organization that may be a threat to their communities ... also, we're accountable to our tenants. We need to be sure that we do provide information about what we spend their rent money on because that's important, that we do provide services they want and demonstrate that, and that we involve them in developing those services. Real involvement not just tokenism."

HA Interviewee C

Perhaps because regulation is well-established and well-understood interviewees made little effort to identify modes of accountability, or to distinguish private and public accountability for housing associations. Notwithstanding, other data from the interviews confirms the significance of public accountability via policy institutions. 63 percent of interviewees commented that housing associations should be accountable to the National Assembly, and 54 referred to local government as a relevant stakeholder.⁷³ Surprisingly, having regard to the questionnaire data, just 36 percent of interviewees identified housing associations as accountable to private funders.

⁷³ Table 13, Appendix Nine.

By identifying stakeholders rather than modes of accountability the majority of interviewees avoided mentioning weaknesses in housing association accountability. This issue was however raised by one interviewee, who commented on the lack of democratic legitimacy for housing associations whilst drawing attention to the significance of tenant participation in housing association governance, as well as regulation, to offset criticism of housing associations in this context. This interviewee commented that:

"[Accountability] is what local authority members throw at us all the time. They tell us we're not accountable: 'Who are you accountable to? You're not elected by local people.' Because we are a voluntary organization we're not a publicly elected body, we don't have publicly elected people sitting on our board, it's the big issue. It's the one thing that's always thrown at us in terms that suggest we're not accountable, and don't have accountability within our organization. Housing associations have always struggled with that fact, but it's true, you cannot get away from it. But what we say is that we have a voluntary board elected by shareholders who can be anybody, and for us in the main they are tenants. And, we are accountable not just to our tenants but to the Assembly. We are a heavily regulated organization."

HA Interviewee J

Enhancing accountability

Consistent with the questionnaire findings from this group, a minority of interviewees, i.e. 27 percent, thought that housing association accountability would be enhanced if they were made subject to judicial review, whilst the majority, i.e. 54 percent, disagreed with this suggestion.⁷⁴ Of those who supported judicial review as a mode of accountability, the evidence suggests that these interviewees were influenced by the amount of public funding provided to the housing association sector as a justification for additional safeguards over and above regulation. However, for the majority ambiguities surrounding housing association status meant that doubts remained over the suitability of judicial review as a mode of accountability, in particular as this was seen as a best suited

⁷⁴ Table 14, Appendix Nine.

to public bodies. Whilst there was no dispute as to the need for public accountability, several interviews noted that housing associations are different from local authorities, and commented that as a result different accountability mechanisms needed to be put in place. Contributions included:

"I think we should be scrutinized. I think any organization that receives public funding should be scrutinized as long as there's a purpose to it and not just done for the sake of doing it. I think we should be monitored, we provide a public service and we should be closely scrutinized. We're not the same as a local authority and it's a matter of whether we're seen as a public body ... I think once they decide where housing associations fit and that you're able to access the benefits that should give you then I haven't got a problem with the scrutiny it brings."

HA Interviewee D

Differentiation from the public sector was not the only justification given for not extending judicial review to housing associations. Several of those interviewed mentioned a concern that the process of judicial review might inhibit housing associations' service-delivery function, and in particular their capacity to innovate. There was also considerable support for regulation as an effective mode of control in any event, tending to confirm the questionnaire finding that housing associations see regulation as a having made the movement more accountable. Comments on this issue included:

"I don't think housing associations should be subject to the same judicial scrutiny because if you did I think you'd kill the entrepreneurial spirit stone dead and you might as well not have them ... We're quite a regulated sector, highly regulated in comparison with the private sector. ... You haven't got judicial review but what you have got is the regulator ... and the regulator can actually directly sack me and replace the board ... they've got almost unlimited powers."

HA Interviewee G

In contrast to the position on judicial review a majority of interviewees supported increased tenant participation. 81 percent of those interviewed thought that accountability might be enhanced through greater tenant participation at board

level.⁷⁵ A number of interviewees commented on why it is that the housing association movement supports tenant participation, including that it provides legitimacy for housing associations as a social institution by introducing a community and tenant perspective into the decision making process. For example:

"[Tenant board members] bring a different perspective and they often deal with the issues that board members don't deal with, at a level that other board members don't necessarily consider. We should have more, we have a struggle getting tenants onto our board ... I would prefer the board to be dominated by tenant board members ... it's the customer perspective."

HA Interviewee D

The impact of regulation

The interview data tends to confirm that housing associations recognize and accept they have responsibilities toward tenants, communities and relevant policy institutions. To this extent accountability may be seen as an aspect of housing associations' increased role within the housing system, and not as an imposition by the regulator: its relevance being to confirm the movement's support for public accountability. Although the questionnaire data shows that there have been negative impacts of regulation for housing associations, most significantly in respect of independence, this is not confirmed by the interview data. When asked about the impact of regulation on housing association discretion just 27 percent commented that it had had any adverse impact, including on independence.⁷⁶ A possible explanation is that housing associations see regulation as unavoidable, i.e. as part of the framework within which they are required to discharge their functions. To some extent this is supported by the evidence from interviews, with several interviewees noting regulation as part of the operating environment, for example:

"I don't know that regulation has affected us greatly. ... It's the framework within which you have to work and that's fine. You need

⁷⁵ Table 15, Appendix Nine.

⁷⁶ Table 16, Appendix Nine.

those guidelines. If you consider yourself to be innovative then you ought to be able to work within those constraints and deliver something new. ... You have to look at way to remain innovative and independent within that."

HA Interviewee D

There was also the suggestion from several participants that associations are able to find ways to work around regulations in any event, one interview commented that:

"If you look back on the kind of thing that housing associations did under Tai Cymru and the growth of the sector then regulatory requirements were not a problem in terms of innovation and growth. The housing associations movement is such that there are a lot of can do people, Tai Cymru would have one set of regulations and you would find a way round it, it was a game. Regulatory requirements were necessary in terms of housing management ... but in development terms there's very little in there ... I don't think they did stop innovation. There was always a tension between Tai Cymru and housing associations but this did not affect our independence, we signed up to them and they weren't that unreasonable."

HA Interviewee K

The Interview Findings for Local Authorities⁷⁷

References to percentages below are approximations from the data.

Priorities for accountability

When asked what is meant by accountability for housing associations local authority interviewees adopted a similar approach to housing associations by seeking to identify relevant stakeholders. Once again interviewees identified multiple stakeholder relationships. Comments included:

"In terms of who I think they are accountable to, ... they are recipients of public money so they are accountable to the Assembly to make sure that those public monies are spent appropriately. They're accountable to the local authority to ensure that the ever decreasing amount of social housing grant is used effectively to

⁷⁷ Interview questions 9-13, Appendix Six.

give the greatest amount of property per buck. They're accountable to the Assembly in terms of the way in which associations set themselves up and the way in which they manage their properties ... They're accountable to their tenants in the same way as any social housing provider is accountable to a recipient of the service. They're accountable to their own board members ... I suppose the other one is accountable to the community."

LA Interviewee C

Tenants, the board, and the National Assembly for Wales were mentioned by 83 percent of interviewees as relevant stakeholders.⁷⁸ Consistent with the views of housing associations is the finding that 66 percent of local authority interviewees thought housing associations should be accountable to the communities they serve.⁷⁹ This confirms an expectation of public accountability.

Whilst 50 percent of those interviewed thought housing associations should be accountable to local authorities this is lower than might be anticipated having regard to the questionnaire findings.⁸⁰ A significant difference between housing associations and local authorities, highlighted by the questionnaire data, but also by the interview data, is that local authorities do not see accountability to lenders as significant. None of those interviewed mentioned private funders as a relevant stakeholder.⁸¹ Another significant contrast between the interview data from housing associations and that from local authorities is that a number of local authority interviewees mentioned weaknesses in modes of accountability relevant to associations. In particular by questioning the effectiveness of housing association accountability to the community, for example:

"I think the point is: who are they accountable to? ... There is a problem. Officially housing associations are accountable to their board and to their members but in practice the membership is only slightly wider than the number of people on the board, which is not at all representative of anything. Indeed, a lot people on housing association boards are there effectively by invitation rather than by

⁷⁸ Table 9, Appendix Ten.

⁷⁹ Table 9, Appendix Ten.

⁸⁰ Table 9, Appendix Ten.

⁸¹ Table 9, Appendix Ten.

a genuine democratic process in any shape or form that's worthy of the name. ... they should be accountable to the communities in which they work. That's what should be happening. They should be accountable to their tenants and to the broader communities in the areas where they work. That's the theory, but I don't have a simple answer as to how that could or should be achieved. In practice the National Assembly is the backstop and the audit but I think that's too remote and too infrequent to be really effective in terms of keeping associations accountable."

LA Interviewee A

When asked specifically whether or not they considered housing associations to be properly accountable to local communities, 50 percent of interviewees thought they were whilst the remainder were either ambivalent or doubtful.⁸² Housing associations were criticized by several interviewees for being too remote from their constituency, for example:

"I don't think they're fully accountable to their community currently. Whilst they have tenants' representatives on their boards there is always an issue of how representative are the representatives in the first instance. I'm concerned that in many respects that associations may be development led and not necessarily what is required by the community they serve, more it serves their purpose ...I would like to see more tenant representation ... I don't know whether there's a general apathy from the tenants or if there's a conscious effort by associations not to proceed with tenant groups but I think you need the forum of tenant groups to feed into and guide the association ... The people receiving a service are the only ones that can give a true comment on how the association is actually operating, whether it is meeting its principal aim of providing housing, housing to a quality standard. It's not just a physical standard, it's the environmental, all aspects of the provision of accommodation. It's whether they're providing community facilities, whether they're providing community activities, it's that accountability that isn't there at the moment with associations ... it's not as strong in certain associations."

LA Interviewee F

⁸² Table 12, Appendix Ten.

Enhancing accountability

Having regard to the findings in Chapter Six, which suggested that local authorities are likely to see housing associations as within the public sector, it is surprising that there was less than overwhelming support for judicial review to apply to housing associations: 50 percent of interviewees thought it appropriate.⁸³ Those who agreed with an extension of judicial review to housing associations drew attention to deficiencies in the regulatory regime to support their position, in particular by suggesting that it is only effective to deal with operational matters - and to the need to provide a legal mechanism for the pursuit of grievances against housing associations. For example:

"...local government is open to much greater scrutiny in many respects than an association. As an authority we find ourselves increasingly becoming a surrogate ombudsman in that there will be an issue between a tenant and their association landlord and ... if they see no other method of airing their grievance they will go through their local member ... and we are also aware of Assembly Member complaints, but there's no judicial review process to tie them down and scrutinize what they are undertaking and to check that what they've done, the decision they've made, is fair and equitable ... Regulation is very much financial regulation with the odd part on, for example allocation, thrown in ... currently it is very vague and there's a lot of loopholes that I know a local authority would not get away with. I think on that score associations need to be more accountable."

LA Interviewee F

"Housing associations do have an extensive range of regulation governing the way in which they undertake their functions, but I think those are very much to be set up between, in effect, the Assembly, the local authorities and the associations. I suppose it's for those people who aren't part of that regular review of performance."

LA Interviewee C

The minority view was that regulation provides sufficient safeguards to ensure propriety and fairness: with one interviewee contrasting the position of local authorities and housing associations and suggesting that the latter are far more

⁸³ Table 10, Appendix Ten.

closely scrutinized. There was also concern that the imposition of judicial review might place an undue burden on housing associations as, in any event, they are expected to take into account local opinion in the decision-making process.

Comments included:

"I'm not sure it would enhance accountability. In terms of housing they're very heavily regulated, far more regulated than we are. Financially they're far more regulated than we are in terms of what lenders would require from them. To add judicial review on top of that; I'm not sure it would enhance accountability."

LA Interviewee B

Whilst there was some support for judicial review as a mode of holding associations to account there was little support for making housing associations more accountable to local government: this despite doubts concerning the extent to which associations take community priorities into account. Just 33 percent of interviewees thought that housing associations should be more accountable to local government.⁸⁴ Several interviewees commented that the focus should be on partnership between housing associations and local authorities, for example:

"I don't think they need to be if they work in partnership and local government works in partnership with them ... if there isn't that engagement and partnership you're not going to get the kind of gains that you can get otherwise, but whether or not that needs some sort of formal structure around accountability to be put in place directly to local government, I think it would be a shame if that were a method that had to be applied ... So long as registered social landlords are working within a framework where they've got opportunity of influence through the development of local strategic housing objectives, and work within that, then I think they're accountable enough."

LA Interviewee D

Direct regulation by local authorities

83 percent of interviewees were against local authorities being given a direct role in the regulation of housing associations.⁸⁵ Factors which were influential in this

⁸⁴ Table 11, Appendix Ten.

⁸⁵ Table 13, Appendix Ten.

context included the capacity of individual local authorities to discharge this function, with the concern expressed that there would be inconsistency of approach. Comments on this issue included:

"I don't think that most local authorities have the expertise to do that. If you're talking about regulation I don't think we should have local authority staff doing auditing of associations and so on. I think auditors should take very seriously the evidence that they get from local authorities ... Again part of it comes down to not all local authorities are the same anyway. If local authorities were given the regulatory role, some would take it on and do a good job, others frankly would make a hash of it and that wouldn't be fair. "

LA Interviewee A

In addition there was a suggestion that in any event regulation is sufficient and that this is the responsibility of the National Assembly. Most interviewees were firmly of the opinion that regulation should not be the function of local government, with a number pointing out that it is not the role of local authorities to duplicate that of the National Assembly, or its executive.

Synthesis and Conclusion

It is apparent that accountability, or the need to demonstrate accountability, is a significant feature of the operating environment for housing associations in Wales, in particular through the imposition of a regulatory regime. Housing associations receive considerable public funding to deliver a welfare service and it is entirely predictable that they will be subject to demands for proper accountability, including public accountability. In this context an obvious impact of housing policy for housing associations is that they have been located in the public domain, and that this has led to public accountability. The relevance of housing policy generally in this area is confirmed by the questionnaire data as both groups of participants identified public subsidy as a justification for public accountability, with housing associations role in meeting housing need also seen as significant. As housing associations are non-democratic, and not ordinarily subject to judicial review, statute has sought to bridge the accountability gap by

providing for the institution of a regulator and for regulation. In Wales the regulatory framework is robust, and under Tai Cymru was the main focus for housing association accountability, with probity and transparency to the fore. Under the National Assembly the regulatory framework remains the primary mode of accountability, but this has been strengthened by an emphasis on the role for local authorities as strategists in housing, and by the introduction of Best Value to housing associations.

In general the survey reveals support for housing associations to be publicly accountable, including to communities and to elected public bodies. In this context regulation may be seen as affirming the movement's *bona fides* as a publicly funded welfare service-providing institution, and the relevance of regulation as being to ensure that expectations of public accountability are given effect. The survey has confirmed support for the maintenance of regulatory regime. Where housing associations are concerned it may be suggested that regulation provides a bulwark against criticism of the movement as undemocratic and unaccountable; alternatively, that it insulates housing associations from demands for accountability via judicial review. This would certainly explain why it is that housing associations support regulation, despite recognition amongst some in this survey group that it has resulted a loss of independence. However, for local authorities it is apparent from the interview data that more may need to be done in order to satisfy demands for proper accountability; as there is skepticism about housing associations' accountability to communities and some support for the extension of judicial review. At a narrower level, both Tai Cymru and the National Assembly have sought to encourage tenant participation as enhancing housing association accountability to the community. Although the housing association movement supports this as a priority, the available evidence suggests that tenant participation has, in practice, been guaranteed by the firm regulatory approach adopted by Tai Cymru and the Assembly.

As a consequence of housing policy housing associations have become highly visible in the public domain, leading to increased demands for accountability. In Wales this has resulted in the implementation of a regulatory regime as an aspect of public accountability, and to higher levels of tenant participation. These may be seen as consequences of housing policy implementation. It is concluded that in Wales an impact of policy implementation has been to make housing associations more accountable, and more democratic. As concerns tenant participation: this is consistent with the notion of voluntary organizations as having strong links with the communities in which they operate, and may be seen as strengthening housing associations connections with the voluntary sector. However, this chapter has identified the potential for regulation to interfere with independence. This, of course, would tend to weaken claims to voluntary status as undermining a key structural criterion for membership of the non-profit sector. The chapters that follow in Part Three consider the impact of regulation as relevant to independence and operational discretion, to provide further insights into how housing policy implementation has impacted on housing association independence.

PART THREE

CHAPTER NINE

HOUSING ASSOCIATION DEVELOPMENT

Introduction

Part Three adopts a narrow focus to discuss housing policy implementation in Wales in three key areas of housing association operations: development; rent setting; and, access to housing. This chapter deals with housing association development, i.e. the provision of accommodation to let or for sale through rehabilitation of existing housing (referred to as rehabilitation or refurbishment), or by building new homes (newbuild). This operational function of housing associations is central to their involvement in policy implementation, and in Wales, as elsewhere, it is apparent that the recent success of housing associations in this area has been underpinned by the provision of public funding along with private finance.¹ In the 1990's development activity under *Tai Cymru* was intense, with many new homes added to the social housing stock as housing associations experienced a period of high investment and growth. The importance of Housing Association Grant and Social Housing Grant in this context is obvious, and was discussed in general terms in Chapter Four. Equally apparent is that the Wales housing association movement is heavily resource dependent on public subsidy for development. This gives the regulator - as responsible for subsidy distribution - influence over the way in which housing associations develop housing, i.e. as to the number of units developed, and the type of housing built. Statutory backing is given by section 36 of the *Housing Act 1996*, which establishes a duty incumbent on the regulator to issue guidance on the *'housing demands for which provision should be made and the means of meeting those demands.'*²

¹ On the significance of grant funding see: Cope, (1999); Alder and Handy, (1997); and, Malpass, (2000).

² Section 36, Housing Act 1996.

This chapter discusses Tai Cymru's approach to development by reference to relevant policy documents and its use of policy instruments to impose a development agenda on housing associations. Also discussed is the National Assembly's strategy on housing association development. However, for reasons discussed in the Methodology, the main focus is on the period 1989-1998.³ This is followed by discussion of the survey findings to provide an insight into the impact of Tai Cymru's approach to development, and the extent to which development may be directed by external prioritization.

Housing Association Development: Context

Meeting Housing Need Strategically

Subsidy distribution

The regulator is responsible for the administration of funding for housing associations. This takes place within a framework of housing policy as determined by government in Westminster, with discretion given to Wales-national policy institutions to establish narrow priorities to meet objectives in Wales, as well as to take account of housing need in particular areas. In the 1970's and 1980's the Housing Corporation sought to ensure that housing associations were meeting local need through the application of a Housing Needs Indicator ('HNI') to assist with the process of grant allocation⁴ (this was developed to assist local authorities with strategic planning), and by consulting with local government on the type of housing required in different areas.⁵ This gave local authorities some input into housing association prioritization for development, but more significantly it confirmed the strategic context as influential on subsidy distribution. When Tai Cymru took over from the Housing Corporation in 1989 it became responsible for distributing subsidy from funds allocated under an Approved Development Programme ('ADP'). Unlike under the Housing Corporation, this was boosted by investment from the private sector following the introduction of mixed-funding. In addition to public and private

³ Chapter Five, at p.116.

⁴ Housing Corporation, (1987).

⁵ Housing Corporation, (1989), at p.9.

funding the ADP was supplemented by income received by Tai Cymru in the form of loan repayments from housing associations.

Strategic prioritization: a role for local authorities under Tai Cymru

From the outset Tai Cymru insisted that housing association development in Wales should take place within a strategic framework, including having regard to the role of local authorities as local planning bodies in housing. This agenda was set out in the early 1990's in Tai Cymru's operational plan for 1990/91, which stated:

'It is recognised that local councils are the statutory housing authorities and as such have wide responsibilities for assessing the housing needs which exist within their localities and developing plans to ensure these are met. It is important therefore that housing association input into ... council areas reflect needs and priorities as determined in consultation with local authorities.'⁶

To ensure that housing associations were taking the views of local authorities into account Tai Cymru sought to integrate local authority strategic prioritization into its own operational planning process by entering into Strategic Housing Agreements with local planners. This proved difficult to achieve for all local authorities in Wales prior to the introduction of unitary authorities; however, with local government reorganization in 1991 the process was accelerated.⁷ Further impetus was provided by local government re-structuring after 1996 and a reduction in the number of local authorities.⁸ The strategic approach adopted by Tai Cymru was made relevant to the housing association movement as a whole, as the allocation of funding was linked to priorities established in local authority strategic documents. Initially Tai Cymru encouraged associations to liaise with local authorities to prioritize development funding as appropriate to meet local

⁶ Tai Cymru, (1990/91), at p.1.

⁷ Tai Cymru, (1989-90). Tai Cymru entered into strategic housing agreements in: Blanaeu Gwent, Cynon Valley, Monmouthshire, South Pembrokeshire, Preseli, Pembrokeshire, Ceredigion, Carmarthen and Dwyfor: Tai Cymru, (1992-1993). See: Chapter Seven, n.75 and n.76 and accompanying text.

⁸ Tai Cymru, (1996/97), at p.9.

need, however, by the mid 1990's its investment policies made clear that it would seek to exercise its discretion over HAG allocation so as to ensure that strategic objectives established by local authorities were being met by housing associations.⁹ In 1996 Tai Cymru announced that it would require housing associations to carry out development on a planned strategic basis as an operational priority: in pursuit of this objective it informed housing associations that the distribution of grant funding under the ADP would be arranged so as to re-enforce the strategic role of local authorities.¹⁰ Housing associations were required to have regard to issues raised by local authorities in those areas where it was proposed to develop new or refurbished housing, i.e. to include an assessment of the benefits of building locally, as well as health, education and transport impacts.¹¹ By 1997 Tai Cymru was focused on assessing housing need by reference to local authority housing strategies, which were made central to determining priorities for distribution of subsidy from the ADP.¹² The role of local authorities relevant to housing association development was further enhanced when Tai Cymru announced that decisions on the distribution of funding for 1997/98 would take into account priorities set out in local housing strategies, and housing need as demonstrated by the local authority.¹³ The framework that was implemented by Tai Cymru for the distribution of subsidy gave local government some influence over housing associations and their capacity to undertake development at local level. This was made more significant in cases where there a local authority had transferred investment from its Housing Investment Programme to support housing association development via the ADP. Tai Cymru notified housing associations by circular in 1989 that:

'Where a [local authority capital transfer] provides the entire public sector subsidy for a new scheme and an additional Housing for Wales [Tai Cymru] allocation is created as a result, the local

⁹ Tai Cymru, (1994-1995), at pp.6-7 and pp.18-19.

¹⁰ Tai Cymru, (1996-1997), at p.6 and p.16.

¹¹ Tai Cymru proposed to carry out '*social impact studies*' to inform its development agenda: Tai Cymru, (1995-1996), at p.5.

¹² Tai Cymru, (1996-97), see '*Key Points*'.

¹³ Tai Cymru, (1996-1997), at p.16.

authority may decide which of the housing associations registered with Housing for Wales [Tai Cymru] it would prefer to carry out development.¹⁴

As will be discussed below, Tai Cymru's policy made rehabilitation difficult for housing associations, so that financial support from local authorities became important for this type of development. Tai Cymru encouraged housing associations to work with local authorities to secure additional finance - provided this was as part of wider strategy of renewal devised and implemented by the local authority.¹⁵ In 1989 Tai Cymru issued a circular on rehabilitation setting out its policy, this confirmed that:

'The key to making it possible for housing associations to undertake [rehabilitation work] will be partnership with the relevant local authority ... Tai Cymru will always be willing to meet costs (within an association's cash limit) up to Acceptable Costs Guidance levels, if the local authority is willing to contribute the balance through allocation transfer or otherwise.'¹⁶

(Acceptable Costs Guidance, as referred to above, is discussed below.)

The approach taken by Tai Cymru encouraged housing associations to work closely with local authorities. Tai Cymru also took an active role with local authorities by seeking to engage in the strategic planning process. In 1989 it informed housing associations that it would:

'... seek to identify, in discussion with local authorities, the type and location of housing association rehabilitation activity which would contribute most effectively to the local authority's renewal strategy ... to shape individual association's investment agreements.'¹⁷

¹⁴ Tai Cymru Circular, 12/89.

¹⁵ Tai Cymru Circular, 17/89; and, Tai Cymru (1993-1994), at p.14. Local authority funding was provided by way of a transfer of credit approvals for use by housing associations.

¹⁶ Tai Cymru Circular, 17/89, at paragraph 4.

¹⁷ Tai Cymru Circular, 17/89, at paragraph 3.

This made local authorities the catalyst for rehabilitation in many areas, and gave local government an influence over individual housing association capacity to engage in development through refurbishment.

Housing Association Development after 1989

Mixed-funding

The introduction of mixed-funding for housing associations in Wales in 1989 was accompanied by an increase in development, and a consequent increase in housing associations' share of the Wales-national social housing market. Private finance contributed to this expansion through the introduction of development funding in the form of loans. The importance of private funding in this context was recognized by Tai Cymru in its *Annual Report 1989-90*, which noted that:

'[The] significant increase in the number of new homes being provided is only made possible with the funds available to be used by drawing substantial amounts of private finance from banks and building societies.'¹⁸

In 1989/90 Tai Cymru informed housing associations that an acceleration of the housing association development programme in the 1990's would be facilitated by an increase in the amount of HAG.¹⁹ Notwithstanding, it is apparent that the expansion of the movement's development programme would not have been possible without private funding, as was confirmed by Tai Cymru in its *Annual Report* for 1993-94:

'Fundamental to the success of the past 5 years has been the widespread introduction of mixed-funding in 1989, allowing housing associations to borrow private finance for the first time to supplement public money provided through housing for Wales.'²⁰

The importance of private capital was highlighted in the 1990's as Tai Cymru set itself the objective of achieving high output from investment via the ADP. In its

¹⁸ Tai Cymru, (1989-90), at p.2.

¹⁹ Tai Cymru, (1989-90), at p.7.

²⁰ Tai Cymru, (1993-94), at p.5.

Investment Policies and Plans 1992/93, Tai Cymru set out the aims of achieving value for money from public funds and maximising output²¹ - in fact output was retained as a measure of performance throughout its tenure.²² As the introduction of private funds to housing association development was achieved administratively, i.e. by reducing the amount of HAG available for individual development schemes, Tai Cymru was influential in determining the level of private finance required to support development. In order to increase housing association efficiency it insisted in 1991 that all new development schemes after 1992/93 were to be financed with mixed-funding.²³ In this operating environment housing associations had to turn increasingly to the private sector to supplement their public funding. As Table 9.1 below shows, the amount of HAG available (or the HAG rate) was reduced between 1989 and 1997. When Tai Cymru took over from the Housing Corporation in 1989 the average HAG rate was 72 percent,²⁴ this had been lowered to a fixed rate of 56 percent by the mid 1990's.²⁵ Notwithstanding the reduction in HAG rates, throughout Tai Cymru's tenure the majority of funding for housing association development came from public sources (this remains the position under the National Assembly), so that it was always in a position to establish development priorities. In any event, the mixed-funding regime provided the foundation for an increase in housing association building output after 1989: Tai Cymru claimed that this was at a rate 50 percent in excess of what would have been possible under a fully publicly funded programme.²⁶

Housing associations responded to the introduction of a modified funding regime by successfully engaging with the private financial sector to achieve higher levels of investment. As shown in Table 9.1, the amount of private finance invested in

²¹ Tai Cymru, (1992-1993).

²² Tai Cymru, (1989-90), at p.7. See also: For example: Tai Cymru, (1990/91); and, Tai Cymru, (1992/93).

²³ Tai Cymru (1992-1993), at p.6.

²⁴ Tai Cymru Circulars, 5/89.

²⁵ Changes to the HAG rate were notified by circular: Tai Cymru Circulars: 5/89, 5/91;17/91; 3/92; 24/92; and, 1/94.

²⁶ Tai Cymru, (1991-92), *Chairman's Report*.

the housing association movement increased from £20 million in 1989/90, to £73 million in 1997/98. From a housing perspective, modification of the funding regime is significant as introducing additional capital into the development of social housing in Wales. From the perspective of voluntary sector studies the shift to mixed-funding may be seen as having other impacts for housing associations. One of these has already been discussed in Chapter Six, i.e. that private sector investment, and funding regimes, may be relevant to perceptions of status. A further consequence of the introduction of private finance mentioned in the previous chapter has been to establish an accountability relationship with the private sector, with lenders identified as relevant stakeholders for the purposes of holding associations to account.

Subsidy and output

Despite a reduction in the proportion of grant funding available for individual development schemes the total HAG provided to associations under Tai Cymru increased in the early 1990's. Taken together with private sector finance introduced to the movement after 1989 the total funding available for housing association development went up substantially following the implementation of the mixed-funding regime. This was accompanied by an increase in housing output, as shown in Table 9.1. Housing association building completions rose from 1,685 in 1989/90 to a high of 2,975 in 1993/94. However, after 1993/94 the level of completions began to fall as the total funding available decreased as the amount of HAG provided to housing associations from the ADP was reduced. It appears that housing associations were unable or unwilling to increase private investment to maintain overall funding levels.²⁷ As a consequence, in 1997/98 housing associations added just 1,472 new properties to their housing stock.

²⁷ Housing associations' unwillingness to take on a greater capital debt from the private sector is likely to have been influenced by the possibility of interest payments adversely impacting on rent levels. See; Chapter Ten.

Table 9.1

HAG rate Wales 1989/90 to 1997/98: HAG and private sector contributions to housing association funding in Wales 1989/90 - 1997/98: Completions in the same period

Year	Average HAG/SHG Rate	Tai Cymru Funding (A) (millions)	Private Finance (B) (millions)	Funding Available A+B (millions)	Housing Association/RSL Completions
1979/80 - 1988/89	-	-	-	-	Average no. of completions p/a 627
1989/90	72	£90	£20	£110	1,685
1990/91	74	£116	£33	£149	2,463
1991/92	69	£132	£53	£185	2,629
1992/93	67	£174	£73	£247	2,955
1993/94	65	£141	£70	£211	2,975
1994/95	62	£128	£68	£196	2,542
1995/96	58	£100	£76	£176	2,557
1996/97	58	£89	£69	£158	2,124
1997/98	56	£72	£55	£127	1,472

Source: Tai Cymru Circulars: 5/91; 17/91; 3/92; 24/92; 1/94; Tai Cymru annual reports 1989-90 to 1997-98; and, Welsh Housing Statistics, (Welsh Office), 1979-1999.

Tai Cymru Policy Initiatives and Development

Increasing efficiency: limiting development costs

In an effort to ensure that housing associations made the most effective use of the subsidy provided Tai Cymru attempted to limit the costs of development. In 1989 it issued a circular, *Guidance on Scheme Costs*,²⁸ giving Acceptable Costs Guidance ('ACG') to housing associations involved in development. Tai Cymru gave the purpose of ACG in its *Investment Policies and Plans 1992/93* as being to ensure value for money from the ADP.²⁹ To this end expenditure on all new development schemes was required to be at or below ACG limits. Housing associations submitting development proposals with costs in excess of ACG had therefore to seek approval from Tai Cymru for additional allowances before a scheme could proceed. Although Tai Cymru retained discretion to award additional funding it is apparent from the wording of the 1989 circular that housing associations meeting ACG were more likely to be allocated HAG, it confirmed that:

²⁸ Tai Cymru Circular 15/89.

²⁹ Tai Cymru, (1992-1993), see, for example, p. 9.

'Acceptable Costs Guidance figures are provided as guidance on the likely acceptability of scheme costs for grant purposes. It is expected that the majority of schemes are capable of being produced at, or below, ACG. Schemes falling at or below ACG will not ordinarily be subject to detailed scrutiny at tender approval stage. Schemes with costs exceeding ACG may be approved if [Tai Cymru] is satisfied that unusually high acquisition and/ or works costs are justified in the light of local conditions and housing need.'³⁰

Housing associations' reliance on HAG funding to support the movement's development programme meant that the introduction of ACG placed pressure to limit costs in order to give the best prospect of obtaining funding. Although ACG included allowances for additional costs and supplements in relation to the provision of accommodation for the elderly, for single persons, and for special needs provision (such as wheelchair access),³¹ no account was taken of the higher costs arising in the case of rehabilitation (e.g. through unforeseen problems such as dry rot). For housing associations this meant that regeneration became more expensive and more risky in comparison with newbuild development on greenfield sites. Associations had therefore to consider carefully the consequences of carrying out refurbishment as part of a development program, as there was the possibility that costs would be in excess of ACG, prejudicing the prospect of a successful grant application (discussed further below), or that hidden expenditure might arise during development which would need to be met from an association's own reserves - this as an aspect of the risk inherent in funding development following the introduction of mixed-funding.

Pattern-book design and Approved Development Bodies

In the mid 1990's Tai Cymru implemented further policy innovations to limit the costs of housing association development, and to achieve consistency and economies of scale. This followed a consultation on housing association

³⁰ Tai Cymru, Circular 15/89, at paragraph 2.1. Tai Cymru Circulars 11/92 and 18/94 give details of eligible amounts.

³¹ Grants were also available under section 101 of the Housing Act 1989 for disabled facilities. When these were introduced Tai Cymru stopped providing funding for adaptations to existing properties: Tai Cymru Circular 13/90.

efficiency carried out in 1993, and the publication of a report entitled *Improving the Effectiveness of Housing Association Development and Management*.³² Following on from this report Tai Cymru sought to rationalize design and to limit pre-construction development costs through the introduction of pattern-book standard plans for newbuild housing. The use of pattern-book was made compulsory for all developing general needs associations in Wales from the 1st of April 1994.³³ This was intended to ensure that housing association housing became of a consistent standard across Wales, but also to minimize pre-construction costs.³⁴

A further innovation introduced by Tai Cymru, as an attempt to consolidate publicly funded development work to a limited number of housing associations, was the introduction of Approved Development Bodies ('ADB's). In 1992 it signaled the introduction of ADB's as the primary vehicles for new development by way of circular that required housing associations submitting proposals for development to have ADB status.³⁵ To gain approval as an ADB housing associations were required to demonstrate a track record in planning, designing and building social housing, and needed to have in place an established in-house development team.³⁶ Any association that failed to gain approval had to appoint an ADB agent to act on its behalf.³⁷ The introduction of ADBs meant that additional pressure was placed on housing associations to limit development costs by focusing on performance. Guidance set out basic criteria for measuring

³² Tai Cymru, (1993). Discussed in context in: *West Housing Quarterly*, (1992), at pp.12-18.

³³ Tai Cymru Circular 20/93. This made the use of pattern book design compulsory for all associations after 1st April 1994, although transitional provision provided for it to apply to some schemes from the 30th November 1993.

³⁴ Tai Cymru (1993-94), at p.14. The use of pattern-book has been criticized for introducing uniformity, and for making housing association properties homogeneous and less sympathetic to local need, local architecture and local environments: Fisk, (1996).

³⁵ Tai Cymru Circular 22/93.

³⁶ Tai Cymru also required housing associations to rationalize their stock so as to ensure a '*local management presence*' by transferring properties between associations: Tai Cymru Circular 22/93.

³⁷ Tai Cymru raised the introduction of ADBs in 1992/93: Tai Cymru, (1992-1993), at p.9. Guidance was given to associations on the criteria for achieving ADB body status: Tai Cymru Circular 12/95. The impact of loss of development status for some associations is discussed in: *Welsh Housing Quarterly*, (1994), at pp.8-10.

the success of ADBs, emphasizing the need to keep costs within ACG, and encouraging the use of pattern-book design.³⁸ Guidance also specified that the performance of ADBs would in part be measured by their effectiveness in meeting housing need in strategic context.³⁹ It might have been anticipated that the introduction of ADBs would have led to greater deference to local authority strategic prioritization. However, their impact in this context cannot be assessed as they proved short-lived. 19 ADBs were established in 1994/95, with as many as 10 associations failing to gain approval and having to appoint agents to act on their behalf.⁴⁰ However, by 1998 it appears that Tai Cymru was not seeking to limit the number of ADBs.⁴¹ Although it has not been possible to establish from available documents why Tai Cymru failed to restrict the number of ADBs approved, informal discussion with several housing association senior officers has provided some insights. It seems that there was no explicit withdrawal of Tai Cymru's policy, rather, it was suggested that Tai Cymru found it expedient to increase competition for funding by approving housing associations for development, leading to a gradual increase in the number of active ADBs to the point where all housing associations with an ongoing development programme had gained ADB status.⁴²

Tai Cymru's Approach to Policy Implementation on Development

The drift away from rehabilitation toward new build

In 1990 the WFHA published a report, *The Effect of the 1988 Housing Act on Housing Association Development Activity in Wales*, in which it noted the beginning of a drift away from rehabilitation as a core activity for associations, notwithstanding that this had been the majority of housing association development activity in the mid 1980's.⁴³ The report raised the concern that over

³⁸ Tai Cymru Circular 12/95.

³⁹ Tai Cymru Circular 12/95.

⁴⁰ Tai Cymru, (1994-1995).

⁴¹ Tai Cymru annual reports 1992-93 to 1997-98 (Bibliography by year).

⁴² This was discussed with housing association interviewees but did not form part of the formal interview process.

⁴³ WFHA, (1990a).

time mixed-funding would result in changes to the development priorities for housing associations, and noted that:

'One of the primary concerns associated with the new mixed-funding regime is the drift away from rehab to new build developments regardless of the need for the type of development but dependent wholly on the opportunity to minimize risk.'⁴⁴

Whilst a focus on newbuild might have suited Tai Cymru's agenda as leading to an increase in output, less attention was paid to meeting the housing needs of already established and settled communities through refurbishment of existing dwellings, thereby limiting housing associations' contribution to tackling social deprivation through regeneration.⁴⁵ Tai Cymru's insistence that development should be priced within ACG meant that any inflated costs and additional expenditures arising during refurbishment were unlikely to be met by HAG. It maintained that ACG should not distinguish between new build and rehabilitation. In a circular issued in 1989 it informed associations that:

'If housing associations are to meet the objective of helping as many people in housing need as possible, it is essential that their procurement of housing stock be as cost effective as possible. That applies to the creation of social housing through rehabilitation as it does to procurement through new build ... Acceptable Costs Guidance will not distinguish therefore between modes of procurement.'⁴⁶

Notwithstanding that rehabilitation was made difficult housing associations were not prevented from developing in this way. However, those associations active in this area (usually community housing associations) were given the responsibility of securing any additional finance over and above HAG. The support provided for

⁴⁴ WFHA, (1990a), at paragraph 4.1.

⁴⁵ Alongside the introduction of mixed-funding generally the WFHA report identified several factors as responsible for the drift away from rehabilitation. These included: the higher costs of refurbishment in comparison with new build; and, the risks involved with development work on older properties: WFHA, (1990b). For a contemporaneous analysis of the impact of Tai Cymru's approach to development, see: Smith and Williams, (1991).

⁴⁶ Tai Cymru Circular 17/89, at paragraph 4.

these associations by Tai Cymru was largely rhetorical: for example, in its 1989 circular it gave the assurance that:

'... the Board of Housing for Wales [Tai Cymru]... wishes the housing association movement in Wales to continue to play a significant role in housing renewal'.⁴⁷

However, in practice Tai Cymru's approach to development mitigated against rehabilitation on the scale of the mid 1980's. It was not until the late 1990's that rehabilitation was moved onto the development agenda as a significant priority in accordance with the objectives of general housing policy. In its *Operational Plan 1997/98* Tai Cymru noted the increased significance given to rehabilitation by Ministers.⁴⁸ In 1997 it recognized the difficulties faced by housing associations involved in refurbishment, and in a report on the role of housing associations in rehabilitation proposed targeted development to support local authority regeneration strategies.⁴⁹ In order to reflect the political agenda Tai Cymru signaled that it would be prepared to approve subsidy at 25-30% above ACG on developments involving refurbishment.⁵⁰ It is apparent from policy documents that toward the end of its tenure Tai Cymru was more explicitly supportive of a regeneration role for housing associations, i.e. as part of a process of urban renewal, with the proviso that any development in this area was carried out as part of a strategic programme as determined by the local authority.⁵¹

Targeted development: allocation within the Approved Development Programme

It is apparent that the priority for Tai Cymru throughout its tenure was to increase output from ADP investment. However, there were also narrower objectives for development. In this context Tai Cymru sought to encourage diversity in the Wales rental market, and exercised its funding discretion to allocate funds to encourage housing associations to build housing suitable to meet the needs of

⁴⁷ Tai Cymru Circular 17/89, at paragraph 1.

⁴⁸ Tai Cymru, (1997/98), at p. 3.

⁴⁹ Tai Cymru, (February 1997).

⁵⁰ Tai Cymru, (1997/98), at p. 3. This was limited to approvals on up to 259 units.

⁵¹ See, for example: Tai Cymru Strategic Plan (1995/96-1997/98) at p.12.

particular social groups.⁵² Its influence in this context is apparent from shifting patterns of development in key areas such as: specialist housing for the elderly, and family housing. For example, in the mid 1990's Tai Cymru identified a change in demand from local authorities away from specialist provision for the elderly toward family housing. In response to it required a minimum of 60 percent of development in 1992/1993 to be targeted at building schemes for families, an increase on previous years, with 30 percent targeted toward schemes for single people, special needs housing and housing for the elderly, a reduction on previous years.⁵³ This prioritization within the ADP had an immediate impact on housing association development. As Table 9.2 below shows, between 1990/91 and 1992/93 the level of starts and completions of family housing increased as a percentage of overall starts and completions.

Table 9.2

Housing association starts and completions in Wales by type of accommodation; 1990/91 - 1992/93

Year ► Type of Accommodation Provided ▼	1990/91 Starts*	1990/91 Comp- letions*	1991/92 Starts*	1991/92 Comp- letions*	1992/93 Starts*	1992/93 Comp- letions*
Family Housing	58%	48%	59%	44%	72%	65%
Single Person Housing	5%	8%	15%	15%	12%	13%
Housing for the Elderly	27%	34%	20%	34%	11%	18%
Other Special Needs Housing	10%	10%	6%	7%	5%	4%

* As % of all starts and completions respectively

Source: Tai Cymru Annual reports, 1990-1991 to 1992-1993.

⁵² Tai Cymru prioritized funding to support development for particular social groups. Ordinarily these were determined by reference to: age, housing status, or family situation. However, its priorities could also be influenced by ministers. In 1994 the Welsh Office identified a need for housing for service personnel leaving the armed forces. Tai Cymru responded by reminding housing associations of their obligation under section 72 of the Housing Act 1985, to assist local authorities with their housing functions, in particular as regards those discharged from the forces: Tai Cymru Circular 9/94.

⁵³ Tai Cymru, (1993-1994). See also: Tai Cymru annual reports and investment plans for years, 1990-1991 to 1992-1993 - bibliography by year.

Low Cost Home Ownership

The promotion of owner-occupation as a tenure has been a central theme of housing policy since at least 1979. In the 1990's, shortly after Tai Cymru was established, the Welsh Office set a target of 80 percent home ownership in Wales in its *Agenda for Action*.⁵⁴ To assist with meeting this objective Tai Cymru's *Operational Plan 1992/93* gave as amongst its aims for the housing association movement, that it should contribute to achieving the Welsh Office's strategic objectives.⁵⁵ To this end it sought to encourage housing associations to double their output of LCHO schemes in the early 1990's, i.e. from 300 to 600 units by 1994/95.⁵⁶ Tai Cymru also published guidance in the form of a circular in 1989 on shared ownership options available for developing housing associations.⁵⁷ In 1992 it introduced a further initiative aimed at promoting owner-occupation through Do-It-Yourself Shared Ownership. This offered an additional LCHO option, giving prospective purchasers the opportunity to select a suitable property to be purchased on LCHO terms.⁵⁸ This allowed buyers to influence the location and type of property acquired by housing associations - although guidance was given on the suitability of selected properties.⁵⁹ In order to facilitate development (rather than acquisition) in the area of LCHO, finance was made available to support housing association schemes. Investment rose from less than £10 million per annum in the late 1980's to an average of approximately £18.5 million between 1991 and 1999.⁶⁰ This increase in funding had a noticeable impact on development priorities for housing associations. In 1994 LCHO housing represented 3.3 percent of the total housing association stock in Wales, by 1996 this had risen to 5.7 percent (reducing slightly to 5.3 percent by 1995).⁶¹ Between 1980 and 1990 sales of properties on shared ownership terms were on average 126 per annum, but between 1991 and 1999 this was 321 per

⁵⁴ I.e. 80% by the turn of the century: Welsh Office, (1991).

⁵⁵ Tai Cymru, (1992/93), at paragraph 1.2.

⁵⁶ Tai Cymru, (1992/93), at paragraph 2.8.

⁵⁷ Tai Cymru Circular 4/89.

⁵⁸ Tai Cymru Circular 6/92.

⁵⁹ Tai Cymru Circular 6/92.

⁶⁰ Wilcox, S., Table 5.1, in Smith *et al* (eds.), (2000).

⁶¹ Tai Cymru, (1994c); and, Tai Cymru, (1996).

annum.⁶² Although the number of LCHO properties remained relatively low in comparison to overall stock levels, it is nevertheless significant that housing associations sales increased at all having regard to the findings from Chapter Seven, i.e. suggesting that the provision of housing for sale is not to be regarded as a core function of the movement in Wales.⁶³

Regulating development

From the outset Tai Cymru established expectations for housing association development through regulation. To this end its 1990 *Performance Expectations* required associations to have clear policies and procedures on development and, significantly, to work strategically to meet need at local level.⁶⁴ In 1992 re-issued regulatory requirements referred to the need for housing associations to meet strategic priorities drawn up in consultation with local authorities.⁶⁵ In 1995 these were amended so as to reflect additional priorities, i.e. to achieve quality standards and value for money in development.⁶⁶ By 1997, and the publication of regulations for Registered Social Landlords, regulation was once more focused on strategic development. Therefore, housing associations were required to work with local authorities to meet housing need, and to enter into discussions on proposals for schemes at local level.⁶⁷ (Regulations also maintained the requirement to meet quality standards.⁶⁸) In fact, the 1997 regulations were more detailed than previous regulations on quality standards by referring to space standards and, heating efficiency.⁶⁹ In addition Tai Cymru published building

⁶² Statistical Directorate, (2003), Table 5.21.

⁶³ In fact, Tai Cymru described its policy in this area as '*outstandingly successful*': Tai Cymru, (1997/98), at p.2

⁶⁴ Tai Cymru, (1990a), at p.25.

⁶⁵ Tai Cymru, (1992a), at paragraph 4.2.

⁶⁶ Associations were required to '*build attractive housing ... which offers a good quality environment for living*': Tai Cymru, (1995), at paragraph 10. Tai Cymru also provided guidance to housing associations on design standards by way of circular, for example, in 1993 it issued guidance on security within newbuild and rehabilitation properties requiring associations to submit proposals for development to a police liaison officer for approval: Tai Cymru Circular, 7/93.

⁶⁷ Tai Cymru, (1997a), at paragraph 10.1.

⁶⁸ It was a requirement that: '*Registered Social Landlords should ensure that any additions they make to their housing stock meet an identified need, are of good quality, and are suitable for the needs of the intended tenants*': Tai Cymru, (1997a), at paragraph 10.

⁶⁹ Tai Cymru, (1997a), at paragraph 10.2.

standards for housing associations in 1996 and 1998⁷⁰ so that a framework was established to ensure consistent standards in the delivery of individual housing association development programmes, as well as in design (i.e. pattern-book).

Housing Association Development and the National Assembly for Wales

Wales-national housing policy and housing association development

Wales-national housing policy under the National Assembly seeks to emphasize the strategic role of local authorities. In the area of development this has highlighted the link between planning, meeting housing need, and the distribution of subsidy. After 1999 bids for Social Housing Grant were required to be submitted directly to the National Assembly by local authorities. These were based on proposals put to planning authorities by housing associations, with the expectation that they would meet with a local authority's own strategic priorities.⁷¹ Until recently this resulted in local authorities being notified of an overall social housing budget for their areas with the allocation of SHG to housing associations a responsibility given to individual authorities, to be determined in accordance with priorities established by the local strategic agenda.⁷² This funding regime highlighted housing associations' dependency on support from local authorities, i.e. to ensure successful implementation of development programmes, as was noted in guidance on funding distribution to housing associations and local authorities in 2000:

'The responsibility for developing and implementing local housing strategies lies with the local authority, but achieving this will involve a range of organizations with which the authority will work in partnership. This is particularly relevant to the delivery of social housing grant ... Delivery of SHG programmes depends on effective working relations between local authorities and [housing associations].'⁷³

⁷⁰ HFW, (1996); and, HFW, (1998).

⁷¹ Housing Directorate, (2004); also, WAG, (2004b).

⁷² Details of the procedure are set out in: NAW, (2000e).

⁷³ NAW, (2000e), at Chapter 1.

In July 2004 the Welsh Assembly Government undertook a consultation exercise on the distribution of SHG in Wales. This followed an independent consultation that identified inefficiencies in the system of allocating funding, including over reliance on historical patterns of funding, and inconsistent input from local authorities and housing associations.⁷⁴ In March 2005 the WAG published new proposals for the distribution of SHG in a policy document entitled *Developing Partnerships*.⁷⁵ This recommended changes to the way in which subsidy is distributed with the aim of providing better public services in Wales and promoting partnership working between local authorities and housing associations.⁷⁶ In *Developing Partnerships* local authorities are identified as the strategic planning body responsible for determining housing investment priorities in local areas. However, in a change from the previous system the WAG proposed that local authorities should submit bids for development projects to meet identified need, leaving it to the National Assembly (via the WAG Housing Directorate) to commission individual schemes.⁷⁷ The *Developing Partnerships* agenda has been implemented as the funding regime for housing associations in Wales since March 2006.⁷⁸ Although the responsibility for SHG distribution has been removed from local authorities the requirement that development should meet with strategic priorities determined at local level remains.

Collaborative working and development

In addition to restructuring the system of allocation of SHG the *Developing Partnerships* agenda seeks to make housing association development more efficient. In this context the WAG is keen to promote collaborative working, and is encouraging housing associations to work collectively as development consortia to secure economies of scale and to promote efficiency.⁷⁹ It may be the case that whilst local authorities remain central to the success, or otherwise, of housing

⁷⁴ WAG, (2004b).

⁷⁵ WAG, (2005f).

⁷⁶ WAG, (2005f), at p.1. The aim of achieving joint procurement is consistent with the National Assembly's objective of providing better public services in Wales as set out in: WAG, (2004c).

⁷⁷ WAG, (2005f), at p.6.

⁷⁸ Details are given in: Housing Directorate, (2006).

⁷⁹ WAG, (2005f), at pp.4-5.

association development programmes, the shift to direct funding and the introduction of development consortia will provide associations with a greater input into the strategic agenda for social housing in Wales. However, the bidding system introduced by the *Developing Partnerships* agenda gives discretion to local authorities to determine their consortium partners.⁸⁰ This is likely to provide authorities with a lever by which to influence the priorities of development consortia. Unfortunately, whilst relevant to the issue of control over development these changes were introduced too late for their impact to be considered as part of this study.

Regulation and development: the National Assembly's Regulatory Code

When the National Assembly took over responsibility for housing associations the regulatory framework for development was well-established. It continued to operate Tai Cymru's 1997 regulations until the WAG published its *Regulatory Code* in 2005. The Code sets out the WAG's expectations relevant to development, and includes a requirement that housing associations should work in partnership with local authorities to identify and provide for local housing need.⁸¹ In addition the Code imposes an obligation on housing associations to have regard to the principles of sustainable development in planning for development.⁸² This requirement reflects the National Assembly's expanded policy role and its concern for the wider well-being of communities, i.e. extending beyond the provision of social housing, to include a concern for economic and/or environmental issues. Once again these changes to the regulatory framework were introduced too late for their impact to be assessed as part of this study, however during interview several housing association participants commented on the general development environment under the National Assembly. These are discussed below, as relevant.

⁸⁰: Housing Directorate, (2006).

⁸¹ WAG, (2005a), at paragraph 1.1.1.

⁸² WAG, (2005a), at paragraph 2.5.1

Housing Association Development: Research Findings

The Purpose of the Research

Tai Cymru's agenda on housing association development was clearly established and firmly implemented.⁸³ The survey investigates the extent to which this agenda was imposed on housing associations and its impact on development priorities. The research findings set out below are therefore relevant to Research Objective Four, as set out in Chapter Five.

For reasons explained in the Methodology, the discussion in this section is limited to an assessment of evidence from housing associations.⁸⁴ The self-completion questionnaires (the 'questionnaires') asked respondents for their views on the priorities for development under Tai Cymru and how these were established. Respondents were also surveyed on the impact of Tai Cymru's agenda on housing associations' capacity to meet housing need. Interviewees were questioned about Tai Cymru's influence on the priorities for development, and the impact of its agenda on diversity and responsiveness to need.

The Questionnaire Findings

Priorities for development

The data set out in Table 9.3 below shows that a large majority of respondents thought that under Tai Cymru the provision of new housing was established as a priority for development: 86 percent of respondents agreed that this was the case.⁸⁵ In contrast just 40 percent of respondents thought that rehabilitation was a priority. It is obvious that the agenda for development under Tai Cymru reflected its priority of achieving an increase in output, and confirms newbuild as the dominant mode of development for the housing association movement between 1989 and 1998. It has been noted that despite it being amongst Tai

⁸³ This was confirmed by the National Audit Office in 1995, which noted Tai Cymru was exercising firm control over housing association development: National Audit Office, (1995).

⁸⁴ Chapter Five, at p.125. Collated from research carried out with local authorities in the area of development is however set out in Appendix Eight, and Appendix Ten.

⁸⁵ Local authority respondents indicated a high level of support for housing association priorities for development to include the provision of new housing: Table 8, Appendix Eight.

Cymru's aims to establish a role for housing associations as providers of specialist housing, and as developers of LCHO schemes, these were not funded to the same level as general needs housing. This is reflected in the questionnaire findings as respondents failed to identify either the provision of specialist housing or LCHO schemes as a main concern for development under Tai Cymru. In both cases, just 20 percent of respondents agreed, and a majority of 73 percent of respondents disagreed, that these were priorities under Tai Cymru. The conclusion suggested by this data is that housing association priorities for development in the 1990's reflected Tai Cymru's strategic agenda focused on output, and significantly its prioritization of funding within the ADP.

Table 9.3⁸⁶

Under Tai Cymru housing association priorities for development were:

Response Options ▼	In Agreement*	No Opinion*	Not Agreeing*	Response Rate (%)
The provision of new housing	13 (86)	1 (6)	1 (6)	100
Rehabilitation of existing housing	6(40)	1 (6)	8 (53)	100
The provision of special needs housing	3 (20)	1 (6)	11 (73)	100
The provision of housing for sale	3 (20)	1 (6)	11 (73)	100

* Given as: Number of response (percentage of total possible responses).

Establishing priorities for development

Having regard to the cost of housing development it is unsurprising that there should be a link between the distribution of funding and the areas in which housing associations develop. The issue that arises in this context is the extent to which Tai Cymru's development agenda was sympathetic to priorities established by the housing association movement, and/or strategic priorities at local level. On the first of these, the data set out in Table 9.4 below shows that just 33 percent of respondents thought that the priorities for development under Tai Cymru were consistent with those of housing association movement. This is a significant finding as it strongly suggests that the development agenda imposed

⁸⁶ This table shows extracted findings from Table 12, Appendix Seven.

on housing associations failed to take account of the movement's concerns in this area. On the strategic priorities for development: a minority of respondents, i.e. 46 percent, agreed that development priorities reflected local authority strategic priorities. This raises the possibility that in addition to relegating housing association priorities Tai Cymru failed to take account of local need as identified by local authority planners. Other data tends to confirm that during its tenure Tai Cymru operated to an agenda on development that very much reflected its own strategic concerns: 80 percent of respondents agreed that development priorities reflected Tai Cymru's policy agenda. Significant in this context is the finding that 86 percent of respondents agreed that the priorities for development reflected the availability of development funding. As development funding is under the control of the regulator this confirms that Tai Cymru's control over the allocation of grant funding allowed it to establish the priorities for development in the 1990's. What is also highlighted is that housing association resource dependency in this area allows the possibility of external prioritization.

Table 9.4⁸⁷

Under Tai Cymru the priorities for housing association development reflected:

Response Options ▶	In Agreement*	No Opinion*	Not Agreeing*	Response Rate (%)
HA priorities for development	5 (33)		10 (66)	100
LA strategic priorities	7 (46)	2 (13)	5 (33)	93
TC's policy agenda	12 (80)	1 (6)	2 (13)	100
The availability of HAG/SHG development funding	13 (86)	1 (6)	1(6)	100

* Given as: Number of response (percentage of total possible responses).

Other data, set out in Table 9.5 below, provides additional insights into how Tai Cymru was able to exert an influence over housing associations in the area of development. The significance of funding is confirmed as respondents were unanimously agreed that Tai Cymru exercised control through the prioritization of funding within the ADP. The findings also show that by exercising control over allowable building costs Tai Cymru obtained an additional lever to direct

⁸⁷ This table shows extracted findings from Table 13, Appendix Seven

development: 80 percent of respondents thought that control was also exercised through ACG. Pattern-book design was seen as less significant in this regard, although it is still the case that a majority of 60 percent of respondents agreed that it provided Tai Cymru with a mode of control. Surprisingly, having regard to the strong regulatory regime established in the 1990's, just 33 percent of respondents saw regulation and guidance as relevant in this context. However, it should not be overlooked that ACG and pattern-book were both implemented by the introduction of guidance.

Table 9.5⁸⁸

Tai Cymru exercised control over housing association development through:

Response Options ▼	In Agreement*	No Opinion*	Not Agreeing*	Response Rate (%)
Prioritization of funding within the ADP	15 (100)			100
ACG	12 (80)	1 (6)	2 (13)	100
Pattern book	9 (60)	1 (6)	5 (33)	100
Regulation and guidance	5 (33)	1 (6)	9 (60)	100

* Given as: Number of response (percentage of total possible responses).

Development and housing need

The data discussed above raises the possibility that support for the role of local authorities as planning authorities as an aspect of policy implementation under Tai Cymru was more rhetorical than real. This is also what is suggested by the data set out in Table 9.6 below. Although this shows that a majority of 53 percent of respondents thought that under Tai Cymru development was appropriate to meet need, a significant minority of 33 percent disagreed. Further, 33 percent of respondents agreed, and 53 percent disagreed, that under Tai Cymru housing associations were able to develop to meet a diversity of housing need, and just 20 percent thought that housing associations were able to undertake appropriate levels of rehabilitation. From this, and data on development priorities already discussed above, it is apparent that Tai Cymru's development agenda, with its focus on output, impacted on housing association development activity to limit diversity. Further, it seems that under Tai Cymru some aspects of meeting

⁸⁸ This table shows extracted findings from Table 14, Appendix Seven

housing need were overlooked, or given a lesser priority, raising doubts about the housing association movement's capacity to act in response to local identified priorities in housing.⁸⁹

Table 9.6⁹⁰

Under Tai Cymru:

Response Options ▼	In Agreement*	No Opinion*	Not Agreeing*	Response Rate (%)
HA development was responsive to local need	8 (53)	2 (13)	5 (33)	100
HAs were able to develop to meet a diversity of housing need	5 (33)	2 (13)	8 (53)	100
HAs were able to undertake appropriate levels of refurbishment	3 (20)	1(6)	11 (73)	100

* Refers: Number of response (percentage of total possible responses).

The Interview Findings⁹¹

References to percentages below are approximations from the data.

Priorities for development

The data from the questionnaires suggests that Tai Cymru's policy agenda was highly relevant to establish the priorities for housing association development. This is confirmed by the interviewees who were unanimous that in this respect it was a highly influential organization.⁹² The impression gained from the interview data as a whole is that Tai Cymru was seen as seeking to impose an agenda focused on high output, and efficiency from the ADP. Several interviewees commented that its primary concern was to deliver a significant increase in the stock of social housing, for example:

"... it felt like 'get lots of units in below cost' and Tai Cymru's existence coincided with cuts in grants rates, so I guess they were

⁸⁹ The evidence from local authority respondents tends to confirm this assessment: a minority thought that under Tai Cymru development was responsive to local need and sufficiently diverse: Table 9, Appendix Eight.

⁹⁰ This table shows extracted findings from Table 15, Appendix Seven

⁹¹ Interview questions 6 and 7, Appendix Five.

⁹² Table 6, Appendix Nine.

trying to make better use of public money. They were very effective in achieving the aims they set out to achieve. "

HA Interviewee H

A number of interviewees commented that Tai Cymru exerted control and direction over development through structural frameworks to include funding and regulation; as well as the effective use of policy instruments such as circulars and guidance. Several interviewees pointed out that without the approval of Tai Cymru large-scale development, or indeed any development, would not have been possible, and that in order to gain funding associations had to meet with Tai Cymru's expectations. Comments included:

"The feeling that I have is that they [Tai Cymru] were very influential. Schemes did not go ahead unless Tai Cymru approved. And that is not just around them stacking up financially. Informal discussions went on, before you submitted schemes you'd been having conversations with them. There was the stuff around this is the type of thing you should be working on."

HA Interviewee J

The interview data also confirms the relevance of subsidy and the allocation of funding as a driver of development activity. A number of interviewees commented on the difficulties caused for housing association development programs where priorities identified by the board of management were not in line with those put forward by Tai Cymru. This is consistent with the questionnaire findings. It is apparent from the interview data that for many housing associations the need to secure funding for development was the key priority under Tai Cymru. This led some associations to abandon or modify their development priorities so as to reflect those established by the regulator. Comments on this aspect of policy implementation under Tai Cymru included:

"Certainly it [Tai Cymru] had detailed control over the programmes. The Welsh Office expected local authorities to draw up housing investment programmes and Tai Cymru was given resources and the resources that Tai Cymru was given sometimes bore little relationship to the housing associations' housing priorities ...

housing associations follow the money so if there was money being thrown at, say low cost home ownership, the entrepreneurial part of housing associations will follow the money ... it would be a financial error on the part of housing associations not to, and that's what they did."

HA Interviewee F

The move away from rehabilitation

It is apparent from the evidence from the interviews as a whole that some housing associations were forced to move away from rehabilitation as the main focus for development after 1989, this as a consequence of the way in which Tai Cymru implemented its development agenda. However, a number of interviewees identified the introduction of mixed-funding, i.e. as an aspect of a wider policy agenda, as responsible for the drift away from refurbishment, for example:

"Funding drives behaviour ... When we moved over to a system of fixed grants in one sense and the risks and costs of development fell on associations that drove the change in behaviour away from rehabilitation and certain other types of development towards new build, and that's never been reversed."

HA Interviewee G

Notwithstanding, a high proportion of those interviewed identified Tai Cymru's approach to development, and the priorities it established for development, as the primary reason for the drift away from rehabilitation toward newbuild during its tenure. 45 percent of interviewees commented that Tai Cymru directed housing associations to focus on high output,⁹³ and 36 percent of those interviewed thought that rehabilitation was made more difficult under Tai Cymru.⁹⁴ Interviewees also identified a number of other less significant factors contributing to the reduction in levels of rehabilitation work, including the increased costs and risks associated with refurbishment. Comments included:

⁹³ Table 6, Appendix Nine.

⁹⁴ Table 6, Appendix Nine.

" ... the concept of delivering units as opposed to working with communities are potentially at odds. In our case, at the time we were working with Tai Cymru in terms of development our natural inclination, our natural desire, would have been to look for opportunities to develop new homes for refurbishment ... that actually had been the bread and butter of our work until 1989. From that point on, with the introduction of mixed-funding the focus shifted away from rehabilitation and small scale developments, infill sites etc., onto larger greenfield or brownfield sites because clearly it was easier to develop units on those sites and potentially it was a lot less expensive ... there was quite a shift away from a community based rehabilitation side to our work to a brownfield/greenfield emphasis in our work which shifted dramatically into new-build."

HA Interviewee A

Several interviewees indicated that had it not been for the development agenda established by Tai Cymru their housing association (or the housing association with which they were involved in the 1990's) would have continued to operate a development program focused on rehabilitation.

For some associations the shift to newbuild development represented not only a change in priorities but also a significant departure from what had previously been their primary undertaking. On this issue one interviewee commented

"I do believe that we would have continued to undertake rehab work. That we would have continued to buy properties from within the existing housing stock and bring them back into use or prolong their use."

HA Interviewee E

Some interviewees asserted very strongly that housing associations ought to be involved in rehabilitation as an aspect of community regeneration, and argued that the shift away from such direct community based activity represented a

compromise of the basic principles underpinning the housing association movement.⁹⁵

Local authorities and development

A number of interviewees mentioned the importance of gaining local authority support for housing association development. However, several suggested that as Tai Cymru ultimately had the discretion to approve or reject a development proposal, and to allocate funding, the priorities of the strategic planning authority were secondary to the policy agenda of Tai Cymru, for example:

"Local authorities were saying in many parts of Wales that what they wanted was rehab and area renewal initiatives and that was pretty difficult to do under that framework. It made responding to local need more difficult, no question. It [Tai Cymru] set a national policy objective of providing housing, as the framework and the other agendas were to a certain extent lost."

HA Interviewee G

And on the influence of Tai Cymru over development at local level, and the relevance of Tai Cymru to local authority planning:

"Tai Cymru was extremely influential. Not just for housing associations but for local authorities. Local authorities have a much more powerful role, I would argue, today than they did during Tai Cymru's existence. Quite often Tai Cymru would make investment decisions in consultation with local authorities but ... Tai Cymru were seen as a very powerful organization who would inform local authorities how much was available to be invested in their area. It wouldn't always be the authorities' decision about where exactly schemes would be ..."

HA Interviewee C

The impression gained is that Tai Cymru was the dominant policy institution influencing housing association development. This offers an explanation for the questionnaire findings suggesting that local authority planning was not as

⁹⁵ These findings are also relevant to the discussion in Chapter Seven, on the community role of housing associations.

influential as might otherwise have been anticipated having regard to the policy context. A number of interviewees noted that by ignoring local authority concerns housing associations had, on occasion, developed housing inappropriately, i.e. in the wrong location, or the wrong type of housing. Again this is consistent with the questionnaire data, as doubts are raised about the effectiveness of housing associations in meeting local need in strategic context. Comments on this issue included:

"Tai Cymru just called the shots completely, at the time of Tai Cymru there was very little involvement with local authorities and I have to say as a result I think some associations - that were development led perhaps - built houses on the edge of on the edge of on the edge and as a result we've got low demand estates now because they didn't fit into strategies at a local level."

HA Interviewee K

Meeting housing need

Other data confirms doubts that the movement was effective in meeting housing need. In response to direct questioning just 27 percent of interviewees thought that housing associations were responsive to housing need, and that the movement was able to meet need effectively within the development framework established by Tai Cymru.⁹⁶ The same low proportion of interviewees thought that housing associations were able to diversify to meet need when asked if this was the case.⁹⁷ It is apparent from the this data that the majority of interviewees thought that under Tai Cymru housing associations were not given sufficient discretion to develop appropriate housing at local level. Several suggested the paradox that it was possible to provide a diversity of housing provided that proposals for development were able to accommodate Tai Cymru's priorities, and that housing need was met to the extent that this was established as consistent with that identified by Tai Cymru. Other interviewees commented that in certain areas, such as the provision of housing for the elderly, Tai Cymru was prepared

⁹⁶ Table 7, Appendix Nine.

⁹⁷ Table 7, Appendix Nine.

to depart from ACG, making it easier to develop to meet a range of housing needs. One interviewee commented that:

"I think housing associations were able to do so more in the area of special needs housing, rather than in the area of general needs housing, so you could work with local groups, and lots of us did, to provide particular kinds of services and support and housing to people with, for example, learning difficulties. So some associations developed that arm of their business considerably ... So it was possible but I wouldn't say as much in general needs ..."

HA Interviewee K

A minority of interviewees suggested that provided evidence was made available to support development of a particular type of housing, or in a particular location, Tai Cymru could be flexible, and was often willing to approve funding for schemes not meeting its development criteria. In general individuals working in larger housing associations with large-scale development programmes were more likely to see Tai Cymru as a flexible and supportive organization. Conversely, those working in smaller housing associations were more inclined to refer to difficulties that had been caused by the regulator, and its agenda on development, to prevent progress of their association's development programme. The main problem encountered by these associations was to secure finance for projects not regarded as a high priority by Tai Cymru. Comments included:

"I only ever worked for a housing association in a very local setting at the time of involvement with Tai Cymru, so we were only ever responding to local need, we were a community based association, that's what we did ... sometimes we struggled to do the things we thought were priorities because they didn't necessarily match the priorities of Tai Cymru, whether it was about us wanting to buy properties that people want to live in but Tai Cymru are saying don't stack up financially ... it was about who should be dictating what the priorities are ... it was about saying this is how much money we've got and we can give you 100,000 and you can do two properties or we can build six new ones, that's regardless of what people were saying they wanted."

HA Interviewee J

"[It was quite difficult to get anything specific done ... Difficult to respond to diversity, relatively easy to respond to straightforward housing need. So we wouldn't have had any problem providing an estate of family houses or flats, but try and do anything different and it was difficult to fund. It was too hard so it wasn't what they did."

HA Interviewee B

Synthesis and Conclusion

Undoubtedly the change to mixed-funding after 1989 had a significant impact for housing associations in Wales, not least by providing a boost to development funding. The introduction of private finance was with the intention of giving housing associations greater independence in the area of development, however, it is apparent that under Tai Cymru development took place in a highly controlled environment, one in which the regulator was influential. As responsible for the distribution of grant funding Tai Cymru sought to implement a strong policy approach, and to exert firm control over housing association development, with an agenda focused on delivering value for money from public investment. From a housing studies perspective the impact of this agenda is obvious: stock levels increased and rehabilitation became less significant as a mode of development. From a voluntary sector perspective the impact of Tai Cymru's approach was that it established an operating environment in which housing association development was largely under the control and direction of the regulator. Some degree of direction is anticipated having regard to the amount of Treasury investment in the housing association movement, as well the role identified for housing associations in Chapter Seven, i.e. to provide affordable housing to meet housing need. But what this chapter has highlighted is the extent to which Tai Cymru's development agenda was unsympathetic to housing association priorities in this area, and the degree to which an agenda was imposed on the housing association movement. In many instances this had the consequence that housing associations were required to set-aside their own priorities.

The survey has shown that Tai Cymru was able to assert its policy agenda primarily because of its role in distributing HAG and SHG. This confirms the relevance of concerns over resource dependency, and weaknesses in the structuring of the voluntary sector to housing associations. It is concluded that Tai Cymru was able to manipulate associations to meet with its expectations in the area of development. What is significant is that for many housing associations development priorities were modified to meet with Tai Cymru's policy agenda, in particular in the area of rehabilitation. It is also apparent that policy innovations and guidance introduced by Tai Cymru were relevant as enabling the regulator to exert an influence over individual associations with development programmes. Against this background Tai Cymru's firm policy approach must be seen as undermining the competence of the board of management to establish priorities for development, this despite the support given to the board to determine the overall strategy of a housing association noted as an aspect of the regulatory framework in Chapter Six. It is argued that on the basis of the evidence discussed housing association development activity in Wales under Tai Cymru was directed by the regulator, and that operational discretion was compromised in favour of external prioritization by Tai Cymru. It follows that the housing association movement, as a resource dependent and regulated institution, may be seen as a vehicle for housing policy implementation in the area of development under Tai Cymru. This would be less significant if housing associations had been able to meet with expectations of the voluntary sector as a service-providing institution at this time. However, the evidence raises the very real possibility that the movement failed to respond to local need. In addition, housing associations' drift away from rehabilitation as a form of development undoubtedly limited their contribution to community regeneration. Whilst it may be suggested that compromise of operational discretion under Tai Cymru was necessary to guarantee financial support, and that housing association responses should be seen as adaptation to a modified operating environment (this is valid as the problem of affordability means that public funding is necessary to support ongoing development), this does not undermine

the conclusion that resource dependency and the imposition of development priorities by a funding body in the 1990's led to a loss of housing association independence, and a weakening of aspects of housing associations as voluntary organizations.

CHAPTER TEN

HOUSING ASSOCIATION RENTS

Introduction

This chapter considers the impact of housing policy implementation in Wales on housing association rent levels, and in particular on how these are established. Chapter Four discussed the removal of rent restrictions (fair rents) as an aspect of the mixed-funding regime after 1989. This structural change was implemented to give housing associations the independence and flexibility to set rents to meet interest costs arising from the introduction of private finance. Rent provides a predictable source of income for housing associations, giving some guarantee of future revenue and a degree of comfort to investors. In addition, the facility to generate income provides housing associations with the option of setting funds aside to meet future management and maintenance costs,¹ as well as to fund projects or work in areas such as community regeneration. Rent setting is therefore a highly significant management function for housing associations and, *prima facie*, is a matter for the board acting in the discharge of its governance function. However, despite the removal of statutory rent controls by the *Housing Act 1988*, board discretion to set rents is limited in practice as the regulator is given the responsibility of issuing guidance to housing associations under the *Housing Act 1996* on '*the principles upon which levels of rent should be determined*.'²

This chapter discusses how Tai Cymru and the National Assembly have sought to influence rents levels in Wales, and their approach toward housing association rent setting. The findings from the survey provide an insight into the impact of rents policy for housing associations, focusing on the extent to which housing

¹ Including statutory obligations, for example, to keep properties in repair under section 11 of the Landlord and Tenant Act 1985.

² Section 36, Housing Act 1996.

associations have been influenced by rents policy at Wales-national level, and by policy institutions, and, the impact of rents policy.

Housing Association Rents in Wales: Context

Housing association rents in Wales are set within the statutory framework established for different tenures in England and Wales. Prior to 1989 fair rents were set by the Rent Officer, this had the impact of limiting the scope for any rent increase by housing associations. The introduction of assured tenancies from the 15th January 1989 gave associations the discretion to set rents without the possibility of limitation by the Rent Officer. Although housing associations continue to operate tenancies let on a fair rents these will decrease as leases expire, or are determined by the landlord or the tenant, or are terminated by the court. Under an assured tenancy the board's discretion to set rent levels is not fettered by statutory rent controls. However, in Wales a primary concern of both Tai Cymru and the National Assembly has been to ensure that housing associations meet housing need by letting accommodation at a rent that is affordable to those on low incomes.³ In the absence of direct rent control the regulator operates a system of rent influencing, implemented through regulatory control, guidance and through the bidding process for grant funding.

Rents Policy Rationale in Wales: The Affordability Issue

In 1990 the Council of Welsh Districts (the 'CWD') published a report, *The Affordability Gap in Welsh Housing*, in which it argued that by the end of the 1980's the issue of affordability in housing had been placed '*firmly on the agenda in Wales*.'⁴ The CWD was critical of housing policy, and its promotion of owner-occupation as the most desirable form of tenure, claiming that this undermined affordability as owner-occupation was, in reality, beyond the means of many households in Wales. In this context the CWD claimed that:

³ This is also an aspect of housing associations' role discussed in: Chapter Seven.

⁴ CWD, (1990), at paragraph 1.2.

'There is clear evidence of a crisis of affordability in Wales. New households are being formed at increasing rate. The gap between incomes and house prices has now widened to such an extent that the majority of new households do not have access to owner-occupation.'⁵

As a solution to the housing needs of those unable to enter the owner-occupier market the CWD proposed an increase in the stock of social rented housing.⁶ After 1974, and a rise in the number of new development associations in Wales, the housing association movement was well placed to respond to an agenda focused on meeting need through development of new social housing. However, the problem that associations had to overcome was how to make social rented housing affordable in an operating environment where upwards pressure was being placed on housing association assured tenancy rents in order to meet interest payments. As the Welsh Federation of Housing Associations noted in 1990, it was an aim of housing policy at that time that housing association rents should rise to meet some of the costs of development.⁷ The WFHA took as a guide that rents should not exceed 25 percent of income to be considered affordable, and expressed a concern that rising housing costs would inevitably lead to rents becoming unaffordable to those on low incomes.⁸ In the early 1990's Tai Cymru had raised a similar concern, noting the trend toward increasing housing association rents, and commenting that this had caused housing difficulties in many areas in Wales, particularly rural areas.⁹ The cost of rising assured tenancy rents in the 1990's is highlighted by comparison with fair rents. Housing association fair rents in Wales in 1981 represented 11.2 percent of average earnings; between 1981 and 1989 the cost of fair rents increased only slightly to 12.4 percent of average income; by 1993 average rents on assured

⁵ CWDs, (1990), at *Conclusion*, paragraph 1. The view of the CWD was supported by others involved in housing in Wales in the late 1980s and early 1990s, including in evidence given to Parliament on the issue of housing in Wales, for example: Bowen and Keeling, (1990). See also: CIHW, (1990).

⁶ CWD, (1990).

⁷ This study is not concerned with whether or not rents are affordable. On the cost of housing association housing in Wales see: WFHA, (1993); Opinion Research Swansea, (1997); and , (1997-1998); Thomas, (1995); and, WFHA, (1990c).

⁸ WFHA, (1990c).

⁹ Tai Cymru, (1990c).

tenancies were 16.4 percent of average income and fair rents 13.7 percent.¹⁰ For housing association tenants, rising rents in the mid 1990's threatened to make housing association assured tenancies unaffordable, a problem not mitigated by the fact that these occupiers tended to have incomes less than owner occupiers (with or without a mortgage), or those in private rented accommodation.¹¹

Housing Association Rents: Tai Cymru's Approach

Tai Cymru's approach to rents policy was primarily focused on ensuring that housing association rents remained comparatively low alongside private market rents. This had also been the approach adopted by its predecessor, the Housing Corporation, which in its *Tenants' Guarantee* had included an expectation that housing associations would keep their accommodation within the means of those on a low income.¹² When Tai Cymru took over policy responsibilities from the Corporation in 1989 it sought to remind the housing association movement of its obligations in this context by establishing a link between the level of rent charged and the allocation of subsidy. In its first annual report it noted that:

'... [housing] associations have been actively building new homes throughout Wales, with grant aid from Housing for Wales [Tai Cymru] to help keep rents within the reach of the people who need homes most.'¹³

In 1991 the Welsh Office set out its housing policy in Wales in its *Agenda for Action*.¹⁴ This included the objective of increasing the housing options of those in need of social housing.¹⁵ Tai Cymru, as the body responsible for funding and monitoring the provision of affordable homes by housing associations, was charged with implementing this objective, which it did partly through manipulation of the development program to increase output (as discussed in the previous

¹⁰ Wilcox, in Smith *et al* (eds.), (2000), Table 5.3.

¹¹ Wilcox, (1994/95), Table 28; and, Wilcox, (1995/96), Table XXVI.

¹² Housing Corporation, (1988).

¹³ Tai Cymru, (1989-90), at p.6.

¹⁴ Welsh Office, (1991).

¹⁵ The objective of creating a rental market for those unable to afford home-ownership was reiterated in 1995: Welsh Office, (1995).

chapter), and partly by persuading housing associations to maintain rents at an affordable level.¹⁶ It was however quick to recognise the difficulties faced by housing associations in providing affordable housing under the mixed-funding regime having regard to the movement's increasing indebtedness to the private sector. In 1991, in a confidential strategic document, it noted as a '*downside of private finance*' that housing association development costs were subject to upward changes in interest rates; this, it concluded, had the potential to adversely impact on rents.¹⁷ Notwithstanding the difficulties raised by the mixed-funding regime for housing associations in the area of rent setting, Tai Cymru was committed to upholding the principle of affordability. In 1991 it set itself the objective of keeping rent levels under review to ensure that housing association accommodation remained available to those on modest or low incomes.¹⁸

Implementing Tai Cymru's rents policy

Tai Cymru's commitment to achieving and maintaining affordable housing association rents was put into effect through a combination of exhortation to associations, and more direct encouragement using the various policy instruments at its disposal. In 1992 it published a revised *Tenants' Guarantee* for housing association tenants in Wales. This included the following statement:

'Where housing association accommodation has been provided with the help of public subsidy ... it is intended to be accessible to people on low incomes, whether or not in paid employment or in receipt of housing benefit. Associations are therefore expected to set and maintain their rents at levels which are within the reach of those in low paid employment.'¹⁹

By 1994 Tai Cymru's agenda on rents was firmly established. Following a review of rent levels in 1993 it decided to take steps to ensure that the affordability principle was fully implemented into practice.²⁰ The review highlighted as

¹⁶ Tai Cymru, (1990-91), at p.6,

¹⁷ Tai Cymru, (1992/93-1994/95), at p.3.

¹⁸ Tai Cymru, (1992/93-1994/95), at p.3.

¹⁹ Tai Cymru, (1992b), at paragraph D.2.

²⁰ Discussed by: Bader and Lawler, (1995).

unsatisfactory the problem of differential rent-setting amongst housing associations. It noted that different associations were setting different rents on properties of not dissimilar specification. This caused a degree of concern for the board of Tai Cymru.²¹ It attributed differentials not to a lack of concern or support for the principle of affordability in social housing, rather it suggested that differences were attributable to strategies adopted by housing association management committees, based on predictions of future revenue requirements and on different assumptions as to costs, and the adoption of different priorities for the application of rental income.²² Although differentials might have been anticipated having regard to the growing number and diversity of associations in Wales after 1974, Tai Cymru nevertheless proposed to establish a degree of homogeneity, and to encourage associations to adopt similar approaches to rent setting, i.e. to keep rents as low as possible. Initially, i.e. for 1994-95, it requested voluntary restraint, an approach which it later suggested had been a success, with housing associations limiting increases to within the median range for properties of similar specification.²³ However, having decided that more was necessary to achieve its objective Tai Cymru sought to give direction on the issue of rent levels by the use of amended criteria for the distribution of development subsidy. A new approach was signaled in Tai Cymru's *Investment Policies and Plans 1995/96* which established a direct link between subsidy and rent: housing associations were informed that rent levels would be a criterion relevant to the determination of HAG allocation in Wales from April 1995.²⁴ Steps were also taken to implement this policy through guidance. Tai Cymru issued a circular in November 1994 setting out its expectations for all housing associations with a development programme part-funded by HAG.²⁵ This stated that:

²¹ For example in: Tai Cymru, (1994/95), at p.9

²² Bader and Lawler, (1995), at p.10.

²³ Tai Cymru, (1995/96-1997/98), at p.2.

²⁴ Tai Cymru, (1995-1996), at p.13.

²⁵ Tai Cymru Circular 19/94, at paragraph 1.1.

'From 1995-96 onwards, [Tai Cymru] will not normally grant aid any new scheme of general needs housing for rent unless the rents charged by the association are broadly competitive with those of other associations serving the same local authority area.'²⁶

As part of the HAG allocation process housing associations applying for subsidy were required, as a matter of course, to provide a statement of average rents for particular types of properties relevant to local authority areas. The 1994 circular also gave an indication of how Tai Cymru intended to prioritise allocation of HAG, it stated that:

'Funds for new schemes will be allocated preferentially to those associations charging the lowest rents. Any association whose proposed average rent in a given local authority area is more than 10 percent above that of the lowest rent association will only receive funding for new schemes in that area in the event that lower rent associations do not, in the opinion of [Tai Cymru], have the capacity to take up all the available programme resources.'²⁷

This system of measuring rents against quantifiable targets became known as rent benchmarking.²⁸ Benchmarking established a subsidy structure that placed housing associations in direct competition with each other to provide housing at the lowest rent. After its introduction housing associations were required to have regard not only to revenue requirements when setting rent levels, but also to the rents charged by other associations, and to achieve rents within 10 percent of the area average. Notwithstanding the restrictions imposed on housing associations by the benchmarking regime Tai Cymru required associations to comply with established expectations on standards of housing management and housing services generally. Its 1994 circular emphasized that there should be no diminution in the quality of housing management, stating that:

'It is stressed that associations should not strive to achieve low rent levels at the expense of unacceptable levels of service provision to

²⁶ Tai Cymru Circular 19/94, at paragraph 1.1.

²⁷ Tai Cymru Circular 19/94, at paragraph 2.2.

²⁸ Tai Cymru, (1995-996), at p. 13.

tenants. Associations should remain financially prudent and in particular should plan for long term maintenance.²⁹

Housing associations seeking to develop new housing after the 1st April 1995 had therefore to set rents low enough to satisfy Tai Cymru that they were affordable, whilst maintaining their income at a level sufficient to provide for the cost of maintaining an adequate housing management service, and to meet necessary expenditures.³⁰

Regulation and rents: Tai Cymru

Tai Cymru's 1990 performance expectations for housing associations did not refer directly to the need to maintain rents at an affordable level, all that was required of housing associations was that they should establish rents in accordance with the law and have regard to the *Tenants' Guarantee*.³¹ By 1992 re-issued performance standards required associations to set and maintain rents at a level '*within the reach of those in low paid employment*' whilst taking account of the need to remain financially viable, and to provide a good standard of service to tenants.³² Reflecting the significance of its developing rents policy Tai Cymru's 1995 performance standards included a specific requirement that associations should not only meet with the expectations set out in its re-issued *Tenants' Guarantee*,³³ but also with more detailed guidance requiring that rents be set at a level within the reach of those in low paid employment consistent with the need

²⁹ Tai Cymru Circular 19/94, at paragraph 2.2.

³⁰ Tai Cymru's policy was introduced at a time when Treasury resources were under pressure due to increased housing benefit payments to tenants because of higher rents in the housing association sector: Malpass, (2000), at p.216. In Wales the housing benefit bill increased from just less than £150 million in 1988/89 to just under £250 million in 1994/95, despite there being fewer claimants in 1994/95: NAW, (2004b), Table 9.5. Tai Cymru's benchmarking policy was introduced shortly before a change of direction in housing policy to re-focus subsidy away from income supplements for tenants toward assisting housing developers to keep rents low. This approach was supported by government which claimed: '*the most cost-effective way of ensuring that people with permanently low incomes have a decent home is to give direct subsidy to landlords to provide social housing at rents below market levels*'. Great Britain, (1995), at p.26.

³¹ Tai Cymru, (1990a), at regulation. 4.5.

³² Tai Cymru, (1992a) at regulation 2.2.

³³ Tai Cymru, (1992b).

to provide for future contingencies.³⁴ The 1995 regulations also introduced a requirement that housing associations should strive to achieve consistent rent levels across the whole of their comparable housing stock.³⁵ By 1997, and the publication of performance standards for registered social landlords, Tai Cymru's rent benchmarking policy had been fully implemented and there was no need for any substantial amendment in this area. Therefore the 1997 regulations simply required housing associations to:

'... keep rents as low as possible, by setting rents as low as is consistent with the objective of covering necessary costs, making prudent provision for future requirements, and maintaining adequate reserves. Registered Social Landlords setting rents at or below benchmark levels will be deemed to comply with this requirement.'³⁶

There remained the possibility of differential rents between developing and non-developing associations. This was dealt with by the 1997 regulations which established benchmark rents as a measure of regulatory compliance for all housing associations.³⁷ This ensured that Tai Cymru's rents policy was made relevant to all registered housing associations, not just those with an active development programme.

It was noted above that Tai Cymru's policy on rents also had as an objective to maintain affordable rents without impacting on the quality of housing and services provided. Many larger associations were able to meet with this objective by cross-subsidizing rents on new developments from income generated by charging higher rents on existing schemes. Although this may be seen as a legitimate exercise of discretion by housing association boards of management it did not meet with the approval of Tai Cymru which, in 1995, took action to put an end to the practice of cross-subsidy. It refined its rents policy so as to require associations to meet benchmark rents established for given areas, irrespective of

³⁴ Tai Cymru, (1995), regulation 5.1

³⁵ Tai Cymru, (1995), at regulation 5.1 and 5.2.

³⁶ Tai Cymru, (1997a), at regulation 5.1.

³⁷ Tai Cymru, (1997a), at regulation 5.1.

whether or not they intended to develop in that area.³⁸ This was so as to reduce the prospect of artificially low rents on some newer schemes with a consequent uplift in rents elsewhere, and was consistent with Tai Cymru's regulatory requirement that associations should strive for consistent rent levels across all stock. In 1997 this was further emphasized when regulations specified that housing associations should aim to achieve consistency of rent levels between assured and secure (i.e. pre 1989) tenancies.³⁹

Overview of the impact of rent policy under Tai Cymru

Changes to the distribution of HAG after 1994, the introduction of benchmarking, and restrictions on internal cross-subsidy established a framework structuring housing association discretion over rents and rent levels, and imposed some restrictions on how rent revenue could be applied by associations. In combination these policy innovations had an impact on the rents charged to tenants. After 1994 the relative cost of housing association assured tenancy rents began to fall as Tai Cymru's policy was implemented into practice, in particular as new housing was developed. By 1998 average housing association assured tenancy rents had fallen to 13 percent of average earnings, making assured tenancy rents less costly than fair rents, which were on average 14.3 percent of average earnings.⁴⁰ It should not however be assumed that support for maintaining low rent levels came just from the regulator. In the mid 1990's the Welsh Federation of Housing Associations endorsed a call by Tai Cymru for a rent freeze⁴¹ following a consultation on the issue of lower rents. During this consultation the WFHA responded by raising concerns over the complexity of the proposed rent-bidding system and arrangements for HAG distribution, but did not seek to take issue with the general principle that there should be some form of control over rent levels.⁴² Against this background it is unsurprising that Tai Cymru's policy was successful in maintaining rents at a comparatively low level, i.e. within the

³⁸ Tai Cymru, (1997/98), at p.9.

³⁹ Tai Cymru, (1997a), at regulation 5.3.

⁴⁰ Wilcox, in Smith *et al* (eds.), (2000), at Table 5.3.

⁴¹ Bader and Lawler, (1995), at p.11.

⁴² Bader and Lawler, (1995), at p.11.

targets established by rent benchmarking. Its firm approach on the issue of rent levels meant that by 1995/96 all housing associations submitting applications for grant subsidy were anticipating rents set at a level within 10 percent of the lowest area average.⁴³ Although it is difficult to know what rents might have been charged by housing associations if Tai Cymru had not insisted on keeping rents low, it is certainly the case that before 1994 the trend was for assured rents to increase. Further, it is reasonable to assume that some housing associations would have continued to cross-subsidize rents on new schemes if regulation had not intervened. Although comparison with the position in respect of fair rents is of limited value having regard to the role of the Rent Officer to set rent levels and control rent rises, it is notable that after 1994 average assured tenancy rents gradually reduced to less than the average level of fair rents: as shown in Table 10.1 below. Also, it is apparent from comparison with rents in the private sector that had housing association rents been allowed to rise to reflect the market value of rented housing in the 1990's housing associations would have been charging higher rents to their tenants: a comparison is shown in Table 10.1. In terms of outturn rents, the pursuit of an aggressive policy aimed at keeping rents affordable resulted in a lowering of the level of rent charged on assured tenancies by comparison with the private sector. In fact, in 1997 Tai Cymru claimed that it had achieved a 13 percent reduction in the cost of housing in real terms since 1993.⁴⁴ Its influence in this regard is confirmed by comparison with the position in England where the Housing Corporation continued to operate a system of assessing applications for grant funding on the basis of the amount of public subsidy that would be required to support individual development proposals until 1996-97. The Housing Corporation introduced grant allocation based on rent-bidding as well as subsidy costs at a later stage than did Tai Cymru, and, as is shown in Table 10.1, the result was that by 1996 housing association rents in Wales were on average 15 percent cheaper than those charged in England.

⁴³ Tai Cymru, (1995-1996), Table A.

⁴⁴ Housing for Wales, (1997).

Table 10.1

Housing association average rents: fair rent/assured rent comparison (Wales); Wales/England assured rents comparison; housing association/private sector assured rents comparison

Year	1989	1990	1991	1992	1993	1994	1995	1996
Fair Rent (Wales)	26.06	30.08	32.02	34.60	35.37	38.52	40.08	42.71
HA Assured Rent (Wales)	26.00	30.73	34.64	39.55	42.51	43.43	42.16	42.44
HA Assured Rent (England)	24.50	28.97	33.93	39.03	44.87	45.90	48.29	50.13
Private Sector Assured Rents (Wales)	29.75	35.58	42.25	46.37	51.13	53.92	58.65	57.26
% Difference in Rent Level*	+5%	+5%	+2%	+1%	-5%	-5%	-12%	-15%

Source: Wilcox, (1996/97) and (1997/98), Table 67 (both years)

* I.e. between housing association assured rents in England and Wales

Housing Association Rents and the National Assembly

National Assembly policy on rents in social housing

The National Assembly's policy on rents, set out in its *Housing Strategy*, refers to social housing, to include both local authorities and housing associations as social landlords.⁴⁵ Although the emphasis remains primarily on affordability the objectives of the Assembly's rents policy are wider than keeping rents low. The National Assembly has sought to make rent levels in social housing relevant in the context of its policies on tackling social exclusion, its *Housing Strategy* states that:

'We [the Assembly] recognize the important connections between social housing rent levels and tackling social disadvantage. Where rent levels are fair and affordable, tenants have a greater incentive to get off benefits and move into work ... Affordability is considered an important issue in the social housing sector in Wales. This is

⁴⁵ NAW, (2001c): rents are dealt with at paragraph G.13.

because many Welsh tenants still face difficulties in meeting their housing costs ...⁴⁶

The Assembly has therefore continued to focus on rent levels and affordability by making a connection between the cost of social housing to the tenant and their likely economic status, i.e. unemployed and on benefits, or employed and self-resourced. Its rents policy sees affordability as an incentive to those in social housing to seek employment without the penalty of having to meet expensive housing costs as a consequence of the withdrawal of welfare benefits through ineligibility.⁴⁷ For this reason the overall aim of the National Assembly's policy remains keeping rents low, and, in any event the system of benchmarking under Tai Cymru is preserved, and is relevant to assessment of housing association regulatory compliance.⁴⁸ Whilst it is apparent that the implementation of rents policy as an aspect of Wales-national housing policy will not be as aggressive as under Tai Cymru, the National Assembly has clearly established its objectives in this area. From policy documents there is little room to doubt that the Assembly anticipates that housing associations will continue to operate fair and consistent rent structures, for example, its *Housing Strategy* states:

'We [the Assembly] believe that local landlords are ultimately best placed to determine rents in their areas. We do not propose the introduction of any nationally uniform system to structure social rents.⁴⁹ We consider, however, that there is a strong case for social landlords to review their rent structures with the aim of achieving greater consistency and fairness.'⁵⁰

Social housing rents: the issue of comparability

Alongside affordability the issue of comparable rents across the whole of the social housing sector, i.e. between housing associations and local authorities, has emerged as a theme relevant under the National Assembly. It has

⁴⁶ NAW, (2001c), at p.77.

⁴⁷ NAW, (2001c).

⁴⁸ WAG, (2005a), at regulation 1.2.1, '*What we will look for*'.

⁴⁹ This refers to social rents across all sectors as housing association rents are structured by rent benchmarking.

⁵⁰ NAW (2001c), at p. 79.

established, as an aim of its rents policy, to ensure that housing association rent levels in Wales are affordable and consistent with local authority rents.⁵¹ The issue of rent disparity was identified by Tai Cymru in the mid 1990's.⁵² It commented on a lack of consistency between local authority and housing association rents, and referred to the differential as '*perverse*' and as having had the effect of limiting the opportunity for tenant mobility between social landlords.⁵³ Similarly, the National Assembly in its *Housing Strategy* has stated that:

'... in addition to affordability issues, there remains concern about the fairness and consistency of rents. We [the Assembly] are concerned about indications that suggest the broad pattern of rents across Wales' social housing sector is not always a coherent one.'⁵⁴

Since 1999 the Assembly has sought parity in social housing rents as a policy objective so that tenants in subsidized housing pay similar rents for comparable accommodation and services irrespective of their landlord, an objective stated in broad terms in its *Housing Strategy* as:

'We [the Assembly] want a social housing sector that has an equitable rent structure that reflects the overriding principle that tenants should pay comparable rents for comparable homes and services, thus providing increased opportunity for tenants in selecting where they want to live.'⁵⁵

The issue of rent compatibility is significant for housing associations for a number of reasons, including that it establishes an expectation that rent levels will reflect those in the public sector, placing a further restriction - albeit indirect - on the discretion of the board of management to set rent levels. Further, the National Assembly's insistence on consistency of rents across all social housing sectors is likely to facilitate the transfer of housing stock from local authorities to housing associations, as tenants will be more likely to vote in favour of such a transfer if it

⁵¹ NAW, (2000c), at paragraph 10.13.4; and, NAW, (2001c) at paragraph G.13.4.

⁵² Tai Cymru, (1995/96-1997/98), at p.3.

⁵³ Tai Cymru, (1995/96-1997/98), at p.3.

⁵⁴ NAW, (2001c), at p.77.

⁵⁵ NAW, (2001c), at p.13 and p.77.

can be shown that rents will not rise.⁵⁶ If housing associations become large-scale stockholders of what was previously local authority housing, i.e. as a result of stock transfer,⁵⁷ this may impact on perceptions of the movement as distinct from the public sector.

Housing association rents: the regulatory position under the National Assembly

In March 2005 the Welsh Assembly Government's *Regulatory Code* for housing associations amended the regulatory requirements on rents. The Code requires that housing associations should set rents and service charges as low as possible, and that they should comply with related WAG policy.⁵⁸ The relevance of benchmarking is that the WAG has indicated that it will use these as a measure of compliance with its *Regulatory Code* (along with assessment of housing services).⁵⁹ In addition, the Code requires housing associations to work in an '*open and constructive*' manner with the WAG on the issue of rent levels in Wales. The WAG has indicated that it will assess compliance with this requirement by reference to the extent to which a housing association meets with rent benchmarking guidelines.⁶⁰ Finally, associations are also required by the Code to demonstrate consistency in the way in which they set rent levels across the whole of their housing stock.⁶¹

Housing Association Rents: Research Findings

The Purpose of the Research

Tai Cymru's rents policy was explicit in establishing, as an aim, the delivery of affordable housing association rents. To this end it sought to exercise direct control over rent levels by making use of regulations and guidance, and by

⁵⁶ A further impact may be that consistent rent levels will remove the deterrent to social housing tenants to move between sectors, or to apply to both housing associations and local authorities for housing.

⁵⁷ Or by the setting up of Community Mutual housing companies to take over the housing stock of local authorities, see: NAW, (2001c) at G.5.

⁵⁸ WAG, (2005a), paragraph 1.2.1.

⁵⁹ WAG, (2005a), paragraph 1.2.1.

⁶⁰ WAG, (2005a), paragraph 2.1.2.

⁶¹ WAG, (2005a), paragraph 1.2.1.

manipulation of the system for allocation of subsidy. As housing association rents were at a relatively low level during its tenure it is reasonable to suggest that Tai Cymru's policy agenda was successfully implemented. This chapter asks whether or not Tai Cymru's policy unduly restricted housing association discretion in the area of rent setting. The research findings set out below are therefore relevant to Research Objective Four, as set out in Chapter Five.

For reasons explained in the Methodology the discussion in this section is limited to an assessment of evidence from housing associations.⁶² The questionnaire asked respondents about factors relevant to how rent levels are established, justifications for rent control over housing associations, and the impact of Tai Cymru's policy on rents. Interviewees were asked about the influences on housing association rent levels in Wales, and the impact of the policy of keeping rents low on their capacity to discharge a community regeneration function.

The Questionnaire Findings

How rent levels ought to be established

The complexity of housing associations, i.e. their service responsibilities, their funding structures, regulation etc. suggest that there are likely to be a number of influences on the way in which they go about setting rent levels. This is confirmed by the data set out in Table 10.2 below which shows that respondents identified a range of factors relevant to rent setting. Having regard to housing associations' need to meet interest costs on development capital from the private sector it is unsurprising that respondents were unanimously agreed that revenue requirements should feature as a significant factor. What is more surprising is that just 46 percent of respondents thought that rent targets as determined by the regulator should be taken into account, but that a much larger proportion of respondents, i.e. 86 percent, thought affordability a relevant factor. These findings confirm that the housing association movement supports the principle of affordability in social housing, and suggests that were housing associations to be

⁶² Chapter Five, at pp.120-121.

allowed to act on their own discretion the movement would endeavor to keep rent levels low in any event. What is also raised as a distinct possibility is that whilst associations may agree with the principle of affordability, the movement may not be in agreement with affordability levels, and therefore rent levels, as determined by the regulator.

Other data shows that 80 percent of respondents identified commercial factors as relevant to establish rent levels. This is anticipated having regard to the operating environment for housing associations after 1989. Although there is no comparable data on relevant factors to be taken into account pre 1989 and the introduction of mixed-funding, it is reasonable to suggest that the modification of the funding regime focused greater attention on rent revenue, and housing association income, as an aspect of rent setting. To some extent the relevance of private finance is confirmed in this context as a minority of 46 percent of respondents thought that housing market factors should be taken into account when setting rent levels. This suggests that the level of private sector rents is not highly significant as a commercial factor. It is interesting to note that 40 percent of respondents disagreed that rents should be established by comparison with local authority rents, and just 26 agreed that housing association rents should be influenced by public sector rent levels. These findings are significant against the background of National Assembly rents policy that has as amongst its objectives rent convergence. What is suggested is that rent harmonization may not be high on the agenda of housing associations, and that in this respect the Assembly may need to adopt a firm policy approach if its objectives are to be achieved.

(Table 10.2 overleaf)

Table 10.2⁶³

Housing association assured tenancy rents ought to be established by reference to:

Response Options	In Agreement*	No Opinion*	Not Agreeing*	Response Rate (%)
HA revenue requirements	15 (100)			100
Housing market factors	7 (46)		8 (54)	100
Commercial factors	12 (80)	1 (6)	2 (12)	100
Rent targets established by the regulator through benchmarking	7 (46)		7 (46)	93
Objectively determined affordability factors (but not set by the regulator)	13 (86)		1 (6)	93
Harmonization with LA rents	4 (26)	4 (26)	6 (40)	93

* Refers: Number of response (percentage of total possible responses).

Notwithstanding that housing associations have identified factors relevant to establish rent levels, further data set out in Table 10.3 below reveals that where rents policy is firmly established and implemented this is likely to influence priorities for housing associations in this area. Respondents were unanimously agreed that rent targets were relevant for housing association rent setting under Tai Cymru, this is in contrast to the finding that 66 percent of respondents thought that affordability was a relevant factor. This data tends to suggest that the principal driver for lower housing association rents in the 1990's was rent benchmarking. Other data confirms the relevance of benchmarking under Tai Cymru - as just 33 percent of respondents thought that commercial factors and/or rent harmonization were factors influencing rent levels, with just 13 percent of respondents agreeing that housing market factors were a relevant factor. It is interesting to note that despite being identified by the majority of respondents as a factor to be taken into account when setting rent levels, just 26 percent of respondents saw housing association revenue requirements as influential on the level of rents charged during Tai Cymru's tenure. These findings confirm that Tai Cymru's rents policy, with its focus on affordability as the main priority to the

⁶³ This table shows extracted findings from Table 16, Appendix Seven.

exclusion of others identified as relevant by the housing association movement, was the key influence on housing association rent levels in the 1990's.

Table 10.3⁶⁴

Under Tai Cymru the main factors influencing housing association assured tenancy rents were:

Response Options ▼	In Agreement*	No Opinion*	Not Agreeing*	Response Rate (%)
HA revenue requirements	4 (26)	3 (20)	8 (53)	100
Housing market factors	2 (13)	2 (13)	11 (73)	100
Commercial factors	5 (33)	3 (20)	7 (46)	100
Rent targets established by the regulator through benchmarking	15 (100)			100
Objectively determined affordability factors (but not set by the regulator)	10 (66)	4 (26)	1 (6)	100
Harmonization with LA rents	5 (33)	7 (46)	1 (6)	86

* Refers: Number of response (percentage of total possible responses).

The impact of benchmarking

Data set out in Table 10.4 reveals that 60 percent of respondents agreed that rent benchmarking was responsible for making housing association rents affordable under Tai Cymru; a minority of 26 percent disagreed. The significance of benchmarking is confirmed as 86 percent of respondents agreed that in the absence of benchmarking housing association rents would have been higher. However, a majority, i.e. 66 percent of respondents, thought that benchmarking unnecessarily restricted housing association's capacity to set rents. These findings need to be considered having regard to the evidence that shows housing association support for the principle of affordability. What appears to be the case is that Tai Cymru's assessment of an affordable rent was not necessarily consistent with that of the housing association movement. It would appear that whilst rent benchmarking served to maintain rents at an affordable level, it was in addition responsible for artificially lowering rents to below what might have been deemed appropriate to be charged by individual housing associations. Other data

⁶⁴ This table shows extracted findings from Table 17, Appendix Seven.

suggests that one impact of this may have been to limit housing associations' capacity to engage in activities outside of the core function anticipated by Tai Cymru: in particular, 60 percent of respondents thought that rent benchmarking had had an adverse impact on housing associations by restricting their capacity to carry out community functions.

Table 10.4⁶⁵
Under Tai Cymru:

Response Options ▼	In Agreement*	No Opinion*	Not Agreeing*	Response Rate (%)
Rent benchmarking was responsible for making HA rents affordable	9 (60)	2 (12)	4 (26)	100
Rent benchmarking had an adverse impact on HAs' capacity to carry out community functions	9 (60)	6 (40)		100
Rent benchmarking unnecessarily limited HAs' discretion to set rents	13 (86)		2 (13)	100
In the absence of benchmarking HA assured tenancy rents would have been higher	10 (66)	3 (20)	2 (13)	100

* Refers: Number of response (percentage of total possible responses).

Justifications for rent control

The data set out in Table 10.5 below shows that a large majority, i.e. 80 percent of respondents, agreed that some form of rent control is appropriate for housing associations. It should be noted that the term rent control is generalized without specific reference to benchmarking. This explains why support is strong notwithstanding the findings already discussed which cast doubt on the extent to which benchmark rents were consistent with affordability. 80 percent of respondents gave as a justification for rent control that housing associations receive public subsidy. Less than 50 percent of respondents thought rent control appropriate to ensure the supply of affordable housing - unsurprising as meeting housing need is an accepted role for housing associations in any event, and the

⁶⁵ This table shows extracted findings from Table 18, Appendix Seven.

movement supports the principle of affordability. The data does however indicate that housing associations see a role for rent control in limiting excessive rents: 60 percent of respondents saw this as a justification. From this evidence it is reasonable to conclude that the housing association movement is likely to regard rent control as a backstop to prevent some associations from departing from the generally accepted principle that social housing rents should be affordable.

Table 10.5⁶⁶

Housing association rent control is:

Response Options	In Agreement*	No Opinion*	Not Agreeing*	Response Rate (%)
Appropriate as HAs receive public subsidy	12 (80)	3 (20)		100
Appropriate to limit excessive HA rents	9 (60)	3 (20)	2 (13)	93
Appropriate to ensure the supply of affordable housing	7 (46)	2 (12)	5 (33)	93

* Refers: Number of response (percentage of total possible responses).

The Interview Findings⁶⁷

References to percentages below are approximations from the data.

How rent levels are established and the impact of rents policy

The interview evidence in general confirms the questionnaire findings on the significance of Tai Cymru's rents policy, as well as its impact on housing associations. Interviewees almost invariably referred to rent benchmarking as a key factor influencing the level of housing association rents in Wales; 81 percent of those interviewed saw it as relevant.⁶⁸ Although benchmarking was identified as the most significant factor, a number of interviewees also mentioned the need to generate income as an aspect of the change to mixed-funding as relevant.

Comments included:

⁶⁶ This table shows extracted findings from Table 19, Appendix Seven.

⁶⁷ Interview questions 11 and 12.

⁶⁸ Table 11, Appendix Nine.

"Benchmarking is an obvious one. I would say from this association's point of view it is a key reference for our setting of rents. But also other things, for example the reducing grant rate, Welsh housing quality standards and general levels of affordability and cost. Benchmarking is one side of it but on the other hand we have to make sure to balance the books on the other side ... also an element in that is the role of the rent officer because we still have reasonable numbers of secure tenants."

HA Interviewee H

However, what emerges very clearly from the interview evidence is that for the majority of interviewees benchmarking was the main influence on rent levels, with other factors of secondary importance. The data shows that just 18 percent of participants identified the change to a mixed-funding regime and the introduction of private finance as impacting on rent levels.⁶⁹ This is surprising given the need to meet interest costs, and the removal of restrictions on rent levels introduced by the assured tenancy regime, but less so when seen against the background of Tai Cymru's rents policy. Other data from the interviews shows that 27 percent of interviewees identified affordability as distinct from benchmarking as a factor influencing rent levels.⁷⁰ The vast majority of interviewees confirmed what is suggested by the questionnaire data, i.e. that Tai Cymru was seen as primarily responsible for limiting the level of housing association rents through benchmarking (81 percent, above). Comments included:

"At the time it was all about benchmarking. It's still the same. Under Tai Cymru though it was always rammed home that we needed to meet benchmark rents, this was a measure of performance and was a target we had to achieve. No doubt about it, rent levels were determined by benchmark levels."

HA Interview A

"Benchmark rents ... have limited the extent to which we can increase our rents and that came from Tai Cymru who were trying to get us to address the affordability issue."

HA Interviewee E

⁶⁹ Table 11, Appendix Nine.

⁷⁰ Table 11, Appendix Nine.

On rent convergence: a number of those interviewed pointed out the significance of the National Assembly's agenda of rent harmonization for housing association rent levels. A large minority of interviewees, i.e. 45 percent, referred to this objective as a key factor behind benchmarking in contemporary context, notwithstanding its relatively low prioritization under Tai Cymru.⁷¹ An interesting perspective on this issue was provided by one interviewee who commented that rent convergence between social landlords was not necessarily appropriate, and that in some areas it might be more relevant to compare housing association rents with those in the private sector. This interviewee made the point that:

"If it wasn't for benchmarking we would have had higher rents, I've absolutely no doubt in my mind. Whether we would have ended up in the same position as in England with very expensive rents I don't know. We're in a position now that most of our assured rents come in at or below our fair rents ... and most of our areas have parity with local authority rents. That's fine in some areas but in others we have artificially low rents ... we're competing with the private sector not necessarily with the local authority."

HA Interviewee J

Several interviewees agreed with the suggestion that housing associations would have been more likely to set higher rents if it were not for rent control imposed by benchmarking, confirming the influence of regulator not just to influence rent levels, but to establish the level of housing association rents. For example:

"Initially the introduction of mixed-funding and assured tenancies, and of course in more recent years rent benchmarking. Benchmarking drives rents in Wales. If it wasn't for rent benchmarking rents would have been higher. Inevitably I think they would have been because there is no doubt that one of the results of the benchmarking process is that you are invariably setting rents at a level which is less than the increase in your revenue costs. So rents go up ... and if we weren't required to achieve benchmarks, particularly to continue development, then we would probably look to ... set higher rents. "

HA Interviewee A

⁷¹ Table 11, Appendix Nine.

Benchmarking: its impact on housing association community functions

Several interviewees expressed a concern that the way in which rent benchmarking was implemented under Tai Cymru failed to take account of individual housing association's revenue requirements, and the need to generate income to allow the movement to extend the range of services provided.

Comments included:

"I've supported both rent bidding and rent benchmarking because we're here to provide good quality housing at affordable rents. The conflict with that is that the cost of building such homes and providing services to such homes has increased faster than the rate that rents have been able to increase."

HA Interviewee C

In response to direct questioning on the issue a number of interviewees suggested that Tai Cymru's policy on rent benchmarking had impacted negatively on their association's capacity to undertake community functions. The data here is consistent with the findings from the questionnaire, with 54 percent of interviewees commenting that the focus on keeping rents low had adversely affected the community regeneration function.⁷² Comments on this issue included:

"The emphasis on keeping rents low has most definitely had an impact. What are you trying to do as an association, you pay wages, you pay loans, you use your money to fund to a good standard your day-to-day housing services. Low rents have impacted on our capacity to work in these areas because of the way you use your money ... what you've got left at the end of financial year is what you use on regeneration ... if you want a Rolls-Royce housing service that's fine but it wont leave as much money for use in other areas."

HA Interviewee A

And on benchmarking and its relevance to regeneration (in contemporary context):

⁷² Table 12, Appendix Nine.

"It's made things somewhat tight. We've never made big surpluses. Now we charge our rents to the maximum benchmark levels because we need the extra income to provide all the services that our tenants require and that includes, increasingly, more than the traditional landlord service. If we are going to invest in community regeneration we need as much rental income as we can possibly get and certainly if rents were able to increase at a higher rate then we could invest much more than we do at the present time. I'm not arguing that the restrictions be taken away but I think the time has come for another debate, with the Assembly, about levels of rent and the benchmark system. Just to ensure that we are, one, able to keep our properties in good condition in the long term and, two, to continue to provide the services our tenants want."

HA Interviewee C

Synthesis and Conclusion

It is apparent that Tai Cymru's rents policy was firmly established and focused primarily on the objective of ensuring housing association rents were set at an affordable level. Through the use of policy instruments it implemented its agenda in practice, in particular through regulation, benchmarking, and the exercise of discretion over the allocation of funding. These innovations were introduced to ensure affordability as an aspect of meeting housing need and may be seen as supporting housing associations in their service-providing function. In summary, Tai Cymru established a framework for housing association rent-setting. Under the National Assembly the aims of its rents policy are broader than its predecessor, as might be anticipated of a body with Wales-national policy responsibilities across all tenures, and include rent harmonization with local authorities. Although the National Assembly is less overtly controlling than Tai Cymru in the area of rent setting, and is seeking to encourage housing associations to meet with the aims of its rents policy, it is able to call upon the policy instruments that were available to Tai Cymru to assert its agenda. It is already apparent from its approach to regulation that the WAG intends to fully implement its rents policy.

The survey has established that under Tai Cymru rent benchmarking was the primary influence on rent levels. Whilst there is some support for the suggestion that the impact of benchmarking has been to make rents affordable it seems more likely that its relevance has been to keep rents artificially low. This is supported by the evidence showing that despite housing associations having embraced the principle of affordability rents would have been higher if benchmarking had not been imposed. It is obvious therefore that one significant impact of rent benchmarking has been to limit the scope for rent increases and the discretion of the board in this area. It is also apparent that their imposition had other impacts relevant to the movement's wider functions. In this context, it is contended that rent benchmarking has artificially structured housing association rents, and has limited board discretion to set rents levels to take account of housing association priorities, in particular by restricting the income available to enable housing associations to engage in community regeneration. It is obvious that Tai Cymru was able to impose its rents agenda on housing associations partly because of resource dependency and the link established between low rents and subsidy, as well as the authority given to the regulator to establish priorities in the area of rent setting. But in addition it cannot be ignored that support for the principle of affordability and for some form of rent control, in combination with expectations of accountability, makes it difficult for housing associations to go behind the role of the regulator in limiting rent increases.

CHAPTER ELEVEN

ACCESS TO, AND ALLOCATION OF HOUSING ASSOCIATION ACCOMMODATION

Introduction

This chapter discusses the allocation of housing, which along with development, is the most direct of housing associations' contributions toward meeting housing need in Wales. Decisions on priorities for access having regard to the needs of particular social groups, and/or the economic or housing status of individuals, will establish the availability of social housing to the public. Allocation is also significant as a management tool: through selective letting housing associations may avoid offering accommodation to those likely to engage in anti-social or disruptive behaviour. This is highly relevant in contemporary policy context as the National Assembly anticipates that housing associations will be proactive in tackling anti-social behaviour.¹ For these reasons allocation is an important management function, and similar to rent setting, is *prima facie* a role within the competence of the board of management. However, discretion in this area is not without limitation as the regulator is under a statutory duty imposed by section 36 of the *Housing Act 1996*, to provide guidance to associations on the '*allocation of housing accommodation between individuals*.'²

As was discussed in Chapter Nine, the regulator may exert an influence over the availability of housing to particular social groups by establishing priorities for development. Further, as noted in Chapter Ten, the level at which rent is set may impact on access for those on low incomes. This chapter considers the extent to which the regulator has sought directly to influence the provision of housing to those in housing need by structuring discretion in the area of allocations. The findings from the survey provide insights into the relevance of Tai Cymru's policy

¹ Chapter Seven, n.58 and accompanying text.

² Section 36, Housing Act 1996.

approach in this area, focusing on its priorities for allocation, and its influence over housing associations.

Allocation of Housing Association Housing: Context

Housing Allocation and Tai Cymru

Overview

In the 1990's Tai Cymru established amongst its policy aims to ensure that the housing association movement contributed toward expanding housing choice in Wales.³ In pursuit of this objective it encouraged housing associations to develop new housing but also sought to facilitate access to subsidized accommodation for those in greatest housing need, as well as to limit restrictions on allocation. Tai Cymru was insistent that housing associations should operate transparent allocations policies, so that decisions on who should be offered housing would be seen as fair and based on clear and accessible criteria. This may have been partly a concern to avoid the sort of criticism that had been directed at local authorities and local councillors over the allocation of social housing by local authority housing departments in the mid 1980's. In Wales, for example, the Welsh Consumer Council had published a report in 1983 highly critical of the way in which local authorities were distributing housing, and in particular the role of councillors in the process.⁴

The regulatory position

In order to establish a fair system of allocation Tai Cymru made extensive use of regulations to develop a framework for housing association lettings. Its 1990 *Performance Expectations* emphasized the need for associations to have '*demonstrably fair procedures for selection and allocation*',⁵ and included the expectation that housing associations would cooperate with local authorities to identify housing need and social groups suitable for assistance.⁶ In this context,

³ Tai Cymru, (1995-96), at p.3.

⁴ Welsh Consumer Council, (1983).

⁵ Tai Cymru, (1990a), regulation 3.3.

⁶ Tai Cymru, (1990a), regulation 3.1.

housing associations were required to offer housing to those in serious housing need, and to be aware of and take into account their obligations to assist the local authority with its statutory duties toward the homeless.⁷ Notwithstanding these expectations housing association boards were given the responsibility of devising allocations policies, and were expected to play a 'vital role' in determining priorities.⁸ However, it is apparent from the regulatory context that in devising their allocations policies housing associations were obliged to consult with local authorities; in addition they were required to avoid entering into competition with the private sector.⁹ In 1992 regulations required housing associations to prioritize applicants for housing according to the severity of housing need,¹⁰ and in 1995 revised regulations directed associations to have regard to an applicant's resources and capacity to access housing through rental or purchase to determine eligibility for allocation.¹¹ Significantly, the 1995 regulations included a prohibition against unnecessary restrictions on access,¹² i.e. to ensure that eligibility was a matter determined by reference to need.¹³ Although a caveat allowed housing associations to take management issues into account by the adoption of special procedures,¹⁴ housing association discretion to reject an application for housing was limited to cases where an applicant failed to meet with criteria approved by Tai Cymru, i.e. as necessary to deal with clearly identified management problems (provided also that these were non-discriminatory against vulnerable or disadvantaged groups).¹⁵

Assisting local authorities through allocation

During its tenure Tai Cymru sought to emphasize the importance of housing associations' role in providing assistance to local authorities, even going so far as

⁷ Tai Cymru (1990a), regulation 3.2.

⁸ Tai Cymru, (1990a), at p.56.

⁹ Tai Cymru, (1990a), regulation 3.

¹⁰ Tai Cymru, (1992a), regulation 2.1.

¹¹ Tai Cymru, (1995), regulation 7.

¹² Tai Cymru, (1995), regulation 7.2.

¹³ Tai Cymru, (1995), regulation 7.3.

¹⁴ Tai Cymru, (1995), regulation 7.6.

¹⁵ Tai Cymru, (1995), regulation 7.6.

to propose common allocations criteria and to consider the feasibility of common waiting lists in the early 1990's.¹⁶ In 1997 revised requirements for Registered Social Landlords insisted that RSLs should enter into formal nomination agreements for a percentage of lettings to be made available to local authorities¹⁷ (discussed further below). On allocations more generally, the 1997 regulations required associations to demonstrate that:

'... their publicly subsidized housing stock is allocated to those who are unable to buy or sustain accommodation suitable for their needs, and should be able to 'demonstrate that those housed are fairly selected'.¹⁸

To this end associations were obliged to operate open waiting lists and to publicize their allocations policies.¹⁹ In determining the priorities for allocation associations were instructed to have regard to a number of factors, including, the need to make best use of publicly subsidized housing. The 1997 regulations therefore included the expectation that:

'When allocating their housing, RSLs should be seeking to achieve a balance between sometimes conflicting considerations such as the needs of applicants, the well-being of existing tenants, and the need to make best use of a publicly funded resource.'²⁰

For Tai Cymru this meant targeting accommodation at those unable to access accommodation other than social rented housing, i.e. owner occupation or private rental. To this end regulatory requirements instructed housing associations to take into account individual resources as well as housing need when determining allocation priorities.²¹

¹⁶ These were not pursued because of concerns about the different priorities of local authorities and housing associations: Tai Cymru, (1992c), at pp.15-20 and p.17

¹⁷ Tai Cymru, (1997a), regulation 7.2, specifying 50% lettings.

¹⁸ Tai Cymru, (1997a), generally regulation 7.

¹⁹ Tai Cymru, (1997a), regulations 7.1-7.2.

²⁰ Tai Cymru, (1997a), regulation 7.4.

²¹ Tai Cymru, (1997a), regulation at 7.4.

Allocation and the Tenants' Guarantee

Regulation provided Tai Cymru with an effective tool to ensure that its priorities for housing association allocation were implemented in practice. Its *Tenants' Guarantee* published in 1992 supplemented regulation and is significant in the area of allocation for several reasons: first, it gave guidance to associations on Tai Cymru's expectations; second, it confirmed that compliance with the *Tenants' Guarantee* would be taken into account when assessing eligibility for Housing Association Grant;²² and, third, it required housing associations to publish lettings policies, and to make these widely available, establishing the priorities for letting in the public domain.²³ Finally, the Guarantee anticipated that housing associations would operate to meet a diversity of housing need, and included the statement that:

'Associations are expected to have allocation policies which are clear. They should be based upon the severity of an applicant's housing needs. Associations are expected to pay special attention to the specific housing difficulties experienced by particular groups. This will vary from time to time and place to place. They may include (subject to the association's specific objectives) elderly people, single people, families with young children, single parent families, people from ethnic minorities, young people without family support, women suffering domestic violence, disabled people, refugees ... but this list is not exhaustive.'²⁴

Housing Allocation and the National Assembly

The National Assembly, similar to its predecessor, has sought to ensure transparency and fairness in housing association procedures for allocation, and to limit restrictions on access. The Assembly's approach to allocations is underpinned by its objective of establishing sustainable communities in Wales. Its *Housing Strategy* states that:

²² Tai Cymru Circular 17/92, at paragraph 4.2.

²³ By sending copies to local authorities and advice centres: Tai Cymru, (1992b), at paragraph B2.3.

²⁴ Tai Cymru (1992b), at paragraph B3.1.

'It is our aim to see social housing provided within mixed, settled communities that are socially inclusive. This will involve minimizing barriers to social housing, developing fair allocations policies which take account of local housing needs and conditions ...'²⁵

As an aspect of this policy the Assembly is keen to promote consumer choice in social housing through the introduction of lettings policies that recognise personal preferences as to the type and location of housing.²⁶ During consultation on its *Housing Strategy* the Assembly set out its priorities in this context: its consultation document stated that:

'We [the Assembly] believe that social housing works most successfully if people are housed where they wish to live. We therefore wish to optimize choice for applicants, and to have lettings systems that respond to applicant's preferences as well as needs.'²⁷

By encouraging choice in the housing system the National Assembly intends to develop settled communities by enabling people to live in areas where they are content to live, and to provide balanced and therefore sustainable communities.

The regulatory position on allocations under the National Assembly is similar to that under Tai Cymru, although its *Regulatory Code* includes a requirement that housing associations should seek to raise awareness amongst the public of social housing as a resource, as well as that housing association lettings should be made available to those in housing need. The Code makes it a fundamental obligation that:

'Associations should ensure that, as far as possible, people in housing need are aware of and have good access to the association's housing.'²⁸

²⁵ NAW, (2001c), at p.76.

²⁶ NAW, (2001c), pp.75-76.

²⁷ NAW, (2001c), at p.57.

²⁸ WAG, (2005a), at paragraph 1.3.

In addition to publicizing their allocations policies to raise awareness housing associations are directed to make arrangements to take referrals from other agencies, including local authorities.²⁹ Similar to its predecessor, the National Assembly has used regulation to establish its priorities for housing association allocation. However, unlike previously where regulation was narrowly focused on ensuring full access for those in housing need, under the Assembly regulation in this area reflects wider policy objectives. Therefore housing associations are required to meet need by allocating to those in housing stress, but also to take account of applicant preference, to maximize social inclusion, and to build stable communities.³⁰ There is therefore some flexibility to select amongst suitable applicants and to reject applications. This contrasts with the position under Tai Cymru, where opportunities for housing associations to manipulate lettings so as to take into account community interests in the allocation process were limited. The regulatory framework established by Tai Cymru meant that housing associations seeking to use allocations as a management tool had first to gain approval for the introduction of a Special Allocation Policy ('SAP') as an exceptional measure (discussed in the context of exclusions below). Under the National Assembly this has been modified so that factors other than the needs of individual applicants are relevant to the allocation process.

Allocation and Assistance to Local Authorities: Nominations and Referrals

Under Tai Cymru

It is a feature of the operating environment for housing associations that they are required, by statute, to assist local authorities with their housing duties.³¹ Although statute does not prescribe nomination agreements, their use is a feature of the relationship between housing associations and local government in Wales, and has been since at least the early 1970's. In 1974 the Welsh Office issued a circular by which it required housing associations to make nominations available to local authorities and encouraged the use of nomination agreements

²⁹ WAG, (2005a), at paragraph 1.3.1.

³⁰ WAG, (2005a), at paragraph 1.3.3.

³¹ Chapter Four, at p.83 and p.86.

to meet particular housing needs and to reduce waiting lists generally. This circular also established a link between grant funding and the obligation to provide local authorities with 'reasonable' nomination rights.³² The Housing Corporation adopted a similar approach. A circular issued by the Corporation in 1978 reminded housing associations of their responsibilities to assist local authorities with their housing duties,³³ and in 1980 it issued further guidance drawing attention to the importance of entering into nomination agreements to meet the objective of tackling local housing need.³⁴ Under the Housing Corporation nominations and referrals from local authorities to housing associations were encouraged, although it was anticipated that where a local authority made a referral to a housing association this would be dealt with in compliance with the association's own lettings policy.³⁵ In 1991 Tai Cymru issued guidance by way of a circular to all housing associations on formal arrangements for nominations and referrals with local authorities. This circular supplemented performance expectations, and was made relevant as regulations specifically required associations to have regard to guidance on allocation.³⁶ The 1991 circular included a joint policy statement made by Tai Cymru and the Welsh Federation of Housing Associations. This gave the purpose of the guidance as being to:

'... ensure that associations work in a consistent manner with local authorities to meet housing need ... [and] to highlight the need for associations to make allocations to those put forward as nominees by local authorities.'³⁷

Housing associations were required to enter into formal nomination agreements with local authorities in respect of general needs and sheltered housing

³² Welsh Office Circular 274/74

³³ Housing Corporation Circular 3/78.

³⁴ Housing Corporation Circular 16/80: although housing associations were warned against offering local authorities too high a percentage of nominations.

³⁵ NFHA, (1987), this document stressed that nominations from local authorities should comply with an associations' own lettings policy, a position endorsed by the Housing Corporation.

³⁶ Tai Cymru, (1990a), at regulation 3.2.6.

³⁷ Tai Cymru Circular 14/91, at A.6.

accommodation.³⁸ The content of these agreements was prescribed in advance and included: a requirement that the number of vacancies to be used for nominations or referrals should be determined through negotiation, this was set at not less than 50 percent of available lettings;³⁹ and, that there should be a clear procedure to be followed by local authorities when making nominations.⁴⁰ The guidance also detailed the type of accommodation to be offered to local authority applicants and sought to discourage the practice of withholding high demand housing from local authority nominees.⁴¹ Housing associations were also reminded of the link between subsidy and the need to make appropriate arrangements for allocation to local authorities. The 1991 circular stated that:

'Where housing is provided with [Tai Cymru] funding it will; in future be a condition of grant that associations should enter into formal local agreements with local housing authorities to nominate for 50% of the vacancies ... the same percentage should also apply to existing housing provided in the past with the aid of HAG and which are not subject to an existing agreement in this respect.'⁴²

Housing associations were also directed on how to meet their obligation to assist local authorities with the discharge of their duties toward homeless persons.⁴³ They were required to give to agree targets for the percentage of available lettings to be used to accommodate referrals of homeless persons.⁴⁴ A second circular on the use of nomination agreements was issued in 1998, to take account of obligations imposed on housing associations by the *Housing Act 1996*.⁴⁵ This circular specified that nominations were to apply to ordinary applicants and were to be differentiated from referrals of homeless applicants.⁴⁶ However, the 1998 circular maintained the requirement of 50 percent

³⁸ Tai Cymru Circular 14/91, at B.1.

³⁹ Tai Cymru Circular 14/91, at C.2.

⁴⁰ Tai Cymru Circular 14/91, at B.3.

⁴¹ Tai Cymru Circular 14/91, at C.1.

⁴² Tai Cymru Circular 14/91, at C.2.

⁴³ Associations were required to agree targets for the percentage of available lettings to be used to accommodate homeless referrals: Tai Cymru Circular 14/91, Enclosure D.2.

⁴⁴ Tai Cymru Circular 14/91, Enclosure at D.2.

⁴⁵ Chapter Four, at p.86.

⁴⁶ Tai Cymru Circular 1/98.

nominations to be made available to local authorities, and sought to give guidance on good practice and on the types of lettings to be excluded for the purposes of putting nomination agreements into practice.⁴⁷

Although the 1991 circular represented a structuring of discretion over allocation, it did not remove discretion altogether. The process of nomination and referral was differentiated from tenant selection. Housing associations retained the discretion to select suitable tenants from amongst suitable applicants, including nominees and referrals. This gave housing associations the choice to accept or reject a local authority nomination. The 1991 guidance was explicit in stating that:

'A nomination right is not a right for local authorities to allocate a housing association's housing, it is a right to put forward names amongst which an association will make its own allocations. This is to ensure that associations retain their independence in exercising for themselves their housing management responsibilities.'⁴⁸

However, this was considerably weakened as Tai Cymru further informed housing associations that the priority of nominees for allocation was not to be made dependent on their meeting ordinary allocations criteria. Other factors were made equally relevant. The 1991 guidance stated that:

'[Associations will sometimes be] accepting nominees who would not come at the very top of their own priority assessments, since there can be no absolute measure of "greatest housing need" and because the authority may have its own strategic requirements ... associations should not invoke their own selection procedures as a matter of course.'⁴⁹

Tai Cymru's approach to nominations appears to have met with a mixed response. It is certainly the case that by the mid 1990's the use of housing association accommodation to house applicants nominated or referred by local authorities had risen from the mid 1980's: up from 48 percent of lettings in 1986,

⁴⁷ Tai Cymru Circular 1/98, at paragraph 3.

⁴⁸ Tai Cymru Circular 14/91, Enclosure G.1.

⁴⁹ Tai Cymru Circular 14/91, at G.3.

to 63 percent in 1994.⁵⁰ However, there was a gradual fall in the number of local authority nominees and referrals housed by housing associations in the late 1990's, down to 37 percent of lettings by 1997.⁵¹ Notwithstanding, Tai Cymru's 1997 *Regulatory Requirements* confirmed both housing associations' responsibilities to assist local authorities, and the relevance of formal referral agreements, and included a requirement that:

'Registered Social Landlords should seek formal agreements with each local authority in their areas of operation, specifying how nomination and referral arrangements will work in practice.'⁵²

Assistance to local authorities under the National Assembly

Under the National Assembly housing associations are required to '*work in partnership with relevant local authorities on the allocation of housing*',⁵³ and are expected to assist local authorities to house individuals and families where the authority is under a duty to provide accommodation.⁵⁴ The significance of allocations in Wales-national housing policy context is confirmed as Tai Cymru's 1998 circular on nominations is the only circular to date to have been re-issued by the National Assembly. Whilst the Assembly's *Regulatory Code* appears less rigid on this issue than was the case under Tai Cymru it is still anticipated that associations will work with local authorities to meet their housing obligations to homeless people and vulnerable applicants.⁵⁵ On the procedure for nominations and referrals, the Code requires associations to offer nominations to local authorities without specifying the use of formal agreements or specifying the number of vacancies to be offered. However, Tai Cymru's guidance issued in 1991 and 1998 remains extant so such agreements are virtually obligatory.

⁵⁰ WFHA, (1990-93); and, WFHA, (1994).

⁵¹ Opinion Research Swansea, (1996-97); and, Opinion Research Swansea, (1997-98).

⁵² Tai Cymru, (1997a), at regulation 7.2.

⁵³ WAG, (2005a), at paragraph 1.3.2.

⁵⁴ WAG, (2005a), at paragraph 1.3.2.

⁵⁵ WAG, (2005a), at paragraph 1.3.2.

Housing Association Exclusion Policies

Exclusion from housing association accommodation under Tai Cymru

Exclusions deny applicants access to housing. Under Tai Cymru these were limited by the regulatory framework, which restricted their use save in particular circumstances. Until 1997 exclusions were only permitted where: a person had sufficient resources to obtain housing via the private market; in cases where the association's accommodation was not suitable to meet an individual's needs; or, where housing had been developed specifically to meet the needs of members of a different social group from that of the applicant.⁵⁶ However by 1997, and the publication of revised regulatory requirements for registered social landlords, Tai Cymru had adopted a less restrictive approach so that RSLs were permitted to exclude applicants from housing if proper reasons could be advanced related to housing management. Where this was the case a housing association might be permitted to introduce a Special Allocations Policy subject to approval by Tai Cymru. These were introduced in recognition of the need for housing associations to manage their housing stock to minimize anti-social behaviour, and were intended to provide flexibility to associations to allocate housing so as to minimize the number of disruptive or anti-social tenants housed in one area. Notwithstanding, under Tai Cymru SAPs were exceptional and required to be formally implemented following negotiation between individual housing associations and Tai Cymru. Their purpose was limited and prescribed by regulations, these stated that:

'... special allocations policies are clearly focused on the contribution allocations might make to protect the interests of existing neighbours or tenants, and to prevent or reverse social decline, since, used indiscriminately, they could constitute unnecessary restrictions non access to housing.'⁵⁷

The exceptional nature of SAP's was further emphasized as they were required to be limited to a defined geographical area, and to a maximum of 3 years

⁵⁶ For example, where housing is designed or intended for use by those with special needs, such as the elderly or single parents.

⁵⁷ Tai Cymru, (1997a), regulation 7.4.

duration.⁵⁸ Some flexibility was provided as associations were permitted to depart from needs based criteria through the introduction of '*additional criteria*',⁵⁹ which housing associations were permitted to adopt to facilitate the most efficient use of housing stock, or in consequence of an SAP, or with Tai Cymru's consent.⁶⁰ Despite this the general regulatory regime for allocations remained needs based, and under Tai Cymru the circumstances in which it was permissible to exclude individuals from housing were narrowly drawn. Exclusions were applicable in the main to individuals who had: committed a criminal offence against housing association or a local authority staff; those who had been evicted from a housing association or local authority tenancy; or, those who had substantial outstanding rent arrears.⁶¹

Exclusion from housing association accommodation under the National Assembly

The strictures imposed by Tai Cymru meant that housing associations retained very little flexibility to determine the suitability of applicants for housing other than by reference to need. However, under the National Assembly the approach to exclusions has been modified. In 2001 the Assembly published a report, *Review into Exclusion From Social Housing*,⁶² setting out the findings of research into access to social housing. This considered 28 allocation policies provided by housing associations⁶³ and showed that permitted exclusions featured in a significant proportion of allocations policies: nearly 50 percent of associations surveyed restricted applications where there had been a previous eviction, and just over 50 percent of allocations policies provided for an exclusion to apply

⁵⁸ Tai Cymru (1997a), , regulation 7.6.

⁵⁹ Tai Cymru, (1997a), regulation 7.7.

⁶⁰ Tai Cymru, (1997a), regulation 7.7. Additional criteria could be included in SAP's under regulation 7.5, i.e. referring to the management of housing stock.

⁶¹ These were the exclusions permitted under the 1997 regulations: Tai Cymru (1997a), regulation 7.3.

⁶² The purpose of the research carried out for the report was to consider how the National Assembly might advance its objectives of tackling social disadvantage and promoting social inclusion to deliver settled, socially inclusive communities: NAW, (2001h), at p.17.

⁶³ The research also considered 22 allocations policies provided by local authorities.

where the applicant had been convicted of a criminal offence.⁶⁴ In addition the report found that:

'A number of policies have been adopted by housing providers which either refer directly to anti-social behaviour or certain features of it.'⁶⁵

Almost half of the policies considered provided for exclusion for anti-social behaviour.⁶⁶ The report also noted that due to difficulties in proving such behaviour exclusions for this reason were not widely used, but that nevertheless there was support for exclusions to be used a management tool.⁶⁷ Against this background it is unsurprising that the National Assembly's *Regulatory Code* does not seek to limit the circumstances in which exclusions may apply. However, the Code does anticipate that:

'... associations [will] keep restrictions on access to its housing to a minimum by:

- Keeping waiting lists open;
- Only operating suspension or exclusion policies that comply with Assembly Government Guidance'⁶⁸

Enquiry made to the Housing Directorate of the National Assembly confirms that guidance on exclusions by housing associations has yet to be issued.⁶⁹ In addition where housing associations adopt local lettings policies to take account of local housing conditions, which are the equivalent of SAPs, the Code requires that these should not impose unnecessary restrictions on access.

⁶⁴ The report does not give percentages for housing associations, these are estimated from the table p.24: NAW, (2001h).

⁶⁵ NAW, (2001h), at p.27.

⁶⁶ NAW, (2001h). This is similar to the finding of a report by the Chartered Institute of Housing in Wales in its 2001 titled *Antisocial Behaviour and the Law: An Adequate Response*. This report noted a rise in the use of exclusion on grounds of antisocial behaviour: Chartered Institute of Housing, (2001), at p25. Other research undertaken on behalf of the Chartered Institute of Housing in 2000 showed that 46 percent of housing association landlords operated exclusion policies based on anti-social behaviour: Hunter *et al*, (2000)

⁶⁷ NAW, (2001h), at p.27.

⁶⁸ WAG, (2005a), at paragraph 1.3.1.

⁶⁹ Information provided by the Housing Directorate, 11th January 2007.

Housing Association Allocations: Research Findings

The Purpose of the Research

Under Tai Cymru housing association discretion over allocations was highly structured, in particular by regulation specifying the priorities for allocation and limiting the use of exclusions. The research carried out for this chapter considers the priorities for housing association allocation under Tai Cymru, and the impact of external prioritization in this context. The research findings set out below are therefore relevant to Research Objective Four, as set out in Chapter Five.

For reasons explained in the Methodology, the discussion in this section is limited to an assessment of evidence from housing associations.⁷⁰ The self-completion questionnaire (the 'questionnaire') asked respondents for their views on relevant priorities for allocation, about the impact of Tai Cymru's policies on allocation in general terms, and, adopting a narrower focus, about the obligations on housing associations to assist local authorities. Interviewees were asked about Tai Cymru's influence on allocation priorities, the impact of regulation on discretion, and the influence of local authorities on allocation policies.

The Questionnaire Findings

The priorities for allocation

The data set out in Table 11.1 below shows that respondents were in full agreement on the relevance of allocation policies as a tool to facilitate the distribution of housing amongst those in housing need. This finding is entirely predictable having regard to the primary function of housing associations to meet housing need, and the expectation that this will take place in a fair and transparent manner. The data also shows that respondents identified a number of additional priorities for allocations policies. Significantly, 93 percent of respondents agreed that amongst these should be to provide for sustainable communities. This finding is consistent with the policy agenda of the National

⁷⁰ Chapter Five, at p.125. Collated from research carried out with local authorities in the area of development is however set out in Appendix Eight, and Appendix Ten.

Assembly that envisages a role for housing associations in community development. However, this is less relevant to the position under Tai Cymru which offered only limited support for this function of housing associations.⁷¹ Other data reveals that housing associations also see allocations policies as instruments of housing management: 86 percent of respondents confirmed that allocation is relevant to facilitate the housing management functions of housing associations. However, despite their utility to assist with managing social housing a majority of 66 percent of respondent agreed that a priority for allocations policies should be to limit the use of exclusions. Reference to the completed questionnaires shows that several respondents added a caveat that this was save in the case of exclusion policies aimed at preventing nuisance to neighbours. A possible explanation for this finding is that housing associations see themselves as having a responsibility primarily to meet housing need, and that this is established as the overriding purpose of allocation.

Table 11.1⁷²

The priorities for housing association allocation policies should be:

Response Options ▼	In Agreement*	No Opinion*	Not Agreeing*	Response Rate (%)
To allocate housing amongst those in housing need	15 (100)			100
To enable HAs to develop sustainable communities	14 (93)	1 (9)		100
To facilitate the housing management functions of HAs	13 (86)	1 (9)	1 (9)	100
To limit the use of exclusions	10 (66)	1 (9)	4 (26)	100

* Refers: Number of response (percentage of total possible responses)

The impact of allocations policies under Tai Cymru

The data set out in Table 11.2 below shows that a majority of respondents agreed that Tai Cymru had an influence over the priorities for housing

⁷¹ Discussed in Chapter Seven.

⁷² This table shows extracted findings from Table 20, Appendix Seven.

association allocations policies: 86 percent of respondents thought this was the case. Reference to the full data shows that 33 percent of respondents were in strong agreement.⁷³ Other data reveals that Tai Cymru's influence was restrictive of housing associations use of allocations policies for purposes other than the fair distribution of housing amongst relevant applicants: 86 percent of respondents thought that Tai Cymru limited housing associations' discretion in matters of allocation, and, significantly, 60 percent of respondents thought that Tai Cymru failed to pay sufficient attention to the need to develop sustainable communities. This suggests that priorities for allocation identified by housing associations were overlooked so as to ensure access to the widest possible population, i.e. having regard to the primary function of meeting housing need. This is confirmed as 60 percent of respondents agreed that Tai Cymru failed to pay proper attention to housing associations' management needs in establishing priorities for allocation, whilst 66 percent agreed that Tai Cymru unnecessarily restricted the use of exclusion policies.

(Table 11.2 overleaf)

⁷³ Table 21, Appendix Seven.

Table 11.2⁷⁴

To what extent do you agree or disagree with the following:

Response Options	In Agreement*	No Opinion*	Not Agreeing*	Response Rate (%)
TC influenced the priorities for HA allocation policies	13 (86)		2 (13)	100
TC restricted HA discretion in matters of allocation	13 (86)		2 (13)	100
TC failed to pay sufficient attention to the need to develop sustainable communities in establishing priorities for allocation	9 (60)	1 (6)	5 (33)	100
TC failed to pay sufficient attention to HAs' management needs in establishing priorities for allocation	9 (60)	1 (6)	5 (33)	100
TC unnecessarily restricted HAs' use of exclusion policies	10 (66)	1 (6)	4 (26)	100

* Refers: Number of response (percentage of total possible responses).

Allocation and local authorities

The data shows a relatively high level of support for housing associations to assist local authorities: as shown in Table 11.3 below, 66 percent of respondents thought housing associations ought to provide assistance to local authorities by making lettings available. The same proportion of respondents thought that associations should work with local authorities to establish the priorities for allocation. This evidence suggests that the regulatory framework, which virtually mandates cooperation, to some extent reflects attitudes amongst housing associations in any event. However, whilst there was support for the principle of cooperation there was considerably less enthusiasm for housing associations to prioritize local authority nominations: just 26 percent of respondents agreed that this should be the case. There was a slightly higher level of support for priority to be given to homelessness referrals, although this was still the minority opinion, i.e. 40 percent in agreement, with 53 percent of respondents disagreeing. This

⁷⁴ This table shows extracted findings from Table 21, Appendix Seven.

would tend to suggest that housing associations see themselves as having a responsibility to make accommodation available to assist local authorities, but not to the extent that such a duty is imposed on the movement. This is explicable as the statutory code on homelessness places the duty to secure that accommodation is made available to suitable applicants firmly on the local authority.⁷⁵

Table 11.3⁷⁶

Housing associations should:

Response Options ▼	In Agreement*	No Opinion*	Not Agreeing*	Response Rate (%)
Offer assistance to LAs by making lettings available	10 (66)		5 (33)	100
Give priority to LA nominees	4 (26)	1 (6)	10 (66)	100
Give priority to LA homelessness referrals	6 (40)	1 (9)	8 (53)	100
Work with LAs to establish the priorities for allocation	10 (66)	1 (9)	4 (26)	100

* Refers: Number of response (percentage of total possible responses).

The Interview Findings⁷⁷

References to percentages below are approximations from the data.

Tai Cymru's influence over allocation priorities

It is apparent from the interview data that Tai Cymru was seen as having a robust agenda on housing allocation, and as an influential body in this area. Approximately 72 percent of housing association interviewees suggested Tai Cymru had an influence in establishing the priorities for the allocation of housing association housing.⁷⁸ This confirms the findings from the questionnaire. Several of the interviewees identified the methods by which Tai Cymru sought to exert its control over associations in this area, these included: regulation, guidance and

⁷⁵ i.e. under Part VII of the Housing Act 1996.

⁷⁶ This table shows extracted findings from Table 22, Appendix Seven

⁷⁷ Interview questions 8 to 10, Appendix Five.

⁷⁸ Table 8, Appendix Nine.

audit. The interview data confirms the effectiveness of Tai Cymru's policy approach to achieve its objectives, with several interviewees commenting that Tai Cymru was interventionist in the area of allocations, for example:

"I think in all areas they were influential, through regulation, guidance, codes of practice, and guarantees for tenants, and I think that they did dictate the priorities. I think they were influential because of the fact that they were very hands on. There was a lot of guidance and there were lots of circulars; the process was very tightly audited. There was always a great deal of interest and quite a high emphasis placed on allocations and access to housing. It was less dictated by local authorities so I think they felt the need to monitor us extremely closely; there was less of a link with having to assist the local authority to meet their strategic priorities."

HA Interviewee D

The evidence establishes that Tai Cymru was seen as having a significant influence over the content of housing association allocations policies: in particular to ensure that associations were meeting housing need. A number of interviewees noted that as a consequence housing associations tended to adopt similar criteria for allocation, and that this had led to the adoption by many of points based letting's policies, with priority for allocation determined almost exclusively by reference to need. Comments included:

"[Tai Cymru was] extremely influential, because there was a whole circular addressed to the allocation of housing which basically said this is what we expect to see in your allocations system. And you will find that our priority criteria for allocation will all be similar. Overall the weighting of priorities will be in the same categories, I'd suggest, for all associations."

HA Interviewee C

This raises the possibility that housing associations were inhibited in their capacity to meet the housing needs of a diverse range of social groups.

It is also apparent that several of those interviewed saw Tai Cymru's approach as rigid and not appropriate to reflect the needs of housing associations: again

reflecting the questionnaire findings. A number of participants sought to contrast the position under Tai Cymru with that under the National Assembly. Comments on the regulatory framework generally included:

"The framework that was in place probably until 2/3 years ago ... was pretty much that laid down by Tai Cymru. So I'd say they were pretty effective in that most associations operated similar procedures and had similar ways of allocating accommodation. So they did that quite effectively from their point of view. I'm glad that things have moved on a bit and caught up with society. Those old traditional ways of allocating properties, and their rigidity and probable lack of transparency needed to be up-dated as society moved on."

HA Interviewee HA

Allocation and discretion under Tai Cymru

The interview evidence also suggests that Tai Cymru's framework on allocations was inflexible, in particular that it did not provide sufficient scope for housing associations to allocate housing so as reduce the possibility of future management problems linked with anti-social behaviour. Several interviewees made the point that where an association sought to exclude an individual from consideration for housing this was made difficult under Tai Cymru, and that the adoption of an SAP was very much the exception - and in any event closely monitored. For example:

"... the regulatory requirements, performance expectations and performance targets set out very clear criteria in terms of your lettings policy and what [Tai Cymru] wanted to see in it. They set out exclusions policies and said you are not allowed to exclude somebody unless they did this or that; they were very, very restrictive about who you could exclude. It was a points system, and if you wanted to stray from it you had to have a special lettings policy. Still it was scrutinized very intensely and you had to justify it and they would only allow it for a time limited period with very clear targets for review. We couldn't exclude people unless they'd been excluded by the local authority, for things like anti-social behaviour, drug-dealing."

HA Interviewee E

Overall the evidence points at a restrictive and inflexible allocations regime imposed on housing associations under Tai Cymru. Although its priorities for allocation reflected the primary function of associations as social landlords, the questionnaire evidence raises the possibility that Tai Cymru's narrow approach limited housing association discretion to allocate so as to ensure balanced, and therefore sustainable, communities. This is confirmed by the interview data with many interviewees suggesting that the focus on meeting general housing need had had an adverse impact in this area. A number of interviewees commented that Tai Cymru was unduly restrictive in the area of allocations, noting that having regard to the regime established by the regulator housing associations found it difficult to allocate accommodation in a way that balanced the needs of the individual against those of the community. For example:

"They were unnecessarily prescriptive. So they insisted on a points scheme that put the most prominently in need at the top of the list every single time ... They didn't listen to the wider issues then about how do we let these properties that helps us to address housing need whilst at the same time developing communities ... They were very restricted in what they were prepared to see as a legitimate yet more diverse way of letting properties."

HA Interviewee A

There was though some suggestion that Tai Cymru's approach to allocation reflected the overriding priority of the housing association movement, i.e. to meet housing need, and therefore had only limited relevance to restrict the use of allocation policies as a management tool. For example:

"I can't think that Tai Cymru had any particular influence. I don't think it made any difference, trying to look back between 1976 to now access has changed more in recent years ... I would say that your standard point scheme carried through the whole, period [1974-1999] I don't think it changed very much really. They reflected what we were doing anyway. I can't remember a circumstance when we changed our allocations policy to reflect Tai Cymru requirements."

HA Interviewee G

This was the minority view with most interviewees recognizing that Tai Cymru had a restrictive influence of Tai Cymru in this area. However, when asked directly about the impact of Tai Cymru's approach to allocations on housing association discretion just 18 percent of interviewees commented that regulatory requirements were a substantial interference with discretion.⁷⁹ The likely explanation is that the regulatory framework on the whole did not limit the discretion to allocate to meet need, but was more relevant to limit exclusion.

The influence of local authorities on allocations

Several of those interviewed indicated that they saw the requirements imposed on housing associations to co-operate with local authorities as no more than a confirmation of the movement's responsibility to work with the public sector to meet housing need. The interview data shows that amongst the interviewees there was a general acceptance that housing associations should provide assistance to local authorities to relieve housing stress, for example:

"... it's an accepted fact of life that we need to work with the local authority to make a reasonable supply of nominations available to them, there's no argument there ... they don't affect our discretion in that sense. Likewise referral arrangements, we enter into those voluntarily so they become part of the whole process of letting out homes ... because of the consequences of occasions where they've adopted a prescriptive approach they are now prepared to work with housing associations on more diverse ways of achieving the same aims."

HA Interviewee A

"... we work with the council. I understand that different associations do different things but I don't think that it's going to give us any great grief. We do house a significant proportion of homeless people ... we feel our job is to help the council and if we're there to help people in need then we've got to do our share to help. They've got to be housed somewhere and that's our job."

HA Interviewee B

⁷⁹ Table 9, Appendix Nine.

However, a number of interviewees suggested that the imposition of a formal requirement to offer assistance to local authorities had the potential to cause management difficulties that could, in the long-term, impact on housing associations' efforts to develop sustainable communities. Several of those interviewed criticized regulatory and other guidance on nominations and referrals as failing to provide sufficient discretion to housing associations to take account of community needs and to reject individuals put forward by the local authority for housing. For example:

"[The guidance stated a] minimum 50 percent of your properties will be made available to the local authorities and you had limited discretion on who you could accept or reject, you'd take what you were given ... when you combined people in greatest housing need with mixed-funding and the developments taking place, and St.Mellons is a prime example, of the levels of deprivation, and all the management problems that came out. We've got a responsibility to ensure that there are balanced communities and we need to look at how we achieve it."

HA Interviewee E

This offers further explanation for the questionnaire findings of low levels of support for local authority nominees or referrals to be given priority for allocation.

It was noted by a number of interviewees that local authorities are in a position to make demands of housing associations and to influence the way in which they go about allocating housing. One interviewee raised the concern that this might lead to a loss of independence, commenting that:

"We're very much now seen as a body that has to assist the local authority to meet its strategic objectives particularly under things like homelessness legislation and so all this brings us more into line with the legal requirements placed on local authorities, so you've got less flexibility on what you can do, so you lose quite a large degree of discretion. If you want to work with a local authority that's when they apply the pressure ... we've been negotiating common allocations policy with [names authority] ... there have been concerns around independence but I think we will go down that route ... as part of it they wanted 70 percent nominations to assist

with their homelessness problem which severely restricts what you can do with your vacant stock ... that's what they want and that's what they think our role should be."

HA Interviewee D

An interesting perspective was provided by one interviewee who drew attention to the possibility that the extent of interference by a local authority in the area of allocations may be dependent on the structure of local housing markets, in particular the demand for social housing. In this context it was suggested that nominations and referrals might be less of a concern if a local authority is not in a position to take-up its total allocation of housing. This interviewee commented:

"Obviously the council have a right to nominate and that interferes with your discretion to a degree, in practice in huge chunks of Wales nominations have been few and far between, I think that's changing now. In low demand areas - all the valleys, Swansea, the West - the local authorities have not been wanting to nominate ... I don't think the regulatory requirements have been that significant, I think it's more like market changes have been significant."

HA Interviewee G

Both Tai Cymru and the National Assembly have encouraged associations to take account of local authority views when devising an allocations policy. Interviewees were therefore asked how closely they work with local authorities in developing allocation policies. The interviewees' responses suggests that local authorities do not directly influence the content of housing association allocation policies; as interviewees on the whole indicated that local authorities are consulted but do not participate in the process of determining priorities. However, it is apparent that housing associations see themselves as having to work closely with local authorities in this area: this was indicated by a number of interviewees. To this extent therefore the views of local authorities must be seen as having some significance on the priorities for allocation. 45 percent of interviewees stated that their association worked closely with local authorities over its

allocations policy, whilst 36 percent said that they had consulted with the authority.⁸⁰ Comments on this issue included:

"... we involve them [the local authority] because we work closely with them. The last time we did a review of allocations they basically said this is what we want to see and can we lift some bits to put in ours. So yes we work together on it. We are different organizations but they think what we do is the right thing and they don't have a problem with what we do, but we don't actually sit down and draft it together."

HA Interviewee B

"If we're making major changes we seek agreement from the local authority before we do it, minor changes we'd notify them but it would be a token thing. As the market becomes more active this will become a big issue. A big issue at the moment is local authority nomination of people who've got support needs ... it varies hugely from area to area, in Cardiff for example it's always been close because the markets always been tight because there's a surplus of demand ... in areas where you've got a surplus of supply over demand discussing your allocations policy becomes less relevant really."

HA Interview G

What is suggested by these findings is that in practice there is a cooperative working relationship between housing associations and local authorities over the content of allocations policies, and that local government is an influential consultee.

Synthesis and Conclusion

It was noted in Chapter Seven that housing policy in Wales strongly supports a role for housing associations in meeting housing need; an aspect of which is the allocation of social housing. Tai Cymru was keen to ensure that publicly subsidized social housing provided by the housing associations in Wales was made available to those in greatest housing need: this as part of establishing the role of the housing association movement. In addition Tai Cymru was concerned

⁸⁰ Table 10, Appendix Nine.

to ensure that allocation was carried out under a transparent system, with clear priorities. To these ends it sought to structure housing association discretion to discriminate in favour of applicants in housing need, and to restrict the use of exclusion policies. Regulations and circulars were the means by which it sought to impose its agenda on housing associations. Tai Cymru's approach to allocations also required cooperation with local authorities. Once again the regulatory framework, as well as circulars, provided the means by which housing associations could be directed to a close working relationship with local authorities.

The evidence from the survey suggests that through the imposition of its priorities Tai Cymru influenced the way in which housing associations exercised their discretion to set priorities in the area of allocations, as well as limiting their capacity to use allocation as a management tool. Although housing associations support the fair allocation of social housing it is apparent that other priorities are identified for allocations policies, in particular to assist with the discharge of a community development function. In this context the approach adopted by Tai Cymru toward allocations failed to take account of aspects of allocation relevant to housing management, and to community development, in particular by limiting discretion and the use of exclusions as a management tool. This is significant as allocation is a key management function, and where there is external prioritization this has implications for housing associations' capacity to take account of issues arising and relevant in different geographical areas, and to act in the best interest of communities. Taking the survey findings as a whole it is concluded that an impact of housing policy implementation under Tai Cymru in the area of allocations was to direct attention away from management issues and toward issues of distribution.

In the area of nominations and referrals it is apparent that there is considerable support for associations to work with local authorities and to offer assistance with the discharge of their housing function. In this context Tai Cymru's insistence on

the use of nomination and referral agreements may be seen less of an imposition on housing associations, and more an attempt to structure the referral procedure and the relationship between local authorities and the housing association movement. Tai Cymru's approach to nominations undoubtedly encouraged housing associations to work closely with local authorities in the area of allocations - as is confirmed by the evidence. However, there is not sufficient evidence from which it might be concluded that this represented an interference with operational discretion.

CONCLUSION

This study has sought to analyse housing associations in Wales in the context of the voluntary sector, and to consider issues arising that are otherwise overlooked in the literature on housing. The evidence reported has provided new insights into the significance of housing policy implementation in Wales for housing associations in their capacity as voluntary organizations, on the influence of Wales-national policy institutions in this regard, and on the relevance of accounts of the voluntary sector to voluntary housing as a discrete non-profit sector. This concluding chapter will re-visit themes from earlier chapters to summarize key points and to develop a model to describe the housing association movement in Wales in the context of the voluntary sector.

Focusing on structural and operational norms Chapter One provided an introduction to the voluntary sector. Non-profit distribution and voluntarism are fundamental to establish status, as are independence and self-governance. The first of these is hardly controversial and may be assessed by reference to the arrangements made for remuneration of owners and/or shareholders. As to voluntarism: this requires that there should be input from individuals who give their time without financial reward. For housing associations, as well as other voluntary organizations that employ staff to discharge day-to-day service-providing and management functions, the gratuitous contribution of board members is relevant as confirmation of a structural link with the non-profit sector.¹ Non-profit distribution and voluntarism may be established objectively: similarly, for formal voluntary organizations independence may be determined by reference to constitutional independence. From this

¹ An issue that arises is the extent to which these voluntary organizations benefit from the input of unpaid volunteers. Although it would be interesting to examine the contribution of volunteers in this context, the issue is relevant to large-scale voluntary concerns and is not necessarily applicable to all organizations operating at industry level where public funding has underpinned growth. This study has therefore focused on independence as an aspect of the voluntary sector's relationship with government arising as a consequence of its reliance on public subsidy more directly affecting all subsidized non-profit organizations.

perspective the introduction of a corporate non-profit sector supports a distinct institutional identity for the voluntary sector, and may be seen as confirming the sector's *bona fides* through recognition of its beneficial social function. Despite this advantage, statutory intervention to structure the registered non-profit sector may be seen as a threat to independence, as voluntary organisations that chose to adopt a corporate form are required to submit to a regulatory jurisdiction. In discrete industries, such as housing, where government has sought to introduce a secondary regulatory framework, this may be seen as further undermining the independent status of discrete non-profit sectors. As was noted in Chapter Two, for industry based voluntary organizations the threat to independence is made more significant as regulation may be narrowly focused, in particular to refer to operational issues.

Concerning the relationship between government and the voluntary sector, and the political context: it was noted in Chapter One that for long periods during the twentieth century the state dominated as a welfare service-providing institution. In the post 1945 period the voluntary sector was secondary to the welfare state, but during the last quarter of the century it emerged to play a significant role in the delivery of public welfare services. A long-term legacy of social policy during the period of dominance of the welfare state is that welfare services are often seen as the responsibility of the state, or at least under the control of government. The introduction of quasi-markets in the 1980's and 1990's was an attempt to reverse the public sector's monopoly on public services, including in the area of welfare, as the voluntary sector was given the opportunity to become more involved in service delivery. However, voluntary organizations that rely on financial support from government to underpin services are now required to work toward objectives determined by ministers, and the increased use of contract and grant as modes of introducing public funding facilitates the imposition of an agenda imposed by ministers. It is entirely predictable therefore that public

investment in the voluntary sector will raise the expectation that supported organizations will contribute to meeting the aims of public policy, including at industry level. This is an aspect of accountability to government and government departments. In this context the introduction of regulation alongside contract and grant increases the potential for ministers, directly or indirectly via appointed agents, to exercise control over subsidized voluntary organizations. For non-profit enterprises operating in relevant industries the issues that arise are: whether or not the intervention of government to direct and control their activities amounts to an undermining of independent status; and, if so, the extent to which this impacts on voluntary status. The relevance of these concerns is such that accounts of the voluntary sector often treat as axiomatic that resource dependent regulated voluntary organizations operate as vehicles for the implementation of government policy.

In the case of voluntary housing, a brief review of housing policy in Chapter Four established the significance of government decision-making to the work of the non-profit sector as a provider of affordable housing. The growth and entrenchment of the welfare state in the 1940's and 1950's was relevant to maintain housing associations on the fringes of social housing provision. The 1980's and the 1990's saw associations promoted as the primary development vehicle for new subsidized housing as public finance was increasingly made available to the housing association movement. This was introduced by grant, with eligibility restricted to registered organizations, so that following the implementation of the *Housing Act 1974* the housing association movement became increasingly dependent on public subsidy. This remains true of contemporary housing associations, notwithstanding the introduction of mixed-funding in 1989. Having regard to the historical context Malpass describes the housing association movement as '*a convenient mechanism for the pursuit of government objectives, which have not always been congruent with those that associations have set for themselves.*'²

² Malpass, (2000), at p.259.

Malpass is not alone in this assessment: the literature on housing and housing associations suggests a strong link between government priorities and the work of housing associations.³ Whilst it is not disputed that housing policy has had a significant impact on the housing association movement it is here argued that analysis of voluntary housing is often too reliant on historical patterns of growth and development to establish the relevance of government policy. It is further contended that the links between housing policy, resource dependency, regulation, and the work of housing associations need to be fully examined for their impact on housing associations before conclusions may be drawn about their function as vehicles for policy implementation, their independence, and their status as voluntary organizations distinct from what remains of the welfare state in housing.

The maintenance of independence is important as it enables the housing association movement to meet with expectations raised in accounts of the voluntary sector, which promote non-profit organizations as an alternative to the public sector. As housing associations are often set up to meet a particular need for housing identified by individuals at local level their priorities may be different from, or narrower than, those of macro housing policy. In order to meet these priorities, as well as expectations established for the voluntary sector, housing associations must be able to act independently in the best interests of local communities. Further, independence provides a justification for the role of housing associations within the housing system. This is undermined where the movement is seen as part of the state, or as a vehicle for policy implementation. In these circumstances positive accounts of the voluntary sector cease to have any application: housing associations become, *de facto*, mere instruments of housing policy, and it is no longer relevant to see them as distinct from the public sector. If this were established as a consequence of housing policy implementation the questions that would inevitably arise are: Why have

³ See, for example: Cope, (1999); and, Baker, (1976).

housing associations? Why not return local authorities to their role as developers and managers of social housing? The maintenance of independence is therefore highly significant for housing associations to facilitate and preserve their role within the housing system.

In Wales the way in which the housing association movement has developed requires a singular analysis of the relevance of housing policy to voluntary housing, and to issues of independence. As was discussed in Chapter Four, the Wales voluntary housing movement was slower to establish itself than its English counterpart. It was the cost-rent experiment of the 1960's, and the introduction of Housing Association Grant in 1974 that provided the impetus for the formation of voluntary organizations specifically to take advantage of public subsidy. In contrast to the position in England, this represents the genesis of the housing association movement in Wales. For this reason it is suggested that housing associations in Wales might not be seen as a voluntary sector response to opportunities provided by housing policy, but as a direct consequence of policy decision-making and implementation. Further, because of the way in which housing associations have developed as a movement in Wales the likelihood is that they will be seen as operating to priorities established in housing policy, and therefore as agents for the implementation of policy. This raises the real possibility that housing associations will be treated as part of the welfare state, and as closely allied with the public sector in Wales. The research carried out has provided insights relevant to these issues, in part by considering how housing associations are perceived. It was recognised at the outset (and is implicit in the methodology), that the determination of status is complicated by the possibility of subjective assessment. The evidence reported in Chapter Six confirms that in the case of housing associations the subjective content is highly significant. In this context structural criteria used to define a voluntary organization are inefficient, and their utility limited, i.e. so as to bring housing associations into proximity with the wider voluntary sector. What appear to be

more significant to influence perceptions of status are operational factors relevant to housing associations. The aggregated evidence from Chapter Six has clearly shown that the complexity of housing associations makes it extremely unlikely that their status will be uncontroversial: as the selection of relevant factors, and the weight given them, is entirely a matter of preference. However, this thesis maintains that housing associations links with the voluntary sector are substantial at a structural and functional level. What is significant about the evidence discussed in Chapter Six is that has shown that different housing institutions in Wales may differ in their perception of housing associations, and that operational factors may not be similarly regarded by. What is not confirmed by this evidence is the suggestion that housing associations should be removed from the Wales voluntary sector and re-located within the public sector. It is therefore argued that for the purposes of analyzing housing associations in Wales their status is best described as uncertain or contingent. To some extent this is anticipated as, despite similarities, housing associations do not meet with intuitive conceptualizations of a voluntary enterprise, nor with accounts of the voluntary sector discussed generally in Chapter One, and relevant to Wales in Chapter Three.

Where there is uncertainty as to status it is relevant to ask how housing associations meet with expectations of the voluntary sector as a service-providing institution. It is anticipated that the sector will operate to meet the needs of those excluded by the private sector, and/or to cater to minority or disadvantaged groups otherwise overlooked by the public sector. As was discussed in Chapter Seven, the primary role of housing associations in Wales is identified as to meet housing need through the delivery of housing services. In this respect there is no lack of congruence between housing policy as implemented in Wales, the priorities of the housing association movement, and expectations of the voluntary sector. What is apparent is that the movement in Wales acknowledges, and has sought to discharge, many of the roles given by macro housing policy in any event, as well as those

identified by Wales-national policy institutions. Despite this it is apparent that under Tai Cymru a number of housing functions were imposed on housing associations. This casts doubt on the competence of the board as ultimately responsible for determining the role of a housing association; as the regulator is able to exert considerable influence over the selection and discharge of housing association functions. A similar argument may be made in relation to local authorities. However, whilst the evidence discussed in Chapter Seven may suggest role determination by the regulator as a feature of housing associations in Wales this is not what is contended in this thesis relevant to the general housing function. The difficulty for analysis presented by the data discussed in Chapter Seven is that it refers to housing association roles in their broadest sense. This problem is mitigated by the research carried out for Part Three, which sought to investigate the influence of the regulator on narrower operational priorities. Significantly the reported evidence in Chapter Nine, on development, revealed that for some housing associations the importance of securing public subsidy was such that operational priorities were relegated, and in some cases set-aside, in favour of increased growth to meet with expectations established by the regulator. Although a degree of control over development is anticipated having regard to the substantial contribution of public funds in this area, Tai Cymru's focus on output in new social housing led inevitably to reduction in refurbishment work, limiting housing associations' contribution to community regeneration. Although much of the evidence referred to in Chapter Nine confirms what is anticipated, i.e. that development takes place consistent with the availability of funding, it is nevertheless relevant to show that Tai Cymru exercised considerable influence in this area. Amongst the most significant findings from Chapter Nine is that housing associations' capacity to meet locally identified need, and to deliver a diversity of provision - both of which would otherwise provide continuity with the aims of the wider voluntary sector - were compromised as Tai Cymru took steps to assert its development agenda. What is suggested in this thesis is that under Tai Cymru the authority of the board to establish

development priorities was denuded, so that between 1989 and 1998 housing associations were operating so as to meet with an agenda established by the regulator.

Chapter Ten and Chapter Eleven considered the influence of Tai Cymru in the operational areas of rent setting and access. It was noted in Chapter Ten that Tai Cymru's policy on rents was well established and firmly implemented. Although specification of an affordable rent may be seen as consistent with housing associations' role within the housing system, the most striking conclusion from this chapter is that Tai Cymru's agenda on rent benchmarking forced housing associations to maintain rents at an artificially low level. This is made more significant as rent capping does not feature in statute implementing housing policy post 1989, and seems unnecessary as housing associations support affordable rents in any event. Artificially reducing the level of rents is contrary to the purpose of introducing private sector equivalent tenancies for housing associations, and undermines the board in the discharge of its governance function. Significantly, as a result of rent benchmarking housing association income has been reduced, thereby limiting their capacity to engage in community regeneration. It is contended that Tai Cymru's approach to rents policy has had a direct and significant impact on housing associations, and has gone beyond merely re-enforcing their role as providers of social housing. In its effect it has imposed a system of rent control on housing associations.

In the area of access to and allocation of housing association accommodation, as discussed in Chapter Eleven, the findings reveal the impact of policy implementation as less significant to establish Tai Cymru's influence on housing association priorities than in the other operational areas discussed. Although there has been a structuring of housing association discretion through the introduction of nomination and referral agreements with local authorities, this is not inconsistent with the movement's function of

meeting housing need. However, the reported evidence also shows that under Tai Cymru housing associations were restricted in their ability to use allocation as a management tool; as the regulator failed to take account of aspects of allocation relevant to housing management, and sought to limit discretion and the use of exclusions. It is argued that as a consequence under Tai Cymru, in the area of allocations, attention was diverted away from management issues and toward issues of distribution as a priority determined by the regulator.⁴

What the research carried out for this study has shown is that when analysing housing associations from the perspective of the voluntary sector it is possible to see the impact of housing policy in broad and narrow perspective. At a broad level, focusing on status and role, the way in which policy is implemented in Wales supports aspects of housing associations as voluntary organizations. This is anticipated as their assumed membership of the voluntary sector provides a justification for their engagement by housing policy in any event. It would not be appropriate for Wales-national policy institutions to seek to undermine their independence from the public sector in the way they go about implementing housing policy. But it cannot be presumed that policy institutions will yield responsibility for determining operational priorities to housing associations where substantial public investment is present. At the very least there is an expectation of accountability for decisions and actions. Accountability for housing associations was discussed in Chapter Eight. It was noted that regulatory accountability represents a weakness in the structuring of housing associations with the possibility that this undermines independence. Although

⁴ For reasons noted in the Methodology, this study has not sought to take into account the impact of the National Assembly's implementation agenda and its relevance to the issues discussed above: this remains suitable for further investigation. It is worth noting however that the instruments by which Tai Cymru sought to exercise control, i.e. by the allocation of funding, by regulation and circular, are relevant to the exercise of control by the National Assembly. As the primary policy institution in housing in Wales the Assembly is in a position to control and direct housing associations in the key operational areas of development, rent setting and allocations.

the regulatory context discussed in Chapter Six and Chapter Seven offered a degree of support for housing associations as voluntary organizations (structural and functional), the research carried out for chapters in Part Three confirmed regulation as relevant to establish priorities for development and rent setting, and to a lesser extent, allocation. In these narrow operational areas it is apparent that regulation, in combination with control over discretionary funding, and other instruments of housing policy, allowed Tai Cymru to exert a significant influence over the operational priorities for housing associations.

To return to the issue of whether or not housing associations in Wales ought to be seen as mere vehicles for the implementation of housing policy. It is contended that the influence of Tai Cymru over narrow operational priorities for housing associations was such that it exercised control and direction over operational activities. This conclusion is justified by the survey findings, and in particular by the findings from Part Three. It is apparent that in response to prioritization by Tai Cymru in several areas housing associations were prepared to modify or relegate their own priorities. It is argued that as a consequence of housing policy implementation under Tai Cymru housing association independence was compromised in favour of an operational agenda established by the regulator. It is anticipated that where services are supported by public subsidy there will inevitably be reference to priorities established as a pre-condition for support, in particular in the way in which funded services are organized and delivered. Notwithstanding, it is here argued that in the case of housing associations, the influence of the regulator has been so significant that serious doubts arise as to the utility of accounts of the voluntary sector to describe and identify housing associations in Wales. This leads to the difficulty of how to describe the Wales housing association movement. It would be inappropriate to include associations within the public sector. This is because they share structural characteristics with paradigm voluntary organizations sufficient to differentiate them from public authorities.

Connections with the voluntary sector may also be argued as a reason for excluding housing associations from the private sector, even though aspects of their funding structures suggest similarities with business and private enterprise. The concept of a social enterprise may therefore be an appropriate descriptor. However, this is a policy construct convenient to identify a particular type of voluntary organization for public policy purposes. It adds nothing to the definition of a voluntary organization, and is predicated on the assumption of voluntary status - which is here in doubt. Social enterprise is inadequate to fully describe housing associations, or indeed any other discrete non-profit sector that is heavily resource dependent and subject to control and direction from an authoritative body.⁵ What is concluded is that existing accounts and terminology are inefficient to identify housing associations in Wales. It is argued that in order to analyze associations from a voluntary sector perspective it is necessary to establish a number of structural, functional and operational descriptors capable of encapsulating the characteristics of the housing association movement in Wales. The proposed descriptors for registered housing associations are:

Structural

1. Housing associations are:
 - a. formal organizations;
 - b. non-profit distributing;
 - c. reliant on volunteers to discharge a governance function.
2. Housing associations are constitutionally independent from the public sector.
3. Housing associations have submitted to the jurisdiction of a regulator and are publicly accountable via regulation.
4. Submission to the jurisdiction of a regulator is voluntary but is a pre-requisite to enable housing associations to access public subsidy.

⁵ It follows that this thesis questions WAG's suggestion of housing associations as examples of a social enterprise: see Chapter Six, n.40 and accompanying text.

Functional

5. Housing associations provide services in the nature of public welfare services.
6. The primary function of a housing association is to meet housing need as an alternative to both the public sector and the private sector.
7. The primary function of a housing association is consistent with housing policy and with its implementation in Wales, and the delivery of this function is largely supported by public subsidy, to this extent they are resource dependent organizations.

Operational

8. Housing associations function within an operational framework established by the regulator.
9. Housing associations are not under the direct control of the National Assembly (previously Tai Cymru, therefore the regulator), in the conduct of their day-to-day activities.
10. The extent to which housing associations are able to operate as independent organizations to determine operational priorities is dependent on decisions taken by the regulator; they are not in a position to act without reference to the priorities of the regulator.
11. Housing associations operate strategically having regard to priorities established by both Wales-national and local policy institutions (local government); they are not in a position to act without reference to the priorities of these institutions.
12. Housing association operational priorities may be subject to modification and/or change having regard to the priorities of the regulator and strategic priorities established by policy institutions.

As this research is narrowly focused geographically it is not suggested that these descriptors should be applied to describe housing associations in the United Kingdom generally.

The descriptors set out above encapsulate housing associations in Wales. They are sufficient to locate housing associations relevant to the Wales voluntary sector by reference to structural and functional descriptors, and to the public sector by reference to operational descriptors - in particular to recognise proximity to both. In addition they adequately describe consequences of resource dependency and regulation for the housing association movement. The structural factors identified include reference to voluntary sector characteristics, but do not require housing associations to demonstrate independence: rather this is assessed by reference to operational factors. The functional descriptors recognize the importance of housing associations as service-providing organizations in policy context, but also pay attention to accounts of the voluntary sector that establish its role in meeting need. The operational descriptors identified are appropriate to highlight the differences between housing associations and other organizations properly described as within the voluntary sector, including that as resource dependent and regulated voluntary organizations they may be subject to external prioritization.

It may be argued that the model suggested goes too far in undermining independence. However in this respect the descriptors are supported by the weight of evidence. It is perhaps more likely that they do not go far enough, and that housing association operational priorities ought to be confirmed as secondary to those of the regulator. This possibility was considered, however, housing associations are able to establish their own priorities. Although the regulator may impose sanctions where there is a breach of regulations, and may consider withdrawal of funding in the long-term, these may be seen as acceptable consequences to allow an association to achieve its objectives. Save in the case of actual mismanagement, a housing association board may elect to adopt and pursue an operational agenda without deference to guidance offered by the regulator. For this reason it is not contended that

housing association priorities are, in all cases, secondary to those of the regulator.

The descriptors suggested for housing associations have relevance for other resource dependent discrete non-profit sectors; although some modification of the structural and/or functional descriptors may be required to take account of industry relevant differences between discrete non-profit sectors. For example, not all industries in which non-profit organizations operate will be subject to regulation. In these circumstances contract and/or service agreements will provide a form of localized regulation. As was noted in Chapter Two, contract provides the opportunity for a funding organization to establish a form of local level regulation by way of terms introduced into the contract document. Similarly, service-level agreements will provide the framework for the operation of grant-aided organizations. In either case, funding is likely to be made available within a strategic context. Reference to relevant documents will establish what are the expectations for funded voluntary organizations. The application of operational descriptors, and assessment of their relevance to undermine independence, is then a matter for subjective assessment. What is intended is that the proposed descriptors should be used to identify where a non-profit organization meets with criteria relevant to describe the voluntary sector by reference to structural characteristics, and to confirm the relevance of public policy to the discharge of their service-providing functions. Attention is then directed to the impact of engagement by public policy for independence and self-governance. To this extent the operational descriptors set out at (8)-(12) are predictive.

One further point worth noting is that where this model is applied in the future it will be necessary to take account of the relevance of the National Assembly's Voluntary Sector Scheme. This does not undermine the validity of the descriptors to identify particular types of non-profit organizations, or to highlight issues arising as a consequence of engagement by public policy.

Rather, the Scheme will be relevant to establish the extent to which the National Assembly offers actual, and not just rhetorical support for independence, and is therefore relevant to assess the impact of policy engagement by reference to the operational descriptors.

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Appendices

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Appendix Two	Local Authorities in Wales
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APPENDIX ONE

Housing Associations with General Needs Stock in Wales:

January 2005

Housing Associations with General Needs Stock in Wales: January 2005

Information on registered housing associations taken from: WFHA, (2004/05)
and www.welshhousing.org.uk

Associations shown in bold were interviewed for this study

HA = Housing Association

CT = Cymdeithas Tai

1. Aelwyd HA
2. Baneswell HA Ltd
3. Bro Myrddin HA
4. **Cadwyn HA**
5. Cantref CT
6. **Cardiff Community HA Ltd**
7. Castle HA (Wales) Ltd
8. **Charter HA (1973) Ltd (Member of the Seren Group including Fairlake)**
9. Clwyd CT
10. Clywyd Alyn HA Ltd
11. Cynon Taff HA Ltd
12. Dewi Sant CT
13. **Eastern Valley HA Ltd**
14. Eryri CT
15. Family HA (Wales) Ltd
16. Glamorgan and Gwent HA Ltd
17. **Gwalia Housing Group Ltd (housing arm is Tai Cymdogaeth)**
18. Gwerin (Cymru) HA
19. Hafan CT
20. Hafod HA Ltd
21. **Merthyr Tydfil HA Ltd**
22. Mid-Wales HA Ltd
23. Newport Housing Trust
24. Newtown HA
25. Newydd HA
26. North Wales HA
27. **Pembrokeshire Housing**
28. Pontypridd and District HA
29. **Rhondda HA**
30. **Swansea HA Ltd**
31. **Taff HA Ltd**
32. **United Welsh HA Ltd**
33. Valleys to Coast
34. Wales and West HA Ltd

APPENDIX TWO

Local Authorities in Wales

Local Authorities in Wales

Local authorities shown in bold were interviewed for this study

1. Isle of Angelsey County Council
2. Blaenau Gwent County Borough Council
3. **Bridgend County Borough Council**
4. **Caerphilly County Borough Council**
5. City and County of Cardiff
6. **Carmarthenshire County Council**
7. Ceredigion County Council
8. Conwy County Borough Council
9. Denbighshire County Council
10. Flintshire County Council
11. Gwynedd Council
12. Merthyr Tydfil County Borough Council
13. Monmouthshire County Council
14. **Neath Port Talbot County Borough Council**
15. Newport City Council
16. **Pembrokeshire County Council**
17. Powys County Council
18. Rhondda Cynon Taff County Borough Council
19. **City and County of Swansea**
20. Torfaen County Borough Council
21. The Vale of Glamorgan Council
22. Wrexham County Borough Council

APPENDIX THREE

Questionnaire: Housing Associations

Questionnaire

- Please indicate your level of agreement or disagreement with the following statements by circling a number on a scale between 1 and 5
- Please indicate your agreement or disagreement with each of the statements that appear alongside each question
- You may also make comments in the spaces provide

The levels of agreement and disagreement are:

- 1 indicates strong agreement
- 2 indicates agreement
- 3 indicates no opinion on the issue
- 4 indicates disagreement
- 5 indicates strong disagreement

The scale used to indicate agreement or disagreement is set out as:

◀ Agree/ No Opinion /Disagree ▶



1 2 3 4 5

Time Required

It is suggested that the questionnaire will take up to 45 minutes to complete.

Responses

Please reply using the envelope provided or if this has been mislaid to:

*Simon Hoffman
University of Wales Swansea
School of Law
Singleton Park
Swansea
SA2 8PP*

Confidentiality

These questionnaires are completed on the understanding that the respondent will remain anonymous.

Name: _____

Housing Association: _____

Job Title: _____

Questions

[1] On the status of housing associations

Housing associations should be described as:

◀ Agree/ No Opinion /Disagree ▶



[a] Voluntary sector organizations	1	2	3	4	5
[b] Public sector organizations	1	2	3	4	5
[c] Private sector organizations	1	2	3	4	5
[d] Hybrid public/private sector organizations	1	2	3	4	5
[e] Social enterprises	1	2	3	4	5

Other, please specify: _____

Additional comments:

[2] On the status of housing associations

Which of the following do you consider to be relevant to the determination of housing association status:

◀ Agree/ No Opinion /Disagree ▶



[a] The public subsidy housing associations receive	1	2	3	4	5
[b] The level of control exerted through regulation etc.	1	2	3	4	5
[c] Housing associations' role in meeting housing need	1	2	3	4	5
[d] The level of private sector investment in housing associations	1	2	3	4	5
[e] Housing associations' capacity to generate revenue from rents	1	2	3	4	5
[f] Housing associations' constitution and non-profit orientation	1	2	3	4	5
[g] Housing associations' traditional links with the voluntary sector	1	2	3	4	5

Other, please specify: _____

Additional comments:

[3] On control of housing associations

To what extent do you agree or disagree with the following:

◀ Agree/ No Opinion /Disagree ▶



[a] Under Tai Cymru housing associations were able to act as fully independent organisations	1	2	3	4	5
[b] Tai Cymru exercised firm control and direction over housing associations	1	2	3	4	5
[c] Tai Cymru placed unnecessary restrictions on housing associations' operational discretion	1	2	3	4	5
[d] Under the NAW housing associations are able to act as fully independent organisations	1	2	3	4	5
[e] The NAW exercises firm control and direction over housing associations	1	2	3	4	5
[f] The NAW has placed unnecessary restrictions on housing associations' operational discretion	1	2	3	4	5

Additional comments:

[4][a] On control of housing associations

Tai Cymru exercised control over housing associations through:

◀ Agree/ No Opinion /Disagree ▶



[a] The control of discretionary funding	1	2	3	4	5
[b] Circulars on operational matters	1	2	3	4	5
[c] Guidance on operational matters	1	2	3	4	5
[d] Regulation	1	2	3	4	5
[e] Audit	1	2	3	4	5

Other, please specify: _____

Additional comments:

[4][b] On control of housing associations

The NAW exercises control over housing associations through:

◀ Agree/ No Opinion /Disagree ▶



[a] The control of discretionary funding	1	2	3	4	5
[b] Circulars on operational matters	1	2	3	4	5
[c] Guidance on operational matters	1	2	3	4	5
[d] Regulation	1	2	3	4	5
[e] Audit	1	2	3	4	5

Other, please specify: _____

Additional comments:

[5] On the role of housing associations in Wales

The role of housing associations in Wales should be:

◀ Agree/ No Opinion /Disagree ▶



[a] To provide affordable housing	1	2	3	4	5
[b] To engage in community regeneration	1	2	3	4	5
[c] To tackle social exclusion	1	2	3	4	5
[d] To provide a housing resource for local authorities	1	2	3	4	5
[e] To contribute to meeting housing need strategically at local level	1	2	3	4	5
[f] To implement National Assembly housing policy	1	2	3	4	5
[g] To provide specialist housing	1	2	3	4	5
[h] To provide housing for sale	1	2	3	4	5

Other, please specify: _____

Additional comments:

[6] On the role of housing associations in Wales

To what extent to you agree or disagree with the following:

◀ Agree/ No Opinion /Disagree▶



[a] Housing association roles should be those anticipated by the strategic housing agenda of the NAW	1	2	3	4	5
[b] Housing association roles should be those anticipated by the strategic housing agenda of local authorities	1	2	3	4	5
[c] Housing association roles should be established by the board having regard to local authority and NAW housing agendas	1	2	3	4	5
[d] Housing association roles should be established by the board having regard to local housing need	1	2	3	4	5

Additional comments:

[7] On the role of housing associations in Wales

What have been the influences on the role of housing associations in Wales:

◀ Agree/ No Opinion /Disagree▶



[a] The need for affordable housing	1	2	3	4	5
[b] The need for a diverse rental market	1	2	3	4	5
[c] The need for specialist housing for minority and vulnerable groups	1	2	3	4	5
[d] The need to increase owner-occupation rates in Wales	1	2	3	4	5
[e] The need to meet objectives established in housing policy	1	2	3	4	5

Other, please specify: _____

Additional comments:

[8] On housing association accountability

Housing associations ought to be accountable to:

◀ Agree/ No Opinion /Disagree▶



[a] Tenants and prospective tenants	1	2	3	4	5
[b] Local communities	1	2	3	4	5
[c] Local authorities	1	2	3	4	5
[d] The National Assembly for Wales	1	2	3	4	5
[e] Private funders	1	2	3	4	5

Other, please specify: _____

Additional comments:

[9] On housing association accountability

How could housing association accountability be enhanced:

◀ Agree/ No Opinion /Disagree▶



[a] By making housing associations subject to judicial review	1	2	3	4	5
[b] By giving local authorities a regulatory function	1	2	3	4	5
[c] By making housing association boards subject to local election	1	2	3	4	5
[d] By maintaining an effective system of regulation					
[e] By requiring minimum levels of local authority representation on housing association boards	1	2	3	4	5
[f] By enhancing tenant participation in housing association governance	1	2	3	4	5

Other, please specify: _____

Additional comments:

[10] On housing association accountability

To what extent do you agree or disagree with the following:

◀ Agree/ No Opinion /Disagree ▶



[a] Housing associations should be publicly accountable	1	2	3	4	5
[b] Housing associations should be publicly accountable as they receive public subsidy	1	2	3	4	5
[c] Housing associations should be publicly accountable as they provide a public service	1	2	3	4	5

Additional comments:

[11] On housing association accountability

The impact of regulation for associations has been:

◀ Agree/ No Opinion /Disagree ▶



[a] To make housing associations more efficient	1	2	3	4	5
[b] To make housing associations more accountable	1	2	3	4	5
[c] To limit housing association discretion	1	2	3	4	5
[d] To make housing associations less independent	1	2	3	4	5
[e] To make housing associations less innovative	1	2	3	4	5

Other, please specify: _____

Additional comments:

[12] On housing association development

Under Tai Cymru housing association priorities for development were:

◀ Agree/ No Opinion /Disagree▶



[a] The provision of new housing	1	2	3	4	5
[b] Rehabilitation of existing housing	1	2	3	4	5
[c] The provision of special needs housing	1	2	3	4	5
[d] The provision of housing for sale	1	2	3	4	5

Other, please specify: _____

Additional comments:

[13] On housing association development

Under Tai Cymru the priorities for housing association development reflected:

◀ Agree/ No Opinion /Disagree▶



[a] Housing association priorities for development	1	2	3	4	5
[b] Local authority strategic priorities	1	2	3	4	5
[c] Tai Cymru's policy agenda	1	2	3	4	5
[d] The availability of HAG/SHG development funding	1	2	3	4	5

Other, please specify: _____

Additional comments:

[14] On housing association development

Tai Cymru exercised control over housing association development through:

◀ Agree/ No Opinion /Disagree▶



[a] Prioritization of funding within the ADP	1	2	3	4	5
[b] Acceptable Costs Guidance	1	2	3	4	5
[c] Pattern book	1	2	3	4	5
[d] Regulation and guidance	1	2	3	4	5

Other, please specify: _____

Additional comments:

[15] On housing association development

To what extent do you agree or disagree that under Tai Cymru:

◀ Agree/ No Opinion /Disagree ▶



[a] Housing association development was responsive to local need	1	2	3	4	5
[b] Housing associations were able to develop to meet a diversity of housing need	1	2	3	4	5
[c] Housing associations were able to undertake appropriate levels of refurbishment	1	2	3	4	5

Additional comments:

[16] On housing association rents

Housing association rents ought to be established by reference to:

◀ Agree/ No Opinion /Disagree ▶



[a] Housing association revenue requirements	1	2	3	4	5
[b] Housing market factors (local private sector rents etc.)	1	2	3	4	5
[c] Commercial factors (loan repayment etc.)	1	2	3	4	5
[d] Rent targets established by the regulator through benchmarking	1	2	3	4	5
[e] Objectively determined affordability factors (but not set by the regulator)	1	2	3	4	5
[f] Harmonization with local authority rents	1	2	3	4	5

Other, please specify: _____

Additional comments:

[17] On housing association rents

Under Tai Cymru the main factors influencing housing association assured tenancy rents were:

◀ Agree/ No Opinion /Disagree▶



[a] Housing association revenue requirements	1	2	3	4	5
[b] Housing market factors (local private sector rents etc.)	1	2	3	4	5
[c] Commercial factors (loan repayment etc.)	1	2	3	4	5
[d] Rent targets established by the regulator through benchmarking	1	2	3	4	5
[e] Objectively determined affordability factors (but not set by the regulator)	1	2	3	4	5
[f] Harmonization with local authority rents	1	2	3	4	5

Other, please specify: _____

Additional comments:

[18] On housing association rents

To what extent do you agree or disagree with the following, referring to the position under Tai Cymru:

◀ Agree/ No Opinion /Disagree▶



[a] Rent benchmarking was responsible for making housing association rents affordable	1	2	3	4	5
[b] Rent benchmarking had an adverse impact on housing associations' capacity to carry out community functions	1	2	3	4	5
[c] Rent benchmarking unnecessarily limited housing associations' discretion to set rents	1	2	3	4	5
[d] In the absence of benchmarking housing association assured tenancy rents would have been higher	1	2	3	4	5

Additional comments:

[19] On housing association rents

To what extent do you agree or disagree with the following:

◀ Agree/ No Opinion /Disagree ▶



[a] Housing association rent control is appropriate as they receive public subsidy	1	2	3	4	5
[b] Housing association rent control is appropriate to limit excessive housing association rents	1	2	3	4	5
[c] Housing association rent control is appropriate to ensure the supply of affordable housing	1	2	3	4	5

Additional comments:

[20] On the allocation of housing

The priorities for housing association allocation policies should be:

◀ Agree/ No Opinion /Disagree ▶



[a] To allocate housing amongst those in housing need	1	2	3	4	5
[b] To enable housing associations to develop sustainable communities	1	2	3	4	5
[c] To facilitate the housing management functions of housing associations	1	2	3	4	5
[d] To limit the use of exclusions	1	2	3	4	5

Other, please specify: _____

Additional comments:

[21] On the allocation of housing

To what extent do you agree or disagree with the following:

◀ Agree/ No Opinion /Disagree ▶



[a] Tai Cymru influenced the priorities for housing association allocation policies	1	2	3	4	5
[b] Tai Cymru restricted housing association discretion in matters of allocation	1	2	3	4	5
[c] Tai Cymru failed to pay sufficient attention to the need to develop sustainable communities in establishing priorities for allocation	1	2	3	4	5
[d] Tai Cymru failed to pay sufficient attention to housing associations' management needs in establishing priorities for allocation	1	2	3	4	5
[e] Tai Cymru unnecessarily restricted housing associations' use of exclusion policies	1	2	3	4	5

Additional comments:

[22] On the allocation of housing

To what extent do you agree or disagree with the following:

◀ Agree/ No Opinion /Disagree ▶



[a] Housing associations should offer assistance to local authorities by making lettings available	1	2	3	4	5
[b] Housing associations should give priority to local authority nominees	1	2	3	4	5
[c] Housing associations should give priority to local authority homelessness referrals	1	2	3	4	5
[d] Housing associations should work with local authorities to establish the priorities for allocation	1	2	3	4	5

Additional comments:

END

APPENDIX FOUR

Questionnaire: Local Authorities

Questionnaire

- Please indicate your level of agreement or disagreement with the following statements by circling a number on a scale between 1 and 5
- Please indicate your agreement or disagreement with each of the statements that appear alongside each question
- You may also make comments in the spaces provide

The levels of agreement and disagreement are:

- 1 indicates strong agreement
- 2 indicates agreement
- 3 indicates no opinion on the issue
- 4 indicates disagreement
- 5 indicates strong disagreement

The scale used to indicate agreement or disagreement is set out as:

◀ Agree/ No Opinion /Disagree ▶



1 2 3 4 5

Time Required

It is suggested that the questionnaire will take up to 30 minutes to complete.

Responses

Please reply using the envelope provided or if this has been mislaid to:

*Simon Hoffman
University of Wales Swansea
School of Law
Singleton Park
Swansea
SA2 8PP*

Confidentiality

These questionnaires are completed on the understanding that the respondent will remain anonymous.

Name: _____

Local authority: _____

Job Title: _____

Questions

[1] On the status of housing associations

Housing associations should be described as:

◀ Agree/ No Opinion /Disagree ▶



[a] Voluntary sector organizations	1	2	3	4	5
[b] Public sector organizations	1	2	3	4	5
[c] Private sector organizations	1	2	3	4	5
[d] Hybrid public/private sector organizations	1	2	3	4	5
[e] Social enterprises	1	2	3	4	5

Other, please specify: _____

Additional comments:

[2] On the status of housing associations

Which of the following do you consider to be relevant to the determination of housing association status:

◀ Agree/ No Opinion /Disagree ▶



[a] The public subsidy housing associations receive	1	2	3	4	5
[b] The level of control exerted through regulation etc.	1	2	3	4	5
[c] Housing associations' role in meeting housing need	1	2	3	4	5
[d] The level of private sector investment in housing associations	1	2	3	4	5
[e] Housing associations' capacity to generate revenue from rents	1	2	3	4	5
[f] Housing associations' constitution and non-profit orientation	1	2	3	4	5
[g] Housing associations' traditional links with the voluntary sector	1	2	3	4	5

Other, please specify: _____

Additional comments:

[3] On the role of housing associations in Wales

The role of housing associations in Wales should be:

◀ Agree/ No Opinion /Disagree ▶



[a] To provide affordable housing	1	2	3	4	5	
[b] To engage in community regeneration	1	2	3	4	5	
[c] To tackle social exclusion	1	2	3	4	5	
[d] To provide a housing resource for local authorities						
[e] To contribute to meeting housing need strategically at local level	1	2	3	4	5	
[f] To implement National Assembly housing policy	1	2	3	4	5	
[g] To provide specialist housing		1	2	3	4	5
[h] To provide housing for sale	1	2	3	4	5	

Other, please specify: _____

Additional comments:

[4] On the role of housing associations in Wales

To what extent to you agree or disagree with the following:

◀ Agree/ No Opinion /Disagree ▶



[a] Housing association roles should be those anticipated by the strategic housing agenda of the NAW	1	2	3	4	5
[b] Housing association roles should be those anticipated by the strategic housing agenda of local authorities	1	2	3	4	5

[more options overleaf]

[c] Housing association roles should be established
by the board having regard to local authority
and NAW housing agendas

1 2 3 4 5

[d] Housing association roles should be established
by the board having regard to local housing need

1 2 3 4 5

Other, please specify: _____

Additional comments:

[5] On housing association accountability

Housing associations ought to be accountable to:

◀ Agree/ No Opinion /Disagree ▶



[a] Tenants and prospective tenants 1 2 3 4 5

[b] Local communities 1 2 3 4 5

[c] Local authorities 1 2 3 4 5

[d] The National Assembly for Wales 1 2 3 4 5

[e] Private funders 1 2 3 4 5

Other, please specify: _____

Additional comments:

[6] On housing association accountability

How could housing association accountability be enhanced:

◀ Agree/ No Opinion /Disagree ▶



[a] By making housing associations subject to
judicial review 1 2 3 4 5

[b] By giving local authorities a regulatory function 1 2 3 4 5

[c] By making housing association boards subject
to local election 1 2 3 4 5

[more options overleaf]

[d] By maintaining an effective system of regulation

[e] By requiring minimum levels of local authority 1 2 3 4 5

representation on housing association boards 1 2 3 4 5

[f] By enhancing tenant participation in housing

association governance 1 2 3 4 5

Other, please specify: _____

Additional comments:

[7] On housing association accountability

To what extent do you agree or disagree with the following:

◀ Agree/ No Opinion /Disagree ▶



[a] Housing associations should be publicly accountable 1 2 3 4 5

[b] Housing associations should be publicly accountable
as they receive public subsidy 1 2 3 4 5

[c] Housing associations should be publicly accountable
as they provide a public service 1 2 3 4 5

Additional comments:

[8] On housing association development

Housing association priorities for development should be:

◀ Agree/ No Opinion /Disagree ▶



[a] The provision of new housing 1 2 3 4 5

[b] Rehabilitation of existing housing 1 2 3 4 5

[c] The provision of special needs housing 1 2 3 4 5

[d] The provision of housing for sale 1 2 3 4 5

Other, please specify: _____

Additional comments:

[9] On housing association development

To what extent do you agree or disagree that under Tai Cymru:

◀ Agree/ No Opinion /Disagree ▶



[a] Housing association development was responsive to local need	1	2	3	4	5
[b] Housing associations developed housing so as to meet a diversity of housing need	1	2	3	4	5
[c] Housing associations undertook appropriate levels of refurbishment	1	2	3	4	5

Additional comments:

[10] On the allocation of housing

The priorities for housing association allocation policies should be:

◀ Agree/ No Opinion /Disagree ▶



[a] To allocate housing amongst those in housing need	1	2	3	4	5
[b] To enable housing associations to develop sustainable communities	1	2	3	4	5
[c] To facilitate the housing management functions of housing associations	1	2	3	4	5
[d] To limit the use of exclusions	1	2	3	4	5

Other, please specify: _____

Additional comments:

[11] On the allocation of housing

To what extent do you agree or disagree with the following:

◀ Agree/ No Opinion /Disagree ▶



[a] Housing associations should offer assistance to local authorities by making lettings available	1	2	3	4	5
[b] Housing associations should give priority to local authority nominees	1	2	3	4	5
[c] Housing associations should give priority to local authority homelessness referrals	1	2	3	4	5
[d] Housing associations should work with local authorities to establish the priorities for allocation	1	2	3	4	5

Additional comments:

END

APPENDIX FIVE

Interview Questions: Housing Associations

Interview Questions

1. What do you think the role or roles of housing associations in Wales should be?
2. How did Tai Cymru's strategic agenda impact on housing associations' capacity to carry out the role or roles you have identified?
3. To what extent did Tai Cymru seek to exercise control over housing associations, and how does this contrast with the approach of the NAW?
4. To what extent do you think the role of a housing association at local level is determined by its local authority strategic partner?
5. Should housing associations be described as public, private or voluntary sector organisations or is there a more appropriate description, for example, a social enterprise?
6. How influential was Tai Cymru in establishing the priorities for housing association development?
7. To what extent were housing associations able to demonstrate diversity and responsiveness to local need within the development framework established by Tai Cymru?
8. How influential was Tai Cymru in establishing the priorities for access to housing association accommodation?
9. To what extent do the regulatory requirements on: nominations; referral arrangements; and access, interfere with housing association discretion in matters of allocation?
10. How closely do you work with local authority partners in developing your association's allocation policy?
11. What do you think have been the key factors influencing the rent levels set by housing associations in Wales?
12. To what extent do you think the emphasis on keeping rents low has impacted on housing associations' capacity to contribute in areas such as community regeneration?
13. What do you understand by the word 'accountability' in application to housing associations?
14. Would it enhance housing associations accountability if they were subject to judicial review in respect of their housing functions?
15. To what extent do you consider housing association accountability is enhanced by tenant participation at board level?
16. What do you think has been the impact of regulation on housing associations' capacity to act independently?

APPENDIX SIX

Interview Questions: Local Authorities

Interview Questions

1. What do you think the role or roles of housing associations in Wales should be?
2. Should housing associations be required to work toward strategic housing objectives established by local authorities or should they be allowed to pursue their own strategic agenda?
3. Should housing associations be described as public, private or voluntary sector organisations or is there a more appropriate description, for example, a social enterprise?
4. To what extent do you think housing associations are responsive to local need in their housing development activities?
5. Is housing association development sufficiently diverse to meet the range of housing needs of local communities?
6. To what extent should housing associations establish their allocations policies by reference to local authority housing priorities?
7. To what extent should housing associations take account of locally identified need when determining an allocations policy?
8. Should housing associations be required to provide a greater percentage of lettings to local authorities either for nomination referrals or for homelessness referrals?
9. What do you understand by the word 'accountability' in application to housing associations?
10. Would it enhance housing associations accountability if they were subject to judicial review in respect of their housing functions?
11. Should housing associations be more accountable to local government?
12. Are housing associations properly accountable to the communities they serve?
13. Would it be appropriate for local authorities to be given a role in the direct regulation of housing associations?

APPENDIX SEVEN

Self Completion Questionnaire Findings:

Tabulated: Housing Associations

- Responses are shown as: *no. of responses (no. of responses as percentage of possible responses)*.
- Percentages are approximate and may not equal the total Response Rate.
- The tables are numbered so as to refer to the questionnaire.

Table 1: On the status of housing associations

Housing associations should be described as:

Response ► Options ▼	Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree	Number of Actual Responses
Voluntary sector organizations	7 (46)	5 (33)	1 (6)	2 (13)		15 (100)
Public sector organizations		2 (13)	4 (26)	7 (46)	2 (13)	15 (100)
Private sector organizations		8 (53)	4 (26)	3 (20)		15 (100)
Hybrid public/private sector organizations		6 (40)	6 (40)	3 (20)		15 (100)
Social enterprises	4 (26)	3 (20)	5 (33)	3 (20)		15 (100)

Table 2: On the status of housing associations

Which of the following do you consider to be relevant to the determination of housing association status:

Response ► Options ▼	Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree	Number of Actual Responses
The public subsidy HAs receive	1 (6)	8 (53)	1 (6)	5 (33)		15 (100)
The level of control exerted through regulation etc.		7 (46)	1 (6)	7 (46)		15 (100)
HAs' role in meeting housing need	3(20)	10 (66)	2 (20)			15 (100)
The level of private sector investment in HAs	2 (13)	11 (80)	1 (6)			14 (93)
HAs' capacity to generate revenue from rents	1 (6)	8 (53)	3 (20)	3 (20)		15 (100)
HAs' constitution and non-profit orientation	1 (6)	11 (80)	3 (20)			15 (100)
HAs' traditional links with the voluntary sector	7 (46)	3 (20)	5 (33)			15 (100)

Table 3: On control of housing associations

To what extent do you agree or disagree with the following:

Response ► Options ▼	Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree	Number of Actual Responses
Under TC HAs were able to act as fully independent organizations		4 (26)		10 (66)		14 (93)
TC exercised firm control and direction over HAs	4 (26)	8 (53)		2 (13)		14 (93)
TC placed unnecessary restrictions on HAs' operational discretion	4 (26)	8 (53)		2 (13)		14 (93)
Under the NAW HAs are able to act as fully independent organizations		5 (33)	5 (33)	4 (26)		14 (93)
The NAW exercises firm control and direction over HAs		4 (26)	5 (33)	5 (33)		14 (93)
The NAW has placed unnecessary restrictions on HAs' operational discretion		1 (6)	5 (33)	8 (53)		14 (93)

Table 4a: On control of housing associations

Tai Cymru exercised control over housing associations through:

Response ► Options ▼	Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree	Number of Actual Responses
The control of discretionary funding	7 (46)	7 (46)	1 (6)			15 (100)
Circulars on operational matters	7 (46)	8 (53)				15 (100)
Guidance on operational matters	5 (33)	9 (60)	1 (6)			15 (100)
Regulation	7 (46)	7 (46)	1 (6)			15 (100)
Audit	6 (40)	8 (53)		1 (6)		15 (100)

Table 4b: On control of housing associations

The NAW exercises control over housing associations through:

Response ► Options ▼	Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree	Number of Actual Responses
The control of discretionary funding	7 (46)	7 (46)	1 (6)			15 (100)
Circulars on operational matters			2 (13)	7 (46)	6 (40)	15 (100)
Guidance on operational matters		5 (33)	1 (6)	5 (33)	4 (26)	15 (100)
Regulation		7 (46)	1 (6)	7 (46)		15 (100)
Audit			1 (6)	7 (46)	7 (46)	15 (100)

Table 5: On the role of housing associations in Wales

The role of housing associations in Wales should be:

Response ► Options ▼	Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree	Number of Actual Responses
To provide affordable housing	15 (100)					15 (100)
To engage in community regeneration	7 (46)	8 (53)				15 (100)
To tackle social exclusion	8 (53)	4 (26)	2 (13)	1 (6)		15 (100)
To provide a housing resource for LAs		7 (46)	1 (6)	6 (40)	1 (6)	15 (100)
To contribute to meeting housing need strategically at local level	7 (46)	6 (40)	2 (13)			15 (100)
To implement NAW housing policy	7 (46)	6 (40)	1 (6)	1 (6)		15 (100)
To provide specialist housing	6 (40)	7 (46)	1 (6)			14 (93)
To provide housing for sale	1 (6)	2 (13)	6 (40)	4 (26)		13 (86)

Table 6: On the role of housing associations in Wales

To what extent do you agree or disagree with the following:

Response ► Options ▼	Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree	Number of Actual Responses
HA roles should be those anticipated by the strategic housing agenda of the NAW	2 (13)	1 (6)		2 (13)	8 (53)	13 (86)
HA roles should be those anticipated by the strategic housing agenda of LAs	2 (13)			3 (20)	8 (53)	13 (86)
HA roles should be established by the board having regard to LA and NAW housing agendas	7 (46)	6 (40)				13 (86)
HA roles should be established by the board having regard to local housing need	6 (40)	7 (46)				13 (86)

Table 7: On the role of housing associations in Wales

What have been the influences on the role of housing associations in Wales:

Response ► Options ▼	Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree	Number of Actual Responses
The need for affordable housing	2 (13)	13 (86)				100
The need for a diverse rental market	1 (6)	10 (66)	4 (26)			100
The need for specialist housing for minority and vulnerable groups		9 (60)	5 (33)	1 (6)		100
The need to increase owner-occupation rates in Wales		3 (20)	1(6)	9 (60)	2 (13)	100
The need to meet objectives established in housing policy		3 (20)	3 (20)	9 (60)		100

Table 8: On housing association accountability

Housing associations ought to be accountable to:

Response ► Options ▼	Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree	Number of Actual Responses
Tenants and prospective tenants	13 (86)	1 (6)				14 (93)
Local communities	6 (40)	6 (40)	2 (13)			14 (93)
LAs	2 (13)	6 (40)	2 (13)	4 (26)		14 (93)
The NAW	3 (20)	10 (66)				13 (86)
Private funders	4 (26)	10 (66)				14 (93)

Table 9: On housing association accountability

How could housing association accountability be enhanced:

Response ► Options ▼	Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree	Number of Actual Responses
By making HAs subject judicial review		1 (6)	3 (20)	6 (40)	5 (33)	15 (100)
By giving LAs a regulatory function	1 (6)		2 (13)	3 (20)	9 (60)	15 (100)
By making HA boards subject to local election	1 (6)	1 (6)		3 (20)	9 (60)	15 (100)
By maintaining an effective system of regulation	9 (60)	6 (40)				15 (100)
By requiring minimum LA representation on HA boards	1 (6)	1 (6)	1 (6)	4 (26)	8 (53)	15 (100)
By enhancing tenant participation in HA governance	4 (26)	7 (46)	1 (6)	3 (20)		15 (100)

Table 10: On housing association accountability

To what extent do you agree or disagree with the following:

Response ► Options ▼	Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree	Number of Actual Responses
HAs should be publicly accountable	14 (93)	1 (6)				15 (100)
HAs should be publicly accountable as they receive public subsidy	6 (40)	5 (33)	3 (20)	1 (6)		15 (100)
HAs should be publicly accountable as they provide a public service	4 (26)	6 (40)	5 (33)			15 (100)

Table 11: On housing association accountability

The impact of regulation for associations has been:

Response ► Options ▼	Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree	Number of Actual Responses
To make HAs more efficient	1 (6)	7 (46)	1(6)	6(40)		15 (100)
To make HAs more accountable	4 (26)	9(60)	1 (6)	1 (6)		15 (100)
To limit HA discretion	5 (33)	5 (33)	3 (20)	2 (13)		15 (100)
To make HAs less independent	3 (20)	6 (40)	2 (13)	4 (26)		15 (100)
To make HAs less innovative		8 (53)	2 (13)	5 (33)		15 (100)

Table 12: On housing association development

Under Tai Cymru the priorities for housing association development were:

Response ► Options ▼	Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree	Number of Actual Responses
The provision of new housing	1 (6)	12 (80)	1(6)	1 (6)		15 (100)
Rehabilitation of existing housing	1 (6)	5 (33)	1 (6)	2 (13)	6 (40)	15 (100)
The provision of special needs housing		3 (20)	1 (6)	2 (13)	9 (60)	15 (100)
The provision of housing for sale		3 (20)	1 (6)	2 (13)	9 (60)	15 (100)

Table 13: On housing association development

Under Tai Cymru the priorities for housing association development reflected:

Response ► Options ▼	Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree	Number of Actual Responses
HA priorities for development	2 (13)	3 (20)		10 (66)		15 (100)
LA strategic priorities		7 (46)	2 (13)	5 (33)		14 (93)
TC's policy agenda	5 (33)	7 (46)	1 (6)	2 (13)		15 (100)
The availability of HAG/SHG development funding	2 (13)	11 (73)	1 (6)	1 (6)		15 (100)

Table 14: On housing association development

Tai Cymru exercised control over housing association development through:

Response ► Options ▼	Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree	Number of Actual Responses
Prioritization of funding within the ADP	5 (33)	10 (66)				15 (100)
ACG	2 (13)	10 (66)	1 (6)	2 (13)		15 (100)
Pattern book		9 (60)	1 (6)	5 (33)		15 (100)
Regulation and guidance		5 (33)	1 (6)	9 (60)		15 (100)

Table 15: On housing association development

To what extent do you agree or disagree that under Tai Cymru:

Response ► Options ▼	Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree	Number of Actual Responses
HA development was responsive to local need	1 (6)	7 (46)	2 (13)	4 (26)	1 (6)	15 (100)
HAs were able to develop to meet a diversity of housing need	1 (6)	4 (26)	2 (13)	6 (40)	2 (13)	15 (100)
HAs were able to undertake appropriate levels of refurbishment		3 (20)	1 (6)	11 (73)		15 (100)

Table 16: On housing association rents

Housing association assured tenancy rents ought to be established by reference to:

Response ► Options ▼	Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree	Number of Actual Responses
HA revenue requirements	7 (46)	8 (53)				15 (100)
Housing market factors	2 (13)	5 (33)		2 (13)	6 (40)	15 (100)
Commercial factors	2 (13)	10 (66)	1 (6)	2 (13)		15 (100)
Rent targets established by the regulator through benchmarking	2 (13)	5 (33)		7 (46)		14 (93)
Objectively determined affordability factors (but not set by the regulator)	2 (13)	11 (73)		1 (6)		14 (93)
Harmonization with LA rents		4 (26)	4 (26)	6 (40)		14 (93)

Table 17: On housing associations rents in Wales

Under Tai Cymru the main factors influencing housing association assured tenancy rents were:

Response ► Options ▼	Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree	Number of Actual Responses
HA revenue requirements		4 (26)	3 (20)	8 (53)		15 (100)
Housing market factors		2 (13)	2 (13)	11 (73)		15 (100)
Commercial factors	2 (13)	3 (20)	3 (20)	7 (46)		15 (100)
Rent targets established by the regulator through benchmarking	5 (33)	10 (66)				15 (100)
Objectively determined affordability factors (but not set by the regulator)		10 (66)	4 (26)	1 (6)		15 (100)
Harmonization with LA rents		5 (33)	7 (46)	1 (6)		13 (86)

Table 18: On housing associations rents in Wales

To what extent do you agree or disagree with the following, referring to the position under Tai Cymru:

Response ► Options ▼	Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree	Number of Actual Responses
Rent benchmarking was responsible for making HA rents affordable	3 (20)	6 (40)	2 (12)	4 (26)		15 (100)
Rent benchmarking had an adverse impact on HAs' capacity to carry out community functions	3 (20)	6 (40)	6 (40)			15 (100)
Rent benchmarking unnecessarily limited HAs' discretion to set rents	2 (13)	11 (73)		2 (13)		15 (100)
In the absence of benchmarking HA assured tenancy rents would more likely than not have been higher		10 (66)	3 (20)	2 (13)		15 (100)

Table 19: On housing associations rents

To what extent do you agree or disagree with the following:

Response ► Options ▼	Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree	Number of Actual Responses
HA rent control is appropriate as they receive public subsidy	11 (73)	1 (6)	3 (20)			15 (100)
HA rent control is appropriate to limit excessive HA rents	2 (13)	7 (46)	3 (20)	2 (13)		14 (93)
HA rent control is appropriate to ensure the supply of affordable housing		7 (46)	2 (12)	5 (33)		14 (93)

Table 20: On the allocation of housing by housing associations
The priorities for housing association allocation policies should be:

Response ► Options ▼	Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree	Number of Actual Responses
To allocate housing amongst those in housing need		15 (100)				15 (100)
To enable HAs to develop sustainable communities	1(6)	13 (86)	1 (6)			15 (100)
To facilitate the housing management functions of HAs	3 (20)	10 (66)	1 (6)	1 (6)		15 (100)
To limit the use of exclusions	2 (13)	8 (53)	1 (9)	2 (13)	2 (13)	15 (100)

Table 21: On the allocation of housing by housing associations
To what extent do you agree or disagree with the following:

Response ► Options ▼	Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree	Number of Actual Responses
TC influenced the priorities for HA allocation policies	5 (33)	8 (53)			2 (13)	15 (100)
TC restricted HA discretion in matters of allocation	5 (33)	8 (53)			2 (13)	15 (100)
TC failed to pay sufficient attention to the need to develop sustainable communities in establishing priorities for allocation		9 (60)	1 (6)	5 (33)		15 (100)
TC failed to pay sufficient attention to HAs' management needs in establishing priorities for allocation		9 (60)	1 (6)	5 (33)		15 (100)
TC unnecessarily restricted HAs' use of exclusion policies		10 (66)	1 (6)	4 (26)		15 (100)

Table 22: On the allocation of housing by housing associations

To what extent do you agree or disagree with the following:

Response ► Options ▼	Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree	Number of Actual Responses
HAs should offer assistance to LAs by making lettings available	1 (6)	9 (60)		5 (33)		15 (100)
HAs should give priority to LA nominees		4 (26)	1 (6)	10 (66)		15 (100)
HAs should give priority to LA homelessness referrals	1 (6)	5 (33)	1 (6)	8 (53)		15 (100)
HAs should work with LA to establish the priorities for allocation	3 (20)	7 (46)	1 (6)	4 (26)		15 (100)

APPENDIX EIGHT

Self Completion Questionnaire Findings:

Tabulated: Local Authorities

- Responses are shown as: *the no. of responses(the no. of responses as percentage of possible responses).*
- Percentages are approximate and may not equal the total Response Rate.
- The tables are numbered so as to refer to the questionnaire.

Table 1: On the status of housing associations

Housing associations should be described as:

Response ► Options ▼	Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree	Number of Actual Responses
Voluntary sector organizations	4 (36)		3 (27)	2 (18)	1 (9)	10 (90)
Public sector organizations	3 (40)	4 (36)	1 (9)	2 (18)		10 (90)
Private sector organizations			6 (54)	2 (18)	2 (18)	10 (90)
Hybrid public/private sector organizations	1 (9)	1 (9)	5 (45)	2 (18)	1 (9)	10 (90)
Social enterprises	1 (9)	2 (18)	6 (54)	1 (9)		10 (90)

Table 2: On the status of housing associations

Which of the following do you consider to be relevant to the determination of housing association status:

Response ► Options ▼	Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree	Number of Actual Responses
The public subsidy HAs receive	8 (72)	3 (27)				11 (100)
The level of control exerted through regulation etc.		3 (27)	8 (72)			11 (100)
HAs' role in meeting housing need	1 (9)	5 (45)	5 (45)			11 (100)
The level of private sector investment in HAs	3 (27)		8 (72)			11 (100)
HAs' capacity to generate revenue from rents	3 (27)		8 (72)			11 (100)
HAs' constitution and non-profit orientation	1 (9)	2 (18)	8 (72)			11 (100)
HAs' tradition and links with the voluntary sector		1 (6)	5 (45)	4 (36)		10 (90)

Table 3: On the role of housing associations in Wales

The role of housing associations in Wales should be:

Response ► Options ▼	Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree	Number of Actual Responses
To provide affordable housing	9 (81)	2 (18)				11 (100)
To engage in community regeneration	5 (45)	6 (54)				11 (100)
To tackle social exclusion	5 (45)	5 (45)	1 (9)			11 (100)
To provide a housing resource for LAs	5 (45)	5 (45)				10 (90)
To contribute to meeting housing need strategically at local level	7 (63)	4 (36)				11 (100)
To implement NAW housing policy	5 (45)	3 (27)	3 (27)			11 (100)
To provide specialist housing	7 (63)	1 (9)	2 (18)			10 (90)
To provide housing for sale	2 (18)	2 (18)	6 (54)	1 (9)		11 (100)

Table 4: On the role of housing associations in Wales

To what extent to you agree or disagree with the following:

Response ► Options ▼	Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree	Number of Actual Responses
HA roles should be those anticipated by the strategic housing agenda of the NAW	4 (36)	5 (45)	2 (18)			11 (100)
HA roles should be those anticipated by the strategic housing agenda of LAs	8 (72)	2 (18)	1 (9)			11 (100)
HA roles should be established by the board having regard to LA and NAW housing agendas	6 (54)	2 (18)	3 (27)			11 (100)
HA roles should be established by the board having regard to local housing need	3 (27)	9 (81)				100

Table 5: On housing association accountability

Housing associations ought to be accountable to:

Response ► Options ▼	Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree	Number of Actual Responses
Tenants and prospective tenants	9 (81)	2 (27)				11 (100)
Local communities	5 (45)	4 (36)	1 (9)	1 (9)		11 (100)
LAs	3 (27)	5 (45)	1 (9)	1 (9)	1 (9)	11 (100)
The NAW	4 (36)	4 (36)	3 (27)			11 (100)
Private funders	3 (27)	2 (18)	5 (45)	1 (9)		11 (100)

Table 6: On housing association accountability

How could housing association accountability be enhanced:

Response ► Options ▼	Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree	Number of Actual Responses
By making HAs subject to judicial review	1 (9)	6 (54)	2 (18)	1 (9)	1 (9)	11 (100)
By giving LAs a regulatory function	1 (9)	3 (27)	4 (36)	3 (27)		11 (100)
By making HA boards subject to local election	2 (18)	2 (18)	3 (27)	4 (36)		11 (100)
By maintaining an effective system of regulation	11 (100)					11 (100)
By requiring minimum LA representation on HA boards	1 (9)	1 (9)	6 (54)	2 (18)	1 (9)	11 (100)
By enhancing tenant participation in HA governance	6 (54)	3 (27)	2 (18)			11 (100)

Table 7: On housing association accountability

To what extent do you agree or disagree with the following:

Response ► Options ▼	Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree	Number of Actual Responses
HAs should be publicly accountable	11 (100)					11 (100)
HAs should be publicly accountable as they receive public funds	7 (63)	3 (27)	1 (9)			11 (100)
HAs should be publicly accountable as they provide a public service	5 (45)	2 (18)	4 (36)			11 (100)

Table 8: On housing association development

Housing association priorities for development should be:

Response ► Options ▼	Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree	Number of Actual Responses
The provision of new housing	11 (100)					11 (100)
Rehabilitation of existing housing	2 (18)	9 (81)				11 (100)
The provision of special needs housing	3 (27)	3 (27)	1 (9)	6 (54)		11 (100)
The provision of housing for sale		1 (9)		9 (81)	1 (9)	11 (100)

Table 9: On housing association development

To what extent do you agree or disagree that under Tai Cymru:

Response ► Options ▼	Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree	Number of Actual Responses
HA development was responsive to local need		5 (45)	1 (9)	4 (36)	1 (9)	11 (100)
HAs developed housing so as to meet a diversity of housing need		3 (27)	1 (9)	5 (45)	2 (18)	11 (100)
HAs undertook appropriate levels of refurbishment		3 (27)	1 (9)	5 (45)	2 (18)	11 (100)

Table 10: On the allocation of housing by housing associations

The priorities for housing association allocation policies should be:

Response ► Options ▼	Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree	Number of Actual Responses
To allocate housing amongst those in housing need	2 (18)	9 (81)				11 (100)
To enable HAs to develop sustainable communities	1 (9)	3 (27)	7 (63)			11 (100)
To facilitate the housing management functions of HAs		4 (36)	7 (63)			11 (100)
To limit the use of exclusions		3 (27)		5 (45)	3 (27)	11 (100)

Table 11: On the allocation of housing by housing associations

To what extent do you agree or disagree with the following:

Response ► Options ▼	Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree	Number of Actual Responses
HAs should offer assistance to LAs by making lettings available	1 (9)	10 (90)				11 (100)
HAs should give priority to LAs nominees	1 (9)	10 (90)				11 (100)
HAs should give priority to LAs homelessness referrals	5 (45)	6 (54)				11 (100)
HAs should work with LAs to establish the priorities for allocation	3 (27)	6 (54)	2 (18)			11 (100)

APPENDIX NINE

Housing Association Interviews: Assessment

- Percentages are approximate.
- The tables are numbered so as to refer to the interview questions.

Table 1:

What do you think the role or roles of housing associations in Wales should be?

Response Anticipated	Response Indicated (no./ % of interviewees)
The provision of affordable housing or meeting housing need	11 (100)
Community regeneration	10 (91)
To assist LAs with discharge of their housing functions (including strategic functions)	5 (45)
To assist the NAW with implementation of its housing strategy	2 (18)
To assist with reducing social exclusion (including anti-social behaviour)	4 (36)
To provide specialist housing or LCHO schemes	1 (9)

Table 2:

How did Tai Cymru's strategic agenda have impact on housing associations' capacity to carry out the role or roles you have identified?

Response	Response Indicated (no./ % of interviewees)
TC facilitated HAs development function	9 (81)
TC limited HA's community regeneration role	5 (45)

Table 3:

To what extent did Tai Cymru seek to exercise control over housing associations and how does this contrast with the approach of the NAW?

Response	Response Indicated (no./ % of interviewees)
TC exercised strong (or firm) control	10 (91)
NAW exercising strong (or firm) control	5 (45)

Table 4:

To what extent do you think the role of a housing association at local level is determined by its local authority strategic partner?

Response	Response Indicated (no./ % of interviewees)
LA is able to determine the role of HAs at local level	4 (36)
LA influences the capacity of HAs to discharge their functions	9 (81)

Table 5

Should housing associations be described as public, private or voluntary sector organisations or is there a more appropriate description, for example, a social enterprise?

Response	Response Indicated (no./ % of interviewees)
Public	
Private	
Voluntary	27
Social enterprise	63

Table 6

How influential was Tai Cymru in establishing the priorities for housing association development?

Response	Response Indicated (no./ % of interviewees)
TC was highly influential	11 (100)
TC directed the focus of development toward high output	5 (45)
Under TC it was made more difficult to undertake rehabilitation work	4 (36)

Table 7

To what extent were housing associations able to demonstrate diversity and responsiveness to local need within the development framework established by Tai Cymru?

Response	Response Indicated (no./ % of interviewees)
HAs responsive to local need/meet need effectively	3 (27)
HAs able to demonstrate diversity	3 (27)

Table 8

How influential was Tai Cymru in establishing the priorities for access to housing association accommodation?

Response	Response Indicated (no./ % of interviewees)
TC was highly influential	8 (72)

Table 9

To what extent do the regulatory requirements on: nominations; referral arrangements; and access, interfere with housing association discretion in matters of allocation?

Response	Response Indicated (no./ % of interviewees)
Substantial interference	2 (18)

Table 10

How closely do you work with local authority partners in developing your association's allocation policy?

Response	Response Indicated (no./ % of interviewees)
Very closely	5 (45)
Consult with LA	4 (36)

Table 11

What do you think have been the key factors influencing the rent levels set by housing associations in Wales?

Response	Response Indicated (no./ % of interviewees)
Mixed-funding	2 (18)
Benchmarking	9 (81)
Affordability	3 (27)
Rent convergence	5 (45)

Table 12

To what extent do you think the emphasis on keeping rents low has impacted on housing associations' capacity to contribute in areas such as community regeneration?

Response	Response Indicated (no./ % of interviewees)
HA's capacity to undertake community regeneration was limited	6 (54)

Table 13

What do you understand by the word 'accountability' in application to housing associations?

Response	Response Indicated (no./ % of interviewees)
Accountability to range of stakeholders	9 (81)
Accountability to tenants	10 (91)
Accountability to board	3 (27)
Accountability to community	7 (63)
Accountability to National Assembly or Welsh Assembly Government	7 (63)
Accountability to local government	6 (54)
Accountability to funders	4 (36)

Table 14

Would it enhance housing associations accountability if they were subject to judicial review in respect of their housing functions?

Response	Response Indicated (no./ % of interviewees)
Yes	3 (27)
No	6 (54)

Table 15

To what extent do you consider housing association accountability is enhanced by tenant participation at board level?

Response	Response Indicated (no./ % of interviewees)
Enhances accountability	9 (81)

Table 16

What do you think has been the impact of regulation on housing associations' capacity to act independently?

Response	Response Indicated (no./ % of interviewees)
Has restricted independence	3 (27)

APPENDIX TEN

Local Authority Interviews: Assessment

- Percentages are approximate.
- The tables are numbered so as to refer to the interview questions.

Table 1:

What do you think the role or roles of housing associations in Wales should be?

Response	Response Indicated (no./ % of interviewees)
The provision of affordable housing or meeting housing need	6 (100)
Community regeneration	4 (66)
To assist LAs with discharge of their housing functions (including strategic functions)	3 (50)
To assist the NAW with implementation of its housing strategy	
To assist with reducing social exclusion (including anti-social behaviour)	
To provide specialist housing or LCHO schemes	4 (66)

Table 2:

Should housing association roles reflect strategic housing objectives established by local authorities or should they be allowed to pursue their own strategic agenda?

Response	Response Indicated (no./ % of interviewees)
HAs should work toward LA strategic objectives	6 (100)

Table 3:

Should housing associations be described as public, private or voluntary sector organisations or is there a more appropriate description, for example, a social enterprise?

Response	Response Indicated (as % of all interviewees)
Public	2 (33)
Private	
Voluntary	
Social enterprise	2 (33)

Table 4:

To what extent do you think housing associations are responsive to local need in their housing development activities?

Response	Response Indicated (as % of all interviewees)
Generally responsive	6 (100)

Table 5:

Is housing association development sufficiently diverse to meet the range of housing needs of local communities?

Response	Response Indicated (no./ % of interviewees)
Yes	1 (16)
No	1 (16)

Table 6:

To what extent should housing associations establish their allocations policies by reference to local authority housing priorities?

Response	Response Indicated (no./ % of interviewees)
Local authority priorities should be reflected in allocations policies	4 (66)

Table 7:

To what extent should housing associations take account of locally identified need when determining an allocations policy?

Response	Response Indicated (no./ % of interviewees)
Housing associations should have regard to need (as identified by local authority)	4 (66)

Table 8:

Should housing associations be required to provide a greater percentage of lettings to local authorities either for nomination referrals or for homelessness referrals?

Response	Response Indicated (no./ % of interviewees)
Yes	2 (33)
No	1 (16)

Table 9:

What do you understand by the word 'accountability' in application to housing associations?

Response	Response Indicated (no./ % of interviewees)
Accountability to range of stakeholders	5 (83)
Accountability to tenants	5 (83)
Accountability to board	5 (83)
Accountability to community	4 (66)
Accountability to National Assembly or Welsh Assembly Government	5 (83)
Accountability to local government	3 (50)
Accountability to funders	

Table 10:

Would it enhance housing associations accountability if they were subject to judicial review in respect of their housing functions?

Response	Response Indicated (no./ % of interviewees)
Yes	3 (50)

Table 11:

Should housing associations be more accountable to local government?

Response	Response Indicated (no./ % of interviewees)
Yes, or yes in respect of certain functions or within limits	2 (33)

Table 12:

Are housing associations properly accountable to the communities they serve?

Response	Response Indicated (no./ % of interviewees)
No, or not fully accountable	3 (50)

Table 13:

Would it be appropriate for local authorities to be given a role in the direct regulation of housing associations?

Response	Response Indicated (as % of all interviewees)
Yes, or yes in respect of certain functions	1 (16)
No	5 (83)