



Mrs Christine Chapman AC/AM
Chair
Communities, Equality and Local Government Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

25 February, 2014

Dear Mrs. Chapman,

Once again, our sincere apologies for the delay in responding to your letters of 27 January as a result of Nigel being out of the UK and Stuart's illness. Whilst Nigel has now returned, unfortunately Stuart remains unwell, hence the need to appoint an "Acting" CEO for Regional Rugby Wales (RRW) to support the Regional businesses at such a critical time. Mark is the CEO of Scarlets and has agreed to undertake the RRW role while Stuart recovers.

On behalf of all four Regions, we would thank yourself and the members of the Communities, Equality and Local Government Committee for expressing your concern regarding the issues Rugby currently faces in Wales. We are deeply encouraged by the engagement and genuine concern shown by members of both the Welsh and Westminster Governments in seeking to understand the situation and, if appropriate, assist with a resolution that contributes to the overall health of the game in Wales for the future.

Your questions are carefully considered and deal with the fundamentals in each case, so we have laid out our response to each question directly. Of course, should you require any further information or background we will be more than happy to answer any further questions you may have.

1) "The issues that, in your view, have instigated the current dispute about the Participation Agreement"

Clearly, for any form of partnership to work effectively, there must be a balanced relationship on both sides, based on agreed fundamental principles, a genuine will from both parties to understand the position of the other and a commitment to developing the relationship over time, as circumstances and the environment change.

In this case, whilst the Regions are Independent Commercial entities, the WRU is a National Governing body so, in addition to the obvious requirement that any form of long-term legal agreement reflects sound business principles and the fundamental business requirements of each party, it should also balance effectively the requirements of all elements of the game in Wales, including Community, Semi Professional and Professional rugby, in addition to the International game.

Any agreement should provide for regular and consistent formal reviews, with the ability to adjust to changing circumstances on either side if necessary and if agreed.

Finally, for any long-term partnership to succeed, the requirement for trust is paramount.

The lack of trust between the WRU Executive and the Regional Organisations is at the core of the current dispute about the Participation agreement.

The Regions believe that it is a significant part of the responsibility of a Governing body to ensure the development of the Sport through effective working relationships with the stakeholders of the Sport operating within the jurisdiction of the Governing body.

Whilst there have been many challenges, inevitable mistakes and significant lessons learned on all sides since the Regions were created by the WRU only 10 years ago, their players and coaches, investors, sponsors, supporters and communities take great pride in their contribution to Welsh rugby over that time.

The existing Participation agreement, signed in early 2009, envisaged a 10 year term in total, but included a break after 5 years on the side of the Regions, allowing them to consider whether it was appropriate to agree a further 5 years on the same Commercial terms, or not. In that sense, the agreement was for 5 years, with an option to extend for a further 5.

Clearly, the environments of society, business and rugby have changed dramatically over the period from 2008 to 2014, perhaps more than any time over the last 40 years and certainly over the short time that rugby has operated as a professional sport.

In line with every independent business in the UK, the massive pressures on society, communities and businesses post 2009 caused each of the Regions to have to review their business models dramatically, including the appointment of new Senior management teams between 2010 and 2012 and cutting costs and revenue projections dramatically.

At the same time, detailed review by each Management team made it clear that the structures, controls and commercial agreements contained within the Participation agreement no longer reflected the significant changes that had taken place within the game, whilst the requirement for a Formal Annual Review included within the agreement had never been put in place by the existing Management Board.

Consequently, with new Management teams in place in each Region and with a real intent to rebuild trust, the Regions agreed to engage completely with PWC, who had been appointed by WRU to conduct a "due diligence" exercise into the Business and Financial model of Welsh Professional Rugby during February 2012.

At the same time, Nigel Short, Chairman of Scarlets and RRW agreed to chair the Working Group set up by WRU to operate alongside the PWC exercise, using the PWC information and conclusions to consider and propose structural solutions that could utilise combined resources to deliver both sustainable and competitive professional rugby in Wales for the future. The Working Group included representatives from WRU, the 4 Regions, PWC and an Independent advisor.

On May 29th 2012, Nigel presented the conclusion of the working group to the WRU Executive. Rather than trying to consider all the operational intricacies of the relationship, the recommendation was to set up a new "Management Board", with an Independent Voting Chairman, to avoid the "deadlock" built in to the existing Management Board within the Participation Agreement, changing the Governance of the decision making and concurring with the PWC conclusion that the only real solution was true collaboration between WRU and the Regional Organisations. The introduction of an Independent Chair also dealt with the issue of trust, by introducing an objective third party to the decision making process. A copy of the presentation can be found at *Appendix 1, with a copy of the PWC conclusion at Appendix 2.*

Almost 6 months later, on November 22nd 2012, the WRU and the Regions finally agreed and signed a Memorandum of Understanding to establish the "Professional Regional Game Board" (PRGB) , with an Independent voting Chair. A copy of the MoU can be found at *Appendix 3.*

During December, the WRU proposed an appointment as Chairman, which the Regions accepted and the first PRGB meeting took place on Dec 17th 2012. In addition to several operational requirements of the Regions, at this first meeting the Chair requested the WRU to present their Strategy for Professional rugby, including the Regions, at the next meeting. This strategy has never been presented.

At the same time, following detailed proposals from the WRU to amend the legal agreement to accommodate the new PRGB and a consequent response from the Regions, discussion regarding the amendments broke down without agreement being achieved. In fact, the WRU accused the Regions of seeking to "interpret the memorandum of understanding in a manner which was unacceptable to the WRU". Consequently, no further PRGB meetings took place.

Once again, with an intent to build both trust and objectivity, the Regions proposed an Independent Adjudication of the interpretation of the MoU and confirmed they would abide by this judgement. No response was received from WRU.

Following this breakdown and a consequent series of attacks from the WRU in the media, the Regions found they had no choice but to respond with a press conference stating their position on April 4th 2013.

As a result, the Regions agreed with a WRU proposal to present their position to the full WRU Board on 25th April 2013.

In addition to a presentation on the process and financials by the Independent member of the Working Group, Nigel Short presented the same recommendation proposed in May 2012. *Copy at Appendix 4.*

It was impossible to gauge the view of the WRU Board members to the presentation as, prior to the presentation being made, they had agreed with the proposal of the Executive that no questions be asked. An extraordinary situation given the time and

commitment that had been devoted to the preparation of the presentation by the Regions and the real need for the Board to fully understand the issues at stake. This is a clear and stark illustration of the need for strong non Executive representation to ensure an appropriate level of scrutiny and accountability.

However, following the meeting, the WRU Executive confirmed that their intent was to re-name the existing Management Board the "PRGB" and implement a NON-Voting Independent Chair. Given no other option, the Regions agreed to this proposal.

Unfortunately, whilst this body has met at least monthly since July 2013, no progress at all has been made on the fundamental issues that have been facing the Regions for some considerable time.

Consequently, as at the 31st December, the WRU could not fulfill its responsibility of committing to either competition structure or revenues for the 14/15 season and the remaining term of the existing Participation Agreement. The following fundamental elements of the Regions' businesses remained unconfirmed, even as at today;

- The existence and structure of any European Competition for the Period 14/15 to 18/19.
- The income and distribution from any such competition over the period.
- The number of teams participating in the Pro12 league for the period 14/15 to 18/19
- The income and distribution from the Pro12 league over the period, or even the confirmation of a main sponsor

So the WRU's fulfillment of the basic definition of "participation" within the legal agreement could not be confirmed.

In demanding the Regions sign an extension, with an insistence that no renegotiation of any element was possible, the WRU were expecting the Regions to legally commit to their operating costs without any commitment from the WRU to the competition incomes that are their responsibility under the agreement. Such a commitment by the Boards of the Regions would be at best irresponsible and possibly illegal in their duty to their shareholders, employees and creditors.

It appears to the Regions that the WRU seeks to control all the key activities of the Regions, such as TV contracts, leagues, match timings and even, under the latest proposals, appointments of coaching and ancillary staff, without being prepared to share any level of commercial risk. The implication of such an intransigent stance is to further risk tens of millions of pounds of sponsor and benefactor support to the Professional game in Wales.

The WRU do not and could not run their businesses in such circumstances and neither can the Regions. Whilst the WRU refers to committed forward fixtures as part of its "rolling 5 year plan", the position the WRU has placed the Regional Organisations in is such that;

- 10/32 games are not confirmed for 14/15 season in just 6 months.
- Season ticket incomes cannot be confirmed for April/May – in just 45 days time.
- Match day incomes for 14/15 season cannot be confirmed.
- Sponsor contracts and income cannot be confirmed within contractual deadlines
- Playing kit, merchandise design, orders and income cannot be confirmed within contractual deadlines.

The total income at risk for 14/15 season alone amounts to a possible £16m across the four Regions and they are unable to confirm any form of robust business plan and financial forecast beyond May.

In addition to failing in its responsibility to the Regions to provide both Competition platform and consequent revenue, at all points over the last two years, the WRU Executive have steadfastly refused to discuss or negotiate any element of the Commercial terms of the existing Participation agreement.

We note that the WRU response to the committee states that; "... the Regions did not inform the WRU of their intentions not to extend until 5:15pm On 31 December 2013. That meant six months of potential negotiation for a new agreement was lost"

This statement is completely incongruous when considering the points above.

It is clearly at odds with the fact that the Regions submitted a further “5 point plan” to WRU on 20th September 2013, as covered in the minutes of the PRGB meeting held on 25th September 2013.

The minutes of the PRGB meeting held on 12th October 2013 clearly refer to the fact that the Chairman “... Recognized the uncertainty surrounding ERC was a major concern, preventing the Regions from signing the Participation agreement.” They go on to state that “The Chairman wondered if there was any scope to alter the 31st December deadline if the issues surrounding ERC have not been resolved, adding that the Participation Agreement could be varied subject to the formal consent of all parties”

The response from WRU included in the minutes was “Mr. Lewis confirmed that if the Agreement is not signed by 31st December, then on 1st January 2014, the WRU will go out to tender for Professional Rugby in Wales”

Finally, the minutes of the PRGB meeting dated 12th November 2013 state that “prior to the meeting the Regions had circulated a paper in which they set out those areas of the PA which they wished to renegotiate”, that “DP (David Pickering) made comment in relation to the paper which had been received on the 11th November 2013” . They continue with the statement that “DP reminded the Regions that the PA was clear, the only contractual option available to the Regions was to extend the PA on the same terms and conditions”. The minutes then conclude with the action for “WRU to respond to Regional paper for amendment to the Terms and Conditions of the Participation Agreement-7 working days-21st November 2013”. This response has not been submitted.

In fact, during October 2013, the WRU Chief Executive publicly stated on National television that failure of the Regions to extend the agreement on existing terms would mean that they would “cease to exist”, a statement that was backed up in a number of other public and private forums.

The four Regional organizations represent a turnover within the Welsh economy of some £30m, with an estimated Direct Economic impact of over £50m and provide employment opportunity for approximately 800 full time and part time individuals. This is the true perspective of the risk that such a staggeringly irresponsible stance represents.

Furthermore, despite failing in it’s duty to provide both coherent competition platforms and committed revenues that enable the Regions to operate their businesses, the WRU clearly state that they retain the right and power to stop the Regions undertaking any action to do so themselves.

Following the Regions’ confirmation, once again, on 31st December, that they could not possibly sign an extension to the existing agreement due to all of the above, having refused to discuss or negotiate the agreement, the WRU immediately furnished a heavily modified Operational agreement on the 6th January, with a proposed Financial structure following on January 14th.

Whilst the Operational side of this new agreement would not be acceptable to any third party organization and the Financial framework as proposed is fraught with mechanisms that create further substantial risk for the Regions, we continue to attempt to re-set discussions by proposing a set of fundamental principles that the agreement should seek to achieve prior to any detail drafting of conditions and obligations. Following the input of the Principles from the Regions on 26th January, the WRU Executive now inform us they will respond by the week of February 24th, followed by a further meeting scheduled for March 3rd, following which further discussion may take place. A full 4 weeks to respond to a simple set of principles and a further 4 weeks delay in the Regions’ ability to operate as businesses, resulting in continued uncertainty for 800 individuals.

2) “Any action that is needed to ensure that such a situation does not occur again in the future?”

Our concerns regarding the Governance of the WRU are covered in the answer to question 3, so our response to this question will be limited to the practical elements of reaching any future agreement between the Regions and the WRU.

Given the complete breakdown of trust between the two parties, a situation which has existed for a number of years, but been reinforced over the last two years, despite new Management teams being introduced across the Regions, it is essential that Independent analysis and review is undertaken to ensure an objective viewpoint.

In addition to proposing an Independent view of the legal interpretation of the original Memorandum of Understanding, which agreed a PRGB with a voting Independent Chair, the Regions have proposed an Independent review of;

- Negotiation and Distribution of TV contracts and Revenues across the Professional game at both Regional and International level.
- The true costs of the development, retention and provision of International players to the Welsh National Team, particularly when exposure at International level can cause player salary inflation well in excess of 100% per annum or per contract.

The WRU has made no response to any of these proposals.

All three proposals would introduce objectivity into the negotiations and the original proposal of a PRGB with a voting Independent Chair remains the most practical solution.

In addition, it must be appropriate for the WRU to confirm it's strategic plan for Welsh Professional Rugby, as requested by the (then voting) Chair at the first PRGB meeting, with a clear definition for the position and responsibilities of the Regions within that Strategy.

Finally, as it is clear that the WRU continues in it's unhealthy exploitation of it's influence over Welsh media to establish negotiating positions, an Independent Chair could ensure any future negotiation is not conducted through the medium of the press.

3) “Any views or concerns you have about the Governance and funding arrangements for Rugby in Wales and whether any improvements need to be made to ensure the game’s sustainability in the longer term?”

- **Governance**

The Regions believe that the inadequacy of the Governance of the WRU is at the root cause of the issues faced by the Regions, the Semi Professional game and the Community Clubs regarding their relationship with the WRU.

We understand that you have written to the District Secretaries to ensure the WRU grass roots member clubs have the opportunity of their opinion on governance, finances and the future being heard.

The Regions believe that this is critical as neither the Regions or the National side can be sustainable or competitive without a strong foundation of grass roots rugby from Community clubs throughout Wales, the most significant contribution of all to the health of Welsh Rugby. The clubs are the essential start point for every young player and the contribution of the many volunteers who work tirelessly to provide people of all ages the opportunity to be involved in the game is critical to the future of the game.

In addition to their role as the foundation of all rugby in Wales, we are very conscious that the community clubs are an essential part of the social fabric of many communities around Wales and should be encouraged to celebrate their own identities and goals.

However, neither the existing Participation agreement, nor the proposed new agreement, recognise any role at all for the Regions in Community rugby. All of the activity currently undertaken by the Regions is entirely at their own initiative and funded by themselves as part of their belief in the invaluable contribution of Community rugby to the game.

Therefore, whilst the Regions are fully aware of the widely held concerns amongst the clubs regarding disparate league structures and decreasing income, at a time when they are facing increasing demands and consequent costs, those concerns are best expressed by the clubs themselves in their input to the committee.

However, there is a clear and growing imbalance between the resources available to the foundation of the community game and the Elite elements of the organization as a direct result of the drive to an increasingly centralized structure.

The Regions firmly believe that active and productive engagement and team work between each Region and the community clubs within its geographic area would be the most effective route forward for the future of Welsh Rugby.

The devolution of responsibility for participation and development to a local level, subject to agreed targets and performance indicators would be the most effective way to ensure that participation in Rugby across all age groups can compete with the significant gains being achieved by football. As you will know, the participation and demand across all age groups for all Sports are available from Sport Wales, whilst the adult participation numbers are also available from the WRU Clubs survey undertaken in 2012/13.

In terms of the Corporate Governance of the WRU as a governing body, the UK Government endorses the “Voluntary code of good governance for the sport and recreation sector”, published by the Sport and Recreation Alliance in 2011 to provide clear guidance for sport and recreation boards, such as the WRU. *Code attached in Appendix 5.*

This guidance includes the following basic principles;

- The Board should include at least 2 Independent Non Executive Directors who bring knowledge and experience from outside the Sport.
- The Board should ideally have an Independent Chair to provide objectivity.
- The members of the Board should be chosen on the basis of their competence, ability, quality, leadership, integrity and experience.

The WRU Board does not comply with these basic principles.

Appendix 6 includes an independent article from a knowledgeable supporter that best illustrates this.

Consequently the Regions do not believe that the WRU operates with adequate Governance. It provides neither the transparency of decision making expected by a governing body in the “ownership” of member clubs, or the scrutiny expected of an independent organization answerable to shareholders. The result is a lack of “check and balance” on the decisions of the executive, particularly in relation to financial performance, decisions and investment criteria.

The Regions do not believe that the WRU is either fit for purpose in its relationship with member clubs to ensure the health of the amateur game, nor in its business partnership with four independent Regions which should deliver sustainable and competitive professional rugby at both a Regional and National level.

- **Funding arrangements**

As a direct result of the above, it is the Regions’ belief that the Financial information provided by the WRU does not meet the level of transparency expected of a governing body of member clubs, whilst the financial decision making process is at best opaque.

Of course, Financial information, as any set of figures, can be presented in several ways. By way of illustration of the above, *appendix 7 includes an independent analysis of financial performance which allows comparison with the WRU’s own positioning of performance.*

Appendix 8 includes an analysis undertaken by an ex Chief Executive of WRU, NZRU and Sport England, which also allows comparison with the WRU’s own positioning.

Appendix 9 includes a further independent article on several accounting conventions used by WRU and, particularly, the effect of these conventions on the statistics utilised to demonstrate performance improvement.

If we remove the Competition revenues “passed through” to the Regions from the competitions they play in, it still remains the case that the vast majority of the £53m income that the WRU itself achieves is generated by International fixtures undertaken utilising players developed by the community clubs, semi professional clubs and Regions and funded by the Regions.

In a balanced and collaborative relationship, there would be a recognition of the true costs of developing and retaining those players, together with the cost of contracting the additional players necessary to enable the Regions to fulfill their own contracted fixtures whilst their International players are not available. It would then be possible to agree a fair level of compensation for the loss of those players while they are utilised by WRU to generate revenue through the International fixtures.

The WRU has consistently refused to recognise the true cost or discuss a fair compensation based on those costs.

In fact, whilst the Regions estimate the true cost of development, retention and substitution players at over £200,000 for every International player, the compensation provided by WRU for an individual International Player over a season amounts to @£40,000 only.

Whilst there are additional payments included within the existing Participation agreement to incentivise the development of Welsh players within the Regional squads, the total compensation available to the Regions for pure player release amounts to @£1.2m. Even if we consider the whole amount of @£6.4m the WRU provide to the Regions, it remains only @12% of the £53m revenue of the WRU, the vast majority of which is generated by fixtures played by the Regions’ employees.

It would appear from a review of the Irish and Scottish Unions accounts that, although there is a very different funding model in place, both Unions commit substantially more resource to the Professional game at a club level.

The Regions have again proposed an Independent review of the costs of International players and their replacements, a proposal which has received no response from the WRU.

Once again, the Regions would like to thank you for expressing your concerns regarding our game, together with the time and effort you are prepared to commit to understanding the issues and, if possible, assisting with a resolution.

As we have consistently stated, we believe that Welsh rugby deserves an objective and Independent review of its governance and funding arrangements, across the entire spectrum of the game, including the Regions. Having provided complete and open access to every aspect of their financial information to PWC during 2012, the Regions would welcome the scrutiny of any appropriate Independent enquiry. It should also be noted that, in marked contrast to the Regions’ approach, the financial information that the WRU was prepared to release to the Regions through PWC during this exercise was extremely limited.

Please do not hesitate to request any further information you may require and we look forward to hearing your conclusions in due course.

Yours sincerely,

Chairman Cardiff Blues

Chief Executive Cardiff Blues

Chairman Ospreys Rugby

Chief Executive Ospreys Rugby

Chairman Newport Gwent Dragons

Chief Executive Newport Gwent Dragons

Chairman Scarlets

Chief Executive Scarlets