

**IN THE UK COVID-19 PUBLIC INQUIRY  
BEFORE BARONESS HEATHER HALLETT  
IN THE MATTER OF:**

**THE PUBLIC INQUIRY TO EXAMINE THE COVID-19 PANDEMIC IN THE UK**

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**SUBMISSIONS ON BEHALF OF COVID-19 BEREAVED FAMILIES FOR  
JUSTICE CYMRU IN ADVANCE OF THE FIRST PRELIMINARY HEARING FOR  
MODULE 3**

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**Introduction**

1. Submissions are made on behalf of Covid-19 Bereaved Families for Justice Cymru (CBFJ Cymru) under the following headings:
  - (i) Scope and structure of Module 3
  - (ii) Rule 9 requests
  - (iii) Rule 10 procedure
  - (iv) Disclosure to Core Participants
  - (v) Approach to evidence of circumstances of individual death and ‘pen portrait’ material
  - (vi) Listening Exercise.

**Scope and structure of Module 3**

2. We are grateful for assurances we have received from the Chair in hearings to date that she fully intends to ensure that the interests of the people who live in Wales are properly recognised during the Inquiry.
3. CBFJ Cymru wishes to raise that the structure and scope of Module 3 should have regard to the need for sufficient attention to the impact of the Covid-19 pandemic on the healthcare system in Wales.

4. As the Chair is aware, although Wales receives funding from the UK Government, responsibility for health is devolved to the Welsh Government. Wales has its own healthcare system. NHS Wales is not a legal entity and instead is comprised of Local Health Boards, NHS Trusts and Public Health Wales. Relevant offices and agencies such as the Office of the Chief Medical Officer and Care Inspectorate Wales are specific to Wales. This means that key decisions made in Wales were largely separate to and quite often different from those taken by the UK Government.
5. This module necessarily covers wide-ranging and complex matters. Moreover, investigation of impact on healthcare lies at the heart of the investigation of the response to and impact of the pandemic. It is of particular importance to CBFJ Cymru. A high proportion of those in the CBFJ Cymru group lost loved ones to hospital-acquired Covid-19. It is a fundamental concern to CBFJ Cymru that the Inquiry understand why hospital-acquired Covid-19 was such an acute problem in Wales and how/whether other regions in the UK adopted a better or different approach. In Wales the Nosocomial Transmission Group was established in May 2020 to provide direction on actions to minimise hospital transmission, chaired by the Chief Nursing Officer and Deputy Chief Medical Officer for Wales.
6. We are grateful to the Chair for confirming that Wales will be properly considered, and not simply as a poor relative of the UK Government. However, in order for there to be a proportionate and effective investigation in this important devolved area, CBFJ Cymru asks the Chair to consider sub-dividing Module 3 into parts. The group asks that the Chair adopt a consistent approach to Module 3 as has been taken in respect of Module 2, namely for Modules 3, 3a, 3b, and 3c to address the impact of the Covid-19 pandemic on the healthcare systems in Wales, Scotland, and Northern Ireland. We submit this for the following reasons:
  - a. Such sub-division reflects the constitutional position in the UK; health is devolved in Wales, Scotland, and Northern Ireland.
  - b. There are real differences between healthcare in Wales and the rest of the UK. The very structure is different, as set out above. The general nature of healthcare is also different; access to primary care, prescriptions, and out-of-hours care all operate differently in Wales.

- c. There are differences in the decisions taken by Wales. For example, in Wales, there were no nightingale hospitals but rather temporary field hospitals and surge facilities<sup>1</sup>. There were also different decisions taken in respect of masks, and when they should be made mandatory. The decisions taken in respect of asymptomatic testing of healthcare workers were different. In Wales, these decisions were made later than in England.
  
7. Whilst the above structure is the proposal CBFJ Cymru urges the Chair to consider foremost as the proportionate and most effective way of dealing with this important area, it submits that an alternative way of seeking to provide a focus sufficiently specific to Wales would be to draft the scope so as to make it clear that each of the issues that are to be considered, will be considered specifically in relation to the Welsh devolved administration (and each of the other devolved administrations). We would even go as far to propose that the sub-paragraphs should be repeated but under headings making clear that those issues will be considered specifically in respect of Wales (and each of the devolved nations).
  
8. Issues that are particularly important to CBFJ Cymru include:
  - a. Healthcare resources;
  - b. Lack of investment in IT infrastructure and the digitisation of NHS Wales;
  - c. ITU and morgue capacity;
  - d. The differences experienced by many of our clients' relatives and loved ones in relation to the quality of treatment received, and differences in palliative and end-of-life care received, particularly in respect of the elderly;
  - e. How infection control was managed in hospitals, including ventilation, testing, segregation, and PPE;
  - f. Extent of testing for Covid-19 of hospital patients prior to discharge;

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<sup>1</sup> ATISN 14384-Nightingale Hospitals Gov.Wales, 27 October 2020

- g. Whether the correct PPE was used, and the scientific basis for choosing one type of PPE over another;
- h. Whether the belief that Covid-19 was fomite-based led to the incorrect type of PPE being used;
- i. Whether the Welsh Government paid sufficient regard to the fact that Covid-19 was airborne;
- j. The date of knowledge for relevant facts about Covid-19, and who provided that information;
- k. Whether the Local Health Boards adhered to mandatory training;
- l. Whether there was sufficient education of staff;
- m. Whether the design and age of the hospital buildings in Wales contributed to the lack of infection control. CBFJ Cymru submits that in this area it is necessary to consider the state of this aspect of the healthcare system when the pandemic struck to understand how the pandemic impacted on healthcare systems;
- n. The lack of bereavement support available in Wales;
- o. Withdrawal of treatment, and the use of DNACPRs (without consultation; incorrectly completed forms, lack of central electronic records);
- p. The guidance issued to the Local Health Boards in Wales, and whether it was followed consistently;
- q. The cross-border experience of those who are ordinarily resident in England but who were treated in Wales, and vice versa;
- r. The governance of the different Local Health Boards, including whether there was sufficient oversight to ensure consistency of care and practices across the Local Health Boards; and
- s. The differing powers of the equivalent regulators (e.g. CQC in England and HIW in Wales).

9. Finally, as to scope, we seek confirmation of resourcing and preparedness for infection control in hospitals, resourcing for PPE availability being within the scope. These are matters as to the existing state of affairs when the pandemic struck which we submit require to be considered in order to understand how the pandemic impacted on the Welsh and other healthcare systems. We note the CTI's comments during the Second Preliminary Hearing (14.2.23) in respect of Module 1 as to the scope of that module include:

**(at p.14 line.20)** In relation to the request concerning the Welsh Government, we have addressed the majority of the issues raised in the written submissions but, **in relation to the specific issues of preparedness for infection control in hospitals and resourcing for infection control measures in hospitals and care homes and resourcing for PPE and stockpiling**, some part of Module 1 will of course be concerned with the overarching, high-level issue of funding and resourcing generally across the organic structures concerned with preparedness. But given that Module 1 is concerned with the structural position and the policy position, **those specific issues are more readily considered in the context of your later modules because, of course, they deal more directly with the specific issues of PPE, stockpiling and infection control measures.** So they will be more appropriately addressed later.

10. CBFJ Cymru seeks confirmation that matters of preparedness in respect of hospitals being prepared for infection control (including the state of the hospital stock so as to have the capacity to implement it), resourcing for infection control measures in hospitals and the extent of preparedness by way of appropriate stockpiles of PPE (as opposed to looking at government procurement arrangements) will be covered in Module 3. If to any extent it is proposed they are not covered in Module 3, CBFJ Cymru would be grateful to know in which module it is proposed these areas will be covered.

### **Update on Rule 9 requests**

11. We note it is intended that, to ensure the Core Participants are kept properly informed, the Inquiry will ensure that the Module 3 lead solicitor provides monthly updates to Core Participants on the progress of Rule 9 work. However, as yet, we have not received sufficiently detailed summaries. A recent example told us that the ILT had received 7 draft witness statements and associated disclosure, and that there was outstanding disclosure that has been delayed. While these updates are helpful, they are not sufficiently detailed to enable CPs to understand the full extent of the request. What we want to avoid is a position where we discover the true extent of the Rule 9 requests in the weeks before

the listed hearing date for Module 3 and are unable to raise any challenge or speak to the ILT about key witnesses that have not been approached or key issues which have not been explored with witnesses. By then, it will be too late. As such, we ask for more detail to be provided.

12. CBFJ Cymru looks forward to receiving a Rule 9 request directed to it, when the issues that are important to the bereaved families can be set out. We hope this input will assist with the Inquiry's development of its list of issues to be covered by this module.

### **Rule 10 Procedure**

13. In keeping with our submissions made at the Module 1 Preliminary Hearing (14.2.23), we request that consideration is given to adopting the same informal procedure in respect of Module 3, namely, that an opportunity is afforded to meet with CTI (remotely) following submission of core participant observations on CTI's evidence proposals and prior to CTI providing a finalised evidence proposal. Thereafter, we request a short period of time is set aside after CTI's questions so that further follow-up questions arising from the evidence can be considered with the core participants. We will respond further on any suggested procedure for applications under Rule 10. We are grateful to the Chair for the ruling on this issue in respect of Module 1 and ask that a consistent approach is adopted in respect of Module 3.

### **Disclosure to Core Participants**

14. As yet, we have received no disclosure in respect of this module. At this stage, we do not have any submissions on this issue, save that we request disclosure is given in good time for us to have sufficient time to adequately prepare for the substantive hearing.

### **Instruction of expert witnesses**

15. At this stage, we do not have any submissions to make in respect of this issue, save in respect of timing. It is noted that it is not proposed to disclose letters of instruction but identity of witnesses, questions and issues they will be asked to address before the expert reports are finalised. We would welcome confirmation that CPs will receive this information at as early a stage as possible so that there is an opportunity to make observations in a meaningful way.

## **Approach to evidence of circumstances of individual death and ‘pen portrait’ material**

16. We note the matters set out at paragraphs 65 and 66 of CTI’s note. CBFJ Cymru requests that the Chair give consideration as to whether hearing the circumstances of particular deaths would be permissible in respect of this module. Individual bereaved family members within the group have relevant evidence to give in respect of the way in which their loved ones became infected, often in hospital settings, and how they were treated thereafter. We note the mention in paragraph 66 of the CTI Note that the calling of evidence regarding individual deaths or experiences of Covid-19 may be considered so as to introduce a systemic issue. CBFJ Cymru welcomes the acknowledgment from the CTI in its note that to include this type of evidence would be in keeping with the Inquiry’s express intention to keep those affected by the pandemic at the heart of the Inquiry, and submits that such evidence would assist the investigation and cast a spotlight on the issue concerned.
17. CBFJ Cymru members can provide direct evidence of what they saw in healthcare settings. They have direct experiences of what infection control was like in healthcare settings, and can provide evidence of the healthcare provided to their loved ones prior to a positive Covid test, whilst being treated for Covid and when dying in Wales. We submit this evidence will assist the Chair in making findings and recommendations and will indeed help engender confidence that those affected are at the heart of the Inquiry.
18. CBFJ Cymru will gladly identify those witnesses within the group who can give oral evidence of experiences which provide insight into wider systemic issues.

### **Listening Exercise**

19. The CTI note states that Module 3 will draw on information provided in the listening exercise and that it is proposed that reports compiled from individual accounts will be fed into the module, that the reports will be disclosed to CPs and summary reports formally adduced in evidence so as to form part of the Inquiry’s record. CBFJ Cymru would welcome disclosure of the Listening Exercise reports relevant to the Module at as early a stage as possible. CBFJ Cymru has offered its commitment to continue working with the Inquiry Team to assist in the development of the Listening Exercise.

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