

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

**SUBMISSIONS ON BEHALF OF 'COVID-19 BEREAVED FAMILIES FOR JUSTICE
CYMRU' IN ADVANCE OF THE PRELIMINARY HEARING IN MODULE 2(B)**

On 29 March 2023

1. These submissions are made on behalf of the Covid-19 Bereaved Families for Justice Cymru ('CBFJ Cymru') in advance of the second Module 2B ('M2b') preliminary hearing on 29 March 2023. CBFJ Cymru is a Welsh focused group dedicated solely to campaigning for and giving a voice to those bereaved by Covid-19 in Wales. These submissions are provided in English and Welsh. CBFJ Cymru thank the Chair for the opportunity to deliver oral submissions in Welsh.

Scope

2. On 9 March 2023 the Inquiry published a Provisional List of Issues for Module 1. This is a comprehensive and extremely helpful document. However, it remains unclear as to how certain issues relating to Wales fall to be divided between the Modules. CBFJ Cymru considers that more progress could have been made in this M2b preliminary hearing had an issues list for M2b been published prior to the hearing. CBFJ Cymru calls for all issues lists to be published as soon as possible and stresses the need to have more than one further preliminary hearings for M2b so that there is adequate opportunity to make written and oral submissions on issues and scope. This is vital to ensure that there are no gaps in this Inquiry's scrutiny of Wales.
3. By way of general comment on scope, CBFJ Cymru repeats the submissions that were made in the Module 2 ('M2') hearing, namely, that in all Modules the Inquiry must seek to understand the unique structure of healthcare in Wales. There must also be exploration of:
 - a. The interactions and communication between the UK Government and the Welsh Government before and after January 2020 (including the frequency

and quality of meetings).¹ This should include requests and efforts made by the Welsh Government to the UK Government for additional funding;

- b. The extent to which there was a sharing of knowledge between the Welsh and UK Governments, in particular, on scientific, medical and other expert knowledge;
- c. The extent to which actions taken, or not taken, by the Welsh Government differ from those taken by the UK Government;
- d. The relationship and communications between the Welsh and UK Government.

Rule 9 requests

4. CBFJ Cymru welcomes the Inquiry's confirmation at the M2 hearing that the Director-General of Covid-19 Crisis Co-ordination for the Welsh Government, Mr Reg Kilpatrick, is to be sent a Rule 9 request.² If not already done we trust it will be done without delay given the central and important role played by this witness in Wales.
5. Rule 9 requests have been sent to organisations and bodies relevant to at-risk or vulnerable groups. The Inquiry update for 2 December 2022 indicated in Annex A that in respect of older people the following had received Rule 9 requests (in respect of Modules 2, 2A, 2B and 2C):
 - a. Age UK;
 - b. Care England;
 - c. National Care Forum; and
 - d. Homecare Association.
6. The 13 February 2023 Inquiry update lists a number of at-risk/vulnerable groups to whom impact questionnaires for M2b have been sent since the January 2023 update, namely:
 - a. Women's Equality Network Wales;
 - b. BAWSO;
 - c. Welsh Women's Aid;

¹ For examples of communication failures by UK Government to the Welsh Government around early testing in Wales see Case Study 1, "Lessons Learned from National Public Health Institutes' Response to the Covid-19 Outbreak in 2020", International Association of Public Health Institutes, May 2022

² 28:25 – 29:1 – 4 (transcript Module 2, 1 March 2023); see also ways of working across all 4 nations during the pandemic <https://publications.parliament.uk/pa/ld5802/ldselect/ldconst/15/1506.htm>

- d. Safer Wales;
- e. Chwarae Teg;
- f. Race Council Cymru;
- g. TGP Cymru.

7. CBFJ Cymru are extremely concerned that there should be no gap in the evidence gathering by the Inquiry in relation to older people and note that the above list does not include a group representing older people. It is not clear whether the Welsh chapters/equivalents of Age UK, Care England, National Care Forum, and the Homecare Association have been contacted. There appears to be no Core Participant group recognised in M2b with a specific /sole focus on working with older people in Wales during the Covid-19 pandemic (from a charitable or non-state perspective). It is understood by CBFJ Cymru that the Older People's Commissioner for Wales ('OOPCW') did not apply for CP status. The ILT January 2023 update indicated that a corporate statement had been requested from the OOPCW. CBFJ Cymru welcomes this and anticipates that the OPOW will have highly relevant evidence to give to the Inquiry. However, given its status OPOW should not be relied on to provide all the evidence in relation on the topic of older people. Different perspectives must be sought.
8. The Covid-19 pandemic had and, CBFJ Cymru believes, continues to have a disproportionate impact on the older people of Wales and particularly those living in poverty and deprived communities.³ The average assumed age (based on the median

³ <https://www.gov.wales/sites/default/files/publications/2022-08/health-inequalities-in-covid-19-deaths-and-hospital-admissions-in-wales-march-2020-to-july-2022.pdf> [page 2]; **See also Public Health Wales data 12 March 2023** https://public.tableau.com/app/profile/public.health.wales.health.protection/viz/COVID-19-Hospitaladmissionsdashboard/COVID-19hospitaladmissionsdashboard?fbclid=IwAR0Es_VFH9XfOmntXMasJVEEWIJh0ELJ4WxGq7c_1ImPPxg_kLqIS7r8qaY ; **Economic inequalities in Wales** https://www.cardiff.ac.uk/news/view/2410317-economic-impact-of-covid-19-compounding-existing-inequalities-in-wales,-report-finds?fbclid=IwAR0mJ0EqxAIDrbVfYS7aDabev-yFHxYgw1sU8Q9PYajvy_l_7-WoUJok_zc ; **On inequalities in Wales including older people (from page 14 on) April 2021** <https://www.who.int/europe/news/item/08-04-2021-wales-places-health-equity-at-the-heart-of-their-covid-19-recovery-using-who-approach> REPORT here <https://phw.nhs.wales/news/placing-health-equity-at-the-heart-of-coronavirus-recovery-for-building-a-sustainable-future-for-wales/placing-health-equity-at-the-heart-of-the-covid-19-sustainable-response-and-recovery-building-prosperous-lives-for-all-in-wales/> ; **Covid deaths Wales compared to England 2021** <https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/deaths/articles/deathsregisteredduetocovid19/2021>; Latest Covid data in Wales <https://www.bbc.co.uk/news/uk-wales-52380643>; **First wave – stats on shielding – and lost shielding letters** <https://welshundergroundnetwork.com/2022/05/03/manufacturing-apathy/>

point of the age band) of Covid-19 deaths in Wales is 79.4 years old, this was 80.9 years old for females and 78.3 years old for males.⁴

9. This it appears may be partly because of the high rates of hospital acquired Covid-19 in Wales ('Nosocomial infection'). Public Health Wales publish data weekly relating to Covid-19 infections and, for example, in the week ending 12 March 2023 at least 70% of Covid-19 infections in Wales were the result of nosocomial infections.⁵ The figure has consistently remained around this percentage. CBFJ Cymru consider that older people are likely to feature heavily within this 70%. It would therefore appear that lessons have still not been learnt about the management of Covid-19 in Welsh hospitals. This is extremely worrying and a further reason why this Inquiry must have a complete picture in relation to the impact of the Covid-19 pandemic on older people in Wales.
10. CBFJ Cymru call on the inquiry to send Rule 9 requests to the following organisations who will no doubt have highly relevant evidence and data to provide on all the issues of concern to this Inquiry in relation to Wales as well as in relation to older people.

Welsh Government / Civil Servants

- a. Permanent Secretary – Andres Goodall & Shan Morgan;
- b. Principal Private Secretary to the First Minister - Carys Evans;
- c. Director, Office of the First Minister – Des Clifford;
- d. Head of Cabinet Secretariat - Christopher W Morgan;
- e. Director General, Health and Social Services Group / Chief Executive, NHS Wales - Judith Paget;
- f. Director General, Covid Recovery & Local Government - Reg Kilpatrick (see above);
- g. Interim Director, Public Health Protection – Sioned Rees;
- h. Director, Health and Wellbeing – Irfon Rees;
- i. Director, Primary Care & Mental Health – Alex Slade;
- j. Deputy Chief Executive NHS Wales – Nick Wood;
- k. Director, NHS Finance – Steve Elliot;
- l. Chief Nursing Officer – Sue Tranka;

⁴ Ibid, <https://www.gov.wales/sites/default/files/publications/2022-08/health-inequalities-in-covid-19-deaths-and-hospital-admissions-in-wales-march-2020-to-july-2022.pdf>

⁵ <https://public.tableau.com/app/profile/public.health.wales.health.protection/viz/COVID-19-Hospitaladmissionsdashboard/COVID-19hospitaladmissionsdashboard?publish=yes>

- m. Director, Education and Welsh Language – Owain Lloyd;
- n. Director, Recovery & Re-start – Simon Brindle;
- o. Chief Scientific Adviser – Jas Pal Badyel;
- p. Head of COVID-19 project team - Jo Trott

Special Advisors

- a. Alex Bevan;
- b. Dan Butler;
- c. Paul Griffiths;
- d. Sara Faye;
- e. Andrew Johnson;
- f. Tom Woodward;
- g. Mitch Theaker;
- h. Gareth Williams;
- i. Madeleine Brindley;
- j. Dewi Knight;
- k. Jonathan Scourfield

Other organisations

- a. Health Education and Improvement Wales (HEIW);
- b. Digital Health and Care Wales;
- c. NHS Wales Shared Services Partnership;
- d. Community Health Councils in Wales;
- e. Human Tissues Authority;
- f. Cygnus Reports - <https://cygnusreports.org/seven-reports>;
- g. Asthma + Lung UK;
- h. Medics for Masked up Wales;
- i. Fresh Air Wales - <http://www.freshair.wales> ;
- j. Fresh Air NHS - <https://www.freshairnhs.com>;
- k. Wales Covid-19 Evidence Centre - <https://healthandcareresearchwales.org/about-research-community/wales-covid-19-evidence-centre>;
- l. National Bereavement Steering Group for Wales;
- m. Will Hayward/WalesOnline- author of Lockdown Wales which highlights the lack of preparedness in Wales;
- n. Churches Together Wales / Interfaith Wales;
- o. Audit Wales;

- p. Age Cymru;
- q. Community Health Councils in Wales;
- r. Race Alliance Wales
- s. National Association of Funeral Directors (Welsh chapter).⁶

Disclosure to Core Participants

11. CBFJ Cymru call for disclosure to be made as soon as possible. No witness statements have yet been received in the disclosure provided so far for M2b. Thus far only 473 documents relevant to M2b have been disclosed.

Instruction of expert witnesses

12. CBFJ Cymru understood from the ILT update for January 2023 and 13 Feb 2023 that, *“We are also in the process of exploring the instruction of one or more experts to address the issues which Alex Thomas and Gavin Freeguard have been instructed on, with a focus on the structures and processes in Wales. Further updates on this will be provided in due course”*. CBFJ were reassured that a Welsh specific expert was to be instructed in relation to the Welsh context.
13. However, CBFJ Cymru note the 14 March 2023 update in respect of M2b mirrors the information on expert given in respect of Module 2:

“As set out in the previous Update Notes, Module 2B has issued instructions in conjunction with Modules 2, 2A and 2C to the following experts:

*a. **Professor Ailsa Henderson** from the University of Edinburgh has been instructed to report on the political structures for devolution within the UK and mechanisms for inter-governmental decision-making between the UK Government and the devolved administrations during the Covid-19 pandemic.*

b. Professor Thomas Hale from the Blavatnik School of Government, University of Oxford, has been instructed to report on international data relating to the Covid-19 pandemic, in particular in analysing the

⁶ CBFJ Cymru believe that this organisation has relevant evidence to give the Inquiry on post death infection, lack of communication and preparation, key worker status and non-designation.

effectiveness of the decision-making of the UK and each devolved administration to the Covid-19 pandemic in comparison to other countries.

*c. **Alex Thomas** from the Institute for Government has been instructed to report on the decision-making structures of the UK Government in an emergency, in particular the Cabinet Office, Cabinet Committees and the Office of the Prime Minister.*

*d. **Gavin Freeguard**, former Programme Director and Head of Data and Transparency at the Institute for Government, has been instructed to report on the access to and use of data by the UK Government and devolved administrations during the Covid-19 pandemic”*

14. CBFJ Cymru agrees that Professor Ailsa Henderson and the other experts listed above will no doubt be able to report on the political structures for devolution within the UK from a historical and factual perspective. However, CBFJ Cymru consider that there needs to be detailed expert evidence from an expert with relevant experience in focusing on the Welsh perspective. CBFJ Cymru note that Professor Heymann’s report underlines the concerns held by CBFJ Cymru. Professor Heymann’s report provided ample relevant high level background information but in the context of a UK wide report. As CBFJ Cymru have commented in their response to this report, where institutions are referred to, attention tends to be on the English or UK-wide institutions and not in relation to Welsh, Scottish or Northern Ireland institutions.
15. The Welsh perspective and the impact of devolution on the competency and resilience of the Welsh government must be properly explored and understood by this Inquiry. This is particularly the case given the limited time set down for oral hearings for Module 1 and M2b. CBFJ Cymru therefore calls on the Inquiry to instruct an expert/experts to report specifically on the devolved decision-making structures in Wales and how they work and inter-relate, including in an emergency, so as to provide the evidential foundation upon which the issues of concern to this Inquiry can be explored and developed in relation to Wales. CBFJ Cymru suggest as possible experts Professor Dan Wincott from the Welsh Governance Centre and/or a suitable individual from UK-ICE (UK in a Changing Europe).⁷
16. CBFJ Cymru welcome the Chair’s indication in the ruling of 9 March 2023 in relation to Module 2 that “*the Inquiry legal team should, in addition to the expert evidence to*

⁷ <https://ukandeu.ac.uk/?s=devolution>

be obtained in relation to structural racism, explore the possibility of obtaining a single report covering these other issues, if necessary drafted by a (small) team of experts covering different specialisms.” These other issues to which the Chair referred are pre-existing structural discrimination on other grounds (other than race) and also on intersectional issues.

17. Attention was rightly paid in the Module 2 hearings to structural racism and inequality and other forms of discrimination. Age is also a protected characteristic under the Equality Act 2010. CBFJ Cymru consider that it is essential that an expert is instructed to consider the impact of the Covid-19 pandemic on older people in Wales (and across the UK). CBFJ Cymru have already highlighted a potential gap in data collection in relation to this cohort in respect of Wales. CBFJ Cymru consider that it will be impossible for this Inquiry to fully understand why the Covid-19 pandemic had such a disproportionate impact on older people in Wales without the benefit of an expert report on the characteristics on this at-risk cohort and what in fact happened in Wales.

Witnesses and hearing timetable

18. CBFJ Cymru note the change in date for M2B and the current proposed timetable. CBFJ Cymru wish to express at this early stage their deep concern that this Public Inquiry intends to cover the impact and handling of the Covid-19 pandemic in Wales on M2b issues in under two weeks of oral hearings. CBFJ Cymru are concerned that this period will not allow for adequate public scrutiny. It must not be forgotten that Mark Drakeford, First Minister for Wales, refused demands for a Wales specific Public Inquiry akin to the Scottish Public Inquiry in reliance on the fact of this Public Inquiry. CBFJ Cymru await the listing for Module 1 but remain concerned that the Welsh Government should not escape full public scrutiny in this Public Inquiry.

Parliamentary privilege

19. CBFJ Cymru have no submissions to make on this issue.

Evidence proposal procedure and Rule 10

20. CBFJ Cymru welcomes the implementation of the process for meeting with CTI referred to at paragraph 52 of CTI's note of 14 March 2023. As confirmed by the Chair in the ruling of 17 February 2023 following the second preliminary hearing in relation

to Module 1 (and in CTIs note at 48), the dialogue with CTI does not affect Core Participants right under Rule 10(4) to seek permission from the Chair to question witnesses themselves. CBFJ Cymru endorse and repeat the submissions that have been made by other non-state core participants representing bereaved families in relation to the importance of permitting core participant questioning after CTI. This approach will ensure effective participation for the bereaved, to increase public confidence in this Inquiry and to ensure a greater diversity of questioners.

Miscellaneous

21. CBFJ Cymru once again endorse and reiterate the suggestion made by the Trades Union Congress that a short hearing be listed after all M2 sub module hearings are completed to take account of the lessons learned across these modules. This is particularly so given the data that is highlighted above which suggest that Nosocomial Covid-19 infection remains a serious problem in Welsh Hospitals.

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