

**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 SECOND PRELIMINARY HEARING
FOR MODULE 1 ON 14 FEBRUARY 2023**

Introduction

1. Submissions are made on behalf of Covid-19 Bereaved Families for Justice Cymru (CBFJ Cymru) under the following headings:
 - (i) Scope of Module 1
 - (ii) Rule 9 requests
 - (iii) Disclosure to Core Participants
 - (iv) Evidence proposal procedure and Rule 10
 - (v) Witnesses and hearing timetable
 - (vi) Opening and Closing Statements
 - (v) Public hearings.

Scope of Module 1

2. We note that the outline of scope remains provisional at this stage. We wish to raise that the refinement of the scope should have regard to the need for sufficient attention to the role of the Welsh Government in decision-making regarding planning and preparedness.
3. Although Wales receives funding from the UK Government, responsibility for health and social care has been devolved to Wales since 1999.

4. Wales has its own healthcare system. NHS Wales 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 are specific to Wales.
5. This means that the key decisions made in Wales in relation to the Covid-19 pandemic were largely separate to and quite often different from those taken by the UK Government.
6. Therefore, the Welsh Government had responsibility for planning for a pandemic, including forecasting, and the learning from past simulation exercises, and had responsibility for producing emergency plans. Further, the Welsh Government is responsible for Public Health services in Wales. The organisation responsible, Public Health Wales, is separate to UKHSA.
7. The Welsh Government also has responsibility for maintaining healthcare more generally in Wales, which lays the groundwork for pandemic resilience. CBFJ Cymru considers that NHS Wales's infrastructure was not fit for purpose prior to COVID-19, meaning that when the pandemic started to take effect in Wales, the health and social care services were insufficiently prepared, and not resilient to the challenges faced. These are all matters CBFJ Cymru wishes to explore in Module 1.
8. As such, we ask that the Chair consider when finalising the scope of Module 1, that its scope will ensure sufficient scrutiny of the decisions taken by the Welsh Government as to, and the extent of, preparedness in Wales, including but not limited to:
 - a. Funding provided to Wales by the UK Government and whether the level of funding impacted on planning and preparedness in Wales;
 - b. Intergovernmental political relations between the Welsh and UK Governments;
 - c. Co-ordination between the UK Government and the Devolved Governments as regards preparedness;
 - d. Variations between those Governments in standard and approach to planning and preparation;

- e. Preparedness as regards capacity in NHS Wales for coping with and implementing infection control measures in the Welsh hospitals estate including segregation; and
- f. Whether there was an adequate understanding of and adequate resourcing for infection control measures in Welsh hospitals and care homes, including PPE stockpiling and distribution.

Update on Rule 9 requests

9. At the time of compiling this note, the Rule 9 Corporate Witness statement of the Welsh Government has not yet been disclosed to core participants and may not yet have been received by the Inquiry. Core participants have not had sight of the Rule 9 request itself but have been provided with a summary of the request, attached to the CTI Note at Annex A. It is noted that as regards the summary of the request to the Welsh Government there is no specific reference in the categories to:
- a. The Welsh Government's role in resilience and civil emergencies;
 - b. Its inter-organisational co-operation; and
 - c. Its planning for a pandemic.
10. These specific categories are however listed in the summary of the request made to the Scottish Government. Without seeing either the Rule 9 request or the witness statement and disclosures provided under this request and the requests addressed to NHS Wales, Chief Scientific Advisor and Chief Medical Officer for Wales it is not possible to evaluate whether the request directed to the Welsh Government has been sufficient. This includes whether it will have sufficiently elicited information about the role of the Wales Resilience Forum and Wales Resilience Partnership Team. We note the CTI's willingness (paragraph 6 of its Note) to issue discrete follow up Rule 9 requests to organisations and urge that it reviews whether to do so in respect of the request addressed to the Welsh Government in view of the apparent disparity between the terms of the requests to Scottish and Welsh Governments.

Disclosure to Core Participants

Timing

11. We wish to raise a concern held by our clients as to the timing of the disclosure. We are grateful to Counsel to the Inquiry for his note setting out the plans for Module 1. However, it is noted that the majority of disclosure will not be provided to the Inquiry until the end of February, meaning it is unlikely to be disclosed to the CPs until at least the beginning of March. Our clients are concerned that this will not provide us with sufficient time to adequately prepare for the substantive hearing.

Content of Disclosure

12. From our clients' own knowledge and from that which has been uploaded to Relativity thus far, we have been able to ascertain a timeline of reports and exercises related to pandemic preparedness (annexed hereto).

13. However, what appears to be missing from the disclosure at present is what happened next. We note disclosure is yet to be received from the Welsh Government. For our clients, this will be key in understanding the actions and/or omissions of the Welsh Government in relation to pandemic preparedness. We hope to be able to review:

- a. Inter-departmental communications;
- b. Communications between civil servants and ministers;
- c. Responses to the various exercises and reports carried out above;
- d. Actions agreed upon following those exercises and reports;
- e. Any audits of whether or not those actions were completed; and
- f. The ministers and/or civil servants' own assessment of Wales's preparedness for a pandemic.

14. Without this evidence, we merely have the background, or what should have been done, but we will not be able to analyse the decision-making. It is anticipated that there may be a great deal of memos, emails, ministerial briefings, and other material which we will need to consider in detail.

15. Further, as yet, while we have received some disclosure that relates to Wales, we have not yet received any witness statements which are Wales-specific. The material provided to date properly considers Wales as part of the UK, but given the devolution arrangements as set out above, Wales must also be considered independently of the UK.

Relativity

16. Having started to use the Relativity system to review the disclosure that has been provided to date, we note its limited functionality. Whilst some training has been organised, that did not provide any better insight as to the way in which the use of system can be improved. Harding Evans has received a demonstration of another system, Opus 2, which appears to have far better functionality and would enable Core Participant's representatives to work more efficiently and effectively. When one considers the speed at which this Inquiry is moving, and the issue of timing as set out at paragraph 11 above, it seems particularly important that the Inquiry use a system that will enable Core Participants to work more efficiently and effectively. We therefore invite the Inquiry to consider introducing the Opus 2 system.

Parliamentary privilege

17. At this stage, we do not have any submissions to make in respect of this issue.

Instruction of expert witnesses

18. At this stage, we do not have any submissions to make in respect of this issue, save that we wish to repeat the submissions we have made above in respect of timing at paragraph 11 above.

Evidence proposal procedure and Rule 10

19. CBFJ Cymru requests that an opportunity is afforded to its legal team 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. This will afford the bereaved core participants an opportunity through their legal team to fully explain to the Inquiry team the precise nature and rationale for matters that they consider ought to be explored in questioning. We submit this will assist CTI and save time and reduce the length of the written response to CTI's evidence proposal. We also suggest that in line

with other Public Inquiries there ought to be a short period of time 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.

Witnesses and hearing timetable

20. CBFJ Cymru requests that an opportunity is afforded to its legal team to meet with CTI (remotely) following receipt of the witness list and timetable.

Opening and Closing Statements

21. We anticipate providing written open and closing submissions and making brief oral submissions if permitted.

The Listening Exercise – Every Story Matters and Commemoration

22. CBFJ Cymru has offered its commitment to continue working with the Inquiry Team to assist in the development of the Listening Exercise.

Public hearings

23. We welcome the opportunity for hearings to be as accessible as possible for the bereaved core participants. However, we wish to bring the following matters to the Chair's attention which specifically affects those who reside in Wales;

- a. The unreliable internet connection for those who live in remote parts of Wales;
and
- b. The difficulties that those who live in Wales may have in attending London on a regular basis.

24. As such, we ask that the Chair gives some consideration to any measures that will make the Inquiry's proceedings as accessible as possible to as many people as possible in all parts of Wales and the rest of the UK.

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8 February 2023