

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

**OPENING STATEMENT
ON BEHALF OF THE COVID-19 BEREAVED FAMILIES FOR JUSTICE CYMRU FOR
MODULE 1 ('M1')**

Introduction

1. This opening statement is made on behalf of the Covid-19 Bereaved Families for Justice Cymru ('CBFJ Cymru') for M1. These submissions supplement the evidence already provided to the Inquiry in the Rule 9 witness statement of Anna-Louise Marsh-Rees.¹
2. CBFJ Cymru is a Welsh group dedicated solely to campaigning for truth, justice, and accountability for those bereaved by Covid-19 in Wales. CBFJ Cymru is led by Anna-Louise Marsh-Rees, Sam Smith-Higgins and Liz Grant and guided by the concerns of its bereaved members across Wales. CBFJ Cymru is committed to giving a voice to all those in Wales who are bereaved due to Covid-19. Since its establishment, CBFJ Cymru has become the most prominent organisation in Wales in the discourse surrounding the Covid-19 and will continue to ensure that there is proper scrutiny of all governmental decision-making relevant to Wales, including those decisions made in Westminster and by the Welsh Government ('WG') in Wales.
3. CBFJ Cymru members have experienced first-hand the consequences of the catastrophic failure of the WG to adequately prepare for a pandemic in Wales. Its members experienced and continue to experience suffering and trauma due to the devastation caused by Covid-19. They lost loved ones in care homes receiving patients from overwhelmed local NHS Wales hospitals without adequate isolation or protection.² They lost loved ones due to hospital acquired Covid-19 in the context of inadequate infection control and a lack of adequate Personal Protective Equipment ('PPE') in Welsh hospitals, many of which were known to have inadequate ventilation. Rates of hospital acquired Covid-19 have remained high in Wales.³ Many members have professional experience working in sectors heavily impacted by Covid-19 and experienced shocking conditions as workers on the front line. They saw first-

¹ Witness statement of Anna-Louise Marsh-Rees dated 28 April 2023 (INQ000183392)

² 2,335 Care Home deaths in Wales, according to Stats Wales <https://stats.wales.gov.wales/Catalogue/Health-and-Social-Care/Services-for-Social-Care-and-Childrens-Day-Care/notifications-to-care-inspectorate-wales-related-to-covid-19-in-adult-care-homes/deathsofresidentsfromadultcarehomes-by-dateofnotification-cause>

³ https://twitter.com/cymru_inquiry/status/1666901981883949122?s=20

hand the failures and deficiencies in the WG's pandemic preparedness, risk management, and civil emergency planning. Many were simply not provided with the protection that they deserved.⁴ Its members have a valuable and unique first-hand experience to offer this UK Inquiry and welcome the opportunity to give oral evidence. It is hoped that the Inquiry continues to afford such opportunities.

4. CBFJ Cymru's primary aim is to assist this Inquiry to understand why decisions were made by those responsible for pandemic planning in Wales and to understand what went wrong and why. CBFJ Cymru also consider that it is essential that any errors are publicly acknowledged and accepted by the WG so lessons can truly be learned and so that there can be proper accountability in Wales. The purpose of this Inquiry must be *"to ensure so far as possible that the full facts are brought to light; that culpable and discreditable conduct is exposed and brought to public notice; that suspicion of deliberate wrongdoing (if unjustified) is allayed; that dangerous practices and procedures are rectified; and that those who have lost their relative may at least have the satisfaction of knowing that lessons learned from his death may save the lives of others."*⁵
5. CBFJ Cymru, the UK Government the Senedd⁶ and indeed this Inquiry⁷ received repeated assurances from the First Minister for Wales, Mark Drakeford and the WG that they were committed to fully engaging with this Inquiry. It is against this background that the First Minister maintains there is no need for Wales, unlike Scotland, to hold its own public inquiry. Mark Drakeford reminded the Rt Hon Boris Johnson MP when he was Prime Minister that: *"I would invite you to agree that all public bodies engaging with the Inquiry are expected to consider themselves under a duty of candour. That duty should drive their culture of engagement with the Inquiry and should lead to prompt and comprehensive disclosure of all relevant material to the Inquiry. A duty of candour should also guide the way public body witnesses should approach"*.⁸
6. CBFJ Cymru are therefore disappointed by the woefully inadequate response and engagement by the WG with this Inquiry in M1. CBFJ Cymru consider that the WG has failed to give prompt⁹ comprehensive disclosure and as a result has frustrated the ability of the Welsh

⁴ Wales Online - <https://www.walesonline.co.uk/news/health/coronavirus-nhs-staff-deaths-covid-19409143>

⁵ *Regina v. Secretary of State for the Home Department (Respondent) ex parte Amin (FC)* (Appellant) [2003] UKHL 51 at §31

⁶ See the exhibits appended to r.9 Statement of Anna-Louise Marsh-Rees, 28 April 2023;

<https://cofnod.senedd.cymru/Plenary/13267?lang=en-GB>, 4 Oct''

⁷ M1H1, 4 October 2022 (124 16:25)

⁸ Letter dated 12 November 2021 from Mark Drakeford to Boris Johnson

⁹ M1H3, 25 April 2023 (22:9-22). CTI- *'there was a notable absence of supporting exhibits... This was rectified after we raised the matter with them, and we demanded and we received assurances, and we've received the material'*

bereaved families and the Inquiry to fully scrutinise the issues to be examined in M1.

7. In some quarters there appears to be a reluctance to take political responsibility for failures to prepare for a pandemic in Wales.¹⁰ Some of the witness statements submitted by the WG are surprisingly short or overly generalised and/or make little reference to exhibited documents.¹¹ CBFJ Cymru were so concerned with the brevity and gaps in the content of Mark Drakeford's statement that a complaint was made to the Inquiry Legal Team.¹² So that the Welsh public are aware, in outline, Mark Drakeford's statement is exceptionally brief and only deals with the period of pandemic preparation when Mark Drakeford was appointed as First Minister. It fails to cover in any detail the extended period from 2009 when Mark Drakeford was involved in health and local government policy both as a special advisor to the First Minister and as a minister of the WG and it fails to mention at all the work as head of the Wales Resilience Forum ('WRF') and knowledge of Local Resilience Forums ('LRFs'). Crucially, it fails to mention that as First Minister for Wales from December 2018 to the current day, Mark Drakeford is head of and responsible for pandemic planning in Wales as Chair of the Wales Resilience Forum ('WRF').¹³ These are fundamental and significant omissions which leave this Inquiry with a significant gap in fully understanding Mark Drakeford's state of knowledge and decision-making and ultimately his accountability in relation to pandemic planning in Wales. CBFJ Cymru remain very concerned at the extent to which the First Minister, as head of the WG, has engaged with this Inquiry.
8. CBFJ Cymru remind the WG that they were (and remain) under a positive obligation under the Human Rights Act 1998 to take steps to protect the lives of the Welsh people from a pandemic, which includes having adequate systems in place. CBFJ Cymru remind the WG that they are bound to comply with this Inquiry's investigation in a timely manner and in accordance with their duty of candour. The WG gave assurances they would do so and used these assurances as a justification for refusing to establish a Welsh Inquiry. CBFJ Cymru call on the WG to significantly change their approach to subsequent Modules and in particular Module 2b which will focus on Wales.
9. CBFJ Cymru call on the Inquiry to investigate the following broad topics, starting in M1:

¹⁰ Witness statement of Vaughan Gething at §§12-37 (INQ000187304)

¹¹ Mark Drakeford (INQ000177804) & Vaughan Gething (INQ000187304), Witness statement of Reg Kilpatrick (Director for Local Government) (INQ000190662) §§46-56, §§92-109; It is disappointing that Carwyn Jones -who is a former AM (April 2021) and former First Minister for Wales and chair of WRF 2009-2018 has provided a 7-page statement with only 4 ½ pages dealing with pandemic preparedness in Wales (INQ000190664)

¹² CBFJ Cymru email to Inquiry Legal Team dated 5 May 2023

¹³ See information about the role of Chair of the WRF in the witness statement of Reg Kirkpatrick, paragraph 14 (INQ000190662) and 1st witness statement of Dr Andrew Goodall, paragraph 134 (INQ000130469)

- a. What the WG – and bodies and individuals responsible for pandemic planning in Wales – knew or ought to have known about the risks to Wales from a pandemic (including from a Severe Acute Respiratory Syndrome (‘SARS’) pandemic);
- b. The adequacy of the planning and preparatory acts undertaken (including adequacy of systems) and whether better planning ought to have been undertaken based on what the WG knew or ought to have known;
- c. Investment in building capacity of workforce and training; NHS Wales digitisation and IT systems
- d. Whether the WG – and bodies and individuals responsible for pandemic planning in Wales – are willing to accept that they made any mistakes and whether lessons have been learnt to protect the people of Wales in the event of a pandemic in the future;
- e. Whether the level of funding provided by the UK Government to Wales had an impact on the planning and preparedness in Wales and, if so, in what ways and how the WG responded to that;¹⁴
- f. Intergovernmental political relations between Wales and the UK Government;
- g. Coordination between the UK Government and the WG and their medical and scientific advisers;
- h. Variation in standards in the approach to planning and preparation;
- i. Whether there was an understanding of and adequate resourcing for infection control and segregation measures in Welsh hospitals and Welsh care homes, including Respiratory Protective Equipment (‘RPE’)/PPE stockpiling and distribution and the adequacy of the infrastructure of the Welsh NHS estate; and
- j. Whether there was adequate/any planning in relation to post-death procedures to protect dignity and to support the Welsh bereaved in the event of a pandemic.

The evidence and findings

10. CBFJ Cymru consider that the following findings are supported by the evidence before this Inquiry:

- a. Pandemic planning in Wales was the responsibility of the WG;
- b. Pandemic planning, preparedness and resilience in Wales was wholly inadequate (including oversight and enforcement);
- c. The WG and their advisers had sufficient notice, knowledge and warning of the risks to the lives of people in Wales from a pandemic (including SARS) but failed to take adequate steps to prepare and build resilience;

¹⁴ See correspondence between Carwyn Jones and Benn Grummer, Minister for the Cabinet Office (INQ000187572; INQ000187573)

- d. The failure to adequately prepare and build resilience in Wales for a pandemic caused unnecessary pain and suffering to the people in Wales and inadequate protection from a risk of suffering and death; and
- e. The WG continues to refuse to accept responsibility for its failures in Wales and must do so in order to learn lessons for the future. There must be accountability.

Pandemic planning: roles and responsibility

11. Responsibility for health and social care was devolved to the WG in 1999 following the Government of Wales Act 1998. Subsequently, the administrative organs of Wales were and remain responsible for their decisions in respect of those areas. Wales has its own healthcare system – NHS Wales – comprising Local Health Boards, NHS Trusts and Public Health Wales (‘PHW’). Relevant offices and agencies such as the Office of the Chief Medical Officer (‘CMO’) and Care Inspectorate are specific to Wales. The 2011 UK Influenza Pandemic Preparedness Strategy (‘the 2011 influenza strategy’)¹⁵ was a “*UK-wide strategic approach to planning for and responding to the demands of an influenza pandemic*”. Cabinet Office Guidance made clear that “*devolved administrations are responsible for the major areas of pandemic influenza planning and response in their respective countries*”¹⁶ and that the WRF chaired by the First Minister “*provides the mechanism for a national multi-agency overview of pandemic preparedness in Wales.*”¹⁷ Wales had in place its own Pan Wales Response Plan approved in 2005 setting out its command control and co-ordination urgent response structure.¹⁸ Under the Communicable Disease Outbreak Plan 2011¹⁹ and the 2013 MoU with Public Health England (‘PHE’), the WG and PHW set out the WG’s responsibility for policy, guidance and advice in relation to communicable disease control and immunisation in Wales with PHW.²⁰ For the avoidance of doubt, the WG and the First Minister for Wales bear ultimate responsibility for pandemic planning in Wales.

12. However, the nature of the devolution settlement means that the WG remained interlinked and appears at times to have relied and deferred to the UK Government on the issue of pandemic preparedness without critical questioning. Adequate pandemic planning requires good communication between central and devolved administrations, however, the evidence before the Inquiry suggests that there were deficiencies, tensions and at times a lack of clarity in the system for communication and the relationship between the UK Government and the

¹⁵ Influenza Pandemic Preparedness Strategy 2011, 10 November 2011 (INQ000128346)

¹⁶ Guidance on Pandemic flu planning information for England and the Devolved Administrations, including guidance for organisations and businesses, 24 November 2017 (INQ000022847)

¹⁷ Guidance from Cabinet Office, Department of Health and Social Care, Ministry of Housing, Communities & Local Government, Home Office, and Ministry of Justice, regarding Pandemic Flu at p.21 of INQ000022847

¹⁸ Witness statement of Reg Kilpatrick at §61 of INQ000190662

¹⁹ Communicable Disease Outbreak Plan for Wales, March 2011 (INQ000089588)

²⁰ Witness statement of Dr Andrew Goodall at §165 of INQ000184901 & MoU (INQ000177512)

WG.²¹

13. The Inquiry must drill down into the financial settlement and any fiscal constraints arising from devolution to understand whether Wales's financial settlement did contribute to the WG's ability to adequately plan for a pandemic in Wales or whether it is simply being offered up as an excuse by the WG for any failures that may be found this Inquiry.²² If devolution and the actions of the UK Government did impact on pandemic planning in Wales, CBFJ Cymru asks the Inquiry to establish whether the people of Wales and their Senedd were ever made aware of this fact by the WG prior to the Covid-19 pandemic.
14. In respect of political communication and relationships, Dr. Andrew Goodall, WG Permanent Secretary, has told the Inquiry that the WG sought to work closely with the UK Government and that in 2011 there was a '*four nations approach*' agreed to pandemic preparedness.²³ However, Dr. Goodall says less about what this really meant in practice for integrated pandemic planning, especially where there appears to be no official forum for communication by the four nations on pandemic planning and resilience. What was the reality of the relationship between the WG and the UK Government and joined up communication? Was it problematic? Vaughan Gething, Minister for the Economy of Wales, suggests it was.²⁴ If so, CBFJ Cymru ask the Inquiry to explore whether this substantively impacted on formal pandemic planning in Wales.
15. CBFJ Cymru consider that it did. Most starkly, Wales was left out of most UK Government's pandemic planning exercises²⁵ and ministers such as Vaughan Gething felt frustration at not being treated as equal partners and in the context of Exercise Cygnus in 2016 that, "*UK ministers did not take Minister and officials from the devolved governments seriously*".²⁶ Vaughan Gething makes reference to "*pre-pandemic disengagement*" and "*intense nature of political competition*".²⁷ It is inexplicable to CBFJ Cymru that in Exercise Alice, the Middle East Respiratory Syndrome ('MERS') one-day tabletop exercise led by PHE, that the head of the Health Emergency Planning Unit ('HEPU') from Wales was only permitted to attend as an observer.²⁸ CBFJ Cymru query why the WG was not shouting from the rooftops about

²¹ See Module 2 Ailsa Henderson Report at para. 53, Joint Ministerial Committee only met 11 times prior to 2020

²² Witness statement of Carwyn James former First Minister Wales, 4 May 2023 at §16 (INQ000190664); Dame Shan Morgan permanent Secretary 2017-22 at §8 (INQ000185340)

²³ Witness Statement of Dr Andrew Goodall at §147 of INQ000130469

²⁴ See Witness Statement of Vaughn Gething at §§ 21-23; 30 & 74(e) – re: Cygnus he notes that '*Our engagement with UK Ministers did not inspire confidence*' of INQ000187304

²⁵ Witness statement of Dr Andrew Goodall at §198 of INQ000184901 & Third witness statement of Dr Andrew Goodall at §174 of INQ000197979 where the WG was invited but played a limited role in Exercises Winter Willow, Cygnus and Alice

²⁶ Witness Statement of Vaughan Gething at §§ 17- 20 of INQ000187304

²⁷ *Ibid* at §30

²⁸ Witness Statement of Dr Andrew Goodall at §216 of INQ000184901

being side-lined in such an important exercise and pandemic planning more generally.

16. The WG has asserted that its pandemic influenza plans were tested in Exercise Cygnus in 2016.²⁹ However, Dr Ruth Hussey CB, OBE, former CMO and current Deputy Chair of the Food Standards Agency, Deputy Chair of The Reader Foundation and a trustee of The Reader charity, explains that *“during the planning for Exercise Cygnus, it appears there was an assumption by PHE that Wales would produce its own modelling, but Wales’s expectation was that this would be done at a UK level.”*³⁰ What we are not told is what was the consequence of this fundamental miscommunication. Who then did the public health modelling for Wales? Further, Dr. Ruth Hussey also mentions more generally that there was a lack of clarity in the arrangements for scientific advice and a strengthening of information systems.³¹ The Inquiry must robustly explore whether the Welsh context was properly understood in Westminster. The suggestion from Dr Ruth Hussey that this may not have always been the case.³² Evidence on the lack of pandemic integration continues. The WG was not allowed to be a core participant in the New and Emerging Respiratory Virus Threats Advisory Group (‘NERVTAG’) but only an observer.³³ CBFJ Cymru query whether the WG did in fact observe and ensure that they kept abreast and implemented all NERVTAG recommendations.
17. Dame Shan Morgan DCMG, former Permanent Secretary for the Welsh Government, now diplomatically notes that one of the lessons learnt from Covid-19 was about the *“importance of effective communication and collaboration between the UK Government and the Devolved Governments at Ministerial and official level.....the structures in place to underpin that collaboration were strengthened during the pandemic”*.³⁴ CBFJ Cymru query what was wrong with the structures for communication prior to Covid-19 and query why it took a pandemic with the loss of thousands of Welsh lives for the WG to seek to address how they communicated and dealt with the UK Government. Do the UK Government bear some responsibility here?
18. CBFJ Cymru expect the witnesses giving evidence to this Inquiry to give a clear account of the reality of their relationship with the UK Government and how this impacted on pandemic planning and what if any steps were taken at the time to rectify any perceived deficit. On the evidence so far before this Inquiry, it is not clear what if any steps the WG or their medical

²⁹ *Ibid* at §1

³⁰ Witness Statement of Dr Ruth Hussey at §12 of INQ000185186

³¹ *Ibid* §11

³² *Ibid* at §11

³³ Witness Statement of Dr Andrew Goodall at §170 of INQ000184901

³⁴ Witness Statement of Dame Shan Morgan at §35 of INQ000185340

and scientific advisers took. The Inquiry has not been provided with any documentary evidence to show that in the context of pandemic planning the WG officially raised any concerns with the UK Government in a timely manner.

Pandemic planning, preparedness and resilience in Wales was wholly inadequate

19. CBFJ Cymru consider that the Pandemic planning and preparedness engaged in by the WG and those advising the WG during the relevant period was wholly inadequate. Consequently, there was a fundamental lack of resilience and ability to adequately respond in Wales to a serious and wide-scale pandemic, including Covid-19. As a result, many Welsh people experienced unnecessary pain and suffering and people may have lost their lives unnecessarily. CBFJ Cymru believe that the WG failed to take adequate steps to protect the lives and well-being of the people of Wales.
20. Whilst Wales held exercises, (Taliesin and Cygnus 2014, and PHW's Dromedary) the outcomes were not sufficiently implemented. These exercises appear bureaucratic and merely designed to satisfy administrative requirements rather than address the substance of pandemic planning. Whilst there may have been updates to some reports or plans, there is no evidence of these exercises having led to material changes to Wales's level of preparedness and resilience such as material changes to infrastructure, greater investment in the social care system, improved ventilation in hospitals, or measures taken to refresh or maintain sufficient levels of PPE stockpiles. Exercise Cygnus in 2014 tested the Pan-Wales Response plan in Wales. The outcome document is extremely brief and makes no mention of testing of NHS Wales surge capacity, PPE/RPE demands and stockpiling, lockdown or the impact of restrictions on free movement or workforce resilience.³⁵ Wales did not formally plan for the impact of lockdown measures but tested them only after Covid-19 arrived in the UK.³⁶ Whereas England tested for surge capacity it appears that Wales did not.³⁷ As now accepted by Dr. Frank Atherton, Wales's Chief Medical Officer ('CMO(W)'), Wales failed to plan for a long-lasting pandemic and "*the plans were inadequate for a two, or three, year shock to the system*".³⁸ This concession does not go far enough. The truth is that the Welsh plans were wholly inadequate for any widespread and potentially fatal pandemic (flu or SARS) likely to

³⁵ Exercise Cygnus - Recommendations, regarding recommendations following exercises assessing preparedness (INQ000107136)

³⁶ It appears that one significant deficit in planning is that it was only after Covid -19 had arrived in the UK, that there was any exercise to test lockdown measures (Exercise Seren City 2020, 3 March 2020) which rightly noted the considerable risks and difficulties of enacting and maintaining lockdown (INQ000082840)

³⁷ Dr Andrew Goodall notes NHS England tested surge capacity in 2015 but makes no mention of a Welsh equivalent at §200 of INQ000184901; Not addressed in 2012, 2017, 2019 response plan (INQ000144596, INQ000082844, INQ000107119)

³⁸ Witness Statement of Dr. Frank Atherton at §55 of INQ000184902

result in high numbers of deaths and requiring restrictions, wide-ranging use of protective equipment, or wide-scale hospitalisation.

The Welsh Government and their advisers had sufficient notice, knowledge and warning of the risks to the lives of people in Wales from a pandemic (including SARS) but failed to take adequate steps to prepare and build resilience

21. The WG planned only for an influenza pandemic to the exclusion of planning for other viruses with pandemic potential. This was a catastrophic and unjustifiable failure. Prior to the COVID-19 pandemic the only fully articulated pandemic strategies in Wales were for influenza.³⁹ The 2011 influenza strategy was adopted by the WG.⁴⁰ The 2011 influenza strategy and the Wales Health and Social Care Influenza Pandemic Preparedness & Response Guidance were prepared in response to the Swine Flu pandemic and on the basis that the next pandemic was most likely to be caused by a new subtype of the Influenza A virus.⁴¹ As a result, the plans in place were geared towards responding to a disease predominantly spread via droplet transmission.⁴² CBFJ Cymru state that no scientists have been available to peer review this planning document, terminology is based on HMG/WG descriptions which is now known to be flawed.
22. As to preparations for a coronavirus pandemic, the WG observed Exercise Alice, and PHW carried out Exercise Dromedary/2nd Bite.⁴³ However, the subsequent updates to PHW's Emergency Response Plan ('ERP') following these exercises did nothing to address the risks of a SARS/MERS pandemic⁴⁴ and the updated ERP features only general guidance on incident levels and activation and command and control. There are no references to either pharmaceutical or non-pharmaceutical measures.⁴⁵ These exercises do not appear to have led to any planning for a SARS pandemic. At the time of COVID-19 all the Welsh Health Boards and NHS Trusts only had pandemic influenza plans in place and the WG based its response to the Covid-19 pandemic on the 2011 influenza strategy.⁴⁶ The four Welsh LRFs each had multi-agency arrangements for pandemic influenza setting out procedures for co-ordination in their LRF area, but none had SARS plans in place. Proposals for pandemic preparedness in the lead up to Covid-19 focused on influenza preparedness.⁴⁷ Mark Drakeford attempts to

³⁹ Report from Department of Health Pandemic Influenza Preparedness Team, titled UK Influenza Pandemic Preparedness Strategy, dated 10 November 2011 (INQ000116441); Report from Welsh Government Department of Health & Social Services, Health Emergency Preparedness Unit titled Wales Health and Social Care Influenza Pandemic Preparedness & Response Guidance, dated February 2014 (INQ000089573)

⁴⁰ Witness Statement of Dr Andrew Goodall at §166 (INQ000130469)

⁴¹ (INQ000116441) pp.14-15

⁴² Report from Department of Health, titled the Use of Face Masks during an Influenza Pandemic Scientific Evidence Base (INQ000177142)

⁴³ INQ000089608; INQ000089562_24 §86

⁴⁴ INQ000089562; INQ000089562_24; §86, INQ000089562_58 §242

⁴⁵ *Ibid*, witness statement Quentin Sandifer at §86 (INQ000089562)

⁴⁶ Letter from Welsh Government regarding ATISN 15194 – Pandemic Planning, dated July 2021 (INQ000148446)

⁴⁷ Report from the Welsh Government, 2018 Health Resilience (INQ000180687); Document from the Pandemic Flue Readiness Board, regarding Action and Activity in Wales (INQ000180621)

excuse such woefully inadequate pandemic planning by suggesting that plans were “geared to fighting the last war.” and so “could not reasonably anticipate the very specific challenges presented by Covid-19”.⁴⁸ This is simply not credible. Not only had the WG been warned about a very high death toll from a flu pandemic,⁴⁹ but there had also already been two coronavirus pandemics in the 21st Century (SARS 2002-2003 and MERS 2012 & 2015). Prior to 2020, the prevailing scientific understanding in the UK was that the main routes of transmission of the SARS-CoV-1 virus were via the droplet and aerosol/airborne routes.⁵⁰ However, the plans for influenza were devised only on the basis of droplet-transmission.⁵¹

23. The WG cannot rely on a defence of blindly following the UK Government. Wales was a devolved nation with its own independent scientific and medical advisors. By the time NERVTAG made its PPE stockpiling recommendations in 2016,⁵² it appeared that “*the evidence to support the plausibility of aerosol transmission of influenza is stronger now than it was prior to the 2009 pandemic*”... with a recommendation that “*FFP 3 respirators are worn on intensive care/high-dependency care units housing pandemic influenza patients (and where AGPs procedures performed) and single use FRSM for close patient contact on all general ward, community, ambulance and social care staff. All those groups should also use gloves and aprons and eye protection.*” Dr. Goodall asserts that HEPU and EPAG in Wales “were both kept apprised of information on emerging disease that originated from NERVTAG” but in fact were only invited to attend NERVTAG as observers.⁵³ CBFJ Cymru ask the Inquiry to get to the bottom on what in fact the WG knew from NERVTAG and whether this recommendation was known about and implemented in Wales.

24. The Inquiry is asked to pay close attention to the witness statement of Covid-19 Airbourne Transmission Alliance (‘CATA’) which systematically dismantles the flaws in the UK (and by extension the WG’s) failure to engage in long term planning for an aerosol-transmitted SARS virus.⁵⁴ The CBFJ Cymru endorse and support the crucial work and analysis that has been carried out by CATA.

25. Had the WG adopted an approach to risk in line with the precautionary principle, they would have formulated pandemic plans which dealt with the risk of both aerosol and droplet

⁴⁸ Witness Statement of Mark Drakeford at §17 (INQ000177804)

⁴⁹ IN0000089573_0007

⁵⁰ J.E. Coia et al. Report from Journal of Hospital Infection titled ‘Guidance on the use of respiratory and facial protection equipment’, 17 September 2013 at §5 (INQ000130561)

⁵¹ INQ000116441_0037; INQ000177142_008; INQ000089573_0050

⁵² NERVTAG Sub-committee on the pandemic influenza Facemasks and Respirators stockpile (INQ000022737)

⁵³ Witness statement of Dr Andrew Goodall at §169 – 170 (INQ000184901)

⁵⁴ Witness Statement of Kevin Bampton at §10 & 11 (INQ000174768)

transmission.⁵⁵ It was entirely foreseeable that the next pandemic may be spread via aerosol transmission. The 2016 recommendation from NERVTAG should have triggered a review of the WG's influenza strategy. The WG's decision to focus on influenza was a huge risk and meant that the response to the Covid-19 pandemic was based on science which was not up to date.⁵⁶ CBFJ Cymru consider this to be an inexcusable and fundamental failure. The simple question - why did the WG not consider the possibility of an aerosol-transmitted virus when there had already been two such pandemics in the 21st Century remains to be answered.

26. The WG knew from before and during the period under consideration by this Inquiry that a pandemic was the top risk on the National Security Risk Register ('NSRR').⁵⁷ However, did those responsible for pandemic planning in Wales take sufficient steps to understand and plan for the risks of a pandemic as they presented in Wales? As now acknowledged by Reg Kirkpatrick, the Director General for Covid Coordination and from 2013 head of Welsh Government Civil Contingencies and emergency planning (including pandemic planning), the NSRR contained assessments which *'provide information at a UK level of analysis rather than one which would serve the Welsh Government'*.⁵⁸ Mr Kirkpatrick boldly states a simple fact which is that *"understanding threat and risk at a more disaggregated level is essential to effective preparedness"* and as a result he explains that Wales now has a Wales Risk Register. However, risk ought to have been understood by the WG whether or not they were obliged to have a Welsh risk register.

27. The simple fact is that Wales did not have an adequate understanding of the risks posed to the people of Wales from a pandemic before and during the relevant period leading to more severe consequences from Covid-19 for vulnerable groups and communities in Wales. For example, pandemic preparedness failed to account for acute health inequalities in Wales distinct from those of the rest of the UK (specifically levels of chronic ill-health and disability and the older population). Professors Bambra and Sir Michael Marmot's report tells us their review indicated that pre-existing health inequalities were considered in no more than a *"in a minimal way"* in the devolved administrations and UK's pandemic planning.⁵⁹ The WG should have sought to understand and incorporate considerations of health inequalities that exist in Wales specifically into its pandemic planning.⁶⁰

⁵⁵ INQ000174768 0005 §12

⁵⁶ INQ000174768 0005 and INQ000174768 0006 §14-15

⁵⁷ See e.g., 2010 National Risk Register (INQ000012665); 2012 National Risk Register (INQ000013406); 2013 National Risk Register (INQ000013617)

⁵⁸ Witness statement of Reg Kilpatrick at §§90-92 (INQ000190662)

⁵⁹ Draft Independent Expert Witness Report on Health Inequalities by Professor Clare Bambra and Professor Sir Michael Marmot §74, p.25

⁶⁰ See Dr. Frank Atherton's concise consideration of health inequalities in Wales in his 2016/2017 report

<https://www.gov.wales/sites/default/files/publications/2019-03/gambling-with-our-health-chief-medical-officer-for-wales-annual-report->

28. Exercise Cygnus 2016 revealed that *“the UK’s current preparedness and response, in terms of its plans, policies and capability, is currently not sufficient to cope with the extreme demands of a severe pandemic which will have a nationwide impact across all sectors”*. The question that this Inquiry must consider is why there had been such a failure in preparedness and resilience prior 2016 in Wales. Did the WG then act fast enough and seriously enough to prioritise pandemic planning in the way that it warranted. If Brexit⁶¹ or lack of a sufficient budget from the UK Government is to be used as an excuse by the WG for not protecting the people of Wales from a pandemic, the Inquiry is asked to ascertain how the WG sought to address that and whether the people of Wales and their Senedd were told these facts by the WG.

29. CBFJ Cymru contend that the following propositions are supported by the evidence before the Inquiry:

- a. The WG knew or ought to have known that they needed to improve infection control and the design and ventilation of Welsh hospitals to reduce infection.⁶² The Wales Framework for Managing infectious Disease Emergencies in both its 2012 and 2014 versions said *“All hospitals need to establish ways of caring for large numbers of infectious patients on a scale outside their normal experience including those requiring high dependency care”*. However, despite the fact that post-Cygnus pandemic flu planning documents refer to review of surge planning in healthcare demand, infection control measures in hospitals did not get the attention they should have in Welsh pandemic planning;
- b. The WG knew that they had to stockpile, but there was a shortage of PPE/RPE including FFP3 masks and ventilators when Covid-19 struck. The WG knew they needed to maintain the stockpile. There is no evidence of any other adequate resourcing for infection control measures in Welsh hospitals and Welsh care homes;
- c. The WG knew they had to plan for excess deaths including 210,000-315,000 excess deaths nationally (UK-wide) in 15 weeks.⁶³ There is no evidence of a plan or strategy to deal with the excess deaths or the consequences (e.g. body bags and storage); or adequate planning in relation to post-death procedures to protect dignity and to support the Welsh bereaved in the event of a pandemic; and

2016-17.pdf at §8 of p. 32; See also Dr. Frank Atherton’s Witness Statement at §47 (INQ000184902) where he refers to his above ‘consideration’ of health inequalities in his 2016/2017 report

⁶¹ Witness Statement of Dr Andrew Goodall at §175 (INQ000130469)

⁶² Exhibit KB/38: Report from Hindawi Journal of Healthcare Engineering titled Environmental Design Strategies to Decrease the Risk of Nosocomial Infection in Medical Buildings at p. 2 (INQ000130575)

⁶³ 2011 Influenza Strategy; Wales Health and Social Care Influenza Preparedness & Response Guidance (INQ000089573); Exercise Cygnus at p. 2 (INQ000107136); Witness Statement of Dr Ruth Hussey at §38 (INQ000185186); Response to Swine Flu – Lessons Learnt at §8 (INQ000107129); Guidance from Cabinet Office titled Preparing for Pandemic Influenza (INQ0001445850); Exercise Winter Willow (INQ000107129)

INQ000107131; Report from Dyfed-Powys Local Resilience Forum (INQ000107134);– Draft plan from North Wales Resilience Forum (INQ000107140); Report from The Welsh Government, Wales Framework for Managing Major Infectious Disease Emergencies (INQ000107104); Report from Department of Health Pandemic Influenza Preparedness Team (INQ000116441)

- d. The WG knew that there would be a burden on care homes and the care sector in the event of a pandemic⁶⁴ and vulnerable groups⁶⁵. Although Dr. Goodall has submitted evidence referring to a (post-Cygnus) Wales Flu Preparedness Group and linked groups that focused on healthcare demand, social care demand and excess deaths,⁶⁶ there is no evidence that shows these areas were actually addressed in a real or substantive way.
30. In terms of implementation and oversight, Reg Kirkpatrick has stated *“taking forward every recommendation has been challenging against other more immediate priorities, but we have endeavoured to turn learning into best practice where we can and change structures and processes, where required, for the better”*.⁶⁷ Vaughan Gething as Minister responsible for Healthcare in Wales appears not to have checked whether the learning from Exercise Cygnus 2016 was implemented, but rather he *“assumed, absent any advice to the contrary or questions in the Senedd, that the lessons of Exercise Cygnus had been applied”*.⁶⁸ Mark Drakeford gives a similar answer to this Inquiry, *“I do not recall any advice from officials that there were any reservations about the state of Wales’s pandemic preparedness, nor did I recall any concerns in the Senedd being raised with me”*.⁶⁹ It is deeply shocking to CBFJ Cymru that those with political responsibility for protecting people in Wales from a pandemic did not consider it their job to understand and check the state of pandemic preparedness and resilience in Wales. Instead, there is now a distinct attempt to shift responsibility for the oversight of pandemic planning implementation onto civil servants and the Senedd. This gives the Inquiry an insight into how seriously the WG took pandemic planning in the years before Covid-19 and their willingness now to accept some responsibility for what went wrong.
31. Many members of CBFJ Cymru lost loved ones who became infected with Covid-19 in hospitals with inadequate infrastructure and ventilation and a lack of adequate protective equipment. However, the risks of such infections and deaths in the event of a pandemic was well known in Wales long before Covid-19 and long before 2016. Despite all the assertions as to investment in health and social care by the WG post devolution,⁷⁰ the reality is that the WG presided over a failing healthcare system and did very little to improve infrastructure and

⁶⁴ INQ000107131 Draft Report from Wales Resilience, titled Response to Swine Flu in Wales 2009/2010: Lessons Identified Report, dated 01/08/2010

INQ000107129 – Document titled WRF(10)4 – Response to Swine Flu – Lessons Learnt, regarding conclusions and recommendations on lessons in the response to Swine Flu, undated

INQ000187173 – Document titled Project Initiation Document, Social care surge in Wales during a flu pandemic, dated 02/07/2018

⁶⁵ Exercise Winter Willow – Master Events List for use of Exercise Planners, Umpires and Controllers Only’, undated (INQ000144272)

⁶⁶ Witness statement Dr. Andrew Goodhall, INQ000130469

⁶⁷ Witness Statement of Dr. Frank Atherton at §103 of INQ000190662

⁶⁸ Witness Statement of Vaughan Gething at §67 of INQ000187304

⁶⁹ Witness Statement of Mark Drakeford at §47 of INQ000177804

⁷⁰ Witness Statement of Dr Andrew Goodall at §350 of INQ000130469

ventilation in hospitals in Wales.⁷¹ There is longstanding scientific and historical evidence to support the case for improving the design/layout of hospitals to better manage the response to a wide-scale respiratory infection.⁷² The importance of good ventilation in hospital was mentioned as far back as Florence Nightingale in her book of 1863.⁷³ The WG were aware many years before Covid-19 of reports and recommendations indicating that NHS Wales and Care Homes would not cope with a pandemic.⁷⁴

32. Hospitals were a known source of risk in relation to a pandemic spread. An update to EPAG in 2015 demonstrates that the WG were aware that MERS cases were largely a consequence of nosocomial infections - 44% of cases were patients exposed in hospital, 33% were caregivers and 13% were healthcare personnel.⁷⁵ The only mention of hospital design in WG documents appears to be in the *Wales Framework for Managing Major Infectious Disease Emergencies*, dated October 2005.⁷⁶

33. Julie Williams, Chief Scientific Advisor for Wales between 2013 and 2017, tells the Inquiry that “*I also consider that Wales put in place good practical measures such as stockpiling antivirals and PPE in anticipation of a possible future pandemic*”.⁷⁷ CBFJ Cymru consider that such a bald statement is difficult to comprehend and does not reflect the reality for the people of Wales. Whatever the type of virus planned for, there were a number of non-pharmaceutical measures which should have been in place and available prior to the onset of the Covid-19 pandemic which were not: ventilation of public spaces, face masks, respiratory etiquette.⁷⁸ The *Wales Framework for Managing Major Infectious Disease Emergencies* October 2014 sets out that PHW, all hospitals and primary care services should maintain a stock of FFP3 respirators and standard facemasks to protect staff dealing with infectious patients in a major infectious disease⁷⁹. The NERVTAG advice in September 2016 was for FFP3 masks, not just surgical facemasks, or Fluid Resistant Surgical Masks (FRSM). CBFJ Cymru have not seen evidence before this Inquiry that the above recommendations were actioned. The Exercise Cygnus De-Brief Report October 2016 tells organisations to ensure

⁷¹ Report from Auditor General Wales titled *Managing the Estate of the National Health Service in Wales*, dated 28/11/2001 [Publicly Available] (INQ000145724)

⁷² The Environmental Design Strategies to Decrease the Risk of Nosocomial Infection in Medical Buildings Using a Hybrid MCDM model (INQ000130575)

⁷³ Witness Statement of CATA at §25-28 of INQ000174768

⁷⁴ A report produced by the WG in 2001, ‘Managing the Estate of the National Health Service in Wales’, noted the poor condition of much of the NHS estate and considered it unsatisfactory that accommodation categorised as “inoperable” or “unacceptable” should be used for patient care INQ000145724; A report produced by NHS Wales in 2002 titled, ‘NHS Wales estates strategic framework’, further reports (detailed in AL r.9 statement INQ000145725; INQ000145726; INQ00014572; INQ000145728; INQ000145729; INQ000145730; INQ000145731; INQ000145732)

⁷⁵ Presentation titled *Emerging infections Update to EPAG*, Welsh Government, dated 01/12/2015 (INQ000177269)

⁷⁶ INQ000116558

⁷⁷ Witness Statement of Julie Williams at §41 of INQ000190668

⁷⁸ INQ000147223_033 to INQ000147223_065

⁷⁹ *Wales Framework for Managing Major Infectious Disease Emergencies*, dated March 2012 at §14.1 of INQ0000116523

there is sufficient awareness of what is held within the Welsh National Stockpile and how these would be distributed to them. CBFJ Cymru see no evidence as to a system to ensure these checks were robustly carried out in Wales. Dr. Frank Atherton states that in 2016/2017 he gave out advice that appropriate PPE should be available, but CBFJ Cymru query what was meant by appropriate.⁸⁰ Dr. Ruth Hussey indicates that there was not sufficient attention paid to maintaining resources and there was no minimum standard.⁸¹

34. The WG were put on notice in 2014 after exercise Taliesin (Swine Flu) that there were issues of concern requiring further work in relation to the needs of vulnerable people in social care and arrangement for managing excess deaths.⁸²

Conclusion

35. CBFJ Cymru believe the failure to adequately prepare and build resilience in Wales meant there were preventable deaths.. CBFJ Cymru consider that the WG must acknowledge its failures and accept responsibility for them. If it fails to do so the lessons from the experience of Covid-19 in Wales will not be learned and when the next pandemic arrives many more Welsh lives could be lost
36. On learning the lessons it will be clear that these were things that would and should have been known well before Covid -19 hit. The WG must now make a genuine commitment to long term pandemic planning.

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12 June 2023

⁸⁰Witness Statement of Dr.Frank Atherton at §47 at INQ000184902

⁸¹ §27at INQ000185186_008

⁸² INQ000184273