

**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**

**WRITTEN SUBMISSIONS ON BEHALF OF THE  
GROUP OF WELSH NHS BODIES  
IN RESPECT OF THE SECOND PRELIMINARY HEARING OF MODULE 3  
27 SEPTEMBER 2023**

**Introduction**

1. These submissions are made on behalf of the Group of Welsh Health Bodies (GWHB).<sup>1</sup> The GWHB comprises the majority of Welsh Local Health Boards and a Welsh NHS Trust in Wales and collectively, the Boards/Trust were responsible for primary and hospital care for the majority of the population in Wales.
2. The GWHB reconfirms its commitment to assisting the Inquiry with its task. In response to the items identified on the agenda for the hearing on 27<sup>th</sup> September 2023 the GWHB says as follows:-

**Rule 9 requests**

3. As at the date hereof only one of the constituent members of the GWHB has received a Rule 9 request in relation to Module 3. The GWHB notes the Inquiry's intention to identify Trusts and Boards that can provide direct evidence of how issues and

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<sup>1</sup> On 18th January 2023 the Group of Welsh Health Bodies (GWHB) was granted Core Participant Status for Module 3 of the Covid-19 Public Inquiry: Aneurin Bevan University Health Board (ABUHB); Betsi Cadwaladr University Health Board (BCUHB); Cwm Taf Morgannwg University Health Board (CTMUHB); Hywel Dda University Local Health Board HDULHB) ; Swansea Bay University Health Board (SBUHB); and Velindre University NHS Trust (excluding NHS Wales Shared Services Partnership) VUNHST.

concerns within Module 3's scope affected hospitals and those being treated and working within them and reconfirms its intention to assist the Inquiry with its task.

#### **Disclosure to Core Participants – the email deletion issue**

4. The Inquiry has already been notified of this issue by DHCW. One of GWHB's constituent members (VUNHST) informed the Inquiry of its understanding of the position on 31 August 2023 explaining the background facts, the temporary workaround and permanent fix as follows:
5. On 16 February 2023, the DHCW Microsoft 365 Centre of Excellence Team uncovered an issue with email retention within the NHS Wales Microsoft 365 tenant, specifically within Exchange Online.
6. Retention policies were created to ensure that email in Microsoft 365 is kept for a 7-year period after a mailbox becomes inactive. Mailboxes become inactive when the licence has been removed due to staff leaving NHS Wales or in some cases moving posts.
7. The Team uncovered an issue where these inactive mailboxes got permanently deleted after 30 days. This means that it is likely that the data will have been wiped for users who have left NHS Wales, and for users who have moved between NHS Wales organisations when the mailbox has not transferred with the user. This issue affects all who are party to the Microsoft 365 NHS Wales tenancy agreement, i.e. all Health Boards, Trusts, SHAs, Primary Care organisations in NHS Wales who hold the required level of licencing.
8. Having escalated the issue with Microsoft the Team applied a temporary workaround on 20 February 2023 to prevent any further deletion of inactive mailboxes. A permanent fix to implement the correct 7-year retention policy was implemented in late March 2023.

## **Overall impact of email deletion issue**

9. On behalf of the Group, the Group's legal advisers have asked the GWHB constituent members to report on the current impact of the deletion issue and how it is, or is likely to, affect them. The answer, in summary, is that it will affect constituent members differently according to the particular members of staff who are or may be affected and the extent to which they will have worked in Gold, Silver or Bronze command level within the NHS bodies' structures. The overall message from the GWHB is that the impact of the email deletion issue is substantially mitigated in most cases by the ability of workaround but in some cases and for particular constituent members of the GWHB the issue may cause delay and difficulty in completing responses to R9 requests where key decision makers have moved on and where there are difficulties in locating information held in deleted email accounts.
10. An example from CTMUHB will suffice to illustrate the kind of potential practical problem that may be experienced. Although the CTMUHB's digital team had already put measures in place to protect email data for staff who had left the organisation, the recovery of the deleted mailboxes is accompanied by its own practical difficulties. For example, where search criteria are used in relation to recovered mailboxes, the information recovered is not in the original format – for example, the original date of an email is not initially available until the email is actually opened and this also applies for calendar entries. Since there are thousands of such emails/entries to open individually and review, the review process is both difficult and time-consuming. This may well have a knock on consequence to the timescales for responding to a request for information by the Inquiry.

## **Summary**

11. The difficulties with the email deletion are practical and in most cases should be capable of being worked around. GWHB will report to the Inquiry on an individualised basis (each of the Group's health bodies has a separate legal team) if

there are specific problems in retrieving relevant information once they in receipt of Rule 9 requests (only one of the GWHBs has so far received a Rule 9 request for M3).

### **Disclosure to Core Participants (Relativity)**

12. The GWHB look forward to being able to access Relativity for the purpose of seeing documents disclosed in this module.

### **Expert witnesses**

13. The GWHB notes Counsel to the Inquiry's submissions as to expert witnesses and has no observations to make at this stage.

### **Non-Covid conditions to be examined**

14. The GWHB notes the four areas which have been identified for closer examination by the Inquiry and has nothing to add at this stage in relation to the identification of those areas.

### **Provisional List of Issues**

15. The GWHB is grateful to the Inquiry for its identification of the provisional list of issues and has no observations to make at this stage in relation to that list pending sight of the submissions of other CPs.

### **Every Story Matters**

16. The GWHB has noted the update provided by the Inquiry on 28 July 2023.

## **Public Hearings**

17. The GWHB note the anticipated hearing dates in Autumn 2024 for a period for 10 weeks and agree that a further preliminary hearing is advisable in mid 2024.

**JEREMY HYAM KC**  
**11 September 2023**

Instructed by Sarah Watt, Legal Representative for the Group of Welsh Health Bodies.