

**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
FOR THE PRELIMINARY HEARING FOR MODULE 3
ON 27 SEPTEMBER 2023**

Introduction

1. Submissions are made on behalf of Covid-19 Bereaved Families for Justice Cymru (CBFJ Cymru) in with reference to the following agenda headings:
 - a. Rule 9 requests for information;
 - b. Disclosure;
 - c. Expert evidence;
 - d. Non-covid conditions to be examined;
 - e. Provisional List of Issues; and
 - f. Every Story Matters.

2. In preparing these submissions, CBFJ Cymru has had particular regard to ‘Module 3: Counsel to the Inquiry’s Note for the Second Preliminary Hearing on 27 September 2023’ (‘Counsel to the Inquiry’s Note’), ‘Module 3: Preliminary List of Issues’, and ‘Module 3: Overview of Module 3 Key Lines of Enquiry for Every Story Matters’ (‘KLOE’).

Rule 9 Requests

3. CBFJ Cymru is grateful for the monthly updates in respect of the rule 9 requests together with the update set out at paragraphs 3 to 7 of Counsel to the Inquiry’s Note.

4. CBFJ Cymru notes that requests have been sent to the recipients detailed at paragraph 3 of the note. CBFJ Cymru seeks confirmation, for the avoidance of doubt, that rule 9 requests have been / will be sent to i) organisations and institutions whose members work within the healthcare sector in Wales; ii) the Welsh divisions of the Royal Colleges; and iii) charities, groups and non-governmental organisations operating in Wales, in addition to the following specific individuals/organisations:

- NHS Wales;
- Welsh Chief Medical Officer;
- Relevant Welsh Ministers including the Minister for Health;
- Aneurin Bevan University Health Board
- Betsi Cadwaladr University Health Board
- Cardiff and Vale University Health Board
- Cwm Taf Morgannwg University Health Board
- Hywel Dda University Health Board
- Powys Teaching Health Board
- Swansea Bay University Health Board
- Velindre University NHS Trust
- Welsh Ambulances Services NHS Trust
- Public Health Wales
- Health Education and Improvement Wales ('HEIW')
- Digital Health and Care Wales
- NHS Wales Shared Services Partnership
- Health Inspectorate Wales ('HIW')
- Care Inspectorate Wales ('CIW')
- Older People's Commissioner for Wales
- Office for National Statistics
- Professor Jean White, Chief Nursing Officer for Wales and adviser to the Welsh Government between October 2010 – April 2021
- Professor Steve Martin, Director of Wales Centre for Public Policy
- Professor Adrian Edwards, Director of Wales Covid-19 Evidence Centre
- Professor Mark Taubert, Chair of Advance & Future Care Planning Group including their DNACPR policy

5. CBFJ Cymru is grateful that the Inquiry team appears to be adopting a proactive and robust approach to chasing rule 9 responses and requests for extensions of time. CBFJ Cymru supports the intention of the Inquiry team to publicly identify organisations in the event of non-compliance.
6. CBFJ Cymru is particular keen to ensure that the mechanism for obtaining and reviewing the statements adopted by the Inquiry team will need to be capable of identifying deficiencies in the responses at the earliest opportunity so that they can be rectified in good time ahead of the substantive hearing.
7. CBFJ Cymru invites the Inquiry team to ensure that Core Participants receive final statements and exhibits in good time ahead of the substantive hearing.
8. CBFJ Cymru looks forward to a further update in respect of the status of rule 9 requests at the hearing on 27 September 2023 and thereafter will continue to consider the monthly updates to Core Participants on the progress of Rule 9 work.
9. Finally, CBFJ Cymru provided a draft witness statement in response to its rule 9 request on 11 August 2023. It is hoped that this will assist with the Inquiry's further development of its list of issues to be covered by this module.

Disclosure

10. CBFJ Cymru is deeply concerned about the issue discussed at paragraphs 13 - 16 of Counsel to the Inquiry's Note relating to the retention of emails within the NHS Wales Microsoft 365 email service, which has resulted in all content from the mailboxes of inactive users being deleted.
11. CBFJ Cymru are particularly concerned that the deletions will impact the upon i) the ability of relevant individuals and organisations to respond to any Rule 9 requests; ii) on the Inquiry team's ability to further develop the list of issues for consideration within scope; and iii) on the Inquiry team and CP's ability to put relevant matters to witnesses.

12. Whilst Digital Healthcare Wales ('DHCW') has stated that it considers that "*most information*" that was deleted would be recoverable from other sources, CBFJ Cymru takes the view that this cannot be guaranteed for all the information lost and there is no objective way of verifying this.
13. CBFJ Cymru supports the Inquiry team's request that DCHW provide an explanation as to the delay in bringing this issue to the Inquiry's attention and to provide information to enable the Inquiry team to ascertain the scale and potential impact of this issue.
14. CBFJ Cymru invites the Inquiry team to continue in its robust approach to exploration of this issue and will await further updates in respect of this matter.
15. More broadly, CBFJ Cymru awaits disclosure in relation to Module 3. It is understood that Core Participants are due to start receiving Module 3 disclosure imminently.

Expert Evidence

16. As to the instruction of expert witnesses, CBFJ Cymru asks that any experts instructed have sufficient experience and expertise to be able to provide evidence dealing with Wales (and the other devolved administrations) specifically. CBFJ Cymru asks that any expert witness instructed is able to give evidence concerning issues relevant to Wales, or alternatively, a separate witness is instructed to deal with issues specific to Wales.
17. CBFJ Cymru submits that in order to properly examine the Module 3 issues in Wales (the healthcare system for which is separate and health being a devolved issue), it is vital that the experts search for, document and analyse the Welsh data to scrutinise the position in Wales. Unfortunately it has not always been the case that expert reports provided to the Inquiry have provided sufficient Welsh data. Where the author of a report has searched for relevant Welsh data but that data is not available then CBFJ Cymru submits this should be identified, as the lack of relevant data would be a matter deserving of highlighting.

Non-Covid Conditions to be Examined

18. CBFJ Cymru supports the Inquiry's intention to examine the impact of the pandemic on those requiring healthcare for reasons other than Covid-19 as set out at paragraph 17 of Counsel to the Inquiry's Note. CBFJ Cymru understands the rationale for confining the list of conditions examined in detail for reasons of proportionality. However, CBFJ Cymru seeks clarification as to how the Inquiry proposes to examine the "*extent to which the pandemic caused delays in treatment and/or an increase in waiting lists and/or otherwise affected treatment*" in broader terms for areas outside the four areas identified.

Provisional List of Issues

19. 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 fully investigated.

20. The areas which CBJ Cymru considers to be of particular concern for those living in Wales and which fall within the scope of Module 3 are as follows:

- a. The design of hospital buildings in Wales and whether this contributed to the lack of infection control.
- b. Lack of investment in IT infrastructure and the digitisation of NHS Wales.
- c. The governance of the different NHS bodies in Wales, including whether there was sufficient oversight to ensure consistency of care and practices across the different NHS bodies in Wales.
- d. The differing powers of the equivalent regulators (e.g. CQC in England and HIW in Wales).
- e. Healthcare resources in Wales at the time the pandemic struck and throughout the pandemic.

- f. Decision-making and guidance issued to NHS bodies in Wales, and whether it was followed consistently.
- g. Infection control measures in place in Wales at the time the pandemic struck.
- h. Whether NHS bodies in Wales adhered to the provision of mandatory training.
- i. Whether there was sufficient education and training for healthcare staff in Wales.
- j. How infection control was managed in Welsh hospitals, including ventilation, testing, segregation and PPE throughout the pandemic.
- k. PPE stockpiling/availability within Welsh hospitals at the time the pandemic struck and throughout the pandemic.
- l. Whether the correct PPE was used, and the scientific basis for choosing one type of PPE over another to include whether the belief that Covid-19 was fomite-based led to the incorrect type of PPE being used.
- m. The differences experienced by many of our clients' relatives and loved ones in relation to the quality of treatment received.
- n. The extent of Covid-19 testing of hospital patients prior to their discharge in Wales.
- o. The experience of patients admitted to the Intensive Treatment Unit in Wales.
- p. The experience of patients requiring palliative and end-of-life care in Wales, particularly the elderly.
- q. Withdrawal of treatment, and the use of DNACPRs in Wales (to include DNACPRs approved without consultation; incorrectly completed forms; and lack of central electronic records).

- r. Morgue capacity in Wales.
- s. The lack of bereavement support available in Wales.
- t. In respect of the foregoing issues, the cross-border experience of those who are ordinarily resident in England but who were treated in Wales, and vice versa.

21. For, the most part, CBFJ Cymru considers the Provisional List of Issues for Module 3 to be sufficiently broad to allow for investigation into the topics of particular concern for those living in Wales and the members of CBFJ Cymru, save as set out at paragraph 21 below.

22. CBFJ Cymru wish to raise the following queries / additions to the list:

- a. In relation to Issue 2 on ‘Core Decision Making and Leadership’, CBFJ Cymru seeks confirmation that this will explore what information was/should have been available to decision-makers at the time decisions were made.
- b. In relation to Issue 2 on ‘Core Decision Making and Leadership’, CBFJ Cymru seeks confirmation that this will include whether the Welsh Government paid sufficient regard to the fact that Covid-19 was airborne and how this impacted on its decision-making.
- c. In relation to Issue 3 on ‘Capacity’ or Issue 10 on ‘Deaths’, CBFJ Cymru considers it is imperative that the Inquiry also considers the issue of morgue capacity.
- d. In relation to Issue 5 on ‘Healthcare Provision and Treatment’, CBFJ Cymru considers that the Inquiry should also consider:
 - i. the extent of testing for Covid-19 of hospital patients prior to discharge;
 - ii. the cross-border experience of those who are ordinarily resident in England but who were treated in Wales, and vice versa; and
 - iii. the differing powers of the equivalent regulators in England and the devolved nations.

- e. In relation to Issue 6b on ‘Do Not Attempt Cardiopulmonary Resuscitation Notices’ (‘DNACPR’), CBFJ Cymru seeks assurance that this topic will cover consultation, whether forms were correctly completed and record keeping.

- f. In relation to Issue 8 on ‘Preventing the Spread of Covid-19 in Healthcare Settings’, CBFJ Cymru thinks it is important that the Inquiry also considers:
 - i. the matter of segregation / isolation of Covid-19 patients from non-Covid patients in healthcare settings;
 - ii. whether the design and structure of the hospital buildings in Wales contributed to the lack of infection control; and
 - iii. the guidance issued specifically to the NHS bodies in Wales, and whether it was followed consistently.

- g. In relation to Issue 10 on ‘Deaths’, CBFJ Cymru are also concerned that the Inquiry deals with the lack of bereavement support in Wales.

Every Story Matters

23. We are grateful for the work done by the Inquiry Legal Team so far in relation to this exercise. CBFJ Cymru thinks the following points should be added to the Key Lines of Enquiry (KLOE) identified within the ‘Overview of Module 3 Key Lines of Enquiry for Every Story Matters’ document:

- a. Healthcare resources in Wales at the time the pandemic struck and throughout the pandemic.

- b. Lack of investment in Information Technology infrastructure and the digitisation of NHS Wales.

- c. The experience of patients requiring palliative and end-of-life care in Wales, particularly the elderly.

- d. The matter of segregation / isolation of Covid-19 patients from non-Covid patients in healthcare settings in Wales.

- e. The nature and extent of Covid-19 testing of hospital patients prior to their discharge.
- f. Whether NHS bodies in Wales adhered to the provision of mandatory training.
- g. Whether there was sufficient education and training for healthcare staff in Wales
- h. The design of hospital buildings in Wales and whether this contributed to the lack of infection control.
- i. The cross-border experience of those who are ordinarily resident in England but who were treated in Wales, and vice versa.

Conclusion

24. CBFJ Cymru will be present at the preliminary hearing on 27 September 2023 and will supplement these submissions by way of oral submissions.

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11th September 2023