

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 16 NOVEMBER 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 16 November 2023.

Rule 9 requests

2. CBFJ Cymru welcomes the Inquiry’s extensive requests for evidence in respect of Wales. CBFJ Cymru understood from the updates provided for the M2b preliminary hearing on 29 March 2023 that Rule 9 requests had been sent to the following organisations to cover all M2 devolved modules: Age UK; Care England; National Care Forum and the Homecare Association. CBFJ Cymru repeats the request raised at the preliminary hearing on 29 March 2023 in respect of ensuring M2b has sufficient evidence in relation to older people in Wales from a charitable / non- state perspective.
3. CBFJ Cymru reiterate requests made at the previous preliminary hearing that Rule 9 requests be sent to the following organisations and individuals who do have relevant evidence to give to the Inquiry for M2b.
 - a. Prof Adrian Edwards, Director of the Wales COVID-19 Evidence Centre;
 - b. Disability Cymru;
 - c. Age Cymru;
 - d. National Association for Funeral Directors
 - e. Gethin Rhys, Policy Officer (Senedd Cymru) at Cytun;
 - f. Churches Together in Wales;

- g. Dr Simon Williams (Swansea University) advised the Senedd's Health and Social Care Committee meeting (7th October 2021) on public attitudes to the coronavirus pandemic¹.
4. The following special advisers:² Alex Bevan; Dan Butler; Paul Griffiths; Sara Faye; Andrew Johnson; Tom Woodward; Mitch Theaker; Gareth Williams; Madeleine Brindley; Dewi Knight; Jonathan Scourfield Kate Edmunds; Ian Butler; Andy Pithouse; Mitchell Theaker.

Disclosure to Core Participants

5. CBFJ Cymru notes the indication that the Inquiry hopes to disclose the majority of all draft statements to Core Participants by the end of December 2023 and for there to be full documentary disclosure by early 2024.³ CBFJ Cymru considers that there must be full disclosure of all statements and evidence touching upon M2b by the end December 2023 at the absolute latest to allow for sufficient preparation time. It is deeply unfortunate that just three months away from the module specifically focusing on core decision making in Wales, Core Participants still do not have full disclosure.
6. CBFJ Cymru recognise that the Inquiry is taking all steps to ensure timely disclosure. However, once again it appears that the responsibility for late and delayed disclosure rests with Welsh Government. This is deeply disappointing to CBFJ Cymru. After the woefully delayed disclosure by the Welsh Government in M1 the Welsh bereaved - and the Inquiry -were assured that the Welsh Government was fully committed to this Inquiry. It must not be forgotten that the Welsh Government has consistently refused demands for a Welsh Public Inquiry. In that context these disclosure failures are indefensible.
7. The Welsh Government must publicly explain why it has delayed disclosure to this Inquiry in M2B. The Welsh Government must also commit to complying with all the deadlines set by the Inquiry. As the Welsh Government well understands, late disclosure frustrates effective scrutiny of the evidence by the Core Participants and significantly hinders the work of this Inquiry.

¹ [business.senedd.wales/documents/s118281/Paper 3 Written evidence from Dr Simon Williams.html?CT=2&fbclid=IwAR1mfhKSV58SUhPeLc9K4Fm6nkT0CKg62o5-PZRQce44dXDft7NOT-JvFmM](https://business.senedd.wales/documents/s118281/Paper%203%20Written%20evidence%20from%20Dr%20Simon%20Williams.html?CT=2&fbclid=IwAR1mfhKSV58SUhPeLc9K4Fm6nkT0CKg62o5-PZRQce44dXDft7NOT-JvFmM) & Dr Simon Williams - Swansea University

² Written Statement: Special Advisers (29 July 2021) | GOV.WALES :

³ Para 24-25 of CTIs Note for the Third Preliminary Hearing in M2B for Thursday 16 November 2023

8. It is clear from M2 that contemporaneous notes and messages between civil servants, special advisors, scientists, and politicians (including WhatsApp messages) have played a key role in illuminating how and why crucial political and administrative decisions were made. These communications have revealed a shocking complacency in the response to the pandemic at a national level combined with deplorable attitudes including to the Devolved Administrations.
9. CBFJ Cymru were therefore deeply concerned to learn from the Inquiry update of 9 October 2023 that as at that date no WhatsApp messages or text messages had been disclosed to the Inquiry by the Welsh Government. As the Inquiry notes, the Welsh Government committed to providing this material in June 2023. Well before this date it would have been obvious to the Welsh Government that this material would need to be preserved and disclosed to the Inquiry. It is now understood that only some WhatsApp messages have been disclosed and that several individual witnesses within the Welsh Government have not retained WhatsApp messages from the relevant period.
10. It is shocking to CBFJ Cymru that crucial records and messages have been destroyed by persons working in the Welsh Government. Mark Drakeford, First Minister for Wales, today in First Minister's Questions stated that whilst he has not deleted any messages, that some members of the Welsh Government may have deleted messages and that it was only when he became aware that the Inquiry would want to see WhatsApp messages that he ordered that none should be deleted. Mark Drakeford has been reported as stating, *inter alia*, that:

*"So I think what I don't want to say is that they were not some people working in the Welsh Government and working on Covid, who didn't have pre-existing arrangements, which continued after Covid began. But as soon as we were aware that the inquiry would be interested in material of that sort that was stored on phones, there was no move to delete it once we knew the inquiry would be taking an interest in it,..... "As soon as we knew that inquiry wanted something, there's no deletion beyond that point. However, during the Covid period itself, many colleagues working for the Welsh Government will have had devices with deletion instructions already on them and those things may have remained on their phones, because at the point, nobody I think, absolutely nobody was focused on whether those messages might be required at some future distant point."*⁴

⁴ <https://www.walesonline.co.uk/news/politics/welsh-government-whatsapps-during-covid-28061559>

11. The Inquiry must and no doubt will be investigating the destruction of material relevant to the Inquiry. CBFJ Cymru asks the Inquiry to ascertain and disclose as a matter of urgency all correspondence within the Welsh Government (including from Mark Drakeford) touching upon the non-destruction of material on phones. CBFJ Cymru also ask the Inquiry to ascertain whether instructions were given within the Welsh Government at any stage prior to and /or during the pandemic on the preservation of documents and whether there was any official or unofficial policy in the Welsh Government of deleting WhatsApps and other messages at any stage, including the use of the autodelete function.
12. CBFJ Cymru note that the ICO office has already warned UK Government officials that deleting messages that could relate to investigations into alleged rule-breaking parties at 10 Downing Street and other departments would be a criminal offence. Further the Freedom of Information Act 2000 (FOIA) requires a Code of Practice providing a framework for public authorities to manage information and records and to comply with their obligations under FOIA. The Code makes clear that public bodies should keep information if it needs it for reference or where there may be a Public Inquiry.
13. CBFJ Cymru remain deeply concerned about the issue 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. CBFJ Cymru are particularly concerned that the deletions might impact 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. It is deeply frustrating that this has been allowed to happen and CBFJ Cymru note that CTI intends to provide a further update at the hearing on 16 November 2023. CBFJ Cymru will respond as necessary in the oral hearing.
14. CBFJ Cymru endorse the robust approach taken by the Inquiry in respect of UK Government WhatsApp messages and ask that a similar robust approach is taken in respect of the Welsh Government.
15. CBFJ Cymru also seek clarity on whether the Inquiry's disclosure requests regarding WhatsApp and notebooks extends to the Welsh scientific advisors.

Use of Experts

16. CBFJ Cymru welcomes the instruction of Professor Daniel Wincott. CBFJ Cymru notes the Inquiry's reliance on certain M2 expert reports in respect of Wales and M2b. CBFJ Cymru has

already indicated their concerns that a number of these reports do not adequately cover Wales often either a lack of data known to those experts in respect of Wales or a lack of Welsh specific expertise. These gaps became evident in respect of the following expert evidence in M2 (see table). CBFJ Cymru requests clarification on what steps are being taken to fill the gaps in evidence (where possible) and whether the issue of data sharing covered by Gavin Freeguard in respect of Westminster will be covered by another expert in respect of Wales.

Expert	Quote	where
Professor Watson (Disabilities)	I think that there's a huge variation. No one knows -- when this report came out, lots of people had been speculating as to why Wales has such a high figure. But no one really knows, because it could be age, it could be -- it will be a mixture of age, poverty and other -- industrial -- legacies of industrial injuries and things.	Page 12 – Module 2 Day 5
Professor Watson (Disabilities)	I think Wales have recently introduced a new system, but most -- I think it's fair to say that there are inadequacies in the provision of special educational needs for children across the country.	Page 12 – Module 2 Day 5
Professor Laia Bécares (LGBTQ+)	Q. It's correct to say that the situation with regard to data is even more limited with regard to both Northern Ireland and Wales; is that right? A. That's right, in particular Northern Ireland	Page 77 – Module 2 Day 5
Professor Clare Wenham (Structural Inequalities and Gender)	There is insufficient data to demonstrate a systematic difference between the way the different devolved administrations undertake impact assessments, although anecdotally there are different tendencies in the way the governments are going it.	Page 116 – Module 2 Day 4
Gavin Freeguard (Expert on data sharing)	Q. It's right at the outset to make it clear, as you do in your report, that your expertise in this field is very much focused on matters relating to Westminster government and institutions. So, as we know,	Page 138 – Module 2 Day 6

	<p>we were addressing devolution matters yesterday, that covers matters relating to England and the UK, but you've explained in your report that your expertise doesn't really extend to similar matters within the devolved nations, Wales, Scotland and Northern Ireland?</p> <p>A. That's right, I occasionally touch upon that in my report and think it's an extremely important topic, but my work has been focused on Westminster and Whitehall</p>	
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Venue

17. CBFJ Cymru have already indicated their concern with the location of the hearing venue for M2b (Mercure, Cardiff North) which is considered to be unsuitable given it is not centrally located and not easily accessible on public transport links (there is one bus but it does not stop directly outside the venue). It is understood that the Inquiry is now committed to this venue and hence CBFJ Cymru ask the Inquiry to come up with a solution to facilitate access to the venue such as a shuttle service located close to Cardiff station. CBFJ Cymru are keen to ensure that as many of its members as possible can attend the final hearings in this module; particularly as this is the only time that evidence is currently due to be heard in Wales. CBFJ Cymru's legal representative's offer of assistance to ensure bereaved families in Wales can access the hearing remains.

18. As noted above, CBFJ Cymru are appalled that the Welsh Government has indefensibly allowed a situation in which relevant communications were destroyed and continue to delay providing relevant disclosure to the Inquiry. CBFJ Cymru, who we must remember are grieving Welsh families, submit that frankly, the bereaved families in Wales and indeed all of the people in Wales deserve better and, despite their grief, CBFJ Cymru will continue to work tirelessly to assist the Inquiry to understand what happened and what lessons must be learned. CBFJ Cymru are grateful for the opportunity to provide these brief submissions which will be supplemented by counsel at the Preliminary Hearing on 16 November. CBFJ Cymru remain committed to assisting the Inquiry Team in all facets of its work.

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Counsel

7 November 2023