

**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 FIRST PRELIMINARY HEARING FOR
MODULE 5**

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 5
 - (ii) Key Lines of Enquiry
 - (iii) Rule 9 requests
 - (iv) Disclosure to Core Participants
 - (v) Approach to evidence of circumstances of individual death and ‘pen portrait’ material

Scope of Module 5

2. 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 properly recognised during the Inquiry.
3. CBFJ Cymru agree that the scope of Module 5 reflects the fact that the devolved nations had their own processes and responsibilities in relation to the procurement of PPE, RPE, healthcare equipment, and other medical supplies. We are grateful to the ILT for making this clear in the provisional outline of scope where the four nations of the United Kingdom are explicitly referred to. Further, at paragraph 16 of CTI’s note, we welcomed the

phrasing of the key questions to be asked in Module 5 as relating to “the Governments of the United Kingdom”, which again underlines how each nation had individual responsibility.

4. However, despite the explicit recognition of the position of Wales as one of four UK Governments being made clear in the provisional outline of scope, it is of concern to CBFJ Cymru that this is not carried through in the KLOEs identified at paragraph 38, where “HMG” is referred to. We submit that this has the potential to cause confusion and seek clarification from CTI whether this is intended to be a reference to all UK Governments. In order to fully understand the decisions taken in relation to procurement and distribution, the devolved nature of healthcare must be reflected in any KLOEs or scope.
5. As the Chair is aware, and has repeatedly acknowledged, Wales is a separate country with a devolved Government. Although Wales receives funding from the UK Government, responsibility for health is devolved to the Welsh Government. Wales has its own healthcare system. NHS Wales is not a legal entity and instead 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 Wales are specific to Wales. This means that key decisions made in Wales were largely separate to and quite often different from those taken by the UK Government. Additionally, social care is devolved in Wales, with the Social Services and Well-Being (Wales) Act 2014 governing social care; an entirely separate statutory scheme from the Care Act 2014. Wales has its own Care Inspectorate Wales which is the independent regulator for social care in Wales and sits entirely separate from the Care Quality Commission, which regulates both health and social care in England. CBFJ Cymru understand that CIW’s function is different to that of the CQC. Social care is therefore squarely within the remit of the Welsh Government’s devolved powers.
6. Wales, England, Scotland, and Northern Ireland all took individual responsibility for PPE and all other healthcare equipment and supplies, as well as field/nightingale hospitals and their equipment. There was also a four nations group headed by Public Health England which secured international supplies where all four nations would receive a share of the PPE bought. Then Health Minister, Vaughan Gething, indicated that it was only because of PPE being transferred from other UK nations that Wales was able to get by at the time

it was “a few days” from running out.¹ Similarly, Wales received two shipments of PPE from Asia into Cardiff airport (one flight from China containing 600,000 fluid resistant gowns and 1.2 million fluid resistant surgical masks), some of which were able to shore up other struggling parts of the UK.²

7. The Welsh Government’s remit to procure all medical supplies and equipment extended to ventilators and CPAP machines. Many members of CBFJ Cymru can speak to the scarcity of resources in the hospitals and care home settings where their loved ones lost their lives. This meant that their loved ones did not receive the care they required due to a lack of ventilators, CPAP machines, morphine drivers, oxygen, and other vital medical supplies.
8. In relation to the issue of procurement, there are examples of where Wales took its own decisions on procurement, or decisions relating to procurement have a Welsh angle. For example, former Wales Secretary Alun Cairns was being paid £15,000 a year to advise the Crumlin based BBI Group which had a role in producing coronavirus tests for the UK Government.³ To earn his £15,000 a year salary, the representative for the Vale of Glamorgan was required to advise the company for 70 hours a year, which equates to just over £214 an hour. This raises the question as to what advice Mr Cairns was providing to the BBI Group, and what information he was able to impart which was so invaluable.
9. Further, the lack of domestic production of PPE supplies in Wales is an issue which puts particular pressure on the Welsh Government, who rely upon procuring supplies from abroad. Even after a large mobilisation of domestic manufacturing to supply protective equipment, as of July 2020, 90% of Wales’s PPE came from abroad.⁴ This was not for lack of will on the part of people in Wales who wanted to be a part of the effort. Many people, like Richard Blackwell who supplied healthcare workers with visors using 3D Printers,⁵ had to put his supplies on hold while tests were carried out. While neither visors nor fluid-repellent masks are PPE for an airborne virus,⁶ this example demonstrates that

¹ <https://www.walesonline.co.uk/news/health/ppe-wales-vaughan-gething-coronavirus-18126325>

² <https://www.gov.wales/half-million-more-vital-fluid-resistant-gowns-land-cardiff-airport>

³ <https://www.walesonline.co.uk/news/politics/alun-cairns-bbi-expenses-claims-18789935>

⁴ <https://www.bbc.co.uk/news/uk-wales-52870671>

⁵ <https://www.walesonline.co.uk/news/wales-news/people-businesses-making-protective-equipment-18054510>

⁶ https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwicqd3D9YmEAXVhh_0HHXMoDfgQFnoECD0QAQ&url=https%3A%2F%2Fwww.rcn.org.uk%2F-%2Fmedia%2FRoyal-College-Of-Nursing%2FDocuments%2FClinical-Topics%2FInfection-Prevention-and-Control%2FRespiratory-Protective-Equipment-Guide-May-

there were people in Wales who were willing to assist in the drive to manufacture PPE and/or RPE, but who were not given the correct direction by the Welsh Government, and whose resources remained untapped. Many had contacted the Welsh Government offering to make supplies, but they had not been taken up on their offer immediately.

10. The type of PPE and/or RPE procured is also of particular interest to CBFJ Cymru, as the issue is not just how supplies were procured, but whether the correct type of equipment procured addressed the risk posed by Covid-19. There was criticism in the press when a consignment of 400,000 gowns from Turkey failed to meet safety standards,⁷ however, a more fundamental question is whether gowns provide protection against an airborne virus in any event. We query therefore whether resources and efforts would have been better directed towards procuring appropriate RPE such as FFP3 respirators which would have provided protection from the risk posed by Covid-19, rather than focussing on being able to procure gowns, visors, and fluid-repellent masks, which may have given the appearance that the Governments of the United Kingdom were doing all they could to procure PPE, when in fact what health and social care workers needed was protection from an airborne virus.
11. For the above reasons, and in particular the fact that both health and social care are devolved, CBFJ Cymru submits that it continues to be important to view the issues of procurement and distribution through the lens of devolution, and to scrutinise the particular decisions taken by each of the governments of the United Kingdom.

Key Lines of Enquiry

12. For the reasons set out above in relation to scope, it is submitted that the current drafting of the Key Lines of Enquiry appears not to reflect the precise constitutional position, which is that each of the four nations of the United Kingdom have devolved healthcare systems and therefore had individual responsibility to procure medical equipment and PPE.

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⁷ <https://www.bbc.co.uk/news/uk-52569364>

13. CBFJ Cymru submits that the KLOEs should be re-drafted to reflect that the Governments of the United Kingdom took procurement decisions, not just HMG.

Update on Rule 9 requests

14. We note it is intended that, to ensure the Core Participants are kept properly informed, the Inquiry will ensure that the Module 5 lead solicitor provides monthly updates to Core Participants on the progress of Rule 9 work. We ask that these updates are sufficiently detailed at the outset to enable CPs to understand the full extent of the request. What we want to avoid is a position, encountered in other modules, where the true extent of a Rule 9 request becomes known only in the weeks before the listed hearing date so that we are unable to raise any challenge or speak to the ILT so that key witnesses may be approached or key issues explored with witnesses, in time. As such, we ask for detail to be provided.
15. CBFJ Cymru looks forward to receiving a Rule 9 request directed to it, when the issues that are important to the bereaved families can be set out. We hope this input will assist with the Inquiry's development of its list of issues to be covered by this module.

Disclosure to Core Participants

16. As yet, we have received no disclosure in respect of this module. At this stage, we do not have any submissions on this issue, save that we request disclosure is given in good time for us to have sufficient time to adequately prepare for the substantive hearing.

Approach to evidence of circumstances of individual death and 'pen portrait' material

17. We note the matters set out at paragraphs 43 to 45 of CTI's note. CBFJ Cymru requests that the Chair give consideration as to whether hearing the circumstances of particular deaths would be permissible in respect of this module. Individual bereaved family members within the group have relevant evidence to give in respect of systemic failings. CBFJ Cymru welcomes the acknowledgment from the CTI in its note that to include this type of evidence would be in keeping with the Inquiry's express intention to keep those affected by the pandemic at the heart of the Inquiry and submits that such evidence would assist the investigation and cast a spotlight on the issue concerned.
18. CBFJ Cymru will gladly identify those witnesses within the group who can give oral evidence of experiences which provide insight into wider systemic issues.

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2 FEBRUARY 2024

CRAIG COURT (RLR)