BEFORE BARONESS HEATHER HALLETT

IN THE MATTER OF: THE PUBLIC INQUIRY TO EXAMINE THE COVID-19 PANDEMIC IN THE UK

CLOSING STATEMENT ON BEHALF OF THE COVID-19 BEREAVED FAMILIES FOR JUSTICE CYMRU ('CBFJ CYMRU') - MODULE 2B

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1. CBFJ Cymru are a group of bereaved families who came together to campaign for truth, justice, and accountability for all those bereaved by Covid-19 in Wales, following the devastating loss of their loved ones in the most traumatic of circumstances. The Welsh Government (WG) ask the Inquiry to judge their actions based on what was reasonable at the time suggesting that "*to have taken one reasonable course when an alternative reasonable option was also available does not make the course taken wrong or in some way flawed*". However, CBFJ Cymru commend the approach taken in Counsel to the Inquiry (CTI)'s opening to judging decision making, namely that what must be scrutinised is whether the WG discharged its duty to protect the lives of the people in Wales which must be considered through probing and challenging the core decisions "*to see if they were made on the best information, after proper consultation, as part of a well ordered process, and without undue delay or unnecessary prevarication*". As stated by CTI in opening, "*if the protection of life is the pre-eminent duty which every government owes to its people, then the numbers of those who died is the marker against which the Welsh Government's response must be judged. This is the simple metric which matters most. Death was the inevitable consequence of a runaway high-consequence infectious disease and prevention of death should arguably have been the Welsh Government's primary obligation*".[1] As was confirmed in Professor Sir Ian Diamond's evidence, Wales's age-standardised mortality rate was on a par with England and was significantly higher than that of Scotland.[2] CBFJ Cymru are disappointed at the lack of accountability and failure to ensure proper record keeping regarding the use of WhatsApps for government business. WG was wrong to use informal communication during a national emergency and was wrong not to ensure that all communication was retained.

Early Response (January to March 2020)

2. WG's initial response was passive, slow and disjointed; characterised by sloth-like urgency where risk was misunderstood, national strategic leadership lacking and valuable time was lost in January – March 2020.
3. There were clear warnings from late January 2020 that what was happening internationally could soon happen in Wales. The CMO(W), Sir Frank Atherton, warned the First Minister by 24 January 2020 that "*there was a significant risk the virus would arrive in Wales*".[3] At the COBR meeting on 29 January 2020, attended by Mr. Vaughan Gething and Sir Frank, UKG confirmed its intention to prepare for the reasonable worst-case scenario (RWCS) which was similar to that of the pandemic influenza.[4] On 30 January 2020,

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[1] M2B Transcript [1/8/2-10]
[2] M2B Transcript [3/78/15-18]
[3] INQ000371209/23
[4] INQ000056226/5

the four UK CMOs formally increased the risk level from low to moderate,[5] (referred to in CTI's opening in Module 2 (M2)(1/30/13) and closing statement of the Office of the CMO[6]). A press release issued by WG on 31 January 2020, headed "*Statement from the Chief Medical officer for Wales about Coronavirus*", set out that "*the four UK Chief Medical Officers consider it prudent for governments and the NHS to escalate planning and preparation in case of a more widespread outbreak. For that reason, we are advising an increase of the UK risk level from low to moderate…. the UK should plan for all eventualities*" and "*It is likely that Wales will see cases of novel coronavirus*".[7] Mr. Gething in his witness statement acknowledges the increase in the risk level to moderate at that time.[8] An email received by Sir Frank from DHSC on 5 February 2020, notified him of Professor Sir Chris Whitty's words to Directors of Public Health on 31 January 2020: "*We are currently using pandemic flu for reasonable worst case scenario planning*" and "*planning for mitigation now is wise*".[9]

4. In the face of all these warnings, by the end of January/ very early February 2020, WG should have been electrified, but it is clear from the evidence that it was not. It is to be noted that flu pandemic RWCS planning assumptions in Wales were premised on 50% of the population experiencing symptoms of which 1-4 % would require hospital treatment, and 12,000-15,000 excess deaths in a 15-week wave.[10] The WG did not discuss Covid-19 in Cabinet until 25 February 2020, notwithstanding the implications of these planning assumptions. Mr. Drakeford's oral evidence on the reaction of WG to the virus in January - February 2020, amounted to informal discussions with Mr. Gething following COBR meetings[11]. Most telling was his statement, "*at that point [Covid-19] is happening elsewhere*".[12] He said the "*signals*" were not there at the time as "*the primary signal*" to start mobilising would be the CMO changing the risk from low to moderate.[13] However, the risk assessment had changed from low to moderate on 30 January 2020, so it is not clear whether he was simply unaware of the change or failed to focus on the risk level to people in Wales. While Mr. Drakeford acknowledged that there was a "*very plausible case*" for saying that the WG should have been making earlier preparations through January and February 2020, he made this acknowledgement only "*with the lens of hindsight applied to it",* stating, *"If we knew then what we know now. There are many things we might have done differently with better knowledge*".[14] The failure to act earlier cannot sensibly be regarded as a matter of *hindsight.*

5. Dr Andrew Goodall was also unclear as to what the risk assessment actually was at the early stage. In his oral evidence, in response to a question as to whether the Health and Social Services Covid-19 Planning and Response Group should have met earlier than 20 February 2020 he said, "*Through February, the overall UK assessment was…was low, it changed to moderate at the end of February.*[15] As stated above, the formal risk level was already moderate by the end of January 2020. Inexplicably, Sir Frank, despite being one of the decision-makers assessing the risk level, failed to accurately state the date it changed in

[5] M2: INQ000203938
[6] M2: INQ000399529/7
[7] INQ000048722
[8] INQ000391237/38
[9] INQ000383585/1
[10] INQ000083240/7
[11] M2B Transcript [11/47/4 - 11/48/13]
[12] M2B Transcript [11/46/21-22]
[13] M2B Transcript [11/49/25 - 11/50/3]
[14] M2B Transcript [11/51/8-10]
[15] M2B Transcript [6/25/14-16]

his witness statement: *"At the end of February, UK CMOs assessed the risk to the UK as moderate noting the criteria that would trigger a re-assessment of the UK response*".[16]

6. The evidence illustrates, and the Inquiry should find, that at the highest levels of WG there was a failure to grapple with and clearly identify the nature and extent of the risk in the early period. As regards the 4 UK CMOs' 30 January 2020 statement of the risk level as moderate (and the Welsh CMO's own statement on 31 January 2020), there was either a significant failure by the WG to communicate that assessment or to take it into account.
7. The minutes of the first Cabinet meeting to consider the threat of the virus, on 25 February 2020, contained the erroneous statement that at that point "*there had been no imported cases into the UK*".[17] Not only was the error in the minutes not spotted and corrected but it was repeated in the witness statements of Mr. Drakeford[18] and Mr. Gething.[19] Further, the minutes do not record a discussion of a plan in response to the virus, merely concluding with "*Ministers would be meeting on a regular basis to consider the implications of the spread of the virus and Cabinet would be provided with a briefing note.*"[20] The Inquiry should find that these matters are telling of the lack of focus at that time on the impending threat. Had there been the intensity of scrutiny and focus proportionate to the threat at that time (when Covid-19 had arrived in the UK) recollections would be clearer, the error in the minutes would have stood out, and witness statements would not have been signed by key decision-makers repeating such an error.
8. The WG should have acted sooner regardless of whether it expected that the Civil Contingencies Act 2004 ('CCA 2004') was going to be used. Even if the UKG would be the ultimate decision-maker on NPIs, it ought to have been appreciated that there would still need to be a response to the pandemic in the devolved areas of health and social care. WG needed to make an informed contribution to any decision-making whichever legal framework was engaged. For example, the WG should have been proactively ensuring IPC measures were in place, hospitals prepared with surge capacity, that care homes knew what to do. They should have started earlier to audit the PPE, liaise with key partners, and establish effective consultative fora in anticipation of the likelihood that the virus would arrive in Wales. The exact types of preventative measures WG could and should have been putting in place are set out in Dr Quentin Sandifer's presentation dated 28 February 2020.[21] Instead, undue weight was attached to the fact that the virus had not yet arrived in Wales, repeated by many WG witnesses, for example, in Mr. Drakeford's witness statement: "*we went through January and February 2020 without seeing any direct impact from the virus. As we entered March 2020 Covid-19 and its seriousness became more apparent.*[22] This ignores the fact that Covid-19 had arrived in the UK by 29 January 2020 and the manner in which it would spread.
9. Public Health Wales (PHW) was mobilising from mid to late January 2020 and by 27 January 2020, assessing and testing suspected cases across Wales.[23] The frustration of PHW witnesses, Dr Quentin Sandifer, Dr Tracey Cooper and Dr Chris Williams, at WG's inaction at the early stage was palpable in

[16] INQ000391115/34
[17] INQ000129852/6
[18] INQ000371209/25 Para 77
[19] INQ000391237/41 Para 164
[20] INQ000022466
[21] INQ000309714/8
[22] INQ000371209/24
[23] INQ000267867/8

their evidence. CBFJ Cymru ask, if PHW could see the pandemic "*coming down the line*",[24] why couldn't the WG? The Inquiry should find that the sentiments expressed by Dr Sandifer are correct and supported by the evidence: ;e stated, "*What I think was missing in the first few weeks from 8 January 2020 when I first became aware to 20 February 2020 when the Health and Social Services Group Coronavirus Planning and Response Group first met, was national strategic leadership and co-ordination from Welsh government*".[25] Mr. Drakeford was dismissive of Dr Sandifer's critique, stating in his oral evidence, "*The fact that he's unable to see something happening does not mean it is not happening*",[26] but, even on Mr. Drakeford's *own* admission, little was being done in that early period. WG witnesses were unable to provide particularisation of actions beyond an "*awareness*"[27] of Covid-19 or "*issuing statements to the Senedd*".[28]

10. Dr Sandifer gave as an example of the deficit in leadership his experience of needing to ask Health Boards to prepare urgently for dealing with cases of Covid-19 in the week of 27 January 2020: he could not tell a Chief Executive of a Health Board or an NHS Trust what to do: WG input with authority to direct was required for that.[29] Rather than attending a cultural event in Brussels on 4 March 2020 Mr. Drakeford would have better served people in Wales by attending COBR and appraising himself of thinking within PHW.
11. As regards the timing of the first National Lockdown, Robert Hoyle, Dr Williams, Dr Cooper, Professor Gravenor, and Dr Sandifer each stated in their evidence their view that the lockdown should have been introduced earlier; the consensus being that up to two weeks earlier would have been preferable. TAG's paper dated 20 July 2020, 'A Calibrated Local Authority Level COVID-19 Epidemic Policy Model for Wales' modelled a lockdown being introduced 5 days earlier, in which it was estimated that 24% deaths in the first wave may have been prevented.[30] Mr. Drakeford in his evidence said that it was only on 21 and 22 March 2020 that a lockdown plan for Wales was being discussed.[31] CBFJ Cymru question why more stringent measures were not being discussed earlier within WG and even if (as has been stated by WG decision-makers) it was unrealistic that Wales would move to a full lockdown before the rest of the UK in the first wave, the WG could have been exerting pressure in COBR for an earlier more stringent response which could have saved more lives.

Asymptomatic Transmission

12. CBFJ Cymru say the possibility of asymptomatic transmission should have been recognised and factored into decision-making at the early stage, rather than, as was the case, ignored because a certain formal level of proof did not yet exist. To do the latter was reckless as to the risk to vulnerable populations of catastrophic consequences. The Inquiry is asked to note Dr Chris Williams' evidence, "*it's always worth considering on the precautionary basis what might be transmission routes*".[32]
13. There was plenty of early evidence that asymptomatic transmission was a possibility. On 20 February 2020, Dr Rob Orford sent an email, '*SAGE: Coronavirus Update 4*' advising, "*From cruise ship – 30-50% asymptomatic-mild*".[33] Further, the SAGE report dated 12 February 2020 stated, "*Asymptomatic*

[24] M2B Transcript [6/147/16-18]
[25] INQ000267867/38
[26] M2B Transcript [11/58/11-13]
[27] M2B Transcript [6/47/8]
[28] M2B Transcript [9/52/4-5]
[29] M2B Transcript [7/32/3-9]
[30] INQ000302585/7
[31] M2B Transcript [11/101/25 - 11/102/8]
[32] M2B Transcript [4/45/9-10]
[33] INQ000384621/1

transmission cannot be ruled out and transmission from mildly symptomatic individuals is likely."[34] At the 21 February 2020 meeting of NERVTAG, "*NF noted that there were a few modelling groups estimating a higher infection rate when comparing case populations in Singapore, South Korea and Japan, this suggests that at least a third have been missed. JE commented on this after the meeting taking into account the issue of asymptomatic cases, where the evidence suggests that 40% of virologically confirmed cases are asymptomatic.*"[35] Dr Williams confirmed in his evidence asymptomatic infections potentially as great as 40% "*would have been part of the thinking by late February*".[36] It is therefore difficult to understand how both Mr. Gething and Mr. Drakeford could continue to deny the significance of the risk of asymptomatic transmission, until later in 2020. This had implications in particular for policy on testing (see below).

Airborne Transmission

14. CBFJ Cymru have emphasised in their statements in M2 and opening statement to this Module the importance of decision-making based on a proper understanding of the mode of transmission of the virus. The scientific knowledge existed from early on that this was an airborne virus. Dr Robert Hoyle, Head of Science in the WG and member of TAG, gave evidence that "*there was a lot of debate about whether it was actually an airborne virus or whether it was passed by touching or fomites […]. [His] view at the time that it was pretty obvious that it was an airborne -- mainly airborne transmissible virus.*"[37] The evidence of Professor Sir Chris Whitty in M2 was that several possible routes of transmission were recognised early on and the general view shifted to suspended aerosol transmission as being of greater importance as was originally thought, leading to a greater emphasis on the role of ventilation.[38] Professor Catherine Noakes in M2 made the important point that people should have been made more aware of the relevant mitigations for aerosol transmission.[39]
15. Against this backdrop, CBFJ Cymru wanted to know if the WG properly investigated all relevant measures to counter aerosol transmission in particular low harm measures including the most effective types of masks, public messaging and actions for better indoor ventilation including in hospitals. For reasons stated further on in this statement the Inquiry should find that WG decision-making on appropriate masks was indeed inadequate. As regards ventilation, whilst it is understood from oral evidence of Dr Cooper of PHW that there was guidance on ventilation, it will be important to examine in the future modules what was the extent of recognition of the need for indoor ventilation and how this was taken forwards in the social care sector and crucially in hospitals.
16. CBFJ Cymru's view is that evidence adduced in this Inquiry to date does not show the WG striving to understand the modes of transmission nor maximise the potential for use of effective low harm interventions to counter aerosol transmission. The group hopes there will be further evidence on this issue in relation to social care and hospitals in the future modules.

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[34] INQ000320718
[35] INQ000119469/6 Para 3.4
[36] M2B Transcript [4/46/19-20]
[37] M2B Transcript [3/185/3-8]
[38] [M2 INQ000248853/100]
[39] M2 Transcript [13/17/10 – 13/18/5]

Mass Gatherings

17. Mr. Drakeford first requested advice on mass gatherings on 9 March 2020[40]. Mr. Drakeford questioned why other countries were banning mass gatherings and sought confirmation as to the scientific basis for not banning them. Advice on the issue ought to have been anticipated and sought earlier. By 11 March 2020, WG received a request from the Welsh Rugby Union for guidance in view of the forthcoming Wales v Scotland rugby match due to take place on 14 March 2020. Dr Orford produced a technical briefing on mass gatherings and behavioural interventions for the First Minister on 11 March 2020[41]. It said, "*Only a modest reduction in the infection related deaths (2%) is predicted for restricting mass gatherings. This is due to the limited exposure time (5.3% of total time), even if the transmission risk is weighted higher. Other measures that impact other more common activities, such as work and home (e.g. self-isolation of symptomatic individuals) have a greater impact on reduction of deaths (11%)*".
18. A Covid-19 Core Group Meeting was convened on 11 March 2020[42]. By this time there were 15 cases in Wales and evidence of community transmission taking place. It was said, "*ministers agreed that there would be a need for further discussions about the policy on mass gatherings, such as sporting and cultural events. The science suggested that such bans would reduce mortality rates by 2%, but there was a need to consider the social impact, the size of events, and whether they were outdoor or enclosed. There were also questions about mass transport hubs. However, it would be difficult to justify not cancelling events, particularly when the Government was advising households to go into quarantine.*"
19. On 12 March 2020 Mr. Drakeford and Mr. Gething attended COBR[43]. The Government Chief Scientific Advisor advised there were an estimated 5,000-10,000 cases in the UK and increasing. The meeting was informed numbers would increase quickly and the UK expected to follow a similar trajectory to Italy. On mass gatherings the minutes note, *"The hardest intervention to call was whether to cancel mass gatherings as the evidence was not there, especially for outdoor events"* and that the "*Scottish Government was minded to advise against gatherings of more than 500 people. Their rationale for this to ensure the frontline emergency workers were able to prioritise the response to COVID-19*".
20. On 13 March 2020 the Football Association of Wales (FAW) cancelled all football until 4 April 2020. On the same day Dr Robin Howe and Dr Cooper of PHW had a conversation with Mr. Gething, expressing significant concern about the Wales v Scotland match going ahead. In his oral evidence, Mr. Gething said on 13 March 2020 active steps were being taken by WG to *"turn off lots of regular NHS activity"*.[44] Against this context, WG declined to cancel the Wales v Scotland match, leaving it instead to the Welsh Rugby Union to make the decision whether to do so (which they did). It is clear, and indeed WG accepted in oral evidence, that the Wales v Scotland on 14 March 2020 would foreseeably entail large swathes of people (20,000) travelling to Cardiff and meeting in bars. WG now accepts that it would have been prudent to cancel the match and indeed to advise against mass gatherings generally as this would have given the correct signal to the public. Disappointingly, witnesses made this admission with the strong caveat of hindsight.

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[40] INQ000271446
[41] INQ000271613
[42] INQ000215171
[43] INQ000056221
[44] M2B Transcript [9/102/5-7]

21. From the above chronology it is clear that WG was aware at the time that: i) that other countries were restricting mass gatherings; ii) of rising rates of community transmission; iii) that restricting mass gatherings would result in a 2% reduction in deaths; iv) that the Scottish Government considered restricting mass gatherings would ease pressures on frontline emergency workers; v) that significant concerns in respect of allowing mass gatherings to continue were held by important stakeholders such as PHW and the Welsh Rugby Union; vi) that steps were being taken by others e.g. FAW, to restrict mass events; vii) of the mixed public messaging inherent in not cancelling events whilst advising households to quarantine; viii) that active steps were being taken to introduce restrictions in the NHS.
22. In his evidence, Mr. Gething drew comparison between indoor and outdoor events and the 'cultural significance' of rugby[45] which is quite staggering given the context of risk of loss of human life and in any event does not explain why WG allowed two Stereophonics concerts to proceed on 14 and 15 March 2020. The reality is that notwithstanding what was known by WG at time, it gave no meaningful consideration to restricting mass gatherings. It clung to the line that the science did not support restrictions on mass gatherings, which was misleading. It is also evident that there was unacceptable confusion within WG as to whether it had the power to impose restrictions on mass gatherings. Jeremy Miles gave advice on 13 and 20 March 2020 advising against the use of public health powers to restrict mass gatherings and impose a lockdown. Public health powers were subsequently used by WG, so the initial advice was simply wrong and is indicative of WG's chaotic early response. The above demonstrates total abdication of responsibility by WG and a lack of strategic leadership.

PPE

23. From the very outset of awareness of the threat it must have been obvious that if Covid arrived in Wales, PPE was *bound* to be needed and potentially in large quantities and very quickly. As Mr. Gething's oral evidence confirmed, it turned out WG did not have the stockpiles it thought it had. He confirmed the evidence he gave to the Inquiry in M1, that the PPE stockpile in Wales turned out to be inadequate even for a flu pandemic[46]. In the face of the threat of the arrival in Wales of the novel coronavirus it is difficult to understand why it was not thought that action needed to be taken straightway to check the stockpile and deal with gaps and issues. However, the Inquiry heard that the group tasked with operational co-ordination and oversight for PPE – the Health Countermeasures Group – did not start its work until 12 February 2020, indicating a striking lack of urgency in identifying and thinking through the issues in supply and delivery of PPE. The record of the group's first meeting shows that in effect a "to do" list was compiled of practical actions to be taken to identify what was needed and gaps in the stockpile.[47] It is difficult to understand why this work of overseeing and coordinating preparedness in this crucial area was not started sooner.
24. The evidence showed that help with PPE for the social care sector from WG was slow and at first minimal. The first decision by WG to provide help to this sector was not until 19 March 2020 when a Written Statement was issued by Mr. Gething, stating that, pending arrangements being made for distribution to

[45] Module 2B Transcript [09/107/11]
[46] Module 2 B Transcript [9/41/22 – 43/3]
[47] INQ000298968

local authorities, care providers could approach local health boards for urgent assistance, but these arrangements could only be utilized if a case of Covid-19 had been confirmed.[48]The WLGA "*escalated significant concerns about the limited availability of PPE from the WG stocks for social care staff, including lack of clarity on stock levels and inconsistent and incomplete supplies being made available across authorities,"* and says "*concerns about the supply of PPE dominated early discussions between leaders and Ministers*".[49]

25. The evidence demonstrated that well into April 2020 serious problems with PPE continued, evidenced by the fact that the BMA and Wales TUC felt it necessary to issue a joint statement on 12 April 2020 calling for assurances from the WG that health and social care staff would get the PPE they needed.[50] There is no doubt that those in dire need of PPE in these early weeks were profoundly failed by the WG.

Face Coverings

26. The WG has characterised its actions as being cautious and only diverging from the UKG when doing so was in the best interests of the people of Wales. This narrative is fundamentally undermined by the WG's approach to face coverings. Wales was later than all other nations when it came to advising and/or mandating face coverings. There is now a large body of evidence which demonstrates the effectiveness of face coverings in reducing transmission, though protection is provided not to the wearer but to others.[51] It appears that Sir Frank was a key source of face covering scepticism within WG. This was compounded by failure on the part of ministers – in particular Mr. Drakeford and Mr. Gething – to rigorously interrogate the scientific advice and come to independent conclusions regarding which NPIs were in the best interests of the public. Mr. Drakeford's evidence, that he needed to follow Frank Atherton's advice at all times to avoid undermining his position on other NPIs,[52] reflects a tendency to hide behind the skirts of scientific advice rather than take decisions independently which are nonetheless informed by the scientific advice.
27. On 28 April 2020, the Scottish Government advised the use of cloth face masks in enclosed spaces and on public transport. On 7 May 2020, the Northern Irish executive recommended face coverings in enclosed spaces where social distancing was not possible. Similar advice was given in England on 11 May 2020. It was not until 9 June 2020 that WG recommended face coverings in circumstances where social distancing is not possible.
28. The trigger for WG's change in position on face coverings was WHO advice of 5 June 2020.[53] The "*main change*"[54] in WHO advice was that vulnerable people (defined as over 60s and those with underlying comorbidities) should wear medical-grade face coverings, even in low-risk settings.[55] As a result, WG sought advice from TAG and TAC. TAG convened on 5 June 2020 where face coverings were discussed.[56] England had already announced it would mandate face coverings on public transport from 15 June 2020. TAC generated an advice dated 8 June 2020 at the request of WG.[57] There are two important points to

[48] INQ000252549
[49] INQ000082940/3
[50] INQ000180916
[51] see EMG Consensus statement, SAGE 96, **INQ000311901** INQ000196751
[52] M2B Transcript [11/97/8-19] [11/98/5-10] [11/137/12 - 11/138/15]
[53] INQ000327606/9-24
[54] INQ000274878
[55] INQ000327606/15
[56] INQ000313097 and INQ000313218
[57] **INQ000384971**

note from this advice. The first is the reference to masks carrying the risk of behavioural change. This ties in with Sir Frank's witness statement where he says that one of his concerns was that mask-wearing may promote risky behaviours.[58] This is clearly a question for behavioural scientists, but at this stage, there were no behavioural scientists on TAG or TAC; Professor Ann John who was not approached by Ms Fliss Bennee until 2 June 2020, did not join TAG until 17 June 2020, and the RCBI sub-group did not meet until 22 July 2020.[59] As such, when TAG and TAC were providing advice on face coverings and making assumptions about how face coverings may impact behaviour, they were doing so in an evidential vacuum and failing to highlight their lack of expertise on behavioural science. The risk of face coverings promoting risky behaviours was therefore not based on sound science. While Sir Frank is ultimately responsible for the scientific advice passed to WG, it was incumbent on ministers to challenge this assumption. Ms Rebecca Evans in the WhatsApp messages makes the point that "*[…] one benefit of masks is that they are a visual reminder that coronavirus is still out there, even though we can't see it*".[60] However, this perfectly reasonable challenge does not appear to have been raised with scientists by WG.

29. The second point to take from the 8 June 2020 TAC advice is that it states (p 3):

"• *There would be benefit of recommending, and in certain circumstances providing, medical masks to people who are more likely to have adverse outcomes from contracting COVID-19 (e.g. shielded individuals, BAME, homeless, over 60s).*

• *The effectiveness of medical grade face masks for personal protection is dependent upon wearing them correctly, and effort should be expended to ensure that this is effectively communicated to the public.*

• *It may be necessary for government to take steps to protect supplies of medical grade face masks, to prevent hoarding by individuals who are not in the key at risk groups.*"

30. Also on 8 June 2020, Sir Frank provided advice to Mr. Drakeford which clearly set out the WHO advice on the use of masks for vulnerable groups.[61] A technical briefing of 9 June 2020 again refers to the debate surrounding whether vulnerable people should be advised to wear medical grade face masks.[62] This was discussed in the 9am call on 9 June 2020 ahead of Mr. Gething's 12:30 press conference[63] when it was agreed that WG would recommend rather than mandate face masks at this stage. This decision resulted in further divergence from UKG which had the potential to cause confusion and erode public trust. As Professor Ann John said in her evidence, "*it would have been very confusing to people that […] there was one point where you had to wear a mask on the train till you got to Newport and then you could take it off. Now, there is no doubt in my mind that that […] if we're following the science why are we coming to different conclusions, was difficult for people, and that would have had an impact on trust.*"[64]

31. The second crucial point to derive from this 9am meeting on 9 June 2020 is that at some point between TAC's advice being discussed at the 9am call and Mr. Gething's press statement at 12:30pm all reference to medical-grade face coverings for the vulnerable was removed.[65] The TAC advice published on WG's

[58] INQ000391115/24
[59] INQ000286066/7
[60] INQ000316403/45
[61] INQ000281742/6
[62] INQ000118555
[63] INQ000349582
[64] M2B Transcript [4/119/18-25]
[65] INQ000198395,

website was edited to remove all reference to the need for vulnerable people to wear medical masks.[66] This was put to Toby Mason, whose emails of 9 June 2020[67] reflect an attempt to "bang heads together"[68] to edit the press statement to make it more deliverable from a "comms perspective". However, as the email trail establishes, Mr. Gething had the ultimate sign-off on the press statement. It is of great concern to CBFJ Cymru that Mr. Gething, having full knowledge of the details of the WHO advice, did not seek to ensure vulnerable people in Wales were appraised of it. As a result of the editing down of the TAC advice and Mr. Gething's press statement, the reference to vulnerable people needing medical grade face masks was erased. The only time CBFJ Cymru have been able to identify when any advice was given to the Welsh public regarding vulnerable people requiring medical masks was a written statement on 13 June 2020.[69] This refers to the fact that medical masks have a place for the protection of the vulnerable in higher risk settings only. It sets out that shielded people should wear a medical mask should they have to enter a health or social care facility. The written statement published on 13 June 2020 is therefore targeted at a much narrower group of people in a narrower set of circumstances than the WHO guidance.[70] It is also misleading as it says that there is "*little evidence that the more widespread wearing of medical masks benefits either staff or the public*". This is contrary both to the advice of the WHO and that of the EMG.[71]

32. The second point of divergence was when other nations mandated the wearing of face coverings on public transport. Face coverings became mandatory on public transport from 15 June 2020 in England, 22 June 2020 in Scotland, 10 July 2020 in Northern Ireland. Wales was the latest of the 4 nations and only mandated face coverings on public transport from 27 July 2020. CBFJ Cymru ask the inquiry to note that one of the key reasons given by Sir Frank for not mandating face coverings sooner was due to the potential for risky behaviour. When face coverings were discussed by TAG on 17 July 2020,[72] Professor Ann John was present and there was a significant shift in the discussion surrounding face coverings. It was said, "*Historically, people's behaviours and compliance have tended to fall into line when instructed to comply with new laws and regulations — i.e, smoking in public places to prevent exposure to secondary smoke.*" These sorts of comparisons with other behavioural changes do not appear in the earlier TAG minutes. Further, it is said in the minutes that "*more evidence is needed on whether [Covid-19] is transmitted more by aerosols or by heavy droplets*". The EMG provided an extremely detailed advice regarding aerosol transmission on 22 July 2020 which confirmed that aerosol transmission plays a significant role in transmission of Covid-19.[73] As to the behavioural science aspect of mandating face coverings, it was suggested that the RCBI discuss face coverings at their first meeting on 22 July 2020. On 21 July 2020, there was growing support from TAC and TAG members for the use of facemasks/coverings[74] which was then firmed up in the updated consensus statement on face coverings on 23 July 2020[75] which resulted in the mandating of face coverings on public transport on 27 July 2020. CBFJ Cymru submit that it is significant that the previous aversion to mandating masks appeared to be on

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66 **INQ000311901**
67 INQ000215458
68 INQ000388424/4
69 INQ000421047
70 INQ000281742/6
71 INQ000215630
72 INQ000221034
73 INQ000212029
74 INQ000313117
75 INQ000385402

the basis of behavioural science, on which Sr Frank is not an expert, and when behavioural scientists were present at TAG, expressions of concern about risky behaviours did not materialise. In fact, their involvement in the discussions coincided with a shift in thinking regarding face coverings.

33. As to inside shops, in Scotland and Northern Ireland, face coverings became mandatory on 10 July 2020, and from 24 July 2020 in England. As to other indoor spaces, England extended the list of places where face masks would be mandatory on 24 July 2020. The WG did not impose similar restrictions until 14 September 2020. Therefore, at each stage, Wales was behind the rest of the UK.
34. CBFJ Cymru see no reasonable justification for why WG stuck so steadfastly to this point of divergence on an NPI which was a low risk to the public and had the potential to reduce transmission. Sir Frank in his evidence conceded that for "*all the time and energy that was spent in Wales thinking about face coverings, I do wonder whether it would have been a better decision just to simply align.*"[76] As Professor John states in her witness statement, divergence *"may have quite naturally raised questions about the scientific underpinnings of actions and behaviours being requested of the general public which can cause sustainable behaviours to be undermined*".[77] Sir Frank Atherton did recognise in his evidence that the position was "*confusing*".[78] Therefore, at each stage, WG should have considered whether divergence was likely to undermine public trust in the scientific advice, rather than being led down this path of divergence by the CMO(W), with the justification put forward by Mr. Drakeford being that following his scientific advice was necessary to justify the decisions taken by WG on NPIs.

Testing

35. As with face coverings, testing was an area where WG were consistently behind UKG, and the divergence was not justifiable. On 30 April 2020, UKG expanded the testing regime in England.[79] On 28 April 2020, Mr. Matt Hancock announced an expansion of Rapid Antigen Testing programme which was at that stage only testing critical NHS staff. The programme was expanded to include inter alia, all key workers working in health and social care.[80] The expansion also applied in Scotland and Northern Ireland. However, it was not until 16 May 2020 that the testing regime was expanded in Wales to match that in England.[81]
36. Both Mr. Gething and Mr. Drakeford were asked to account for this by the Senedd. Mr. Gething on 30 April 2020 in front of the Health, Social Care and Sport Committee said: "*but there still isn't an evidence base that widespread testing for every individual, whether asymptomatic or symptomatic, is the right thing to do*" and that he didn't understand the "rationale" for UKG's approach. Again, Mr. Gething in his 2 May 2020 press release stated, "*At present, the evidence does not support blanket testing – it points to testing people who have symptoms and isolating them until the test results come back.*" However, by the end of April 2020, there was ample evidence which substantiated the need for blanket testing. On 8 April 2020, the Covid-19 Core Group discussed the concern about the number of people in care homes that had become infected,[82] and again on 15 April 2020.[83] Mr. Albert Heaney states in his witness statement that on 23 or 24 April 2020 PHE shared the results of a survey of care homes which indicated asymptomatic

[76] M2B Transcript [5/49/24 - 5/50/2]
[77] INQ000286066/30 Para 6.38
[78] M2B Transcript [5/49/14-15] [5/53/8-10]
[79] INQ000182446
[80] INQ000198020
[81] INQ000053221
[82] INQ000311826/3
[83] INQ000311859/1

transmission which was shared with WG. It noted growing international evidence of asymptomatic transmission of Covid-19 in care homes. On 28 April 2020, the Deputy Chief Inspector of CIW advocated for all residents and staff to be tested regularly.[84] On 29 April 2020 an email sent to Mr. Heaney stated, "*DM spoke with VG and FM today about testing etc. They were not convinced that there is scientific merit (nor capacity) to test sector-wide.*"[85] On 30 April 2020, there was a ministerial advice which set out the evidence for testing: "*Whilst it is unclear what role asymptomatic positive individuals play in the transmission of Covid-19 is unknown — some may never develop symptoms, for those that develop symptoms it is generally accepted that individuals may be infectious to others for up to two days prior to onset. There is some evidence to suggest that there are asymptomatic residents who are undetected and be a source of infection.*"[86] Pilot studies are then cited which make clear the role that asymptomatic transmission plays in care homes. While the advice goes on to conclude that testing was not the "*best use of resources*", the evidence regarding asymptomatic transmission is clear.

37. However, in his evidence before the inquiry, Mr. Gething's answer to the question regarding testing was wholly unclear.[87] He at different points suggested that the knowledge was the problem, but also that resources were the problem. Regrettably, CBFJ Cymru consider that the picture is no clearer for Mr. Gething having given evidence.
38. Mr. Drakeford also spoke at a Senedd plenary on 29 April 2020 where he was questioned about the issue of testing. He stated that, "*The reason we don't offer tests to everybody in care homes, symptomatic and asymptomatic, is because the clinical evidence tells us that there is no value in doing so. Because of that, we don't do it. We offer the testing where the advice to us is that it's clinically right to do that.*" Again, this was despite the evidence referred to above. When giving evidence to this Inquiry, Mr. Drakeford was asked about the 2 May 2020 announcement (that there was not the evidence to support blanket testing). His response was "*We followed the advice of the people who were charged with giving that advice and didn't pick and choose between it.*"[88] However, the evidence before the Inquiry is that there was evidence provided to WG by 27 April 2020 which established the need for blanket testing of patients and residents.
39. In fact, Dr Williams had been advocating for a wider testing regime from much earlier. In an email dated 1 April 2020,[89] he advocated for weekly routine testing of social care workers to give "*routine reassurance and also set up a rhythm and acceptance of testing and self-consideration of symptoms.*" When he gave evidence, he confirmed that symptom-based screening alone was insufficient to reduce the risk.[90] Further, it is not clear to CBFJ Cymru whether WG's position on testing changed from one of there being "no value" to being "value" and when the scientific advice in this regard changed, or whether the change was implemented as a result of political pressure.[91]
40. When lateral flow tests became available in autumn 2020, it became easier for more routine screening of health and social care workers to take place. On 16 November UKG introduced routine testing of

[84] INQ000396501
[85] INQ000385276/2
[86] INQ000116607/4 Para 16
[87] M2B Transcript [9/118-126]
[88] M2B Transcript [11/96/16-19]
[89] INQ000228309/2
[90] M2B Transcript [4/54/8]
[91] INQ000093562

healthcare workers in hospitals.[92] Significantly, in Wales however, it was only on 4 December 2020 that WG announced the same. When asked about this, Mr. Gething was unable to give a reason as to why Wales was so much later than UKG in announcing this extension in testing.[93] Moreover, even though such testing was announced at the beginning of December 2020, it is widely reported by the BBC[94] that this was not properly rolled out in practice until mid-March 2021. Further, it was not until February 2021 that the decision was taken to routinely test all social care workers.[95]

Care Homes admissions and testing

41. The WG had to protect hospitals, but this should not have been at the expense of vulnerable care home residents who were in effect locked in, without visitors and without a voice. The WG should have sought to protect vulnerable people in care homes, but the evidence shows WG giving scant attention to their vulnerable position when making its policies. UKG announced its change of policy on 15 April 2020 that all patients discharged from hospital would be tested before going into care homes as a matter of course. The introduction of such testing was later in Wales. Despite the WG policy on 13 March 2020 to create hospital capacity by expedited discharge into care homes, testing for those discharged was not the subject of ministerial advice to Mr. Gething until 30 April 2020 and Mr. Drakeford says it was on 1 May 2020 that he "*decided to approve the testing of patients on discharge from hospital to care homes*".[96]
42. When Mr. Gething was asked about this, his evidence was entirely unclear as to whether the lack of testing of patients being discharged from hospitals was due to a lack of knowledge or resources.[97] Mr. Drakeford, when answering questions from John's Campaign, said it was a fair point that the number of people being discharged per day from hospital without a test was "*not enormous and maybe the amount of testing that would have been needed could have been accommodated*" but "*that's not the advice that ministers had at the time*".[98] The Inquiry is asked to note the clear implication that, at the time, decision-makers, including the First Minister, could not have been engaged in any serious scrutiny of this issue and advice they were given, but passively followed the advice.
43. It is difficult to understand how the policy introduced on 8 April 2020 "*Admission and Care of Residents during Covid-19 incident in a residential setting in Wales*"[99] could have been considered acceptable from any point of view: it directed care homes to accept people being discharged from hospital who had symptoms of Covid-19, It remained in place until the end of that month. This was not a matter of testing or not testing: the 8 April admissions policy stated, "*some of these patients may have Covid 19, whether symptomatic or asymptomatic. All these patients can be safely cared for in a care home if this guidance is followed*". It is easy to deduce that this meant care homes that were clear of Covid-19 could have Covid-19 cases knowingly introduced into them by virtue of this policy. When Sir Frank Atherton was asked about it, he responded "*the numbers were not large*"[100], and that care homes had PPE, when evidence to this Inquiry shows this was simply not consistently the case, a response that was deeply upsetting to those

[92] INQ000227387
[93] M2B Transcript [9/204/25 - 9/205/10]
[94] INQ000420994 and INQ000420993
[95] INQ000145045
[96] INQ000391237/129 INQ000371209/48
[97] M2B Transcript [9/204-205]
[98] M2B Transcript [11/217/2-5]
[99] INQ000389958/22
[100] M2B Transcript [5/71/23]

who lost loved ones in care homes[101]. How this policy came to be made at all, who was consulted and which ministers even noted it, should be subject to further scrutiny in Module 6.

44. The Inquiry should evaluate WG core decision-making in light of the observations and findings of the Older People's Commissioner. The Inquiry heard that in April 2020 the Commissioner asked the WG for an action plan on care homes because "*there needed to be an urgency and focus that I couldn't see at the time*" and a need for "*faster action to protect older people*". The WG's response then was that this would not add value which angered the Commissioner because this was "*at a time when people were dying in care homes and families were distraught*".[102] After the Equality and Human Rights Commission's ('EHRC') involvement the WG agreed to the request at the end of July 2020. The Commissioner and EHRC worked together to scrutinize the WG's record in upholding equality and human rights during the pandemic between April and December 2020 and concluded "*There was insufficient attention given to older people living in care homes and upholding their rights*".[103]

Autumn Firebreak

45. During September and early October, TAG and TAC emphasised that numbers of infections were increasing and local measures may not be effective fast enough to bring the infections down at population level.[104]

46. Mr. Drakeford in his witness statement, suggests that the reason WG could not have commenced the firebreak sooner was because they did not have faith that UKG would agree to fund this[105]. CBFJ Cymru say this is misleading for a number of reasons:

    a. It is clear from the disclosure, that from early October there was an intention for any firebreak to coincide with the October half-term[106] so that there was minimal disruption to schooling. This was also made clear in Professor Gravenor's oral evidence that he was specifically asked to model around the school half-term break[107]. However, this does not address why the first week of the firebreak could not have been the week *before* the half-term break, and the second week of the firebreak during the half-term break, as the impact on schooling would have been the same;

    b. Despite knowing from 21st September 2020 that Wales would need to implement national lockdown measures in order to bring the R rate below 1, WG did not seek modelling advice until 11th October 2020[108], suggesting that the lack of earlier action was not due the financial implications of a firebreak, but prevarication in obtaining the relevant scientific advice and information to enable Cabinet to make a decision. In other words, there was a failure to act with sufficient rapidity proportionate to the risk Wales faced;

    c. There was already furlough funding in place; what WG sought was for the new scheme to be brought forward. However, it is not correct to say that there was no funding in place at all. This point was clearly identified by the Chair;

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[101] M2B Transcript [5/71/23-25 – 5/72/1-3]
[102] [M2B Transcript [2/129/11 – 2/130/5] [2/131/1-5]
[103] INQ000276281/47-50
[104] INQ000313251; SAGE papers 21 September 2020; INQ000066383/2; INQ000228468/2; INQ000228474/2; INQ000066408/2; INQ000374391
[105] INQ000371209/70, para 227
[106] INQ000395839
[107] M2B Transcript [4/192]
[108] INQ000374391

d. Fundamentally, WG imposed the firebreak without the new funding scheme being brought forward by UKG and were able to source additional funding from the funding streams already available to them[109];

e. Finally, WG simply did not ask UKG for funding sufficiently early.

47. Although Mr. Drakeford suggested in his evidence that he had been asking UKG for additional funding since September, in particular, relying upon the COBR minutes of 22nd September 2020, it is clear from those minutes that at all times Mr. Drakeford was talking in general terms about funding for devolved governments to act independently of UKG if the circumstances allowed for it. The first time WG wrote asking for funding for a specific firebreak commencing on 23rd October 2020 was on 16th October 2020[110]. It is submitted that it should have been no surprise to WG that the UKG were not going to bring the scheme forward in time for the firebreak given the lateness of WG's request.

48. WG missed a number of opportunities to approach UKG to ask for the funding they sought prior to 16th October 2020; first, on 5 October 2020 during the CDL call[111]. In an email sent at 10:48 that morning, Ms Bennee suggested that Mr. Drakeford discuss funding of a firebreak with Michael Gove. That call took place at 15:45 that afternoon and Mr. Drakeford again only discussed financial support for the devolved nations in relation to Tier 3 funding and in the most general sense[112]. Documents suggest Mr. Drakeford did not do what Ms Bennee suggested which was to "*ask CDL whether they are willing to provide economic support for a firebreak/circuit breaker around half term.*" It appears from documents there was a further failure to raise the issue of a firebreak at the HMT call on 7 October 2020[113], again at COBR on 12 October 2020[114], and again at a HMT call on 14 October 2020[115], despite having asked for Professor Michael Gravenor's modelling advice by this stage, and the firebreak clearly being within the contemplation of WG as Cabinet determined to implement a firebreak on the very next day. Therefore, according to the documents, contrary to what was suggested by Mr. Drakeford in evidence, the first time UKG received a formalised, particularised request for funding for the specific purpose of a firebreak is on 16 October 2020, only 7 days before the firebreak was due to be implemented.

49. Further, WG suggest that the reason they could not have had a longer firebreak was because of UKG's refusal to provide additional funding. It is submitted that this suggestion must be dismissed because by the time Wales would have been in the third week of the firebreak (i.e. beyond 9 November 2020), the new scheme would have been in force, as it came into force on 1 November 2020. Therefore, lack of funding cannot possibly be the reason why the firebreak was not implemented for longer. The clear advice of CSA for health, Dr Rob Orford, was for a longer firebreak. In emails dated between 14 October 2020 and 15 October 2020, he advised: "*The take home message is that is we act sooner (the end of this week) and for longer (3 weeks, rather than 2) we will have a greater impact in terms of weeks gained (with rate of deaths as a measure of success)*"[116]. This advice was given on the assumption that the firebreak lockdown would be imposed by the end of week commencing 11 October 2020.

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[109] INQ000227915
[110] INQ000216554
[111] INQ000395839
[112] INQ000198969/3
[113] INQ000353150
[114] INQ000083851
[115] INQ000353157
[116] INQ000385731

50. Professor Gravenor's evidence shows that both an earlier and a longer firebreak would have lessened the loss of life in the second wave. He said "*earlier would have helped*"[117] and "I *do think it should have been longer. A longer firebreak could have -- given how effective it was, given how effective it was in reducing Rt a longer firebreak would have set -- if that, if those benefits had continued, it would have set the prevalence down to a very low level, and then we would have headed toward December. I think a four-week firebreak would have put the reset time deep into December*"[118]. He stated that a four-week lockdown would have bought seven to nine weeks,[119] by which time the most vulnerable would have benefited from the vaccine rollout. However, as confirmed by evidence of Professor Ian Diamond, "*During the second wave mortality in Wales was the highest of the four administrations across the UK.*"[120]

51. It appears that a longer firebreak simply did not form part of WG's thinking at the time. Professor Gravenor confirmed that, by the time he was commissioned to provide modelling assistance on 11 October 2020, the thinking within WG was that the firebreak would be for a 2 or 3-week period as he was only commissioned to do those specific models. From Cabinet minutes of 15 October 2020[121], there appears to have been very little debate about the length of the firebreak, despite scientific advice that "a *minimum of a two week lockdown was required but three weeks was preferable"* being made clear to the ministers. That the lockdown would be for 2 weeks and start with half-term appears to have become a *fait accompli* long before Professor Gravenor was asked to model 2 and 3 week lockdowns and Cabinet was asked to make a formal decision.

DNACPR (Do Not Attempt Cardiopulmonary Resuscitation Notices)

52. CBFJ Cymru have significant concerns regarding the use of DNACPR. Many of the Cymru group's loved ones were placed on DNACPRs without due process. On 1 April 2020 the Older People's Commissioner, Ms Helena Herklots, "*issued a public statement and gave a television interview following the shocking letter sent on 27 March 2020 by a surgery to some of its patients saying that they would like to complete a Do Not Attempt CPR form ("a DNACPR form") for them*"[122]. She stated that the letter, sent to patients with serious health conditions, told them they were *"unlikely to be offered hospital admission"* if they became unwell with coronavirus and *"certainly will not be offered a ventilator bed"* and the completion of the DNACPR form *"will mean that in the event of a sudden deterioration in your condition because of a Covid-19 infection or disease progression the emergency services will not be called and resuscitation attempts to restart your heart or breathing will not be attempted"*. It *"listed benefits to the completion of a DNACPR form including that scarce ambulance resources can be targeted to the young and fit who have chance of surviving the infection"*[123]. Ms Herklots described the distress caused by the letter. A joint statement was issued on 6 April 2020 stating, *"age, disability or long term condition alone should never by a sole reason for issuing a DNACPR order against an individual's wishes"*[124]. In oral evidence she stated issues pertaining to DNACPR, together with a "*number of different things happened which, cumulatively, older people who were talking to me or talking to other older people which was being*

[117] M2B Transcript [4/175/6]
[118] M2B Transcript [4/175/12-21]
[119] M2B Transcript [4/193/4]
[120] M2B Transcript [3/80/11-12]
[121] INQ000048796
[122] INQ000181737
[123] INQ000276281/11 para 3.22
[124] INQ000184964/2 and INQ000276281/11 para 3.25

reported to me, there was certainly feeling that -- that sense of, yeah, just not being valued"[125]. CBFJ Cymru anticipate further detailed exploration of the use of DNACPRs in Modules 3 and 6.

Bereavement Support

53. The Impact Films and powerful evidence of the bereaved in M2B served as tangible heart-breaking reminders of loss of life but also the trauma experienced by the bereaved. Against this context, Ms Grant of CBFJ Cymru stated in her evidence '*We have over, I think it's 400 members, and not one person has been offered bereavement support.*"[126] When asked about bereavement support, Ms Eluned Morgan[127] said the Mental Health Helpline was available to support during the pandemic. Under scrutiny from the CTI and the Chair, Ms Morgan accepted the Mental Health Helpline provided mental health support as opposed to specific bereavement support and that the bereaved would not necessarily have considered themselves to be suffering from a mental health issue. CBFJ Cymry comment that notwithstanding the inevitable trauma and distress they faced, the bereaved were left unsupported.

Intergovernmental Relations

54. CBFJ Cymru repeat what they said in their Closing Statement in M2 that relations between UKG and the devolved administrations (DAs) during the pandemic should have been conducted in the way that best promoted an effective response to the pandemic across the whole of the UKG; and that this implies striving where possible to reach agreement on common policies and where policy differed, sharing information so that nations could co-ordinate implementation of their respective policies and public announcements: a true Four Nations approach.

55. During the pandemic, things that needed to be in place in order to support a Four Nations approach were not in place. As set out in CBFJ Cymru's Closing Statement in M2, there was a lack of a forum for regular meetings between First Ministers and the Prime Minister. There was a wrong mindset at the top of the UKG, namely that DAs needed to be "managed" rather than worked with. CBFJ Cymru's recommendation in its Closing Statement in M2, is that there must be a formal structure which in a period of prolonged crisis such as a pandemic would provide for regular meetings between Prime Minister and First Ministers. There also needs to be a be an approach on all sides of genuinely attempting to work together to maximize the chances of alignment of policies, where appropriate, and otherwise to share information and co-ordinate actions and messaging.

56. After hearing the evidence in M2B, CBFJ Cymru believe the following further observations are warranted. Although the structures for intergovernmental relations at the First Minister – Prime Minister level were inadequate, there *were* opportunities for regular communication and exchange of information between the WG and UKG. There were for example regular meetings between four UK CMOs and between the four health ministers. It is surprising to read the evidence of Mr. Gething that advice to him on 30 April 2020 about testing on hospital discharge into care homes included the statement "*officials were not provided with full details of UK policy*"[128], and in the record of the discussion that followed, the comment: "*There*

[125] M2B Transcript [2/127 – 128]
[126] M2B Transcript [2/16/7]
[127] M2B Transcript [10/32-33]
[128] INQ000391237/129

was a 4 nations group on testing but Wales did not seem to be fully plugged in"[129]; also in the minutes of the Core Group Meeting on 6 May 2020 there is an entry, "*It had been difficult to obtain clarity from the UKG on its policy for England*" (in relation to policy on testing all residents and staff in care homes where there had been an outbreak)[130]. CBFJ Cymru see no good reason as to why information on UKG policy in key areas could not have been obtained had WG efforts been appropriately focused and directed, and deficits in information about what the UKG was doing on the key issues referred to avoided. The Inquiry should find that the WG did not take a proactive enough approach to these policy areas, and tended to a default position of blaming UKG when WG lagged behind in updating its policies.

57. Although there were circumstances where alignment with UKG would not have been the right option (e.g. deciding not to switch to *Stay Alert* in May 2020 was right), CBFJ Cymru are also of the view that given that the basic science was obviously the same, WG attached too little weight in its decision-making to the advantages in adopting the same policy across the UK, namely strengthening public messaging, enhancing public confidence in measures and avoiding confusion. These factors should have weighed more heavily in the balance in decision-making than was the case. The most obvious example of this was in relation to WG decision-making on face coverings.

58. **Recommendations:** CBFJ Cymru invite consideration of the following:

(i) **Intergovernmental relations**: There should be:

(a) A forum and formal structure for regular meetings between at Prime Minister and First Minister level during a period of prolonged crisis such as a pandemic;

(b) Recognition by all Four Nations of the advantages of an agreed approach across all Four Nations and commitment to striving to reach agreement where possible; where that is not possible, co-ordination of actions and sharing of information about key policy developments as early as possible so that each nation can consider the implications for their territory.

(ii) **Sharing science expertise across Four Nations**: the accessibility for the WG of UK science advice and structures (SAGE and its sub-committees and NERVTAG) should be strengthened by Devolved Administrations being invited from the outset to attend (as participants or, as appropriate, observers) all key groups and committees with full access to all relevant documentation.

(iii) **Public health infrastructure for Wales**: should have the capacity for rapid scaling up of mass testing and widescale test and trace operations.

(iv) **WG's decision-making capability**: WG should review its structures and processes for decision-making, taking into account:

(a) the need to trigger early response from the whole of Government to an emerging threat and for informed leadership by ministers at an early stage (not just its CMO(W) and PHW);

(b) that ministers must exercise scrutiny of advice they receive before making policy decisions rather than passively following the advice they are given(e.g. scrutiny of why scientific advice

[129] INQ000116607/11

[130] INQ000336509/1

they are receiving is different to that given in other UK nations; what policies other UK nations have adopted on the same subject);

(c) the need for effective internal communication within WG of key information (e.g. of the formal risk assessment of UK CMOs; of key observations by SAGE and at COBR about the degree of risk and of how UKG is responding to it);

(d) the need to proactively investigate and make properly informed decisions in a pandemic on *low harm* measures to reduce infection spread (e.g. appropriate mask wearing, indoor ventilation; public messaging).

(v) **Core decisions on infection protection and control - airborne transmission**:

(a) The implications of aerosol transmission of SARS-CoV-2 should be reflected in infection prevention and control measures by greater focus on appropriate mask wearing in healthcare and generally in the community during a pandemic;

(b) Design standards for ventilation in buildings should be enforced;

(c) Attention to public messaging on the need for ventilation to counter airborne transmission.

(vi) **Core decisions on infection prevention and control - asymptomatic transmission**:

(a) Policymakers should proactively ensure that they have the up-to-date information about the modes of transmission of a virus as an essential foundation for their policy-making;

(b) They should take account of the need for a precautionary approach where the science may as yet be uncertain but there is potential for serious harm (such as possibility of asymptomatic transmission impacting on vulnerable residents in a care home).

(vii) **Social Care**: Whilst this area will be examined in a future module, the following relate to core decision-making:

(a) Decision-making on creating hospital capacity must identify and take into account all the implications of such policies for the social care sector;

(b) Decision-makers should pay attention at the earliest stage to the range of ways that infection can be introduced into the highly vulnerable environment of a care home (e.g. staff movement, hospital discharges) and relevant policies for minimising this;

(c) Relevant data on the sector including care homes should be readily available to decision-makers;

(d) Early attention to the needs of those in care homes and those dependant on the social care sector, notwithstanding that care providers may be private enterprises (e.g. support with PPE).

(viii) **Bereavement support services**: should be in place and readily accessible to all who may need them (not just as part of mental health services).

59. **Concluding comment**. CBFJ Cymru are bitterly disappointed that even when giving evidence WG representatives showed little insight into their mistakes and errors and what could and should have been done better relying instead on unjustified references to the benefit of hindsight and a lack of information,

despite clearly displaying a lack of proactivity. There were significant failings in the way WG conducted its core decision-making during the pandemic, and a woeful lack of national strategic leadership. This was to the detriment of people in Wales and especially those who were the most vulnerable to the virus. CBFJ Cymru invites this Inquiry to reflect this in its findings.

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