

## **The UK Covid-19 Inquiry**

### **Written Submissions of the Covid-19 Bereaved Families for Justice Cymru on Module 7 (Test Trace and Isolate)**

#### **Introduction**

1. The group's earlier submissions to the first preliminary hearing in this Module set out (at paragraph 9) some 28 issues of importance to the group.
2. These further submissions focus on the group's priorities, in support of their proposed inclusion within the Module 7 hearings, and to identify key witness evidence and further lines of enquiry.
3. As the Inquiry will be aware, the issue of nosocomial infections and deaths in hospital and care home settings in Wales is a major concern of the group, and the testing failures of the Welsh Government in particular, were a significant contributory factor to these tragic circumstances.

#### **Priority issues**

##### Suspension of contact tracing between March and June 2020

4. A key concern held by CBFJ Cymru's members is that contact tracing in Wales was halted in March 2020 and did not restart until June 2020, almost 2 months after the peak of the first wave in Wales on 12 April 2020. CBFJ Cymru wishes to understand: why contact tracing was suspended; whether the justification provided for suspension, namely that the UK was entering the "delay" phase, was accurate and complete, or whether the real reason for suspension was in fact a lack of capacity; why there was such a lengthy delay in re-introducing a tracing programme given its importance; and what was being done by the Welsh Government in the early stages of the pandemic to speed up testing and tracing infrastructure.

##### The failure to test hospital patients upon discharge to care homes

5. Over 1,000 patients were discharged from hospital into care homes in Wales, prior to the introduction of testing on discharge on 29 April 2020. This practice seeded infections into vulnerable communities, and was exacerbated by the lack of PPE, testing, and effective treatment and equipment, available in care homes.

6. The lack of awareness of the risks that this policy posed (including asymptomatic transmission) can be seen within email correspondence from early March 2020 disclosed by the Inquiry [INQ000183761].
7. Further, the introduction of testing on discharge in Wales was inexplicably delayed, and came some two weeks after testing on discharge was introduced in England, on 16 April 2020.

#### Testing within care homes

8. The failure of the Welsh Government to provide routine testing in care homes is a matter of very great concern for the group and encapsulates everything that was wrong about the approach of the Welsh Government to the pandemic, including: a failure to take a precautionary approach to the risks of asymptomatic and aerosol transmission; inaccurate claims that testing had no value; numerous changes of policy; a lack of transparency; and delays in implementation, including in comparison with other UK countries.
9. Statements made by the former First Minister, Mark Drakeford, on this issue, include:
  - i. 29 April 2020 – *“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.”*
  - ii. 06 May 2020 – that he had not *“seen any clinical evidence that led me to believe that testing of non-symptomatic residents and staff in care homes where there is no coronavirus in circulation had a clinical value.”*
10. Between these statements, on 2 May 2020, the Welsh Government confirmed that only symptomatic care home residents would be tested. This despite routine testing in care homes in England from 28 April 2020.
11. Over this period, a member of the group, who owned and ran a care home in Wales, campaigned extensively for routine testing because of the risks of asymptomatic transmission, and also because elderly and vulnerable care home residents were falling ill and dying within 48 hours of becoming symptomatic (without Public Health Wales being able to provide testing in this short period between symptoms and death).
12. On 16 May 2020 the Welsh Government announced routine testing in care homes, and on the same day routine testing was carried out at the care home of the group member mentioned, and, as feared, the testing resulted in several positive tests for asymptomatic staff and residents.

13. On 19 May 2020 the group member asked for these results to be passed to the First Minister and Health Minister, and stated, *"This Virus is an invisible killer and the only way it is going to be eradicated in care homes is to have the staff tested WEEKLY especially as their children return to school, so we all know who is shedding COVID19 and they can stay away until safe to return."*
14. The group wishes to know why the Welsh Government was so blind to these risks, and precisely what clinical evidence they relied upon to justify their position prior to 16 May 2020 that there was no value in routine testing. The position of the Welsh Government is all the more bewildering in light of the routine testing of patients being discharged from hospitals in Wales to care homes on 29 April 2020 (in recognition of the risk of asymptomatic transmission, albeit two weeks after England), and the UK Government's policy of routine testing from 28 April 2020.

#### Testing criteria

15. The group is aware that testing criteria in Wales was limited to the 3 cardinal symptoms – fever, cough and loss of smell. However, many people experienced a wider range of symptoms, such as headaches, sore throat, fatigue, nausea, diarrhoea etc. The Welsh Government's failure to acknowledge this broader range of symptoms in testing criteria, even as late as March 2021, would have led to countless instances of symptomatic people continuing to spread the virus. Exhibited to the Module 3 witness statement of the group's co-lead, Anna-Louise Marsh-Rees, is a letter that her father (as a Shielding Patient) received from the CMO for Wales, Sir Frank Atherton, in October 2020 that states, *"You will need to self-isolate if you develop one of the following symptoms, a new continuous cough, a high temperature, loss of or change to sense of smell or taste. You should also apply for a test online if you develop one of these symptoms."* [INQ000327639\_0005]

#### Differences in approach and lack of collaboration between UK nations

16. In addition to care home testing, there were many other differences of approach, including:
  - i. The type of test processed through Welsh laboratories involved a 'single dry swab' taken from the back of the throat. Tests processed through English laboratories involved 'two wet swab' sample collections taken from the nose and throat. There is evidence that the two swab approach increased the likelihood of detecting the virus. Further, the two processes were not compatible, and resulted in a change of approach by the Welsh Government so that testing

- capacity in England could be utilised.
- ii. The lack of availability and access to testing centres in Wales, with social care workers in Wales forced to drive to Manchester Airport to obtain a test.
- iii. The specific lack of collaboration between the UK Government and the Welsh Government when setting up a mass test centre in Cardiff City Stadium (of which Public Health Wales was not initially aware).
- iv. Differences in isolation requirements, and test and trace strategies, including the delay in Wales in the introduction of lateral flow tests (again, announced two weeks after England, and with significant further delays in implementation).

The group wishes to understand what impact these differences had on the population of Wales, including and in particular the general delays in Wales in adopting policies and practices pursued in other parts of the UK.

### **Proposed witnesses**

17. For the reasons set out above, the group respectfully submits that it will be essential for the Inquiry to take oral evidence at the Module 7 hearings, from the former First Minister, Mark Drakeford, former Health Minister, Vaughan Gething, the CMO for Wales, Sir Frank Atherton, and the CSO for Wales, Dr Rob Orford, all of whom made public statements that testing was not effective (the group notes that Rule 9 requests have been issued in respect of these individuals).
18. Other witness proposals (in addition to those individuals and organisations to whom Rule 9 requests have already been issued), are
  - i. The Older People's Commissioner for Wales, Helena Herklots, who recognised and warned that many people were discharged into care homes from hospital without testing, while people in care homes were also not being tested.
  - ii. The seven local health boards in Wales (either individually or collectively) through which NHS services in Wales are delivered, and as distinct from the Welsh Government, Health and Social Services Group.

### **Further lines of enquiry**

19. A rapid review on testing in Wales reported to the Welsh Government in mid-April 2020. This resulted in a change in testing policy on 18 April 2020, and on 22 April 2020 the former First Minister, Mark Drakeford, made the following statement, "There is more that needs to be done to simplify the process from which social care staff in particular can be identified and offered testing at the

different centres that we have, and that's one of the key conclusions of the rapid review..." The group has not been able to identify a copy of the rapid review report, and respectfully requests that the Inquiry obtains the report from the Welsh Government together with relevant underlying information (research, and analysis, etc.) against which the statements and decisions of the Welsh Government on testing can be assessed. As the Inquiry is aware, the group is concerned at the level of disclosure provided by the Welsh Government in previous Modules and at the potential deliberate destruction of relevant information.

20. The group campaigned extensively for an investigation of nosocomial infections in Wales from Covid-19, and in April 2022 the National Nosocomial COVID-19 Programme was established. The Programme has now published a report<sup>1</sup> of its work, which included the assessment and investigation of a total of 18,360 cases of nosocomial COVID-19. The report includes (at paragraph 5.3.2), the following findings:

*"Increased demand for COVID-19 testing during the pandemic posed a significant challenge to the existing testing infrastructure, which still had to manage routine provisions such as blood tests for in-patients. Demand exceeding capacity and the inability to test rapidly for COVID-19 during periods of 2020, meant that testing was somewhat ineffective as a mechanism for reducing infections, until the supply of consumables met demand and testing capacity increased.*

*Due to the testing capacity challenges early in the pandemic, patients were discharged into other care settings or their own homes without the ability to rapidly test for COVID-19. This was in line with national guidance at the time, which did not advise that negative tests were required before transfer/admission into residential settings.*

*Further UK guidance, especially early in the pandemic, actively encouraged the discharge of patients from hospitals into care home settings, to free up hospital capacity in order to manage the anticipated demand for services."*

Given the relevance of this work to the scope of Module 7, the group respectfully requests that the Inquiry seeks to obtain and disclose relevant information in the possession of the Welsh National Nosocomial COVID-19 Programme.

21. Similarly, the group suggests that the Medical Examiner for England and Wales is approached by the Inquiry. The Inquiry has already disclosed the Medical

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<sup>1</sup> [www.nhs.wales/sa/national-nosocomial-covid-19-programme/](http://www.nhs.wales/sa/national-nosocomial-covid-19-programme/)

Examiner's report for 2022 in Module 3 [INQ000409941], and the reports for 2020 and 2021 are publicly available. In 2020 and 2021 some 9000 deaths in Wales in health and social care settings were examined by medical examiners (where the process is overseen by the NHS Wales Shared Services Partnership). The core role of a medical examiner is to provide bereaved people with clear information about the cause of death, and to give them a voice and opportunity to raise questions and concerns about the treatment received by their loved one. The group suggests that the Medical Examiner will hold important information about deaths in Wales as a result of Covid-19 nosocomial infection, and the extent to which the failure to test was a contributory factor.

22. The group has noted that the following suppliers of tests have been issued with Rule 9 requests (Accenture UK Ltd, IBM UK Ltd, Zuhlke Engineering Ltd, Sodexo, Serco, and Roche Diagnostics), and requests that the Inquiry assures itself that there are no Welsh specific suppliers who are yet to receive a Rule 9 request, particularly given the use of a different type of test in Wales to that used in England.
23. Finally, the group is grateful for the Inquiry's careful consideration of Mr Pickford's contribution to the expert report of Dr Machin (as set out in Counsel to the Inquiry's note).

**27 January 2025**