

4 January 2023

Dear

### **ATISN 16928 – Reporting Officer Concerns**

Thank you for your request to the Welsh Government for information received on 05 December 2022 which has been dealt with under the Freedom of Information Act (2000) (FOIA) and in accordance with the UK General Data Protection Regulation (GDPR). You will note that some information has been redacted under Section 40 of the Freedom of Information Act (FOIA). An explanation is attached at Annex 1.

You requested the following:

1. *Did any Welsh Government employee (including anyone in the CMO's office) discuss my concerns/ and correspondence/ requests with.*
  - a. *Any employee or board member of my employer; Cardiff and Vale University Health Board*
  - b. *The GMC*
  - c. *The HEIW*
  - d. *If the reply to any of the above is a YES, please provide details of the minutes/ notes/ emails, any documented evidence*

No Welsh Government employee has discussed your concerns with the Health Board or HEIW. A policy colleague did speak to the GMC during the course of their work and enquired if they would be happy for Welsh Government to advise a doctor to contact them directly. No names or specific concerns were discussed

As provided in ATISN 16594 (Oct 22) and reiterated in ATISN 16776 (Nov 22), notes of a meeting between the CMO and GMC in January 2021 were provided to you, and this is the only time advice was sought.

2. *I was sent a link to justify the decision taken to decline my request for an alternate RO. Mr Ian Turner is being given information from someone else. I need clarity before I start off a conversation with the GMC. Please provide all notes/ emails/ minutes/ documents.*
  - a. *Who spoke with the GMC to verify that the link actually covers the concern I have raised? Names and/or the designation be provided please.*

Telephone conversation was held by a Policy Manager; however, no notes, emails, minutes or documents are held by Welsh Government regarding this call. An email with contact details were provided - see Doc. 1. We have withheld the name of the Policy Manager under s40(2) and details of this can be found in Annex 1.

- b. *Did the GMC advise that I am not eligible for an alternate RO?*

No, The GMC only indicated that they would be happy for the doctor to contact them to discuss their Revalidation Guidance in more detail via the GMC contact centre. Email with contact details at Doc. 1

- Did the person/s hold any discussions with the HEIW? WAG/ My employer about this guidance?*

No discussions were held with HEIW or your employer with regards to the guidance

- c. *Has the CMO, Sir Atherton, himself agreed or stated or confirmed that the guidance advises that a person under disciplinary cannot be allowed an alternate RO?*

No

3. *The CMO had a meeting with Prof Jenney In November. Please specifically answer, if he discussed my alternate RO request and advised that no alternate RO is needed?*

As advised in our response ATISN 16776 (Nov 22), the CMO met with Prof Meriel Jenney on 7th October 2022 to discuss the role of RO and did not provide advice. As per the GMC guidance for RO's, when a revalidation is deferred, there is no requirement to change the RO.

*Did The CMO have similar conversation about me with any other RO of the Cardiff and Vale UHB and gave an opinion that I should not be allowed an alternate RO or an alternate RO is NOT needed.*

No

4. *Appointment of the new Responsible Officer. As communications with the GMC about me have been held by the ROs it has relevance to me as well as being a generic query. Please confirm*

a. *What standard Operating protocol is followed by the Welsh Government to inform the GMC of the appointment of the RO; and confirm who is responsible for its completion?*

As stated in our email dated 20 Oct 22 at 09:29, the CMO followed the GMC guidance for RO's at Doc. 2

b. *Please confirm all dates on which the GMC was informed of the appointment of new ROs of my organisation in the past 5 years by the Welsh Government*

Medical Directors are appointed Responsible Officers and the following were appointed for your organisation in the last 5 years:

2017 – 2018 - Graham Shortland - stepped down 23/04/19

29.04.19 - Sharon Hopkins, as Interim RO

25.07.19 - Stuart Walker, as RO – replaced by Richard Skone,

29.04.22 - Peter Durning, – not RO: interim MD with responsibility for FtP. Sharon Hopkins was interim RO during this period.

07.07.21 -08.07. 22 - Richard Skone, as Interim RO

26.07.22 - Richard Skone as RO

22.08.22 - Meriel Jenney as RO

c. *Please provide me the actual guidance/ law/ regulation/ Standard Operating Protocol about appointment a person other than a medical director as the Responsible Officer*

As previously stated, this is a GMC process and guidance followed can be found here:

[Responsible Officer Protocol \(gmc-uk.org\)](https://www.gmc-uk.org/guidance/for-the-public/responsible-officer-protocol)

[Revalidation for responsible officers and suitable persons - GMC \(gmc-uk.org\)](https://www.gmc-uk.org/guidance/for-the-public/revalidation-for-responsible-officers-and-suitable-persons)

*Please provide me the concerns response policy that the Welsh Government abides by for any concern raised to the Welsh Government?*

The CMO/revalidation team have no direct role in the handling of individual complaints relating to internal health board matters, these must be dealt with through the procedures set up for this purpose directly with your employer.

As provided in ATISN 16599, information on raising concerns, whistleblowing and public interest disclosures in conjunction with the GMC guidance for ROs are followed.

Information can be found in the Civil Service Code: [Civil Service Code | GOV.WALES](#)

The guidance on how to raise concerns or complaints about Welsh Government can be found on the follow: <https://gov.wales/how-make-complaint-about-welsh-government> and the process followed can be found in Appendix 1: Process summary of the above.

*5. Please provide me any policies that are followed when concerns about probity, misinformation about patient safety reports, DATIX related misinformation are raised to the Welsh Government?*

Guidance on the reporting and handling of serious incidents and other patient related concerns / no surprises to Welsh Government can be found [here](#)

The NHS Wales Delivery Unit supports organisations in NHS Wales with regards to patient safety reports. You may wish to contact them directly for further information via email [deliveryunit@wales.nhs.uk](mailto:deliveryunit@wales.nhs.uk)

DATIX is an NHS Wales system of reporting and you will need to contact the NHS Wales Shared Services Partnership (NWSSP) with regards to the policies that are followed. You can contact the team on [OnceForWales.CMS@wales.nhs.uk](mailto:OnceForWales.CMS@wales.nhs.uk) more information.

*6. If there are no written policies, please provide me evidence that the Welsh Government has ways of ensuring that probity/ candour issues are addressed promptly and who are the senior managers within the Welsh Government responsible for vetting those issues?*

See above with regards written policies.

*7. Does the Welsh Government have any tools/ ways of verifying if the DATIXs are being closed with truthful information and with appropriate expertise?*

No, DATIX is a tool used by the NHS Wales. See response to question 5.

### **Next steps**

If you are dissatisfied with the Welsh Government's handling of your request, you can ask for an internal review within 40 working days of the date of this response. Requests for an internal review should be addressed to the Welsh Government's Freedom of Information Officer at:

Information Rights Unit,  
Welsh Government,  
Cathays Park,  
Cardiff,  
CF10 3NQ

or Email: [Freedom.ofinformation@gov.wales](mailto:Freedom.ofinformation@gov.wales)

Please remember to quote the ATISN reference number above.

You also have the right to complain to the Information Commissioner. The Information Commissioner can be contacted at: Information Commissioner's Office,  
Wycliffe House,  
Water Lane,  
Wilmslow,  
Cheshire,  
SK9 5AF.

However, please note that the Commissioner will not normally investigate a complaint until it has been through our own internal review process.

Yours sincerely,

## **S.40 (2) – Personal information about others**

‘Personal data’ is defined in sections 3(2) and (3) of the Data Protection Act 2018 (‘the DPA 2018’) and means any information relating to an identified or identifiable living individual. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

We have concluded that, in this instance, the information requested contains third party personal data.

Under Section 40(2) of the FOIA, personal data is exempt from release if disclosure would breach one of the data protection principles set out in Article 5 of the GDPR. We consider the principle being most relevant in this instance as being the first. This states that personal data must be:

*“processed lawfully, fairly and in a transparent manner in relation to the data subject”*

The lawful basis that is most relevant in relation to a request for information under the FOIA is Article 6(1)(f). This states:

*“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child”.*

In considering the application of Article 6(1)(f) in the context of a request for information under FOIA it is necessary to consider the following three-part test: -

- **The Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information.
- **The Necessity test:** Whether disclosure of the information/confirmation or denial that it is held is necessary to meet the legitimate interest in question.
- **The Balancing test:** Whether the above interests override the interests, fundamental rights and freedoms of the data subject.

Our consideration of these tests is set out below:

### **1. Legitimate interests**

Welsh Government recognises your legitimate interest in this information.

## **2. Is disclosure necessary?**

Whilst release may be necessary in the context of your research, we have to consider the release in the wider context of public disclosure and the necessity for that. In that context, we do not believe it is necessary to release the names of the official that provided the information

## **3. The balance between legitimate interests and the data subject's interests or fundamental rights and freedoms**

Welsh Government believes that the officials that provided information for your research would not have any reasonable expectation that their names would be disclosed to the public and that to do so would not be fair and transparent within the meaning of the first data protection principle. In the absence of compelling legitimate interests in the publication of this information, we have decided it is exempt from release under section 40 of the Freedom of Information Act.

Section 40 is an absolute exemption and not subject to the public interest test.