

4 September 2023

Dear

**Reference - ATISN 18823 - Review of vascular services at Betsi Cadwaladr University Health Board**

Thank you for your information request received on 4 August 2023. A response is provided below.

1. *Could you please confirm who it was that set the Terms of Reference for your Review which has allowed the disregarding of such serious issues?*

The terms of reference for our review were developed by Healthcare Inspectorate Wales (HIW) with the specific intention of examining progress made by the health board since the Royal College of Surgeons of England (RCS) report in January 2022, rather than review matters prior to this date.

2. *Could you provide a copy of the Terms of Reference?*

The Terms of Reference are available on our website, here is a [link](#).

3. *Could you confirm that the visit relating to this Review took place during December 2022 and that there was no further visit between December 2022 and the production of your Review in June 2023?*

The onsite fieldwork element of the review took place during December 2022. Remote fieldwork was undertaken prior to and following December's onsite fieldwork.

4. *I note there were several vascular surgeons in the team who visited Ysbyty Glan Clwyd. Were they fully aware of the limitations of the review implicit in the Terms of Reference and content, therefore, to de-escalate the service based on this very limited assessment?*

The full review team including the three Consultant Vascular Surgeons were aware of the terms of reference for our review from the outset. The review team visited all three acute sites in the health board, and not just Ysbyty Glan Clwyd.

5. *I am concerned that clinicians involved in this assessment were content to sign off a de-escalation when the far more robust RCS report highlighted grave concerns. The RCS report openly and transparently listed the names of Vascular Surgeons together with their Units and I would therefore be grateful to receive from you the names of the HiW review surgeons and their Units.*

HIW is withholding the names of the HIW review surgeons and their units, under Section 40(2) of the Freedom of Information Act, as it is personal data protected by the General Data Protection Regulation and Data Protection Act 2018.

Further details of our application of this exemption can be found in Annex A.

However, as highlighted within the report, the composition of the team was as follows:

- HIW Senior Healthcare Inspector
- HIW Healthcare Inspector
- HIW Reviews Assistant
- Three Expert Vascular Surgery Consultants (Clinical Peer Reviewers). One was from a health board in Wales and two were from different NHS Trusts in England.)
- Registered Vascular Nurse (Clinical Peer Reviewer)
- Patient Experience Reviewer

6. *Was the decision to de-escalate the vascular service unanimously agreed by all the visiting team?*

As described previously, the review concluded that satisfactory progress has been made against all nine recommendations set within the RCS report published in January 2022.

The role of the '*clinicians*' involved in our review was to provide clinical advice, help develop the fieldwork methodology based on HIWs terms of reference, directly inform the review findings based on the evidence obtained, help determine the review recommendations, and approve the content of the final report. Further details of our methodology can be found in the report.

It is neither the role nor responsibility of HIWs clinical peer reviewers to '*sign off a de-escalation*' of an SRSI within a health board. HIW made the decision to de-escalate the designation following careful consideration of its intelligence and overall evidence obtained throughout the review, based on its terms of reference.

We have been clear, that the health board must maintain the progress is has made in improving its vascular service since the RCS review and must act upon the recommendations set out in our report. Should HIW receive any new concerns or intelligence relating to the vascular service, we will consider this and use it to inform any actions we decide to take.

HIW operates within the Welsh Government's framework for handling Freedom of Information requests. 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: [Freedomofinformation@gov.wales](mailto:Freedomofinformation@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

## Annex A

This Annex sets out the reasons for the use of Section 40(2) of the Freedom of Information Act.

### Section 40(2) - Personal Information

Section 40(2) together with the conditions in section 40(3)(a)(i) or 40(3)(b) provides an absolute exemption if disclosure of the personal data would breach any of the data protection principles.

‘Personal data’ is defined in sections 3(2) and (3) of the Data Protection Act 2018 (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, by reference to an identifier such as a name, an identification number, location data, an online identifier or 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 concerns 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 General Data Protection Regulation (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**

Whilst we recognise the legitimacy in openness and transparency that release would engender, it's important to note that releases under the Freedom of Information Act (FOIA) are made 'to the world' and published on our disclosure log. Although requests under the Act are usually handled as applicant and motive blind, we do acknowledge the motivation behind your request.

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

We do not believe disclosure of third-party personal data into the public domain is necessary in this case as the data is not relevant.

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

Although we do not believe the disclosure to be 'necessary' in this context, we also believe that the 'fairly' requirement of the above principle would not be satisfied in that an individual would have no reasonable expectation that their personal information would be put into the public domain, and sharing their personal data could have unjustified adverse effects on them. Thus, we believe release of this information into the public domain would be unfair and incompatible with the purpose for which the data was originally obtained. It has therefore been withheld under section 40 of the Freedom of Information Act. Section 40 is an absolute exemption and not subject to the public interest test.