



## **Brexit Risks and Actions**

### **Advisory Review Final Report**

**2020/21**

**Hywel Dda University Health Board**

**Audit and Assurance Services**

**Private and Confidential**

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**Please note:**

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## **1. INTRODUCTION AND BACKGROUND**

### **Introduction and Background**

The review of Brexit Risks and Actions was completed in line with the Hywel Dda University Health Board Internal Audit Plan for 2020/21. The relevant lead Executive Director for this review was the Director of Finance.

The United Kingdom (UK) left the European Union (EU) on the 31<sup>st</sup> January 2020 following a referendum held in June 2016. A transition period had been in place until 31<sup>st</sup> December 2020 that allowed the negotiation and agreement of the new Trade and Cooperation Agreement on 24<sup>th</sup> December 2020 between the UK and the EU.

The deal addressed many of the concerns raised by the NHS Confederation and the Brexit Health Alliance over the last four years. However, there were some significant gaps compared with the arrangements that applied until the end of the post-Brexit transition period on 31<sup>st</sup> December 2020.

The impact on the NHS was multifaceted:

- delays in importing medicines due to new border arrangements, requiring stock piling and good supply chain management;
- possible weakening of the UK's response to pandemics and an increase in the chances of diseases spreading as we lose partnerships with key EU bodies, including membership of the European Centre for Disease Prevention & Control; and
- new immigration rules potentially affecting the ability of the NHS to recruit doctors and other medical staff from the rest of the EU.

As this was an advisory review, the assignment was not allocated an assurance rating, however, we have suggested some considerations for the future to supplement already robustly established delivery plans.

## **2. EXECUTIVE SUMMARY**

### **Main Observations**

Overall, we identified satisfactory arrangements in place with the establishment of a dedicated Brexit Steering Group that was chaired by the Senior Responsible Officer for Brexit within the Health Board, with the membership made up from a cross-section of directorates and services.

We noted the progress made by the Health Board in preparing and addressing the issues and risks around the EU Settlement Scheme and the identification of data flows between UK-EU, whilst mapping exercises were undertaken to establish the number of EU nationals employed by Hywel Dda

and the flows of personal data between the Health Board and EU companies and organisations. In addition, risks and issues were captured on risk registers, including the corporate risk register that was regularly updated in line with national progress towards a trade /no deal scenario.

Whilst we noted the progress made in the identification of data flows between the UK and EU, some Information Asset Owners have yet to complete and submit their Information Asset Register (IAR) work plans in order for the Information Governance Team to assess the risk of data retained abroad. We also noted that risks and issues in relation to data flows were currently being held on a local Information Governance Team system rather than on the central Datix system. However, plans are in place to transfer these risks onto directorate and service risk registers once all IAR work plans have been received and assessed.

It was identified during our review that the Brexit Steering Group terms of reference had not been updated to reflect a change of reporting line and also the inconsistent attendance of some key members at meetings.

### **Priority considerations for the future**

We have not assigned priority ratings to considerations, but we believe the following to be key priorities:

- The EU Settlement Scheme and its potential impact of maintaining services for affected EU employees should be considered when developing business continuity plans.
- Outstanding Information Asset Owners must be reminded of their responsibility to communicate their Information Asset Register work plans promptly to the Information Governance Team in order to identify all data flows between the UK and EU.
- Data sharing and retention risks that are currently recorded on the Information Governance Teams local system should be transferred to directorate and service risks registers in order to retain control of residual issues and risks following the closure of the corporate risk entry.
- A clear trail to ensure key actions raised at the BSG meetings, prior to the group disbanding in March 2021, should be evidenced as being 'closed off'.

### **3. DETAILED REPORT**

#### **3.1 Governance Arrangements**

The Director of Public Health was initially identified as the Senior Responsible Officer (SRO) in 2019 for managing the impact of Brexit on the Health Board. In September 2020, the SRO position was transferred over to the Director of Finance to allow the Director of Public Health to lead the Covid-19 pandemic response and mass vaccination programme.

The Health Board established a Brexit Steering Group (BSG) in January 2019 to manage the impact of the Brexit changes on the organisation following the transition of the United Kingdom (UK) out of the European Union (EU).

Whilst we can confirm that a terms of reference (TOR) was produced for the group with the Chair identified as the Director of Public Health in January 2019, the TOR was not amended to reflect the change in Executive Director for Brexit during 2020.

A paper submitted to the People, Planning & Performance Assurance Committee (PPPAC) in December 2020 provided an update of the Health Board's representation at the following groups and forums to discuss Brexit:

- Brexit Senior Responsible Officer (SRO) Group
- Wales Brexit Communications Group
- Welsh Government Health & Social Care Civil Contingencies Group
- Dyfed Powys Local Resilience Forum (LRF) Brexit Group
- Dyfed Powys LRF Risk Group

Testing was undertaken on BSG meetings for the period August 2020 to February 2021 to establish the consistency of standing agenda items and the attendance of members identified in the TOR. Concluding testing, we noted that standing agenda items were consistent with the agenda being built upon since the first meetings.

Whilst we noted that all meetings were quorate during our period sampled, we noted a number of members with poor attendance records including six members that had not attend one meeting during the period sampled. However, the BSG was disbanded in March 2021.

#### **3.2 European Union Settlement Scheme**

The Home Office European Union (EU) Settlement Scheme allowed EU citizens and their families a route to living and working in the UK beyond

the transition period of 31<sup>st</sup> December 2020. EU citizens currently living or arriving in the UK before the end of the transition period will be able to apply for the scheme up until the 30<sup>th</sup> June 2021, whilst those arriving on or after the 1<sup>st</sup> January 2021 will be subject to the new immigration system.

In preparation for the implementation of the settlement scheme, the Workforce and Organisational Development (OD) function undertook a scoping exercise to establish the number of EU nationals employed by the Health Board. A review of the Electronic Staff Record (ESR) system identified 235 out of 11,480 (approximately 5%) of the workforce as EU nationals as at September 2020.

A review was undertaken of three departments with high EU employee numbers to establish whether the potential risk and impact has been captured in their Business Continuity Plans. The three areas selected were Bronlais General Hospital Hotel Services, Glangwili General Hospital Medical Staffing Anaesthetics and Worthybush General Hospital Medical Staff Anaesthetics.

Concluding a review of the business continuity plans, we can confirm that reference has been made to the actions and resources in the event of staff shortages, but no explicit reference was evident to the EU settlement scheme.

Current arrangements do not allow an employer to question individuals as to their settlement status but are able to provide information and links to aid and educate staff. A review of the information and communications provided by Workforce & OD in regard of the settlement status noted the following:

- signposting of links to the Welsh Government (WG) site via global emails;
- the creation of a restricted Hywel Dda Facebook page dedicated for EU nationals within the organisation; and
- the development of an intranet site dedicated to the topic 'EU Transition advice for Hywel Dda staff' including a managers toolkit,
- workshops were provided by Newfields Law (that had been appointed by the WG to provide free legal advice and support for EU citizens living in Wales) at a number of sites across the organisation during 2019.

A review of the BSG agendas and minutes confirmed that regular updates of the EU Settlement Scheme was being provided by Workforce.

### **3.3 Data Sharing and Retention**

The EU-UK Trade and Cooperation Agreement contained a bridging mechanism that allows the continued free flow of personal data from the EU to the UK after the transition period for up to six months.

To mitigate the potential data sharing and retention risk, the Health Board initiated a mapping exercise to establish data flows between the UK and the EU. An Information Asset Register (IAR) was developed to record all areas within the organisation that process personal data. In each area, Information Asset Owners (IAOs) were identified and responsible for providing information governance submissions that would populate the IAR.

Concluding the submission, a member of the Information Governance Team would arrange a meeting with the IAO to ensure all data flows are identified and recorded. This assessment by the Information Governance Team would be recorded on an 'IAO Risk Report' detailing the data flow outside and inside the UK.

The IARs received from the directorates and services are submitted to the Information Governance Sub-Committee (IGSC). In addition, an IAR summary report is also submitted that documents the progress in the identification of data flows with every directorate and service. A review of the latest IAR progress report as at 27<sup>th</sup> April 2021 noted that 73% of IAOs had identified and mapped the processing of personal data outside of the UK on the IAR includes data flows out and into the UK.

The process of identifying any processing of personal data outside of the UK has also been addressed with the Information Asset Owners at the Information Asset Owners Group meeting. We can confirm that the IAOG key actions and discussions are submitted to the IGSC.

### **3.4 Risk Registers**

A review of the Corporate Risk Register submissions during 2020-21 noted that a Brexit deal risk entry (Risk No. 635) had been recorded. We can confirm that updates, including the risk rating, had been adjusted in line with national developments in agreeing a trade deal. We can also confirm that the EU Settlement Scheme had formed part of the risk detail, including progress and updates being provided on internal developments such as the mapping exercises undertaken by Workforce & OD and the Information Governance Team. However, no detail of the data sharing and retention issues and actions had been noted within the Corporate Risk Register paper submitted to the Health Board nor the paper submitted to the People, Planning & Performance Assurance Committee in November 2020.



On the 3<sup>rd</sup> March 2021, the Executive Team agreed to close the corporate risk as a result of the UK having left the EU with a trade deal. This risk entry closure was confirmed in the paper submitted to the Health Board in March 2021 with the agreement that any residual issues or risks within the supply chain will be managed as part of the Health Board's routine processes going forward.

Whilst we note that residual risks and issues will be captured at a directorate/service level, we noted that risks and issues relating to data sharing and retention are currently being recorded on the Microsoft Teams platform. We were informed by the Head of Information Governance that they are working with the Risk and Assurance Team to transfer these risks onto directorate and service risk registers recorded and maintained on the Datix system.

### **3.5 Reporting Arrangements**

A review of the BSG minutes and agendas for the period August 2020 to February 2021 confirmed regular meetings had occurred. We can confirm that that service updates were regularly provided in key areas, including Business Continuity Planning, Workforce, Supply Chain, Finance, Primary/Social Care and Communications.

Testing was undertaken on identified actions recorded in the BSG minutes to ensure they were addressed and raised at a subsequent meeting. Of the 15 actions selected, we identified six instances where updates of the actions taken were evident. In addition, the BSG was disbanded in March 2021 therefore we were unable to verify whether outstanding actions raised in previous BSG meetings had been addressed.

The arrangements set out in the draft TOR stated that the BSG would report through to the Executive Team. Following discussions and a review of minutes and papers, we were unable to support the reporting through to the Executive Team. However, we were informed that the BSG reported through to the Finance Committee. Concluding a review of minutes and papers for 2020-21, we can confirm that submission of Brexit update papers. This change in reporting arrangements was not reflected in the BSG draft TOR.

A review of the Health Board papers for the period 2020-21 noted that updates in regards of Brexit and the impact on and actions taken by the organisation were included in the Finance Committee papers.

## Appendix One – Scope, Objectives & Risks

### Scope of this Advisory Review

The advisory review has assessed the adequacy and effectiveness of the implementation of planned workforce and data sharing actions following the post-Brexit agreement.

The purpose of the review was to assess the progress made by the Health Board in implementing actions in relation to EU staff settlement status and the retention and sharing of the organisation's data, and outstanding risks are accurately captured.

The areas that the review sought to review were:

- Arrangements have been established for coordinating and capturing the Health Board's approach to the impact of Brexit;
- Actions to address EU staff settlement status and the control of data retention and sharing has been implemented;
- Risks in relation to the progress of EU staff settlement status and the control of data retention and sharing has been captured and reported on a risk register; and
- Progress on the organisation's Brexit plans are regularly communicated to the Health Board.

The management of risks affecting the NHS Wales supply chain, including the National Supply Disruption Response, was subject to separate review on behalf of NHS Wales Shared Services Partnership and was therefore excluded from the scope of this review.

The potential risks considered in this review were as follows:

- No arrangements have been established to capture and address the impact of Brexit on organisation services and functions;
- The potential impact of workforce and data sharing has not been assessed or addressed, potentially resulting in service disruption and the ability to deliver safe and timely services to patients; and
- Inadequate reporting of Brexit planning arrangements to the Health Board.

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