



**NOTICE OF DETERMINATION
CORE PARTICIPANT APPLICATION
MODULE 2 - CARE ENGLAND**

Introduction

1. In my [Opening Statement](#) on 21 July 2022, I explained that Modules would be announced and opened in sequence, with those wishing to take a formal role in the Inquiry invited to apply to become Core Participants for each module. On 31 August 2022, the Inquiry opened Module 2 and invited anyone who wished to be considered as a Core Participant to that Module to submit an application in writing to the Solicitor to the Inquiry by 23 September 2022.
2. On 22 September 2022 the Inquiry received an application from Care England (“the Applicant”) for Core Participant status in Module 2. This Notice sets out my determination of the application.
3. The Inquiry has published the [Provisional Outline of Scope](#) for Module 2, which states that this module will examine the decision-making by the UK Government during the Coronavirus pandemic. Further modules will be announced and opened in due course, to address other aspects of the Inquiry’s Terms of Reference.

Application

4. Applications for Core Participant status are considered in accordance with Rule 5 of the Inquiry Rules 2006, which provides:

5.—(1) The chairman may designate a person as a core participant at any time during the course of the inquiry, provided that person consents to being so designated.

(2) In deciding whether to designate a person as a core participant, the chairman must in particular consider whether—

- (a) the person played, or may have played, a direct and significant role in relation to the matters to which the inquiry relates;*
- (b) the person has a significant interest in an important aspect of the matters to which the inquiry relates; or*
- (c) the person may be subject to explicit or significant criticism during the inquiry proceedings or in the report, or in any interim report.*

(3) A person ceases to be a core participant on—

- (a) the date specified by the chairman in writing; or*
- (b) the end of the inquiry.*

5. In accordance with the approach set out in my Opening Statement and the Inquiry's [Core Participant Protocol](#), I considered whether the application fulfils the requirements set out in Rule 5(2) in relation to the issues set out in the Provisional Outline of Scope for Module 2.

Summary of Application

6. Care England is a registered charity and the largest and most diverse representative body for independent providers of adult social care in England. It has 163 members (including care homes) who provide circa 120,000 care home places across England. The application is made on the basis that Care England is open to joint working with the National Care Forum and Homecare Association each of which has made its own application for Core Participant status. The application is put on the basis that Care England has a significant interest in an important aspect of the matters to which Module 2 since it is its view that initial decisions were taken with an inadequate understanding of and data relating to the care sector and this had a fundamental impact on Care England members, their staff and those they support, and on the guidance provided to the care sector. It also states that guidance demonstrated an inadequate understanding of the care sector and that NPIs and legislation had an enormous impact on those supported by Care England's members. It also supported its members through the demands made on them during the pandemic in relation to data collection, collation and sharing.

Decision for the Applicant

7. I acknowledge the specific impact of the Covid-19 pandemic on those individuals with existing health inequalities, protected characteristics and those either in care homes or receiving care. I wish to repeat my ongoing commitment, as set out in the Terms of Reference and repeated in my Opening Statement, that inequalities will be at the

forefront of the Inquiry's investigations. This will include a focus on the disparities evident in the impact of the pandemic on different categories of people.

8. Having considered with great care everything that is said in the applications, I am minded, in my discretion, to designate Care England, the Homecare Association and the National Care Forum as Core Participants in Module 2. This is on the basis of a joint grant, noting that the organisations have adopted joint working and will be jointly represented. I consider that none of the Applicants satisfy Rule 5(2)(a) and did not play a direct or significant role in high level core political and administrative decision making. However, I do accept that each has a significant interest (Rule 5(2)(b)). The Core Participant Protocol provides that while I am bound to consider the factors set out in Rule 5(2), it is also open to me to take into account other relevant matters. I am also not obliged to designate a person or organisation that meets the criteria set out in Rule 5 of the Inquiry Rules as a Core Participant. It further explains that I particularly invite applications from groups of individuals and organisations with similar interests, rather than from individual persons and organisations and that the designation of Core Participant status to groups representing the interests of more than one person would assist the fair and efficient running of the Inquiry. I additionally have regard to my duty to act with fairness and with regard to the need to avoid any unnecessary cost to public funds.
9. I have considered with great care everything that is said in the application. For a number of reasons, I consider that the Applicants jointly are well placed to assist the Inquiry as to whether those in care homes/receiving care whose interests it may represent, were considered as part of the process of core political and administrative decision-making in response to Covid-19 without considering in detail any individual cases. I consider that the Applicants will be able to assist me on this issue.
10. It is noted that care homes, health inequalities and the impact of the Covid-19 pandemic are to be specifically considered in later modules. The Inquiry will also listen to and consider carefully the experiences of those who have suffered hardship or loss as a result of the pandemic. I made clear in my Opening Statement that this listening exercise is a significant and important task which will lead to summary reports of the impact of the pandemic on those who come forward to be used as evidence during the Inquiry's module hearings. It will be run in such a way that as many people as possible who wish to share their experience may do so.

11. I further consider that the Applicants' interests in the outcome of the inquiry are similar and that the facts they are likely to rely on in the course of the inquiry are similar. In the circumstances, it is fair and proper for them to be jointly represented and as such I direct that those to whom I have granted core participant status shall be represented by a single recognised legal representative ('RLR') pursuant to Rule 7 of the Inquiry Rules. The Core Participant is directed to confirm within 14 days which RLR they wish to be designated after which I will make a decision based on who has sufficient knowledge and experience to act on their behalf.

Legal Representation

12. Applications for designation as the Recognised Legal Representative of a Core Participant are governed by Rules 6 and 7 of the Inquiry Rules 2006, which provide:

6.—(1) Where—

- (a) a core participant, other than a core participant referred to in rule 7; or*
- (b) any other person required or permitted to give evidence or produce documents during the course of the inquiry,*
has appointed a qualified lawyer to act on that person's behalf, the chairman must designate that lawyer as that person's recognised legal representative in respect of the inquiry proceedings.

7.—(1) This rule applies where there are two or more core participants, each of whom seeks to be legally represented, and the chairman considers that—

- (a) their interests in the outcome of the inquiry are similar;*
- (b) the facts they are likely to rely on in the course of the inquiry are similar; and*
- (c) it is fair and proper for them to be jointly represented.*

(2) The chairman must direct that those core participants shall be represented by a single recognised legal representative, and the chairman may designate a qualified lawyer for that purpose.

(3) Subject to paragraph (4), any designation must be agreed by the core participants in question.

(4) If no agreement on a designation is forthcoming within a reasonable period, the chairman may designate an appropriate lawyer who, in his opinion, has sufficient knowledge and experience to act in this capacity.

13. Directions will be given in relation to applications for an award under section 40(1)(b) of the Inquiries Act 2005 of expenses to be incurred in respect of legal representation, at the forthcoming preliminary hearing. I will determine any such

applications in accordance with the provisions of section 40 of the Inquiries Act 2005, the Inquiry Rules 2006, the [Prime Minister's determination](#) under section 40(4) and the [Inquiry' Costs Protocol](#).

Rt Hon Baroness Heather Hallett DBE

Chair of the UK Covid-19 Inquiry

13 October 2022