



**NOTICE OF DETERMINATION  
CORE PARTICIPANT APPLICATION  
MODULE 2A - SCOTTISH CARE**

**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 2A 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 Scottish Care (“the Applicant”) for Core Participant status in Module 2A. This Notice sets out my determination of the application.
3. The Inquiry has published the [Provisional Outline of Scope for Module 2A](#), which states that this module will examine the decision-making by the Scottish 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 2A.

### **Summary of Application**

6. Scottish Care is a registered charity and members' organisation which represents independent social care providers in Scotland who deliver residential care, nursing care, day care, care at home and housing support services. Scottish Care has 350 members which cover approximately 900 services. It represents more providers of social care than any other representative body in Scotland. The Applicant states that they were at the heart of debate and discussion and provided detailed responses to the numerous issues faced by the social care sector during the pandemic. They engaged with the Scottish Government ("SG") in relation to legislation, guidance and policies which affected the care sector and state they are well placed to speak to the extent to which the care sector was consulted or views taken into account. The Applicant's members were at the forefront of frontline response and as a result were directly impacted by the SG's decision-making. The Applicant also states an interest in decisions being fully explored so that lessons can be learned.

### **Decision for the Applicant**

7. 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 and 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 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.

8. I have considered with great care everything that is said in the application and had regard to the need to manage the Inquiry effectively and efficiently. Having done so, I have decided, in my discretion, to designate Scottish Care as a Core Participant in Module 2A. Having regard to the provisions of Rule 5(2), I consider that the Applicant is best placed to assist the Inquiry to achieve its aims by representing the collective interests of a broad spectrum of social care providers in Scotland, in relation to Module 2A. The Applicant can assist the Inquiry in understanding the perspective of a sufficiently large group of social care providers when it examines the core political and administrative decisions taken in response to Covid-19. Additionally, I consider that the Applicant has a significant interest in Module 2A of the Inquiry under Rule 5(2)(b).

## **Legal Representation**

9. 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.*

10. I am satisfied that the Applicant has appointed Kirstyn Burke of Brodies LLP as its qualified lawyer in relation to this Module. I therefore designate Kirstyn Burke as the Applicant's recognised legal representative in accordance with Rule 6(1).
11. 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**