



**NOTICE OF DETERMINATION**  
**CORE PARTICIPANT APPLICATION**  
**MODULE 3 - HEALTH & SAFETY EXECUTIVE**

**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 8 November 2022, the Inquiry opened Module 3 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 5 December 2022
2. The Inquiry has published the Provisional Outline of Scope for Module 3, which states that this Module will consider the impact of the Covid-19 pandemic on healthcare systems in England, Wales, Scotland and Northern Ireland. Further Modules will be announced and opened in due course, to address other aspects of the Inquiry's Terms of Reference.
3. On 5 December 2022 the Inquiry received an application from the Health & Safety Executive ("the Applicant") for Core Participant status in Module 3.
4. I made a provisional decision dated 12 January 2023 not to designate the Applicant as a Core Participant in Module 3, thereby declining the application ("the Provisional Decision"). The Applicant was provided with an opportunity to renew the application in writing by 4pm on 19 January 2023.
5. The Applicant did not renew the application by the prescribed deadline. Accordingly, this Notice sets out my final decision on the application.

## Application

6. 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.*

7. In accordance with the approach set out in my Opening Statement and the Inquiry's [Core Participant Protocol](#), I have 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 3.

## Summary of Application

8. The Applicant is Britain's national regulator for workplace health and safety and regulates a wide range of workplaces across England, Scotland and Wales, including in the health and social care sector. The Applicant states it has considered the rates of deaths of healthcare staff and possible specific characteristics, including work as part of the Covid-19 National Core Studies. The Applicant states it has undertaken a programme of inspections at hospitals and reported the results of this to help hospitals maintain Covid-19 controls. In its role as the regulator for workplace health and safety, the Applicant states it has received and responded to concerns raised by healthcare workers. In relation to the adequacy of PPE and Respiratory Protective Equipment ("RPE"), the Applicant states that it assisted the government in assessing

whether certain PPE met essential Health and Safety requirements, and to have provided training, together with relevant agencies, for those purchasing PPE on how to ensure it met the required standard.

### **Decision for the Applicant**

9. I have considered with great care everything that is said in the application. Having done so, I consider that the Applicant does not meet the criteria set out in Rule 5 for designation as a Core Participant in Module 3 and, therefore, I have decided not to designate the Applicant as a Core Participant in Module 3.
10. Module 3 will consider the impact of the Covid-19 pandemic on healthcare systems in England, Wales, Scotland and Northern Ireland. This will include consideration of the healthcare consequences of how the governments and the public responded to the pandemic. It will examine the capacity of healthcare systems to respond to a pandemic and how this evolved during the pandemic. It will consider the primary, secondary and tertiary healthcare sectors and services and people's experience of healthcare during the pandemic, including through illustrative accounts. It will also examine healthcare-related inequalities (such as in relation to death rates, PPE and oximeters), with further detailed consideration in a separate designated Module.
11. The application is based on the Applicant having played a direct and significant role in the matters to which Module 3 relates (Rule 5(2)(a)) and having a significant interest in an important aspect of those matters (Rule 5(2)(b)), and is also put on the basis that there is a possibility that it may be subject to explicit or significant criticism under Rule 5(2)(c). The Applicant states, however, that its role and interest is limited to a small number of discrete topics in the Provisional Outline of Scope for Module 3. The Applicant states its role will be limited but significant if granted Core Participant status.
12. I do not consider the Applicant played a direct and significant role in the matters to which Module 3 relates. The Applicant's role as an independent inspectorate with regulatory oversight is one step removed from the operation of healthcare systems and the impact of the pandemic on patients, groups and services. While the Applicant played a role in assessing the suitability of PPE, I do not consider that this amounts to

a significant and direct role in the prevention of the spread of Covid-19 in healthcare settings and the impact that such measures had on doctors, nurses and healthcare staff. Hence, the Applicant did not play a direct and significant role in the matters to which Module 3 relates and so Rule 5(2)(a) is not met. While the Applicant can be said to have a broad interest in such matters, this does not amount to a "significant" interest in an important aspect of the matters to which Module 3 relates in accordance with Rule 5(2)(b). The Applicant states there may be the potential for it to be criticised, and refers to comments made in submissions by a Core Participant in Module 2. However, it is too early at this stage in the Inquiry for me to determine whether any criticism will be made of the Applicant in Module 3, particularly whether it might amount to explicit or significant criticism and so Rule 5(2)(c) is not met at this stage.

13. I am determined to run the Inquiry as thoroughly and as efficiently as possible, bearing in mind the Inquiry's wide-ranging Terms of Reference and the need for the Inquiry process to be rigorous and fair. Given the vast numbers of people who were involved with, or adversely affected by, the Covid-19 pandemic, very many people in this country could potentially have an interest in the Inquiry. Not everyone can be granted Core Participant status for the purposes of the Inquiry hearings.
14. It is not necessary for an individual or organisation to be a Core Participant in order to provide evidence to the Inquiry. It is likely that the Inquiry will in due course seek information from a range of individuals, organisations and bodies who may have information relevant to the issues raised in the Modules and, where appropriate, make requests for witness statements and documents.
15. For all of those reasons, having considered all of the information provided by the Applicant in light of the Provisional Outline of Scope for Module 3, I have decided that the Applicant should not be designated as a Core Participant in Module 3 and I confirm that this is my final decision.
16. I will keep the scope of Module 3 under review. My decision not to designate the Applicant as a Core Participant in Module 3 does not preclude it from making any further applications in respect of any later modules. I will consider any future applications the Applicant may wish to make on their merits at the time they are made.

**Rt Hon Baroness (Heather) Hallett DBE**

**Chair of the UK Covid-19 Inquiry**

**14 February 2023**