



NOTICE OF DETERMINATION
CORE PARTICIPANT APPLICATION
MODULE 3 - BRITISH INSTITUTE OF HUMAN RIGHTS

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 for Core Participant status in Module 3 from the British Institute of Human Rights ("the Applicant") as part of a group application alongside John's Campaign, the Relatives and Residents Association and the Patients Association.
4. I made a provisional decision dated 17 January 2023 to (i) designate John's Campaign, the Relatives and Residents Association and the Patients Association as a Core Participant Group in Module 3 and (ii) decline to designate the British Institute of Human Rights as a Core Participant in Module 3 ("the Provisional Decision"). The British Institute of Human Rights and the Applicant Group as a collective were provided with an opportunity to renew the application in writing by 4pm on 24 January 2023.

5. On 23 January 2023 the Applicant submitted a renewed application for Core Participant status in Module 3. This notice sets out my final determination of the British Institute of Human Rights' application for Core Participant status in Module 3.
6. I confirmed my provisional decision to designate John's Campaign, the Relatives and Residents Association and the Patients Association as a Core Participant Group in Module 3 in a final determination dated 16 February 2023.

Application

7. 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.

8. 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 3.

Summary of Application

9. The original application sets out the role of the Applicant in undertaking direct support of 3,000 people including patients and their families and frontline public services staff

during the pandemic and in conducting research about the impact of Covid-19 measures, with specific research on the use of DNACPRs (do not attempt cardiopulmonary resuscitation). This is said to have been pivotal to the Care Quality Commission's inquiry into the use of DNACPRs. The Applicant was also said to have raised concerns about a policy of keeping individuals in hospital too long or patients not being discharged when it was safe to do so.

10. The Applicant's renewed application provides helpful further information, which I have considered with care. In summary, the Applicant clarifies that its "core organisational aim is to enable positive change" through the practical use of human rights law beyond the courts and sets out its role and focus during the pandemic. It is said that on average over 70% of its work is directly in healthcare. It develops and delivers NHS England's children's inpatient mental health and human rights programme for all staff across England and regularly works with a number of Trusts in England, NHS bodies in Scotland, and University Boards in Wales. Its focus during the pandemic was almost entirely on the healthcare sector. The Applicant's direct experience-led research included research with healthcare staff to better understand their experience of how their own human rights were affected and how Covid-19 measures impacted their ability to do their jobs in a human rights-compliant way. The Applicant also conducted research on issues such as the clinical guidance which was issued, availability of personal protective equipment (PPE), the imposition of DNACPRs, the disproportionate deaths of black people and those from minority groups and other restrictions on visiting in health and social care settings. It also published two reports setting out its research on DNACPRs in 2020.
11. The Applicant also explains that it was given the task by a health commissioner of a large metropolitan area of training GP surgeries and healthcare staff in the human-rights adherent administration of the Covid-19 vaccine.

Decision for the Applicant

12. I have considered with great care everything that is said in the Applicant's renewed application. I have also reminded myself of what was said in the original application to enable me to assess the merits of the application for Core Participant status as a whole. Having done so, I consider that although the Applicant has a significant interest in Module 3 (Rule 5(2)(b)) that is not sufficient to warrant designation as a Core Participant in circumstances where I consider that the issues in which the Applicant

has an interest, including the use of DNACPRs and the impact of the Covid-19 pandemic on healthcare workers, can be adequately represented by other groups more closely connected with healthcare systems to whom I have already granted Core Participant status. I have therefore decided not to designate the Applicant as Core Participants in Module 3.

13. In my original determination, I accepted that the Applicant had a significant interest in Module 3. I remain of that view. As I have previously indicated, however, 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. 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.
14. I am grateful to the Applicant for taking care to set out more detail in their renewed application and, in particular, for providing greater clarity over its remit and the work it undertook during the pandemic. However, I remain of the view that the Applicant's work during the pandemic was one step removed from healthcare systems. I continue to consider, for the purposes of Module 3, that the Applicant is not sufficiently closely connected to healthcare systems, so as to warrant designation as a Core Participant, in light of the considerations to which I must have regard in managing this Inquiry effectively and efficiently.
15. I note the specific work which the Applicant is said to have done in assisting GP surgeries with the administration of the vaccine. This touches on issues which are of importance to the Inquiry as a whole. However, vaccines, therapeutics and anti-viral treatments will be considered in a later module rather than within Module 3.
16. More generally, and to the extent that the issues the Applicant raised are intended to be addressed by Module 3 as opposed to later modules, I have every confidence in the independent legal team whom I have appointed specifically for the purpose of pursuing all legitimate lines of inquiry with the investigatory and analytical rigour that a statutory inquiry of this scale and importance demands.
17. I have also taken into account the fact that there are a number of ways in which the Applicant can participate in Module 3 without being a Core Participant, many of which have been recognised as adequate alternatives to Core Participant status in other

recent statutory inquiries. As I noted in my Provisional Decision, it is not necessary for an individual or organisation to be a Core Participant in order to provide evidence to the Inquiry. The Applicant may have relevant information to give in relation to matters being examined in the Inquiry and, in due course, the Inquiry will seek information from a range of individuals, organisations and bodies to gain their perspective on the issues raised in the modules and, where appropriate, to ask for witness statements and documents.

18. Therefore, having considered all the information the Applicant provided in light of the Provisional Outline of Scope for Module 3, I remain of the view that the issues in which the Applicant has demonstrated an interest can be properly represented and understood without the granting of Core Participant status to the Applicant. I have decided that the British Institute of Human Rights should not be designated as a Core Participant in Module 3 and I confirm that this is my final decision.
19. My decision not to designate the Applicant as a Core Participant in Module 3 does not preclude the Applicant 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

16 February 2023