



**NOTICE OF DETERMINATION  
CORE PARTICIPANT APPLICATION  
MODULE 3 - MENCAP**

**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 Mencap ("the Applicant"), with a revised application being received on 7 December 2022 for Core Participant status in Module 3.
4. I made a provisional decision dated 13 January 2023 not to designate the Applicant as a Core Participant in Module 3, thereby declining Mencap's application ("the Provisional Decision"). The Applicant was provided with an opportunity to renew the application in writing by 4pm on 20 January 2023.
5. On 20 January 2023 the Applicant submitted a renewed application for Core Participant status in Module 3. This notice sets out my final determination of the Applicant's application for Core Participant status in Module 3.

## 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 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. In its original application, the Applicant identifies itself as the largest learning disability charity representing England, Wales and Northern Ireland. The application states that research undertaken by Public Health England in November 2020 showed that people with a learning disability were dying from Covid-19 at a rate of over six times that of the general population. In relation to Rule 5(2)(a), the application is put on the basis that the Applicant engaged with senior officials and Ministers on what it describes as a wide range of emerging health disparities. The application is also put on the basis of Rule 5(2)(b), that the Applicant has a significant interest in the matters to be explored in Module 3. The Applicant is said to have raised significant concerns about the National Institute for Health and Care Excellence guidance and other

practices which adversely affected people with learning disabilities. The Applicant strongly believes that in order to properly consider the impact of the pandemic upon those with learning disabilities, it needs to be a Core Participant given the significant proportion of people it represents and the very specific issues that affected those with learning disabilities.

9. The renewed application provides helpful further information, which I have considered with care. In summary, the Applicant seeks to emphasise the direct and significant role it played in relation to the healthcare system. It states that it was often the only recourse for families trying to secure advice and help. The Applicant is said to have assisted in educating those working within the healthcare system, for example, when it transpired following a Government announcement that a number of GP practices did not understand what a learning disability was. The Applicant also highlights a number of meetings it attended with the Care Minister and its first hand knowledge of issues pertaining to those with learning disabilities, such as what it describes as the “blanket use of DNACPRs”. Further, the Applicant stresses that people with a learning disability cannot be adequately represented by a pan-disability organisation such as the Disability Charities Consortium (“DCC”), to whom Core Participant status has been granted in Module 3. The Applicant urges caution upon the Inquiry in conflating vulnerable groups (including disability groups) or assuming that their needs and interests were uniform.

### **Decision for the Applicant**

10. 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 remain of the view that the Applicant does not meet the criteria set out in Rule 5(2). I have therefore decided not to designate the Applicant as a Core Participant in Module 3.
11. I am grateful to the Applicant for taking care to set out more detail in its renewed application. In particular, I note the emphasis which the Applicant places on the role it played during the pandemic and the distinct concerns of those with learning disabilities as compared with other members of the DCC.

12. As mentioned above, the renewal application is made partly on the basis that the Applicant satisfies the Rule 5(2)(a) criteria and the Applicant provides further information about its involvement in meetings with the Care Minister and its first hand-knowledge, through its own care services, of the use of DNACPRs. I recognise that the Applicant will have played an important and valued role in campaigning and directly supporting services for those with learning disabilities. However, I remain of the view that the Applicant's role was not sufficiently closely connected with healthcare systems so as to constitute a "direct and significant role" in the context of Module 3.
13. In my original determination, I did not consider that the Applicant had a significant interest in Module 3. I remain of that view. I recognise that the Applicant has an interest in healthcare systems, however, that interest is not "significant" within the meaning of Rule 5(2)(b) in the context of Module 3 as a whole. Given the vast numbers of people who were involved with, or adversely affected by, the Covid-19 pandemic, very many people and organisations in the UK could potentially have an interest in the Module and not everyone can be granted Core Participant status for the purpose of the Inquiry hearings.
14. Further, 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 not obliged to designate any particular person or organisation 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.
15. I do not accept that to designate the DCC as a Core Participant in favour of the Applicant serves to conflate vulnerable groups or assumes that their needs and interests are uniform. The DCC is a consortium of which the Applicant itself is a member. The Applicant is capable of considering material, contributing to the Inquiry and representing its interest in Module 3 through its membership of the DCC. As a Core Participant, the DCC will have the opportunity to represent the interests of those with learning disabilities and raise any distinct concerns relating to those individuals, alongside and/or in addition to highlighting the concerns of its other members. This approach does not suggest that the interests of all of those who form part of the DCC will at all times be entirely consistent. Rather, it recognises that the DCC will have the opportunity to contribute to Module 3 in a way which reflects the concerns of each of

its members, while also aligning with my intention to run this Inquiry as effectively and efficiently as possible.

16. I have taken into account the fact that there are a number of ways in which the Applicant can participate in Module 3 without being designated as an individual 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.
17. More generally, 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.
18. Therefore, having considered all of the information the Applicant provided in light of the Provisional Outline of Scope for Module 3, I remain of the view that the interests and concerns of those with learning disabilities can be properly represented and understood without the granting of Core Participant status to the Applicant. I have decided that Mencap 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**