



NOTICE OF DETERMINATION
CORE PARTICIPANT APPLICATION
MODULE 3 - PARLIAMENTARY AND HEALTH SERVICES OMBUDSMAN

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 28 November 2022 the Inquiry received an application from the Parliamentary and Health Services Ombudsman ("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 Parliamentary and Health Services Ombudsman's application ("the Provisional Decision"). The Applicant was provided with an opportunity to renew the application in writing by 4pm on 19 January 2023.
5. On 19 January 2023 the Applicant submitted a renewed application for Core Participant status in Module 3. This notice sets out my final determination of the 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. The Applicant is the Ombudsman responsible for investigating complaints about the health service and makes final decisions when a Government department, the NHS in England or arms-length bodies have not resolved complaints. It is independent and directly accountable to Parliament. It is said to have a key role in ensuring that public services are accountable for learning from their failings. It states that it had a 24% increase in complaints since before the pandemic which included complaints directly relating to multiple areas of the Provisional Outline of Scope for Module 3. The Applicant considers that this provides systemic insights on the actions taken at a local level, some of which might have resulted from national decision making and the consequences experienced by individuals, families and communities. The original

application appeared to be put on the basis that the Applicant played a direct and significant role in the matters to which Module 3 of the Inquiry relates (Rule 5(2)(a)) and that it has a significant interest in an important aspect of the matters to which Module 3 relates (Rule 5(2)(b)).

9. The Applicant's renewed application provides helpful further submissions, which I have considered with care. It does not include any new information, but states that the Applicant has "demonstrated through the evidence already submitted, that the Parliamentary and Health Services Ombudsman manifestly did have a significant interest in the matters involved in this module". The renewed application asserts that the Provisional Determination did not give reasons for finding that the Applicant did not have a significant interest as required by Rule 5(2)(b).

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 their renewed application. I remain of the view, as set out in the Provisional Determination, that the Applicant did not play a direct and significant role in the matters with which Module 3 is concerned. Its role in these matters was an indirect one.
12. I also do not consider that the Applicant meets the test in Rule 5(2)(b). I do not agree with the submission in the renewed application that the Applicant, as an independent ombudsman responsible for investigating complaints, has a significant interest in an important aspect of the matters included in the Provisional Outline of Scope for Module 3. The renewed application submits that the Applicant has a significant interest because it "will play a pivotal role in ensuring the health service learns from these experiences for future national crises". I remain of the view that the Applicant's interest in healthcare systems is a broad one, arising as it does from its role in the

independent determination of individual complaints. This is not the same as a “significant interest” in the matters to be considered within Module 3 of the Inquiry.

13. 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 a Core Participant, many of which have been recognised as adequate alternatives to Core Participant status in a number of other recent statutory inquiries. For example, 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.
14. More generally, and to the extent that the issues the Applicant raises are intended to be addressed by Module 3, 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.
15. 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 Applicant does not have a significant interest in the matters for investigation in 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. 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