



**NOTICE OF DETERMINATION  
CORE PARTICIPANT APPLICATION  
MODULE 2A - NHS NATIONAL SERVICES SCOTLAND**

**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 23 September 2022, the Inquiry received an application from NHS National Services Scotland (“NSS”) 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. NSS is a body within the National Health Service (“NHS”) in Scotland. Its statutory name is the Common Services Agency, which provides services and advice to the NHS and the wider public sector within Scotland. The application states that NSS played a direct and significant role in several important aspects of the matters to which Module 2A relates; continues to have a direct and significant interest in them; and will wish to learn from the issues examined in this module. Specifically, NSS was involved in the commissioning of the NHS Louise Jordan Hospital which was a direct arm of the Scottish Government, the initial development of Test and Protect; Antimicrobial Resistance and Health Associated Infection Scotland (“ARHAI”) implemented a cluster reporting system, undertook epidemiological analysis to support testing decision making, reported on hospital mortality, issued evidence-based guidance on various matters including face masks and winter respiratory addendum, provided a service of rapid review of existing literature to support decision makers and prior to the setting up of PHS in April 2020, NSS provided the PHS functions.

## Decision for the Applicant

7. I have considered with great care everything that is said in the application. Having done so, I have decided, in my discretion, to designate NSS as a Core Participant in Module 2A. I consider that NSS played, or may have played, a direct and significant role in relation to the core political and administrative decision making in response to the Covid-19 pandemic in Scotland and has a significant interest in Module 2A of the Inquiry.

## Legal Representation

8. 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.*

9. I am satisfied that NSS has appointed Robert Wightman of the NHS Scotland Central Legal Office as its qualified lawyer in relation to this Module. I therefore designate

Robert Wightmanas PHS's recognised legal representative in accordance with Rule 6(1).

10. 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**