



**NOTICE OF DETERMINATION
CORE PARTICIPANT APPLICATION
MODULES 2 AND 2A - ASAP NHS**

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 Modules 2 and 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. The Provisional Outlines of Scope for Modules 2 and 2A provide that those modules will examine the decision-making by the UK Government and the Scottish Government respectively 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.
3. On 14 September 2022 the Inquiry received an application from Roger Livermore on behalf of ASAP NHS for Core Participant status in Modules 2 and 2A.
4. I made a provisional decision not to designate ASAP NHS as a Core Participant in Modules 2 and 2A, thereby declining ASAP NHS's application ("the Provisional Decision"), on 13 October 2022. ASAP NHS was provided with an opportunity to renew the application in writing by 12 noon on 20 October 2022.
5. On 18 October 2022, ASAP NHS submitted a renewed application for Core Participant status in Modules 2 and 2A. This notice sets out my determination of ASAP NHS's application for Core Participant status in Modules 2 and 2A.

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 Outlines of Scope for Modules 2 and 2A.

Summary of Application

8. ASAP NHS's original application stated that the principal focus of the application was that the Health and Safety at Work etc Act 1974 was not utilised or enforced. Furthermore, it said that the regulator, HSE, declined to comply with its statutory responsibilities and has not acted lawfully. Regarding the Scottish Government, ASAP NHS stated that it had an insufficient emergency plan, set an unlawful policy regarding care homes, hospitals and care homes did not have effective controls on infections and no precautions were in place.

9. In its renewed application, the Applicant states that ASAP NHS did play a direct or significant role in core political and administrative decision-making and that they do have a significant interest in an important aspect of the matters to which the Inquiry relates. ASAP NHS states that it played a unique role in the historic UK policy on infection control and that in Scotland it was the only body upholding the law on infections, and upholding the UK law. The application sets out, inter alia, work that ASAP NHS has done over the course of the pandemic regarding the upholding of various laws and efforts to communicate with the Scottish First Minister, the Scottish Government and NHS Scotland.

10. The Applicant states *“The position of ASAP-NHS should be critical in the pandemic and to the public inquiries. If the governments in the UK had followed our line – that the law applies, and that they should have complied with it, then the consequences of the global pandemic would have been greatly reduced in the UK and a great many lives would have been saved.”*

Decision for the Applicants

11. I have considered with great care everything that is said in ASAP NHS’s renewed application. The renewed application included a covering email which sets out submissions and three attachments, all of which have been reviewed and considered, as well as other correspondence sent to the Inquiry by the Applicant. 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, in my discretion, I consider that ASAP NHS does not meet the criteria set out in Rule 5 for designation as a Core Participant in Modules 2 and 2A and, therefore, I have decided to not to designate ASAP NHS as a Core Participant in Modules 2 and 2A.

12. I have noted what the Applicant has set out in relation to the activity he has undertaken during the pandemic. I do not doubt that the Applicant has a deep and genuine concern for the issues set out in the application, renewed application and attached correspondence. Module 2 and Module 2A will pay particular scrutiny to the decisions taken by the UK and Scottish Governments as advised by the Civil Service, senior political, scientific and medical advisers and relevant sub-committees. The focus will be on the key decisions made by the Governments. It is anticipated that the

Inquiry will hear evidence from the experts who provided advice directly to the Governments at the time. Having regard to the ambit of Module 2 and Module 2A, I have appointed a number of representative organisations generally to represent the interests of all bereaved persons, as well as representatives of frontline workers and those in the medical and health and safety fields. Whilst I recognise the efforts made by ASAP NHS to raise awareness of its concerns, I am satisfied that the Applicant did not have a direct or significant role in core political and administrative decision making as a decision-maker or as an adviser (Rule 5(2)(a)). Additionally, I do not consider, having regard in particular to the need to manage the Inquiry effectively and efficiently, that the Applicant's interest in decision making by the UK Government and the Scottish Government is sufficiently significant as to grant it Core Participant status in these Modules (Rule 5(2)(b)). Further, the Applicant is not likely to face criticism in the Inquiry (Rule 5(2)(c)).

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 wide impact of the pandemic there will inevitably be a very significant number of individuals, organisations and groups whose members were impacted by the pandemic and who accordingly, and understandably, have a very real, and significant, interest in the core political and administrative decision-making in the UK and Scotland in relation to the Covid-19 pandemic.
14. In my Opening Statement, I said that I will publish more information about the issues intended to be covered by later modules in the coming months. The Applicant may consider making an application for Core Participant status in future modules. I will determine any future applications on their merits.
15. It is also not necessary for an individual or organisation to be a Core Participant in order to provide evidence to the Inquiry. ASAP NHS may have relevant information to give in relation to matters being examined in the Inquiry and the Inquiry will be reaching out in due course to a range of individuals, organisations and bodies to seek information, to gain their perspective on the issues raised in the modules and, where appropriate, to ask for witness statements and documents.

16. Regarding the Applicant's submission that they have a significant interest in matters to which the Inquiry relates on account of its involvement with bereaved family members, it is beyond the provisional scope of Modules 2 and 2A to consider in detail any individual cases of harm or death. However, the Inquiry has granted Core Participant status to those Applicants I consider to be the most representative to ensure that the interests of the bereaved and those significantly impacted by the Covid-19 pandemic are considered. Further, I will listen to and consider carefully the experiences of bereaved families through the listening exercise. I made clear in my Opening Statement that this listening exercise is a significant and important task which will lead to summary reports on the impact of the pandemic on those who come forward to be used as evidence during the Inquiry's module hearings. ASAP NHS, on behalf of Neil Alexander's family and others, has the opportunity to contribute to the Inquiry through the listening exercise if it chooses. May I extend my deep sympathies to Mr Alexander's family for their loss and to those similarly affected.
17. For all of those reasons, having considered all of the information provided by ASAP NHS, in light of the Provisional Outlines of Scope for Modules 2 and 2A, I consider that ASAP NHS did not play a direct and significant role in relation to the matters sought to be investigated in Modules 2 and 2A, nor does ASAP NHS have a significant interest in an important aspect of the matters to which Modules 2 and 2A relate. Further, ASAP NHS will not be subject to criticism. I have therefore decided that ASAP NHS should not be designated as a Core Participant in Modules 2 and 2A and I confirm that this is my final decision.
18. I will keep the scope of Modules 2 and 2A under review. My decision not to designate ASAP NHS as a Core Participant in Modules 2 and 2A does not preclude it from making any further applications in respect of any later modules. ASAP NHS may wish to consider applying for Core Participant status in relation to future modules likely to deal more directly with the matters which have been referred to in both the original application and the renewed application. I will consider any future applications ASAP NHS 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

25 October 2022