



**NOTICE OF DETERMINATION
CORE PARTICIPANT APPLICATION
MODULE 3 - SCOTTISH HEALTH BOARDS**

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 30 November 2022 the Inquiry received an application from the Scottish Health Boards ("the Applicant") for Core Participant status in Module 3. This Notice sets out my determination of the application.

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 3.

Summary of Application

6. The Applicant consists of Scotland's fourteen territorial health boards together with five national non-geographic special health boards, applying under the name of "the Scottish Health Boards". The application is put on the basis that the Scottish Health Boards played a direct and significant role in relation to the matters to which the Inquiry relates (Rule 5(2)(a)) since they provide almost all secondary healthcare within Scotland and, in some circumstances, also have responsibility either for primary healthcare or the junction between primary and secondary healthcare, such as some ambulance provision and out of hours emergency contact. Specific roles included: caring for patients in Scotland with Covid-19 who required hospital admission; employing medical and nursing staff; interpreting and implementing national guidance or policy; managing the treatment; and management of non-Covid conditions.
7. The Applicant also states that it has a significant interest in an important aspect of the matters to which the inquiry relates (Rule 5(2)(b)) since it would have an interest in the implementation in Scotland of any recommendations made by the Inquiry. The Applicant also states that healthcare provision has the potential to be subject to explicit or significant criticism (Rule 5(2)(c)) during the Inquiry. However, the Applicant does not set out any specific criticism that may be made of the Applicant.

Decision for the Applicant

8. I have considered this application carefully and having done so, I have decided to designate the Applicant as a Core Participant in Module 3.
9. Module 3 will consider the impact of the Covid-19 pandemic on healthcare systems in England, Wales, Scotland and Northern Ireland. This will include consideration of the healthcare consequences of how the governments and the public responded to the pandemic. It will examine the capacity of healthcare systems to respond to a pandemic and how this evolved during the Covid-19 pandemic. It will consider the primary, secondary and tertiary healthcare sectors and services and people's experience of healthcare during the pandemic, including through illustrative accounts. It will also examine healthcare-related inequalities (such as in relation to death rates, PPE and oximeters), with further detailed consideration in a separate designated Module.
10. The application is based on having played a direct and significant role in the matters to which Module 3 relates (Rule 5(2)(a)). I consider that as a group, the Applicant played a direct and significant role in the Scottish healthcare systems' response to the pandemic, satisfying Rule 5(2)(a) of the Inquiry Rules 2006. I am also satisfied that jointly the Applicants have a significant interest in the matters to which Module 3 relates and thus also satisfy Rule 5(2)(b).

Legal Representation

11. 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.

12. I am satisfied that the Applicant has appointed Elaine Coull of the NHS Central Legal Office as its qualified lawyer in relation to this Module. I therefore designate Elaine Coull as the recognised legal representative in accordance with Rule 6(1).

13. 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's Costs Protocol](#).

Rt Hon Baroness Heather Hallett DBE

Chair of the UK Covid-19 Inquiry

16 January 2023