



NOTICE OF DETERMINATION
CORE PARTICIPANT APPLICATION
MODULE 3 - 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 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 NHS National Services Scotland ("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 states that it played a direct and significant role in relation to certain matters to which Module 3 relates (Rule 5(2)(a)) and has a significant interest in an important aspect of them (Rule 5(2)(b)). The application provides examples of how these conditions are said to be met by reference to paragraphs in the Provisional Outline of Scope for Module 3. It specifies that the core decisions in relation to the pandemic were the responsibility of the Scottish Government but the Applicant was responsible for the operational implementation of those decisions. Within the Strategy Performance and Service Transformation Unit there was responsibility for Test and Protect. Antimicrobial Resistance and Healthcare Associated Infection Scotland, which is part of the Applicant's organisation, is said to have been a key part of the national Covid-19 response developing data and intelligence, producing evidence and guidance, developing and delivering educational resources and supporting health boards in their local pandemic responses. The delivery of a Nightingale hospital is said to have relied heavily on the Applicant. The Applicant is also described as being involved in assessing staffing levels, providing lease and employment advice, and agreeing a workforce strategy, although it is said that this was not utilised due to hospitals maintaining demand locally.

Decision for the Applicant

7. I have considered with great care everything that is said in the application and having done so, I have decided to designate the Applicant as a Core Participant in Module 3.
8. I consider that the Applicant played a direct and significant role in relation to the healthcare system in Scotland during the Covid-19 pandemic and that it has a significant interest in important aspects to which Module 3 of the Inquiry relates.

Legal Representation

9. 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 core participant, other than a core participant referred to in rule 7; or 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— their interests in the outcome of the inquiry are similar; the facts they are likely to rely on in the course of the inquiry are similar; and 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.

10. I am satisfied that the Applicant has appointed Morag Shepherd of the Central Legal Office as its qualified lawyer in relation to this Module. I therefore designate Morag

Shepherd as the Applicant's recognised legal representative in accordance with Rule 6(1).

11. 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
Chair of the UK Covid-19 Inquiry
18 January 2023