



**NOTICE OF DETERMINATION  
CORE PARTICIPANT APPLICATION  
MODULE 2A - LONG COVID KIDS 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 Modules 2, 2A, 2B and 2C and invited anyone who wished to be considered as a Core Participant to those Modules to submit an application in writing to the Solicitor to the Inquiry by 23 September 2022.
2. The Provisional Outline of Scope for Module 2A provides that this module will examine the decision-making by the Scottish Government during the Coronavirus pandemic. Further modules are being announced on a rolling basis to address other aspects of the Inquiry's Terms of Reference.
3. On 27 January 2023 the Inquiry received an out of time application from Long Covid Kids Scotland ("LCKS") for Core Participant status in Module 2A. This Notice sets out my final decision on 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. Applications for Core Participant status made outside the Inquiry's timescales are considered in line with paragraph 10 of the Inquiry's [Core Participant Protocol](#) which provides:

*When inviting applications, the Inquiry will set a timeframe for applications to each module, or part of a module. Applicants are asked not to submit applications outside the timelines given by the Inquiry. The Inquiry will not consider applications that are outside the timescales provided by the Inquiry, unless the applicant provides an acceptable explanation as to why they did not submit their application within the relevant timeframe.*

6. In accordance with the approach set out in my Opening Statement and the Inquiry's [Core Participant Protocol](#), I have considered whether the LCKS have provided an acceptable explanation as to why they did not submit their application within the relevant timeframe and 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 Outline of Scope for Module 2A.

### **Summary of Application**

7. The application states that LCKS ("the Applicant") is an autonomous branch within a federated network facilitated by Long Covid Kids & Friends ("LCKF"), a charity registered in England. It was founded in October 2020 and represents, supports and advocates on behalf of more than 200 families across Scotland living with Long Covid and the varied consequences of it. It works in close partnership with LCKF, who were

granted Core Participant status in Module 2 on 13 October 2022. They refer to and adopt the terms of the successful Core Participant application made by LCKF.

8. The Applicant states that it will not duplicate LCKF's contribution to the Inquiry, but will augment and supplement it, focusing on the 'lived experience' in Scotland, which it considers to be distinctive from that in other parts of the UK.
9. The Applicant argues that they played a direct and significant role in matters that fall within the Inquiry's Terms of Reference. LCKS states they engaged extensively with the Scottish Government, the Scottish Parliament and other key policymakers. LCKS aimed to raise awareness of children's experience of Long Covid and to inform the development of related, evidence-led policy. The Applicant states they have frequently engaged with the Cabinet Secretary for Health and Social Care since March 2021 and facilitated public meetings between the Cabinet Secretary and affected families, most recently at the Scottish Parliament on 22 June 2022. LCKS is a member of the Scottish Government's Long Covid Roundtable and has frequently contributed evidence, research outputs and the benefit of 'lived experience' to inform and support evidence-led policy development. LCKS has also been an active member of the Scottish Parliament's Cross-party Group on Long Covid and has addressed that group on children's experiences of Covid-19/Long Covid.
10. The application is further made on the basis that the Applicant has a significant interest in an important aspect of matters to which the Inquiry relates, namely the disproportionate impact of the pandemic felt by children. They state that the Scottish Government, through their decisions in response to the pandemic, placed children at unnecessary, unreasonable and unconscionable risk of grave harm and failed to implement measures necessary to enable them to enjoy their human rights. The application states that while the Scottish Government may not act incompatibly with the ECHR, nonetheless key decisions were made that engage, and prima facie, violate rights in articles 3, 8, 14 and article 2 of protocol 1 of the ECHR. They state that it is reasonable and necessary that LCKS be afforded the opportunity to ventilate fully its concerns, aid the Inquiry in understanding the impact across the whole of the UK and contribute evidence and experience which will otherwise be lacking. Granting LCKF Core Participant status in Module 2, but not LCKS in Module 2A would mean that the

voice of 'lived experience' of families living with Long Covid and its consequences in Scotland will not be heard and decisions made in Westminster will be more closely interrogated than those made in Holyrood.

11. The Applicant's explanation for making its application outside the Inquiry's timescales is that it is a small, grassroots organisation, reliant on the support of volunteers. The Applicant initially understood that LCKF, which has been granted Core Participant status in Module 2 of the Inquiry, would participate on a UK wide basis. They state that this misunderstanding came to light only when LCKF received and considered a Rule 9 request in respect of Module 2 only. This Rule 9 request was made by Module 2 on 4 November 2022. Given its limited capacity and resources, LCKS required additional time to consider the Inquiry's terms of reference and the contribution it might make thereto. The Applicant states that LCKF's Scotland Representative sought to "urgently progress" LCKS' Core Participant application to Module 2A but that this was delayed as a result of her ill health. No further details are given of the Scotland Representative's ill health, except that it had an "outsized impact in the context of a small voluntary organisation." It is stated that the delay to the application is not deliberate and is "relatively short and adequately explained." LCKS is now ready, they state, to proceed without delay, having retained solicitors with suitable experience. The Applicant also states that the delay occasions no prejudice to any person. I am invited to exercise my discretion and to consider the late application.

### **Decision for the Applicant**

*Whether the application should be considered out of time*

12. As is acknowledged by the Applicants, the deadline for applications for Core Participant Status to Module 2A was 23 September 2022, meaning that this application was received significantly late, 126 days after the deadline expired.
13. I remind myself that paragraph 10 of the Inquiry's Core Participant protocol states: "...The Inquiry will not consider applications that are outside the timescales provided by the Inquiry, unless the applicant provides an acceptable explanation as to why they did not submit their application within the relevant timeframe."

14. The aim of this Inquiry is to provide prompt and useful reports and recommendations. To achieve that aim, I must impose firm deadlines at different stages of the Inquiry. Compliance with those deadlines is important to ensure that the challenging timetable will be met. I also have to consider the need to be fair to all Applicants who have made their application for Core Participant status within the time period available as well as those who have made applications outside the application window and more generally that there is no unfair advantage obtained by a late application.
15. I therefore have first considered whether the Applicant has provided an acceptable explanation for the failure to comply with the deadline imposed for renewal.
16. I note that the application was received 126 days after the deadline. The application window was open from 31 August 2022 to 5pm on 23 September 2022. The application was therefore received over four months after the closure of the application window, which had itself been open for over three weeks.
17. Further, the application identifies that the “misunderstanding” regarding the extent of LKCF’s participation in the Inquiry came to light when Module 2’s legal team sent a Rule 9 request to LCKF. This was sent to LKCF on 4 November 2022. On 18 December 2022, the Applicant’s legal representatives informed the lead solicitor for Module 2A via email that they would be making a Core Participant application to Module 2A. The current application states that the LCKF’s Scotland Representative’s effort to progress the application was delayed by ill health. However, no further details are given as to the extent of the ill health or why it caused a delay of 84 days between when the misunderstanding came to light and the eventual date the application was made, on 27 January 2023.
18. The Inquiry responded to the Applicant’s legal representative on 21 December 2023 that a formal application would need to be submitted as soon as possible, with reasons for the delay included within the application. The Applicant’s legal representative replied on 4 January that it was not possible to undertake any work on the application during the Christmas ‘shut down period’ and it would be a further two or three weeks before the application could be submitted. Whilst a short break over the Christmas period is understandable, there is no further explanation for why the application was still not made until 27 January 2023.

19. There appear to be three reasons given by the Applicant for the delay in making the current application. Firstly, the misunderstanding by LCKS regarding the extent of LCKF's participation in the Inquiry. I note that the Provisional Outline of Scope for Module 2 and Module 2A were both published on the Inquiry's website on 31 August 2022, as the Core Participant application window opened, clearly setting out the scope of each module. Further, after the deadline for Core Participant applications passed, preliminary hearings were held regarding Module 2 on 31 October 2022 and Module 2A on 1 November 2022, at which Counsel to the Inquiry announced the Core Participants for each module and explained in more detail the scope of each module. The Module 2 Core Participant joint application from Long Covid Kids, Long Covid SOS, Long Covid Physio and Long Covid Support was published on the Inquiry website on 31 October 2022, as was the Core Participant determination, granting this group, excluding Long Covid Physio, joint Core Participant status on 1 November 2022. I therefore do not find that this misunderstanding is an acceptable explanation as to why an application was not made earlier.
20. Secondly, once the misunderstanding came to light, the Applicant wishes to rely on the fact that they are a "small, grassroots organisation" who needed time to consider the Inquiry's terms of reference and LCKS' potential contribution thereto for the delay. Whilst I accept that a small, voluntary group may take longer than a larger organisation to deal with complex matters, given the significance of the Inquiry and the tight timescales I have imposed and made public, I do not accept that it should have taken nearly another 3 months to submit an application.
21. Thirdly, the Applicant relies on the ill health of the LCKF's Scotland Representative. Although I am sympathetic to the individual's ill health, I have been given no details as to why this illness should have delayed such important matters so long or why others within the organisation could not have progressed the application once the impact of the illness had been recognised.
22. If I accept the reasons given as acceptable explanations then, in effect, the deadline has no force. I also bear in mind that this is not a situation where material identified in the course of the Inquiry has come to light or circumstances have changed so it is appropriate for an application to be made outside the initial window.

23. I note that whilst the Applicant asserts that its delay causes no prejudice to any person, I have declined to consider the applications of other out-of-time Applications from Applicants with substantially shorter delays. I have taken into consideration the need to be fair to all Applicants.

24. Accordingly, I do not consider that the Applicants have provided an acceptable explanation as to why they did not submit their application within the relevant timeframe. I therefore decline to consider the application at this time and so decline the application for Core Participant status.

25. I also bear in mind that simply because an Applicant has been refused Core Participant status in Module 2A that does not bar them from applying for or being granted Core Participant status in a later module or from providing relevant evidence to the Inquiry.

26. For completeness, I will also go on to provide my conclusion on whether the Applicants should have been granted Core Participant status in Module 2A had their application been received during the application window.

*The substance of the application*

27. I acknowledge the specific impact of the Covid-19 pandemic on vulnerable and minority groups. I wish to reaffirm my commitment that inequalities will be at the forefront of the Inquiry's investigations. This will include a focus on the disparities evident in the impact of the pandemic on different categories of people, including children.

28. I have considered with great care everything that is said in the Applicant's application. Having done so, in my discretion, I consider that the Applicants do not meet the criteria set out in Rule 5 for designation as a Core Participant in the Module 2A and, therefore, even if the application had been made in time, my decision would have been not to designate the Applicant as a Core Participant in Module 2A.

29. The application provides few specific details in respect of the direct and significant role that the Applicant played in relation to core political and administrative decisions in Scotland beyond stating they engaged or sought to engage with various stakeholders in the Scottish Government. I have noted with care the valuable work the Applicant has undertaken in this field. However, in the context of the provisional scope of this Module, I am satisfied that the Applicant did not have a direct or significant role in core political and administrative decision making in Scotland (Rule 5(2)(a)).
30. I recognise that the Applicant is representative of a minority group which was impacted by the pandemic in various ways. I therefore do accept the significant interest the Applicant has in the matters for provisional investigation in Module 2A (Rule 5(2)(b)). However, the Core Participant Protocol provides that while I am bound to consider the factors set out in Rule 5(2), it is also open to me to take into account other relevant matters. I am not obliged to designate a person or organisation that meets the criteria set out in Rule 5 of the Inquiry Rules as a Core Participant. Having regard in particular to the need to manage the Inquiry effectively and efficiently, I do not consider that the Applicant's interest in decision making by the Scottish Government is sufficiently significant as to grant it Core Participant status in this Module.
31. I note, for example, that the number of families that LCKS currently supports in Scotland is 200. This can be contrasted with the number of families LCKF supports across the whole of the UK, namely 10,000. I do not consider LCKS to represent a sufficiently large group so as to be well placed to assist the Inquiry to achieve its aims by representing the collective interests of a broad spectrum of those affected by Covid-19 in relation to Module 2A. 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 vast numbers of people who were involved with, or adversely affected by, the Covid-19 pandemic, very many people in this country could potentially have an interest in it and not everyone can be granted Core Participant status for the purposes of the Inquiry hearings.



32. However, the Inquiry team will ensure that the interests of those represented by the Applicant group are properly considered where appropriate. It is not necessary, for example, 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 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.
33. The Inquiry will also listen to and consider carefully the experiences of bereaved families and others who have suffered hardship or loss as a result of the pandemic, through the listening exercise which the Inquiry has named “Every Story Matters”. I made clear in my Opening Statement that this listening exercise is a significant and important task which will lead to summary reports of the impact of the pandemic on those who come forward to be used as evidence during the Inquiry’s module hearings. The Applicant and those it represents will have the opportunity to contribute to the Inquiry through the Every Story Matters process if they choose.
34. I will keep the scope of Module 2A under review. My decision not to designate the Applicant as Core Participants in this module does not preclude the Applicant from making any further applications in respect of any later modules. I will consider any future applications the Applicants 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**  
**10 February 2023**