



NOTICE OF DETERMINATION
CORE PARTICIPANT APPLICATION
MODULE 3 - COUNTY DURHAM & DARLINGTON NHS FOUNDATION TRUST

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 County Durham and Darlington NHS Foundation Trust ("the Applicant") for Core Participant status in Module 3.
4. I made a provisional decision dated 9 January 2023 not to designate the Applicant as a Core Participant in Module 3, thereby declining its application ("the Provisional Decision"). The Applicant was provided with an opportunity to renew the application in writing by 4pm on 16 January 2023.
5. The Applicant did not renew the application by the prescribed deadline. Accordingly, this Notice sets out my final decision on the application.

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 Outline of Scope for Module 3.

Summary of Application

8. The application is made on the following grounds: (a) as to role (Rule 5(2)(a)), that the Applicant was a provider of healthcare during the pandemic; (b) as to interest (Rule 5(2)(b)), that as a healthcare provider the Applicant has an interest in all matters within the Provisional Outline of Scope for Module 3; and (c) as to potential criticism (Rule 5(2)(c)), the Applicant has already attracted criticism (i) from the local council by reason of matters covered by paragraph 10 (deaths) of the Provisional Outline of Scope for Module 3, given that County Durham had some of the highest death rates in care home residents; and paragraph 11 (shielding and impact on the clinically vulnerable) of the Provisional Outline of Scope for Module 3; and (ii) by the local coroner after a worker who was clinically vulnerable was infected with Covid-19 in the workplace.

Decision for the Applicant

9. I have considered with great care everything that is said in the application. Having done so, I consider that the Applicant does not meet the criteria set out in Rule 5 for designation as a Core Participant in Module 3 and, therefore, I have decided not to designate the Applicant as a Core Participant in Module 3.
10. 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 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.
11. The application is put on the basis that the Applicant played a direct and significant role in the matters to which Module 3 relates (Rule 5(2)(a)), the Applicant has a significant interest in an important aspect of those matters (Rule 5(2)(b)), and there is a possibility that the Applicant may be subject to explicit or significant criticism under Rule 5(2)(c).
12. I do not consider the Applicant played a direct and significant role in the matters to which Module 3 relates. The Applicant did play a direct role in the matters that are relevant to Module 3 as a provider of healthcare during the pandemic. However, as an individual Trust, its role is not "significant" such that it ought to be granted Core Participant status under Rule 5(2)(a), as opposed to any other individual Trust or Board of its type. I also do not consider the Applicant to have a significant interest in those matters for the reasons set out above and so, in my view, Rule 5(2)(b) is also not met.
13. While the Applicant states there may be the potential for it to be criticised, it is too early at this stage in the Inquiry for me to determine whether any criticism will be made, particularly whether it might amount to explicit or significant criticism and so

Rule 5(2)(c) is not met at this stage. Even if that were not the case, in the exercise of my discretion, and having regard in particular to the need to manage the Inquiry effectively and efficiently, I would decline to designate the Applicant as a Core Participant. 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.

14. The scope of Module 3 and the designation of Core Participants will be kept under review. In due course it may be that the operational response of individual healthcare boards or trusts will be examined as case studies as part of Module 3 and the Applicant may be identified in that regard. Whether they should then be designated as an individual Core Participant could be revisited.
15. It is not necessary 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 it is likely that the Inquiry will in due course seek information from a range of individuals, organisations and bodies who may have information relevant to the issues raised in the Modules and, where appropriate, make requests for witness statements and documents.
16. For all of those reasons, having considered all of the information provided by the Applicant in light of the Provisional Outline of Scope for Module 3, I have decided that the Applicant should not be designated as a Core Participant in Module 3 and I confirm that this is my final decision.
17. I will keep the scope of Module 3 under review. My decision not to designate the Applicant as Core Participants in Module 3 does not preclude it from making any further applications in respect of any later modules. I will consider any future applications the Applicant 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
13 February 2023