



**NOTICE OF DETERMINATION**  
**CORE PARTICIPANT APPLICATION**  
**MODULE 3 - HIS MAJESTY'S TREASURY**

**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 2 December 2022 the Inquiry received an application from His Majesty's Treasury ("the Applicant") for Core Participant status in Module 3.
4. I made a provisional decision dated 6 January 2023 not to designate the Applicant as a Core Participant in Module 3, thereby declining the Applicant's application ("the Provisional Decision"). The Applicant was provided with an opportunity to renew the application in writing by 4pm on 13 January 2023.
5. On 13 January 2023 the Applicant submitted a renewed application for Core Participant status in Module 3. This notice sets out my final determination of the Applicant's application for Core Participant status in Module 3.

## 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 Applicant's original application stated that it was centrally involved in discussions on both the policy direction on healthcare and on the availability and use of funding in relation to the same. Given its role as both a steward of the UK economy and the overseer of public spending, the Applicant stated it was frequently at the heart of complex and high-profile decisions regarding the direction of the Government's response to the Covid-19 pandemic, balancing the need to make rapid and unprecedented decisions with the importance of ensuring value for money for the taxpayer. The application states that, as a result, the Applicant was centrally involved in the substance of healthcare decision making during this period, thus satisfying the criteria in Rule 5(2)(a).

9. The Applicant also stated that it plays a central role in setting budgets and applying spending controls for Government departments and public bodies including the Department for Health and Social Care (“DHSC”) and NHS England (“NHSE”). In “non-pandemic” periods, the Applicant has a core role in making decisions on health spending and policy, in conjunction with the DHSC and NHSE. Treasury approval is required for all decisions which incur expenditure above set “delegated limits”, which require additional funding or which could be considered “novel, contentious or repercussive”.
  
10. The Applicant’s renewed application provides helpful further information, which I have considered with care. In summary, the Applicant clarifies that it is involved not just in setting the overall size of departments’ budgets, but also in considering, at a more granular level, where and how that money is spent. The availability of funding is described as one of the key factors in determining how patients experience their care, affecting the setting in which they receive care, the speed of access to care and the treatment options available. The Applicant submits that this was especially so during the pandemic as the situation required rapid, complex changes in the delivery of healthcare.
  
11. The Applicant explains that the funding structures underpinning the NHS had to be substantially revised when decisions were made to reduce the amount of elective activity the NHS was undertaking in order to free up beds and staff to deal with Covid-19 patients. The Applicant states it was heavily involved in decisions relating to the suspension of the NHS financial framework and the move to a system of block contracting, decisions which, it submits, were crucial to facilitating the approach the NHS took to its provision of care. The Applicant is therefore said to have had a role not just in allocating ‘headline’ funding, but in influencing policy and deciding which options did (and did not) receive funding. The Applicant acknowledges that it was not directly involved in delivering healthcare or making operational decisions, but submits that there are likely to be instances where, to understand the decisions made, it is necessary to fully understand the availability of funding and the role of the Applicant in influencing policy.

## Decision for the Applicant

12. I have considered with great care everything that is said in Applicant's renewed application. 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, I consider that the Applicant does meet the criteria set out in Rule 5(2)(b) and I have decided to designate the Applicant as a Core Participant in Module 3.
  
13. Taking everything that is said on the Applicant's behalf into account, I am of the view that the Applicant has a significant interest in an important aspect of the matters to which Module 3 relates. In reaching my decision, I have had particular regard to the Applicant's involvement with individual policy setting on a practical level and the fact that decisions and changes made with respect to healthcare systems required the funding structures underpinning the NHS to be revised. I also recognise the impact of the Applicant's own decision-making on the way the NHS functioned and provided care generally, but particularly during the rapidly changing circumstances caused by the Covid-19 pandemic.
  
14. I consider that the Applicant is well placed to assist the Inquiry to achieve its aims through its depth of knowledge and understanding of a range of issues relating to policy and funding considerations around healthcare systems and its involvement in assessing and providing funding towards healthcare initiatives during the Covid-19 pandemic, including attempts to increase NHS capacity.

## Legal Representation

15. 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.*

16. I am satisfied that the Applicant has appointed Robyn Smith of the Government Legal Department as its qualified lawyer in relation to this Module. I, therefore, designate Robyn Smith as the Applicant's recognised legal representative in accordance with Rule 6(1).

17. 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 February 2023**