



NOTICE OF DETERMINATION
CORE PARTICIPANT APPLICATION
MODULE 3 - THE INTENSIVE CARE SOCIETY

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 the Intensive Care Society ("the Applicant") for Core Participant status in Module 3.
4. I made a provisional decision dated 16 January 2023 not to designate the Applicant as a Core Participant in Module 3, thereby declining the Intensive Care Society's application ("the Provisional Decision"). The Applicant was provided with an opportunity to renew the application in writing by 4pm on 23 January 2023.
5. On 23 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 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 the Applicant is the oldest intensive care professional body and membership organisation in the world with 3,000+ UK members. The Applicant is said to represent the wider multi-professional UK intensive care community. In March 2020, the Applicant established the National Emergency Critical Care Committee to create a national approach to managing Covid-19 in UK intensive care by generating and sharing knowledge, guidance and learning.
9. The original application set out the bases upon which the Applicant is said to have an interest in the 12 areas of the Provisional Outline of Scope for Module 3. The Applicant

stated that it meets the criteria for Core Participant status set out in Rule 5(2)(a) and/or Rule 5(2)(b).

10. The Applicant's renewed application provides helpful further information, which I have considered with care. In summary, the Applicant restates that it is the oldest intensive care organisation in the world and the only dedicated multi-professional intensive care organisation. The Applicant is of the view that one of the reasons given in the provisional decision appears to reflect a misunderstanding as to the professional role and purposes of other designated organisations, namely the Royal College of Emergency Medicine (who have been granted Core Participant Status as part of the Academy of Royal Medical Colleges), and the Faculty of Intensive Care Medicine, the Royal College of Anaesthetists and the Association of Anaesthetists (who have been granted Core Participant status as part of a joint application). The Applicant states that the Royal College of Emergency Medicine represents a completely different speciality to intensive care. Similarly, the Applicant states that anaesthesia is not intensive care despite a number of doctors being trained in both specialities. It is said that the Royal College of Anaesthetists and the Faculty of Intensive Care Medicine have effectively been designated as Core Participants twice, as part of the Academy of Medical Royal Colleges and through their separate application alongside the Association of Anaesthetists.
11. The Applicant draws a distinction between its role and that of the Faculty of Intensive Care Medicine. The latter is said to be governed by the Royal College of Anaesthetists and is not an independent organisation, whereas the Applicant is constituted and governed as an independent charity for public benefit. The Applicant cites its role in an application for permission for judicial review and explains that its position in the case cited differed from that of the Faculty of Intensive Care Medicine. It is said that its distinct position applies equally to the Inquiry.

Decision for the Applicant

12. I have considered with great care everything that is said in the 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 although the Applicant played a direct and significant role in UK healthcare systems (Rule 5(2)(a)) and has a significant interest in Module 3 (Rule 5(2)(b)) that is not sufficient to warrant designation as a Core

Participant in circumstances where I consider that the interests of intensive care professionals are adequately represented and that the interests of those professionals can be properly advanced by other organisations to whom I have designated Core Participant status in Module 3. I have therefore decided not to designate the Applicant as a Core Participant in Module 3.

13. In my original determination, I accepted that the Applicant played a direct and significant role in UK healthcare systems and had a significant interest in Module 3. I remain of that view. As I have previously indicated, however, 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 also 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. The Inquiry's Core Participant Protocol explains that I particularly invite applications from groups of organisations with similar interests, rather than from individuals or individual organisations and that the designation of Core Participant status to groups representing the interests of more than one person or group would assist the fair and efficient running of the Inquiry. I additionally have regard to my duty to act with fairness and with regard to the need to avoid any unnecessary cost to public funds.
14. I am grateful to the Applicant for taking care to set out more detail in their renewed application. In particular, I recognise the distinctions drawn between the medical professions as highlighted by the Applicant. However, I remain of the view that, for the purposes of Module 3, the interests of intensive care professionals can be sufficiently and appropriately represented by the Faculty of Intensive Care Medicine, both as a member of the Academy of Royal Medical Colleges and alongside the Royal College of Anaesthetists and Association of Anaesthetists. I do not consider that the Applicant's interests are sufficiently distinct from those of the Faculty of Intensive Care Medicine so as to warrant designation as a separate Core Participant, in light of the considerations to which I must have regard in managing this Inquiry efficiently and effectively.
15. I have also taken into account the fact that there are a number of ways in which the Applicant can participate in Module 3 without being a Core Participant, many of which have been recognised as adequate alternatives to Core Participant status in other recent statutory inquiries. As I noted in my Provisional Decision, 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, in due course, the Inquiry will seek information from a range of individuals, organisations and bodies to gain their perspective on the issues raised in the modules and, where appropriate, to ask for witness statements and documents.

16. Therefore, having considered all of the information the Applicant provided in light of the Provisional Outline of Scope for Module 3, I remain of the view that the interests of intensive care professionals can be properly represented and understood without the granting of Core Participant status to the Applicant. 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. My decision not to designate the Applicant as a Core Participant in Module 3 does not preclude the Applicant 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
16 February 2023