



NOTICE OF DETERMINATION
CORE PARTICIPANT APPLICATION
MODULE 3 - UK HEALTH SECURITY AGENCY

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 UK Health Security Agency (UKHSA) ("the Applicant") for Core Participant status in Module 3.
4. I made a provisional decision dated 13 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 20 January 2023. Following a request from the Applicant, the Inquiry extended this deadline until 4pm on 24 January 2023.
5. On 24 January 2023, the Applicant submitted a renewed application for Core Participant status in Module 3. This notice sets out my 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 was made by way of a very short email in which the Applicant did not specifically address the Rule 5 criteria or the basis on which it considered this was met. The Applicant stated that it did not believe the entirety of Module 3 was directly relevant to it, but it did believe that paragraphs 8, 10 and 11 of the Provisional Outline of Scope for Module 3 were directly relevant to its involvement in the Covid-19 pandemic, i.e. preventing the spread of Covid-19 within healthcare settings, including infection control, adequacy of PPE, rules about visiting, deaths caused by the Covid-19 pandemic, shielding and the impact on the clinically

vulnerable. The application did not provide any explanation of the Applicant's involvement in these matters.

9. In its renewed application, the Applicant sets out how it, and its predecessor organisations (which includes Public Health England and NHS Test and Trace, which itself includes the JBC (Joint Biosecurity Centre)), meet all three limbs of Rule 5(2).
10. With respect to Rule 5(2)(a), the Applicant states that it played a direct and significant role in relation to several key matters to which Module 3 relates. The Applicant was involved in collecting data on cases of Covid-19, including demographics of cases. This is said to have helped build an understanding of the impact of Covid-19 on healthcare workers. Public Health England is said to have been involved in delivering a large research study, SIREN, which specifically looked at reinfection in healthcare workers. The Applicant is said to have been involved in the drafting, provision and publication of advice and guidance for healthcare settings including: early clinical guidance, infection prevention and control guidance and the initial roll out of testing of Covid-19 in healthcare settings and among healthcare workers. The Applicant is also said to have had a role in the procurement, maintenance and distribution of the pandemic preparedness stockpile of PPE both prior to the pandemic and in the first few weeks of the pandemic. The Applicant also managed and provided data on deaths in healthcare settings and was involved in the drafting and provision of advice with respect to shielding.
11. For the same reasons as set out above, the Applicant states that it has a significant interest in an important aspect of the matters to which Module 3 relates (as per Rule 5(2)(b)). As a result of its role in drafting and providing advice, the Applicant states it may be subject to explicit or significant criticism during the Module (Rule 5(2)(c)).

Decision for the Applicant

12. I have considered with great care everything that is said in the Applicant's renewed application. Having done so, I consider that the Applicant does meet the criteria set out in Rule 5(2) for designation as a Core Participant in Module 3 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 did play, or may have played, a direct and significant role in the matters to which Module 3 relates and has a significant interest in an important aspect of Module 3. In reaching my decision, I have had particular regard, in the renewed application, to the extent to which the Applicant was involved with the drafting and provision of clinical guidance to those within healthcare systems, its direct involvement with matters relating to infection and prevention control measures within healthcare systems and its involvement with respect to the drafting and provision of advice to those who were shielding. This is directly relevant to paragraphs 5, 7, 8 and 11 of the Provisional Outline of Scope for Module 3. I also consider that the Applicant is well placed to assist the Inquiry to achieve its aims given the extent to which it collected data on cases of Covid-19.

Legal Representation

14. 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.

15. I am satisfied that the Applicant has appointed Katrina McCrory of Mills & Reeve LLP as its qualified lawyer in relation to this Module. I therefore designate Katrina McCrory as the Applicant's recognised legal representative in accordance with Rule 6(1).

16. 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