



NOTICE OF DETERMINATION
CORE PARTICIPANT APPLICATION
MODULE 3 - WELSH GOVERNMENT, HEALTH INSPECTORATE WALES & CARE
INSPECTORATE WALES

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 Welsh Government, to include the role of the Healthcare Inspectorate Wales ("HIW") and the Care Inspectorate Wales ("CIW"), for Core Participant status in Module 3.
4. I made a provisional decision dated 17 January 2023 to designate the Welsh Government as a Core Participant. I provisionally decided not to designate HIW and CIW as a Core Participant in Module 3, thereby declining the application in respect of HIW and CIW ("the Provisional Decision"). The HIW and CIW, independently and/or alongside the Welsh Government, were provided with an opportunity to renew the application in writing by 4pm on 24 January 2023.

5. I did not receive a renewed application from HIW or CIW, either independently or alongside the Welsh government, 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 explains that the Welsh Ministers (acting on behalf of the Welsh Government) are responsible under the *National Health Service (Wales) Act 2006* for the provision of a comprehensive health service in Wales and that these services are provided through a network of NHS and other bodies. The application states that the Director General of the Welsh Government Health and Social Services Group (“HSSG”) is also the Chief Executive of the NHS in Wales, working closely with NHS bodies. It

also notes that Welsh Ministers may direct local health boards to exercise functions relating to health services and are required to fund local health boards for such services.

9. It is said that during the Covid-19 pandemic, strategic direction and oversight of the NHS in Wales was provided by the Minister for Health and Social Services and the Director General of the Welsh Government HSSG. The Director General of the Welsh Government HSSG is said to have worked closely with chief executives of NHS bodies and directors of the Welsh Government HSSG, including the Chief Medical Officer for Wales and Chief Nursing Officer for Wales, on issues such as the stepping up and down of services, and provision of extra capacity during the Covid-19 pandemic from the independent healthcare sector or the establishment of field hospitals. The Welsh Government is also said to have provided guidance on infection control, PPE and hospital visits and support via the CMO and CNO leadership of doctors and nurses. The application describes how the Welsh Government convened an advisory group in April 2020 on issues relating to ethical, moral, cultural and faith considerations in decision making including in relation to DNACPRs; introduced the shielding programme in March 2020; and published a framework for rehabilitation for those including long Covid sufferers. The Welsh Government is also said to have established a hub to consider data on cases and deaths.
10. The application is put on the basis that the Welsh Government played a direct and significant role in relation to the matters to which Module 3 relates (Rule 5(2)(a)), it has a significant interest in an important aspect of the matters to which Module 3 relates (Rule 5(2)(b)) given its statutory powers and responsibilities within devolved competence specifically those in the health arena, and that it may be the subject of explicit or significant criticism during Module 3 (Rule 5(2)(c)).
11. The application “includes the role of HIW and CIW”, to the extent that CIW is required. The Chief Executives of HIW and CIW provide their signed consent for the inspectorates to be included in the application for Core Participant status in Module 3.
12. The application describes HIW and CIW as directorates of the Welsh Government whose operational independence is protected by a memorandum of understanding with Welsh Ministers. HIW is described as the inspectorate and regulator of healthcare

in Wales, which is responsible for ensuring that people in Wales receive good quality healthcare.

Decision for the Applicant

13. I have considered with great care everything that is said in the application. Having done so, I have decided to designate the Welsh Government as a Core Participant in Module 3. However, I consider that neither the CIW nor the HIW 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 either the CIW or HIW as a Core Participant in Module 3, either independently or as part of the Welsh Government's application.
14. 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.
15. I consider that the Welsh Government meets the criteria in Rule 5(2)(a) and 5(2)(b) in that it played, or may have played, a direct and significant role in the matters to which Module 3 relates, specifically through its involvement in core decision-making and leadership within the healthcare system in Wales during the Covid-19 pandemic. I also consider that, for similar reasons, the Welsh Government has a significant interest in an important aspect of the matters to which Module 3 relates, and particularly those issues which pertain to the healthcare system in Wales.
16. I do not consider that HIW or CIW meet the criteria in Rule 5(2). As inspectorates, both bodies are one step removed from the operation of the healthcare system in Wales and the impact of the Covid-19 pandemic on the healthcare system, patients, groups and services. As such, their role in these matters was an indirect one. Further, the focus of Module 3 is on healthcare rather than the care sector, which will be the focus

of a later Module. While the inspectorates could be said to have a broad interest in such matters, this does not amount to a 'significant' interest in an important aspect of the matters to which Module 3 relates pursuant to Rule 5(2)(b).

17. I note that HIW and CIW may be able to provide information to the Inquiry in Module 3, to the extent that it is relevant to healthcare systems. However, it is not necessary for an individual or organisation to be a Core Participant in order to provide evidence to the Inquiry and I consider that the organisations' assistance, if required, is likely to be appropriately achieved by the Inquiry making a request for evidence.
18. For all of those reasons, having considered all of the information provided in the application, in light of the Provisional Outline of Scope for Module 3, I have decided to designate the Welsh Government as a Core Participant in Module 3. I have decided that the HIW and CIW should not be designated as a Core Participant in Module 3. I confirm this as my final decision.
19. I will keep the scope of Module 3 under review. My decision not to designate the HIW and CIW as a Core Participant in Module 3 does not preclude the directorates 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.

Legal Representation

20. 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.

23. I am satisfied that the Welsh Government has appointed Stephanie McGarry of Browne Jacobson as its qualified lawyer in relation to this Module. I therefore designate Stephanie McGarry as the Welsh Government's recognised legal representative in accordance with Rule 6(1).

24. 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
21 February 2023