



**NOTICE OF DETERMINATION
CORE PARTICIPANT APPLICATION
MODULE 2 - REFUGEES FOR JUSTICE**

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 31 August 2022, the Inquiry opened Module 2 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 23 September 2022.
2. The Provisional Outline of Scope for Module 2 provides that this module will examine the decision-making by the UK Government during the Coronavirus pandemic. Further modules will be announced and opened in due course, to address other aspects of the Inquiry's Terms of Reference.
3. On 23 September 2022 the Inquiry received an application from Refugees for Justice ("the Applicant") for Core Participant status in Module 2.
4. I made a provisional decision not to designate the Applicant as a Core Participant in Module 2, thereby declining the Applicant's application ("the Provisional Decision"), on 13 October 2022. The Applicant was provided with an opportunity to renew the application in writing by 12pm on 20 October 2022.
5. On 26 October 2022, the Applicant submitted a renewed application for Core Participant status in Module 2. This notice sets out my determination of the Applicant's application for Core Participant status in Module 2.

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 2.
8. I have taken into account all of the information upon which the Applicant has relied. The fact that I have not, in making this determination, referred to every matter which is set out in the application does not mean that I have not considered it. The summary below is intended to capture what appear to be the most important points made in support of the application.

Summary of Application

9. The Applicant's original application was made on the basis that Refugees for Justice is an organisation formed by refugees and asylum seekers in Scotland who were removed from safe residential accommodation during COVID-19 and placed in hotel accommodation. The application states that Refugees for Justice has a significant

interest in relation to Module 2, as the decision-making of government officials during the pandemic, particularly within the Home Office, directly affected this group. The application also highlights the obligations imposed by the Human Rights Act 1998 and Article 2 ECHR, and states that the investigative duty can only be properly discharged through Refugees for Justice's participation in the Inquiry as a Core Participant.

10. In its renewed application, the Applicant reiterates its submissions that it "has a significant interest in an important aspect of the matters to which the inquiry relates" and relies on the matters advanced in its original application. In summary, the Applicant asserts that in order properly to examine core political and administrative decision-making by central government, the impact of that decision making must be considered. Further, the Applicant asserts that its ability to test evidence is limited by any denial of Core Participant status and "for justice to be achieved there needs to be effective victim participation".
11. The Applicant relies on the Terms of Reference, the aims of which include consideration of any disparities evident in the impact of the pandemic on different categories of people. It is submitted that, in furtherance of this aim, the Inquiry will need to examine this fully in Module 2 and consider a full assessment of evidence, namely the impact on refugees and asylum seekers within the jurisdiction. With regard to recommendations and lessons learned, it is submitted that the evidence of the Applicant will assist the inquiry to make complete recommendations to the government about its core political and administrative decision-making process. The Applicant asserts that it is unrealistic to expect even the submission of evidence without funded legal representation.
12. Finally, the Applicant relies on obligations imposed by the Human Rights Act 1998 and in particular states that Article 2 ECHR is engaged and, concomitantly, the duty to conduct an Article 2 compliant inquiry. This is because the Applicant was directly affected by the matters to be investigated in Module 2. As in the original application, it is submitted that the investigative duty can only be properly discharged through its participation in the Inquiry as a Core Participant, enabling it to have access to disclosure, submit lines of questions to witnesses, make submissions and opening and closing statements to the Inquiry

Decision for the Applicants

13. 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, in my discretion, I consider that the Applicant does not meet the criteria set out in Rule 5 for designation as a Core Participant in Module 2 and, therefore, I have decided to not to designate the Applicant as a Core Participant in Module 2.
14. As I set out previously, I acknowledge the disproportionate effect that the Covid-19 pandemic may have had on refugees and asylum seekers in Scotland and elsewhere in the UK and I wish to repeat my ongoing commitment, as set out in the Terms of Reference and in my Opening Statement, that inequalities will be at the forefront of the Inquiry's investigations. This will include (as identified by the Applicant) a focus on the disparities evident in the impact of the pandemic on different groups of people including migrant communities.
15. However, the focus of Module 2 is the high level UK core political and administrative decision making, with particular scrutiny to be paid to decisions taken by the Prime Minister and the Cabinet, as advised by the Civil Service, senior political, scientific and medical advisers and relevant Cabinet sub-committees. The Applicant does not suggest that it played any role in such decision making and I do not consider that the Applicant played a direct or significant role (Rule 5(2)(a)).
16. The decisions in which the Applicant asserts an interest, namely the decisions to remove refugees and asylum seekers in Scotland from safe residential accommodation during COVID-19 and place them in hotel accommodation are, in any event, unlikely to form part of the evidence under consideration in Module 2.
17. Whilst I recognise that the Applicant has an interest in the issues under investigation in Module 2, I do not consider that it is a significant interest in the context of Module 2 such as to meet the threshold of Rule 5(2)(b).

18. Furthermore, I do not consider, having regard to the need to manage the Inquiry effectively and efficiently, that its interest in decision making by the UK Government is sufficiently significant as to grant it Core Participant status in this Module.
19. 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. Given the vast numbers of people who were involved with, or adversely affected by, the Covid-19 pandemic, very many people and organisations in this country could potentially have an interest in it and a significant interest in it. It will be appreciated that not everyone can be granted Core Participant status for the purposes of the Inquiry hearings.
20. The Applicant does not suggest nor do I consider that it is likely to be subject to any criticism (Rule 5(2)(c)).
21. I have also considered the submissions made in the renewed application that the Inquiry has obligations under the ECHR and, in particular, Article 2 and its corresponding investigative duty. As with my determination in Module 1, I do not consider it necessary at this stage to make any determination as to whether or not Article 2 is in fact engaged by the Applicant and/or those individuals whom they represent. Even if Article 2 is engaged, there is no automatic obligation under the ECHR to designate the bereaved family members or survivors of an event which does engage Article 2 as Core Participants in an Inquiry that investigates that event. Therefore, Article 2 does not require me to grant RFJ Core Participant status in Module 2.
22. As set out in my original determination there are a number of ways in which the Applicant can participate in the inquiry.
23. 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 the Inquiry will be reaching out in due course to a range of individuals, organisations and bodies to seek information, to gain their perspective on the issues raised in the modules and, where appropriate, to ask for witness statements and documents.

24. I note the submission made in the renewed application that absent funded legal representation it is 'unrealistic to expect even the submission of evidence'. As the Applicant's representatives may be aware, it is not necessary to be a Core Participant to access funding in the event that evidence is considered necessary by the Inquiry under a Rule 9 request. Funding may be available in those circumstances under section 40. I will consider any application, in the event that this arises, on its own merits.
25. The Inquiry will also listen to and consider carefully the experiences of bereaved families and others who have suffered hardship or loss as a result of the pandemic, through the listening exercise. I reiterate that this listening exercise is a significant and important task which will lead to summary reports of the impact of the pandemic on those who come forward to be used as evidence during the Inquiry's module hearings. The Applicant and those it represents will have the opportunity to contribute to the Inquiry, through the listening exercise if they choose.
26. It is also a relevant factor that I have adopted a modular approach with different issues and strands to be investigated as the Inquiry progresses. This includes specific focus in later modules dealing directly with the impact of Covid-19 on public services including housing/homelessness, health inequalities and the vulnerable, including migrant communities. In my Opening Statement, I said that I will publish more information about the issues intended to be covered by later modules in the coming months. The Applicant may wish to consider making an application for Core Participant status in a future module. I will consider any future applications the Applicants may wish to make on their merits at the time they are made.
27. 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 2, I consider that the Applicant did not play a direct and significant role in relation to the matters sought to be investigated in Module 2, nor does the Applicant have a significant interest in an important aspect of the matters to which Module 2 relates. I have therefore decided that the Applicant should not be designated as a Core Participant in Module 2 and I confirm that this is my final decision.

28. I will of course keep the scope of Module 2 under review. My decision not to designate the Applicant as Core Participants in Module 2 does not preclude it from making any further applications in respect of any later modules.

Rt Hon Baroness Heather Hallett DBE

Chair of the UK Covid-19 Inquiry

27 October 2022