



**NOTICE OF DETERMINATION
CORE PARTICIPANT APPLICATION
MODULE 2 - CARE QUALITY COMMISSION**

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 (along with 2A, 2B and 2C) 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. Modules 2A, 2B and 2C will examine the decision-making by the Government in Scotland, Wales and Northern Ireland respectively 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 26 May 2023 the Inquiry received an out of time application from the Care Quality Commission ("CQC") ("the Applicant") for Core Participant status in Module 2. This Notice sets out my final decision on the application.

Application

4. 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.

5. Applications for Core Participant status made outside of the Inquiry's timescales are considered in line with paragraph 10 of the Inquiry's [Core Participant Protocol](#) which provides:

When inviting applications, the Inquiry will set a timeframe for applications to each module, or part of a module. Applicants are asked not to submit applications outside the timelines given by the Inquiry. The Inquiry will not consider applications that are outside the timescales provided by the Inquiry, unless the applicant provides an acceptable explanation as to why they did not submit their application within the relevant timeframe.

6. In accordance with the approach set out in my Opening Statement and the Inquiry's [Core Participant Protocol](#), I have considered whether the Applicant has provided an acceptable explanation as to why it did not submit the application within the relevant timeframe and 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.

Summary of Application

7. The Applicant refers to other correspondence where it sets out its role. CQC was established by the Health and Social Care Act 2008 in 2009 as the independent

regulator of health and adult social care in England. Through inspection and ongoing monitoring, it seeks to ensure that services comply with the statutory requirements.

8. The Application provides reasons why the Applicant chose not to apply for Module 2 during the relevant Core Participant application window in light of its understanding of the scope of this module at that time.
9. The Applicant suggests that the receipt of a recent Rule 9 request for evidence has changed its view as to the significance of its role and its evidence within Module 2. It states that the nature of the Rule 9 requests requires detailed evidence about the Applicant's involvement in and advice given to the UK government. It sets out that in those circumstances, the Applicant may satisfy the criteria under Rules 5(2)(a)-(c).

Decision for the Applicant

Whether the application should be considered out of time

10. The deadline for applications for Core Participant Status to Module 2 was 23 September 2022, meaning that this application was received over seven and a half months after the deadline expired.
11. I remind myself of paragraph 10 of the Inquiry's Core Participant protocol and whether the Applicant has provided an acceptable explanation for the failure to comply with the deadline imposed.
12. The aim of this Inquiry is to provide prompt and useful reports and recommendations. To achieve that aim, I must impose firm deadlines at different stages of the Inquiry. Compliance with those deadlines is important to ensure that the challenging timetable will be met. I also have to consider the need to be fair to all Applicants who have made their application for Core Participant status within the time period available and more generally that there is no unfair advantage obtained by a late application.

13. I note that the application window was open from 31 August 2022 to 23 September 2022. This application was received 214 days after the closure of the application window, which had itself been open for over three weeks. Further, the first preliminary hearing for Module 2 was heard on 31 October 2022, with preliminary hearings thereafter on 1 March 2023 and most recently on 6 June 2023.
14. I bear in mind that simply because an Applicant has been refused Core Participant status that does not bar them from applying or being granted Core Participant status in a later module or from providing relevant evidence to the Inquiry.
15. Accordingly, I do not consider that the receipt of the recent rule 9 request and the subsequent re-evaluation by the Applicant of its role, amounts to an 'acceptable explanation' for an out of time application. The Applicant has misinterpreted that request and the scope of Module 2. I therefore decline to consider the application at this time and so decline the application for Core Participant status.
16. For completeness, I will also go on to provide my conclusion on whether the Applicant should have been granted Core Participant status in Module 2, had their application been received during the application window.

The substance of the application

17. The Applicant states that "*in light of the breadth of questions posed in the Rule 9, it is submitted that grounds are now made out for a possible view to be taken by the Inquiry that CQC is to be considered to have played a direct and significant role in relation to the UK's core political and administrative decision-making regarding the Covid-19 pandemic*".
18. The Application provides no specific details in respect of the direct and significant role that the Applicant is said to have played in relation to either core political and administrative decision-making.
19. As was made clear in the Rule 9 request, with which I concur, I do not consider the Applicant to be a "decision-maker" within the definition adopted for the purpose of the Inquiry's Module 2 scope. I wish to understand the role that the Applicant played, if

any, in informing Government decision-making during the response to Covid-19 between 1 January 2020 and 24 February 2022. In the context of the provisional scope of Module 2, I am satisfied that the Applicants did not have a direct or significant role in core political and administrative decision-making (Rule 5(2)(a)).

20. The Applicant submits “ *the evidence now sought from CQC does demonstrate that it has a significant interest in an important aspect of the matters being investigated*”. It is important to note that a request for evidence does not translate to a significant interest within the meaning of Rule 5(2)(b) or lead, without more, to Core Participant status. The Inquiry has made over 300 requests for evidence from a variety of government departments, organisations and individuals. The vast majority of those recipients have not sought or been granted CP status. Nor would they meet the criteria. I recognise that the Applicant, like many within the UK, will have an interest in the subject matter of Module 2 and further recognise the importance of the Applicant’s role as the independent inspectorate and regulator of health and adult social care in England. However, on the material before me, I do not accept that the Applicant has a significant interest in the matters in Module 2 (Rule 5(2)(b)). It is correctly characterised as being one step removed from core political and administrative decision making.

21. Furthermore, the Core Participant Protocol provides that 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 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. Having regard in particular to the need to manage the Inquiry effectively and efficiently, I do not consider that the Applicant’s interest requires me to grant it Core Participant status in Module 2.

22. The Applicant appears to suggest that Rule 5(2)(c) could be engaged but provides no details of how this may be. On the material to date, I am not persuaded that the Applicant may be subject to significant criticism in relation to matters within the scope of Module 2 (Rule 5(2)(c)).

23. In conclusion, I have considered with great care everything that is said in the application. 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 the above

module and, therefore, even if the application had been made in time, my decision would have been not to designate the Applicant as a Core Participant in Module 2. This is my final determination.

24. I would like to express my gratitude to the Applicant for its engagement with the Inquiry and I look forward to receiving and considering their response to my request for evidence in due course.

25. Lastly, as the Applicant is no doubt aware, my decision not to designate the Applicant as Core Participants in this module 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

19 June 2023