



**NOTICE OF DETERMINATION
CORE PARTICIPANT APPLICATION
MODULE 3 - CARDIFF & VALE UNIVERSITY HEALTH BOARD**

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, some of which have since been announced, will address other aspects of the Inquiry's Terms of Reference.
3. On 1 December 2022 the Inquiry received an application from Cardiff & Vale University Health Board ("the Applicant") for Core Participant status in Module 3. I made a provisional decision dated 12 January 2023 not to designate the Applicant as a Core Participant in Module 3, thereby declining the application ("the provisional decision"). The Applicant was provided with an opportunity to renew the application in writing by 4pm on 19 January 2023 ("the renewal deadline"). The application was not renewed by the renewal deadline and accordingly I issued a Notice of Determination on 13 February 2023 ("the original determination"), finalising the provisional decision and formally declining the application for Core Participant status.
4. On 3 January 2024, over 10 months after the issuing of the original determination and more than 11 months after the renewal deadline, the Applicant submitted a renewed application, seeking Core Participant status in Module 3 ("the renewed application").
5. This Notice sets out my decision in relation to the renewed 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 Applicant has provided an acceptable explanation as to why it did not submit a renewed application within the prescribed time frame and whether the renewed 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 original application dated 1 December 2022 (“the original application”) stated that since 2009, the Applicant has been responsible for the provision of primary and secondary healthcare and related healthcare services in Cardiff and the Vale of Glamorgan. It provides healthcare for a population of approximately 445,000 and oversees 17 health centres. Its hospitals include University Hospital of Wales (“UHW”), which is Wales’ largest hospital and the third largest university hospital in the United Kingdom. Its treatment centre deals with all major trauma cases throughout South and West Wales and it operates the only dedicated children's hospital in Wales. UHW was also responsible for the Dragon’s Heart Hospital, a temporary “Nightingale” hospital, and it provides a range of public health and community and specialist services for the whole of Wales.
9. The original application noted that the scope of Module 3 was yet to be finalised and it anticipated that the Inquiry may decide to use case studies or select particular topics, geographical areas or levels of government for detailed investigation. It was noted that the Inquiry may wish to examine the Applicant’s role when considering the impact of the pandemic on healthcare systems in Wales.

10. The original application also stated that each of the 12 topics set out in the Provisional Outline of Scope for Module 3 were relevant to the Applicant and identified particular areas where it considered that it was “uniquely placed” insofar as the population of Cardiff and the Vale of Glamorgan are concerned.
11. The renewed application is submitted following a request for evidence made by Module 3 under Rule 9 of the Inquiry Rules 2006 to the Medical/Clinical Director of UHW on 7 December 2023 (“the Rule 9 request”). The central premise of the renewed application is that the sending of the Rule 9 request is recognition of the significant role that UHW (and consequently the Applicant) played, and continues to play, in the provision of healthcare services within Wales. The Applicant describes UHW as “one of only two hospitals across the whole of Wales and one of only eight hospitals in the whole of the UK” to have been selected to provide evidence from its Medical Director. Further, it is said that the Rule 9 request is extensive and covers two thirds of the topics set out in the Module 3 Provisional Outline of Scope.
12. The renewed application contends that in light of the breadth of questions posed in the Rule 9 request and the decision to request a statement from UHW, the Inquiry must have recognised that the Applicant played a direct and significant role (Rule 5(2)(a)) in the matters described within the Provisional Outline of Scope of Module 3 and that it has a significant interest in an important aspect of the matters being investigated in Module 3 (Rule 5(2)(b)). It is also submitted that given that UHW was selected to provide evidence on a wide range of important operational matters, there must be a very real possibility that the Applicant will be the subject of explicit or significant criticism (Rule 5(2)(c)), including as representative of secondary healthcare providers in Wales and in the UK generally.
13. The renewed application acknowledges that a group of Welsh NHS bodies have been jointly granted Core Participant status in Module 3 but explains that the Applicant has opted not to request to join that group, as it considers that its role was sufficiently distinct from that of the other Welsh boards or trusts so as to require separate recognition and separate legal representation.
14. In order to justify the delay and failure to meet the renewal deadline, the Applicant explains that the renewed application was made directly in response to the change of circumstances occasioned by the receipt of the Rule 9 request on 7 December 2023. The Applicant notes that at paragraph 16 of the original determination I confirmed that my decision would be kept under review and stated that “*in due course it may be that the operational response of the individual healthcare boards or trusts will be examined as case studies as part of Module 3 and the Applicant may be identified in that regard. Whether they should then be designated as an individual Core Participant could be revisited.*”

Decision for the Applicant

Whether the application should be considered out of time

15. The deadline for the Applicant to renew its application for Core Participant Status in Module 3 was 19 January 2023. The renewed application has been made some time after this deadline.
16. I remind myself that paragraph 10 of the Inquiry's Core Participant protocol states: *"...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."*
17. I am determined to run this Inquiry as thoroughly and expeditiously as possible. This includes providing prompt and useful reports and recommendations. To achieve that aim, I have imposed 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 and/or renewed their applications for Core Participant status within the time period available, and more generally ensure that there is no unfair advantage obtained by those making late applications. I have therefore first considered whether the Applicant has provided an acceptable explanation for the failure to comply with the renewal deadline.
18. There is no explanation of any specific issue which prevented the Applicant from making a renewed application for Core Participant status in Module 3 at an earlier stage. Rather, the Applicant sets out its rationale for making the renewed application at this stage on the basis that circumstances have changed following receipt of the Rule 9 request on 7 December 2023 made to the Clinical / Medical Director of UHW. The Applicant highlights its belief that such a scenario was in fact contemplated at paragraph 16 of the original determination.
19. In my view, while the rationale behind the renewed application is understandable, I do not consider that it amounts to an acceptable explanation for submitting a renewed application for Core Participant status outside of the renewal deadline. I accept that from the Applicant's perspective the Rule 9 request sent to one of the Applicant's main hospitals amounts to a change in circumstances from when the original determination was issued. I also recognise the potential impact of my previous comments within the original determination in relation to the possibility of the Inquiry utilising "case studies" and the Applicant's stated belief that it is one of only eight hospitals in the United Kingdom to receive a "specific" Rule 9 request.
20. Notwithstanding the above, in my view, the renewed application is predicated on a misunderstanding of the prominence which UHW is being given within Module 3's investigation, as well as the purpose behind the Rule 9 request. It is not entirely clear how the Applicant has gained the understanding that UHW is one of only eight hospitals in the United Kingdom to receive a specific Rule 9 request. This is incorrect.

Specific requests of the kind made to UHW have been sent to the Medical/Clinical Director, Chief Medical Officer or equivalent of over twenty hospitals across the UK. Additionally, as set out further below, the intention behind the Rule 9 request is not to utilise UHW as a case study but to obtain evidence of what was happening “on the ground” within hospitals across the United Kingdom during the Covid-19 pandemic. Were the Applicant correct in its belief that UHW was being relied on as one of only eight “case studies” within Module 3, this may have amounted to an acceptable explanation for the delayed application. However, this is not the case.

21. Accordingly, I consider that the Applicant has not provided an acceptable explanation as to why it did not submit the renewed application by the renewal deadline. For completeness, however, I will go on to provide my conclusion on whether the Applicant should be granted Core Participant status in Module 3 had the Applicant provided an acceptable explanation for its late application.

The substance of the Application

22. 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, as well as my reasons for finally declining the application on 13 February 2023. Having done so, I remain of the view that the Applicant does not meet the criteria set out in Rule 5(2) for designation as a Core Participant in Module 3.
23. My original determination recognised that there was a possibility that the operational response of individual healthcare boards or trusts would be examined as case studies as part of Module 3 and that the Applicant may be identified in that regard. While I understand the rationale behind the renewed application, I have reached the view that the Applicant has placed too great an emphasis on the perceived effect of the Rule 9 request to UHW. I am satisfied that the circumstances do not in fact warrant the grant of Core Participant status to the Applicant.
24. As stated above, it is not the case that UHW has or will receive the degree of focus which the Applicant appears to believe. Module 3 of the Inquiry has, to date, sent well over 150 Rule 9 requests to various organisations and individuals. Among these have been requests to individual hospitals addressing specific aspects of Module 3’s scope, as well as a number of specific requests of the kind sent to UHW.
25. In any event, it is not Module 3’s intention to utilise case studies or to examine the circumstances of individual patients or their experiences within UHW. Nor is it intended to examine how specific wards or units within the hospital fared during the Covid-19 pandemic. The Rule 9 request is one of several requests spread broadly across the UK, seeking evidence about operational pressures or challenges within hospitals during the relevant period. I therefore do not consider that the Applicant is correct in its assertion that the issuing of a Rule 9 request to UHW amounts to “recognition” that the Applicant played a significant or direct role in the matters which

Module 3 is investigating, nor does it demonstrate that it has a significant interest in Module 3 so as to warrant designation as a Core Participant.

26. As I made clear in the original determination, it is not necessary for an individual or organisation to be a Core Participant in order to provide evidence to the Inquiry. Equally, the Inquiry is not limited to seeking evidence only from those designated or likely to be designated as Core Participants. It does not follow that because one of the Applicant's hospitals has received a detailed Rule 9 request that the criteria within Rule 5(2) is made out. It is entirely possible for an organisation to be in possession of relevant evidence without that organisation itself being the focus of the Inquiry's investigations. It is also possible for an organisation's role and/or actions to form part of the Inquiry's investigations but for that organisation itself not to have played a "significant and direct" role or have a "significant" interest in the matters being investigated. Equally, while a request for evidence may appear extensive to an organisation itself, this may not reach the threshold of significance within the context of the Inquiry, taking into account the scope of the Module as a whole and all of the other organisations from whom evidence has or will be sought.
27. In my original determination, I stated that I did not consider that the Applicant had played a direct and significant role in the matters to which Module 3 relates or had a significant interest in Module 3. I remain of that view. I recognise that the Applicant did play a direct role in matters that are relevant to Module 3 as a provider of primary and secondary healthcare and related healthcare services in Cardiff and the Vale of Glamorgan. However, as an individual board, its role is not "significant" such that it ought to be granted Core Participant status under Rule 5(2)(a). That is notwithstanding its large size, range of services and the fact that it is in possession of relevant evidence. For the same reasons, I also consider that the Applicant does not have a significant interest in those matters and that Rule 5(2)(b) is also not met.
28. The renewed application notes that a group of Welsh NHS bodies have been granted Core Participant status in Module 3 but states that the Applicant has opted not to approach that group with a request to join, as it considers that its role was sufficiently distinct from that of the other Welsh boards so as to justify separate recognition and legal representation. No specific information has been provided as to why the Applicant's position is distinct. Paragraph 8 of the Inquiry's Core Participant Protocol sets out my particular invitation for groups of organisations with similar interests to submit a joint application for Core Participant status, rather than sole applications from individual organisations. I consider this approach to be appropriate considering my need to manage the inquiry efficiently. It remains open to the Applicant to seek to join with the other Welsh boards should it change its position.
29. As I noted above, I intend to run the Inquiry as thoroughly and as efficiently as possible, bearing in mind the Inquiry's wide-ranging Terms of Reference. Given the vast numbers of people who were involved with or adversely affected by the Covid-19 pandemic, very many people and organisations in the UK could potentially have an

interest in the Inquiry or in several of the Inquiry's Modules and not everyone can be granted Core Participant status.

30. I take 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 a number of other recent statutory inquiries. It is not necessary for an individual or organisation to be a Core Participant in order to provide evidence to the Inquiry. I appreciate that UHW has recently received a request from the Inquiry for a witness statement in relation to Module 3. Through this process, the Applicant is able to provide to the Inquiry information relevant to the matters being examined in Module 3. I appreciate that the Rule 9 request appears to the Applicant to be "extensive" and I am grateful to the efforts which will be made to respond to it. However, in reality, the sending of the Rule 9 request does not amount to a reason to designate the Applicant as a Core Participant.
31. Finally, I remain of the view that it is too early for me to determine whether any criticism will be made of the Applicant or indeed of UHW, and particularly whether it might amount to explicit or significant criticism, so I do not consider Rule 5(2)(c) is met. I reiterate that while the Inquiry is seeking to expand its evidence base about the daily realities within hospitals, it is not Module 3's intention to utilise "case studies".
32. 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 Applicant did not play a direct and significant role and does not have a significant interest in the matters for investigation in Module 3. I therefore confirm my decision that the Applicant should not be designated as a Core Participant in Module 3 and I confirm that this is my final decision.
33. 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
22 January 2024