



NOTICE OF DETERMINATION
CORE PARTICIPANT APPLICATION
MODULE 3 - INTENSIVE CARE SOCIETY

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 be 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 Intensive Care Society ("the Applicant") for Core Participant status in Module 3. I made a provisional decision dated 16 January 2023 not to designate the Applicant as a Core Participant in Module 3, thereby declining the application. The Applicant was provided with an opportunity to renew the application in writing by 4pm on 23 January 2023 ("the renewal deadline"). The Applicant renewed its application within the renewal deadline on 23 January 2023 ("the first renewed application"). Having considered the information within the first renewed application, I maintained my decision not to designate the Applicant as a Core Participant. I issued a Notice of Determination on 16 February 2023 ("the original determination"), formally declining the application for Core Participant status.

4. On 18 December 2023, over 10 months after the issuing of the original determination, the Applicant submitted a further renewed application, seeking Core Participant status in Module 3 (“the second renewed application”).
5. This Notice sets out my decision in relation to the second 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 has submitted a further renewed application outside the prescribed time frame, whether the criteria within Rule 5 is met and, ultimately, whether to designate the Applicant as a Core Participant to Module 3.

Summary of Application

8. The original application dated 5 December 2022 (“the original application”) set out that the Applicant is the oldest intensive care professional body and membership organisation in the world with 3,000+ UK members and that it is a multi-professional

organisation. In March 2020, the Applicant established the National Emergency Critical Care Committee to create a national approach to managing Covid-19 in UK intensive care settings by generating and sharing knowledge, guidance and learning. The original application set out the bases upon which the Applicant is said to have an interest in each of the 12 areas of the Provisional Outline of Scope for Module 3, and stated that it meets the criteria for Core Participant status set out in Rule 5(2)(a) and/or Rule 5(2)(b).

9. The Applicant's first renewed application set out its view that one of the reasons given for declining Core Participant status in the provisional decision reflected a misunderstanding as to the professional role and purposes of other designated organisations, namely the Royal College of Emergency Medicine who have Core Participant Status in Module 3 as part of the Academy of Royal Medical Colleges, and the Faculty of Intensive Care Medicine ("FICM"), the Royal College of Anaesthetists ("RCoA") and the Association of Anaesthetists ("AoA") who have joint Core Participant status. It was stated that the Royal College of Emergency Medicine represents a completely different speciality to intensive care. Similarly, it was emphasised that anaesthesia is not the same specialism as intensive care despite a number of doctors being trained in both specialities. Further, it was submitted that RCoA and FICM have effectively been designated as Core Participants twice, once as part of the Academy of Medical Royal Colleges and again through their separate application alongside AoA.
10. The Applicant also drew a distinction between its role and that of FICM because the latter is said to be governed by RCoA, whereas the Applicant is constituted and governed as an independent charity for public benefit. The Applicant cited its role in an application for permission for judicial review and explained that its position in that case differed from that of FICM. Its distinct position was said to apply equally to the Inquiry.
11. The second renewed application sets out three further factors which are said to justify designating the Applicant as a Core Participant. The first of these is the role which research played in the Applicant's contribution throughout the Covid-19 pandemic. The application states that Applicant's Directors of Research led clinical trials and were able to share key emerging learnings as the pandemic progressed. This meant that the correct therapeutics to treat Covid-19 were "defined as quickly as possible" and

were then capable of being used in critical care. It is said that the current list of Core Participants does not include representatives who can provide input in respect of critical care research.

12. Second, the Applicant states that while some Allied Health Professions are represented by the Covid-19 Airborne Transmission Alliance (“CATA”), this is a narrow group of individuals limited to those with a focus on airborne transmission. In contrast, the Applicant states it represents the breadth of Allied Health Professions in Critical Care. Equally, whereas other Core Participants represent a broader profession, they are not focused on the specialists in Critical Care. The Applicant describes itself as being able to speak for a multi-professional workforce, all of whom operate in Intensive Care. It is thus submitted that the Applicant’s interests are not adequately represented by other Core Participants.
13. Finally, it is suggested that the Applicant may be subject to explicit or significant criticism during the Inquiry (Rule 5(2)(c)) on the basis that it developed and rolled out a number of guidance documents during the relevant period. Given the “sensitive nature” of a number of those documents it is said that it is “fair and just” for the Applicant to be designated as a Core Participant.
14. The Applicant has not provided a specific explanation as to any matter which prevented it from making the second renewed application at an earlier stage. However, the application has been submitted along with the first draft of its witness statement and is said to have been brought at this time “in light of the substantial statement” provided by the Applicant and the information contained within it.

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 23 January 2023. The Applicant submitted the first renewed application within that time frame. The second renewal was made 47 weeks later.
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. It is appropriate to consider whether an acceptable explanation has been provided for submitting the second renewed application at this time. The Applicant sets out its rationale for making the application at this stage on the basis that it has just provided a substantial draft witness statement to Module 3 in response to a request under Rule 9 of the Inquiry Rules 2006.
18. The Provisional Outline of Scope for Module 3 was published on the Inquiry website on 8 November 2022. It sets out a number of areas for investigation. The content of the scope has not changed since being published. The Applicant made an application for Core Participant status in Module 3 on 5 December 2022. This was provisionally declined on 16 January 2023 and formally declined on 16 February 2023. The Applicant has therefore had ample time both to consider the issues mentioned within Module 3’s Provisional Outline of Scope and to reflect upon both the provisional and formal decision.
19. In my view, the Applicant has not provided an acceptable explanation for submitting its second renewed application. I do not consider that the submission of a detailed witness statement amounts to an acceptable justification for submitting a further application for Core Participant status in Module 3 nor do I consider that it amounts to a significant change in circumstances. As I made clear in the original determination, there is no direct link between the submission of relevant evidence to the Inquiry and the designation of an organisation as a Core Participant.
20. 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 or further applications.

21. Accordingly, I consider that the Applicant has not provided an acceptable explanation as to why it has submitted the renewed application at this stage. I therefore consider that the renewed application for Core Participant status should be refused.
22. For completeness, however, I will also go on to provide my conclusion on whether the Applicant should have been granted Core Participant status in Module 3, had an acceptable explanation for submitting a further application at this stage been provided.

The substance of the Application

23. I have considered with great care everything that is said in the Applicant's second renewed application. I have also reminded myself of what was said in the original application and the first renewed application to enable me to assess the merits of the application for Core Participant status as a whole, as well as my reasons for declining the application on 16 February 2023. Having done so, I remain of the view that although the Applicant played a direct and significant role in UK healthcare systems (Rule 5(2)(a)) and has a significant interest in Module 3 (Rule 5(2)(b)), I exercised my discretion justifiably in declining to designate it as a Core Participant.
24. I consider that the second renewed application places too great an emphasis on the fact that the Applicant has provided a detailed witness statement to Module 3. 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 simply because the Applicant has provided a detailed witness statement setting out its involvement in various aspects of the Covid-19 response that I should grant it Core Participant status. While I have accepted that the Applicant meets the criteria within Rule 5(2)(a) and (b), 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 and it is also open to me to take other relevant factors into account.
25. First, while I am grateful to the Applicant for setting out its role in relation to research within critical care and how this contributed to determining the correct therapeutics for use in critical care, I do not consider that this is of such significance to the issues within Module 3 as to warrant Core Participant status. I wish to make clear that while

Module 3 will examine the use of therapeutic drugs to treat patients suffering with Covid-19, alongside other modes of treatment and care such as 'proning' and the use of mechanical ventilation, it is Module 4 that will focus on the development, trials and steps taken to make use of both new therapeutics and repurposed medications.

26. Second, while I note that the Applicant represents the breadth of Allied Health Professionals in Critical Care, I remain of the view that the interests of intensive care professionals, as well as a wide variety of healthcare professionals from different backgrounds will be adequately represented within Module 3. As noted in the original determination, FICM, RCoA and AoA have been granted joint Core Participant status in Module 3. I have also designated various organisations which themselves represent a broad spectrum of healthcare professions, including those who operate in intensive care, as Core Participants. This includes but is not limited to CATA, the British Medical Association, the Royal College of Nursing, the Royal Pharmaceutical Society and the Federation of Ethnic Minority Healthcare Organisations. In addition, Module 3 has taken considerable steps to obtain relevant evidence about the impact of Covid-19 on intensive care. As well as gathering witness statements from the Applicant, FICM, RCoA and AoA, requests have been made to the Intensive Care National Audit & Research Centre and the Scottish Intensive Care Society Audit Group. Module 3 has also instructed two expert intensivists, Dr Ganesh Suntharalingam and Professor Charlotte Summers, to report on a range of issues arising within intensive care units during the relevant period. I am aware that Dr Suntharalingam acted as President of the Applicant organisation during 2020.

27. Finally, while the Applicant states that there may be the potential for it to be criticised, it remains too early at this stage for me to determine whether any criticism will be made, particularly whether it might amount to explicit or significant criticism and so I do not consider that Rule 5(2)(c) is engaged.

28. I have taken 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. I am grateful to the Applicant for providing its draft witness statement in relation to Module 3 and for the efforts already made to assist the Inquiry. Through this process, the Applicant has been and continues to be able to provide to the Inquiry information relevant to the matters being examined in Module 3.

29. I have also considered the Inquiry's wide-ranging Terms of Reference and the need for the Inquiry process to be rigorous and fair. Not everyone can be granted Core Participant status for the purposes of the Inquiry hearings. I remain satisfied that the interests of the Applicant are adequately accounted for.
30. I also bear in mind that the fact that an applicant has been refused Core Participant status in one Module does not bar them from applying or being granted Core Participant status in a later Module or from providing relevant evidence to the Inquiry.
31. Having considered all of the information the Applicant provided, I maintain that the Applicant should not be designated as a Core Participant in Module 3 and I confirm that this is my final decision.
32. 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