NOTICE OF DETERMINATION

CORE PARTICIPANT APPLICATION

MODULE 5 - ALLIANCE OF PANDEMIC PROCUREMENT COUNTERPARTIES

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 24 October 2023 the Inquiry opened Module 5 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 17 November 2023.

2. The Provisional Outline of Scope for Module 5 provides that this module will consider and make recommendations regarding the procurement and distribution to end-users across the four nations of the United Kingdom of key healthcare related equipment and supplies, including PPE, ventilators and oxygen. Further modules will be announced and opened in due course, to address other aspects of the Inquiry's Terms of Reference.

3. On 16 November 2023 the Inquiry received an application from the Alliance of Pandemic Procurement Counterparties ("APPC") for Core Participant status in Module 5.

4. I made a provisional decision not to designate the APPC as a Core Participant in Module 5, thereby declining the APPC's application ("the Provisional Decision"), on 13 December 2023. The APPC was provided with an opportunity to renew the application in writing by 4pm on 21 December 2023.

5. The Applicant did not renew the application 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 5.

Summary of Application

8. The application is made by the APPC. The Applicant is an unincorporated association of companies concerned in the manufacture of medical equipment, that submitted bids to supply key equipment to the Department of Health and Social Care ("DHSC") during the pandemic. Some were ultimately awarded contracts for the supply of medical equipment for use in the NHS by DHSC or other relevant governmental bodies, and some were not. The application is made on the basis of Rule 5(2)(a) and (b) of the Inquiry Rules 2006.

9. The Applicant states that its members played a direct and significant role in relation to the matters set out in the provisional outline of scope for Module 5 on the basis that they were participants in processes for the procurement of healthcare related equipment including PPE. The Applicant submits that their members witnessed deficiencies in the procurement system and in the organisational structures that were used to assess offers and conduct negotiations with parties during the pandemic.

10. Further, the Applicant states that its members will be able to provide evidence regarding the procurement and distribution of key healthcare related equipment and supplies to end-users across the four nations of the United Kingdom and also particularly in relation to the adequacy of the items obtained (including their specification, quality and volume) and the robustness and effectiveness, as well as potential abuse, of the procurement processes.

Decision for the Applicant

11. I have considered with great care everything that is said in the APPC's application. Having done so, in my discretion, I consider that the APPC does not meet the criteria set out in Rule 5 for designation as a Core Participant in Module 5 and, therefore, I have decided not to designate the APPC as a Core Participant in Module 5.

12. I do not consider that the APPC played a sufficient, direct or significant role in relation to the procurement or distribution of key equipment and supplies. For that reason, Rule 5(2)(a) is not satisfied. I bear in mind that the Applicant is an unincorporated association whose members were participants in processes for the procurement of healthcare-related equipment, including PPE, during the pandemic. However, this does not amount to a sufficiently significant interest in the matters to be explored in Module 5. Similarly, the interest that the Applicant may have in important aspects to be explored by Module 5 are not sufficiently significant to require Core Participant status to be granted.

13. It will be appreciated that many parties who engaged in the procurement processes for the supply of key equipment and supplies during the pandemic will consider themselves to have an interest in an important aspect of this module. I do not consider, having regard in particular to the need to manage the Inquiry effectively and

efficiently, that the Applicant's role or interest in the areas in the provisional outline of scope is sufficiently significant as to grant Core Participant status in this Module. 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 the Inquiry and not everyone can be granted Core Participant status for the purposes of the Inquiry hearings.

14. I have taken into account the fact that there are a number of ways in which the Applicant can participate in Module 5 without being a Core Participant. It is also 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 I have asked the Module 5 legal team to liaise with the Applicant to make sure the concerns it raises are reflected in the Inquiry's investigation.

15. For all of those reasons, having considered all of the information provided by the APPC, in light of the Provisional Outline of Scope for Module 5, I consider that the APPC did not play a direct and significant role in relation to the matters sought to be investigated in Module 5, nor does the APPC have a significant interest in an important aspect of the matters to which Module 5 relates. I have therefore decided that the APPC should not be designated as a Core Participant in Module 5 and I confirm that this is my final decision.

16. I will keep the scope of Module 5 under review. My decision not to designate the APPC as Core Participants in Module 5 does not preclude it from making any further applications in respect of any later modules. The APPC may wish to consider applying for Core Participant status in relation to future modules likely to deal more directly with the matters which have been referred to in the application. I will consider any future applications the APPC 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

12 January 2024