



**NOTICE OF DETERMINATION
CORE PARTICIPANT APPLICATION
MODULE 5 - PROCUREMENT**

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. On 16 November 2023 the Inquiry received an application from the Scottish Covid Bereaved (“SCB”) for Core Participant status in Module 5. This Notice sets out my determination of the application.
3. The Inquiry has published the [Provisional Outline of Scope](#) for Module 5, which states 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.

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. In accordance with the approach set out in my Opening Statement and the Inquiry's [Core Participant Protocol](#), I 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

6. The application is made on behalf of SCB, on the basis of Rule 5(2)(a) and (b). The application states that the SCB are able to provide information and comment upon the issues being investigated within Module 5 from the perspective of the end-users. The SCB has a wide and varied membership, including doctors, nurses and paramedics, carers in care home settings, community settings and those who cared for loved ones in domestic settings. Additionally, the application submits that SCB members whose relatives died in care homes and hospitals are in a unique position to provide information to the Inquiry on what happened in practice in such settings.
7. Specifically, the application states that SCB members witnessed the availability or lack of suitable PPE in both care home and hospital settings and the lack of available lateral flow tests and PCR testing within hospital and care home settings. With regards to those who had loved ones in care homes, they believe that had there been more testing available, this may have prevented covid positive patients being sent to care homes from hospitals and the further spread of the virus within care home settings.

They suggest that had more lateral flow testing been available, this might have allowed for care homes to facilitate visits for residents. The application also states that SCB members have concerns about the lack of availability of ventilators, oxygen and other forms of treatment, and that this meant that relatives in care homes were not admitted to hospital and were unable to access treatment.

Decision for the Applicant

8. I wish to reiterate my deep sympathy to each and every individual who has experienced the loss of a loved one as a consequence of the Covid-19 pandemic including those which the applicant represents.
9. The Core Participant Protocol provides that while I am bound to consider the factors set out in Rule 5(2), it is open to me to take into account other relevant matters. I am also not bound to designate a person or organisation which meets the criteria set out in Rule 5 as a Core Participant. I have a wide discretion which I exercise fairly and with an open mind. The Protocol further explains that I particularly invite applications from groups of individuals and organisations with similar interests, which assists the fair and efficient running of the Inquiry. I additionally have regard to my duty to act with fairness and with regard to the need to avoid any unnecessary cost to public funds.
10. I have considered with great care everything that is said in the application. Having done so, I have decided, in my discretion, to designate the SCB as a Core Participant in Module 5.
11. Module 5 will consider the procurement and distribution of key healthcare related equipment to end-users across the four nations of the UK. This will include consideration of the robustness and effectiveness of procurement processes, the adequacy of the items obtained and the effectiveness of their distribution to the end-user. It will also consider the UK-wide procurement of lateral flow tests and PCR tests. I consider that the applicant is well placed to assist the Inquiry to achieve its aims in Module 5 by representing the collective interests of a broad spectrum of those bereaved in Scotland as a result of the Covid-19 pandemic in relation to matters relevant to Module 5.

12. For the avoidance of doubt, I grant Core Participant status to the SCB Group as one collective group rather than to each individual. Having designated the SCB as a Core Participant for Module 5, I consider that the individual interests of the individual applicants are best represented by the SCB, having regard to its ability to represent the collective interests of the group in relation to Module 5 matters and also to the need to manage the Inquiry effectively and efficiently.

Legal Representation

13. Applications for designation as the Recognised Legal Representative of a Core Participant are governed by Rules 6 and 7 of the Inquiry Rules 2006, which provide:

6.—(1) Where—

- (a) a core participant, other than a core participant referred to in rule 7; or*
- (b) any other person required or permitted to give evidence or produce documents during the course of the inquiry,*
has appointed a qualified lawyer to act on that person's behalf, the chairman must designate that lawyer as that person's recognised legal representative in respect of the inquiry proceedings.

7.—(1) This rule applies where there are two or more core participants, each of whom seeks to be legally represented, and the chairman considers that—

- (a) their interests in the outcome of the inquiry are similar;*
- (b) the facts they are likely to rely on in the course of the inquiry are similar; and*
- (c) it is fair and proper for them to be jointly represented.*

(2) The chairman must direct that those core participants shall be represented by a single recognised legal representative, and the chairman may designate a qualified lawyer for that purpose.

(3) Subject to paragraph (4), any designation must be agreed by the core participants in question.

(4) If no agreement on a designation is forthcoming within a reasonable period, the chairman may designate an appropriate lawyer who, in his opinion, has sufficient knowledge and experience to act in this capacity.

14. I am satisfied that the SCB have appointed Aamer Anwar of Aamer Anwar and Co as their qualified lawyer in relation to this Module. I therefore designate Aamer Anwar as the SCB's recognised legal representative in accordance with Rule 6(1).

15. Directions will be given in relation to applications for an award under section 40(1)(b) of the Inquiries Act 2005 of expenses to be incurred in respect of legal representation, at the forthcoming preliminary hearing. I will determine any such applications in accordance with the provisions of section 40 of the Inquiries Act 2005, the Inquiry Rules 2006, the [Prime Minister's determination](#) under section 40(4) and the [Inquiry' Costs Protocol](#).

Rt Hon Baroness Heather Hallett DBE

Chair of the UK Covid-19 Inquiry

11 December 2023