



**NOTICE OF DETERMINATION
CORE PARTICIPANT APPLICATION
MODULE 6**

SCOTTISH TERRITORIAL AND SPECIAL HEALTH BOARDS

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 12 December 2023 the Inquiry opened Module 6 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 19 January 2024.
2. On 18 January 2024 the Inquiry received an application from the Scottish Territorial and Special Health Boards (“the Applicant”) for Core Participant status in Module 6. This Notice sets out my determination of the application.
3. The Inquiry has published the [Provisional Outline of Scope](#) for Module 6, which states that this module will examine the impact of the Covid-19 pandemic on the publicly and privately funded adult social care sector (the “Care Sector”) in England, Wales, Scotland and Northern Ireland. 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 6.

Summary of Application

6. The Applicant consists of Scotland's fourteen territorial health boards together with five non-geographic special health boards, applying under the name of "the Scottish Health Boards". The application is put on the basis that the Scottish Health Boards played a direct and significant role (r.5(2)(a)) in the provision of services in the public adult social care sector in Scotland during the Covid-19 pandemic. Examples of specific involvement by the Scottish Health Boards, provided in the application, include: Engagement with publicly run care homes through Health and Social Care Partnerships; delivery of medical treatment to care home residents; powers to issue emergency direction to care homes under the Coronavirus (Scotland) (No.2) Act 2020; responsibility for enhances support and oversight of care homes under direction from the Scottish Government in May 2020; distribution of PPE to some care homes; decisions relating to the discharge of patients from hospitals to care homes; and the use of DNACPR orders.

7. The Applicant also states that it has a significant interest in the module (Rule 5(2)(b)) since it would have an interest in the implementation in Scotland of any recommendations made by the Inquiry.
8. The Applicant further submits that the operation of the care sector in Scotland during the Covid-19 pandemic has the potential to attract criticism (Rule 5(2)(c)) during the Inquiry, including in relation to staffing, infection prevention and control measures such as testing, PPE, restrictions and access by/to healthcare professionals and loved ones, decision-making and discussions relating to DNACPRs, regulatory inspection regimes, and decisions to discharge hospital patients into care homes. It is said that, given the involvement of the Scottish Health Boards in these areas, there is potential for them to be the subject of criticism were any to arise.

Decision for the Applicant

9. I have considered carefully this application and having done so, I have decided to designate the Applicant as a Core Participant in Module 6. The application is based on having played a direct and significant role in the matters to which Module 6 relates (Rule 5(2)(a)), a significant interest in those matters (Rule 5(2)(b)) and the potential for criticism.
10. Module 6 will consider the impact of the Covid-19 pandemic on the publicly and privately funded adult Care Sector in England, Wales, Scotland and Northern Ireland. It will consider the impact on people's experience of the Care Sector, the structure of same, the key decisions in respect of the Care Sector and the management of the pandemic in adult care and residential homes, including discharge, IPC, testing, availability of PPE, use of DNACPRs and changes to the regulatory regime.
11. I consider that the Applicant played a direct and significant role in the Scottish Care Sector's response to the pandemic, satisfying Rule 5(2)(a) of the Inquiry Rules 2006, I am also satisfied that it has a significant interest in the matters to which Module 6 relates and thus also satisfies Rule 5(2)(b).

Legal Representation

12. 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.

13. I am satisfied that the Applicant has appointed Elaine Coull of the NHS Central Legal Office as its qualified lawyer in relation to this Module. I therefore designate Elaine Coull as the Applicant's recognised legal representative in accordance with Rule 6(1).
14. 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

26 February 2024