



**NOTICE OF DETERMINATION**  
**CORE PARTICIPANT APPLICATION**  
**MODULE 6 - NHS ENGLAND**

**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. The Provisional Outline of Scope for Module 6 provides 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.
3. On 19 January 2024 the Inquiry received an application from NHS England (“the Applicant”) for Core Participant status in Module 6.
4. I made a provisional decision not to designate the Applicant as a Core Participant in Module 6, thereby declining the application (“the Provisional Decision”), on 8 February 2024. The Applicant was provided with an opportunity to renew the application in writing by 4pm on 15 February 2024.
5. On 15 February 2024, the Applicant submitted a renewed application for Core Participant status in Module 6. This notice sets out my determination of the Applicant’s application for Core Participant status in Module 6.

## 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 6.

## Summary of Application

8. In its original application, NHS England states that it played a direct and significant role and has a significant interest in matters to which Module 6 relates. The application states that in its role as a Category 1 responder the duties of the Applicant included collaborating with local authority commissioners of social care. The Applicant also commissions social care for certain individuals who require 'continuing health care' and those discharged from detention pursuant to the Mental Health Act 1983. While noting that the Applicant funds nursing care for many in care homes and commissions the provision of primary care services for care home residents, the application states that the Applicant is neither a regulator, provider nor responsible for the operation or direction of the Care Sector.

9. Nevertheless, the application sets out that the Applicant was closely involved in discussions and meetings with government and others relating to the development of discharge policies and provided 'mutual aid' to the care sector through the provision of equipment and training.
10. In its renewed application, the Applicant relied on Rules 5(2)(a), (b) and (c). In respect of 5(2)(a), the renewed application states that the Applicant played a direct and significant role through the provision of mutual aid, measures designed to prevent the spread of Covid-19 in care homes such as IPC training and distributing oximeters.
11. As to rule 5(2)(b), the Applicant sets out that the Care Sector and the NHS are inextricably linked, with the NHS reliant on a functioning Care Sector to operate effectively. The Applicant states that decisions about social care were taken in consultation with the Applicant due to the health and social care systems being intertwined and states that separating the consideration of health and social care would be to create an artificial distinction. The renewed application draws the Inquiry's attention to the development of a Capacity Tracker during the course of the pandemic to monitor capacity in the Care Sector, states that the Applicant was emphasising the importance of engaging with the Care Sector early in the pandemic and notes the Applicant's interest in any discussion of the discharge policy. Further, the Applicant states that it has a significant interest through providing direct financial support for the Care Sector and refers to changes introduced by the Health and Care Act 2022 which brought about structural reforms further entwining health and social care through Integrated Care Board and Integrated Care Partnerships. The Applicant submits that its interest in the Care Sector is, therefore, "significant."
12. In respect of 5(2)(c), the renewed application also refers to the potential for criticism in relation to concerns about the extent to which health care professionals were prevented from treating those in the Care Sector and the Applicant's role in the development of discharge policies.

### **Decision for the Applicants**

13. I have considered with great care everything that is said in the Applicant's renewed application and I am grateful to the Applicant for taking the time to expand upon its

original application. I have also reminded myself of what was said in the original application to enable me to assess the merits of the application as a whole. Having done so, I remain of the view that the Applicant does not meet the criteria set out in Rule 5 for designation as a Core Participant in Module 6 and, therefore, I have decided not to designate the Applicant as a Core Participant in Module 6.

14. The renewed application is based on the Applicant having played a direct and significant role in the matters to which Module 6 relates (Rule 5(2)(a)), that the Applicant has a significant interest in an important aspect of those matters to which Module 6 relates (Rule 5(2)(b)) and that the Applicant may be subject to explicit or significant criticism during the inquiry proceedings or in the report or any interim report.
15. I do not consider that the Applicant played, or may have played, a direct and significant role in the matters to which Module 6 relates. I accept that the Applicant had a direct and significant role in relation to healthcare systems in England during the Covid-19 pandemic, as reflected in the grant of Core Participant status in Module 3. However, I do not consider that the Applicant played or may have played a direct and significant role in the matters to which Module 6 is concerned. As set out in the Application, the Applicant “is not a regulator or provider of social care services” and “was not responsible for the operation or direction of the Care Sector during the pandemic.” While the Applicant is responsible for commissioning social care for certain individuals following discharge pursuant to the Mental Health Act 1983 and primary care for residential and nursing home residents, the Applicant’s role with regards to the matters covered in the Provisional Outline of Scope for Module 6 therefore appears to have been indirect rather than direct. Further, involvement in discussions about the operation of discharge policies, development of a Capacity Tracker and the provision of financial support does not equate to the Applicant having played a direct and significant role.
16. I accept that the health and social care systems are in many ways connected, however this fact alone does not establish that the Applicant has a significant interest. While the renewed application refers to changes introduced by the Health and Care Act 2022, I note that such changes only came into force on 28 April 2022 and are therefore likely to have had only a limited impact, if any, on the matters covered in the Provisional

Outline of Scope for Module 6 and the timeframe covered by the Inquiry's Terms of Reference. Equally, while the Applicant can be said to have an interest in the Care Sector neither the original nor renewed application demonstrate that this interest was "significant" within the meaning of Rule 5(2)(b) and in the context of Module 6.

17. While the Applicant states there may be the potential for criticism, it is too early in the Inquiry for me to determine whether any criticism will be made, particularly whether it might amount to explicit or significant criticism and so Rule 5(2)(c) is not met at this stage. Even if that were not the case, in the exercise of my discretion, and having regard in particular to the need to manage the Inquiry effectively and efficiently, I would decline to designate the Applicant as a Core Participant. 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 in this country could potentially have an interest in it and not everyone can be granted Core Participant status for the purposes of the Inquiry hearings.
18. It is 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 the matters being examined in the Inquiry and the Inquiry will be reaching out in due course to a range of individuals, organisations and bodies to seek information, to gain their perspectives on the issues raised in the modules and, where appropriate, to ask for witness statements and documents.
19. For all of those reasons, having considered all of the information provided by the Applicant, in light of the Provisional Outline of Scope for Module 6, I consider that the Applicant did not play a direct and significant role in relation to the matters sought to be investigated in Module 6, nor do the Applicant have a significant interest in an important aspect of the matters to which Module 6 relates. I have therefore decided that the Applicant should not be designated as a Core Participant in Module 6 and I confirm that this is my final decision.
20. I will keep the scope of Module 6 and the designation of Core Participants under review. My decision not to designate the Applicant as a Core Participant in Module 6

does not preclude it from making a further application 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**

**27 February 2024**