



NOTICE OF DETERMINATION
CORE PARTICIPANT APPLICATION
MODULE 6 - UKHSA

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 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.
3. On 18 January 2024 the Inquiry received an application from the UK Health Security Agency (“UKHSA”) (“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 Applicant’s 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 21 February 2024, the Applicant submitted a renewed application for Core Participant status in Module 6. This notice sets out my determination of the 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, UKHSA submitted that, while having no formal remit for the social sector in England at the start of the pandemic, PHE did assist in managing infection outbreaks in care settings through regional health protection teams and provided early Covid-19 guidance. I did not consider that the provision of advice or support to key decision makers alone was sufficient to demonstrate that the Applicant's role was a direct and significant one in relation to the Adult Social Care sector and it was on this basis that I provisionally declined their application for CP status in Module 6.

9. In its renewed application, UKHSA has provided additional information which they submit demonstrates that PHE became increasingly involved in advising the ASC sector as the pandemic progressed. This role is said to have become more formalised with the establishment of UKHSA which has, since October 2021, had direct responsibility for care sector testing programmes. UKHSA's 2022/2023 remit letter, issued by the Department of Health and Social Care, is also said to explicitly cover the health and social care sector.
10. UKHSA further submits that the nature of the advice provided by its predecessor PHE, in particular regarding the issues around the discharge of patients into care homes, will or could come under scrutiny in Module 6. UKHSA also submits that PHE also contributed to the decision around whether legislation should be introduced to make vaccination a condition of deployment of care home staff in 2021.

Decision for the Applicant

11. 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. Having done so, I consider that the Applicant does meet the criteria set out in Rule 5(2) for designation as a Core Participant in Module 6 and I have decided to designate the Applicant as a Core Participant in Module 6.
12. Taking everything that is said on the Applicant's behalf into account, I am of the view that the Applicant did play, or may have played, a direct and significant role in the matters to which Module 6 relates and has a significant interest in an important aspect of Module 6. While it is too early in the Inquiry for me to determine whether any criticism will be made, I consider there is also the potential for the Applicant to be subject to explicit or significant criticism in Module 6.
13. In reaching my decision, I have had particular regard, in the renewed application, to the extent to which the Applicant was involved with the drafting and provision of guidance and advice to the adult care sector, its direct involvement with matters relating to infection and prevention control measures within the adult care sector and its provision of advice to the UK Government on key issues including around the discharge of patients into care homes. I also consider that the Applicant is well placed

to assist the Inquiry to achieve its aims given the extent to which it collected data on cases of Covid-19.

Legal Representation

14. 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.

15. I am satisfied that the Applicant has appointed Olivia Barnes of the Government Legal Department as its qualified lawyer in relation to this Module. I therefore designate Olivia Barnes as the Applicant's recognised legal representative in accordance with Rule 6(1).

16. 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's Costs Protocol](#).

Rt Hon Baroness Heather Hallett DBE

Chair of the UK Covid-19 Inquiry

27 February 2024