



**NOTICE OF DETERMINATION
CORE PARTICIPANT APPLICATION
MODULE 7 - 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 19 March 2024 the Inquiry opened Module 7 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 26 April 2024.
2. On 25 April 2024 the Inquiry received an application from NHS England (“the Applicant”) for Core Participant status in Module 7. This Notice sets out my determination of the application.
3. The Inquiry has published the [Provisional Outline of Scope](#) for Module 7, which states that this Module will consider the policies and strategies developed and deployed to support the test, trace and isolate system by the UK Government and the Devolved Administrations. 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 7.

Summary of Application

6. This application is brought on behalf of NHS England. NHS England has a system leadership role in the NHS, and specifically from its statutory duty to exercise its functions with a view to securing continuous improvement in the quality of services under section 13E of the NHS Act 2006. The application also details reference to the role of NHSx, which was a joint policy unit of both NHS England and DHSC.
7. NHS England worked closely with DHSC, PHE and NHS Test and Trace throughout the pandemic in relation to a range of testing initiatives, to advise on NHS needs (including the impact of the pandemic on NHS resources).
8. NHS England has applied for Core Participant status on the basis of the direct and significant role played in testing and tracing delivery in particular it:
- i. led, in practice, on operationalising government testing policy as it related to tests undertaken in NHS laboratories for NHS patients, and some elements of staff testing as available capacity allowed;

- ii. was a key contributor to the wider testing programme, for example enabling delivery of tests through technologies that were not available to PHE at sufficient scale;
 - iii. through NHS Digital delivered elements of NHS Test and Trace technological solutions.
9. The application details that NHS England played a crucial role in the national testing programme by leading on 'pillar one' of the programme: developing testing capacity in NHS laboratories for NHS patients. In addition, NHS England also played a role in delivering elements of pillar three of the national testing programme, which focussed on antibody testing to assess the development of immunity to Covid-19. NHS England enabled the NHS patient and staff antibody testing elements of this pillar via the NHS pathology network.

Decision for the Applicant

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 NHS England as a Core Participant in Module 7.
11. Module 7 will consider a range of issues in relation to the implementation of test, trace and isolate policies in the UK. This includes, but is not limited to, the policies and strategies developed and deployed throughout the pandemic, the capacity of the systems that were implemented and their effectiveness. NHS England played a crucial role in the national testing programme and was involved with the development and operational delivery of the test, trace and isolate system. I consider that NHS England meets the criteria in Rule 5(2)(a) in that they played a direct and significant role in the matters to which Module 7 relates. I also consider that the Applicant meets the criteria in Rule 5(2)(b), as they have a significant interest in these important aspects of Module 7.

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 NHS England has appointed Alistair Robertson of DAC Beachcroft LLP as its qualified lawyer in relation to this Module. I therefore designate Alistair Robertson as NHS England'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

31 May 2024