



**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 25 July 2024 the Inquiry received an application from the British Medical Association (“BMA”) for Core Participant status in Module 5. This Notice sets out my determination of the application.
3. The Inquiry has published the [Scope](#) for Module 5, which states that this module will consider and make recommendations regarding the procurement and distribution 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 Scope for Module 5.

Summary of Application

6. The applicant submits that the BMA's members have a significant interest in and played a significant role in the matters to which Module 5 relates.
7. Module 5 has sent a detailed Rule 9 request to the BMA covering topics including: the experiences of doctors in accessing PPE during the pandemic, the quality and adequacy of PPE, the BMA's role in advocating for supply of PPE during the pandemic, experiences of female, ethnic and religious minority staff, IPC guidance, availability and geographical distribution of ventilators, major incidents relating to ventilators, the adequacy of planning, supply and delivery of ventilators and lessons learned. The application submits that the BMA has important evidence to give in response to this Rule 9 and that the fact the Rule 9 has been sent to the BMA establishes that the BMA and its members played a significant role and have a significant interest in the matters to which Module 5 relates.
8. The Applicant recognises that its application is late. The application states that this is due to the development and refining of the scopes for Module 3 and Module 5 of the

Inquiry. The Applicant had initially thought their interests could be fully addressed in Module 3 and therefore did not apply for Core Participant status in Module 5 to avoid any unnecessary expense and use of resource. However, the Applicant considers that important issues in relation to the adequacy and supply of PPE and the appropriateness of IPC guidance will be dealt with in depth in Module 5 rather than Module 3.

Decision for the Applicant

Whether the application should be considered out of time

9. As is acknowledged by the Applicant, this application for Core Participant status in Module 5 has been made out of time. The deadline for applications for Core Participant status in Module 5 was 17 November 2023. This application was received on 25 July 2024, 251 days after the expiration of the deadline.
10. I remind myself that paragraph 10 of the Inquiry's Core Participant protocol states: "...The Inquiry will not consider applications that are outside the timescales provided by the Inquiry, unless the applicant provides an acceptable explanation as to why they did not submit their application within the relevant timeframe."
11. Paragraph 10 is important. In order to ensure the speedy progress of this Inquiry so that it can provide prompt and useful reports and recommendations, I must impose firm deadlines on different stages of the Inquiry. Compliance with those deadlines is important to ensure that the challenging timetable will be met. I also consider the need to be fair to all applicants who have made their application for Core Participant status within the time period available.
12. I have therefore considered whether the Applicant has provided an acceptable explanation for the failure to comply with the deadline imposed for renewal.
13. I have set out above the Applicant's explanation for the delay in applying to renew its application for Core Participant status. As the Applicant recognises, it is expected and is entirely appropriate that the scope for Modules of the Inquiry's investigation will develop and refine as the Inquiry's work progresses and more material is considered.

14. I bear in mind that the Applicant wrote to the Inquiry on 17 November 2023 (prior to the deadline for applications) to confirm that, whilst it considered it did have grounds for applying for Core Participant status in Module 5, it would not be doing so because it believed its interests, particularly in relation to the adequacy and supply of PPE and the appropriateness of infection prevention and control guidance, would be adequately addressed in Module 3 of the Inquiry.
15. The scopes for both Module 3 and Module 5 of the Inquiry have developed and refined as the Inquiry's work has progressed. I do therefore consider this is an instance where circumstances have changed so that it is appropriate for an application to be made outside the initial window.
16. Accordingly, I consider that the Applicant has provided an acceptable explanation as to why it did not submit its application within the relevant timeframe. I therefore agree to consider the application at this time.

The substance of the application

17. I have considered with great care everything that was said in the application. Rule 9 requests are sent by the Inquiry to a wide variety of organisations and individuals. Receiving a Rule 9 request from the Inquiry does not necessarily mean that a person played a direct and significant role, or has a significant interest, in an important aspect of the matters to which the Inquiry relates in accordance with Rule 5. However, in the circumstances of the present case I do consider that the Applicant's members have a significant interest in the procurement and distribution of key healthcare equipment and supplies during the pandemic. Having regard to the provisions of Rule 5(2)(b) in particular, I have decided to exercise my discretion to designate the BMA as a Core Participant in Module 5.

Legal Representation

18. 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.

19. I am satisfied that the BMA has appointed Brian Stanton of Innovo Law as its qualified lawyer in relation to this Module. I therefore designate Brian Stanton as the BMA's recognised legal representative in accordance with Rule 6(1).

20. 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

14 August 2024