



NOTICE OF DETERMINATION
CORE PARTICIPANT APPLICATION
MODULE 8 - CHILDREN AND YOUNG PEOPLE
PUBLIC HEALTH SCOTLAND

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 21 May 2024, the Inquiry opened Module 8 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 June 2024.
2. The Inquiry has published the [Provisional Outline of Scope for Module 8](#), which states that this module will examine the impact of the pandemic on children and young people across society in the UK. This will include in education, health and social care, the criminal justice system and the immigration system. Module 8 will also examine the extent to which children and young people were considered as part of decision-making in response to the pandemic and the wider and long term impact of those decisions on children and young people. Further Modules will be announced and opened in due course, to address other aspects of the Inquiry's Terms of Reference.
3. On 17 June 2024 the Inquiry received an application from Public Health Scotland (the "Applicant") for Core Participant status in Module 8.
4. I made a provisional decision not to designate the Applicant as a Core Participant in Module 8 on 8 July 2024 ("the Provisional Decision"). The Applicant was provided with an opportunity to renew the application in writing by 4pm on 15 July 2024. This deadline was subsequently extended to 4pm on 16 July 2024.

5. On 16 July 2024, the Applicant submitted a renewed application for Core Participant status in Module 8. This notice sets out my determination of the Applicant's application for Core Participant status in Module 8.

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 8.

Summary of Application

8. In making this determination, the fact that I have not referred to every matter or detail which is set out in the application does not mean that I have not considered it. The points addressed below are intended to capture what appear to be the most important points made in support of the application.

9. In its original application Public Health Scotland stated that it is the national agency for improving and protecting the health and wellbeing of all people in Scotland. It provides advice and support to local government and authorities in Scotland on public health matters.
10. The application is made pursuant to Rule 5(2)(a), (b) and (c) of the Inquiry Rules 2006. In relation to Rule 5(2)(a), Public Health Scotland sets out that it played a key role in matters within the scope of Module 8 by providing advice to decision-makers in relation to the opening and closing of places of education and by collecting, analysing and reporting relevant data on the impact of pandemic restrictions. Public Health Scotland submits that it played a direct and significant role due to its advisory role within a number of Scottish Government groups concerned with issues related to children and young people, such as the Scientific Advisory Sub-Group on Education and Children's Issues, the Coronavirus Children and Families Collective Leadership Group, and the COVID-19 Education Recovery Group (CERG). The application states that Public Health Scotland published a wide range of bespoke reports and studies to understand the risks of COVID-19 (clinical and those arising from NPIs) in children and young people, education staff and education settings and listed examples of those publications. The application also highlights the role of Public Health Scotland in contributing to Scottish Government guidance on infection prevention and control measures in education and childcare settings. It submits that Health Protection Scotland, a legacy body of the Applicant organisation, had a role in pandemic planning.
11. In relation to Rule 5(2)(b), Public Health Scotland submits that it has a significant interest in the matters to be examined in Module 8 due to its key role in Scotland in relation to protection of public health, which health protection role includes children and young people. On this basis, it will have a particular interest in the Inquiry's findings and recommendations in relation to Module 8. Furthermore, as a public health body, it has a duty to carefully consider and implement any recommendations made by the Inquiry in these areas.
12. In relation to Rule 5(2)(c), Public Health Scotland contends that, given its role, it may be subject to comment in any report issued by the Inquiry for Module 8, for example, in respect of matters such as the impact on young people of the closing and reopening

of education institutions. On that basis, it asserts that it is important that it is given the fullest opportunity to respond to any criticism made during the Inquiry by being designated Core Participant status.

13. In relation to Rule 5(2)(c), Public Health Scotland has concerns that it may be subject to explicit or significant criticism in relation to the closing of schools and other educational institutions as well as in relation to NPIs imposed when schools were re-opened, as the decision-makers' approach was based substantially on advice and evidence from Public Health Scotland (although, it states, this advice was not always followed). Public Health Scotland submits that its designation as a Core Participant will benefit the Inquiry by providing it (the Inquiry) with a more informed understanding of Public Health Scotland's position. Public Health Scotland considers that full engagement will only be possible if it is a Core Participant.
14. Public Health Scotland makes an additional point not raised in its original application, which is that it has been granted Core Participant status in relation to the Scottish Covid Inquiry's Term of Reference K. This is concerned with the delivery of education and certification which, it submits, will likely overlap with this Inquiry's investigation in Module 8.

Decision for the Applicant

15. I have considered with great care everything that is said in the Applicant's original application and in its renewed application. I have assessed the merits of the application for Core Participant status in its totality. Having done so, I remain of the view that the Applicant does not meet the criteria set out in Rule 5(2). I have therefore decided not to designate the Applicant as a Core Participant in Module 8.
16. I remain of the view that Public Health Scotland did not play a direct and significant role in relation to the matters to which Module 8 relates. The focus of Module 8 is on those decisions which most impacted upon the lives of children; the extent to which the interests of children were taken into account in the making of those decisions and on the impact of those decisions on children and young people. I do not consider that Public Health Scotland's role, which I understand to have been essentially advisory when it came to some of the significant decisions relevant to children (like the closure

and reopening of schools) amounts to it having played a direct and significant role in those matters. I consider this to be the case even where the advice and data went beyond health protection and infection control and includes advice as to young people's wellbeing and other aspects of their health. The key decisions were made by the Scottish Ministers, to whom I have granted Core Participant status. I do not consider that the fact that the Scottish Ministers were provided with advice and evidence by Public Health Scotland in reaching those decisions means that Public Health Scotland itself played a direct and significant role in the relevant events.

17. I am aware that Public Health Scotland was granted Core Participant status in Module 6, but Module 6 and Module 8 are not analogous. Module 6 is focused upon those living and working in the adult care sector. Module 8 is broader in that it is concerned with children, young people and the decisions which impacted upon a range of issues related to their lives. I do not consider that the fact that Core Participant status was granted in Module 6 means that Public Health Scotland should be granted Core Participant status in Module 8 or that it would be inconsistent not to do so. Similarly, the fact that Public Health Scotland's data may have been subject to scrutiny in Module 2A does not justify it being a Core Participant in Module 8. In summary, I do not consider that Rule 5(2)(a) is satisfied.
18. I also do not consider that the criterion in Rule 5(2)(b) is met. As set out in my Provisional Decision, I do not consider that Public Health Scotland has a significant interest in an important aspect of the matters to which Module 8 relates on the basis of its public health and health improvement role in Scotland. I have taken into account Public Health Scotland's submissions in its renewed application as to its wider remit and its contention that the Inquiry's findings will have a direct influence on its future work and responsibility in respect of how young people's wellbeing is addressed in future pandemics. However, whilst Public Health Scotland may well have an interest in the Inquiry's recommendations, I do not consider that this amounts to it having a significant interest in an important aspect of a matter to which this Module relates.
19. I have also considered Rule 5(2)(c). I note Public Health Scotland's concerns, as expanded upon in its renewed application, that it may be subject to explicit or significant criticism in relation to the closing of schools and other educational settings (as well as the NPIs imposed when schools were re-opened). Public Health Scotland

acknowledged in its original application that it is too early in the Inquiry's proceedings to say whether this is a possibility and this remains the case.

20. I will consider all the factors which were taken into account particularly having regard to the decisions to close and open schools. However it was for Ministers both in Westminster and in the devolved administrations to balance all the factors in making those decisions and then to make those decisions. I do not see, at present, that any basis exists for saying that the Applicant may be subject to explicit or significant criticism in relation to the decisions which were ultimately made (across the UK) to close schools and other educational settings.
21. As noted, Public Health Scotland has drawn to my attention the fact that it has been granted Core Participant status in relation to the Scottish Covid Inquiry's Term of Reference K. I do not consider that this is a reason to grant Public Health Scotland Core Participant status in Module 8 of this Inquiry. The two Inquiries are independent of each other. Plainly the Scottish inquiry is focused only on Scotland. Term of Reference K relates to education, whereas Module 8 is wider. The factors which I must take into account in deciding whether to designate an organisation as a CP are therefore different. I must make my decision by reference to the Terms of Reference of this Inquiry and the Provisional Outline of Scope for Module 8.
22. I do intend to call evidence on the decisions which were made to close schools to most children in society. I will consider evidence about all the reasons advanced to justify the closure of schools and which Ministers took into account in their decision making. I am clear however that I can explore this issue by calling evidence on it and that it does not require this Applicant to be a Core Participant.
23. Even if I were wrong about whether the Applicant satisfies those matters set out in Rule 5(2) of the Inquiries Rules 2006, I would still decline to exercise my discretion to make it a Core Participant. Whilst I am bound to consider the factors set out in Rule 5(2), it is also open to me to take into account other relevant factors. I am not obliged to designate any particular person or organisation as a Core Participant. There are other organisations which are better placed to represent the interests of children and young people in relation to the matters to be examined in Module 8 and who will be

Core Participants. I additionally have regard to my duty to act with fairness and with regard to the need to avoid cost to public funds which is not justified.

24. Because Module 8 is concerned with the experiences of all children across society, it is necessarily broad in its compass. Just as almost every adult in society was impacted by Covid-19 so too were almost every parent (or carer) and every child. Any parent (or carer) or child could be said to have an interest in this Module 8. The same may be said of very many organisations which work with children or with their families.
25. There are also many different groups of children across the United Kingdom whose lives were made extremely difficult by the decisions made in response to the pandemic. They include those living in poor standards of accommodation; those exposed to violence and abuse and those children who suffered mental ill health.
26. It is because of this need to consider the experiences of a broad range of children and groups of children that I have designated the Children's Commissioners and also a number of large and leading children's charities as Core Participants. I intend to call evidence from a range of witnesses with expertise or front line experience to speak to the impact on children of a number of key decisions which affected children's lives as set out in the Provisional Outline of Scope for Module 8.
27. 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. I am satisfied that the interests of children, including bereaved children, their families and carers represented by the Applicant will be well served by the approach that I intend to take to Module 8.
28. I have also taken into account the fact that there are a number of ways in which the Applicant can participate in Module 8 without being a Core Participant, many of which have been recognised as adequate alternatives to Core Participant status in a number of other recent statutory inquiries. As I noted in my Provisional Decision, it is not necessary for an individual or organisation to be a Core Participant in order to provide evidence to the Inquiry.

29. Having considered all of the information provided by the Applicant, in light of the Provisional Outline of Scope for Module 8, I remain of the view that the Applicant did not play a direct and significant role in relation to the matters sought to be investigated in Module 8, nor does it have a significant interest in an important aspect of the matters to which Module 8 relates. I do not consider that any basis exists, at this time, for suggesting that it may be subject to explicit or significant criticism.
30. Even if I was wrong about these matters, I would still exercise my discretion to refuse the application. I have therefore decided that Public Health Scotland should not be designated as a Core Participant in Module 8 and I confirm that this is my final decision.
31. I will keep the scope of Module 8 under review. My decision not to designate the Applicant as a Core Participant in Module 8 does not preclude it from making any further applications 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

7 August 2024