

# Protocol for Application for Core Participant Status



## 1. What is a core participant?

1.1 Any person, group of persons, organisation or other body, may apply to be designated a “core participant”. “Core participant” is not defined in the Inquiries Act 2005 (“the 2005 Act”) or the Inquiries (Scotland) Rules 2007 (“the 2007 Rules”) but the Rules do provide a particular role for core participants to play. Core participants can make opening or closing statements at some hearings unless the Chair directs otherwise (rule 10 of the 2007 Rules); with the permission of the Chair, they can ask witnesses questions through their own legal representatives (rule 9); and they receive a copy of the Inquiry report in advance of publication (rule 15).

1.2 It is, however, important to stress that you do not need to be designated as a core participant in order to:

- (a) provide information or evidence to the Inquiry or be a witness during its proceedings. Information or evidence submitted by a core participant does not have any higher value than that submitted by someone not so designated
- (b) receive expenses for attending the Inquiry as a witness if the relevant criteria are met – see section 7 below;
- (c) watch or attend public hearings<sup>1</sup> (unless the Chair decides to hear evidence in private); or
- (d) read transcripts of hearings, witness statement and other documents or evidence that is available on the Inquiry’s website.

1.3 Core participants are formally designated as such by the Chair of the Inquiry according to the criteria set out in Rule 4 of the 2007 Rules.

1.4 Rule 4(2) of the 2007 Rules states that when deciding whether to designate a person or organisation as a core participant, the Chair must in particular consider whether the applicant:

- (a) played, or may have played, a direct and significant role in relation to the matters to which the inquiry relates;
- (b) has a significant interest in an important aspect of the matters to which the inquiry relates; or
- (c) may be subject to significant or explicit criticism—
  - (i) during the proceedings at the inquiry, or

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<sup>1</sup> Please note that the reference to “attend” public hearings should not be taken as confirmation that there will be public hearings in the traditional sense. Given current circumstances, it is anticipated that the Inquiry will conduct at least some of its proceedings remotely and via video conferencing/ streaming technology. Further details on this aspect of the Inquiry’s procedure will be published in due course.

- (ii) in the report (or any interim report) of the Inquiry.

1.5 A list of the names of all of those granted core participant status will be published on the Inquiry's website in due course.

## **2. Call for applications by 31 December 2020**

2.1 Applications for core participant status should be submitted to the Inquiry in writing by 31 December 2020.

## **3. Content of applications**

3.1 Applications should be submitted in writing to the Solicitor to the Inquiry by email to [legal@hospitalsinquiry.scot](mailto:legal@hospitalsinquiry.scot). If any applicant is unable to provide their application in writing, they should contact the Solicitor to the Inquiry by telephone on 07920 818829 and ask that he authorise an alternative means of application. Applications may be submitted on behalf of an applicant by the legal representative appointed to act on their behalf (see further section 5 below).

3.2 As a minimum, all applications should:

- (a) provide the applicant's full name, address and email address that may be used to contact them;
- (b) confirm that the applicant consents to being designated as a core participant, if their application is successful;
- (c) where the applicant is an individual, state whether the applicant consents to their name being published on the list of Core Participants on the Inquiry website. If such consent is given, it may be withdrawn at any stage by email to [legal@hospitalsinquiry.scot](mailto:legal@hospitalsinquiry.scot);
- (d) indicate which of the matters within Rule 4(2) of the 2007 Rules applies to the application and why;
- (e) if not apparent from the explanation given in relation to the preceding paragraph, an explanation of the matters falling within the Inquiry's Terms of Reference<sup>2</sup> (and in relation to which hospital) with which the applicant has a connection or in which the applicant has an interest; and
- (f) confirm whether the applicant is or wishes to be legally represented and, if so, the details of the solicitor(s) concerned.

3.3 In relation to each person, organisation or entity making an application for core participant status, the application should not exceed 4 sides of A4 paper.

3.4 Notwithstanding the foregoing, the Chair may consider an application for core participant status at any time during the Inquiry. However, if an application has not been made by the date specified in paragraph 2.1, the Chair may require an explanation as to why the application was not so submitted. In the absence of circumstances that made it impracticable for the applicant to submit their application by then, any late application may be refused.

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<sup>2</sup> The Inquiry's Terms of Reference can be found here: <https://www.gov.scot/publications/inquiry-into-the-construction-of-the-qeuh-glasgow-and-the-rhcyp-dcn-edinburgh-terms-of-reference/>

## **4. Consideration of applications**

4.1 The Chair will give careful consideration to all applications, having regard in particular to the matters set out in Rule 4(2) of 2007 Rules set out above. However, while the Chair is bound to consider those matters, it is open to him to take into account other relevant matters. The Chair is not obliged to designate a person, group of persons, organisation or other entity that meets the criteria set out in Rule 4 as a core participant. The Chair has a wide discretion, that he will exercise fairly, consistently and with an open mind.

4.2 If the Chair considers that further information is required before he can make a decision on any application, he may require the applicant to provide such further information as he considers necessary within such time as he determines. In addition, if he considers it to be necessary, the Chair may require an applicant to appear before him to make an oral application for core participant status.

4.3 Where the Chair requires an oral application to be made, the person or their legal representative will be notified no later than 3 clear days before the date of the hearing at which he will hear that application.

4.4 A list of those granted core participant status will be published on the Inquiry's website on the conclusion of the process of considering applications.

## **5. Invitation to Be Core Participant**

5.1 In addition to the procedure set out above, if at any stage during the course of the Inquiry the Chair considers it appropriate to do so, he may invite a person, organisation or entity to become a core participant. He may designate them as a core participant providing that person consents to be so designated.

## **6. Legal representation**

6.1 The designation of a core participant's recognised legal representative is separate from the decision to designate a person as a core participant.

6.2 Where a core participant has appointed a qualified solicitor to act on their behalf, the Chair must designate that solicitor as that person's designated legal representative in respect of the Inquiry proceedings or the relevant part of the Inquiry proceedings, as the case may be, in accordance with Rule 5 of the Inquiries (Scotland) Rules.

6.3 However, where two or more core participants each seeks to be legally represented and the Chair considers that:

- (a) their interests in the outcome of the inquiry are similar;
- (b) the facts they are likely to rely on during the course of the inquiry are similar; and
- (c) it is fair and proper for them to be jointly represented,

in accordance with the rule 6(2) of the 2007 Rules, the Chair will direct that those core participants shall be represented by a single recognised legal representative.

6.4 Where the Chair makes such a direction, core participants must agree the designation of a single legal representative. If they do not do so within a reasonable period, the Chair will designate an appropriate solicitor who he considers has sufficient knowledge and experience to act in that capacity.

## **7. Costs of legal representation**

7.1 As a general rule, the costs incurred in engaging legal representation for the purposes of the Inquiry will fall to the person instructing that legal representation, whether they are core participants or not. This applies in respect of those designated as core participants as it applies to those not so designated.

7.2 However, section 40 of the 2005 Act allows the Chair to make awards of reasonable amounts in respect of expenses properly incurred, including the expenses of legal representation, of a person or organisation:

- (a) attending the inquiry to give evidence or to produce any document or other thing, or
- (b) who, in the opinion of the chair, has such a particular interest in the proceedings or outcome of the inquiry as to justify such an award.

7.3 Awards of expenses are at the discretion of the Chair, and are subject to such conditions or qualifications as may be determined by the Cabinet Secretary and notified to the Chair in accordance with section 40(4) of the 2005 Act. The fact that a person or organisation falls into one of the categories specified above does not necessarily mean that they will receive an award of an amount towards their expenses.

7.4 Applications for an award of legal expenses in accordance with section 40 of the 2005 Act should be made in accordance with the Inquiry's Expenses Protocol and the Cabinet Secretary's determination under section 40(4) of the 2005 Act, both of which will be published on the Inquiry's website in due course. The Expenses Protocol will give further information about the matters that will be taken into account by the Chair in determining applications.

## **8. Withdrawal of Core Participant Status**

8.1 Core participant status may be withdrawn by the Chair by notice in writing at any time before the end of the Inquiry in accordance with rule 4(3) of the 2007 Rules.

## **9. Further information**

9.1 If you have any questions about any of the above, or any other matter related to core participant status, please email the Solicitor to the Inquiry at [legal@hospitalsinquiry.scot](mailto:legal@hospitalsinquiry.scot).

## **10. Version control**

10.1 This version of the Protocol for Application for Core Participant Status is dated 9 November 2020 and is issued under the authority of the Chair of the Scottish Hospitals Inquiry. It is the first version of this Protocol.