

# The Scottish COVID-19 Inquiry

## Protocol on Core Participants and Application Form

### 1. Introduction

- 1.1. This protocol explains what a core participant is and how applications for designation as a core participant are decided. To become a core participant, you need to apply to the Chair of the Inquiry. At the end of this protocol there is an application form together with notes to help you complete it.

### 2. What is a core participant?

- 2.1. A core participant can be a person, a group, or an organisation.
- 2.2. You do not need to be a core participant to be involved in the Inquiry. Whether or not you are a core participant, you will, for example, have the opportunity to:
  - 2.2.1. participate in the Let's Be Heard Project and tell the Inquiry about your experience;
  - 2.2.2. keep up to date with the Inquiry's progress through the website;
  - 2.2.3. respond to the Inquiry's requests for written evidence and documentation;
  - 2.2.4. watch public hearings, which the Inquiry intends to livestream and make available on its website (unless parts of the hearings are being held in private);
  - 2.2.5. read transcripts of hearings and any documents (including expert

- reports) that are on the website;
- 2.2.6. read any witness statements that are on the website;
  - 2.2.7. in some circumstances, give evidence as a witness at a public hearing; and
  - 2.2.8. read records and documents published by the Inquiry as part of its investigation, and its reports.
- 2.3. It is not necessary to be legally represented in order to engage with the Inquiry.
- 2.4. A core participant has additional rights to others participating in the Inquiry. These include:
- 2.4.1. making statements (often through a legal representative) when the Inquiry holds public hearings, unless the Chair directs otherwise (in terms of rule 10 of the Inquiries (Scotland) Rules 2007);
  - 2.4.2. proposing questions for Counsel to the Inquiry to ask witnesses and, if the Chair allows them to do so, asking questions of witnesses at a public hearing (in terms of rule 9 of the Inquiries (Scotland) Rules 2007); and
  - 2.4.3. being provided with advance copies of the Inquiry's reports relating to their interest before publication. Although core participants receive an advance copy they can't change what it says and they must keep its contents confidential until it is published.
- 2.5. The rights described at paragraphs 2.4.1 to 2.4.3 above are all subject to any further procedure or direction made or given by the Chair under section 17 of the Inquiries Act 2005.

### **3. How can I apply?**

- 3.1. The Inquiry will announce when applications for core participants are being invited. This will be done on the Inquiry website. If your application is submitted when the Inquiry is not inviting applications, the Inquiry may still consider it if there is good reason to do so. In the absence of a reasonable explanation it is likely to be refused.
- 3.2. You must apply in writing using the application form at the end of this protocol where you will also find notes about how to fill in the form. Please provide as much information as you can on the form. Please also ensure that all information you wish to submit is included in the application form - do not provide any additional information separately (whether on separate sheets or in additional documents or otherwise).

### **4. How does the Chair decide applications?**

- 4.1. When the Chair is deciding applications, matters he will consider include:
  - 4.1.1. Does the applicant satisfy one or more of the criteria explained in paragraph 4.2 below ([Rule 4\(2\) of the Inquiries \(Scotland\) Rules 2007](#))?
  - 4.1.2. Is it fair in all the circumstances to designate the applicant as a core participant, having regard also to the need to avoid any unnecessary cost ([Section 17\(3\) of the Inquiries Act 2005](#))?
- 4.2. The Chair has to have particular regard for the desirability of including as core participants persons who:
  - 4.2.1. have played a direct and significant role in the matters the Inquiry is investigating; or
  - 4.2.2. have a significant interest in an important aspect of a matter the Inquiry is considering; or

- 4.2.3. may be subjected to significant or particular criticism.
- 4.3. If you are applying to be a core participant, you should explain which of these three criteria you think apply to you, and why.
- 4.4. The Chair also has to act with fairness and with regard to the need to avoid unnecessary cost. The Chair is not obliged to designate every person or organisation meeting the requirements of Rule 4(2) (and set out in paragraph 4.2 above) as a core participant. The Chair will take into account all relevant factors. The Chair will exercise his discretion whether to designate an applicant as a core participant fairly, consistently and with an open mind.
- 4.5. A fair and just inquiry involves not merely getting to the right answers, but also doing so with reasonable speed and without excessive expense. The response to the Covid-19 pandemic directly affected everyone in Scotland. Granting too many core participant applications would likely make the Inquiry unmanageable and defeat its purpose. The designation of an applicant as a core participant should facilitate the better management of the Inquiry, and assist it in fulfilling its terms of reference. Applicant organisations representing a number of people with similar interests may facilitate the most effective management of the inquiry.
- 4.6. If the Chair needs more information to make a decision, he may ask you to provide further information. If he thinks it necessary he may ask you to appear before him to make an oral application for designation as a core participant.
- 4.7. The Chair may designate you as a core participant, but with limitations. For example, it may be limited to participation in a particular part of the Inquiry, it may not entitle you to be at public hearings without obtaining leave to appear, or it may be limited only to receiving a report prior to publication.
- 4.8. The Solicitor to the Inquiry will write to you with the Chair's decision on your application.

## **5. Invitation to be a core participant**

- 5.1. In addition to the application process, 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. They will only be designated as a core participant if they consent.

## **6. Legal representation**

- 6.1. A core participant can have a lawyer to give them advice and represent them at appropriate public hearings. A core participant can also choose not to have a lawyer.
- 6.2. Where two or more core participants each seek to be legally represented, the Chair of the Inquiry can direct that two or more core participants are represented jointly by the same lawyer. That may be done particularly when there are similarities between their interests and the facts they are likely to rely on, and where it is fair and proper for them to be jointly represented. If the Chair makes a direction for joint representation, core participants must agree on the designation of a single legal representative. If they do not do so within a reasonable period, the Chair will designate an appropriate legal representative who he considers has sufficient knowledge and experience to act in that capacity.
- 6.3. If a core participant can't afford their lawyer's fees, the Inquiry may be able to help with the cost. The Inquiry has published a separate Funding Protocol on its website about this. Designation as a core participant does not create an automatic entitlement to receive funding for legal representation.

## **7. Confidentiality**

- 7.1. Core participants and their lawyers are likely to receive documents and information from the Inquiry. All core participants and their lawyers must agree to treat information they get from the Inquiry as confidential unless it is otherwise in the public domain. This is very important as it maintains trust and enables the Inquiry to carry out its work fairly.

- 7.2. Core participants and their lawyers all have to sign confidentiality undertakings. They continue to apply even after the Inquiry has ended.
- 7.3. Core participants and their lawyers must take all necessary steps to preserve the confidentiality of the information they have access to. This means, for example, that unless they have the express permission of the Inquiry they are not allowed to:
  - 7.3.1. use the information for any purpose other than taking part in the Inquiry;
  - 7.3.2. allow others to use the information for any purpose other than taking part in the Inquiry; or
  - 7.3.3. disclose or publish the information.
- 7.4. Any breach of a confidentiality undertaking is a serious matter. If it happens during the Inquiry process, it could lead to the Chair deciding to withdraw a person's core participant status.

## **8. Withdrawal of core participant status**

- 8.1. The Chair can, if he thinks it appropriate to do so, decide that a person should no longer be a core participant. This decision could be taken at any time. If the Chair decides this, the Inquiry will write to the core participant to explain the decision.

## **9. Version control**

- 9.1. This is the third version of the Core Participant Protocol and Application Form dated 8 September 2023 and is issued under the authority of the Chair.

## **Notes for filling in the application form**

For information about the process to apply to be a core participant, and what being a core participant means, see the protocol above.

If you need help filling in the form, or are not able to provide your application in writing, please contact the Inquiry team on [coreparticipants@covid19inquiry.scot](mailto:coreparticipants@covid19inquiry.scot).

**Please put all your information on the form and do not attach any separate sheets or documents. Any information provided separately from the form will not be considered.**

**Please note that separate to the core participant process, there are other ways you can participate in the Inquiry, as set out in paragraph 2.2 of the protocol above. Please consider whether it would be most appropriate for you to participate in the Inquiry in those ways, or whether you consider that you require core participant status in order to participate effectively.**

### **Question 1 – your name**

Please give your full name if you are applying on your own behalf.

If you are applying on behalf of an organisation, group or body, please give its full name and any registered number. If the organisation is a company, we need to know the identity of all directors. If the organisation is a charity, we need to know who the trustees are. For groups, we need to know who the office-bearers are.

### **Question 2 – your status**

Use this box to tell us if you are applying on your own behalf or as a representative of an organisation, group or body.

### **Question 3 – your contact details**

We will use your contact details if we need to discuss your application with you.

If the Chair decides you should be a core participant, we will use these contact details to stay in touch with you.

If you have a preferred way for us to contact you (for example, only by post), let us know.

#### **Question 4 – your lawyer**

A core participant can have a lawyer but doesn't have to. A lawyer advises you and represents you at Inquiry hearings.

If you have a lawyer, we will usually be in contact with them, rather than with you direct.

If you do not have a lawyer when you apply to be a core participant, but you later appoint one, you can tell us their contact details later.

The chair has power to direct that two or more core participants be represented by the same lawyer (paragraph 6.2 of the protocol above). Question 4 asks if you intend to appoint a lawyer, if you don't already have one.

#### **Question 5 – Your interest**

The first part of this question asks about your interest in the inquiry. Your answer may help the chair with any issues arising about joint legal representation (paragraph 6.2 of the protocol above).

The second part of this question asks whether you represent a number of people with similar interests. You may want to read paragraphs 4.4 and 4.5 of the protocol above before you answer this question. Applicant organisations representing a number of people with similar interests may facilitate the most effective management of the inquiry.

The third part of this question asks about the terms of reference and gives a link to them. The terms of reference set out what the Inquiry has to investigate. They contain a number of different matters. There may be only some parts of this in



which you have an interest. This question asks you to identify which. It may be more manageable for the Inquiry if core participant status is restricted to particular paragraphs in the terms of reference. Please set out which of the terms of reference for which you wish to have core participant status.

### **Question 6 – Initial criteria**

The Chair has to have particular regard to the desirability of having core participants who meet at least one of three criteria. You should say which of these three you satisfy (which could be more than one), and why, in your application. You may want to read paragraphs 7 to 10 of the protocol above before you answer this question.

### **Question 7 – Reasons why you think your application to be a core participant should be granted**

The Chair has a discretion whether to grant your application or not. This question gives you an opportunity to say why you think it is fair for him to do so, also having regard to the need to avoid unnecessary cost. You may wish to read paragraphs 7 to 10 of the protocol above before you answer this question.

### **Question 8 – The facts you intend to rely on**

In making decisions about whether to direct joint legal representation of core participants (paragraph 6.2 of the protocol above), one of the matters the Chair will consider is similarities between the facts those core participants are likely to rely on. Question 8 asks for a summary of facts you intend to rely on. Please be brief. The purpose of asking the question is only to assist with issues of joint representation which the Chair may have to decide. The question is not a call for evidence. Calls for evidence will be made during the life of the Inquiry at which time more detail can be given.

### **Question 9 - Consent**

Because people can only be designated as a core participant with their consent, this question asks you to confirm your consent. It is expected that if you are

applying to be designated as a core participant, you are willing to fulfil this role, or you would not submit an application. The question also asks you to confirm if you are content for your name to appear on lists of core participants published by the Inquiry. It is normal practice for names of all core participants to appear on the list.

## **Scottish Covid-19 Inquiry**

### **Application for designation as a core participant**

**Fill in this form to apply to be a core participant.**

**There are notes above about how to fill in the form.**

**1. Your name (if you are applying on behalf of an organisation, include the names of the directors, trustees or office-bearers):**

**2. Your status (are you applying on your own behalf, or for an organisation or body, or as a representative of a group):**

**3. Your contact details:**

**Address:**

**Email:**

**Phone:**

**Your preferred way for the Inquiry to contact you:**

**4. Contact details of your lawyer (if you have one):**

**Name:**

**Address:**

**Email:**

**Phone:**

**If you don't yet have a lawyer, do you intend to appoint one?**

**Yes**

**No**

## **5. Your interest**

### **5.1. What is your interest in the outcome of the inquiry?**

(The answer to this question should not exceed 300 words. Information provided separately from the form will not be considered)

### **5.2. Are you representing a number of people with similar interests? If yes, please give details.**

(The answer to this question should not exceed 200 words. Information provided separately from the form will not be considered)

Please tick the box for topics in the Inquiry's terms of reference on which you could give evidence. The full terms of reference can be found [here](#):

- pandemic planning and exercises carried out by the Scottish Government
- the decisions to lockdown and to apply other restrictions and the impact of those restrictions
- the delivery of a system of testing, outbreak management and self isolation
- the design and delivery of a vaccination strategy
- the supply, distribution and use of Personal Protective Equipment
- the requirement for shielding and associated assistance programmes, provided or supported by public agencies

- in care and nursing homes: the transfer of residents to or from homes, treatment and care of residents, restrictions on visiting, infection prevention and control, and inspections
- the provision of healthcare services and social care support, including the management and support of staff and the recognition, involvement and support of unpaid carers
- the delivery of end of life care and the use of DNACPR (do not attempt cardiopulmonary resuscitation decisions)
- welfare assistance programmes, for example those relating to benefits or the provision of food, provided or supported by public agencies
- the delivery of education and certification; and
- financial support and guidance given to businesses and the self employed, including in relation to identification of keyworkers, by public agencies

**6. The initial criteria**

**Tell us which of these criteria you satisfy and why:**

**6.1. have you had a direct and significant role in the matters under investigation? or**

**6.2. do you have a significant interest in an important aspect of a matter the Inquiry is considering? or**

**6.3. might you be subjected to significant or particular criticism?**

**And why would it be desirable for you to be a core participant?**

(The answers to this question should not exceed 300 words. Information provided separately from the form will not be considered)

**7. Reasons why your application to be a core participant should be granted**

**Please explain why you think the Chair should grant your application to be designated a core participant**

(The answer should not exceed 400 words in total. Information provided separately from the form will not be considered.)

**8. The facts you intend to rely on**

**Please provide a very brief summary of the main facts you are likely to rely on in the course of the Inquiry.**

(The answer should not exceed 300 words in total. Information provided separately from the form will not be considered.)



## **9. Consent**

**Please confirm that you consent to being designated a core participant if your application is granted.**

Yes

No

**Please confirm whether you consent to your name being published in the list of core participants on the website and in any Inquiry reports if your application is granted.**

Yes

No

## **DECLARATION**

**I confirm that the information I have given in this application form is true and correct to the best of my belief and knowledge.**

**Your signature:**

**Date:**

**Send completed forms:**

- By email to: [coreparticipants@scotland19inquiry.scot](mailto:coreparticipants@scotland19inquiry.scot)
- By post to: FREEPOST Scottish Covid-19 Inquiry

Please only send the completed form. Other documents will not be considered.

**Personal data:**

The Inquiry will treat the information you give us on this form in accordance with the Inquiry's [Protocol for the Receipt and Handling of Information](#) and [Privacy Notice](#).