

Covid-19 Public Inquiry: Issues relating to Core Participants



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What is a Core Participant?

- A Core Participant is not defined in the Inquiries Act 2005 or the Inquiry Rules 2006.
- Generally understood to refer to a participant who will play a key role during the Inquiry process.
- Usually attends for all of the proceedings (or substantial parts) either personally or by recognised legal representatives.
- Distinguishable from a witness, who is not permitted to ask questions or play an active part.

Entitlements of Core Participants

- Make opening and closing statements at any hearing.
- Ask questions of witnesses at public hearings under the Rule 10 procedure, if permitted to do so by Chair.
- See any evidence / disclosure that relates to their interest in the Inquiry – usually provided electronically, but subject to any restrictions made under section 19 of the Inquiries Act 2005.
- See any draft report relating to their interest in the Inquiry before it is published.

Numbers of Core Participants

- Infected Blood Inquiry – Over 1600
- Grenfell – Over 500
- IICSA – Over 350
- Brook House – Approximately 20
- Post Office Horizon IT - Anticipated over 1000.

- Covid 19 Inquiry XXXX ?

Likely categories of Core Participant

- **Bereaved Families**
- **Those suffering from Long Covid**
- **Front line workers** – Health workers and support staff/
Teachers and support staff / Transport workers and
transport distribution workers / Post office deliveries/
Priests/ clerics/ Police, ambulance, fire service workers.
Local authority essential services providers /Supermarket
and food distribution staff/ Mortuaries.
- **Individual hospitals**
- **Care homes** - Patients and their families, members of staff
- **Those subject to DNR**

Likely categories of Core Participant cont'd

- **Businesses** (incl. personal care providers/ restaurants / arts- theatres/ private landlords, sporting organisations, travel industry)
- **Educational establishments**
- **Department of Health and Social Care**
- **Department of Education**
- **Department for Business, Energy & Industrial Strategy**
- **HM Treasury**
- **Department for Transport**

Likely categories of Core Participant cont'd

- **National Health Service Trusts**
- **Various professional bodies and interest groups**
- **Academics/ virologists/ epidemiologists**
- **Scientific Advisors**
- **National Statistics Office / UK Statistics Authority / data providers**
- **PPE providers /Test and Trace providers**
- **Domestic abuse victims**

- **Individuals who are likely to face criticism**
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Applications for Core Participant Status

- Applications are usually submitted in writing by email or by post.
- An Inquiry will usually impose a deadline for such applications, which will be posted on the website and determined at preliminary hearings.
- The Covid 19 Inquiry may be conducted in a series of strands, so applications may be staggered.
- In all cases it will necessary to explain why a specified timeframe has not been met
- However, an application can be made at any time. In some cases CP status will be granted immediately prior to or even during an Inquiry hearing to ensure that that an individual or organisation can be appropriately represented and can respond to any such criticism during the course of an Inquiry.

Applications for core participant status. Rule 5, Inquiry Rules 2006

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*

Rule 5. Cont'd

*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.*

The test

- The list in Rule 5(2) is not exhaustive and other relevant matters can also be taken into account.
- The Chair has wide discretion to designate.
- A ‘person’ for the purposes of Rule 5 includes “ *a body of persons, incorporate or unincorporate*” (Interpretation Act 1978). It would cover survivors’ organisations, interest groups, local authorities, government departments.
- Designation can take place at any time. The Inquiry will usually invite applications for such applications within a specific timeframe, especially if an inquiry is sub-divided into separate investigations with separate phases.

The test cont'd

- Those deadlines will be posted on the website and determined at preliminary hearings. Often, it will be necessary to justify late applications.
- The Core Participant must consent to the designation.
- In some cases the Chair may invite individuals or institutions to become core participants, but no power to compel them to do so.
- Many Complainant CPs may be traumatised, disaffected or concerned to protect their anonymity.
- Some Government Departments may consider that it is not necessary for them to be designated where other departments are already CPs.

The test – Paragraph 5(2) (a) & (b)

Direct and significant role

Significant interest in an important aspect

- Chair may consider that it is not necessary for a peripheral individual or organisation / institution if no significant and direct role.
- An inquiry is able to investigate the matters under its terms of reference by issuing a request for a written statement pursuant to rule 9 of the Inquiry Rules.
- Important not to conflate the grant of core participant status with the role of a witness.

The test – Paragraph 5(2) (a) & (b)

Direct and significant role

Significant interest in an important aspect

- Representatives should set out in detail the grounds upon which the proposed core participant can be seen to have a significant interest in the inquiry or any particular investigation within it.
- In particular, whether an individual or organisation was involved in an important way in the events that the investigation or inquiry is considering.
- CP status may be granted if it would assist the Inquiry if the individual or organisation is able to be provided with disclosure of relevant documentation

The test – Paragraph 5(2) (a) & (b)

Direct and significant role

Significant interest in an important aspect

- Institutional Core Participants - test will usually be met where department/ council has policy responsibility in relation to the issue upon which public concerns were raised.
- Particularly where the matters to be investigated will have a bearing on the future direction of policy on the issue – in particular what lessons can be derived from Covid 19 to enable a different or better response to future pandemics

Rule 5(2) (a) & (b) - *Matters to which Inquiry relates*

- Consider the scope of the Inquiry – likely to be wide ranging for Covid 19 .
- Set out in the terms of reference under which the Minister causes an Inquiry to be held under section 1 of the 2005 Act.
- If the terms of reference are broad, ‘matters to which inquiry relates’ may be specifically established by the Inquiry.
- For example, IICSA Westminster Investigation. Following a preliminary hearing, the Chair directed that any Core Participant who wished to do so could file submissions on the suggested scope of that particular investigation. The Chair subsequently issued a determination on the scope of the investigation.

Rule 5(2)(c) - subject to explicit or significant criticism

- Inquiries are held under section 1 where particular events have caused, or are capable of causing, public concern, or there is public concern that particular events may have occurred.
- Many institutional witnesses can expect to be the subject of criticism by complainants if requested to provide a Rule 9 statement.
- Individual politicians or advisors may wish to apply for Core Participant status.
- Most institutions which receive requests for Rule 9 statements should consider applying for CP status. Other individuals, such as whistle blowers of individual employees within institutions who may be said to have been culpable engage Rule 5(2) (c).
- Representatives should address whether a proposed Core Participant may be subject to criticism by other witnesses of core participants.

Rule 5 (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.*
- Note - A restriction order will continue in force indefinitely unless it is varied or revoked pursuant to section 20 of the Inquiries Act.

Designation of legal representatives

- Applications for Core Participant status under Rule 5 should be accompanied by an application for legal representation in cases where lawyers are acting.
- An Inquiry will usually deal with any application under Rules 6 and 7 of the Inquiry Rules 2006 at the same time as determining an application for Core Participant status.
- The Chair must designate a legal representative under Rule 6(1).

Rule 6

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.

Rule 7

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

Rule 7

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.

Applications for funding

- Upon designation directions will be given for receipt of applications for an award under section 40 (1) (b) of the Inquiries Act 2005 for expenses to be incurred in respect of legal representation at the public hearing.
- Often the Inquiry will direct that an application for an award should be filed by a particular date.
- Most Inquiries will have their own Cost Protocol on Legal Representation at Public Expense, which is usually accessible on the website.
- Funding provisions are dealt with at section 40 of the 2005 Act.
- Inquiries will often have their own costs protocols and may be subject to Minister's determinations under section 40(4).

Change of representatives

- In the event that a Core Participant's legal representative changes, the Inquiry will, upon notification, designate the new representative in accordance with rule 6(1).

Disclosure of documents

- Core Participants may be required to disclose documents.
- To be provided in unredacted form, except where Legal Professional Privilege or other legal bar to disclosure to the Inquiry is asserted.
- Inquiry will redact in accordance with DPA requirements and in accordance with any restriction order under section 19 of the Inquiries Act 2005.
- Inquiry will usually have a protocol on redaction of documents (such as IICSA), which is available on the Inquiry website.

Rule 10 applications

- **10.** (1) Subject to paragraphs (2) to (5), where a witness is giving oral evidence at an inquiry hearing, only counsel to the inquiry (or, if counsel has not been appointed, the solicitor to the inquiry) and the inquiry panel may ask questions of that witness.
- (2) Where a witness, whether a core participant or otherwise, has been questioned orally in the course of an inquiry hearing pursuant to paragraph (1), the chairman may direct that the recognised legal representative of that witness may ask the witness questions.
- (3) Where—
- (a) a witness other than a core participant has been questioned orally in the course of an inquiry hearing by counsel to the inquiry, or by the inquiry panel; and

Rule 10 applications

- (b) that witness's evidence directly relates to the evidence of another witness,
- the recognised legal representative of the witness to whom the evidence relates may apply to the chairman for permission to question the witness who has given oral evidence.
- (4) The recognised legal representative of a core participant may apply to the chairman for permission to ask questions of a witness giving oral evidence.
- (5) When making an application under paragraphs (3) or (4), the recognised legal representative must state—
 - (a) the issues in respect of which a witness is to be questioned; and
 - (b) whether the questioning will raise new issues or, if not, why the questioning should be permitted.

Rule 10 – practical steps

- Important part of the process for Core Participants.
- The proceedings are inquisitorial, so usually only CTI will be permitted to ask questions of witnesses.
- It is open for any core participant to apply for their own counsel to ask questions of a witness.
- In practice, if the applications are granted, the Chair will permit the question, but to be asked by CTI.
- It is important to focus on the mandatory requirements of Rule 10(5). The questions are often submitted on a pro forma sheet, which has separate columns relating to sections 5a and 5b.

Rule 10(5)

- **5a.** The issue must fall within the scope of the Inquiry or investigation
- Should relate to a matter on which the witness is likely to be able to answer.
- References to the witness statement should be provided.
- **5b.** If a new issue is raised, it is important to state why the question should be asked.
- Often section 5(b) will deal with issues that have been raised in the witness statement of a Core Participant, or in the opening submissions.
- If in scope the questioning should be allowed if relevant to an issue raised by a Core Participant.

Rule 10 applications. Cont'd

- If a list of topics for questioning has been circulated by CTI in advance of calling the witness, the Rule 10 question should not duplicate a question or an issue that is to be raised by CTI in any event.
- Often an Inquiry will require the Rule 10 application to be submitted 5 days in advance of the scheduled date for witness to give evidence.
- Applications which do not comply with that requirement are likely to be considered where based on material that is disclosed within the time limit.

Section 40

- 40 Expenses of witnesses
 - (1) The chairman may award reasonable amounts to a person—
 - (a) by way of compensation for loss of time, or
 - (b) in respect of expenses properly incurred, or to be incurred, in attending, or otherwise in relation to, the inquiry.
 - (2) The power to make an award under this section includes power, where the chairman considers it appropriate, to award amounts in respect of legal representation.

Section 40

(3) A person is eligible for an award under this section only if he is—

(a) a person attending the inquiry to give evidence or to produce any document or other thing, or

(b) a person who, in the opinion of the chairman, has such a particular interest in the proceedings or outcome of the inquiry as to justify such an award.

(4) The power to make an award under this section is subject to such conditions or qualifications as may be determined by the Minister and notified by him to the chairman.

Thank you for listening

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