



## **CHAIR'S STATEMENT OF INTENT ON CORE PARTICIPANT STATUS**

### **Introduction**

1. It is a basic principle that participation in the Inquiry does not depend on being a “core participant” as defined in the Inquiry Rules 2006. Every person who is infected or affected has an account that will add to the Inquiry’s store of knowledge. This means that the personal accounts and experiences of those infected or affected who are not “core participants” are of no less value in the eyes of the Inquiry, than those of a person who is a core participant. Being a core participant does not mean that person’s evidence is of greater value.
2. The Inquiry team will, however, engage with core participants on matters of practice and procedure which they will help to shape, and indeed will expect core participants to further the working of the Inquiry on an ongoing basis in ways that go beyond what it will ask of those who are not. Core participants have a role that involves more than giving an account of their personal experiences and views and offering up their own documents.

### **The Legislative Framework**

3. Under Rule 5 of the Inquiry Rules, I 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. I must consider certain factors in deciding whether to designate a person as a core participant.
4. In deciding whether to designate a person as a core participant, the Rules say that I must:

“...in particular consider whether –

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- (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.”

(Rule 5(2))

5. In each of (a), (b) and (c) a keyword is “significant”. This is an emphatic word: not everyone who played a role, nor everyone who is interested in the Inquiry or parts of it, is included, and the effect of Rule 5(2)(a) - (c) is that the significant nature of the role, interest or criticism indicates the difference between being a “participant” in an inquiry and a “core participant”. Not all who may have an interest in the conclusions of the Inquiry will necessarily fall within Rule 5(2)(a) - (c), or indeed will necessarily be core participants.
6. This rule does not exclude other considerations being taken into account, nor limit what those may be.
7. In applying these considerations I must also give effect to the obligations on me under the Inquiries Act 2005. Thus, I must act “...with fairness and with regard also to the need to avoid any unnecessary cost (whether to public funds or to witnesses or others)” (section 17(3)).

### **Application of these principles in this Inquiry**

#### **(a) Persons infected and affected**

8. It might, understandably, be said that anyone who was infected with Hepatitis C or HIV, or who was affected by being close to a person who was infected, such as those who cared for a person who was infected, suffer the effects of their loss of career or income, or mourn for their death, may have played a role (Rule 5(2)(a)) and almost certainly has an

interest in important aspects of the matters to which the Inquiry relates (Rule 5(2)(b)).

9. However, the Inquiry I chair throws up challenges of scale which few other public inquiries have faced. Many thousands of people have been infected with Hepatitis C and HIV, and they and their families have been seriously affected as a result. There are also potentially significant numbers of people who are infected but do not yet know. The number of people who could potentially be designated as core participants is huge.
10. It would make for an unwieldy inquiry if every one of the several thousand people infected or affected were to be granted core participant status, and this could easily lead to the Inquiry being unmanageable and thereby defeat its purpose.
11. I must have regard to justice, which involves not merely getting to the right answers, but doing so with reasonable speed and without excessive cost. Justice is best served by taking decisions as to core participant status which facilitate the better management of the Inquiry as a whole.
12. Applying these principles, and subject to any submissions I receive, I intend to approach applications by people who are infected or affected for the grant of core participant status as set out below.
13. Where individuals have openly and for some time campaigned for an inquiry, or where they have formed associations with others to discuss the issues and promote certain outcomes, they have demonstrated by those actions an interest in the workings of the Inquiry as well as how important the conclusions of the Inquiry are for them. In general, those individuals should be granted core participant status if they wish it.
14. A second group (which may include many of those mentioned in the last paragraph) consists of those many people who are infected or affected who, in association with others, have already instructed or authorised

firms of Solicitors to act for them. Four firms of Solicitors - Collins Solicitors, Leigh Day, Thompsons Solicitors Scotland, and Watkins & Gunn - have told the Inquiry that they act for people who have been infected and affected in significant number. Many if not all of their clients have played an active part in previous Inquiries or associate litigation, so as to accumulate a deep reservoir of knowledge, experience and expertise in respect of the issues the Inquiry faces. This demonstrates in respect of the clients of the four named firms collectively a significant interest in the subject matter of the Inquiry, the issues which the Inquiry will be investigating and the way in which it will undertake its work.

15. I bear very much in mind that it will not be feasible for the Inquiry to examine the individual cases of every person who is infected or affected, but rather that it will seek to draw conclusions from their collective experiences. By joining together with others, those represented by the four named firms of Solicitors have indicated a common interest which taken together as a whole is significant, and all the stronger for being held in common. Accordingly, where individuals already meet the central considerations of Rule 5(2)(a) or (b), these actions evidencing shared interest in the issues the Inquiry will investigate in general justify granting such individuals core participant status if they apply for it.
16. The actions of individuals referred to at paragraphs 13 - 15 above, as well as demonstrating a significant interest in the matters to be examined by the Inquiry, give objective criteria by which to support a conclusion that these individuals should be made core participants.
17. I have taken into account the further considerations which I set out below, which together with the above, as well as separately, lead me to the provisional conclusion that in general those who have already instructed any of the four named firms of Solicitors, for the purposes identified above, should be granted core participant status if they apply for it.

18. The further considerations are these:

(a) Recognising only a few clients of those firms as core participants, whilst others are not, may lead to difficulties for those firms and individuals in ensuring that where (for instance) disclosure is made available to core participants on a confidential basis but not more widely for the time being, it is kept limited to those with core participant status. These and similar difficulties, which might cause additional cost, are largely avoided by all existing clients having core participant status;

(b) This approach avoids the time needed for me to consider multiple separate applications, each separately argued in detail and requiring separate determination, which would be the case if (say) 500 clients of Solicitor X each sought to be designated as a core participant, with a real risk that fine distinctions which might have the effect of allowing one application whilst refusing another might not easily be understood by those who as a result were refused, leading to complaint which would divert the Inquiry's time and resource from its central task of addressing the Terms of Reference.

19. In setting out my provisional views about those who should be designated core participants, I am not excluding from further consideration those who do not fall into these categories, those who are clients of legal representatives other than the four named firms, or those who are unrepresented. Other applications for core participant status will be determined by applying the factors detailed above, starting with those in Rule 5(2) and including the additional matters I have set out and taking into account in particular the extent to which individuals can show that their involvement as core participants would add further to achieving the aims of the Inquiry, and I will of course take into account any additional feature particular to an individual case which that individual wishes to raise in his or her application.

20. It is important to emphasise again that it is not necessary for every person who is infected or affected who wishes to engage with the Inquiry to be designated as a core participant. The interests and experiences of persons who are infected and affected, whether core participants or not, will be a central focus of the Inquiry's work: all such people will be able to provide evidence to the Inquiry and follow its work through regular updates on the Inquiry's website; regular engagement meetings with people who are infected and affected will be held throughout the Inquiry, irrespective of core participant status; access to information will not be restricted to core participants; and transcripts of Inquiry hearings and other evidence that it obtains will be available on the website.

21. It should not be assumed that being granted core participant status automatically confers a right to receive funding for legal representation or for legal representation of the individual's choice. I have in mind section 17 of the Inquiries Act and Rules 6 and 7 of the Inquiry Rules, which are aimed at core participants sharing a common interest being represented by the same legal representative, such that it might be an unreasonable expenditure of public funds for separate representation to be funded by the Inquiry. Further, in determining whether to make an award I am obliged by Rule 21 to consider whether making an award is in the public interest. Though all depends upon the particular circumstances of any applicant, where it appears to me that the individual has no conflict with others represented by at least one of the firms some or all of whose clients have been granted core participant status (or is not one of a substantial group which chooses to instruct another representative to act for all of that group), I am likely to be less inclined to award public funds to pay for the other representation chosen and more likely to give a direction under Rule 7(2). This is for the following reasons in particular:

- (a) The rules recognise that where many core participants may have similar interests in the outcome of the inquiry, and rely on similar

facts, it is desirable that they have the same legal representation (Rule 7) – the Inquiry will be run more efficiently with a small number of legal representatives representing common interests;

(b) It is less costly for many with the same general interest to be represented by the same representatives; indeed, they may effectively be better represented than where they instruct a solicitor to act for them alone, for the economies of scale are such that the instruction of senior counsel (QC) and junior counsel may be justified in the former case where it would not be justified in the latter; and

(c) The four Solicitors firms I have identified have already done much work, funded from other sources or conducted pro bono, which means that it will cost them less to become familiar with the facts and issues than it would cost a freshly instructed firm and makes timescales more achievable without any unfairness.

22. To help individuals who may consider in the light of the above that sharing legal representation with others who have already been granted core participant status would assist their own applications, a list of those firms who have amongst their clients at least some core participants will be put on the Inquiry website and regularly updated.

23. Core participant status will not be conferred unless applied for. This is to respect the right of any individual to make his or her own choice as to whether they wish to be a core participant, a right reflected in the wording of Rule 5(1). To facilitate this in the case of any person who is a client of any of the four named firms mentioned above, that Solicitor need only supply a signed and dated confirmation of the instruction of that firm, and a short description of how that client has been infected or affected, and tell the Inquiry that, on instruction, the client who signed that form wishes to be a core participant. To this end, a schedule of names and details supplied electronically, together with copies of the

signed and dated forms of confirmation, will suffice. Other applications from people who are infected or affected, including those who fall within paragraph 13 above, should be made in accordance with paragraphs [17 and 19] of Infected Blood Inquiry Statement of Approach - Core Participant Status.

*(b) Those subject to potential criticism*

24. Core participant status will be considered for those to whom Rule 5(2)(a) or Rule 5(2)(c) applies, though in the latter case it must not be assumed that core participant status will be granted. The Inquiry will have regard to all relevant circumstances including (a) the number and nature of individual criticisms likely to be made, (b) the opportunities to answer them available through the Inquiry process, (c) whether the person criticised has a commonality of interest with others, and (d) the fact that a broad overview of what was happening at particular times may be of much greater assistance to the Inquiry in addressing its Terms of Reference than the determination of some individual complaints. Where groups of individuals share a particular viewpoint and have grouped together to express it, then on a basis similar to that adopted for people who are infected or affected, I may be more inclined to award such status. If granted, it cannot be assumed that funding for representation will follow.

*(c) Other applicants with particular interest*

25. Applications from those who because of their work or particular professional interest come within Rule 5(2)(b) will be considered on their individual merits, in particular considering the extent to which the individual can show that their involvement would add further to achieving the aims of the Inquiry.

This Statement of Intent should be read together with the Statements of Approach adopted by the Inquiry.