



**NOTICE OF DETERMINATION**  
**CORE PARTICIPANT APPLICATION**  
**MODULE 2C - DECLAN KEARNEY MLA**

**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 31 August 2022, the Inquiry opened Module 2C 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 23 September 2022.
2. The [Provisional Outline of Scope](#) for Module 2C provides that this module will examine the decision-making by the government in Northern Ireland during the Coronavirus pandemic. Further modules will be announced and opened in due course, to address other aspects of the Inquiry's Terms of Reference.
3. On 23 September 2022 the Inquiry received an application from Declan Kearney MLA (the "**Applicant**") for Core Participant status in Module 2C.
4. I made a provisional decision not to designate the Applicant as a Core Participant in Module 2C, thereby provisionally declining the Applicant's application, on 13 October 2022. The Applicant was provided with an opportunity to renew the application in writing by 12pm on 20 October 2022.
5. On 21 October 2022, the Applicant submitted a renewed application for Core Participant status in Module 2C. This renewed application was not filed in time but I have nonetheless considered it given that it was made on the day that the deadline expired and that the Inquiry could, on this occasion, accommodate it being made late.

This notice sets out my determination of the Applicant's application for Core Participant status in Module 2C.

## **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 2C.

8. I have taken into account all of the information which the Applicant has relied upon. The fact that I have not, in making this determination, referred to every matter which is set out in the application does not mean that I have not considered it. The summary below is intended to capture what appear to be the most important points made in support of the application.

## **Summary of Application**

9. The Applicant's original application stated that he was the Junior Minister to the deputy First Minister within the Executive Office from 11 January 2020. The application did not provide much information as to the Applicant's role or what he was responsible for in the response to the Pandemic.
  
10. In his renewed application, the Applicant provides much greater detail as to his role. In summary he submits that:
  - A. As the Junior Minister to the deputy First Minister he was involved in the key decisions taken by The Executive Office. His role went beyond contributing to the high level response, rather he had a direct and significant role in the core political and administrative decisions.
  - B. At the request of the deputy First Minister he was responsible for: "input into Civil Contingencies", leading on sectoral engagements and leading on political engagements with the Westminster government and the Welsh and Scottish governments.
  - C. His specific roles included *supporting* the deputy First Minister at Executive Meetings and *playing a key role* in the pre-Executive Meeting process with the deputy First Minister, the Minister for Health, the Chief Medical Officer and the Chief Scientific Adviser.
  - D. He brought the COVID Regulations to the floor of the Assembly.
  - E. He attended the Civil Contingencies meeting when key public bodies monitored the emerging situation and escalated issues when required.
  - F. He was involved in the creation of an advisory forum chaired by the Labour Relations Agency, which included representation from the Trade Unions, business and manufacturing sectors to manage the safe and orderly shut-down and re-opening of workplaces.
  - G. He hosted meetings with representatives of the hospitality, leisure and retail sectors to inform ministerial decision-making for introducing mitigation measures.
  - H. He engaged with the Universities to help them in managing their student population.
  - I. He engaged with enforcement agencies such as the PSNI and Local Councils.
  - J. He engaged with the Faith communities and sporting codes.

- K. He led on political and sectoral engagement in the North West (when the COVID indicators were higher than the regional average).
  - L. He engaged weekly with the Chancellor of the Duchy of Lancaster Michael Gove and senior Ministers from the Scottish and Welsh administrations.
  - M. He had a key role in processing and formulating the detail that shaped the decisions of the deputy First Minister on key Executive decisions.
  - N. He also had a communications role, on behalf of the deputy First Minister, in setting out the rationale and the context for Executive decision-making.
  - O. He was one of the main public faces for explaining the nature, scope and necessity of many important steps the Executive took during the pandemic.
11. The Applicant also relies upon his having published a newspaper article in April 2020 which was critical of the UK government response. The Applicant further explains that it is possible that he will be subject to explicit or significant criticism during the Inquiry proceedings or in the report, or in any interim report.
12. The Applicant acknowledges that it is relevant that the former First Ministers and deputy First Minister have sought and will be granted Core Participant status however the Applicant states that the designation of former deputy First Minister, Michelle O'Neill, as a Core Participant is not adequate and that it would be fair to grant that status to the Applicant.

### **Decision for the Applicant**

13. I have considered with great care everything that is said in the Applicant's renewed application. I have also reminded myself of what was said in the original application to enable me to assess the merits of the application for Core Participant status as a whole. Having done so, in my discretion, I consider that the Applicant does not meet the criteria set out in Rule 5 for designation as a Core Participant in Module 2C and, therefore, I have decided to not to designate the Applicant as a Core Participant in Module 2C.
14. I am grateful to the Applicant for providing much more information about the role which he played during the Pandemic. When I refused the initial application it was on the basis that the application did not explain the role of the Junior Minister within the

Executive Office; what his specific areas of responsibility were during the Covid-19 pandemic and did not identify any particular decisions for which he was responsible, in relation to the key decision making in response to the Covid-19 Pandemic. It appeared to me that having regard to the criteria set out in Rule 5 of the Inquiry Rules 2006, whilst the Applicant, as a Junior Minister, may have had a role in the high level response to the Covid-19 Pandemic there was no information upon which I could conclude that it was a direct or significant role in the core political and administrative decision-making (Rule 5(2) (a)). I noted in that regard that I did not have any information about decisions for which he had specific responsibility. I also pointed out that it was relevant in this regard that the former First Ministers and the deputy First Minister had sought and would be granted Core Participant status and would therefore be able to account for those decisions made by them or on their behalf within the Executive Office.

15. The further information provided enables me to conclude, for the purposes of Rule 5(2)(a) and (b) that the Applicant played a direct and significant role in relation to the matters to which the Inquiry relates and that he has a significant interest in a principal issue which Module 2C will consider, namely the key decisions made by the government in Northern Ireland in response to the pandemic. Nonetheless, in my discretion, I have refused the application for the following reasons.
  
16. **First**, the application is made on the basis that it was the role of the Junior Minister to support the deputy First Minister in her decision-making. It is not suggested that the Applicant was ultimately responsible for any of the key decisions made, for example the decisions related to non-pharmaceutical interventions. The Applicant states that he played a key role in the pre-Executive Meeting process with the deputy First Minister, the Minister for Health, the Chief Medical Officer and the Chief Scientific Adviser but that does not demonstrate responsibility for the key decisions made at Executive Meetings or responsibility for how the deputy First Minister (for example) framed issues at the meetings. Similarly, that he was responsible for bringing the Covid Regulations to the floor of the Assembly does not demonstrate that the Applicant was responsible for their content or responsible for how the Assembly responded to those regulations. That he was the public face of communications does not demonstrate that he had overall responsibility for the communications strategy of

the government of Northern Ireland or controlled the content of government communications about the response to the pandemic.

17. Without going through each part of his role upon which the Applicant relies, it appears to remain the position that the First Minister and the deputy First Minister were ultimately responsible for the decisions made at the highest level of government in Northern Ireland, whether in conjunction with the executive committee or not. Whilst both may have relied upon their respective Junior Minister to support them in making decisions and delegated certain tasks to them as part of the response, that does not, on the basis of what the Applicant has told me, alter the position as regards their ultimate responsibility.
18. It appears to me that the Applicant might be able to give valuable evidence about the response to the Pandemic in Northern Ireland and that, for example, he may be particularly well placed to give evidence about co-operation or co-ordination with other devolved nations and/or the United Kingdom Government. However his ability to provide such evidence does not necessitate his being a Core Participant.
19. **Second**, his application does not explain why the granting of Core Participant status to the deputy First Minister is not adequate or why fairness requires a separate grant to the Applicant. The reason why those who held the office of First Minister and deputy First Minister have been granted Core Participant status is because I recognise that they are in a distinct position because of the ultimate responsibilities which they bore for the response in Northern Ireland to the Pandemic. I accept that fairness requires that they be Core Participants. That reasoning does not apply to those who held the office of Junior Minister.
20. **Third**, I have also considered the Applicant's suggestion that he might be criticised (per Rule 5(2)(c)). However, the same reasoning applies. If the First Minister and the deputy First Minister (whether in conjunction with the Executive Committee or not) bear the ultimate responsibility for the decisions which they made, then criticism might be ultimately be directed at them, rather than their junior ministers. The Applicant advanced no separate or specific basis upon which he might be criticised. Put another way he has not, for example, identified any specific key decision for which he was responsible and which might attract criticism.

21. 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. In my judgment, the overarching aims of the Inquiry would not be furthered by making the Applicant a Core Participant in Module 2C.
22. For all of those reasons, having considered all of the information provided by the Applicant, in light of the Provisional Outline of Scope for Module 2C, I consider that whilst the Applicant did play a direct and significant role in relation to the matters sought to be investigated in Module 2C, and has a significant interest in an important aspect of the matters to which Module 2C relates, he should not (as a matter of discretion) be designated as a Core Participant in Module 2C. I confirm that this is my final decision.
23. I will keep the scope of Module 2C and the designation of Core Participants under review. Should the Inquiry identify any matter which materially affects this decision (for example evidence emerges which demonstrates that the Applicant might be subject to criticism), or otherwise considers it is appropriate, it may invite the Applicant to review his status as a Core Participant. The Core Participant Protocol, paragraph 12, explains that *"If at any stage during the course of the Inquiry the Chair considers it appropriate to do so, she may invite such individuals or institutions to become Core Participants. It will be a matter for each individual or institution as to whether they wish to be designated as a Core Participant."* 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**  
**25 October 2022**