



NOTICE OF DETERMINATION
CORE PARTICIPANT APPLICATION
MODULE 3 - DEPARTMENT OF HEALTH IN NORTHERN IRELAND

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 8 November 2022, the Inquiry opened Module 3 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 5 December 2022.
2. The Inquiry has published the [Provisional Outline of Scope](#) for Module 3, which states that this Module will consider the impact of the Covid-19 pandemic on healthcare systems in England, Wales, Scotland and Northern Ireland. Further Modules will be announced and opened in due course, to address other aspects of the Inquiry's Terms of Reference.
3. On 5 December 2022 the Inquiry received an application from the Department of Health in Northern Ireland ("the Applicant") for Core Participant status in Module 3. This Notice sets out my determination of the application.

Application

4. 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.*

5. In accordance with the approach set out in my Opening Statement and the Inquiry's [Core Participant Protocol](#), I 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 3.

Summary of Application

6. The Applicant describes itself as having statutory responsibility to promote an integrated system of health and social care in Northern Ireland. The application sets out that under previous legislation there was a single Health and Social Care Board ("HSCB") working with the Public Health Agency to commission services. However, the HSCB was dissolved on 1 April 2022 and its legislative functions (in the main) were transferred to the Applicant. The application explains that these structures are unique to Northern Ireland and also that Northern Ireland's system of local government is distinct from England, Wales and Scotland where social services remain the responsibility of 'Local Authorities'.
7. The application sets out the criteria in Rules 5(2)(a), (b) and (c) the Inquiry Rules 2006 and states that the Applicant should be granted Core Participant status in Module 3 because its active involvement would assist the Inquiry in fulfilling its Terms of Reference. It further states that the Applicant had responsibility for the policy response to the Covid-19 pandemic in a range of areas, including: realignment of delivery of Health and Social Care ("HSC") primary and secondary care services; critical and respiratory care surge planning; the HSC workforce; critical care capacity; Nightingale hospitals; private hospitals; the establishment of Covid-19 centres; mental health services; dental and ophthalmic services; and guidance for various professional

groups. The Applicant is also described as having had responsibility in the area of public health policy responses to the pandemic, including PPE and visiting arrangements. The application lists a number of other areas relevant to the matters set out in the Provisional Outline of Scope for Module 3 as being under the Applicant's responsibility. The application also identifies matters in which the Applicant is said to have played a significant role including providing public information, rationale for non-pharmaceutical interventions (NPIs), shielding and the impact on the clinically vulnerable. The Applicant is said to have engaged with a range of stakeholders to ensure that effective measures were in place within Northern Ireland, and that people were properly informed about the risks to the public arising from the Covid-19 pandemic.

8. The Applicant asserts that Core Participant status should be granted given the significance of its overarching role, and its direct and significant role in relation to responding to and managing the Covid-19 pandemic. It states that it was involved in key decisions relating to healthcare systems in Northern Ireland, and that it has a substantial interest in this area and will continue to do so.

Decision for the Applicant

9. I have considered with great care everything that is said in the application. Having done so, I have decided to designate the Applicant as a Core Participant in Module 3.
10. Module 3 will consider the impact of the Covid-19 pandemic on healthcare systems in England, Wales, Scotland and Northern Ireland. This will include consideration of the healthcare consequences of how the governments and the public responded to the pandemic. It will examine the capacity of healthcare systems to respond to a pandemic and how this evolved during the Covid-19 pandemic. It will consider the primary, secondary and tertiary healthcare sectors and services and people's experience of healthcare during the pandemic, including through illustrative accounts. It will also examine healthcare-related inequalities (such as in relation to death rates, PPE and oximeters), with further detailed consideration in a separate designated Module.

11. I consider that the Applicant played, or may have played, a direct and significant role in relation to healthcare systems in Northern Ireland during the Covid-19 pandemic and that it has a significant interest in important matters to which the Inquiry relates. This is due to the Applicant's responsibility for the policy response to the pandemic and its involvement in key decisions regarding a number of issues relating to Module 3, such as realignment of delivery of HSC primary and secondary care services, critical and respiratory care surge planning and HSC staffing.

Legal Representation

12. Applications for designation as the Recognised Legal Representative of a Core Participant are governed by Rules 6 and 7 of the Inquiry Rules 2006, which provide:

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.

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 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.

13. I am satisfied that the Applicant has appointed Sara Erwin of the Department Solicitor's Office as its qualified lawyer in relation to this Module. I therefore designate

Sara Erwin as the Applicant's recognised legal representative in accordance with Rule 6(1).

14. Directions will be given in relation to applications for an award under section 40(1)(b) of the Inquiries Act 2005 of expenses to be incurred in respect of legal representation, at the forthcoming preliminary hearing. I will determine any such applications in accordance with the provisions of section 40 of the Inquiries Act 2005, the Inquiry Rules 2006, the [Prime Minister's determination](#) under section 40(4) and the [Inquiry's Costs Protocol](#).

Rt Hon Baroness Heather Hallett DBE

Chair of the UK Covid-19 Inquiry

16 January 2023