



NOTICE OF DETERMINATION
CORE PARTICIPANT APPLICATION
MODULE 2B - CHILDREN'S COMMISSIONER FOR WALES

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 2B 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. On 23 September 2022 the Inquiry received an application from the Children's Commissioner for Wales ("the Applicant") for Core Participant status in Module 2B. This Notice sets out my determination of the application.
3. The Inquiry has published the Provisional Outline of Scope for Module 2B, which states that this module will examine the decision-making by the Welsh Government 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.

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 2B.

Summary of Application

6. The application states that the Applicant has the primary aim and overriding objective to safeguard and promote the rights and welfare of children. The Applicant's remit covers all areas of the devolved powers of the Senedd that affect children's rights and welfare. The application outlines the Applicant's involvement in influencing, scrutinising and holding to account Welsh Government and public services devoted to Wales during the pandemic. It also details the research conducted by the Applicant during the pandemic and sets out the other steps the Applicant took to support children and young people.
7. The application is made on the basis that the Applicant, in acting as described above, played a direct and significant role in relation to matters to which Module 2B relates, and so satisfies Rule 5(2)(a). It states that the Applicant has a significant interest in an important aspect of matters to which the Inquiry relates, namely the rights and welfare of children, for the purposes of satisfying Rule 5(2)(b). The application also states that the Applicant may be subject to explicit or significant criticism during the Inquiry proceedings or in the report, or in any interim report for the purpose of satisfying Rule 5(2)(c) as the Applicant accepts that they may be subject to criticism during the Inquiry

proceedings by virtue of the nature of their office and the very challenging circumstances of the pandemic.

Decision for the Applicant

8. The Core Participant Protocol provides that while I am bound to consider the factors set out in Rule 5(2), it is also open to me to take into account other relevant matters and I am also not obliged to designate a person or organisation that meets the criteria set out in Rule 5 of the Inquiry Rules as a Core Participant. It further explains that the designation of Core Participant status to groups representing the interests of more than one person would assist the fair and efficient running of the Inquiry. I additionally have regard to my duty to act with fairness and with regard to the need to avoid any unnecessary cost to public funds.
9. I have considered with great care everything that is said in the application. Having done so, I am minded, in my discretion, to designate the Applicant as a Core Participant in Module 2B. For a number of reasons I consider that the Applicant is best placed to assist the Inquiry to achieve its aims by representing the collective interests of a broad spectrum of those impacted by decision-making in Wales, having regard to the need to manage the Inquiry effectively and efficiently. This is because the Applicant can assist the Inquiry in understanding the perspective of children in Wales and their families, without considering in detail any individual cases of harm or death.

Legal Representation

10. 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.

11. We note in your application that you have requested an extension of time to select legal representation prior to formal designation of your Recognised Legal Representative. Please confirm **by 12pm on Thursday 20 October 2022** the outcome of this selection process.

12. 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' Costs Protocol](#).

Rt Hon Baroness Heather Hallett DBE

Chair of the UK Covid-19 Inquiry

13 October 2022