



NOTICE OF DETERMINATION
CORE PARTICIPANT APPLICATION
MODULE 3 - THE COMMISSIONER FOR OLDER PEOPLE 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 Commissioner for Older People in Northern Ireland ("the Applicant") for Core Participant status in Module 3.
4. I made a provisional decision dated 16 January 2023 not to designate the Applicant as a Core Participant in Module 3, thereby declining his application ("the Provisional Decision"). The Applicant was provided with an opportunity to renew the application in writing by 4pm on 23 January 2023.
5. The Applicant did not renew the application by the prescribed deadline. Accordingly, this Notice sets out my final decision on the application.

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 3.

Summary of Application

8. The application sets out the Applicant's statutory aim of safeguarding and promoting the interests of older people in Northern Ireland. It is said that, as at March 2021, people over 60 accounted for some 23% of Northern Ireland's population. The Applicant describes how throughout the Covid-19 pandemic he participated in and made recommendations at frequent "pandemic response meetings" with the Department of Health, the Public Health Agency and the Regulation and Quality Improvement Authority. The Applicant is also said to have provided written submissions to the Northern Ireland Assembly Health Committee Inquiry in which the Applicant highlighted his serious concerns about hospital discharge policies and what is described as the catastrophic impact of these on care homes. The application states

that the Applicant issued statements during the pandemic about matters said to be relevant to Module 3, including the impact of lockdown on the older population, lack of sufficient PPE in care homes, ageist decisions taken by medical professionals regarding the entitlement to ventilators, the impact of ageist practices relating to DNACPRs, failures to record care home deaths and the need for recording this, roll out of the vaccination programmes for older people, the number of deaths in care home settings compared to the community, particularly when compared to other areas of the UK, the importance of wearing face coverings to protect older people and deaths in care homes following the discharge of hospital patients.

9. The Applicant states he had a direct and significant role in highlighting the importance of shielding to protect older people as well as the social and emotional impact it had on many older people, who were more likely to fall within the “extremely vulnerable” category (Rule 5(2)(a)). The application states that the Applicant’s constituents are uniquely vulnerable to experiencing loneliness and to feeling more significant physical impacts of being required to shield. The application also states that the Applicant was vocal on policies on visiting those in care homes. According to the Applicant, his statutory duties to safeguard and promote the interests of older people result in him having a unique perspective to offer on the Terms of Reference, which is focused on the experience of older persons in the Northern Ireland regulatory and operational context. The Applicant says he has a significant interest in having his perspective and views factored into the Inquiry as he has statutory duties to safeguard and promote the interests of older people in Northern Ireland and he considers that the lessons to be learnt from the pandemic and the implementation of recommendations will be key to the future safeguarding of older people in the event of a future health crisis (Rule 5(2)(b)).

Decision for the Applicant

10. I have considered with great care everything that is said in the application. Having done so, I consider that the Applicant does not meet the criteria set out in Rule 5 for designation as a Core Participant in Module 3 and, therefore, I have decided not to designate the Applicant as a Core Participant in Module 3.

11. 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 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.
12. The application is put on the basis that the Applicant played a direct and significant role in the matters to which Module 3 relates (Rule 5(2)(a)) and has a significant interest in an important aspect of those matters (Rule 5(2)(b)).
13. I do not consider the Applicant played a direct and significant role in the matters to which Module 3 relates. While I recognise the important work the Applicant is said to have done and the expertise which the Applicant can offer, I do not consider that the Applicant meets the criteria within Rule 5(2)(a) for the purposes of Module 3. This is because the Applicant's role in safeguarding and promoting the interests of older people in Northern Ireland is one step removed from the operation of healthcare systems overall. The Applicant is said to have advocated on issues affecting older people and made recommendations to the responsible decision-making bodies (such as the Department of Health Northern Ireland, which has been granted Core Participant status in Module 3) throughout the Covid-19 pandemic. I note that the Applicant has been granted Core Participant status in Module 2C on the basis of its direct and significant role in the decision-making of the government in Northern Ireland. However, I do not consider that the Applicant's role in the matters to which Module 3 relates was a direct and significant one and so Rule 5(2)(a) is not met. Equally, while the Applicant can be said to have an interest in healthcare systems and the treatment of older people in Northern Ireland, the application does not demonstrate that the interest was "significant" within the meaning of Rule 5(2)(b) and in the context of Module 3.
14. Even if that were not the case, in the exercise of my discretion, and having regard in particular to the need to manage the Inquiry effectively and efficiently, I would still

decline to designate the Applicant as a Core Participant in Module 3. 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. Given the vast numbers of people who were involved with, or adversely affected by, the Covid-19 pandemic, very many people and organisations in the UK could potentially have an interest in the Inquiry and not everyone can be granted Core Participant status for the purpose of the Inquiry hearings. I consider the issues raised by the Applicant in its application are either able to be dealt with by other applicants to whom Core Participant status has been granted in Module 3, or will be addressed in other Modules.

15. I also bear in mind that the Applicant has placed emphasis on the matters about which he would like to provide the Inquiry with evidence. However, it is not necessary for an individual or organisation to be a Core Participant in order to provide evidence to the Inquiry. It is likely that the Inquiry will in due course seek information from a range of individuals, organisations and bodies who may have information relevant to the issues raised in the Modules and, where appropriate, make requests for witness statements and documents.
16. 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 3, I have decided that the Applicant should not be designated as a Core Participant in Module 3 and I confirm that this is my final decision.
17. I will keep the scope of Module 3 under review. My decision not to designate the Applicant as a Core Participant in Module 3 does not preclude him from making any further applications in respect of any later modules. 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

14 February 2023