



NOTICE OF DETERMINATION
CORE PARTICIPANT APPLICATION
MODULE 3 - ARLENE FOSTER & PAUL GIVAN, FORMER FIRST MINISTERS

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 Arlene Foster ("the first Applicant") & Paul Givan ("the second Applicant"), former First Ministers (and together "the Applicants") for Core Participant status in Module 3.
4. I made a provisional decision dated 9 January 2023 not to designate the Applicants as Core Participants in Module 3, thereby declining their application ("the Provisional Decision"). The Applicants were provided with an opportunity to renew the application in writing by 4pm on 16 January 2023.
5. The Applicants 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 asserts that as First Ministers, the Applicants played a substantial role in government decision-making as it related to healthcare consequences. Due to the unique constitutional arrangements in place arising from the mandatory coalition, the Northern Ireland Executive Committee (“the Committee”), chaired consecutively by the first Applicant from 11 January 2020 to 14 June 2021 and the second Applicant from 17 June 2021 to 4 February 2022 along with the relevant deputy First Minister(s), took the majority of the decisions around healthcare and non-pharmaceutical interventions. It is also noted that amendments to legislation meant that decisions did not need to be brought to the Committee unless they affected the decision-making of one or more other Ministers more than incidentally and that some decisions will have been taken

by the Applicants jointly with the deputy First Minister outside the Committee in their capacity as leaders of the Northern Ireland Government.

9. The Applicants state that they each had a significant role in decision-making and are therefore at risk of criticism in relation to the impact of the Government response (Rule 5(2)(c)).
10. The Applicants are said to have played a significant role in relation to the particular matters to which the Inquiry relates and the application lists their involvement under a number of the paragraphs in the Provisional Outline of Scope for Module 3 (Rule 5(2)(a)).
11. The application states that many of the core decisions affecting healthcare systems and the response to the Covid-19 pandemic were directly affected by funding considerations and the Applicants played a key role in acquiring additional funding from the HM Treasury. The Applicants state that this high-level decision making will have affected the impact of Covid-19 on people's experience of healthcare. The Applicants were also involved in decisions relating to whether and when to set up Nightingale hospitals and decommission them. They note that high-level decision making around funding affected staffing and resource levels which contributed to strategies regarding hospital discharge, availability of suitable community/nursing home care on discharge and the provision of appropriate healthcare for people without Covid-19. The application notes that funding and resourcing decisions impacted on healthcare staff at all levels and that the Northern Ireland Executive implemented changes to legislation around leave entitlements. Issues around sufficiency of testing, PPE and advice to the clinically vulnerable were all matters also considered at Northern Ireland Executive level.

Decision for the Applicant

12. I have considered with great care everything that is said in the Applicants' application. Having done so, I consider that the Applicants do 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 Applicants as a Core Participant in Module 3.

13. 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.
14. The application is based on the Applicants having played a direct and significant role in the matters to which Module 3 relates (Rule 5(2)(a)) and having a significant interest in an important aspect of those matters (Rule 5(2)(b)), and is also put on the basis that there is a possibility that they may be subject to explicit or significant criticism under Rule 5(2)(c).
15. I do not currently consider the Applicants played a direct and significant role in the matters to which Module 3 relates. Although the Applicants were responsible for high-level decision making as First Ministers, which will have impacted healthcare systems as well as all aspects of life in Northern Ireland during the pandemic, I do not consider that as individuals they played a direct and significant role in the matters to which Module 3 relates (Rule 5(2)(a)) or that they have a significant interest in an important aspect of the matters to which the inquiry relates (Rule 5(2)(b)). Module 3 will consider core decision-making and leadership within healthcare systems and I consider the appropriate Core Participants in those areas to be the Northern Ireland Department of Health and the Public Health Authority of Northern Ireland. While the Applicants have explained that they had a particular role and close involvement in certain healthcare decisions, particularly regarding funding which would have impacted patients and staff within the healthcare system, this will be reflected in the examination of the decision-making of the Department of Health in Northern Ireland and Public Health Agency and its consequences.
16. Higher-level decision-making such as that for which the Applicants were responsible is the province of other Modules and it is noted that the Applicants are already Core Participants for Module 2C. For the reasons set out above, I consider that the

Applicants' interest does not amount to 'significant' interest in an important aspect of the matters to which Module 3 relates, thereby not satisfying Rule 5(2)(b).

17. While the Applicants state there may be the potential for them to be criticised, it is too early in the Inquiry for me to determine whether any criticism will be made, particularly whether it might amount to explicit or significant criticism and so Rule 5(2)(c) is not met at this stage. 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 decline to designate the Applicants as Core Participants. 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 in the UK could potentially have an interest in the Inquiry. Not everyone can be granted Core Participant status for the purposes of the Inquiry hearings.
18. The Applicants have placed significant emphasis on the matters about which they 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. The Applicants may be recipients of a request for information.
19. For all of those reasons, having considered all of the information provided by the Applicants in light of the Provisional Outline of Scope for Module 3, I have decided that the Applicants should not be designated as a Core Participant in Module 3 and I confirm that this is my final decision.
20. I will keep the scope of Module 3 under review. My decision not to designate the Applicants as Core Participants in Module 3 does not preclude them from making any further applications in respect of any later modules. I will consider any future applications the Applicants 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

16 February 2023