



**NOTICE OF DETERMINATION**  
**CORE PARTICIPANT APPLICATION**  
**MODULE 3 - AUSTIN W SMYTH, SEAN MCKAY AND ALAN ORME**

**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 Austin W Smyth, Sean McKay and Alan Orme ("the Applicants") for Core Participant status in Module 3.
4. I made a provisional decision dated 12 January 2023 not to designate the Applicants as Core Participants in Module 3, thereby declining Austin W Smyth, Sean McKay and Alan Orme's application ("the Provisional Decision"). The Applicants were provided with an opportunity to renew their application in writing by 4pm on 19 January 2023.
5. On 19 January 2023 the Applicants submitted a renewed application for Core Participant status in Module 3. This notice sets out my final determination of the Applicants' application for Core Participant status in Module 3.

## 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 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 Applicants are a team of specialists in statistics and financial and auditing skills. The Applicants state they are nearing completion of a comparative analysis of the performance of Northern Ireland's healthcare system over five years compared to the three other UK jurisdictions and the Republic of Ireland. The Applicants have identified a total of 66 performance indicators. The Applicants apply pursuant to Rule 5(2)(b) because they say they can provide an extensive analysis of the impact of Covid-19 on the health service in the UK with particular reference to Northern Ireland.

9. The Applicants' renewed application provides helpful further information regarding the analysis undertaken by the Applicants, which I have considered with care. In summary, the renewed application contains greater detail about the Applicant's comparative analysis and the reasons the work was commissioned.

### **Decision for the Applicant**

10. I have considered with great care everything that is said in the Applicants' 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, I remain of the view that the Applicants do not meet the criteria set out in Rule 5(2). I have therefore decided not to designate the Applicants as a Core Participant in Module 3.
11. I am grateful to the Applicants for taking care to set out more detail in their renewed application in relation to the nature and extent of their work over five years in undertaking a comparative analysis of the healthcare systems of Northern Ireland, England, and the Republic of Ireland. While the Applicants have plainly aggregated and analysed a considerable amount of data regarding the healthcare systems in these three countries, I remain of the view that this does not amount to a significant interest in the matters set out in the Provisional Outline of Scope for Module 3. I consider that the Applicants, as a team of specialists in statistics and financial and auditing skills, have an interest in the data assessed within their own reports and the analysis it provides of the subject matter rather than a significant interest in the subject matter itself.
12. I have taken into account the fact that there are a number of ways in which the Applicants can participate in Module 3 without being a Core Participant, many of which have been recognised as adequate alternatives to Core Participant status in a number of other recent statutory inquiries. As I noted in my Provisional Decision, it is not necessary for an individual or organisation to be a Core Participant in order to provide evidence to the Inquiry. The Applicants may have relevant information to give in relation to matters being examined in the Inquiry and, in due course, the Inquiry will seek information from a range of individuals, organisations and bodies to gain their perspective on the issues raised in the modules and, where appropriate, to ask for witness statements and documents.

13. More generally, I have every confidence in the independent legal team whom I have appointed specifically for the purpose of pursuing all legitimate lines of inquiry with the investigatory and analytical rigour that a statutory inquiry of this scale and importance demands.
14. Therefore, having considered all of the information the Applicants provided in light of the Provisional Outline of Scope for Module 3, I remain of the view that the Applicants do not have a significant interest in the matters for investigation in Module 3. I have therefore decided that the Applicants should not be designated as a Core Participant in Module 3 and I confirm that this is my final decision.
15. My decision not to designate the Applicants as a Core Participant in Module 3 does not preclude the Applicants 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**