



**NOTICE OF DETERMINATION**  
**CORE PARTICIPANT APPLICATION**  
**MODULE 3 - THE COMMISSIONER FOR OLDER PEOPLE FOR 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 for 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 the application ("the Provisional Decision"). The Applicant was provided with an opportunity to renew the application in writing by 4pm on 23 January 2023 ("the renewal deadline"). The application was not renewed by this prescribed deadline and accordingly I issued a Notice of Determination on 14 February 2023 ("the original Determination") finalising the Provisional Decision and formally declining the application for Core Participant status.

5. On 23 March 2023, five weeks after the issuing of the original Determination and eight weeks after the renewal deadline, the Applicant submitted a renewed application for Core Participant status in Module 3 dated 21 March 2023 (“the renewed 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 Applicant has provided an acceptable explanation as to why he did not submit his renewed application within the prescribed timeframe and whether the renewed 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 original application dated 5 December 2022 set out the Applicant’s statutory aim of safeguarding and promoting the interests of older people in Northern Ireland. The Applicant described 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.

9. The original application is put on the basis that the Applicant issued statements during the Covid-19 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 information, 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, and the importance of wearing face coverings to protect older people and deaths in care homes following the discharge of patients from hospitals. According to the Applicant, his statutory duties to safeguard and promote the interests of older people mean he has 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 is said to have 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.
10. The renewed application is centred on the observation that no organisation with Core Participant status for Module 3 is focused directly or exclusively on the interests of older people in Northern Ireland. The renewed application repeats the matters relied upon in the original application and lays emphasis upon a survey conducted by the Applicant in 2021 (some considerable time prior to the Applicant submitting the initial application for Core Participant status in Module 3) which showed that a majority of the older people surveyed in Northern Ireland were in favour of the Applicant participating in a Covid-19 public inquiry. The renewed application also states that during the Commissioner's routine discussions with older people and their families there was general agreement that he should be representing the interests of Northern Ireland older people at this Inquiry.

11. The renewed application does not explain why the application was not made by the renewal deadline. It states that the application was “not renewed based on the information available at the time...” Under the heading “Subsequent information” the renewed application states that the Applicant has now considered the list of Core Participants for Module 3, which was published on 23 February 2023 and the transcript of the first Preliminary Hearing for Module 3, which took place on 28 February 2023 and which was published on the Inquiry website on the same day. The renewed application further states that the Commissioner was prepared to accept the original Determination in the expectation that there would be other Core Participants who better complied with Rule 5(2) in relation to the older people of Northern Ireland, but the Commissioner’s review of the list of Core Participants in Module 3 suggests that this is not the case.

### **Decision for the Applicant**

*Whether the application should be considered out of time*

12. As is acknowledged in the renewed application, the deadline for the Applicant to renew his application for Core Participant Status to Module 3 was 23 January 2023, meaning that this application was received 59 days after the renewal deadline.
13. I remind myself that paragraph 10 of the Inquiry’s Core Participant protocol states: “...The Inquiry will not consider applications that are outside the timescales provided by the Inquiry, unless the applicant provides an acceptable explanation as to why they did not submit their application within the relevant timeframe.”
14. The aim of this Inquiry is to provide prompt and useful reports and recommendations. To achieve that aim, I must impose firm deadlines at different stages of the Inquiry. Compliance with those deadlines is important to ensure that the challenging timetable will be met. I also have to consider the need to be fair to all applicants who have made and/or renewed their applications for Core Participant status within the time period available and more generally that there is no unfair advantage obtained by those making a late application.
15. I therefore have first considered whether the Applicant has provided an acceptable explanation for the failure to comply with the renewal deadline.

16. I note that the renewed application was received 59 days after the renewal deadline. The period for the Applicant to renew his application was open from 16 January 2023 to 4pm on 23 January 2023 (“the renewal period”). The application was therefore received over eight weeks after the closure of the renewal period, which provided the Applicant with a week in which to renew.
17. There is no explanation of any specific issue(s) that prevented a renewed application for Core Participant status in Module 3 being made at an earlier stage. The renewed application refers to the wish of members of the Applicant’s constituency for the Applicant to participate in this Inquiry and present their experiences and represent their interests. However, this was known to the Applicant in 2021. The renewal application further suggests that it was not until the list of Core Participants in Module 3 was considered that the Applicant came to the view that no Core Participant was better placed to represent the interests of older people in Northern Ireland. Finally, the Applicant observes that upon perusal of the published transcript of the Module 3 Preliminary Hearing on 28 February 2023, there were very few references to older people specifically.
18. Module 3 will examine the response of healthcare systems to the Covid-19 pandemic and the impact of the pandemic upon healthcare systems. The Provisional Outline of Scope for Module 3, published on the Inquiry website on 8 November 2022 sets out a number of areas for investigation. The Applicant has had ample time therefore to consider those issues, decide if the interests of older people in Northern Ireland require specific representation and whether he is best placed to represent the interests of older people in Northern Ireland in this Module. Yet he failed to lodge a renewed application before the deadline expired. In my view, the Applicant has not provided an acceptable explanation for why the renewed application for Core Participant status is made out of time. This is not a situation where new evidence identified in the course of the Inquiry’s investigations has come to light or circumstances have changed so it is appropriate for an application to be made outside the renewal window.
19. Accordingly, I do not consider that the Applicant has provided an acceptable explanation as to why he did not submit the renewed application by the renewal

deadline. I therefore decline to consider the renewed application for Core Participant status at this time.

20. I also bear in mind that the fact that an applicant has been refused Core Participant status does not bar them from applying or being granted Core Participant status in a later module or from providing relevant evidence to the Inquiry.

21. For completeness, I will also go on to provide my conclusion on whether the Applicant should have been granted Core Participant status in Module 3, had the renewed application been received by the renewal deadline.

### ***The substance of the Application***

22. I have considered with great care everything that is said in the Applicant's 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, as well as my reasons for declining the application on 14 February 2023. However, having done so, I remain of the view that the Applicant does not meet the criteria set out in Rule 5(2) for designation as a Core Participant in Module 3. I therefore confirm my decision not to designate the Applicant as a Core Participant in Module 3.

23. The Applicant sets out some further detail in the renewed application. In particular, I note that the renewed application states that the Applicant "*was prepared to accept the Determination in the expectation that there would be other Core Participants who better complied with Rule 5(2) in relation to the older people of Northern Ireland*".

24. In my original Determination, I stated that I did not consider that the Applicant had a significant interest in Module 3. I remain of that view. While I recognise the important work the Applicant is said to have done and the expertise which the Applicant can offer, I still 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. I note that the Applicant has been granted Core Participant status in Module 2C on the basis of his direct and significant role in the decision-making of the government in Northern Ireland during the Covid-19

pandemic. 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 in this instance. While the Applicant can be said to have a broad interest in healthcare systems relating to the treatment of older people in Northern Ireland, the application does not demonstrate that the interest is a "significant" interest in an important aspect of the matters to be examined by the Inquiry in the context of Module 3 and so Rule 5(2)(b) is not met. As I explained at the First Preliminary Hearing for Module 3, there will be a later module or modules examining the impact of Covid-19 and inequalities in relation to different sections of society.

25. The Applicant lays emphasis on the fact that none of the Core Participant groups can be said to focus specifically on the interests of older people in Northern Ireland. However, it is important to note that the original application was not declined on the basis that another Core Participant was better placed than the Applicant to represent these interests, but rather, that the Applicant did not satisfy the criteria in Rule 5(2). Nothing in the renewed application has changed my view in this regard. Even if this were not the case, in the exercise of my discretion, I would not designate the Applicant as a Core Participant in Module 3. As I noted in the original Determination, I have a duty to run the Inquiry as thoroughly and as efficiently as possible, bearing in mind the Inquiry's wide-ranging Terms of Reference. 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.

26. I have taken into account the fact that there are a number of ways in which the Applicant 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 original Determination, it is not necessary for an individual or organisation to be a Core Participant in order to provide evidence to the Inquiry. I am aware that the Applicant has already received a request from the Inquiry for a witness statement in relation to Module 3 and has been in correspondence with the Module 3 legal team about the timeframes for responding to this request. Through this process, the Applicant is able to provide to the Inquiry information relevant to the matters being examined in Module 3.

27. Therefore, having considered all of the information the Applicant provided in light of the Provisional Outline of Scope for Module 3, I remain of the view that the Applicant does not have a significant interest in the matters for investigation in Module 3. I therefore confirm my decision that the Applicant should not be designated as a Core Participant in Module 3 and I confirm that this is my final decision.
28. My decision not to designate the Applicant as a Core Participant in Module 3 does not preclude the Applicant 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**  
**17 April 2023**