



**NOTICE OF DETERMINATION
CORE PARTICIPANT APPLICATION
MODULE 6**

THE RT HON BARONESS FOSTER DBE AND PAUL GIVAN MLA

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 12 December 2023 the Inquiry opened Module 6 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 19 January 2024.
2. The Inquiry has published the [Provisional Outline of Scope](#) for Module 6, which states that this module will examine the impact of the Covid-19 pandemic on the publicly and privately funded adult social care sector (the “Care Sector”) 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 19 January 2024 the Inquiry received an application from the Right Honourable Baroness Arlene Foster of Aghadrumsee DBE and Mr Paul Givan MLA (“the Applicants”) for Core Participant status in Module 6.
4. I made a provisional decision not to designate the Applicants as a Core Participant in Module 6, thereby declining the application (“the Provisional Decision”), on 8 February 2024. The Applicants were provided with an opportunity to renew the application in writing by 4pm on Thursday 15 February 2024.
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 6.

Summary of Application

8. The application asserts that, as First Ministers, the Applicants played a substantial and significant role in government decision-making as it related to the Covid-19 pandemic. Due to the unique constitutional arrangements in place arising from the mandatory coalition, the Northern Ireland Executive Committee, was 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. The Applicants were involved in key decision making on matters which were significant or controversial and which cut across their responsibility of two or more Ministers or performed a challenge function in respect of decisions taken by Departments without reference to the Executive.

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.
10. The application states that the Applicants played a role in Executive consideration of matters affecting the Care Sector within the remit of the Department of Health including testing, virus spread in care homes, PPE, concerns around staffing levels, visiting, changes to the RQIA inspection regime and the prioritisation of vaccines for the Care Sector. The Application states that these matters, which were operational decisions taken by the Department of Health, were discussed at the Executive. The application also outlines that the Applicants considered issues relating to the Care Sector raised by constituents, considered as part of the Executive the disproportionate impact of the virus on older people, supported the Department of Health in investment and reform of Health and Social Care systems in Northern Ireland and engaged in discussion with the UK Government.

Decision for the Applicants

11. I have considered with great care everything that is said in the Applicant's application. Having done so, in my discretion, I consider that the Applicant does not meet the criteria set out in Rule 5 for designation as a Core Participant in Module 6. and, therefore, I have decided not to designate the Applicant as a Core Participant in Module 6.
12. Module 6 will consider the impact of the Covid-19 pandemic on the publicly and privately funded adult Care Sector in England, Wales, Scotland and Northern Ireland. It will consider the impact on people's experience of the Care Sector, the structure of same, the key decisions in respect of the Care Sector and the management of the pandemic in adult care and residential homes, including discharge, IPC, testing, availability of PPE, use of DNACPRs and changes to the regulatory regime.
13. The application is based on the Applicants having played a direct and significant role in the matters to which Module 6 relates (Rule 5(2)(a)) and on the basis that there is a possibility that they may be subject to explicit or significant criticism (Rule 5(2)(c)). I have also considered whether the Applicants have a significant interest in an important aspect of the matters to which Module 6 relates (Rule 5(2)(b)).

14. I do not consider that the Applicants played, or may have played, a direct or significant role in relation to the Care Sector in the context of Module 6 (Rule 5(2)(a)). Although the Applicants had a role in high-level decision making as First Ministers, which will have impacted the Care Sector as well as all aspects of life in Northern Ireland during the pandemic, I do not consider that as individuals they played, or may have played, a direct and significant role in the matters to which Module 6 relates, or that they have a significant interest in an important aspect of the matters to which Module 6 relates (Rule 5(2)(b)). Module 6 will consider the key decisions made in respect of the Care Sector in Northern Ireland and I consider the appropriate Core Participants to be the Northern Ireland Department of Health and the Regulatory and Quality Improvement Authority. The application acknowledges that decision making concerning testing, PPE, staffing, visitation, vaccines and inspection regimes were “within the remit of the Department of Health,” this will be reflected in the examination of the decision making of the Northern Ireland Department of Health and the Regulatory and Quality Improvement Authority. While such matters may have been discussed at the NI Executive that does not equate to the Applicants having played a direct or significant role.
15. Higher-level decision making such as that for which the Applicants were responsible is the province of other Modules and I note 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 6 relates, thereby not satisfying Rule 5(2)(b).
16. 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 this

country could potentially have an interest in it and not everyone can be granted Core Participant status for the purposes of the Inquiry hearings.

17. 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 6, I consider that the Applicants did not play a direct and significant role in relation to the matters sought to be investigated in Module 6, nor does it have a significant interest in an important aspect of the matters to which Module 6 relates. I have therefore decided that Baroness Foster and Paul Givan should not be designated as Core Participants in Module 6 and I confirm that this is my final decision.
18. It is also 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 the Inquiry will be reaching out in due course to a range of individuals, organisations and bodies to seek information, to gain their perspective on the issues raised in the modules and, where appropriate, to ask for witness statements and documents.
19. I will keep the scope of Module 6 and the designation of Core Participants under review. My decision not to designate the Applicants as Core Participants in Module 6 does not preclude them from making a further application 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

27 February 2024