

NOTICE OF DETERMINATION

CORE PARTICIPANT APPLICATION

1. On 24 March 2017 the Inquiry invited anyone who wished to be designated as a core participant in the Children in the Care of Nottinghamshire Councils investigation to make an application to the Solicitor to the Inquiry by 21 April 2017.
2. An application for core participant status was made on behalf of the Secretary of State for Education. This notice sets out my determination of that application.
3. Applications for core participant status are considered under Rule 5 of the Inquiry Rules 2006 which provides:

(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.

4. In determining each person's application, the matters listed in Rule 5(2) must be considered, but the list is not exhaustive and I may also take into account other relevant matters.

5. The Secretary of State for Education's application sets out the role and responsibilities of the Department for Education. It is responsible for education and children's services in England, and part of this responsibility is to ensure that local services protect and support children. It is the central government department with national policy responsibility for safeguarding of children.
6. It is explained that although the Department for Education currently has national policy responsibility for safeguarding children, this has previously been the responsibility of other government departments, including the Department of Health until 2003. It is submitted that the Department of Health is not applying for core participant status in respect of this investigation, but will work closely with the Department for Education to ensure that it is able to assist the Inquiry in respect of events prior to 2003.
7. It is submitted that the Secretary of State for Education has a significant interest in this investigation, the inquiry proceedings and the inquiry report in light of her role as the central government department with national policy responsibility for safeguarding children, including the oversight of education and children's services in England.
8. It is further submitted that she should be granted core participant status on the following bases: that the Department for Education (and the Department of Health) comprise a "public authority" in respect of which the Inquiry will consider the appropriateness of the response to reports of child sexual abuse involving children cared for by the Councils, and/or reports of child sexual abuse by individuals who were employed by or contracted by the Councils, with access to children; that the responsibility of the Department for Education or its predecessors at national and/or policy level may become relevant to matters falling within the definition of scope; that the extent to which the Department for Education or its predecessors bore responsibility for inspection regimes and/or their adequacy may be explored; that as part of her role, the Secretary of State for Education has "*a significant interest in*

matters that concern failure of safeguarding and child protection, considerations of governance, reporting and investigation of child sexual abuse and steps taken in response including disciplinary action, information sharing with outside agencies, and improvements to safeguarding measures in response”; and finally, that to the extent that the Inquiry might find there were failings at a local or national level, the Department for Education (and/or Department of Health) may be subject to explicit or significant criticism during the inquiry proceedings or in the report.

9. Having regard to the provisions of Rule 5(2) and to matters raised in the application (as set out above), I am satisfied that the Secretary of State for Education should be designated as a core participant in this investigation on the basis that: the Department for Education (and/or the Department of Health) may have played a direct and significant role in relation to the matters under investigation in light of its national policy responsibility for safeguarding children and its role in relation to safeguarding and protecting children; it has a significant interest in an important aspect of the matters under investigation; and, it may also be subject to explicit or significant criticism during the proceedings or in any report, or any interim report.

10. Applications for designation as the recognised legal representative of a core participant are governed by rules 6 and 7 of the Inquiry Rules 2006, which provide as follows:

6(1) Where -

- (a) a core participant, other than a core participant referred to in rule 7; or*
- (b) any other person required or permitted to give evidence or produce documents during the course of the inquiry,*

has appointed a qualified lawyer to act on that person’s behalf, the chairman must designate that lawyer as that person’s recognised legal representative in respect of the inquiry proceedings.

7(1) This rule applies where there are two or more core participants, each of whom seeks to be legally represented, and the chairman considers that -

(a) their interests in the outcome of the inquiry are similar;

(b) the facts they are likely to rely on in the course of the inquiry are similar; and

(c) it is fair and proper for them to be jointly represented.

(2) The chairman must direct that those core participants shall be represented by a single recognised legal representative, and the chairman may designate a qualified lawyer for that purpose.

(3) Subject to paragraph (4), any designation must be agreed by the core participants in question.

(4) If no agreement on a designation is forthcoming within a reasonable period, the chairman may designate an appropriate lawyer who, in his opinion, has sufficient knowledge and experience to act in this capacity.

11. I am satisfied that the Secretary of State for Education has appointed Will Barclay of the Treasury Solicitor as its qualified lawyer and accordingly, I designate Mr Barclay as the Secretary of State for Education's recognised legal representative in respect of this investigation in accordance with Rule 6(1).

12. Directions will be given for receipt of applications for an award under section 40(1)(b) of the Inquiries Act 2005 for expenses to be incurred in respect of legal representation at the forthcoming preliminary hearing. Such applications by core participants will be determined in accordance with the Inquiry's Costs Protocol on Legal Representation at Public Expense.

Professor Alexis Jay OBE
Chair, Independent Inquiry into Child Sexual Abuse

28 April 2017