

**NOTICE OF DETERMINATION  
CORE PARTICIPANT APPLICATION**

1. On 30 August 2017 the Inquiry invited anyone who wished to be designated as a core participant in the Westminster investigation to make an application to the Solicitor to the Inquiry by 27 October 2017. Subsequently, on 31 January 2018, the Inquiry held a Preliminary Hearing in this investigation, at which Counsel to the Inquiry identified which organisations and individuals had been designated as core participants.
2. Counsel to the Inquiry also made detailed submissions on the scope of the investigation at the Preliminary Hearing in January. Following that hearing, core participants were invited to file written submissions on scope. Having considered the submissions that were filed, as well as the oral submissions that had been made by Counsel to the Inquiry at the Preliminary Hearing, I issued a determination on the scope of the investigation dated 8 May 2018.
3. On 11 September 2018, an application was made by Mr Kerr, through KRW Law acting on his behalf, for core participant status in the Westminster investigation. On 1 October 2018, I made a provisional ruling that I was minded to decline Mr Kerr's application. I offered Mr Kerr the opportunity to renew his application, in writing, within 14 days. The application was not renewed and this notice therefore sets out my final determination of the application.
4. 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.*

5. In determining the application, the matters listed in Rule 5(2) must be considered, but the list is not exhaustive and other relevant matters can also be taken into account.
6. Mr Kerr's application was lodged almost a year after the deadline for core participant applications in this investigation. Notwithstanding the delay, I have a discretion pursuant to Rule 5(1) to designate a core participant "at any time" during the course of the Inquiry.
7. The explanation that has been given for the lengthy delay in making the application is brief and, in my view, inadequate. All that the application says on this subject is that Mr Kerr *"waited for the Hart Inquiry to publish its Findings, Conclusions and Recommendations. He then assessed these. He then waited for a response from those who commissioned the Hart Inquiry (the OFDFM of the NIE). As you will be aware, there has been no operational political administration at Stormont since early 2017."*
8. It is to be noted, however, (a) that the Hart Inquiry published its report in January 2017; and (b) that the Hart Inquiry report stated in terms (see Volume 8, Chapter 26, Part Seven, paragraph 229) that Mr Kerr's alleged experiences in London were outside its Terms of Reference and that *"if his allegations about his experiences in London or other parts of England are to be investigated that will be a matter for the Independent Inquiry into Child Sexual Abuse."* The Hart Inquiry's report had been available to Mr Kerr for a period of eight months before core participant applications in the Westminster investigation were even invited.
9. The Inquiry received an email from KRW Law on 17 October 2017 stating they were "on record" for Mr Kerr and requesting information about applying for core participant status on his behalf. The Solicitor to the Inquiry confirmed on 18 October 2017 that the Inquiry was currently accepting applications for core participant status, any such application should be provided by 27 October 2017 and provided further information about the scope of the investigation and the application process. Further correspondence was received from KRW Law on 12 February 2018 seeking an

update on the “Kincora investigation”, to which the Solicitor to the Inquiry confirmed on 16 February 2018 that the Inquiry does not have a Kincora investigation. He again provided further information about the scope of the Westminster investigation and how to apply for core participant status in this investigation. Almost seven months later, the Inquiry eventually received Mr Kerr’s application for core participant status from KRW Law. In the circumstances, I do not consider that Mr Kerr has advanced any reasonable or justifiable grounds to explain his delay of eleven months from the date of his solicitors’ initial enquiries in making this application.

10. Although I am not satisfied by the explanation that has been given for the delay, I am prepared nonetheless to consider the merits of the application.
11. Mr Kerr’s application does not refer either to the submissions on scope made by Counsel to the Inquiry at the Preliminary Hearing in January, or to my subsequent determination on scope. Rather, the application invites the Inquiry to investigate two factual areas that are associated with Mr Kerr’s own account of having been the victim of abuse. The application for core participant status is dependent on the Inquiry including one or other or both of these factual matters within scope.
12. First, the application refers to Mr Kerr’s claims that he was “trafficked” from Northern Ireland to London and then sexually abused by persons of public prominence associated with Westminster at locations including Dolphin Square and a place that is variously described in the application as “Elm House”, “The Elm House” and “The Elm House Guest House”. The application asserts that the Metropolitan Police were aware of this abuse *“but failed to act or to investigate or prevent it and were complicit in it as far as there was collusion between [the MPS] and the abusers and procurers.”* The application goes on to assert that *“there was a conspiracy to cover-up child sexual abuse by persons of public prominence associated with Westminster.”*
13. Second, the application asserts that Mr Kerr was a victim of abuse at the Kincora Boys’ Home in Belfast and that (I summarise) the Hart Inquiry failed to investigate his allegations properly. The application also makes more general criticism of the Hart Inquiry, claiming that it was *“flawed in its scope, reliance on assurances and undertaking, conduct and procedure, findings and conclusions.”* The application invites this Inquiry to investigate *“the continuing rumours and suspicion around Kincora”*, starting, it seems, by conducting *“a scoping exercise of the evidence*

*assessed by the Hart Inquiry and the undertakings and assurances received between that [sic] the Hart Inquiry and the Security Services.”*

14. I have considered this application and I am not persuaded that the Inquiry should include either of these matters within the Westminster investigation. For that principal reason, I have decided not to grant Mr Kerr’s application for core participant status. My reasons are as follows.

15. As far as Mr Kerr’s account of having been the victim of sexual abuse in London is concerned, I would make the following points.

- a. First, the details of the alleged abuse provided in the application are extremely thin. The application does not name the individuals whom Mr Kerr alleges “trafficked” and/or abused him, nor does it give the dates of these events, or (beyond references to Dolphin Square and “Elm House”), where it took place. The application does not make it clear how old Mr Kerr was at the time of the events in question, which is important since the focus of this Inquiry is on child sexual abuse.
- b. Second, no detail at all is given in support of Mr Kerr’s allegation that the Metropolitan Police was aware of but failed to investigate the sexual abuse that he claims to have suffered. This is very much the type of allegation that the Inquiry wishes to investigate, but we cannot act on a bare assertion.
- c. Third, and most important, the application does not address, or indeed refer at all, to the finding made by the Hart Inquiry that an earlier allegation that Mr Kerr had made of being “trafficked” to London and then abused at the age of 17 was untrue. The Report of the Hart Inquiry (see Volume 8, Chapter 26, Part Seven, paragraph 230(4)) states as follows:

*“There is no evidence to support [Mr Kerr’s] claim that he was “trafficked to London” aged seventeen. The irrefutable evidence examined by us is that from 4 October 1977 until February 1979, except for the few days between 21 October and 7 November when he was on bail before being remanded back into custody when he stole from Semple, he was in secure custody at Rathgael Training School, and then in Millisle Borstal. He left Northern Ireland in mid-May 1979 when he reached the age of eighteen and was automatically discharged from care.”*

This is a clear factual finding, and it is unfortunate that it is not addressed in the application. If Mr Kerr can explain how the allegations that he now wishes this Inquiry to investigate are consistent with this finding made by the Hart Inquiry, then this explanation should already have been provided.

16. In light of the above information, I am unable to place any weight on Mr Kerr's account of having been trafficked to London when he was 17 and/or the assertions of abuse that he alleges that he suffered from whilst in London. It is for these reasons that I do not intend to add the factual allegations now made by Mr Kerr to the Westminster investigation. I should add that, even if the above noted problems had been overcome, the delay in raising these allegations might well have made it impracticable to investigate them in light of the hearing dates that are fixed for March 2019.
17. I can deal more shortly with the second limb of the application. The geographical scope of this Inquiry is limited (see paragraph 4 of the Terms of Reference) to England and Wales. Events in Northern Ireland are outside the scope of the Inquiry. This Inquiry is therefore not entitled to take up Mr Kerr's invitation of re-investigating his allegations about events at Kincora or, indeed, of reviewing the way in which the Hart Inquiry was conducted. Were this not the case, it would have been necessary for me to consider other important objections to the course that Mr Kerr has invited the Inquiry to take. But since the Inquiry does not have jurisdiction in any event to do as Mr Kerr has suggested, it is not necessary for me to consider any further objections.
18. I am accordingly not currently satisfied that Mr Kerr fulfills the criteria in Rule 5(2) as a person who played, or may have played, a direct and significant role in relation to the matters to which the Westminster investigation relates. Nor am I satisfied that he has a significant interest in an important aspect of such matters to which this investigation relates or may be subject to explicit or significant criticism during the inquiry proceedings or in the report, or in any interim report. There is no other basis upon which it would be appropriate to grant Mr Kerr core participant status. I have therefore decided not to designate him as a core participant in this investigation.
19. Before concluding, it is important that I make the following two points clear.

20. First, it is not my role or the role of the Inquiry to make factual determinations of the truth or otherwise of individual allegations of sexual abuse. The question to which I am directed by Rule 5(2) in this case is whether Mr Kerr's application establishes either that he played or may have played a direct and significant role in relation to the matters to which the inquiry relates, or that he has a significant interest in an important aspect of those matters. It is in that context that I have considered Mr Kerr's account.

21. Second, this decision should not be read as a rejection of Mr Kerr's entire account of having been the victim of child sexual abuse. All that it has been necessary for me to consider in determining this application is the relatively limited part of his account that relates to Westminster.

22. I will keep the scope of the investigation and the designation of core participants under review as the Inquiry progresses and further invitations to apply for core participant status may be made as the investigation proceeds. My decision not to designate Mr Kerr as a core participant in this particular investigation does not preclude him from making a future application in respect of other investigations. I will consider any future application which Mr Kerr wishes to make on its merits.

**Professor Alexis Jay OBE**

**22 October**

**2018**

**Chair, Independent Inquiry into Child Sexual Abuse**