

Fitness to  
Practise

# Procedures of the Fitness to Practise Committee

in respect of Part 8 of the  
Nurses and Midwives Act  
2011, as amended

Approved by the Fitness to Practise Committee  
30 August 2023



Bord Altranais agus  
Cnámhseachais na hÉireann  
Nursing and Midwifery  
Board of Ireland

The Fitness to Practise Committee (FTPC) is established in accordance with the requirements of Section 24 of the Nurses and Midwives Act 2011, as amended ('the Act'). The purpose of this document is to set out the procedures of the FTPC in respect of matters which are referred to it. The document is not legally binding on the FTPC and serves as a guide only to the manner in which the FTPC will usually approach matters referred to it. Failure of the FTPC, any of its members or Nursing and Midwifery Board of Ireland (NMBI) staff to comply with these procedures shall not invalidate any act or omission. The FTPC may depart from these procedures when necessary and in doing so, will act in the interests of justice and fair procedures. The procedures may be amended from time to time.

The procedures shall take effect on 30 August 2023 and shall apply to all complaints referred to the FTPC in circumstances where the hearing of the inquiry has not commenced by that date.

## 1. Subcommittees

The commencement of the Nurses and Midwives (Fitness to Practise Subcommittee) Rules 2022 on 9 May 2022 means that a subcommittee of three persons may perform the functions of the Fitness to Practise Committee in respect of a complaint, to include conducting the inquiry into the complaint.

The FTPC shall sit in subcommittees for the purpose of considering preliminary applications (callovers) and hearing inquiries. The subcommittee must be composed of one nurse or midwife as appropriate to the nurse or midwife the subject of the inquiry, and two 'lay' persons who are neither nurses nor midwives<sup>1</sup>. The chairperson of the subcommittee shall be a Board member. The FTPC's secretariat coordinates the appointment of subcommittees for inquiries and callovers. The appointment of subcommittees is based on the availability of the FTPC members and in accordance with the requirements of the Act.

If the Chairperson of the FTPC is sitting on a subcommittee, then the Chairperson will chair the subcommittee. If the Chair of the FTPC is not sitting on a panel and the Vice-Chairperson of the FTPC is sitting on the subcommittee, then the Vice-Chairperson will chair the subcommittee. In the event that neither the Chairperson nor the Vice-Chairperson is sitting on the subcommittee, or if either or both of them request not to act as a Chair of the subcommittee, a Board member who will have already agreed to act as Chairperson for that inquiry, or callover, will be allocated to sit on the subcommittee by the FTPC secretariat.

## 2. FTPC secretariat

The FTPC shall be supported by a secretariat, composed of one or more staff of the NMBI who shall be responsible for administrative matters to support the functioning of the FTPC.

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<sup>1</sup> Nurses and Midwives (Fitness to Practise Subcommittee) Rules 2022 S.I. No. 236 of 2022.

### 3. Remote hearings

The Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020 was enacted on 6 August 2020. This Act makes provision for designated bodies to conduct hearings under enactments to do so by remote means and specifies that a reference to the holding of a hearing shall be construed as a reference to the holding of such a hearing by remote hearing. It also states that persons required to attend such a hearing or produce a document to a designated body may do so via remote or electronic means.

Section 31 (6) of the aforementioned Act sets out that a “remote hearing” means a hearing in which—

- (a) the participants are not all in the one place, and
- (b) one or more of the participants participate in the hearing by means of electronic communications technology.

The NMBI was designated as a body under the Civil Law and Criminal Law (Miscellaneous Provisions) Act by the Minister for Health on 20th November 2020<sup>2</sup>.

Section 31 (2) of the Act permits an inquiry subcommittee, where it is of the opinion that a remote hearing would be unfair to a registrant or would otherwise be contrary to the interests of justice, to hold part or all of an inquiry in person. This includes the monthly callover which is generally heard remotely.

In the process of preparing for the format of the inquiry, the CEO team in consultation with the registrant (or their legal representative) will consider the nature of evidence to be opened at the inquiry, the geographical location of the registrant and/or the witnesses and any preferences already stated by inquiry participants with respect to the approach to be taken in holding the inquiry. This will inform a recommendation as to the most appropriate format for holding the inquiry, either fully remotely, in hybrid form or with all participants attending in person. The secretariat will then liaise with the inquiry subcommittee with respect to the agreed proposed format in which the inquiry will be heard. Please see the separate Scheduling Process document.

At the start of the inquiry the Chairperson of the subcommittee should set out the reasons why the selected format has been chosen and how this complies with section 31 of the Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020.

At any stage of an inquiry, an inquiry subcommittee may decide to change the inquiry format and should provide the reasons for this decision. The legal assessor may give advice to the subcommittee where appropriate.

### 4. Notice of Inquiry

The CEO will give notice in writing of the matter that is to be the subject of the inquiry to the registrant who is the subject of the inquiry and will seek to do so a minimum of eight weeks in advance of the inquiry date(s). There may be exceptions to this notice period with the consent of the registrant. This notice period will be set out in the Notice of Inquiry, which will outline the complaint against the registrant, and the particulars of the evidence in support of the complaint will be contained within the Book of Documents served with the Notice of Inquiry.

<sup>2</sup> Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020 (Section 29) (Health) (Designation) Order 2020 S.I. No. 532/2020.

## 5. Callover: Preliminary Applications to the FTPC in advance of an Inquiry

The subcommittee shall convene for callovers at regular intervals to case manage matters referred to it pursuant to Part 8 of the Act.

Preliminary applications to the FTPC facilitate, in particular, the consideration of the following matters in advance of an Inquiry:

- (a) Applications from witnesses and/or nurses/midwives who are the subject of the Inquiry to apply for some or all of the hearing to be held otherwise than in public, to include applications for anonymity. The subcommittee will consider, pursuant to the Act, whether it is satisfied that it would be appropriate in the circumstances to hold the hearing or part of the hearing otherwise than in public.
- (b) Applications for a summons to compel the production (including discovery) of medical records or other records that are containing personal data in the following circumstances:
  - (i) Where records containing health data, or other records containing “special category” personal data, and where the person whose records are sought is unrepresented (regardless of whether they consent to the application);
  - (ii) Where the subject of the request is objecting to the issuing of a Production Summons;
  - (iii) Where the subject of the request is uncontactable or not responding to correspondence; and
  - (iv) Where the subject of the request lacks capacity.
- (c) Applications for a direction that any person who has power over or control of the medical records of a patient make the records available for the purposes of an Inquiry.
- (d) Applications to deem good the service of the Notice of Inquiry on the registrant in circumstances where the CEO has been unable to contact the registrant or where the registrant has refused to accept service of the Notice of Inquiry.
- (e) Applications for part or all of an inquiry to be held in person where a registrant or their representative can demonstrate that the holding of an inquiry via remote means is unfair to the registrant or contrary to the interest of justice.
- (f) Such other matters or applications which may arise from time to time and are appropriate to the overall purpose of effective advance case-management of inquiries and are appropriate for decision by the callover subcommittee.

All registrants or their legal representatives who have matters pending inquiry before the FTPC are invited to attend such callovers. Preliminary applications to the subcommittee must be made in writing and copied to the solicitors for the CEO. The Chair will generally have responsibility for sitting at callovers.

In advance of a callover, a letter of invitation, usually issued by the CEO’s solicitors, will inform the registrant or their representatives of the date and time of the callover. The letter will request the registrant or their representatives to inform the CEO’s solicitors by a specified date of any application(s) that they wish to make to the subcommittee at a callover.

The registrant and/or their representatives must normally set out in writing in advance of the callover any application they wish to make. All such written applications should be furnished to the CEO's solicitors pursuant to the timeline set out in correspondence from the CEO. The CEO will then ensure that any applications are considered by the subcommittee at the callover. The CEO's solicitors will also arrange to furnish a brief to the subcommittee at the callover containing relevant correspondence and documentation to be considered by the subcommittee.

The registrant and/or their representatives will be invited to a callover by means of an invitation to a named video-conferencing platform or via a telephone connection. The registrant and/or their representatives should notify the CEO's solicitors in advance of the callover if they intend to participate in the callover.

A transcript of the callover in so far as each case is concerned will be circulated to the registrant and/or their representatives in cases where any preliminary or substantive matter was considered by the callover committee. The subcommittee may direct that specific timelines be complied with to ensure that an inquiry is ready for hearing on the scheduled date(s).

## 6. Production Summons and Witness Summons

The CEO's solicitors will apply for a production summons in respect of medical records or other records containing personal data, rather than relying on obtaining consent, to ensure compliance with Data Protection legislation and to facilitate the FTP process<sup>3</sup>.

The subject of the request will be put on notice of the CEO's intention to apply for a production summons and will have the opportunity to respond.

The application for the production summons will be made directly to the Chairperson of the FTPC, or their designate (further detail below), in the following circumstances:

- (a) Where records containing health data, or other records containing "special category" personal data<sup>4</sup>, and where the subject of the request has provided consent;
- (b) Where records containing personal data (other than special category personal data) are sought and where the subject of the request has not provided consent; and/or
- (c) Where the records of a deceased person are being sought, proof of death should accompany the application.

With the exception of matters referred to in sections 5(b)(i) to 5(b)(iv), production summons and witness summons shall be signed by the Chairperson or Vice-Chairperson of the FTPC. If both the Chairperson and the Vice-Chairperson are unavailable, then a production summons or subpoena witness summons may be signed by a member of the FTPC provided that person is also a Board member. This shall be formally designated in a separate document.

<sup>3</sup> The NMBI has received legal advice in relation to this point.

<sup>4</sup> Special category personal data is defined as "personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership and the processing of genetic data, biometric data for the purpose of uniquely identify a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation": Regulation (EU) 2016/679 (General Data Protection Regulation).

## 7. Applications for adjournment of an inquiry

Once a Notice of Inquiry has issued and a date fixed for inquiry, if an application for adjournment of the inquiry is being made, this application will normally be made at the next callover; however, if there is no callover scheduled between the adjournment request being made and the inquiry or if the timeline is such as to cause difficulties for parties to the inquiry, then the application for the adjournment may be made to the Chairperson of the FTPC in writing in advance of the inquiry.

Once an inquiry has commenced, adjournment requests must be made to the Chairperson of that inquiry subcommittee. The Chairperson should consult with the subcommittee members before a decision is made. The secretariat will subsequently liaise with the subcommittee if necessary for alternate dates when the matter can next be considered.

In some cases where a last-minute adjournment request is received, the secretariat will liaise with the Chairperson of the inquiry subcommittee to determine whether a decision can be taken without convening the inquiry subcommittee or where it is necessary to convene the inquiry subcommittee as planned to consider the adjournment request with the assistance of a legal assessor.

## 8. Core Books

The FTPC requests that, where possible, Core Books are agreed between the CEO and the registrant and/or their representatives in advance of a matter coming before the inquiry subcommittee.

In the event that the parties cannot agree the contents of the core book, the subcommittee will request at the start of the inquiry that the parties:

- submit the agreed documents to the subcommittee;
- make oral submissions on the relevance/objections they have on the disputed documents.

The subcommittee shall take advice from the Legal Assessor on the submissions made and shall make a decision on the inclusion or exclusion of these documents and setting out the rationale for their decision.

## 9. Inquiries

Participants at inquiries should observe the subcommittee's timetable and attend punctually.

The Chairperson of the inquiry opens the proceedings by reading out an opening statement.

It may be necessary, on occasion, for one or more preliminary applications to be made to the FTPC subcommittee. It shall be at the inquiry subcommittee's discretion whether such applications are heard in public or otherwise than in public.

The CEO's legal representative, in opening submissions, will provide a summary of the evidence to be led in support of the allegations. The registrant or their representatives may make replying opening submissions. The CEO may call factual and expert witnesses and such witnesses may be cross-examined by or on behalf of the registrant. Members of the inquiry subcommittee and, on occasion, legal assessors may also question witnesses. The CEO may re-examine their own witnesses.

At the conclusion of the CEO's case, the registrant is entitled to call factual and/or expert evidence on their own behalf. The registrant is also entitled, but not obliged, to give evidence. No adverse inference can be drawn from a registrant not giving evidence or not attending an inquiry. Any witnesses called to give evidence by the registrant may be cross-examined by the CEO and/or questioned by the inquiry subcommittee. Witnesses called by or on behalf of the registrant may be re-examined by or on behalf of by the registrant.

The Chairperson shall request all witnesses who have given evidence not to discuss the inquiry with any other persons.

## 10. Recalling witnesses

The subcommittee has the power to recall any witness who has already given evidence to appear before the subcommittee again.

If the parties are not agreed that the witness should be recalled, the inquiry subcommittee shall request that the parties make oral submissions on the reasons or objections they have to this.

The subcommittee shall take advice from the Legal Assessor on the submissions made and shall decide on recalling the witness setting out the rationale for their decision.

## 11. Inquiries held in Private

In circumstances where an inquiry is held in private, the Chairperson of the inquiry subcommittee will request all persons who are not a party to the inquiry to leave the inquiry room.

The inquiry subcommittee will consider applications at any time from a witness to be present for the balance of a private inquiry after they have given evidence. This may arise, for example, where a complainant has successfully applied for the inquiry to be held in private due to the sensitive nature of the facts, but the complainant wishes to hear the remaining evidence given to the inquiry subcommittee. The inquiry subcommittee will request submissions from the registrant and the CEO in relation to any such application.

## 12. Inquiries held in public where names anonymised

In circumstances where an inquiry is held in public but the subcommittee (either at the callover of inquiry) agree to anonymise some or all of the participants, the inquiry subcommittee shall request any members of the public or media present to respect the decision of the inquiry subcommittee and not to publish names if, for example, the names are inadvertently made public during the course of the inquiry.

### 13. Rules of Evidence

The FTPC is not strictly bound by the rules of evidence that apply in the Courts. When deciding whether to admit evidence that is not in accordance with the rules of evidence, the inquiry subcommittee will consider the extent to which the admission of that evidence may represent a breach of the registrant's entitlement to fair procedures and natural justice. Legal advice will be available to the subcommittee from its Legal Assessor.

### 14. Role of Legal Assessor

The Legal Assessor sits with the subcommittee throughout the inquiry and provides legal advice to the subcommittee when requested to do so by the subcommittee. If the Legal Assessor is of the opinion that a matter has arisen upon which the subcommittee should be advised, the Legal Assessor will offer their advice to the subcommittee through the Chairperson.

At the conclusion of the evidence and before the inquiry subcommittee retires to consider its determinations, the Legal Assessor will remind the inquiry subcommittee of its task. They do not present a summary of the evidence. Their advice simply serves to remind the inquiry subcommittee of its obligations and to advise in respect of any legal issues that have arisen during the course of the inquiry.

The Legal Assessor may be present at the inquiry subcommittee's private deliberations, and it is a matter for the inquiry subcommittee if it wishes to sit without the Legal Assessor when deliberating.

The inquiry subcommittee may request advice while in a private session, and any legal advice to the inquiry subcommittee must be shared with the parties and an opportunity provided to the parties to make submissions in respect of that advice. The inquiry subcommittee may then decide to accept or reject the advice received from the Legal Assessor. If the inquiry subcommittee decides to accept the advice of the legal assessor, this should be made clear to the parties. If the inquiry subcommittee decides not to accept the advice of the legal assessor, the inquiry subcommittee should give reasons for not accepting this advice.

### 15. Section 65 Procedures

Procedures in relation to Section 65 of the Act (undertakings and/or consents) are set out in a separate document.

### 16. Closing Submissions

At the conclusion of an inquiry, each party will be invited by the Chairperson of the subcommittee to make closing submissions. The registrant or their representative and, where necessary, the CEO may make submissions to the inquiry subcommittee as to the possible sanction, if appropriate. The inquiry subcommittee will then retire to consider its determination and report.



## 17. FTPC Report

The inquiry subcommittee, with the assistance of the Legal Assessor, will complete the report on the inquiry and will carefully outline the findings in respect of each of the allegations and sub-allegations.

The report shall include the inquiry subcommittee's reasons in respect of the following:

- a. each of the inquiry subcommittee's findings of fact, if any;
- b. each of the inquiry subcommittee's findings of professional misconduct, poor professional performance and/or any other ground of complaint, if any; and
- c. the recommended sanction, if any.

The inquiry subcommittee will ensure proper deliberations occur. The subcommittee will endeavour to make its decision and inform the parties of its decision on the day of the conclusion of the inquiry. Alternatively, it may reserve its decision for completion of its report to a later time. If the inquiry has been held in public, then the inquiry subcommittee will sit in public to announce the findings of the subcommittee and the reasons for such findings.

If the inquiry subcommittee is not in a position to make its decision on the day of the conclusion of the inquiry, the inquiry subcommittee will inform the parties of the proposed approximate timeline for completion of its report.

The inquiry subcommittee's recommended sanction(s), if any, will not be made public.

If the inquiry has been held in private, there is no requirement for the inquiry subcommittee to reconvene to announce the findings. The inquiry subcommittee will inform the parties of the proposed approximate timeline within which they will be furnished with the inquiry subcommittee's report on the day of the conclusion of the inquiry.

The full report, to include reasons and recommended sanction(s), if any, will be furnished to the registrant and the CEO for consideration in advance of the meeting of the Board. The sanction(s) to be imposed is a decision made by the Board of NMBI.

## 18. The Media

The media are requested to liaise with the Communications Manager of NMBI in relation to any queries. Information sheets may be made available on the day of any public inquiry setting out details pertaining to that inquiry.

Members of the media and the public will be required to complete an undertaking form (see Appendix 1) prior to being granted access to an inquiry.

## 19. Interpreters

It may be necessary for the FTPC to engage an appropriately qualified interpreter. On such occasions, the secretariat will identify a suitable interpreter to attend the inquiry. Before the interpreter provides assistance to any inquiry subcommittee, the interpreter will take an oath swearing or will affirm that they will interpret truthfully and accurately.

## 20. Fixing further dates when an Inquiry is part-heard

In circumstances where an inquiry is partly heard and further dates are to be fixed, the inquiry subcommittee will request that the registrant or their representatives and the CEO identify how many additional dates are likely to be required. The inquiry subcommittee will, with the assistance of the secretariat, liaise with all parties to identify additional dates. This should be done before all parties leave the inquiry unless there are exceptional reasons where this is not possible. The FTFC requests that where possible, additional dates should be fixed as close as possible to the original inquiry dates.

## 21. Unrepresented registrants

Whilst registrants have a right to legal representation, they can decide to represent themselves. In such circumstances, it may be that the registrant lacks legal knowledge (including what matters relevant to the legal issues) and objectivity.

Inquiry subcommittee members should ensure the following :

- Balance the duty of fairness to the registrant with the CEO's legal team, and with the need to ensure the public interest is served.
- Minimise the registrant's disadvantage as far as possible, to ensure its role to do justice between the parties - without conferring a positive advantage - but rather a fair and equal opportunity for each party to present their case.
- Grant a degree of latitude to the registrant in running their case.
- Limit interference with normal practices and procedures as much as possible.

## 22. Persons supporting/accompanying a registrant at an inquiry

Where a registrant attends an inquiry with a person who is stated to be supporting the registrant but is not their legal representative, this person is referred to as a "McKenzie Friend". The following is a Practice Direction of the President of the High Court: <https://www.courts.ie/content/mckenzie-friends-2>

In practice, the inquiry subcommittee should permit a McKenzie Friend to be present at an inquiry, unless the inquiry subcommittee has reasonable concerns in relation to the suitability of the person in the role. The presence and identity of any such person should be recorded for the inquiry record and the Chair should outline the role of a McKenzie Friend. Any subsequent decision to exclude or limit the role of the McKenzie Friend should be carefully considered by the inquiry subcommittee and subject to submissions from the parties and advice from the legal assessor as appropriate.

For any other support person who accompanies an unrepresented registrant but does not qualify as a McKenzie Friend, the subcommittee should afford a degree of latitude to their presence in the inquiry.

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