Bord Altranais agus
Cnáimhseachais na hÉireann

Nursing and Midwifery
Board of Ireland

Guide for Factual Witnesses

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Introduction

This guide is for factual witnesses who have been asked to assist in a Fitness to Practise (FTP) investigation and/or give evidence at an Inquiry. FTP is the process for handling complaints or concerns raised about nurses or midwives.

This guide aims to explain your role in the process to provide you with helpful information and answer common questions; it does not constitute legal advice.

Who We Are

The Nursing and Midwifery Board of Ireland (NMBI) is the regulatory body for the nursing and midwifery professions in Ireland. Our mission is to protect the public by promoting high standards of education, training and professional conduct amongst nurses and midwives.

Our Standards for Witness Care

Witnesses in FTP matters play a vital role in supporting the delivery of patient and public safety, and ultimately effective regulation. We truly appreciate all witnesses who engage and assist us with investigations.

We aim to support you through this process by:

1. Providing contact details for your primary point of contact.
2. Tailoring our method, frequency and tone of engagement based on your preference.
3. Providing updates at least once every three months.

Your Role as a Witness

Your role is to provide first-hand evidence based on your own observations or knowledge of the matter. You are expected to answer questions truthfully, clearly and to assist with an understanding of the facts of the case.

Witness Statement

- You will be asked to attend an interview, either remotely or in person.
- The purpose of this interview is to discuss your recollection of events and gather information to support the process.
- After the interview, a statement will be prepared by the legal team based on the information you provided.
- The statement will be sent to you for review; you will have the opportunity to make amendments before it is finalised.
- Once you are happy that the contents are a true and accurate record of events you will be asked to confirm and sign it. This becomes your final witness statement.
- As a matter of procedural fairness, any documents gathered during the investigation, including your witness statement, can be disclosed to the nurse or midwife.

Inquiry

Fitness to practise inquiries are formal, like a Court hearing. If the case proceeds to an Inquiry you may be asked to attend to give oral evidence.

Your evidence will be based on the information in your witness statement, and you will be asked to answer questions from both the CEO's legal team and registrant/their legal team.

Your evidence will be given under oath or affirmation.

You are not able to have your witness statement in front of you while giving evidence, so you should read your statement in advance to refresh your memory.

Support Information

We understand being a witness can be a worrying and stressful time. Please be assured that we are here to support you throughout the process.

Emotional support service – 1800 849 163

Cic provides a completely independent and free emotional support service to anyone involved in the FTP process. This includes a 24/7 freephone service that enables those involved to speak with a qualified counsellor.

The counsellor can arrange follow up counselling sessions for anyone requiring that support during the process. More information about the service is available in this leaflet or in this short video.

Legal team

If you have any concerns or questions at any stage, do not hesitate to reach out to your primary point of contact. They can provide guidance, explain what to expect, and help address any difficulties you might face.

Support person

NMBI staff will be available on the inquiry day to offer practical help and assistance. If you would like additional support, you may request to have a support person accompany you on the day. Please ensure this is discussed and agreed in advance.

Timeline

Timelines depend on the complexity of the matter. In all matters a full and thorough investigation is required to ensure fair process for everyone involved. You will be kept updated on timelines throughout the process.

We aim to schedule Inquiries within 18 - 24 months from the date of Preliminary Proceedings Committee (PPC) referral date. Sometimes factors outside of our control can cause significant delays.

Independent Legal Advice

No allegations have been made against you. You are not required to obtain independent legal advice. However, if you wish you can seek advice in confidence from your union or a legal professional. NMBI will not pay your legal costs.

As a witness, you are entitled to the same protections and privileges as if giving evidence to a Court This means that, provided the evidence you give is truthful, you cannot be prosecuted or sued for defamation based on anything you say while giving evidence.

Time off Work

If you have difficulty obtaining time off, we can arrange a letter for your employer or for a witness summons to be issued. If a summons is issued, your employer is obliged to give you the time off.

You should never ignore a witness summons. If necessary, the Fitness to Practise Committee (FTPC) can make an application to Court to compel your attendance. If you are unable to attend for any reason you should discuss this with your primary point of contact who may be able to seek an alternative date for you to attend.

Loss of Earnings

If you take the time as paid annual leave, we are unable to reimburse you. We can only reimburse unpaid leave. If you require a letter for your employer to approve unpaid leave, we can provide this.

A loss of earnings certificate will be required from your employer stating the gross and net loss of earnings claimed. We ask you to discuss loss of earnings in advance for pre-approval.

Expenses

We will pay reasonable vouched expenses to facilitate attendance i.e. travel, refreshments, meals, payment of a childminder or locum.

Self-employed

If you are self-employed, you must provide evidence of the loss, for example a letter from your accountant.

Will the Inquiry be in Public or Private?

The default is for inquiries to be held in public. This means members of the public and media can attend. The media will have the right to report on the matter. The media usually attend remotely but can attend in person.

In special circumstances inquiries can be heard in private. As a witness you may apply for all or part of the Inquiry to be heard in private, or for your identity to be anonymised.

If you wish to consider making an application for privacy or anonymity, please ensure to discuss this with your point of contact at the earliest opportunity. They will provide guidance, and if required, make this application on your behalf.

Terms We Use

During the FTP process you will see and hear some key terms used regularly. To help you we have summarised some key terms below:

People	Definition or description
Chief Executive Officer (CEO)	The CEO is responsible for proving the complaint against the nurse or midwife.
CEO's legal team	The solicitor and barrister instructed by the CEO.
Complainant	The person who made the complaint.
Expert witness	A person who has specialist knowledge and experience called to give their opinion.
Factual witness	A person who is called to give evidence about a particular fact(s) of the case.
FTP Committee	A Committee that considers complaints referred to inquiry. The FTP Committee consists of 33 members including nurses and midwives, lay members and Board members.
FTP Subcommittee	A group of three FTP Committee members who are selected to hear the inquiry and call-overs. One member will be a nurse or midwife, two members will be lay members. At least one member will be a member of the Board of NMBI who will act as Chair.
Inquiry team	A team within the FTP Department who assist the CEO prepare cases for inquiry.
Legal Assessor	An independent senior solicitor or barrister who provides legal advice to the FTP Subcommittee during the inquiry and at call-over meetings. They play no part in the decision-making process.
Preliminary Proceedings Committee (PPC)	A committee who initially considered the complaint and formed a view the matter required further investigation. The PPC consists of 11 members including registered nurses and midwives, lay members and Board Members.
Registrant	The nurse or midwife subject to the complaint.
Secretariat	A team within the FTP department that supports and assists the FTP Committee with administrative matters and scheduling inquiries.

Legal terms	Definition or description
The Act	Nurses and Midwives Act 2011, as amended: www.irishstatutebook.ie/2011/en/act/pub/0041
Adjournment	A postponement to the scheduled inquiry date. This can happen for a number of reasons.
Allegation	A claim that there has been an act or omission that that may affect the registrant's fitness to practise.
Application	A request made to the FTP Subcommittee for an Order, decision or direction to be given on the case before it is listed for inquiry.
Burden of proof	The legal burden to prove the case. The CEO has the burden to prove the case to the same standard as required in a Criminal Court, which is beyond all reasonable doubt.
Call-over	A monthly meeting before three members of the FTP Subcommittee to manage the cases being prepared for inquiry and to consider any initial or 'preliminary' applications.
Cross examination	Questions put to a witness by the other party in the case.
Findings	The FTP Subcommittee's decisions on each of the allegations and grounds of referral.
Fitness to Practise (FTP)	The process involved in handling complaints or concerns raised about nurses or midwives.
Grounds	Under the Act, the PPC notify the nurse or midwife of the grounds for making the referral (see further details below).
Hybrid inquiry	Oral hearing with some people attending in person and others attend remotely on a virtual platform.
Inquiry	The investigation of a complaint that proceeds to an oral hearing.
Remote inquiry	An inquiry at which all parties attend remotely on a virtual platform.

Grounds of Complaints

The matter will have been referred by the PPC to the FTPC for an inquiry on one or more of the following grounds.

Professional misconduct	• Conduct that is infamous or disgraceful in a professional respect. • Conduct that has seriously fallen short of the expected standard of conduct expected among nurses and midwives.
Poor professional performance	• A failure to meet the standards of competence, whether in knowledge and skill or both, that can reasonably be expected of a nurse or midwife, carrying out similar work.
Non-compliance with a Code	• This relates to a Code that was in place at the time of the alleged events.
Relevant medical disability	• A physical or mental condition, including substance misuse, which may impair ability to practise.
Failure to comply	• Failing to comply with any condition which was agreed during a previous fitness to practise inquiry.
Breach	• Breach of provisions of the Act or any rules or regulations made under the Act.
Misuse of Drugs Act	• An offence under the Misuse of Drugs Acts, 1977 or 1984.
Conviction	• A conviction for an offence that has gone before a Judge or Jury at the Higher Courts.

Summary of Inquiry Stages

1 Investigation

The CEO appoints a solicitor to investigate the case and gather evidence.

2 Witness statement

You will be interviewed and can ask questions. If you have specific queries or require additional support, discuss this with the solicitor without delay.

You will receive a copy of your statement for signing.

When the investigation is complete, the solicitor will serve a Notice of Inquiry setting out the allegations and listing the witnesses they intend to call to give evidence at the inquiry.

3 Your preparation

You should read and familiarise yourself with your statement prior to giving evidence as you are not ble to have your witness statement in front of you while giving evidence.

All evidence you provide should be your own, you should not be advised by anyone else what to say.

We will work with you to find a suitable date to schedule the inquiry.

It is important you keep your contact details up to date so that we can contact you.

4 The inquiry

In advance of the inquiry the solicitor will call you to explain what happens on the day.

When you attend the inquiry the Chair of the Subcommittee will introduce the parties. NMBI staff will be available to provide practical assistance and support.

5 Oath or affirmation

You will be asked to choose to give your evidence under oath or affirmation. The committee member will read out the wording and you can repeat it back after them.

6 Examination of Evidence/ Cross Examination

The nurse or midwife has the right to question any witness to test their evidence – this is known as cross examination. The nurse or midwife is given the opportunity to present their case or defence.

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