Fitness to Practise

Inquiry Information Booklet for Registrants

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

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Introduction

This guide is for Nurses and Midwives who have been referred to inquiry before the Fitness to Practise Committee.

It explains the inquiry process, step by step, and your options for support.

You'll learn about:

- Supports available to you
- Terms we use
- What are the grounds of referral
- What happens before, during and after your inquiry
- How to prepare and attend your inquiry
- Outcomes of an inquiry
- What are undertakings and consents
- Sanctions
- How to appeal a decision
- Useful links for support and information.

This guide aims to answer your questions about how the process works, it provides basic information and does not constitute legal advice.

It is important that you seek advice from your union or a legal professional.

Support Information

We understand the Fitness to Practise (FTP) process can be a worrying and stressful time for anyone involved.

Emotional support service - 1800 849 163

CiC provides a completely independent and free Emotional Support service to anyone involved the FTP process. This includes a freephone service, available 24/7, that enables those involved to speak with a qualified counsellor.

The counsellor will arrange follow-up counselling sessions for anyone requiring that support during the process.

More information about the service is available in this leaflet and on our website: https://www.nmbi.ie/Complaints/Who-Can-Help.

Can I bring a solicitor or support person?

You can bring your own representation to present your case or speak on your behalf at the inquiry. Some people chose not to have any legal representation and may present their own case.

You can also bring a support person with you to the inquiry.

NMBI staff are available throughout the inquiry to offer practical help and assistance on the day.

The legal assessor will explain the legal processes and any legal arguments that are raised.

Other organisations

There are various organisations and agencies in Ireland that can provide advocacy or support services either directly or indirectly.

We have listed some of the key organisations and agencies on our website: https://www.nmbi.ie/Complaints/Who-Can-Help.

Terms We Use

During the FTP process you will see and hear some key terms used regularly.

To help you understand and navigate the process we have summarised the key terms for your reference.

Two key terms:

- **NMBI** - the regulatory body for the nursing and midwifery professions in Ireland. NMBI's mission is to protect the public by promoting high standards of professional education, training and professional conduct amongst nurses and midwives.
- **FTP** - Fitness to Practise, which is the process involved in handling complaints or concerns raised about nurses or midwives.

People

Person	Definition or description
CEO	Chief Executive Officer. The CEO is responsible for proving the complaint against you.
CEO's legal team	The solicitor and barrister instructed to act on CEO behalf.
Complainant	The person who made the complaint.
Expert witness	A person who has specialist knowledge and experience in a particular area of nursing or midwifery who is called to give their opinion.
Factual witness	A lay 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. Two members will be lay and one will be a nurse or midwife; at least one member must be a NMBI Board member.
Inquiry team	A team within the FTP department at NMBI that assists 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 all call-over meetings. They play no part in the decision-making process.
Preliminary Proceedings Committee (PPC)	A committee that gives initial consideration to complaints received by NMBI. If the PPC decide the complaint requires further action, they will refer the case to the FTP Committee for an inquiry. The PPC consists of 11 members including registered nurses and midwives, lay members and NMBI Board members.

Person	Definition or description
PPC team	A team within the FTP department that is tasked with obtaining all the relevant information on the complaint so that this can be presented to the Preliminary Proceedings Committee.
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 appointments to Inquiries.

Legal Terms

Term	Definition or description
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 your fitness to practise.
Application	A request made to the FTP Subcommittee for a particular order, decision or direction to be given on the case before it is listed for an 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.
Closing submissions	At the end of the inquiry, both the CEO and registrant can summarise their case and set out the reasons why the FTP Subcommittee should make its decision.

Term	Definition or description
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 must notify you of the grounds for making the referral.
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.
Notice of inquiry	A document provided by the CEO that will set out the: • grounds of referral • allegations, and • the evidence the CEO will provide to prove the case.
Opening submissions	At the inquiry, the CEO's legal team will present a summary of the case and evidence that will be called. The registrant can reply to this opening submission if they wish.
Prima facie case	There is a case to answer. If the PPC has decided there is a prima facie case in relation to the complaint, they will refer the matter to inquiry.
Production summons	A legally enforceable document issued by the FTP Subcommittee that requires documents to be disclosed by certain third parties (including organisations).
Remote inquiry	An inquiry at which all parties attend remotely on a virtual platform.
Sanction	An action that is taken or order that is given if findings are made against the registrant.

Grounds

The Preliminary Proceedings Committee will inform you of the grounds that the complaint has been referred to an inquiry. The referral can be made on one or more of the grounds that are set out under the Act: www.irishstatutebook.ie/2011/en/act/pub/0041.

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, as the case may be, carrying out similar work.
Non-compliance with the Code	• This relates to a Code that was applicable 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 Practice 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.

Stages

The Preliminary Proceedings (PPC) has referred the complaint to the Fitness to Practise Committee for an inquiry on one or more of the grounds above.

The main stages of the inquiry process are summarised below.

1 Investigation

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

2 Notice of Inquiry

- When the CEO's investigation is complete, the CEO's solicitor will serve you with a Notice of inquiry setting out the allegations and listing the witnesses they intend to call to give evidence at the inquiry.
- You will also be served with copies of all the evidence that will be used.

3 Your Preparation

- Once you have received the Notice of inquiry and CEO's evidence you can prepare your case/defence.
- It is essential that you carefully consider the allegations you face and the CEO's evidence.

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Your Preparation

- If you have a question about documentation the CEO has provided, you should raise this with the CEO's solicitors without delay.
- After considering the evidence you may find it useful to make a note of any information you wish to obtain so that it can be presented at the inquiry.
- Some of the information you may wish to provide may be evidence such as a witness statement, expert report or other documents relevant to the facts in the case.
- If you are calling any witnesses, it is important that their evidence is their own, you must not tell a witness what to say. You may also wish to refer them to the CIC Emotional Support Service as this is available to everyone involved in the process. Visit: www.nmbi.ie/Complaints/Who-Can-Help
- It is important to decide whether you accept or dispute the allegations.
- If you agree with some or all the allegations, this is called an admission.
- If you want to make any admissions, offer undertakings or agree any evidence, you can discuss this with the CEO's solicitor at any time.
- Making admissions in advance is likely to reduce the overall length of the inquiry, as less time will be required to hear evidence on the allegations that you admit.
- You may wish to provide evidence to support your character. You can provide testimonials and you can call character witnesses to give evidence.
- It is important to note that you are not required to make any admissions, the CEO has the burden to prove the allegations against you.
- The NMBI Secretariat will liaise with you directly to find a suitable date to schedule the inquiry.
- It is your responsibility to keep your contact details up to date so that we can contact you.

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Inquiry

- The inquiry starts with the Chair of the Subcommittee formally opening the inquiry and inviting all participants to introduce themselves.
- At inquiry the burden of proof lies with the CEO - this means the CEO must prove the allegations and grounds of referral against you, beyond all reasonable doubt.
- You do not have to prove anything.
- The CEO's legal team will set out their case and present all of its evidence.
- The CEO will call witnesses, including an expert witness if required, to give their oral evidence.
- You have the right to question any witness or the expert to test their evidence – this is known as cross examination. It is important that you think in advance about the questions you have for any CEO witness so that you are prepared for this.
- Once the CEO has presented its case you will then be given the opportunity to present your case or defence.
- If you are represented your representative will make submissions on your behalf. If you are not represented you may wish to prepare your submissions in advance, with an outline or bullet point list to help you remember your points.
- You can choose whether you want to give evidence, this can be done under oath or affirmation.
- You can choose whether you want to call witnesses including an expert if required.
- Once all evidence has been heard you and the CEO can make closing submissions. This is an opportunity to summarise your case based on the evidence and documents you have presented.
- If you do not intend to attend or be represented at the hearing, or if you are concerned about public speaking and make to make sure you have made your points you may send written submissions in advance. NMBI staff will ensure these are provided to the Subcommittee at the inquiry.

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Inquiry

- After closing submissions, the legal assessor will provide advice to the Subcommittee before they retire to make their decision.
- The Subcommittee will then retire to private session to make its decision on whether the allegations and grounds are found proved.
- The Subcommittee will give you an indication of how long this might take and you will be kept updated on when their decision will be delivered.
- If the inquiry is in public the Subcommittee will return to announce their decision in public.
- The Subcommittee will also prepare a written report setting out the reasons for its decision on the facts and the grounds of referral. This report will be made available to you and the CEO as soon as it has been finalised.
- At any time during the inquiry, the Subcommittee can:
    - advise the parties if they believe undertakings would be appropriate, and
    - invite the registrant to agree to an undertaking as a suitable outcome on the case.

Outcomes

There are several possible outcomes at the end of the inquiry depending on the decision of the Subcommittee.

We have summarised these below and further information is available on our website at: https://www.nmbi.ie/Complaints.

No findings

- If the Subcommittee decides the CEO has not proved the allegations and/or the grounds against you then they will make no findings and the complaint is dismissed.

- The Subcommittee will announce their decision and then prepare a report setting out their reasons for making no findings and this will go the NMBI Board for noting only.

Adverse findings

- If the Subcommittee decides the CEO has proved some or all of the allegations and/or the grounds then they will make findings against you.

- The Subcommittee will announce their decision and then prepare a report setting out their reasons and recommended sanction

- The report will be sent to the Board for consideration.

- The Board will consider the Subcommittee report and their recommendations before deciding on the sanction. The registrant can attend the Board meeting, in-person or remotely, to address the Board on the sanction.

Sanctions

If findings are made, then the appropriate sanction will be considered by the NMBI Board.

When making their decision on sanction: 'the primary purpose is to protect the public and serve the public interest and not to punish the nurse or midwife.'

We have summarised the available sanctions below and further information is available on our website at: https://www.nmbi.ie/Complaints/Sanctions.

- Advice or admonishment, or a censure, in writing.
- A censure in writing and a fine not exceeding €2000.
- Attach conditions to registration.
- Transfer to another division of the Register.
- Suspension for a specified period.
- Cancellation from the Register.
- Prohibition from applying for a specified period of time for restoration.

Undertakings and Consents

At any time prior to or during an inquiry, you can offer an undertaking and/or consent.

Undertakings and consents are an agreement between the NMBI and a nurse or midwife about their future practice.

Undertakings could include an agreement to:

- not to repeat the conduct
- complete a training course
- retrain in a particular area of practice.

Consent is an agreement to being censured by the Board or to undergo medical treatment.

Undertakings will only be suitable if the Subcommittee considers them sufficient to protect patients and the public and that they address the concerns that have been raised.

The Subcommittee may accept an undertaking from a registrant at an early stage in the process, to conclude the inquiry process promptly.

If you would like more information about undertakings and how they might be suitable for your case, please contact the CEO's legal team to discuss this further.

Inquiry Attendance

Scheduling

- Once your inquiry is ready to be scheduled, you will be contacted by NMBI staff to check your availability and asked if you would prefer to attend in-person at our office in Blackrock, Dublin or remotely via an online platform. Details can be found on our website: www.nmbi.ie/Contact-Us.
- Please let us know as soon as possible if you have any additional needs that affect your attendance and provide details of any reasonable adjustments required.
- If you think it is not possible for the inquiry to go ahead on the scheduled dates, you may apply for an adjournment. It is important you set out the reasons for your application clearly, along with providing evidence in support.

Format

- The inquiry can take place either in person, virtually using an online platform for the parties to attend remotely or in hybrid format. You will be advised of the format and be provided with further information in advance of the inquiry.
- NMBI staff will take all reasonable steps to assist you with arrangements for your attendance at the inquiry, including test calls if you or any of your witnesses are attending remotely.

On the day

- If you are attending in person, please arrive at the NMBI's office to address at least 30 minutes before your inquiry is due to start so that have time to meet with your representative if they are attending with you. The address of NMBI's office can be found on our website: ww.nmbi.ie/Contact-Us.
- NMBI staff can bring you into the inquiry room before the inquiry starts and explain where everyone will be sitting so that you feel more comfortable when the inquiry starts.
- The CEO's representative will introduce themselves to you and your representative and answer any questions you may have before the inquiry begins.
- If you are attending virtually you should aim to be ready at least 30 minutes before the inquiry is due to start to resolve any technical issues that may arise on the morning.

Non-attendance

- It is for you to decide whether you want to attend your inquiry. You don't have to attend, but it is in your best interests to do so because of the potential impact on your NMBI registration. For example, questions might arise that only use can answer and you will be able to give the Subcommittee your comments about the allegations.
- If you chose not to attend, the inquiry may proceed in your absence if the Subcommittee is satisfied that you have been given notice and that it is appropriate to proceed in your absence.
- If you decide not to attend, you may submit written submissions or comments that can be considered by the Subcommittee. You should send your written submissions to the CEO's legal representative in advance of the inquiry so that these can be included within the documents provided to the Subcommittee.

Applications

At any stage in the process you or someone else involved in the case can make an application to the Subcommittee for an order, decision, production summons or direction to be given on the case.

If any applications are made, the CEO's legal team will inform you and invite you to provide your comments.

Call-over meetings

Applications will be considered at a monthly call-over meeting, these take place remotely, via Microsoft Teams and are less formal than an inquiry.

You will be informed of the date and time of the call-over meeting in advance.

Adjournment

If you want to make an application at any stage, you should inform the CEO's legal team.

You will need to provide your written reasons along with any supporting documents you want the Subcommittee to consider.

The Secretariat team will send your documents to the Subcommittee so they can consider these at the call-over meeting.

Attending the call-over meetings

You will be sent a Microsoft Teams invitation to attend the call-over meeting so that you can make your application to the Subcommittee.

NMBI staff will assist you with the logistics of attending the call-over and set up a test call with you in advance.

You can bring representation or represent yourself.

If you are attending without representation and have queries about any legal arguments or issues that are raised the Legal Assessor can explain these during the meeting.

If you are unable to attend the call-over your application can still be considered based on the documents you have provided. After the meeting you will be notified of the decision and be provided with a transcript of the application after the call-over.

Public or private

Inquiries are heard in public unless the Subcommittee decides that part or all of it should be held in private. The Subcommittee can also decide that you or anyone giving evidence should be anonymised.

If the inquiry is held in public, members of the public and/or media can watch and listen to the hearing.

If you feel there are reasons for your inquiry to be heard in private or that you should be anonymised, you can make an application to the Subcommittee. This is only granted in exceptional cases.

You should put the CEO's legal team on notice of your intention to make the application and provide your written reasons for the request.

You will be invited to attend the call-over meeting, as explained in the applications section above, to make your application to the Subcommittee.

The Complainant and any witness can also make an application for privacy or anonymity to the Subcommittee. If they make an application, you will be informed and you can provide your comments on this.

Publication

When considering the FTP report, the Board shall consider if it is in the public interest for the FTP report of sanction and/or all or part of the transcript of the inquiry to be published. A copy of the NMBI's publication policy is available on the policies section of our website: www.nmbi.ie/What-We-Do/Governance/Policies/Publications-Policy-(2011-Act)

You will be advised further on this if publication might apply to your case.

Notification to HSE and employers

The Board of the NMBI is required to give notice in writing to the Health Service Executive and such other persons it sees fit as soon as practicable after any of the following sanctions or measures take effect. You will be advised further on this if it might apply to your case.

Appeals and Judicial Review

If you are not happy with a decision, the outcome or feel that you have grounds to challenge the decision you have a right to appeal to the High Court within **21 days** or Judicial Review.

If you are considering an appeal we recommend that you do seek legal advice or assistance from your Trade Union as soon as possible.

Useful Links

NMBI website	www.nmbi.ie
How to find us	www.nmbi.ie/Contact-Us
NMBI support service	www.nmbi.ie/Complaints/Who-Can-Help
FTPC procedures	www.nmbi.ie/Complaints
Sanction guidance	www.nmbi.ie/Complaints/Sanctions
Citizens Information	www.citizensinformation.ie
Doras	www.doras.org
Flac	www.flac.ie
INMO	www.inmo.ie
Law Society of Ireland	www.lawsociety.ie
Migrant Nurses Ireland	www.migrantnurses.ie
National Advocacy Service for People with Disabilities	www.advocacy.ie
Patient Advocacy Service	www.patientadvocacyservice.ie
Pila	www.pila.ie
PNA	www.pna.ie
SIPTU	www.siptu.ie

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