

WHAT TO DO IF CALLED TO GIVE EVIDENCE AT A FITNESS TO PRACTISE INQUIRY



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

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INTRODUCTION

The Nursing and Midwifery Board of Ireland (NMBI) is the independent, statutory organisation which regulates the nursing and midwifery professions in Ireland. For more information about our role and functions, visit www.NMBI.ie/What-We-Do

This booklet has been prepared to provide information to people who have been called to provide a witness statement or attend an Inquiry before the Fitness to Practise Committee (FTPC) of NMBI in respect of a complaint against a registered nurse or registered midwife.

We hope that the information in this booklet will tell you what you need to know before, during and after the Inquiry. If you have any further queries in relation to the Inquiry process which are not addressed in this booklet, please do not hesitate to contact the solicitors acting on behalf of the CEO who will be notified to you in correspondence.

BEFORE ATTENDING THE INQUIRY

Investigation of complaint

Once a complaint has been referred to the FTPC for Inquiry, the solicitors for the CEO of NMBI must gather evidence in support of the complaint. This evidence may include reports, medical records, correspondence (such as letters and e-mails) and written witness statements.

The solicitors for the CEO may need to take a statement from you about the evidence you are in a position to give to the FTPC at the Inquiry. You may then be called to give oral evidence at the Inquiry in relation to the matters referred to in your statement.

Any documents procured during the course of the investigation, including witness statements, will be disclosed to the registered nurse or registered midwife who is the subject of the complaint, as a matter of procedural fairness. This evidence, both oral and documentary, will be presented to the FTPC at the Inquiry.

What happens if I am contacted in relation to an Inquiry?

If you are contacted by the solicitors for the CEO in relation to an Inquiry, the following will occur:

1. The solicitors for the CEO will arrange a telephone call or a meeting with you.
2. The solicitors for the CEO will explain the Inquiry process to you and will answer any questions about the process that you might have.
3. The solicitors for the CEO will then proceed to ask you questions about the extent of your knowledge/ involvement in relation to the matter that is the subject of the complaint and if necessary, prepare a statement (or supplemental statement) of the evidence that you will give to the FTPC. This statement will be sent to you for your review.
4. If you want to make any changes to the statement, you should contact the solicitors for the CEO so that they can make the changes.
5. The solicitors for the CEO will then send an amended statement to you to sign.
6. This signed statement, together with the initial draft statement, will be sent to the registered nurse or registered midwife or the representatives for the registered nurse or registered midwife involved.
7. The solicitors for the CEO will then contact you to discuss an Inquiry date and your availability to appear as a witness. Please tell the solicitors for the CEO as soon as possible about any significant commitments you may have which might affect your availability. Where possible, the solicitors for the CEO will arrange the Inquiry for a time that suits you. However, this may not be possible, as other factors will affect the date, as will the need to accommodate many other people.

8. Please also let the Fitness to Practise Department staff or the solicitors for the CEO know as soon as possible about any special needs, for example if you are a wheelchair user or if you have a visual impairment.
9. On the day of the Inquiry, you will be asked to give evidence to the FTPC in relation to the matters referred to in your statement.

The role of witnesses in attending inquiries

Evidence is given orally by witnesses at the Inquiry. Sometimes witnesses will be called to give evidence about an event they saw or heard which has been recorded in a written witness statement, or to confirm, for example, that certain records or documents being considered by the FTPC contain their handwriting or are part of their file.

Your role as a witness at an Inquiry is to give first-hand evidence in relation to the matters which are the subject of the allegations made about a registered nurse or registered midwife. This is to assist the FTPC to:

- Decide whether an alleged event occurred.
- Decide whether the registered nurse or registered midwife is guilty of the ground(s) of complaint e.g. professional misconduct, poor professional performance, relevant medical disability.

As a witness you will be asked to give factual evidence to the FTPC, not your opinion about what happened. Your evidence will be given under oath or affirmation to tell the truth.

Independent legal advice

It is important to remember that you have been called to give evidence at an Inquiry as a factual witness. You are not the subject of the Inquiry and no allegations have been made against you. While it is unlikely that you will need to consult a solicitor, it is your right to do so if you wish. If you have any specific concerns in relation to your involvement in the matter that is the subject of the Inquiry, it may be of assistance for you to seek your own independent legal advice. However, please note that NMBI will not be responsible for discharging any legal costs incurred by you.

A witness at an Inquiry is entitled to the same immunities and privileges as if he or she were a witness before the High Court. This means that you cannot be prosecuted or sued for defamation on the basis of anything you say while giving evidence to the FTPC, provided the evidence you give is truthful.

Am I required to attend the Inquiry?

Once you have been served with a subpoena or witness summons, please note that you are legally required to attend the Fitness to Practise Inquiry unless you have significant reason not to do so e.g. you have been certified as medically unfit to attend. However, it is important to note that in the event you are unable to attend the Inquiry on a specific date, the FTPC may require your attendance on an alternative date.

You will be notified of the venue, date(s) and time(s) you are required to attend the Inquiry in advance of the hearing date.

If you ignore a witness summons, the FTPC may apply to the High Court for an order requiring you to appear before the Committee (or whatever Order the High Court decides). It is a criminal offence not to comply with a witness summons and you may be prosecuted. Please note that a witness summons to attend an Inquiry overrides any other commitments that you may have on that day. If you require a letter to your employer to explain the requirement that you are to attend the Inquiry, please let us know.

Please note that it may be necessary for you to travel to Dublin the day before you are required to give evidence and stay in a hotel overnight in order to facilitate your early attendance at the Inquiry. We will let you know if this is required.

Will the Inquiry be in public or private?

Inquiries are held in public except in certain circumstances. As a witness you may wish to apply to the FTPC for the Inquiry to be held otherwise than in public, e.g. in private, partly in private or for your identity to be anonymised. If you wish to make an application to hold the Inquiry or part of the Inquiry otherwise than in public, you will be asked to give your reasons in writing. The FTPC will consider your application and decide whether the applications shows 'reasonable and sufficient cause' and whether it is in the public interest to hold all or part of the Inquiry otherwise than in public.

If the Inquiry is held in public, any member of the public may attend. The media will know about the Inquiry and will have the right to report on the matter. Photographers and television cameras may be present outside the Inquiry venue.

You are required not to talk to the media or press in advance of or during the Inquiry about your evidence or about any matter relevant to the Inquiry as to do so may cause difficulties at the proceedings. You are not obliged to talk to the media after the Inquiry.

Inquiry venue

Inquiries will generally be held at:

Nursing and Midwifery Board of Ireland (NMBI),
18-20 Carysfort Avenue,
Blackrock,
Co Dublin. (see map on www.NMBI.ie/Contact-Us)

We will notify you if the Inquiry is to be held at an alternative venue.

Support for people with disabilities

The Inquiry centre has wheelchair access. If you have any special needs, please discuss them with the Fitness to Practise Department staff or the solicitors for the CEO before the Inquiry so that we can make arrangements to make it easier for you to give your evidence.

ATTENDING THE INQUIRY

Day of the Inquiry

Most Inquiries last one or two days. If an Inquiry is likely to last longer, we will try to allocate a specific day for you to give evidence.

The solicitors for the CEO will give you a specific time to be at the Inquiry centre. The Inquiry generally commences at 10.00am but you will usually be asked to attend at an earlier time (usually 8.30am) in order to meet the CEO's legal team and staff representatives. Please give yourself plenty of time for your journey and arrive at the required time. You may wish to familiarise yourself with the location of NMBI in advance of attending the Inquiry – see contact details and map at Appendices 2 & 3. If you hold original documents relevant to the Inquiry, please bring them with you to the Inquiry.

When you arrive at the Inquiry centre, please go to the reception desk and let them know you are attending an Inquiry. A member of staff from the Fitness to Practise Department will show you the venue, including the location and lay-out of the room in which the Inquiry will be held. The staff member will explain what you can expect to happen when you go into the Inquiry room to give your evidence:

- Where to stand when taking the oath or affirmation.
- Who will be in the Inquiry room and where they will be situated.
- The order of proceedings.

The staff member will also answer any questions you might have. Once that has been done, you will then be shown to a waiting room designated for witnesses only.

The Inquiry usually concludes each day between 4.00pm and 4.30pm. However, it may go on longer than expected. Please note that if your evidence is not heard on the day due to a delay or change in circumstances, you will be asked to attend on another day. The witness summons served on you will be valid for the next Inquiry day and every day after that until you have given your evidence.

We will always try to give you as much notice as possible about the date(s) on which you will be required to attend.

Adjournments

The Inquiry will adjourn for lunch. The Inquiry may also adjourn at the end of each day, if the Inquiry lasts for more than one day. The FTPC may also adjourn the Inquiry for a longer period because it has become clear that the Inquiry will take longer to complete.

It is extremely important that you do not talk to anyone about the case or about your evidence during an adjournment. This includes anyone else involved with the case and your family or friends. If you do not follow this procedure, it could affect the outcome of the Inquiry.

Refreshments

Tea, coffee, water and biscuits are provided during the day. Sandwiches are provided at lunchtime.

Meeting representatives before giving evidence

The legal representatives for the CEO and the representatives for the registered nurse or registered midwife may wish to meet with you on the morning of the Inquiry in advance of you giving evidence for the purpose of going through the matters referred to in your statement and any other relevant documents. Please note that while you are not obliged to meet with the representatives, it is normal practice to do so.

Waiting to give evidence

You will not generally hear the evidence given by other witnesses before you give your own evidence. We try to ensure that Inquiries proceed as quickly as possible and that witnesses are called to give evidence in a timely manner. However, it is not unusual for witnesses to be required to wait for a period of time before they are called to give evidence and in some cases witnesses are asked to return on a future date in the event that the Inquiry overruns. Therefore it is likely that there will be a period of time during which you will be required to stay in the witness waiting room before you are actually called to give evidence. You may be waiting with other witnesses, but you will not be waiting in the same room as the registered nurse or registered midwife who is the subject of the Inquiry. Please do not discuss the case, your own evidence or any other witness's evidence while waiting, as this might influence the case.

Newspapers and a radio are provided in the waiting room but you may wish to bring your own reading material or a laptop. Wifi is available and a member of staff will give you a guest password on request.

Many people may be asked to attend the Inquiry and give evidence. The registered nurse or registered midwife, their legal representatives and any witnesses who are giving evidence on behalf of the registered nurse or registered midwife will also attend. Therefore, it is likely that you will meet other people involved in the case. You are not obliged to talk to any other witness or the registered nurse or registered midwife and/or their representative.

While waiting to give evidence, you should take time to read your witness statement. You may not be entitled to have your witness statement in front of you when giving your evidence.

GIVING EVIDENCE AT THE INQUIRY

Who will be at the Inquiry?

The following parties will be present in the Inquiry room when you are giving evidence:

- **FTPC** – this is normally five people, including three people who are not nurses or midwives, one nurse and one midwife. One member of the Committee will act as Chairperson.
- **Legal Assessor** – this is a Senior Counsel (barrister) who will sit with and advise the FTPC. The Legal Assessor will not take part in any decision making but will give advice and information to the Committee on the law and procedure.
- **CEO's legal representatives** – these will include a barrister and/or solicitor who will present the case in support of the allegations facing the registered nurse or registered midwife and will question the witnesses so that they can give their evidence.
- **Stenographer** – this person records all of the evidence given at the Inquiry.

The following people may or may not be present while you are giving evidence:

- **Registered nurse or registered midwife** – this is the person against whom the allegations have been made.
- **Registered nurse's or registered midwife's representatives** – these may include a barrister, solicitor and/or a trade union representative. They will present the case or speak on behalf of the registered nurse or registered midwife. They will put the registered nurse's or registered midwife's position to the FTPC and will question the witnesses about their evidence. Some registered nurses and registered midwives choose not to have any legal representatives and will defend their own case.
- **Expert witness on behalf of the CEO/the registered nurse or registered midwife** – the role of the expert is to assist the FTPC by providing an independent opinion, based on their expertise, in relation to the matters which are the subject of the allegations.

The diagram in the appendix shows the layout and seating arrangements of the room in which the Inquiry is held. You will be seated opposite the Chairperson of the FTPC and you should address your evidence and responses to the Chairperson.

Public access to the Inquiry

If the Inquiry is held in public, there will also be a public area where the media and public can sit to watch and listen to the proceedings. Sometimes, the FTPC will ask the media, the public and witnesses to leave the Inquiry if there are any confidential matters to discuss. If this happens, you will be brought back to the witness waiting room until the Inquiry restarts.

Taking the oath or affirmation

When it is your turn to give evidence, a member of staff from the Fitness to Practise Department will show you to the Inquiry room. You will be asked to stand at a table opposite to the Chairperson of the FTPC and then asked to state that you will tell the truth. You can make this statement by reading aloud an oath while holding the bible or another holy text. If you do not wish to swear an oath you may affirm to the FTPC that you will tell the truth. A staff member will hold up a card with the wording of the oath or affirmation and ask you to read it out loud. You may then sit.

Giving evidence, examination and cross-examination

When you are called to give evidence, you will be brought to the Inquiry room and shown to the witness table. After you have been sworn in or given an affirmation, the Chairperson of the FTPC will introduce the members of the FTPC to you.

Take time to think about the questions you have been asked. If you do not understand a question or do not know the answer, you should say so. Try to speak clearly and slowly so that everyone can hear what you are saying. It is important to note that you will not have access to your written witness statement while you are giving evidence to the FTPC. It is likely that the FTPC will not have access and may not have seen your written statement. It is important that you give evidence regarding all matters and do not assume that the FTPC will already know.

Examination in Chief – The barrister or solicitor representing the CEO of NMBI will ask you questions based on the matters referred to in your witness statement.

Cross Examination – The registered nurse or registered midwife who is the subject of the Inquiry or their legal/union representative (if they are represented) may also ask you questions by way of cross-examination.

Members of the FTPC may then ask you questions about your evidence.

If you feel that you need a break from giving evidence you can ask the Chairperson of the FTPC and the Chairperson may decide if a break is required. If a break is taken during the course of examination in chief or cross-examination, you are not allowed to talk to anyone about the Inquiry, including the CEO's legal team, so you will be generally asked to go to a separate room.

When you finish giving your evidence, you may leave the Inquiry venue. If the Inquiry is being held in public, you may choose to stay to listen to the rest of the day's proceedings. If you choose to stay, you will be shown where to sit.

If the Inquiry is being held in private, you may not stay unless you are given permission to do so by the FTPC. You should tell the solicitor for the CEO before the Inquiry if you want to apply to the FTPC for permission to stay.

It is important that you do not discuss your evidence with other witnesses or any other person as this could affect the Inquiry.

Once the CEO of NMBI has called all the evidence in support of the allegations and has closed her case, it is then open to the registered nurse or registered midwife who is the subject of the Inquiry to call evidence by way of defence. However, there is no obligation on the registered nurse or registered midwife to give evidence in their defence or indeed to call any other evidence by way of defence. The onus remains on the CEO of NMBI to prove the allegations against the registered nurse or registered midwife to the appropriate standard. The legal representatives for the CEO are entitled to cross-examine any witnesses called by or on behalf of the registered nurse or registered midwife.

When all the evidence has been heard, the CEO's legal representatives will summarise the case in support of the allegations facing the registered nurse or registered midwife. The registered nurse or registered midwife or his or her representative may summarise the case against the allegations for the FTPC.

End of Inquiry

At the conclusion of the Inquiry, when all the evidence has been heard, the FTPC will then prepare its report. This will state:

- The nature of the complaint considered by the FTPC and the evidence presented to the FTPC,
- Whether any of the allegation(s) against the registered nurse or registered midwife has been proved, and
- Whether an undertaking or consent has been provided.

If the FTPC makes findings against the registered nurse or registered midwife, the report of the FTPC will also include reference to the sanction being recommended to the Board by the FTPC. The report may be drawn up on the day of the Inquiry or at a later date.

The Board of NMBI will consider the report at the earliest possible opportunity. In the event that the FTPC finds that no allegation against the registered nurse or registered midwife the subject of the complaint is proved, the Board will dismiss the complaint.

If the FTPC finds that any allegation against the registered nurse or registered midwife is proved, the Board of NMBI will determine the sanction to be imposed on the registered nurse or registered midwife. The Board of NMBI may impose one or more of these sanctions on the registered nurse or registered midwife:

- An advice or admonishment, or a censure, in writing;
- Censure in writing and a fine not exceeding €2,000;
- The attachment of conditions to the nurse's or midwife's registration, including restrictions on the practice of nursing or midwifery that may be engaged in by the nurse or midwife;
- The transfer of the nurse's or midwife's registration to another division;
- The suspension of the nurse's or midwife's registration for a specified period;
- the cancellation of the nurse's or midwife's registration from the register of nurses and midwives or a division of that register;
- A prohibition from applying for a specified period for the restoration of the nurse's or midwife's registration in the register of nurses and midwives or a division.

If the Board determines that a sanction, other than an advice or admonishment or a censure should be imposed, the Board must apply to the High Court for confirmation of the decision. The registered nurse or registered midwife has 21 days to appeal this decision to the High Court. Appeals to the High Court

are held in public. In the event of an appeal, the case may be re-heard in full and you may be called as a witness to give evidence at the appeal.

Payment of expenses

Once you have completed giving evidence at the Inquiry you can claim payment for reasonable out-of-pocket expenses to which you may be entitled.

These expenses may include:

- Travel expenses
- Accommodation expenses
- Refreshments and meals

Please note that we will pay expenses for NMBI witnesses only and not your solicitor's fees or the expenses incurred by any individual accompanying you to the Inquiry.

In order to be reimbursed please:

- Complete the Witness Expenses Form which is available in the Witness Guidelines section of our website on www.NMBI.ie/Complaints/Witness-Guidelines/Witness-Expenses/Witness-Expense-Form.
- Attach all receipts to your completed form and return to the Fitness to Practise Department at NMBI.

You will receive a written acknowledgement of receipt of your claim form and receipts from the Fitness to Practise Department. Your claim form will be reviewed, approved and then sent to our Accounts Department for processing. Any payments will be made directly into your bank account.

Other costs

Reimbursement of any other costs or expenses incurred must be approved by NMBI in advance of attending the Inquiry. Such costs may include employment of a locum or a child-minder. Proof of costs and/or relevant documentation must be submitted with your expenses claim form.

If you have any queries about expenses please contact the Fitness to Practise Department.

Travelling to the Inquiry

Public transport is the preferred mode of travel. You are responsible for booking your own tickets and you must present receipts stating the starting and finishing points of the journey, date(s), times and fare.

Travelling by train

NMBI will pay economy class fares. You can find up-to-date timetables and details of fares on the Iarnród Éireann/Irish Rail website (www.IrishRail.ie).

Travelling by bus

You can find up-to-date timetables and details of fares and routes on the Dublin Bus website (www.DublinBus.ie).

Travelling by private transport

If public transport routes and times are not convenient for your journey you may use private transport.

Travelling by coach

If travelling by coach you are responsible for booking your own tickets. You must present receipts stating the starting and finishing points of the journey, date(s), times and fare.

Travelling by taxi

If travelling by taxi you must ask the driver for a printed receipt from the taximeter stating the starting and finishing points of the journey, date(s), times and fare.

Travelling by private car

Please note that there is no parking for witnesses at the NMBI offices. There are several car parking facilities in Blackrock village.

NMBI will pay mileage at the current public sector rates. If claiming mileage, you may claim from your home.

Parking costs and tolls will be reimbursed on presentation of receipts stating date(s), times and costs.

Meals

Sandwiches are provided at lunchtime and other refreshments are provided throughout the day(s) of the Inquiry.

You must present itemised receipts for other meals – credit card receipts are not itemised receipts.

Accommodation

NMBI will reimburse you for any overnight accommodation costs where necessary. You are responsible for booking your own accommodation and must present itemised receipts from the accommodation provider – credit card receipts are not itemised receipts.

Things to remember

- Make sure you have all the information you need before the day of the Inquiry.
- Check that you are familiar with the location of the Inquiry venue and have factored in sufficient travel time. If you are unsure, please ask the Fitness to Practise staff or the solicitors for the CEO for directions and please see the map attached.
- Read over your statement and any other relevant documents in advance of the Inquiry.
- Make sure that you bring with you all original documents, even if you have already given copies to the solicitors for the CEO.

- Be on time for the Inquiry and any meeting beforehand.
- If you think of any additional information or evidence that you believe may be relevant to the Inquiry, please tell the solicitors for the CEO or the Fitness to Practise Department staff as soon as possible, as it may be too late to tell them on the day of the Inquiry.
- Keep your receipts.

Giving feedback

We want to improve the service we provide and welcome any comments you might have following your experience as a witness. Please let us know what you think by contacting the PPC Division of the Fitness to Practise Department on 353-1-6398500 or at FTP@NMBI.ie

APPENDIX

Layout of Inquiry Room

Layout and seating arrangements of the Inquiry Room in Nursing and Midwifery Board of Ireland

