

Information for Witnesses: A Guide to Attending Fitness to Practise Inquiries (*Nurses Act, 1985*)

This booklet contains information for people who have been called to provide a witness statement or attend a fitness to practise inquiry at Bord Altranais agus Cnáimhseachais na hÉireann/Nursing and Midwifery Board of Ireland.

**Bord Altranais agus Cnáimhseachais na
hÉireann/Nursing and Midwifery Board of Ireland
(2013)**

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**Bord Altranais agus Cnáimhseachais na hÉireann/
Nursing and Midwifery Board of Ireland**
Formerly An Bord Altranais (Irish Nursing Board)

**Information for Witnesses:
A Guide to Attending Fitness to Practise Inquiries
(Nurses Act, 1985)**

About this booklet

This booklet contains information for people whom Bord Altranais agus Cnáimhseachais na hÉireann/Nursing and Midwifery Board of Ireland (formerly An Bord Altranais/Irish Nursing Board) has called to attend as a witness at an inquiry into a complaint against a registered nurse or registered midwife; more specifically, an inquiry to be held in accordance with the provisions of the **Nurses Act, 1985**. We understand that you may be nervous or anxious about giving evidence and 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 questions after reading this booklet, please contact our Fitness to Practise Department – see contact details on page 17.

In order to make this booklet easier to read, the Nursing and Midwifery Board of Ireland will be referred to as **NMBI**.

The role of Bord Altranais agus Cnáimhseachais na hÉireann/Nursing and Midwifery Board of Ireland in protecting the public

Prior to the enactment of the *Nurses and Midwives Act, 2011* and the commencement of certain sections of this Act, An Bord Altranais operated within the provisions of the *Nurses Act, 1985*. Its role was to protect the public through the promotion of high standards of nursing and midwifery education and training and professional conduct among nurses and midwives. As part of that role An Bord Altranais had a statutory responsibility to carry out inquiries into the fitness to practise of nurses and midwives. If allegations were made that a nurse or midwife was guilty of professional misconduct and/or unfit to practise by reason of physical or mental disability and where the Fitness to Practise Committee had decided that there was sufficient cause to warrant the holding of an inquiry, then an inquiry would be held.

Under the provisions of the *Nurses and Midwives Act, 2011* and following the commencement of section 6 of that Act in October 2012, An Bord Altranais has continued in being but is now known as Bord Altranais agus Cnáimhseachais na hÉireann/Nursing and Midwifery Board of Ireland (NMBI). Protection of the public continues to be the primary concern of the organisation.

The Nurses and Midwives Act, 2011: An explanatory note

The *Nurses and Midwives Act, 2011* provides for the enhanced protection of the public in its dealings with nurses and midwives, the recognition of midwifery as a separate profession to nursing, the registration, regulation and control of nurses and midwives, enhanced high standards of professional education, training and competence of nurses and midwives, the investigation of complaints against nurses and midwives, and the increased public accountability of the Board. Its provisions for the handling and investigation of complaints against registered nurses and registered midwives differ in many ways to the provisions of the *Nurses Act, 1985*.

Although the relevant fitness to practise sections of the *Nurses and Midwives Act, 2011* have been commenced, complaints about registered nurses and registered midwives that were made prior to 2nd October 2012 must be processed in accordance with the provisions of the *Nurses Act, 1985*. The purpose of this booklet is explain what is required of witnesses attending inquiries held in accordance with the *Nurses Act, 1985*.

The role of the Fitness to Practise Committee at inquiries

In accordance with the provisions of the *Nurses Act, 1985*, the role of the Fitness to Practise Committee at an inquiry is to hear the oral evidence and to examine any written or other evidence presented by the Chief Executive Officer or her representatives. The Committee also hears any evidence presented on behalf of the nurse or midwife who is the subject of an inquiry. The Chairperson of the Committee ensures that the procedures for the conduct of the inquiry are adhered to. When all the evidence has been presented and any closing statements have been heard, the Committee then considers the evidence and prepares a report on its findings.

The role of witnesses in attending inquiries

Your role at an inquiry is to give first-hand evidence in relation to allegations made about a nurse or midwife. You will be asked to state what you saw and/or heard in relation to particular incidents.

Once you have received a *subpoena* or witness summons, you must attend the inquiry. The staff in the Fitness to Practise Department of NMBI understand that you may find the experience stressful for a number of reasons, for example, remembering what happened, getting time off work to attend, and finding our offices. You can contact our office for assistance in advance of attending the inquiry.

You may feel nervous giving evidence at the inquiry and when being questioned about your evidence. All members of the Fitness to Practise Committee are aware that you may not have given evidence before.

Overview of the complaints and inquiry processes

Making an application for an inquiry

Within the provisions of the *Nurses Act, 1985* the Board of An Bord Altranais or any person may apply to the Fitness to Practise Committee for an inquiry into the fitness to practise of a nurse or midwife on the grounds of alleged professional misconduct or alleged unfitness to engage in such practice by reason of physical or mental disability. The nurse or midwife is notified that a complaint has been made and invited to respond to any allegations.

Preparing to hold an inquiry

The Fitness to Practise Committee considers the application and makes a decision about whether or not to hold an inquiry. If the decision is made to hold an inquiry the nurse or midwife is informed.

Once the date of the inquiry is set, the nurse or midwife, his or her representatives, and witnesses are notified of the venue, date(s) and time(s) they are required to attend. The inquiry is held in private; no member of the public may attend.

Events at an inquiry

The legal representatives of the Chief Executive Officer (CEO) of NMBI prepare a case in support of the allegations made against the nurse or midwife. They present their case at the inquiry to the Fitness to Practise Committee. Documents are presented and witnesses give evidence. The CEO's legal representative may ask each witness to give more detail about their statements after which the nurse or midwife or his or her representative may cross-examine or question the witness.

The nurse or midwife may call witnesses to give evidence on his or her behalf. The legal representatives of the CEO of NMBI may cross-examine these witnesses.

When all the evidence has been heard the CEO's legal representative summarises the case in support of the allegations against the nurse or midwife. Similarly, the nurse or midwife or his or her representative may summarise the case against the allegations.

The findings of the Fitness to Practise Committee

The Fitness to Practise Committee then considers the evidence in private and makes a report on its findings to the Board of NMBI. The Board considers this report at its next meeting: it may confirm the findings and recommendations of the Fitness to Practise Committee in whole or in part.

No finding of professional misconduct and/or unfitness to practise

There may be no finding of professional misconduct or unfitness to practise against the nurse or midwife, but the Board may still decide to:

- attach specific conditions to the retention of the nurse's or midwife's name on the register, or
- advise, admonish or censure the nurse or midwife.

Findings of professional misconduct and/or unfitness to practise

Where the nurse or midwife is found guilty of professional misconduct and/or unfit to practise because of physical or mental disability, the Board may decide to:

- erase the nurse's or midwife's name from the register
- suspend the nurse's or midwife's name from the register for a specified period
- attach specific conditions to the retention of the nurse's or midwife's name on the register, or
- advise, admonish or censure the nurse or midwife.

Confirmation of decisions by the High Court

In the case of erasure, suspension or attachment of conditions, the Board must apply to the High Court for confirmation of the decision. The nurse or midwife may apply to the High Court for a cancellation of the decision.

Publication of inquiry outcomes

If a nurse or midwife has **not** been found guilty of professional misconduct or unfit to practise by reason of physical or mental disability, NMBI cannot publish the findings unless the nurse or midwife gives consent.

If the nurse or midwife has been found guilty of professional misconduct or unfit to practise by reason of physical or mental disability, NMBI will publish the findings and any sanctions in accordance with the most recent publication policy.

Individual witnesses are not notified about the outcomes of inquiries unless they are the complainant or applicant or the employer of the nurse or midwife.

In cases of significant public interest, NMBI or the Chief Executive Officer may also publish the findings of the Fitness to Practise Committee and the decisions of the Board by means of a press statement.

Further details of the most recent NMBI policy on publishing the outcomes of inquiries (September 2012) can be found on the website.

BEFORE THE INQUIRY

The inquiry date

Before attending an inquiry you will have received a *subpoena* or witness summons from the Chief Executive Officer of NMBI. This subpoena sets out the name of the case, the date(s) and time that the inquiry will take place, and the place where you must attend. In almost all cases, inquiries are held in the offices of NMBI – see contact details and map on pages **15-17**.

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. In exceptional circumstances, an inquiry may be deferred. We will always try to give as much notice as possible about the date(s) you will be required to attend.

The inquiry generally commences at 10.00 a.m. but you will usually be asked to attend at an earlier time in order to meet the Chief Executive Officer's legal team and staff representatives.

The inquiry usually closes each day between 4.00p.m. and 4.30p.m. However, it may go on longer than expected. You should be aware of this if booking trains or coaches. You should also be aware 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.

Obtaining advice

Remember that you have been called to give evidence at an inquiry: you are not the subject of the inquiry and no allegations have been made against you. You do not need to consult a solicitor. It is your right to do so, however, if you wish.

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 Fitness to Practise Committee.

You may be feeling anxious about what you can say during the inquiry, for example, "Can I say what so-and-so said?" Any queries about your evidence can be discussed with staff in the Fitness to Practise Department in advance of attending the inquiry or with the Chief Executive Officer's legal team on the day you attend.

What happens if I do not attend the inquiry?

Having been subpoenaed, failure to attend is an offence under the *Nurses Act, 1985*. You may be prosecuted and if convicted, a fine may be imposed.

If there is some very significant reason why you cannot attend on the appointed dates, please contact the Fitness to Practise Department as soon as possible.

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

We suggest that you familiarise yourself with the location of NMBI in advance of attending the inquiry – see contact details and map on pages **15-17**.

We also suggest that you decide which form of transport will enable you to arrive at our offices in good time for the inquiry. Information about transport options is given on page **15**.

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

When you arrive at the offices of NMBI, please introduce yourself to the staff at the reception desk and let them know you are attending an inquiry. You will then be shown to a waiting room designated for witnesses only.

Preparing for the inquiry

A member of staff from the Fitness to Practise Department will show you around the facilities of the venue, including the location and lay-out of the room in which the inquiry will be held – see the diagram on page **8**. She 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 sitting where (see diagram on page **8** and the list of those present on page **9**)
- the order of questioning.

She will also answer any questions you might have.

Waiting to give evidence

You may be waiting with other witnesses, but you will not be waiting in the same room as the nurse or midwife who is the subject of the inquiry. Please do not discuss your own evidence or any other witness's evidence while waiting.

If you gave a statement to a member of the Chief Executive Officer's legal team before attending the inquiry, you may be asked to go through it with a legal advisor before giving evidence to the Fitness to Practise Committee.

The nurse or midwife may or may not be represented by a lawyer or trade union representative. If present, this representative may ask to speak to you before you give your evidence. While it is customary to do so, you are not obliged to do so.

We suggest that you think about your evidence while you are waiting to go into the inquiry room. 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.

If you would like to be accompanied to the inquiry, please contact a member of the Fitness to Practise staff beforehand. Please note that NMBI will not be held responsible for expenses incurred by any person accompanying a witness to an inquiry.

If you have any questions about giving evidence, please feel free to ask the legal advisor or a staff representative.

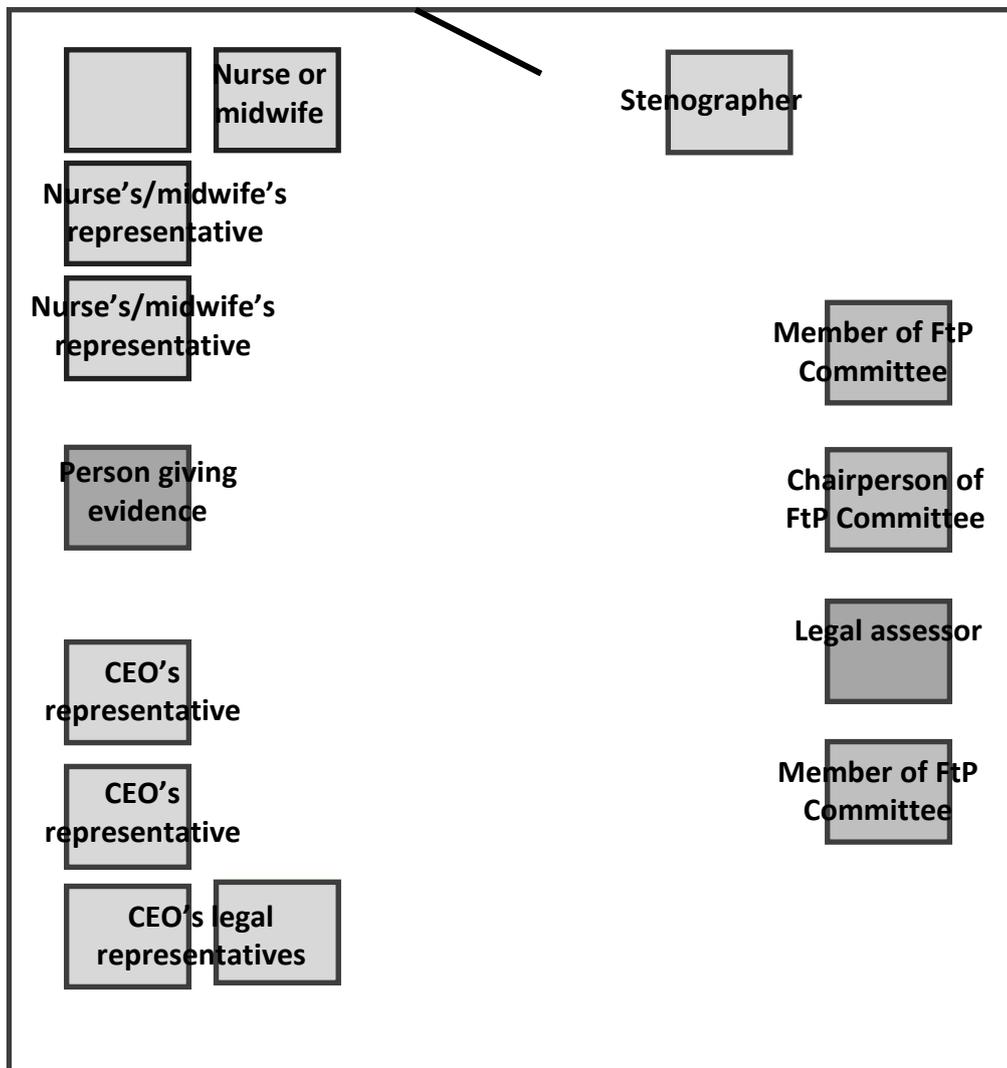
Refreshments

Tea, coffee, water and biscuits are provided during the day. Sandwiches are provided at lunchtime. If you have any special dietary requirements, please contact the Fitness to Practise Department and let us know.

GIVING EVIDENCE AT THE INQUIRY

Lay-out and seating arrangements of the Inquiry Room in Bord Altranais agus Cnáimhseachais na hÉireann/Nursing and Midwifery Board of Ireland

This diagram shows the lay-out and seating arrangements of the room in which the inquiry is held. You will be seated opposite the chairperson of the Fitness to Practise Committee and should address your evidence and responses to him or her. At least three members of the Fitness to Practise Committee may be present, but occasionally there will be more.



Who will be present in the inquiry room?

The following people must be present in the inquiry room:

- The Fitness to Practise Committee which consists of a minimum of three members
- A legal assessor whose role is to advise the Fitness to Practise Committee
- A team representing the Chief Executive Officer of NMBI and consisting of a barrister, a solicitor and staff from the Fitness to Practise Department
- A stenographer who keeps a verbatim or “word for word” record of what is said at an inquiry.

The following people may or may not be present:

- The nurse or midwife who is the subject of the inquiry
- The nurse’s or midwife’s representatives who may include a barrister, a solicitor and/or a trade union representative.

The diagram on page 8 shows the seating arrangement of the inquiry room.

Evidence is given orally by witnesses. This may be supported by documents which are circulated to everyone in the inquiry room. For example, you might be asked to confirm that you wrote a particular letter or minutes of a meeting.

Taking the oath or an affirmation

You will be shown into the inquiry room and asked to stand at a table opposite the Chairperson of the Fitness to Practise Committee. You will then be asked to state to the Fitness to Practise Committee that you will tell the truth. You can make this statement by reading aloud an oath while holding a bible or another holy text. If you do not wish to swear an oath you may affirm to the Committee that you will tell the truth. A staff representative will hold up a card with the wording of the oath or the affirmation and ask you to read it out loud. You may then sit down.

The oath

I swear by Almighty God that the evidence I shall give to this committee shall be the truth, the whole truth and nothing but the truth.

The affirmation

I affirm and attest that the evidence I shall give to this committee shall be the truth, the whole truth and nothing but the truth.

The Chairperson of the Fitness to Practise Committee will explain what will happen.

Giving evidence, examination and cross-examination

The legal advisor representing the Chief Executive Officer of NMBI will ask you questions.

The nurse or midwife who is the subject of the inquiry may or may not be present at the inquiry. He or she may or may not be represented by a lawyer or trade union representative. The nurse or midwife may put questions to you about your evidence

either directly or through his or her representative: this is known as cross-examination.

Members of the Fitness to Practise Committee may ask you questions about your evidence. This Committee is usually made up of at least three people. A legal advisor known as the legal assessor sits with the Committee. The legal assessor provides advice to the Committee only and does not take part in making decisions about the evidence.

What is the order of questioning?

The order of questioning is as follows:

- the legal representative of the Chief Executive Officer of NMBI
- the nurse or midwife or his or her representative
- the Fitness to Practise Committee

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 to that everyone can hear what you are saying.

If you feel that you need a break from giving evidence you can ask the Chairperson of the Fitness to Practise Committee. He or she may also decide that a break is required. If a break is taken during cross-examination, you are not allowed to talk to anyone, including the Chief Executive Officer's legal team, so you will be asked to go to a separate room.

When you have finished giving evidence, the Chairperson of the Fitness to Practise Committee will tell you that are free to leave and remind you that you must not discuss your evidence with anyone else, including other witnesses.

AFTER GIVING EVIDENCE AT THE INQUIRY

After you have left the inquiry room, you are free to leave NMBI. You must not discuss your evidence with other witnesses or any other person as this could affect the inquiry.

If for any reason it seems that the Fitness to Practise Committee needs to clarify certain points in your evidence, you may be asked to wait in the witness waiting room.

When the members of the Fitness to Practise Committee have heard all the evidence from witnesses and closing statements from legal advisors, they then withdraw to prepare a report on the inquiry. This report contains details of:

- each allegation made against the nurse or midwife
- whether or not each allegation was proven
- the basis for the Committee's decision about each allegation
- whether or not the nurse or midwife was found
 - guilty of professional misconduct and/or
 - unfit to practise by reason of physical or mental disability
- any sanctions that the Committee recommends to the Board of NMBI.

The report is considered by the Board of NMBI. The Board may or may not decide to uphold the decisions of the Fitness to Practise Committee.

Payment of expenses

Once you have completed giving evidence at the inquiry you may then prepare and submit your expenses claim form to NMBI. Information about expenses can be found on pages **11-14**.

EXPENSES

The activities and operations of NMBI are funded by nurses' and midwives' fees.

Reimbursement of expenses

NMBI will pay all reasonable expenses incurred in attending the inquiry. These are normally paid after the inquiry has concluded. However, if this is likely to cause any difficulty for you, please contact the Fitness to Practise Department as soon as possible.

Receipts must be provided. Subsistence and attendance fees will not be paid.

In order to be reimbursed please:

- Read and complete the NMBI *Fitness to Practise Expenses Claim 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 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.

Please note that incomplete claim forms will be returned to you and may result in delays in processing the payment.

Travelling by public transport

Public transport is the preferred means 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 are 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.

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

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

NMBI will pay mileage at the current public sector rates. If claiming mileage, you may claim from your home to our offices. Tolls and parking costs 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.

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.

Summary

NMBI will reimburse:

- Economy class train fares
- Bus fares
- Coach, taxi or Hackney cab fares
- Parking and tolls
- Certain meals
- Accommodation where necessary
- Other costs which have been agreed in advance

Itemised receipts must be presented.

GETTING TO BORD ALTRANAIS AGUS CNÁIMHSEACHAIS na hÉIREANN/NURSING AND MIDWIFERY BOARD OF IRELAND

The inquiry will take place in the offices of NMBI, 18-20 Carysfort Avenue, Blackrock, Co Dublin. These are located in the section of Carysfort Avenue between the main street of Blackrock Village and the dual carriageway (Frascati Road; the N31).



Arriving by train

The Blackrock train and DART station is located on Bath Place and is a five minute walk from NMBI – see the map on page 16. You can find up-to-date timetables and details of fares on the Iarnród Éireann/Irish Rail website (www.irishrail.ie).

Arriving by bus or coach

The following Dublin Bus routes go from the city centre to Blackrock: 4, 7, 8, 46e, 84, 84a, 114 and 118. The 17 goes from Rialto, Dublin 8 to Blackrock. You can find up-to-date timetables and details of fares and routes on the Dublin Bus website (www.dublinbus.ie).

Certain Aircoach routes include the Frascati Shopping Centre and the Rock Road/Mount Merrion Avenue Junction. You can find up-to-date timetables and details of fares and routes on the Aircoach website (www.aircoach.ie).

Arriving by bicycle

There are off-street bicycle racks to the rear of NMBI's office building. We do not accept responsibility for bicycles left there.

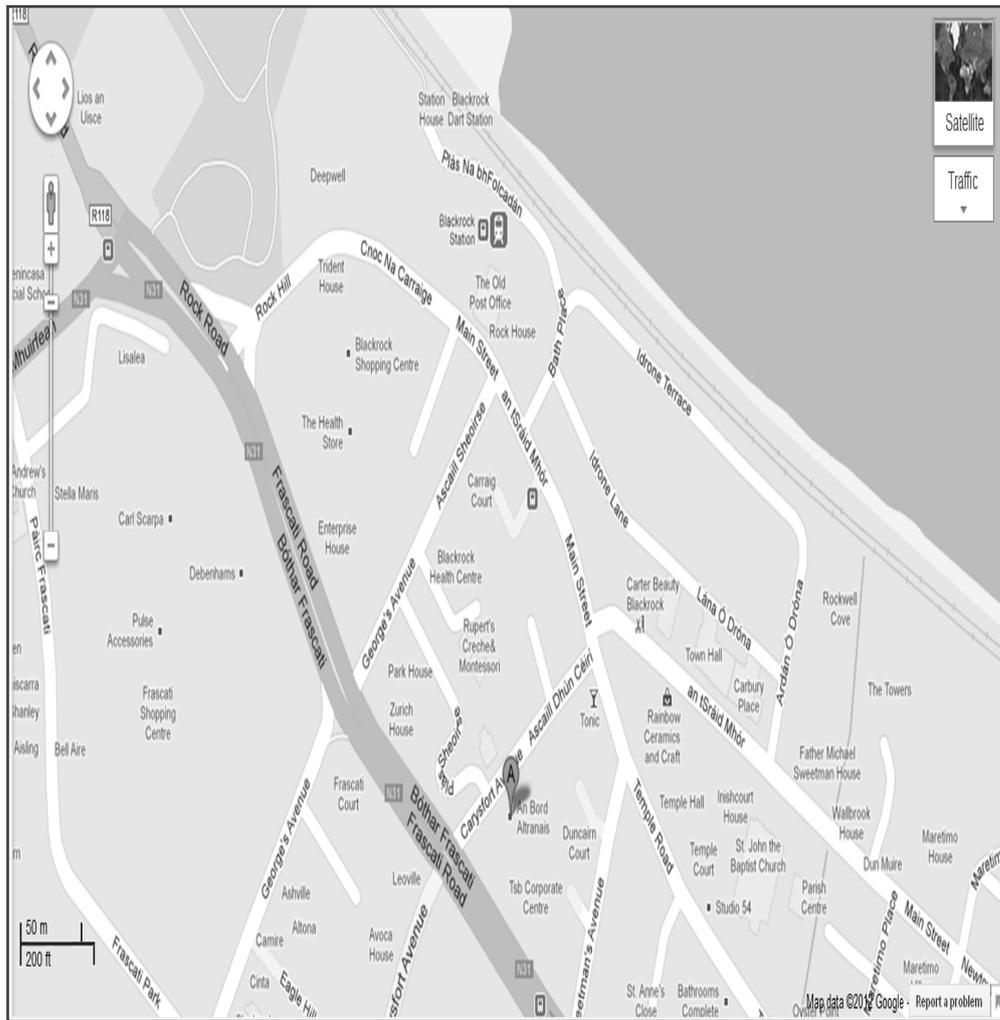
Arriving by car

Whichever direction you approach Blackrock from, you should be aware that NMBI's offices are located at the **Blackrock** end of Carysfort Avenue, i.e., between Frascati Road (N11) and Blackrock Main Street – see the map on page 16. This short section of Carysfort Avenue does not currently show up on satellite navigation (SatNav) systems or global positioning systems (GPS).

All-day parking is available at the nearby Blackrock and Frascati shopping centres. You can find out about parking rates at these websites:

- Blackrock Centre - www.blackrockcentre.com/customer-service.html
- Frascati Shopping Centre - <http://iloveblackrock.ie/directory/shopping-centres/frascati-shopping-centre/>

Short-term pay-and-display parking is available on some roads in Blackrock.



MORE INFORMATION

The website of NMBI is a useful resource for anyone trying to find out more about Fitness to Practise matters.

Log on to www.nmbi.ie, then click on the link *Reporting Misconduct*. You can find information about the complaints process and fitness to practise decisions and findings on the *Reporting Misconduct* pages of the website.

Journal articles (click on the link to *Publications*)

- *An Bord Altranais News* – the issues published in Summer 2007, Winter 2007 and Spring 2011 contain articles about fitness to practise matters and inquiries.
- *Regulation Matters* – issue 2 (May 2012) contains an article about inquiries held between 2006 and 2010.

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

If you have any further queries, please contact the Fitness to Practise Department at NMBI.

Main switch

01 6398500

Direct line

01 6398527

E-mailftp@nmbi.ie