

## Section 65 Procedure

Section 65 of the Nurses and Midwives Act 2011 empowers the Committee, at any time after a complaint is referred to it, to request, with the agreement of the Board, the nurse/midwife the subject of the complaint to do one or more of the following:

- a) if appropriate, undertake not to repeat the conduct the subject of the complaint;
- b) pursuant to *section 87(2)*, demonstrate her or his relevant competencies to the satisfaction of the Board;
- c) take such steps as may be specified by the Board, which may include taking a course of education or training or gaining clinical practice experience for the express purpose of updating her or his skills and knowledge;
- d) consent to undergo medical treatment;
- e) consent to be censured by the Board.

The options open to the Committee and the Board at a) to e) above are described as “undertaking(s) and/or consent(s)” in these procedures.

If the Committee is minded to exercise its discretion to request a nurse/midwife to provide an undertaking(s) and/or consent(s), the Committee will specify the precise terms of the undertaking(s) and/or consent(s) which the Committee is minded to request and the reason(s) why it is minded to make such request(s). The Committee will seek the views of the nurse/midwife (or his/her legal representatives) and the CEO regarding the specific undertaking(s) and/or consent(s) which the Committee is minded to request. The CEO may request an opportunity to ascertain the views of the complainant and/or a relevant patient(s) and/or his/her/their family in respect of the specific undertaking(s) and/or consent(s) proposed.

The Committee will consider the submissions of the nurse/midwife (or his/her legal representatives) and the CEO before seeking the agreement of the Board to the specific undertaking(s) and/or consent(s) which it is minded to request.

The Committee will not indicate that it is minded to request the nurse/midwife to provide an undertaking(s) and/or consent(s) unless the CEO has completed the presentation of her evidence or the Committee has a clear understanding of the extent of the evidence to be adduced on behalf of the CEO. The panel sitting at a call over will normally not indicate that it is minded to request undertaking(s) and/or consent(s) pursuant to Section 65, on the basis that a hearing panel is better equipped to determine the appropriateness of such a request with the full facts before it.

In circumstances where the Committee indicates that it is minded to request a specific undertaking(s) and/or consent(s) pursuant to section 65, the complaint will generally stand adjourned pending consideration by the Board of the request for an undertaking (s) and/or consent(s).

A registrant and/or his/her representatives may invite the Committee to consider whether it is minded to request a specific undertaking(s) and/or consent(s) from the registrant. In such a situation, the Committee will seek the views of the CEO to the proposed undertaking(s) and/or consent(s). The CEO may request an opportunity to ascertain the views of the complainant and/or a relevant patient(s) and/or his/her/their family in respect of the specific undertaking(s) and/or consent(s) proposed.

The following shall be sent to the Board for its consideration when determining whether to agree to the specific terms of the undertaking(s) and/or consent(s) which the Committee is minded to request:

1. The Core Book and exhibits which were before the Committee when it decided that it was minded to request the specific undertaking(s) and/or consent(s).

2. The transcript of the proceedings before the Committee when the Committee indicated to the registrant and the CEO that it was minded to request the specific undertaking(s) and/or consent(s) proposed, including the submissions of the registrant and the CEO to the specific undertaking proposed.
3. A letter from the Chair of the Committee, setting out the request for the Board to consider whether it agrees with the terms of the specific proposed undertaking(s) and/or consent(s) and the reasons why the Committee is minded to request the specific undertaking(s) and/or consent(s) from the registrant.

The Board will consider all relevant documents at the next available opportunity.

The Board will consider whether it agrees with the specific undertaking(s) and/or consent(s) which the Committee is minded to request. The Board will provide its decision, together with reasons, by way of a letter from the President to the Chair of the Committee.

The registrant and the CEO will be sent a copy of the letter from the President to the Chair of the Committee setting out the decision of the Board.

The registrant and the CEO will generally be invited to attend before the Committee once the decision of the Board has been received. The Committee will then determine how to proceed in light of the decision of the Board.

If a specific undertaking(s) and/or consent(s) is requested by the Committee, agreed to by the Board and agreed to by the registrant, the Committee will consider whether to inform a relevant patient(s) and/or his/her/their family of the specific undertaking(s) and/or consent(s). The complainant will be informed of the position per section 55(3).

Where the Committee requests a specific undertaking(s) and/or consent(s) and the Board and the registrant agree to such undertaking(s) and/or consent(s), the undertaking(s) and/or consent(s) shall be provided in writing by the registrant and the

Inquiry shall be considered to be completed. The Committee will then prepare a report per section 67 (2)(iv).

In the event of a private Inquiry where the specific undertaking(s) and/or consent(s) which the Committee indicated that it was minded to request are agreed to by the Board and provided in writing by the registrant, the Committee may decide that there is no necessity to reconvene the Inquiry. In such a situation, the Committee will simply prepare a report per section 67 (2) (iv).

Per section 65 (3), where a registered nurse or a registered midwife refuses to give an undertaking(s) or consent(s) the subject of a request by the Committee, the Committee may proceed as if the request had not been made.

Approved by the Fitness to Practise Committee

DATE: 8<sup>th</sup> May 2017