

21 October 2015

Health and Care Professions Council response to Law Commission consultation on Mental Capacity and Deprivation of Liberty

The Health and Care Professions Council welcomes the opportunity to respond to this consultation.

The Health and Care Professions Council is a statutory UK-wide regulator of health, social work, and psychological professions governed by the Health and Social Work Professions Order 2001. We regulate the members of 16 professions. We maintain a register of professionals, set standards for entry to our register, approve education and training programmes for registration and deal with concerns where a professional may not be fit to practise. Our main role is to protect the health and wellbeing of those who use or need to use our registrants' services.

1. Our comments

1.1 We have commented below on the two provisional proposals which are directly relevant to us.

Provisional proposal 7-17: the Health and Care Professions Council and Care Council for Wales should be required to set the standards for, and approve, the education, training and experience of "Approved Mental Capacity Professionals" (currently, Best Interests Assessors).

1.2 We support this proposal.

1.3 We are responsible for the regulation of social workers in England. As the consultation paper notes, we already have a statutory responsibility to set criteria for the approval of Approved Mental Health Professional (AMHP) training and to quality assure ('approve') AMHP programmes against those criteria.

1.4 We consider that there is a similar case for Best Interests Assessor (BIA) programmes in England to be approved by us. If the legislation was changed to give us this statutory responsibility, we anticipate that we would approve the programmes which are already running. We would consult with the sector to develop criteria for approval (similar to the structure of that in place for AMHPs) and then use our education approval process to confirm the ongoing approval of programmes against those criteria.

Provisional proposal 7-18: the ability to practise as an “Approved Mental Capacity Professional” (currently, the Best Interests Assessor) or Approved Mental Health Professional should be indicated on the relevant register for the health or social care professional.

- 1.5 We have some reservations about the proposal.
- 1.6 At the moment, those registrants who have successfully completed AMHP training in England are not annotated on the HCPC (or the Nursing and Midwifery Council register).
- 1.7 There are two reasons for this. First, there is no statutory requirement for the regulators to do this. Second, although we have powers which would, at our discretion, allow us to annotate the Register in this way, following careful consideration of the issues, we decided not to. This was principally because completion of the training is not in itself sufficient in order to exercise the functions of an AMHP in legislation.
- 1.8 Instead, approval by a local social services authority (LSSA) is required. In order to approve an individual to act as an AMHP, the LSSA has to satisfy itself that the requisite training has been completed, but also has to be satisfied of other criteria, including that refresher training has been undertaken. Approval to act as an AMHP can also be withdrawn by a LSSA.
- 1.9 As there is not a direct link between completion of approved training and the legal ability to exercise the role, we decided that we would not annotate the qualification on the Register. We were concerned that to do so might be misleading for members of the public and others.
- 1.10 We understand that similar arrangements are in place for the approval of individuals to act as BIAs and as a result we have similar reservations about this proposal.
- 1.11 However, should this proposal go forward, we would ask that the legislation is changed so that it is clear that the AMHP and BIA roles cannot be discharged without the person performing them being annotated on a relevant professional register. Provision should also be made in legislation to compel the relevant regulators to annotate their registers. This would be consistent with how supplementary and independent prescribing is managed in legislation. It is important that there is a consistent approach to this issue and we are mindful that in addition to the role of the Care Council for Wales and the HCPC, nurses registered with the Nursing and Midwifery Council (NMC) are also able to perform these roles.
- 1.12 We would be happy to discuss our comments further if this was helpful.