

**Health Professions Council
Education and Training Committee, 28th September 2006
Approved Mental Health Professionals (AMHPs)**

Executive Summary and Recommendations

Introduction

An amendment to the Mental Health Act 1983 will create a new role, Approved mental health professional (AMHP), which will be open to social workers, nurses and occupational therapists.

This paper summarises proposals for the new role of approved mental health professional and discusses the possible implications for the Council.

Appendix 1 is a letter dated 11th August 2006 from the department of health seeking our position on a proposal to annotate the register.

Appendix 2 is a draft interim position statement on annotating the register. It is intended that the interim position agreed by the Committee will be used to provide constructive feedback to the department of health in the development of their proposals. The Executive may therefore bring a further paper back to the Committee regarding this topic and would keep the Committee updated of any developments.

Decision

The Committee is invited to consider and discuss the proposals and their possible implications for HPC.

The Committee is invited to consider the draft position at appendix 3, make any necessary changes and agree its interim position.

Background information

None

Resource implications

None

Financial implications

None

Background papers

None

Appendices

Appendix 1: Letter dated 11th August 2006 from Department of Health

Appendix 2: Draft HPC interim position

Date of paper

12th September 2006

Approved Mental Health Professionals (AMHPs)

Introduction

- 1.1 An amendment to the Mental Health Act 1983 will establish a new role, Approved mental health professional (AMHP) which will be open to Nurses, Occupational Therapists and Social Workers.
- 1.2 This role was previously known as 'Approved social worker' or ASW and was only open to social workers.
- 1.3 The proposals are currently in draft form and the department of health is currently exploring possible options with stakeholders and their legal advisors.

Approved social workers (ASWs)

- 1.3 ASWs were established under the Mental Health Act 1983. Local authorities have the power to approve a social worker to act on their behalf under the act.
- 1.4 ASWs are bound by their contract to the local authority but act in a personal capacity undertaking functions and duties under the act.
- 1.5 ASWs have various powers (and duties) under the Mental Health Act 1983 including powers to make an application for a person's admission to hospital or for them to be taken into guardianship.
- 1.6 Approval of ASW training was undertaken by the General Social Care Council's predecessor body responsible for social work education since 1983.
- 1.7 Each local authority makes a decision about whether to 'approve' a social worker to act on their behalf under the terms of the act. This might involve checking their qualifications and/or experience.
- 1.8 Someone moving between local authorities would need to be 'reapproved' by each local authority; they could not act under the act without this happening.
- 1.9 Neither the successful completion of the ASW training, nor local authority approval, is currently annotated on the register of qualified social workers held by the GSCC.

Proposal

Approval/ Quality assurance

- 1.9 AMHP training will be based on ASW training but access will be widened to nurses and occupational therapists. The training is approximately 3 weeks in duration.
- 2.0 The proposal from the Department of Health is that the GSCC should continue to approve courses but do so in conjunction with the NMC and HPC.

2.1 This would involve the regulators agreeing on the training requirements for AMHP and quality assurance standards. There has also been a suggestion that each regulator could send a visitor to an approvals visit. However, the GSCC would be the approving body.

2.2 GSCC approval involves:

- accrediting the institution involved;
- visiting, assessing and approving the programme; and
- annual monitoring and 5 year periodic review.

2.3 Meetings of the GSCC advisory group looking to agree a curriculum framework for AMHP training have already been taking place.

2.4 Exact arrangements about how joint-approval with the GSCC would work, including the extent of the involvement of the NMC and HPC, have not yet been agreed.

Approval by local authorities

2.3 With the new AMHP role, an approval by a local authority will last for five years. Someone who is approved can move between local authorities and act on their behalf under the act without the need to be re-approved by each authority (within authorities in England and within authorities in Wales). This assumes that approval is not 'withdrawn' by a local authority.

2.4 It is suggested that there will be a set criteria against which a local authority would decide whether to approve someone to act as an AMHP.

Annotation

1.1 The department of health believe that a central record of AMHP approval would be needed in order to protect the public and are seeking the views of the regulators in relation to the annotation of approval (see appendix 2).

1.2 They have indicated that they believe a central record of approval is necessary for public in protection. In particular, that this negates the risk of someone who does not have current approval, acting on behalf of a local authority.

1.3 In this scenario a local authority would approve a person as an AMHP and then inform the regulator, who would annotate the register.

1.4 The annotation would record where approval was held, the date of the approval and the name of the local authority who approved them.

1.5 Local authorities would be able to check the register when checking the status of a person they wish to act on their behalf under the Act.

Removal of approval/ annotations

- 1.1 The details around withdrawal or approval of approval are currently being explored by the department.
- 1.2 However, current thinking is that approval could be withdrawn by the original local authority that approved the AMHP.
- 1.3 For example: Local authority A approved an AMHP, who then moved and started to work for local authority B. Local authority B has concerns about the conduct or performance of that person to perform the AMHP role. They remove the AMHP from acting in this capacity and inform local authority A of their concerns. Local authority makes a decision against the basic criteria for AMHPs. If they decided that the criteria were no longer met, they could withdraw approval and would inform the appropriate regulatory body, who would then remove the annotation.
- 1.4 The regulatory body could then also consider whether the circumstances leading to removal of approval raised any concerns regarding the registrant's fitness to practise.

Implications and considerations for HPC

The current proposals for AMHPs would have possible implications for the Council.

Approval of education programmes

AMHP training is a post-registration qualification. At present, the Council approves a small number of post-registration courses for supplementary prescribing (for radiographers, chiropodists/ podiatrists and physiotherapists) and for local anaesthetic entitlements (for chiropodists and podiatrists). In both these instances the Council is required to annotate the register by another enactment (in this case, the Prescription Only Medicines (Human Use) Order 1997). There is also a very clear link between a protected function which directly affects patient safety and the annotation of the register.

The Council visits providers offering these post-registration and assesses them against its standards of education and training to decide whether to approve them for the purposes of annotating the register. The proposals for AMHPs raise a number of issues in this area.

Although joint approval may be an effective way of working and something which may happen more regularly in the future (especially in the event that further post-registration qualifications are annotated on the register), the Committee may wish to consider the desirability of moving forward in a potentially piecemeal fashion, before a broader, thematic look at the issue of post-registration qualifications has been undertaken.

Although, at this stage, it is unclear the extent of the involvement which the Council may have in the approvals process, the Committee may wish to consider the resources involved should the Council be invited to attend approvals visits.

Further, joint-approval would not seem to be beneficial or a good use of resources in the event that the Committee decided that they did not wish to annotate the register.

Annotation

The department of health report on the future of non-medical regulation made a number of conclusions in relation to post-registration qualifications. The report concluded: "Marks in the register should only be made where the specialisation is relevant to patient care and patient safety, can be defined in terms of extra skills acquired, and is at a level substantially beyond basic registration".¹

The Council's power to annotate the register is found in the rules. The Health Professions (Parts of and Entries in the Register) (Amendment) Order of Council 2006 says at Rule 2 (4):

"(4) The Council may also include such entry in the register as it considers appropriate to indicate that a registrant possesses any other qualification (whether or not it is an approved qualification) or competence in a particular field or at a particular level of practice."

The rules are therefore flexible in allowing the Council to annotate its register as it sees fit, and to mark a qualification which is not approved.

¹ Department of Health, The regulation of the non-medical healthcare professions, 2006, p. 23.

There are, however, a number of other points to think about in considering the merits and logistics of annotating the register with a record of approval. Firstly, this is a different process from that which the Council currently operates. At present, the Council only annotates that a qualification is held (and directly approves that qualification).

A registrant successfully passing a supplementary prescribing course, for example, will have their entry in the register annotated. Unless they ask us to remove that annotation, that annotation would remain on their record and gives them the legal entitlement to act as a supplementary prescriber. Obviously, it is a decision for the individual health professional and their employer as to whether they wish to exercise those rights. It is also incumbent upon the health professional to ensure that they practise safely and effectively within their scope of practise. A registrant who had a finding against them by a fitness to practise panel which concerned their prescribing activities might be made subject to conditions of practice which limited their prescribing activities. However, there is no provision in the order or in the rules for the Council to remove an annotation in the register (as opposed to removing an entry).

The proposal from the department of health moves beyond annotating the qualification. The Council is asked to consider annotating “approval” by a local authority. This would involve reflecting a decision made by another organisation which has considered a qualification and other information in making a decision about whether to grant approval. Annotating approval seems to involve effectively reflecting an employer’s decision about an individual’s fitness for purpose. This is movement away from previous policy as we have always differentiated between the role of the register in reflecting fitness to practise and the role of the employer in determining fitness for purpose for a particular role.

Approval is time limited for a period of five years and therefore a registrant may not be re-approved after five years or may choose not to seek re-approval. It is also possible that a local authority could decide to withdraw approval. These scenarios would involve the removal of an annotation – a power we do not presently have under the rules or order. The information we would be required to gather (i.e: information regarding approvals and re-approvals) is also different from that which we currently hold.

In the scenario that approval was annotated on the register, this would benefit employers in terms of being able to more easily verify the approval status of someone who was moving between local authorities. It would also benefit the individual registrant in this regard. However, again the benefits in terms of protecting the public again seem unclear. An Occupation Therapist AMHP whose conduct or competence was causing concern would need to be considered under HPC’s fitness to practise procedures in the normal way to decide whether we needed to take any action in respect of their registration.

An alternative to annotating approval might be to annotate that the qualification is held. However, the benefits of doing this also seem unclear.

In the scenario that the qualification was annotated, it is unclear the benefits this offers to public safety. In the event that no annotation was recorded, a local authority deciding whether to employ someone to act on their behalf as an AMHP under the legislation would check that that person was registered (by the GSCC, NMC or HPC depending on their background), that

they held the relevant qualification and would then make a decision about whether to employ/approve them. If that person subsequently moved elsewhere, the new local authority might contact the previous local authority to check their status (in the same way as a standard pre-employment reference check is undertaken). These kinds of checks are routinely undertaken by employers in deciding whether it is appropriate to employ a registrant in a certain role or at a certain level of seniority.

Conclusion

1.1 The Committee is invited to consider the draft interim position statement appended at appendix 2. This is not intended to articulate the final or formal position of the Committee, but to clearly express the committee's understanding and opinion of the issues at this time, which would feed into construction feedback to the department of health in the further development of their proposals.

11 August 2006

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Dear Michael

I am writing in connection with the proposed amendment to the Mental Health Act 1983 to allow professionals, including occupational therapists, with the right skills, experience and training to undertake functions under the Act that are currently only performed by approved social workers (ASWs). As you are aware, those undertaking these functions will be referred to as approved mental health professionals (AMHPs).

In order to act as an AMHP a person will have to be approved by a local social services authority (LSSA). Secretary of State directions will set out minimum criteria for approval and once approved, an AMHP will be able to act on behalf of any LSSA in England (or in Wales, if the person was approved by a LSSA in Wales). Approval will last for 5 years.

To protect the public, a central record of AMHP approval is needed. This will allow a LSSA who is not the initial approver to confirm that a person seeking to act as an AMHP on their behalf has been approved to undertake these functions. It was concluded from discussions with stakeholders (including yourself), that annotation of an AMHP's professional register may be an effective way to record AMHP approval. I am therefore seeking the HPC's view on the possibility of annotating the HPC register to indicate where an occupational therapist has AMHP approval / reapproval, the date of that approval and the LSSA that approved them. I would be grateful if you could let me know of any policy, practical or legal obstacles that you might foresee to this approach.

We are in the process of clarifying implementation processes, in consultation with stakeholders including the HPC, and will be able to provide details in due course. However, we envisage that when a LSSA approves a person as an AMHP they will inform the relevant professional council, who would annotate their register. A LSSA wishing an AMHP to act on their behalf would contact the relevant council to confirm that the AMHP has up to date approval. Having spoken to some of the professional councils, it appears that many provide employers with relevant information about registrants via their website and meet the cost of this via registration fees.

We are working on an implementation date for changes arising from the Bill of April 2008. From this date, current ASWs will automatically become AMHPs and LSSAs will be able to approve new people as AMHPs that meet the approval criteria. We would therefore be looking to councils to be ready to annotate their registers from April 2008.

I am seeking the HPC's agreement in principle to your register being annotated to indicate approval details for occupational therapist AMHPs. Please feel free to call me if you would like to discuss the issue.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Louise Lawrence', with a long horizontal flourish extending to the right.

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Appendix 2

Approved Mental Health Professionals – Interim position of the Education and Training Committee

Introduction

This document sets out the interim position of the Education and Training Committee in relation to Approved Mental Health Professionals (AMHP).

Background

An amendment to the Mental Health Act 1983 will establish a new role, 'Approved Mental Health Professional' (AMHP) which will be open to Nurses, Occupational Therapists and Social Workers. This role was previously known as 'Approved social worker' (ASW) and was only open to social workers.

In order to act as an AMHP a person will need to be approved by a local authority. Approval will last for five years. During this period an approved person can move between local authorities carrying out functions on their behalf under the act without the need for re-approval.

The proposal from the Department of Health is that the General Social Care Council (GSCC) should be responsible for approving AMHP training but do so in conjunction with the Nursing and Midwifery Council (NMC) and the Council. The exact details of how such a 'joint-approval' process have yet to be agreed.

It has been further suggested that each of the regulators should annotate their registers to indicate where a registrant has been approved by a local authority. This would involve recording approval, the date of the approval and the local authority that approved the registrant.

Purpose

The Committee has been invited to formulate its opinion about proposals relating to the role of Approved Mental Health Professional. In particular, the Committee has been asked to reach a view on the proposal that the register should be annotated to indicate where an occupational therapist has been approved by a local authority to act for them under the Mental Health Act 1983.

Position

The Committee believes that there are a number of points to consider in annotating the register to indicate the approval of a registrant to act as an AMHP. In reaching its view, the Committee has considered the implications of annotating approval, of annotating that the AMHP qualification is held and the implications of not annotating the register.

The Council approves a small number of post-registration qualifications against its standards of education and training. A registrant successfully passing an approved course can apply to the Council for the register to be annotated. At present, the Council approves and annotates the register to indicate where a registrant holds entitlements in relation to supplementary prescribing, local anaesthetics and prescription only medicines.

The Committee believes that the register should not be annotated to indicate approval undertaken by local authorities. The Committee is concerned that to do so the Council would be reflecting what is in effect an employment decision taken by an individual local authority. The Council would be reflecting a decision taken by a third party rather than reflecting the successful completion of a programme of study which it directly approves.

The Committee also believes that it has not been established how annotating approval would meet the Council's objectives of protecting the public. The Committee believes that a local authority wishing to employ an AMHP approved by another local authority would be able to verify that information by contacting the local authority concerned. They would additionally be able to undertake additional checks, such as checking qualifications, in deciding whether it was appropriate to employ that individual and, if so, whether they were happy for them to act on their behalf under the Mental Health Act 1983.

The Committee also believes that there may be legal issues around annotating and removing approval which would need to be resolved. The Council's power to annotate the register is found in the rules. The Health Professions (Parts of and Entries in the Register) (Amendment) Order of Council 2006 says at Rule 2 (4):

"(4) The Council may also include such entry in the register as it considers appropriate to indicate that a registrant possesses any other qualification (whether or not it is an approved qualification) or competence in a particular field or at a particular level of practice."

There is no provision in the Health Professions Order 2001, or the rules, which permits that an annotation in the register may be removed. The Committee's understanding is that as approval is limited to five years, a registrant may not be re-approved at the end of the period or may choose not to seek re-approval. Further, it is our understanding that a local authority can decide to withdraw approval. All these scenarios would involve the removal of an annotation.

The Committee has also considered the desirability of annotating the register to indicate only where the AMHP qualification was held but concluded that this did not have clear benefits for patient safety. The Committee concluded that in the event that no annotation appeared on the register a local authority deciding whether to employ someone in the capacity of an AMHP could check that that person was registered as an occupational therapist, check their qualifications and consider any other information in deciding to approve them. The additional benefits of annotating the register therefore seem unclear.

The Committee believes that clear benefits derive from the requirement that anyone acting as an AMHP will, in any event, need to be registered with the regulatory body appropriate to their professional background (i.e the NMC in the case of a nurse acting as an AMHP).

Registrants have a positive duty under each regulator's code of conduct to ensure that they practise safely and effectively within their scope of practise.

Each regulator could consider matters arising out of a registrant's activities as an AMHP to decide whether they needed to take any action to protect the public. This can include restricting their practice in some way.

Given its decision that it is not minded to annotate the register at this time, the Committee believes that it would not be a good use of the Council's resources to be actively involved in a joint-approval arrangement. However, the Committee is happy to provide input into the work being undertaken to establish training requirements for AMHPs.

The Council has agreed to look at the area of post-registration qualifications in more detail in the near future. The Committee anticipates that the Council may wish to revisit this issue when looking more broadly at whether we should approve and annotate further post-registration qualifications.