

Update on work undertaken by the PSI ADMA Working Group to include psychologists within the prescribed classes of healthcare professionals under the Assisted Decision-Making (Capacity) Act, 2015

Summary: At present, psychologists are excluded from conducting functional assessments of capacity under the Assisted Decision-Making (Capacity) Act (ADMA). This is due to the current absence of statutory registration for psychologists. The Act specifies that only registered healthcare professionals can conduct such assessments. A working group representing the PSI and HPSI have been engaging with relevant agencies/departments to try to arrive at an interim solution while issues pertaining to statutory registration continue to be progressed.

Background

The Assisted Decision-Making (Capacity) Act (ADMA) commenced on Wednesday 26 April 2023. This legislation is for anyone over the age of 18 who has difficulty now, or who might have difficulty in the future, with making decisions. The ADMA abolished the Ward of Court system and made provisions for five legally recognised decision support arrangements to support decision-making. Under the ADMA, functional assessments of capacity are required to apply for three types of decision support arrangements under the law: Co-Decision-Making agreements (Part 4); Decision-Making Representatives/Decision-Making Orders (Part 5); Enduring Powers of Attorney (Part 7). Capacity review assessments are required for applications to exit wardship (Part 6).

Under previous legislation, many psychologists across a variety of services in both the public and private sectors have routinely undertaken functional assessments of capacity and capacity review. This has been done by individual practitioner psychologists and as part of multi- and inter- disciplinary teams. In some services, psychologists lead these assessments or provide clinical oversight. Given their professional competencies, psychologists commonly lead team-based assessment and formulation, holding a clinical oversight/supervisory role in the interdisciplinary approach to decision support and functional assessment, and coordinate multi-professional reports.

With the development of the Act, it was envisaged that psychologists would continue to provide these key services. Indeed, psychologists were initially set to be included within associated regulations for the prescribed classes of healthcare professionals recognised as being able to submit functional capacity assessment reports and undertake capacity assessment reviews. However, as CORU regulation has not been achieved prior to commencement of the ADMA this has not been possible to date. The Decision

Support Service (DSS) does not have funding and other resources required to undertake competence/proficiency checks of psychologists who submit reports required under the legislation.

This means that psychologists are currently excluded from the regulations for the prescribed classes for professionals (SI 204/2023). The Circuit Court, presiding over DMR/DRO Part 5 applications, has, in the development of the Court Rules for these applications, taken the decision, 'for the time being,' to define 'healthcare professionals' based on the current regulations for Part 4 and 7 applications (SI 201/2023). Furthermore, for similar reasons, psychologists are also excluded from participating in reviews of wardship under Part 6. Currently, the only opportunity for psychologists to contribute to Part 5 applications is under Part 50(2)(a) of the Act, where the Court may direct that an expert psychological report be furnished to it to assist it in making a decision.

This means that the professional practice of psychologists has been drastically curtailed in terms of participation in applications for decision support arrangements and capacity review; for all intents and purposes in daily practice, psychologists are excluded. This exclusion has considerable ramifications in many services given that psychologists are key individual practitioners and key members of multi- and interdisciplinary teams with a broad competency base and expertise in meeting these complex needs, and especially the management of the kinds of complex presentation contexts for decisions that are likely to go before the Court under Part 5 of the Act.

PSI and HPSI advocacy and intervention to bring psychologists under the prescribed professionals regulations

The exclusion of psychology is recognised by the Department of Children, Equality, Disability, Integration and Youth (DCEDIY), the DSS, the Health Service Executive (HSE), and the Department of Health (DOH) as a pressing issue. About 1,400 psychologists in HSE and HSE-funded services are currently excluded. The above stakeholders are motivated and interested in arriving at a legally workable solution for bringing psychologists back in under the regulations as prescribed healthcare professionals under the legislation.

Initial engagement with officials from the DCEDIY and DOH occurred prior to the commencement of the ADMA with a view to determining what course of action might be required for the inclusion of psychologists in the prescribed classes of professionals.

Subsequent to this, a working group was formed consisting of PSI Council Members, Division chairs, and key member stakeholders (Chair of the Expert Validation Committee and Chair of the Heads of Psychology Services in Ireland group). This working group has been liaising with, and providing guidance to, representatives from the DCEDIY, DOH, and HSE National Office for Human Rights and Equality Policy. This has aimed to facilitate the development of minimum practice and qualification requirements to bring psychologists under amended regulations for prescribed classes of healthcare professionals. It is necessary that any such guidance satisfies the Attorney General on a number of points of law.

Following a series of meetings and correspondence minimum criteria were submitted to the Office of Parliamentary Council for approval on Thursday 15 June. We are currently awaiting feedback as to whether this submission provides a legally robust solution to bring appropriately qualified psychologists under amended regulations.

It remains our view that any solution implemented in the absence of CORU regulation does not fully achieve the ultimate intention of protecting the public; however, it does enable appropriately qualified psychologists to resume their pivotal roles in supporting individuals to exercise rights protected by the legislation and to access decision support arrangements provided for under the Act. It is understood that any arrangement put in place on foot of this work is an interim arrangement and will be reviewed once the issue of statutory registration is resolved. Work on this continues separately to the current working group.

Further updates will be issued by the PSI ADMA Working Group as information becomes available.

Resources

In the interim, PSI members are invited to check out information, resources, and training about the Act, assisted decision-making, functional capacity assessment, and application processes for decision supports available at the following websites:

HSE National Office for Human Rights and Equality Policy

www.assisteddecisionmaking.ie

www.hseland.ie

Decision Support Service

www.decisionsupportservice.ie

Circuit Court

www.courts.ie/assisted-decision-making-circuit-court

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