

**The professional association for
social work and social workers**

The British Association of Social Workers (BASW) is the professional association for social work in the UK with offices in England, Northern Ireland, Scotland and Wales. With over 22,000 members we exist to promote the best possible social work services for all people who may need them, while also securing the well-being of social workers working in all health and social care settings.

The Social Workers Union (SWU) is the only trade union to offer representation by qualified social workers who understand the complexities of the profession. With officers working across the UK, SWU provides representation at internal hearings for disciplinary and grievance procedures, and employer investigations into practice and misconduct allegations.

This is a joint consultation response from both organisations prepared by the BASW England team and the BASW/SWU Advice and Representation service (A&R). We are pleased to respond to Social Work England's consultation on the new education and training approval standards for best interests assessors (BIA) on behalf of our members.

Question 1

To what extent do you agree that the standards accurately reflect the requirements of the role of best interests assessor (BIA)?

- Reference to demonstrating a commitment to anti-racist, anti-discriminatory and anti-oppressive practice is welcome, ensuring that this is a requirement for all applicants. Some ideas about how course providers could test this would be beneficial.
- The course content needs to take account of not just law, policy and practice issues relating to the existing framework and code of practice, but also the everchanging context with evolving case law.
- Overall, the standards are satisfactory. They are in alignment with with Mental Capacity Act 2005 (MCA) and the MCA Code of Practice which outline the requirements of the Best Interest Assessor (BIA) role.

Question 2

In relation to standard 1, to what extent do you think the language reflects what an applicant should be able to demonstrate upon admission to the course?

- Reference to demonstrating a commitment to anti-racist, anti-discriminatory and anti-oppressive practice is welcome, ensuring that this is a requirement for all applicants. Some ideas about how course providers could test this would be beneficial.
- While the role of BIA has been accessible to a number of health and care professionals, the vast majority of current BIAs are social workers. Many of these are independent social workers, rather than being employed by a single employer. This needs to be considered in the development and implementation of the BIA training standards.

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- Narrow references to employment circumstances and sources of shadowing opportunities could have a detrimental and disproportionate impact on independent Black and ethnic minority social workers who value the ability to work independently. This is a significant implication which should not be overlooked.
- It is clear from the proposals that applicants will require knowledge of current legislation, policy and case law, along with appropriate practice experience which they can apply with critical thinking while undertaking their duties. This is reiterated throughout.
- The only points of clarity are in standard 1: (v) 'Work within their area of competence, seeking further advice as appropriate', which is a rather broad and vague statement which requires further depth and expansion. Also, is older adults, LD, MH, DA a reference to field / speciality of practice a reference to field / speciality of practice or being a student undertaking BIA, or all and is the further advice to be sought from a Consultant/Dr, line manager or course lecturer?

Question 3

Do you think the relationship between the standards and the 6 capabilities set out in the annex is clear? What changes could we make to ensure the link between the two, and the reason for the inclusion of the 6 capabilities, is sufficiently robust and can inform course design and delivery?

- The link between the capabilities and the course standards could be clearer. The could: explain that the capabilities underpin both course content and practice as a BIA; set out what BIA's need to know and be able to demonstrate throughout the learning journey and in practice so they are become integral to the course.
- The course standards need to clarify how they will support students to meet the 6 capabilities and what the students can expect from course providers to enable them to do this.
- The information outlines that the proposed standards relate to educators and institutes of learning, whereas the capabilities directly set expectations of students.

Question 4

What updates or amendments would you suggest that we make to the 6 capabilities in Annex 1, and why?

- Please see our suggested updates and amendments below:

Standard 1

1.5- Reference to demonstrating a commitment to anti-racist, anti-discriminatory and anti-oppressive practice is welcome and ensuring that this is a multi-professional requirement for all applicants. Some ideas about how course providers could test this would be beneficial.

1.8- including reasonable adjustments that can be made by the course provider

Standard 2

2.2. and 2.3- could this also involve feedback and involvement/consultation with regional DOLS leads/ regional forums.

2.4 – and preferable has some experience as a BIA themselves.

2.6- requirement for annual refresher training if qualified as a BIA.

2.7. – feedback to be shared with employers, local teaching partnerships and regional DOLS forums commissioning places on the course.

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3.2- something here about the quality assurance of the two shadowing and observation opportunities being built into the course delivery, particularly where a student is proposing to source this independently rather than being supported directly by an employer.

Standard 4: Curriculum and assessment

There needs to be specific reference to up to date case law which can supersede the MCA code of practice in terms of some of the judgements made e.g the way we now assess mental capacity. Course content needs to reflect this and support students with the knowledge and evidence they need to utilise including the incorporation of case law as evidence and where to source this information.

4.5 -Ensure that the integration of policy, legal literacy and practice is central to the course- integration of anti-racism, anti-oppressive and anti-discriminatory practice including structural inequalities such as poverty to be integrated and underpin decision making and challenge.

4.8 - plus opportunity for external quality assurance via dip sampling by commissioners of the training such as employers, teaching partnerships and people with lived experience.

4.14 - and hold the BIA qualification.

Annex 1: The 6 BIA capabilities

1.1- (ii) Needs to reference the Care Act 2014

1.2(iii)- critically reflect on own practice including from the perspective of anti-racist, anti-discriminatory and anti-oppressive practice

(v) Work within their area of competence, seeking further advice as appropriate – this should be capability not competence

(vi) Assert a social perspective and make properly informed independent decisions in tight timescales- clarification required on the meaning of social perspective? Is this social model of disability? Psych-social model? Or should it be: challenge medicalised perspective?

3. The ability to take all practical steps to help someone make a decision

3.1. An understanding of:

(i) The impact of mental disorder on mental capacity, including the effect of social, physical and developmental factors on a person's ability to make decisions.

Would also include the impact of structural inequalities and oppression in the above statement as well.

6. The ability to effectively assess risk in complex situations, and use analysis to make proportionate decisions

6.2 - (v) Challenge risk averse practice

Add: "challenge risk adverse and/or oppressive and discriminatory practice"

There seems to be a pattern set out in Annex 1: .1's being about knowledge and .2's being about application of knowledge / ability. Looking through the 6 standards, some content is repetitive, and there is a somewhat disjointed overlap - but we acknowledge this is possibly intentional to be emphatic of important expectations and there being a continual cycle of practice responsive to the cycle of needs.

Standards in the annex read as:

- 1) Practice knowledge - legal & policy frameworks, codes, utilising these for the basis of practice.
- 2) Rights based practice/ human rights – flows naturally on to #3
- 3) Supported decision making – straightforward leading in to practice dilemma.
- 4) Getting it right balancing rights/ autonomy, risks and proportionality of care / support
- 5) Process, assessment and decision making – evidencing assessment is rights based / consideration of impact of loss of liberty, legal powers.
- 6) Evaluation – seems to go back to rights v risks v proportionality, which seems out of synch, as it loops back to #4. Maybe this should be about the responsibility for monitoring and reviewing that the deprivation of liberty safeguards remain appropriate and emphasise the need to constantly re-evaluate due to changing condition/circumstances.

Comments on Annex content:

2.2 (i) “complex cases” people are not cases, we might carry out casework (paperwork) as a bureaucratic function - but there needs to be distinction. More sensitive language is needed individual circumstances which are complex or complex situations.

2.2 (ii) This is a welcome statement on the need for cultural sensitivity and the impact varying factors might have on accuracy of assessments. It should be recognised this is a wide-ranging equality, diversity and inclusion statement. It might be also appropriate to include recognition of educational attainment, which can be inhibited by social class. Low educational attainment can severely skew assessment results. A good example of this is with the ACE III and similarly with MCA's when there is a lack of personalised support/ aids.

4.1 (i) This is unclear. Is this an acknowledgement that unwise decisions are not the basis for MCA? We cannot and should not be preventing people from making unwise decisions or choosing to take risks if they understand the consequences, but could look to mitigate as much as possible with consent.

Question 5

Is there anything in the standards that you don't understand?

No

Question 6

Do you have any other comments on any part of the standards?

- The standards reflect the role of BIA within the current framework of the deprivation of liberty safeguards (DoLS). However, following changes brought about through case law judgements, DoLS also needs to be considered in a wider context of community and family home settings and in relation to children and young people in educational and residential settings.
- BIA's may be called upon to complete assessments, provide advice, guidance and support in relation to deprivation of liberty within diverse arrangements and in a range of settings. The standards need to take account of this and ensure that the broader context for the role is accurately reflected in the course standards.
- Courses need to educate and equip social workers and allied professionals from an adults AND children's background to understand, not just the role of the BIA in relation to the DoLS, but also in relation to deprivation of liberty in a range of settings with a diverse age range.
- Entry requirements – current DOLS code of practice states:
- Minimum of two years post qualifying - will there be a requirement to have been undertaking mental capacity assessments and making best interest decisions under the MCA to apply for the BIA course during the two year post qualifying period?

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- Currency – will proof of undertaking a refresher course annually be a mandatory requirement for currency and to maintain annotation on the register as a BIA with relevant regulator?
- Recognition that not everyone that wishes to undertake the training to become a BIA will work for a Local Authority or in health.
- Members of BASW who are independent social workers and BIA's generally work for several local authorities and value the autonomy and flexibility that being self-employed brings.
- Existing problems in recruitment and retention of social workers also needs to be borne in mind – if independent social workers do not become BIA's, where will additional BIA's be recruited from?
- Overall, it reads as this is an essential proposal to assure that standards of education in BIA are maintained in the short-term until LPS / role of AMCA is put in place.

Question 7

Do you think that these standards could impact any persons with a protected characteristic? If so, is it positively, or negatively, and how? The Equality Act (2010) lists 9 protected characteristics: age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership and pregnancy and maternity.

- Only positively: inclusion of recognition of people with lived experience as being essential in measuring impact and the statements on equality, diversity and inclusion are much needed.

Question 8

How did you hear about this consultation?

- Community Care

Question 9

Do you have any feedback on the consultation process or any other comments?

- Main consideration is how long will the delay be and the impact on people subject to DoLS.
- Standard 5.9. Ensure that policies and processes, including for whistleblowing, are in place for students to challenge unsafe behaviours and cultures and organisational wrongdoing, and report concerns openly and safely without fear of adverse consequences. *can this be bolstered with direction to how concerns are reported? Individual to Uni or is there some guidance from SWE about reporting concerns to CQC and SWE? along the lines of wilful neglect / corporate homicide.

We hope this feedback is helpful and received in the constructive spirit with which it is intended.

For further information please contact:

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