

TRANSFORMING SOCIAL WORK PRACTICE



7th Edition

Mapped to the PCF ☒

Using the Law in Social Work

Robert Johns



Contents



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Robert Johns

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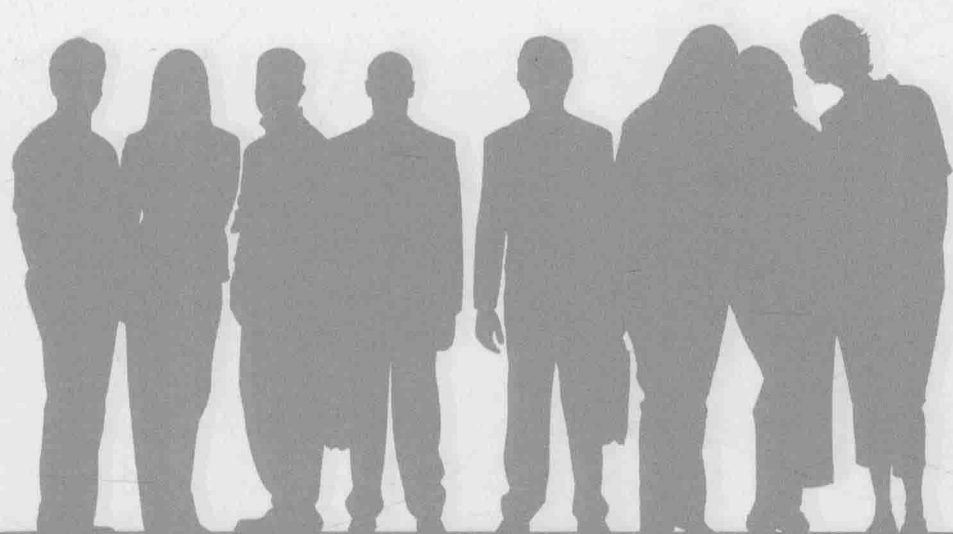
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Using the Law in Social Work



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Series Editor's Preface

We have witnessed significant changes and shocks in recent years. These have resulted in numerous challenges for the wider world, and for all four countries of the UK. These include political shifts to the 'popular' Right, a growing antipathy to care and support, and dealing with lies and 'alternative truths' in our daily lives. Alongside this, is the need to address the impact of an increasingly ageing population with its attendant social care needs and working with the financial implications that such a changing demography brings. At the other end of the lifespan the need for high quality childcare, welfare and safeguarding services has been highlighted as society develops and responds to the changing complexion. As demand rises so do the costs and the unquestioned assumption that austerity measures are necessary continues to create tensions in services, policies and expectations.

Migration has developed as a global phenomenon and we now live and work with the implications of international issues in our everyday and local lives. Often these issues influence how we construct our social services and determine what services we need to offer. It is likely that as a social worker you will work with a diverse range of people throughout your career, many of whom have experienced significant, even traumatic, events that require a professional and caring response. As well as working with individuals, however, you may be required to respond to the needs of a particular community disadvantaged by world events or excluded within local communities because of assumptions made about them.

The importance of high quality social work education remains if we are adequately to address the complexities of modern life. We should continually strive for excellence in education as this allows us to focus clearly on what knowledge it is useful to engage with when learning to be a social worker. Questioning everything, especially from a position of knowledge is central to social work.

The books in this series respond to the agendas driven by changes brought about by professional bodies, governments and disciplinary reviews. They aim to build on and offer introductory texts based on up-to-date knowledge and to help communicate this in an accessible way, so preparing the ground for future study and for encouraging good practice as you develop your social work career. The books are written by people passionate about social work and social services and aim to instil that passion in others. The current text represents an up-to-date edition of a key book in the series. It introduces you to core legislation and some of diverse ways in which law is interpreted in, for and by social work practice. The complexities of the law are presented in a clear, accessible way that sets the scene for exploring more specialised areas of law affecting practice.

Professor Jonathan Parker

Introduction to the seventh edition

This is the seventh edition of *Using the Law in Social Work*. There can now be no doubting the central role of law in qualifying programmes in social work. When the Department of Health set out regulations concerning the core curriculum for the first BA qualifying programmes in social work in 2002 (Department of Health, 2002) it specifically identified law as a distinct entity, which resulted in many social work programmes offering discrete modules in law at different levels. The changes instituted by the Social Work Reform Board reaffirmed the importance of social work law, with the Health and Care Professions Council (HCPC) Standards of Proficiency dedicating an entire set of proficiencies to it entitled 'be able to practise within the legal and ethical boundaries of their profession' (Standard of Proficiency 2 HCPC, 2012). It is not surprising, therefore, that this book has been widely used by students studying in the first and second years of undergraduate degrees, and in the first year of their Master's qualifying degree in social work. It is also widely used by practice educators as well as experienced practitioners.

The popularity of the book indicates that it meets a real need for an introductory text in law that prepares students for their first placements, and as essential grounding before being able to go on to tackle the more advanced, comprehensive and authoritative texts such as Brayne *et al.*, (2015) and Brammer (2015). The book was devised for student social workers who are beginning to develop their skills and understanding of the requirements for practice, particularly in statutory settings. While primarily aimed at students in the early stages of their degree courses, it is also designed to be useful for subsequent years depending on how programmes are formulated and at what stage students move into practice learning.

Requirements for social work education

Social work education has undergone a major transformation to ensure that qualified social workers are educated at least to honours degree level and develop knowledge, skills and values which are common and shared. A vision for social work operating in complex human situations has been adopted. This is reflected in the following definition from the International Association of Schools of Social Work and International Federation of Social Workers (IFSW, 2014):

Social work is a practice-based profession and an academic discipline that promotes social change, and development, social cohesion, and the empowerment and liberation of people. Principles of social justice, human rights, collective responsibility and respect

for diversities are central to social work. Underpinned by theories of social work, social sciences, humanities and indigenous knowledge, social work engages people and structures to address life challenges and enhance wellbeing.

Human rights and justice are also fundamental to law. Law is a very important component of social work practice in Britain. The majority of social workers in Britain today are employed by statutory agencies – that is, organisations such as local authorities whose every action has to be based on some kind of legal power that authorises it. Even for social workers employed outside the statutory sector, the law provides the framework within which services are offered, and is crucial in areas such as child safeguarding, where inter-agency co-operation is essential and where every social worker has responsibilities. It is impossible to practise without coming up against the law; it is impossible to practise effectively without an in-depth understanding of how the law affects everyday social work practice. That is what this book is about.

This book has been carefully mapped to the new Professional Capabilities Framework for Social Workers in England and will help you to develop the appropriate standards at the right level. These standards are:

1. Professionalism

Identify and behave as a professional social worker committed to professional development.

2. Values and ethics

Apply social work ethical principles and values to guide professional practice.

3. Diversity

Recognise diversity and apply anti-discriminatory and anti-oppressive principles in practice.

4. Rights, justice and economic well-being

Advance human rights and promote social justice and economic well-being.

5. Knowledge

Apply knowledge of social sciences, law and social work practice theory.

6. Critical reflection and analysis

Apply critical reflection and analysis to inform and provide a rationale for professional decision-making.

7. Intervention and skills

Use judgement and authority to intervene with individuals, families and communities to promote independence, provide support and prevent harm, neglect and abuse.

8. Contexts and organisations

Engage with, inform and adapt to changing contexts that shape practice. Operate effectively within your own organisational frameworks and contribute to the development of services and organisations. Operate effectively within multi-agency and interprofessional settings.

9. Professional leadership

Take responsibility for the professional learning and development of others through supervision, mentoring, assessing, research, teaching, leadership and management.

References to these standards will be made throughout the text and you will find a diagram of the Professional Capabilities Framework in Appendix 1 on p192. In addition, reference will be made at the start of each chapter to the most relevant Standards of Proficiency (HCPC, 2012). The law is also directly relevant to a number of the National Occupational Standards for Social Work for Wales (Care Council for Wales, 2013), particularly:

- SW 7 prepare professional reports and records relating to people;
- SW 10 support people to participate in decision-making processes;
- SW 11 advocacy;
- SW 13 investigate harm or abuse.

As an academic text, this book is intended as an introduction to the study of social work law as a specific topic area. As such, the book relates to some key social work benchmarks (Quality Assurance Agency for Higher Education (QAA), 2016).

With regard to helping students to become accountable, reflective, critical and evaluative (section 4.7), this book helps readers think critically about the legal context in which social work is located and therefore:

- to work in a transparent and responsible way, balancing autonomy with complex, multiple and sometimes contradictory accountabilities;
- to exercise authority constructively within complex frameworks of accountability and ethical and legal boundaries.

With regard to Knowledge, Understanding and Skills (section 5), the book will assist in the following areas:

- the relationship between human rights enshrined in law and the moral and ethical rights determined theoretically, philosophically and by contemporary society (5.3 v);
- the complex relationships between justice, care and control in social welfare, and the practical and ethical implications of these, including their expression in roles as statutory agents in diverse practice settings and in upholding the law in respect of challenging discrimination and inequalities (5.3 vi);

- the importance of interventions that promote social justice, human rights, social cohesion, collective responsibility and respect for diversity and tackle inequalities (5.5 v);
- its delivery in a range of community-based and organisational settings spanning the statutory, voluntary and private sectors, and the changing nature of these service contexts (5.5 vi);
- the importance of social work's contribution to intervention across service user groups, settings and levels in terms of the profession's focus on social justice, human rights, social cohesion, collective responsibility and respect for diversities (5.5 viii);
- the leadership, organisation and delivery of social work services, which include:
 - the significance of legislative and legal frameworks and service delivery standards, including on core social work values and ethics in the delivery of services which support, enable and empower (5.6 vi).

With regard to the development of skills, the book will enhance your potential to:

- involve users of social work services in ways that increase their resources, capacity and power to influence factors affecting their lives (5.16 i);
- increase social justice by identifying and responding to prejudice, institutional discrimination and structural inequality (5.16 vi);
- operate within a framework of multiple accountability – for example, to agencies, the public, service users, carers and others (5.16 vii);
- observe the limits of professional and organisational responsibility, using supervision appropriately and referring to others when required (5.16 viii).

What's in this book?

Before launching into a summary of what is covered in each chapter, it may be worth saying something about the general approach of this book. It is part of a series that outlines and explores the knowledge base of social work as it applies to everyday practice. It is an example of applied theory and knowledge, with a strong emphasis on how knowledge underpins sound professional social work practice. It was written very much with the future needs of social work students in mind, in the sense that it places the application of law to everyday social work practice centre stage.

We begin in Chapter 1 with an overview of the purpose of law in social work, looking at the role of law, how it is made, different kinds of law and the purpose they serve.

In Chapter 2, there is a focus on basic human rights with an overview of the European Convention on Human Rights, the key legal benchmark, implemented in Britain through the

Human Rights Act 1998. By way of illustration, we look at the development of legislation that attempts to address the needs of people with serious mental health problems as a case example of how human rights legislation applies to social work. Key issues addressed in this example are as follows.

- Is it acceptable for people to be protected from themselves?
- To what extent can laws protect the public from people who might present an apparent threat?
- What is the extent of the responsibility of the state?
- To what extent do people have the right to determine their own future, even when their capacity to make judgements and decisions is seriously affected by mental health problems?

These are not just legal issues. They reflect fundamental debates about values and ethics in social work.

Chapters 3 and 4 explore the crucial issue of the relationship between social workers, the family and the state. In Chapter 3, the focus will be on children's basic needs and how these are provided for through legislative means. How does the state, Britain today, ensure that children have their basic needs met? What overall legal frameworks govern this? What measures does the law promote in relation to children's safety? What about their education? What about their care and support, especially where parents are not able to provide care themselves? Here the book explores the range of services available to support children, with social workers working in partnership with parents, and the provision of alternative accommodation when children cannot be cared for in their own homes.

Chapter 4 concentrates more specifically on various provisions in the Children Act 1989, the Children Act 2004, the Children and Young Persons Act 2008, and the Children and Families Act 2014. These are crucial Acts for any intending social worker to understand, regardless of whether they are employed in voluntary settings or the statutory sector. This chapter focuses on the principles underlying the Children Act 1989 in particular, especially working in partnership and ascertaining children's wishes and feelings. What happens when the law has to intervene directly in family life and sort out such matters as who cares for children after a divorce? What are the legal issues relevant to a social work assessment of children's needs? What happens when there is an allegation that a child is being harmed? When legal intervention is being considered on behalf of children, what do legal proceedings offer by way of offering a better future for certain children?

In Chapters 5 and 6, the focus switches to social workers' role in relation to adults, particularly those who may be in need of support services (Chapter 5) or, in extreme cases, protection

from themselves or other people (Chapter 6). Here the book explores the issue of provision of services under various legal enactments that comprise what might loosely be called 'social care'. Chapter 5 offers an overview of the legal basis for adult care services, while the discussion in Chapter 6 is extended to measures by which local authorities, the voluntary sector and independent organisations can protect vulnerable adults who are at risk of various forms of harm. Included in this is consideration of the law relating to people's ability to make decisions for themselves, which the law terms 'capacity'.

Chapter 7 is a more specialist chapter, applicable to social workers who work in the field of youth justice. This book does not cover work with adult offenders, since in England and Wales this is the prerogative of the National Probation Service. However, social workers are employed in a nationwide network of Youth Offending Teams, multidisciplinary agencies that implement all aspects of youth justice legislation with a prime responsibility for preventing 'offending behaviour'.

Chapter 8 addresses the role of the courts as a key forum in which social workers are held publicly accountable. It focuses on practice issues that sometimes cause social workers anxiety: what actually happens in court, court's expectations, giving evidence in court, writing reports. This chapter highlights the main issues for social workers when they are called to account for their actions. Courts are the forum where the law is put into practice in the sense that cases are 'tried' or 'heard', and where independent decisions are made about social work practice or recommendations. It is therefore essential to understand the role that courts play in social work generally, but most especially in the fields of youth justice and child safeguarding.

Finally, Chapter 9 addresses a number of issues that are sometimes overlooked when social workers study the law, for this chapter is not about what social workers do, it is about who they are – their credibility and the standards of professional practice the public is entitled to expect. The emphasis in this chapter is on public accountability in the sense of ensuring that high standards of professional practice are maintained. What legal provisions exist to ensure that social workers are reliable and trustworthy? What standards apply to the kinds of services provided, especially in relation to residential care? How are social workers accountable to service users and employers?

The book concludes with an overview of its coverage, indicating areas for further study and urging a watching brief on the ever-changing world of social work law.

Learning features

The book is interactive. You are encouraged to work through the book as an active participant, taking responsibility for your learning, in order to increase your knowledge,

understanding and ability to apply this learning to practice. The activities have been devised to encourage reflection and help you to incorporate the learning undertaken into practice. In this way, your knowledge will become deeply embedded as part of your development.

Each chapter begins with a reference to the relevant aspects of the Professional Capabilities Framework together with a summary of the chapter contents. The structure of each chapter varies, but in all cases there will be illustrative case material incorporated into the discussion. In keeping the discussion practical yet clarifying a number of complex issues, it is necessary to make some accommodation for readers' and social work practitioners' needs, so the following points need to be borne in mind.

- This book should not be treated as an authoritative statement of the law – it is intended as an introduction to relevant law, not an advanced legal textbook.
- Legislative sources will be cited as accurately as possible, but extensive quotation of legislation is avoided, so if you need to refer to specific sections of particular Acts you will need to use additional sources – for example, other textbooks or the Internet: see Further Reading and website addresses at the end of each chapter.
- Professional practice and decision-making should not be based solely on this book, which is intended as an introductory text for professional qualifying courses in social work (BA, BSc, MA or MSc in Social Work).
- This text does not cover every aspect of social work law, but should provide some indication of the areas which are of the most direct relevance to practice in England and Wales.
- There are major differences in the law in Scotland and Northern Ireland, and significant differences in relation to Wales. While every effort has been made to incorporate legislation and guidance in relation to Wales, practitioners may need to double-check on references to regulations and current policy. Practitioners in Scotland and Northern Ireland will need to consult reference sources for the law in those countries (see list at end of Chapter 1).
- Some important legislation was passed by Parliament in 2014. Most relevant here to Chapters 3 and 4 is the Children and Families Act 2014 (for Wales the Social Services and Well-being (Wales) Act 2014). In the field of adult care (covered in Chapters 5 and 6) the Care Act 2014 (and the Wales equivalent which is again the Social Services and Well-being (Wales) Act 2014) is of great wide-ranging significance. These stand along with developments in Wales (but only Wales) regarding a public body general well-being duty (Well-being of Future Generations (Wales) Act 2015) and changes in registration of social workers with the introduction of Regulation and Inspection of Social Care (Wales) Act 2016 and the establishment of Social Care Wales as a registration

body. Several texts referred to in this book will not include references to these measures, so great care should be taken to ensure that any other textbooks or websites consulted are as up-to-date as possible.

While the book is as accurate as possible at the time of going to press, legislation and practice is constantly changing, so it is always important to check the latest legislation. For this purpose, each chapter concludes with a list of recommended websites and other resources that will help with this. The currency and validity of all these were checked when this book was prepared for publication.

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