

Introduction from the authors

Social workers in training often approach law learning with degrees of trepidation, apprehension and scepticism. They may have had professional experiences of the law in action, as part of their lived experience of work, which appeared to emphasise the controlling and containing, rather than the enabling and empowering, features of legal rules. They may, indeed, through processes such as divorce, have had personal encounters with legal rules, the outcome of which may have left them with questions about the degree to which the law can resolve social issues.

They may perceive the legal rules to be oppositional to, rather than supportive of, social work's ethical commitments or knowledge bases, seeing then the law as alien and hostile territory when contrasted with the values and rights with which social workers are also concerned. Social workers in training may be concerned at the apparent breadth, depth and complexity of the law to be learned, contrasting this with their motivation for becoming social workers. The motivation to study and to practise social work may have arisen less from a desire to exercise authority, statutory or otherwise, than from a wish to support and to help people realise their rights and meet their needs. Personal intentions and academic reflections then combine in resisting the idea of law, as opposed to values, as a core mandate for social work.

By the time social workers in training reach the law module within their qualifying programme, they may have become aware that the law is a social construct, reflective of the society of which it is a part and indeed a contested space, the outcome of politics and ideology. They may wonder why social work frequently appears less as an active player in shaping what the legal rules might be than a passive recipient of duties that other people have determined.

However, the law is an inescapable feature of public and private life. It is a key feature of social work practice so, whilst acknowledging the serious questioning with which social workers in training might approach their law learning, there are additional points that should be considered.

Firstly, the legal rules do change, sometimes frequently as in criminal justice, asylum and immigration. Whilst these changes can be the outcome of political ideology, there are also examples of where lobbying, in which social work has been engaged and has resulted in a review of the legal rules. Secondly, public authorities, such as councils with social services responsibilities, do sometimes act unlawfully, such that it can be important to know how and why to question the legality of agency policy and procedures. Thus, critically reflective social workers can comment upon the social conditions and issues through which laws emerge and change and can interrogate the implementation of the legal rules against social work knowledge and values.

If, thirdly, one motivation for entering social work is to enable service users and carers to obtain their rights and to achieve positive outcomes in respect of their needs and wishes, then knowing what the law permits and requires through statute, regulations, policy and practice guidance and case law, is one essential ingredient. Indeed, such knowledge can enhance practitioners' negotiating power within organisations and can enable them to engage authoritatively with managers and with other professionals.

Thus, whilst law is not the only map with which to navigate through social work practice, it is one map. Indeed, it has important messages about the quality of practice, about accountability and standards for practice and about responsiveness and meeting need, which social workers in training will find supportive. Moreover, the values underpinning the work of legal and social work practitioners, and the goals to which they aspire with the people with whom they are working, may be characterised as much by similarity as difference.

This learning object contains interviews with Gwyneth Roberts, Alison Brammer and Stuart Vernon all of whom have written about social work and law and have taught social workers in training. Each interview revolved around seven questions. The purpose here is to clarify:

- How law is made
- How social issues may be reflected in the legal rules
- How the legal rules reflect the society of which they are a part
- The relationship between national and international jurisdictions
- The role of the judiciary and of case law
- The separation of powers.

The seven questions are:

1. Why should social workers concern themselves with the law?

In part, the answers here revolve around questions of accountability, since the legal rules underpin the registration of social workers and can be used to call them to account for their actions and decisions. In part, the answers revolve around the fact that the law determines what social workers may or, in certain circumstances, must do.

2. What law should they know about?

One distinction here is the difference between social work law and social welfare law. Within the former are the powers and duties given directly to councils with social services responsibilities. Within the latter are those areas of law that may impact on the lives of the people with whom practitioners work, where accurate advice and guidance will be important.

3. What is the framework of the legal rules?

Here the dominant metaphor is 'the body'. One way of envisaging the legal rules is to imagine a body. Initially this comprises a skeleton – the outline powers and duties, such as those contained within the *Children (Leaving Care) Act 2000*, the *Adoption and Children Act 2002*, and the *Carers (Recognition and Services) Act 1995*. The different elements of this skeleton may be connected together and each may be fleshed out by regulations, or secondary legislation.

Thus, special guardianship in the *Adoption and Children Act 2002* has been greatly developed by regulations, which clarify who may apply and the role of a council with social services responsibilities. Regulations subsequent to the *Children (Leaving Care) Act 2000* clarified which young people were to be eligible for support. Policy and practice guidance further flesh out the legal rules by bringing to life how social work practice is to realise the intentions within the legal rules.

Both policy guidance and practice guidance were issued, for example, to shape implementation of the *Carers (Recognition and Services) Act 1995*. Case law may clarify what is contained within a particular body of legal rules. Thus, judgements have clarified that unaccompanied minors who, having sought asylum, are accommodated by a local authority, are eligible for the enhanced support that the *Children (Leaving Care) Act 2000* offers.

4. To whom may powers and duties be given?

Here it is important to understand when legal rules are given to councils with social services responsibilities and when to social workers themselves. It is equally important to appreciate when councils may delegate their functions to other organisations, for example in the voluntary sector.

5. What is the relationship between law and social work values?

Whilst the legal rules relating to asylum and immigration, for example, may well run counter to social work values and goals, those contained within *Community Care (Direct Payments) Act 1996* and the *Children Act 1989* are more in line with such social work values as self determination and the primacy of the child's welfare.

6. Why is law not enough?

The body of the legal rules operates within a climate or context of international obligations, of social issues, of other knowledge bases that shape how problems are understood, of agency and practitioner values and beliefs that impact on decision-making and of resources – all of which will influence outcomes.

7. Why should social workers be interested in how legal rules are made and reviewed?

If the body of the legal rules is the visible outcome of processes in which people engage surrounding social issues, then the challenge for social work is the degree to which it engages and the evidence that it offers. Social work practitioners can draw on different types of evidence – research into outcomes, practice wisdom and dialogue with service users and carers – to inform debates about the balance to be struck, for example, between needs and resources, rights and risks, care and control.

The law is one space for practice. This learning object will hopefully enable social workers in training, you, to appreciate the possibilities that knowledge of the law offers for positive practice.