

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

### Gwyneth Roberts

I think there are a number of basic reasons why social workers should concern themselves with the law. It's because it's the law that gives social workers the power, the authority to function, as social workers. It's also what guides social workers, defines what they can do. And thirdly, the law also controls social workers. It makes them accountable. So we could say that the law is the essential bone structure for social work practise. But of course we need other elements to make up the body, the flesh and blood of the whole of social work practice.

### Alison Brammer

Social workers need to concern themselves with the law firstly because it's a key element to the requirements for training, for social work training as set out under the new degree framework. So it's there as a compulsory element. But beyond that, I think law is key to social work practice. It provides social workers with their mandate to practise. It gives them a structure within which they practise. It provides them with both duties that are mandatory, that they must follow, such as the duty to assess somebody for community care services. And it also provides them with powers over which there is an element of discretion, such as the power to then provide a range of appropriate services. It actually sets out the framework for social work organisations. So, back in 1970, there was an Act that stipulated which local authorities would have social services departments and functions and had to employ an appropriate number of social workers. And that's been amended recently by The Children Act of 2004 which sets out a slightly different structure for social services within Children's Services authorities and a new requirement to appoint a director of Children's Services and a separate Director of Adult Social Services.

### Stuart Vernon

Social workers should concern themselves with the law because by-and-large it specifies the breadth and parameters of their practice. Not only does it do that but also it imposes some very important disciplines on the breadth of their practice and the way in which they practise as well, so, for me, it's absolutely essential as a context of their understanding, their knowledge and their competence.

## 2. What law should they know about?

### Gwyneth Roberts

Social workers should know about two basic areas of law. In the first place, they must of course have an understanding of professional social work law, that is, of the law which as I have said, empowers, guides and controls them, tells them what they can do in relation to the client groups which is defined by the law: children, people with mental disorder, people with physical disability, older people. So, the law is crucial in that respect. But also, the law is important because it gives social workers insight, it helps them to understand their clients' broader problems, because, many service users and clients may have problems with housing, with social security, with immigration, with race relations. So, social workers are in a key position to enable their clients to enforce their rights and, also, of course, to practise their duties.

### Alison Brammer

I think there are three key areas of law that social workers need to know about. They need to know about what I sometimes call workplace law, they need to know about the structures of law, about how law is created and about where law works. So, they need to know about the courts, about the court structures about legislation, so that those settings can effectively become an extension of their practice. Secondly, they need to know about the law that actually provides them with their powers and duties. That gives them the role that they carry out. So, they need to know about duties, for example, under The Children Act, duties under the Community Care legislation, legislation and powers that enable them to provide services to support individuals. So, the law that relates to the key client groups that social workers will work with, children and their families, vulnerable adults - including adults who are elderly, adults who might be disabled and people with mental health problems. And the law operates in different ways according to those different service user groups. And then finally, there's another area of law that I think that social workers need to have an understanding of, and that's the law that may affect service users even though there isn't a direct corresponding duty or responsibility imposed on the social worker. So, whilst a social worker might not become directly involved with a couple's divorce or separation or arrangements that they make for their children it would be helpful for them to have an understanding of those processes and of the relevant law. Similarly, some service users might need to access housing provision, welfare benefits, or might become involved with criminal processes or domestic violence. And in those situations, social workers might have a role in supporting the individuals.

### Stuart Vernon

The law that social workers need to know about, I mean the obvious context, is the law that specifies or regulates their particular area of practice. Childcare law, mental health law, youth justice. But beyond that is a much wider context. We've already talked about

administrative law or public law accountability. There is, if you like a sort of wider welfare law accountability as well because a lot of social work, people using social work services are in some ways disadvantaged or discriminated against or living their lives in some form of poverty. So, for example, immigration law may be relevant, social security law may be relevant. So whilst you have a sort of inner core of what is sometimes called professional law. You have then a series of outer cores or circles, contexts, legal contexts, which are just as important as the core statutory professional law of particular areas of practice.

### 3. What is the framework of the legal rules?

Gwyneth

We can define these two bodies of law into social work law and the second into social welfare law. This is a nice distinction which clarifies I think for social workers the distinction between these two areas of law.

Alison Brammer

The framework of legal rules that social workers need to have an understanding of is quite complex. It can be split most easily into legislation, primary and delegated, and common law. So, to think about legislation first of all, when we talk about The Children Act, or The Mental Health Act, that's primary legislation. It will have been produced through parliament, undergone a process of scrutiny through various stages in both the House of Lords and the House of Commons. It may have been introduced directly, flowing directly from an election manifesto perhaps. So it may be overtly political in nature, and I think we can see good examples of that if you look at the huge volume of asylum related law that has been introduced in recent years. In addition to legislation that can be directly traced to a political party or the government's perspective, legislation may also have its origin in public pressure, through pressure groups lobbying parliament and introducing legislation. An example of that would be disability discrimination legislation. It may arise directly as the result of a particular event within society such as a child abuse enquiry and we've got clear examples of that with The Children Act of 1989. For which The Cleveland Report really provided a catalyst for the speedy introduction of that legislation. And then more recently, The Children Act of 2004 can be directly traced to events surrounding the death of Victoria Climbié. Other ways in which legislation might be introduced include the work of The Law Commission. The Law Commission is an independent body which reviews existing legislation, makes proposals for new legislation and consults with relevant bodies. Other consultation processes might be instigated by government departments such as the Department of Health, the DFES or the Home Office and their recommendations may then be taken up as government policy presented as a white paper which includes government proposals for legislation which is then translated into a bill which then ultimately, following the parliamentary process, becomes an act of parliament when it receives royal assent. But it's important to remember that even if an act of parliament has royal assent it won't necessarily be up and running straight away. So, for example, the Human Rights Act of

1998 was not implemented so that it could be directly used by individuals until 2000. Within that period, before implementation, there were lots of training exercises going on and there was also an opportunity for rules and regulations and guidance to be published which supplement the key legislation, provide more detail, deal with points of procedure and processes.

## Stuart Vernon

So, if we were to look at where the law, if you like, comes from, ultimately all law comes from parliament. Parliament is the supreme or sovereign law making body in this country. But we have a legal system that derives its legal rules not only from parliament but from what some people call the common law. Parliament provides both primary legislation, Acts of parliament, and secondary legislation, which is parliament giving other people the power to make law, often that's ministers but it might be local authorities through by-laws or other agencies so you have both primary legislation and secondary legislation emerging from parliament. But you also have then the development of common law which, by and large, has developed, been developed over the centuries by the judiciary not in a vacuum but by the courts deciding every day legal disputes. Areas of law particularly which have been developed through common law procedures and dispute resolution are things like the law of tort and even, for instance, the law of murder. It seems surprising, but that's the way it is. The trend these days is to increase the breadth of statute law and to decrease the breadth of common law but don't ever underestimate the importance of judicial development of the law.

## 4. To whom may powers and duties be given?

### Gwyneth Roberts

One of the interesting things about social work law is how the powers and duties are distributed, because they're not normally assigned to individual social workers. That body of the law, the duties, are placed on the organisations in which social workers function. And these are normally local authorities. So it is the local authority which is a legal body in itself which is actually the organisation to whom the legal rules are assigned. And so social workers get their powers and duties normally through being employees of that public body. And this is done through delegation. So, in fact, social workers' contract of employment is really important because that tells them what bit of this body of law they are practising. So, are they practising with children? Are they practising with elderly people? Are they practising with people with physical disability or with people with mental problems, mental health problems? And that's very important although sometimes the law puts the powers and duties directly on social workers themselves and one example of that is becoming an approved social worker, which gives that person powers and duties under The Mental Health Act of 1983, directly. However, the interesting thing also, is that they first of all have to be employees of the local authority which approves them to carry out that direct role. So it's very important I

think to understand the organisational context in which social work takes place and to know therefore how that structure and its bureaucracy affects social work practice.

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

### Gwyneth

The picture that I have drawn, of the structure of social work law, of course is incomplete, in terms of actual social work practice because social workers have values and these values are also crucial in making up the concept of social work and social work practice. Much of the time, fortunately, the law and social work values correspond, or there's a fair fit between the two. For instance, in the concept that the welfare of the child is the paramount consideration under The Children Acts. And that is extremely important, that's a good example I think. But there are occasions when social workers feel they have no power to intervene when they might wish to do so. For example, to protect vulnerable adults from financial, physical or other forms of abuse. And some service users are excluded from some provisions of certain statutes like direct payments for example. So there are examples of omissions, if you like, in the law where social work values need to come in perhaps to fulfil the gap. Or there can be conflict between these two because the law is a body which is practised within complex social situations. The law is also a historical body and sometimes hasn't caught up with changes in the social structure so there are lots of issues here and I think that social workers need to be educated, need to understand some of those conflicts as well when they are being trained and when they are practising also.

### Alison Brammer

The relationship between law and the values that social workers might bring into their practice is at times complementary, but I think, at times, there is a conflict. If we think of some of the key values for social workers, the first point, perhaps, is to work in an anti-discriminatory anti-oppressive fashion, that's key to social work practice. And, to a certain extent, the law supports that through legislation that intends to combat discrimination in relation to sex, race, disability, and, recently, age. But those laws are essentially reactive to particular situations when discrimination has already occurred. And it's clearly an area where good practice in social work goes beyond what the law prescribes. And it may also be argued that there are some ways in which the law itself is quite discriminatory, if we just think about how legislation is framed, always in the male pronoun, that could be arguably so. Also law doesn't change as quickly as practice and so there are some terms in usage in legislation, and sometimes in case law decisions, that wouldn't be considered good practice for a social worker to use. If you think of definitions of disability which refer to people being 'blind', 'deaf' or 'dumb', it would clearly be unacceptable for a social worker to use that terminology other than if they are specifically referring to that piece of legislation. If you think also about the way the law operates and the sorts of people that are perhaps are involved in law. If you look at The

House of Lords, the judges there, predominantly male, in fact there is only one female judge in The House of Lords. And if we look at the judiciary as a whole, there are very few judges from ethnic minorities, which must raise questions as to diversity and the impact on decision making and the extent to which the judiciary are actually in touch with reality. So there are points there about the way the law operates. Other key values, I think for social work practitioners, partnership is really important and that was described as a key element of The Children Act of 1989. But, in fact, the term 'partnership' doesn't feature in the Act, we have to look to guidance such as 'Working Together' to find a template for partnership between individuals from different professional groups. Children's rights, respecting rights is something that's also important for social work practice and we see some examples of that within legislation such as the requirement for children's views to be ascertained, for their wishes and feelings to be considered, there are a number of references to that within The Children Act. But there are other areas of law in which children's rights are clearly not supported. Although it was argued that there should be a requirement that a child over twelve should consent to their own adoption, that didn't actually feature in the most recent adoption legislation. And the UK has been consistently criticised by the United Nations committee that oversees the operation of the convention on the rights of the child for its apparent lack of commitment to children's rights. Although, as a result of some of that criticism, we do now have a new post of Children's Commissioner in England, and also in Wales and Scotland.

## Stuart Vernon

The law that social workers work with is, reflects if you like, both politics/policy and values. And social workers, I think, often come to an understanding or a learning of law from a position which is very negative. They see the law as something which often controls what they can and cannot do. The statute law that social workers deal with, and case law as well, is, if you like, value laden. Some of those values will indeed support the objectives of a social work practitioner's practice. Other values won't, and they will find them in opposition to, if you like, their objectives. But what's important is that they understand what the value base of legislation is and realise that within the legislation they are working with there is space for what I might call 'positive practice'. Now, I've understood, if you like, the value level of social work law, the statute law as being located on a continuum. At one end of that continuum you've got that sort of law which is very much dictated by the values of social work. One end of the continuum you've got social work law which is dominated by the value of social work – and I would include the Children Act in that – at the other extreme end of the continuum you've got those areas of law which, if you like, are dominated by other values. They may be legal values, they may be political values, which some social workers would find very difficult to work with or within. And I am thinking, increasingly, of the values attached to criminal justice legislation and youth justice legislation. If you were to look at the sort of middle range of the continuum, I think you've got sorts of statute law where there is, if you like, a tension sometimes between the values of social worker and other values. And I would include there, for example, mental health law. I've described those values as being contained within statute but they are equally contained within the case law as well. Now, that case law may emerge from the development of the common law but it may also emerge, of

course, from the interpretation of the statute in the first place. And what is fascinating, is to see the values of the law emerging, if you like, from what may be first of all a policy initiative or a political initiative, getting transformed into a statutory framework and then again possibly being developed or transformed by practice or by interpretation by the courts. This is a dynamic movement, it's not a static movement at all, and that's something that it's useful for social workers to understand that their practice can contribute to the development of the law.

## 6. Why is law not enough?

### Gwyneth Roberts

To know about the body of social work law is not enough, obviously, because social work takes place within society and social workers bring to bear their knowledge about this body of law, they bring it bear on specific situations, so they have to be skilled in applying the law. In understanding, in defining, in assessing the situation that they are in and then choosing what area of that social work law is appropriate in order to help their clients and their service users. So, of course, they need social work values, they need social work skills, to be competent, well functioning social workers.

### Alison Brammer

Law's an important area for social workers but it's not enough in itself. It needs to be seen as part of social work practice, it needs to be seen as integral to that practice but not dictating or dominating practice. There will be many opportunities for social workers to exercise choice about their use of law. In some situations they may decide that a particular provision is so discriminatory that it would be inappropriate to use it in current practice. There may be other situations where social workers will find a particular provision to be empowering both to themselves perhaps or to service users. It's clear that law doesn't exist in a vacuum. We have choices about how it is used, about when it is used. And that's where the relationship between law and social work values is really crucial. And the way that social workers can choose to use law to support anti-discriminatory practice perhaps rather than to provide a further example of discrimination.

### Stuart Vernon

Law as an element of social work practice is, I would say it is central, but it's not everything. Social work practitioners bring their own knowledge, their own values, their own education to their practice. And that's where it inter-relates with the other elements of their practice. Law being a central element of that. Social workers, I think, have to understand the role of law in their practice. Not to be afraid of it, not to have a negative

attitude towards it but to see it, as I said before, as a space within which they can develop their practice for the benefits of their clients, their service users, customers, but also for the benefits of their own profession as well. And as a vehicle or a forum within which the values of social work can be recognised.

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

### Gwyneth Roberts

I think social work has a dynamic role to play in society. To make that body that we've been talking about, a healthy entity, one which has an impact on people's needs in society. Then social workers do, I think, have a duty to be involved, much more broadly, in the evolution of the law. I think they have a duty not to accept the legal situation always but to say "Well, this bit, this bit of the skeleton is a little bit defective, the flesh and blood here needs a little bit of cosmetic treatment". And so I think there is a wider social enterprise that social workers should carry out as a pressure group within society for the sake of those people for whom they are in existence to help and serve.

### Alison Brammer

I think social workers have a key role in commenting on the way in which the law may or may not facilitate what they want to do. It's an important skill for social workers to in being critical, in being reflective about their practice and their use of the law is an obvious aspect of that practice. Part of the tool kit of being a competent social worker is being able to question the law. And so if there are opportunities to question the law and to perhaps exercise choice in their use of the law then that's an obvious opportunity for them to exercise that critical reflection.

### Stuart Vernon

I think social work, as a discipline, has a responsibility and a role in the development of the law. That can be seen in a number of ways. You may want to talk about the influence of childcare enquiries, about the influence of social work as a profession, or as a discipline or, if you like, as a value base in the development of law at the pre-legislative stage. The Law Commission, for instance, is responsible for recommending to government changes in the law and the social work profession, the discipline can intervene at that stage. And I'm also thinking particularly about the way in which there has been a considerable influence in what was thought to be the future of, the development of mental health law. There were scoping exercises, there were green papers, there were white papers. There is a space in which influence can occur and social work has to seize that space.