



Fourth Edition

# SOCIAL WORK LAW

ALISON BRAMMER

Foreword by the Rt. Hon. Sir James Munby, President  
of the Family Division and of the Court of Protection

# **SOCIAL WORK LAW**

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# SOCIAL WORK LAW

**Alison Brammer**

School of Law, Keele University

Fourth Edition

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## Foreword

In the five years since the publication of the last edition of this invaluable book, social workers have had to face enormous changes in the many different and complex legal environments in which they practise their professional skills – a complexity exemplified by the astonishingly long list of statutes which appears in Chapter 1. If the largest and most profound changes have been in family law and the law of community care, there are few chapters which have not required the skilful updating for which we must all be indebted to the author.

In recent years too many social workers have come to feel undervalued, disempowered and deskilled. In part at least this was an unhappy consequence of the way in which care proceedings had come to be dealt with by the courts. Proper implementation of the family justice reforms, already well under way, will, I very much hope, re-position social workers as trusted professionals playing the central role in care proceedings which they should, and must. Social workers are experts. We must recognise them and treat them as such.

Expertise in social work practice, however, is not enough. Given the legal context in which they practise, social workers, as Sir Andrew McFarlane commented in his Foreword to the last edition, need to have a sound knowledge of the legal framework and the law that governs their work. He observed that this book succeeds in providing social workers with the law they need to know in a digestible form. That applies as much to this very welcome new edition, which I commend, both to the experienced and to the less experienced, as an expert guide through the legal thickets.

*The Rt. Hon. Sir James Munby  
President of the Family Division and of the Court of Protection  
Royal Courts of Justice  
6 January 2015*

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# Preface

## Aims

The aims of this book are to:

- Improve knowledge of law and its application to social work practice.
- Clarify legal terminology, conventions and practice and introduce basic legal skills.
- Identify the statutory responsibilities of social workers.
- Establish links between law and social work values.
- Demonstrate how law can promote good practice and empower service users whilst acknowledging the converse.
- Provide a comprehensive account of 'service user law'.
- Engage with professional and contextual issues surrounding law and social work.

The law covered in this text is specifically that which applies in England and Wales. The law applicable in Scotland and Northern Ireland is not included other than on occasion by way of comparison. Social work practice in statutory Social Services Departments forms the main focus of discussion although it is recognised that an increasing number of people in the social work profession are employed in the private and voluntary sector and where possible relevant issues relating to those areas are addressed.

## Terminology

It is important to add a note on terminology at this stage. Language in law and social work practice is always changing – though not necessarily at the same pace. At times a choice had to be made between various terms and styles and a brief explanation for those choices follows.

Throughout the text the term 'service user' is employed rather than 'client'. In practice this term is now more commonly accepted as the appropriate term. The reasoning behind this preference is that reference to 'service user' is less discriminatory as it implies a more active and equal position with the social worker and emphasises that social work practice and the law deals significantly with provision of services and support and is not confined to issues of protection and control. It is recognised that in some particular circumstances the term may not seem appropriate to all or some of the players. For example, in child protection where a parent emphatically denies the existence of 'significant harm' yet action is taken to remove



the child, that parent may not perceive herself as a service user or a client and may relate more closely to terms such as victim or adversary.

He is used throughout the text rather than s/he or they, which can appear clumsy, though more acceptable in terms of anti-discriminatory practice. The main reason for use of he is that legislation is framed in these terms, though application of the Statutory Interpretation Act 1978 means that he should be taken to refer to she also. This usage is adopted therefore for reasons of clarity and consistency.

The glossary includes explanation of a range of terms used throughout the book. Some are technical legal terms which are unavoidable and in rare cases may still be expressed in Latin. Other terms are more recent in origin and an explanation is provided of their meaning in the context of social work law. Terms included in the glossary are highlighted in red bold the first time they appear in the text. Abbreviations used are highlighted in black bold in the text at first mention.

## Approach

A few thoughts about learning the law will further explain the approach of this text.

Learning social work law is most effective as part of an approach which conforms to what Biggs (1994)<sup>1</sup> describes as 'the qualitative outlook'. Under this premise, students learn in a cumulative fashion through interpretation of new materials with existing knowledge and understanding. The task for teachers of social work law is thus to encourage understanding, not simply to transmit vast amounts of content which can be reproduced in a test situation without any real understanding of the subject matter or its interrelationship with other areas (the quantitative outlook). The qualitative approach involves use of activities to help understanding. Elements typically present in this approach include: a positive motivational context; a high degree of learner activity, both task-related and reflective; interaction with others, at peer level and hierarchically; a well-structured knowledge base, that provides depth and breadth for conceptual development and enrichment (Biggs, 1994).

To learn a new subject it is necessary to be aware of expectations, motivation and attitudes. It is possible that some social work students feel that the study of law is imposed on them if they wish to pursue a career in social work, rather than it being a genuine choice. A few students may still consider that law has no relevance to social work and therefore have little commitment to its study. Others may grasp the aspects of law that might be interpreted as oppressive or discriminatory and see their role as fighting against law rather than embracing it as a tool to improve practice.

For some students, reluctance to study law is founded in a preconception that law is dry and boring. A response to such concerns is to encourage students to take some ownership of the study of law by incorporating it fully into their professional development as a social work practitioner. Guiding this approach, is Rogers' (1969)<sup>2</sup> view that significant learning takes place when the subject matter is perceived as having relevance to your own purpose.

To learn law it is necessary to spend some time on basic skills of legal research, 'the ability to find, use and apply legal source material; the ability to read cases and statutes and apply them to new or complex situations' (Kenny, 1994, p. 47).<sup>3</sup> The introduction of these skills should be set against a context of an understanding of the respective roles of social workers and solicitors. In practice social workers should have access to legal advice for complex cases. The aims of studying law as a social worker should not include a desire to turn into quasi-lawyers, but having an appropriate knowledge of law and awareness of how to access the law that supports professional practice.

Before embarking on the study of law as part of a social work course, it is apposite to develop an awareness of the sensitive nature of some areas of study. It is important to acknowledge the possible existence of personal and professional experience of certain issues, e.g. domestic violence, and the need to foster a 'safe' working environment.

One way to achieve this is through the development of 'ground rules' which can if necessary be revisited throughout a course of study. Ground rules might include issues such as: respect for each other's beliefs and opinions, confidentiality within the group, sharing resources, appropriate use of language, time out if appropriate, and full participation. From my experience of following this approach with groups of mature students I would support the view of Egan (1974),<sup>4</sup> that, 'an adult way of learning is best established when a group agrees to and respects and values each other, and that this is best achieved through a contract that establishes ground rules' (in Rowland, 2000, p. 65).

The approach taken in this text is to provide the opportunity to learn law in a way which is relevant to social work practice and develops critical analysis. Chapters therefore include learning objectives, discussion points, signals to evaluate law, including deficiencies in current law and commentary on proposals for reform, case analysis and exercises in the form of case study discussion, as a facet of problem-based learning (Savin-Baden, 2000).<sup>5</sup> A limitation of case studies is that it is not usually possible to provide the amount of detail that would be available in a real situation. This can be a positive feature, however, in that it can encourage questioning and provide for a greater range of options to be considered e.g. a reference in a case study to a 'child in need' as defined by the Children Act 1989, s. 17 might prompt thought or discussion about gate-keeping, prioritisation of services, concepts of need versus protection, ethnocentric interpretations of need, medical versus social need – all issues hidden behind a seemingly straightforward legal term. The companion website will include answers to case studies and exercises.

## Keeping ahead of the game – further reading and website addresses

Professionals working in all of the areas covered in this book need to be alert to changes in policy, legislation and case law, all of which impact on practice. Reading a textbook on social work law, however comprehensive, is unlikely to equip the social practitioner fully for the diverse situations which will be encountered. In part this is an inevitable result of the speed of changes and developments in law.

Some sections of this text have had to consider both existing law and future, as yet unimplemented, legislation or proposals for reform. In addition, the potential for challenge of existing law via the Human Rights Act 1998 should not be overlooked and its impact is considered throughout. The approach adopted therefore is to encourage and enable the reader to consider the study of law as a career-long aspect of professional development, and to achieve this to develop the skills necessary to access up-to-date materials and indications of future direction. Three principal features of the book support this aim.

### Further reading

Space dictates that certain important publications, such as government policy and consultation documents, can only be referred to in brief. References are provided in further reading to encourage the reader to access the original documents and to expand and develop on the

knowledge gained in the text. Certain key documents e.g. 'Working Together to Safeguard Children', will become an essential part of the social work 'toolkit'. The text aims to encourage a critical and reflective approach to the role of law. Published research and academic articles included in further reading support this notion and the requirement for research-based practice. This is a generic text but it is recognised that on qualification most social workers will choose an area of specialism and may wish to research that area in greater depth.

## Website addresses

In addition to the more traditional library-based sources of information, there is a wealth of information which can be accessed via the internet. Website addresses are included at the end of each chapter. Sites are included through which significant documents such as government publications can be accessed. In addition, for each topic there are websites listed reflecting the particular issues, e.g. charitable or research-based organisations, which can provide further insight into an area.

## Outline of content

The remainder of this text is divided into three parts: the legal context of social work practice; children and families; and vulnerable adults. Criminal justice issues are dealt with in Chapter 13 regarding juvenile offenders and Chapter 18 for adults. Two additional chapters at the end of the text cover asylum law and welfare. Both areas are relevant to each of the three parts of the text but have been positioned at the close of vulnerable adults as it is arguable that asylum seekers and people who are homeless have a vulnerability. There have been significant changes within social work law since publication of the third edition and these are reflected in the updated fourth edition.

Whilst I hope the views in this chapter are persuasive and coherent, ultimately they are expressed by a lawyer. Accordingly, a summary of feedback follows from two exercises carried out with Social Work students.

## Why study law?

- relevant to ALL areas of practice
- avoid litigation
- social workers operate within tight guidelines which are dictated by law
- know powers within law and limitations
- understand nature of state's role in protection
- understand clients/service-users' rights and lack of rights – enables empowerment
- advocacy
- defines boundaries of how citizens should behave
- law protects client group and social workers
- social workers need a good working knowledge of the legal system, e.g. access to services
- to fulfil obligations to service users/clients
- to challenge unfair discrimination
- to influence and shape legal systems

- to guard against personal litigation
- social workers work in partnership with other professionals and agencies which are dominated by the legal framework – to know professional boundaries
- because it's interesting!

## What are the barriers to use and understanding of the law?

- rigidity
- jargon, language and terminology
- format
- continuous change in some areas, lack of change in others
- contradictory content
- not accessible
- inconsiderate to victim
- subject to interpretation
- discriminatory
- elitist
- tradition, e.g. dress etc. in court setting
- time – adjournments etc.
- too generic
- lack of time and resources to learn
- politics influences changes in law.

The author has endeavoured to explain the law as at 1 June 2014 and some possible developments thereafter are included.

## Notes

1. J. Biggs (1994) 'Student learning research and theory: where do we currently stand?', in J. Gibbs (ed.) *Improving Student Learning*. Oxford: The Oxford Centre for Staff Development.
2. C. Rogers (1969) *Freedom To Learn*. Merrill.
3. P. Kenny (1994) *Studying Law*. London: Butterworths.
4. Egan, cited in S. Rowland (2000) *The Enquiring University Teacher*. The Society for Research into Higher Education/Open University Press, p. 65.
5. M. Savin-Baden (2000) *Problem-based Learning in Higher Education, Untold Stories*. Oxford: Oxford University Press.



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**DEDICATION**

**For Rosa**



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### Figures

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### Tables

Tables 17.1 and 17.2 adapted from *The Law and Social Work: Contemporary Issues for Practice*, Palgrave (Cull, L.-A. and Roche, J., Eds 2001), reproduced with permission of Palgrave Macmillan.

### Text

Text on page 6 from *Domains with the Professional Capabilities Framework*, <http://www.tcsw.org.uk/pcf.aspx>, The College of Social Work, accessed 21st March 2014. Correct at time of going to press. The PCF is subject to regular updating; Box on page 114 from *The Human Rights Act – Changing Lives*, 2nd ed., The British Institute of Human Rights (Matthews, L., Sceats, S., Hosali, S. and Candler, J. 2008), reproduced with permission from BIHR; Text on pages 166 and 232 from *Working Together to Safeguard Children: Statutory Guidance on Inter-agency Working to Safeguard and Promote the Welfare of Children*, HM Government (2013), contains public sector information licensed under the Open Government Licence (OGL) v3.0. <http://www.nationalarchives.gov.uk/doc/open-government-licence>; Boxes on pages 230 and 242 from *X Council v. B (Emergency Protection Orders)* [2004] EWHC 2015 (Fam), contains public sector information licensed under the Open Government Licence (OGL) v3.0. <http://www.nationalarchives.gov.uk/doc/open-government-licence>; Box on page 398 from *Care Bill becomes Care Act 2014*, <https://www.gov.uk/government/speeches/care-bill-becomes-care-act-2014>, contains public sector information licensed under the

Open Government Licence (OGL) v3.0. <http://www.nationalarchives.gov.uk/doc/open-government-licence>; Box on page 427 from *Code of Practice to the Mental Health Act 1983 (as amended by the Mental Health Act 2007)*, Department of Health (2007), contains public sector information licensed under the Open Government Licence (OGL) v3.0. <http://www.nationalarchives.gov.uk/doc/open-government-licence>; Box on page 464 from Care home boss locked disabled patients in his car for THREE hours whilst he visited bookies, *Daily Mail*, 14/12/2007, Mail Online; Box on page 573 from *R (AS) v. London Borough of Croydon* [2011] EWHC 2091 (Admin), contains public sector information licensed under the Open Government Licence (OGL) v3.0. <http://www.nationalarchives.gov.uk/doc/open-government-licence>.

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## List of abbreviations

<b>AA</b>	Adoption Act 1976
<b>ABC</b>	Acceptable behaviour contract
<b>ABCPA</b>	Anti-social Behaviour, Crime and Policing Act 2014
<b>AC</b>	Approved clinician
<b>ACA</b>	Adoption and Children Act 2002
<b>ACPC</b>	Area Child Protection Committee
<b>AEA</b>	Action on Elder Abuse
<b>AIA</b>	Asylum and Immigration Act 2004
<b>AMHP</b>	Approved Mental Health Professionals
<b>ASBA</b>	Anti-social Behaviour Act 2003
<b>ASBO</b>	Anti-social Behaviour Order
<b>ASW</b>	Approved Social Worker
<b>BAILII</b>	British and Irish Legal Information Institute
<b>BASW</b>	British Association of Social Workers
<b>CA 1989</b>	Children Act 1989
<b>CA 2004</b>	Children Act 2004
<b>CAF</b>	Common Assessment Framework
<b>CAFA</b>	Children and Families Act 2014
<b>CAFCASS</b>	Children and Family Court Advisory and Support Service
<b>CAMHS</b>	Child and Adolescent Mental Health Service
<b>CAO</b>	Child assessment order
<b>CCRC</b>	Criminal Cases Review Commission
<b>CDA</b>	Crime and Disorder Act 1998
<b>CDCA</b>	Carers and Disabled Children Act 2000
<b>CDS</b>	Criminal Defence Service
<b>C(EO)A</b>	Carers (Equal Opportunities) Act 2004
<b>CHAI</b>	Commission for Healthcare Audit and Inspection
<b>CJA</b>	Criminal Justice Act 2003
<b>C(LC)A</b>	Children (Leaving Care) Act 2000
<b>CMH</b>	Case Management Hearing
<b>CPS</b>	Crown Prosecution Service
<b>CQC</b>	Care Quality Commission
<b>CRE</b>	Commission for Racial Equality
<b>C(RS)A</b>	Carers (Recognition and Services) Act 1995
<b>CSA</b>	Care Standards Act 2000
<b>CSCI</b>	Commission for Social Care Inspection
<b>CSDPA</b>	Chronically Sick and Disabled Persons Act 1970

<b>CTO</b>	Community treatment order
<b>CYPA</b>	Children and Young Persons Act 2008
<b>DASS</b>	Director of Adult Social Services
<b>DCSF</b>	Department for Children, Schools and Families
<b>DDA</b>	Disability Discrimination Act 1995
<b>DfE</b>	Department for Education
<b>DfES</b>	Department for Education and Skills
<b>DoH</b>	Department of Health
<b>DOLS</b>	Deprivation of Liberty Safeguards
<b>DPA</b>	Data Protection Act 1998
<b>DPP</b>	Director of Public Prosecutions
<b>DP(SCR)A</b>	Disabled Persons (Services, Consultation and Representation Act) 1986
<b>DRC</b>	Disability Rights Commission
<b>DTO</b>	Detention and Training Order
<b>DVCVA</b>	Domestic Violence, Crime and Victims Act 2004
<b>DVPO</b>	Domestic Violence Protection Order
<b>DWP</b>	Department for Work and Pensions
<b>EA 1996</b>	Education Act 1996
<b>EA 2002</b>	Education Act 2002
<b>EA 2005</b>	Education Act 2005
<b>EA 2011</b>	Education Act 2011
<b>ECHR</b>	European Convention on Human Rights
<b>ECtHR</b>	European Court of Human Rights
<b>ECT</b>	Electroconvulsive therapy
<b>EHC</b>	Education Health and Care Plan
<b>EIA</b>	Education and Inspections Act 2006
<b>EOC</b>	Equal Opportunities Commission
<b>EPA</b>	Enduring power of attorney
<b>EPO</b>	Emergency protection order
<b>ERA</b>	Employment Rights Act 1996
<b>EWO</b>	Education Welfare Officer
<b>FfA</b>	Fostering for Adoption
<b>FLA</b>	Family Law Act 1996
<b>FMA</b>	Forced Marriage Act
<b>FSM</b>	Free school meals
<b>GR</b>	Gender reassignment
<b>GSCC</b>	General Social Care Council
<b>HA</b>	Housing Act 1996
<b>HCPC</b>	Health and Care Professions Council
<b>HMCS</b>	Her Majesty's Courts Service
<b>HRA</b>	Human Rights Act 1998
<b>HSCA</b>	Health and Social Care Act 2008
<b>HSPHA</b>	Health Service and Public Health Act 1968
<b>IAA</b>	Immigration and Asylum Act 1999
<b>ICS</b>	Integrated Children's System
<b>IEP</b>	Individual education plan
<b>IMCA</b>	Independent Medical Capacity Advocate
<b>IMHA</b>	Independent mental health advocate
<b>IRH</b>	Issues Resolution Hearing
<b>IRO</b>	Independent Reviewing Officer

<b>ISSP</b>	Intensive supervision and surveillance programme
<b>LA</b>	Local authority
<b>LAA</b>	Legal Aid Agency
<b>LAC</b>	Local authority circular
<b>LAC</b>	Looked after children
<b>LASPO</b>	Legal Aid, Sentencing and Punishment of Offenders Act 2012
<b>LASSA</b>	Local Authority Social Services Act 1970
<b>LEA</b>	Local education authority
<b>LGO</b>	Local government ombudsman
<b>LPA</b>	Lasting power of attorney
<b>LSCB</b>	Local Safeguarding Children Boards
<b>MCA 1973</b>	Matrimonial Causes Act 1973
<b>MCA 2005</b>	Mental Capacity Act 2005
<b>MHA 1983</b>	Mental Health Act 1983
<b>MHA 2007</b>	Mental Health Act 2007
<b>MHRT</b>	Mental Health Review Tribunal
<b>MIAM</b>	Mediation Information and Assessment Hearing
<b>MJ</b>	Ministry of Justice
<b>NAA</b>	National Assistance Act 1948
<b>NASS</b>	National Asylum Support Service
<b>NHSA 1977</b>	National Health Service Act 1977
<b>NHSA 2006</b>	National Health Service Act 2006
<b>NHSCCA</b>	National Health Service and Community Care Act 1990
<b>NIAA</b>	Nationality, Immigration and Asylum Act 2002
<b>NR</b>	Nearest relative
<b>NSF</b>	National Service Framework
<b>OASYS</b>	Offender Assessment System
<b>ODPM</b>	Office of the Deputy Prime Minister
<b>PACE</b>	Police and Criminal Evidence Act 1984
<b>PCA</b>	Protection of Children Act 1999
<b>PCCA</b>	Protection of Children Act index
<b>PCC(S)A</b>	Powers of Criminal Courts (Sentencing) Act 2000
<b>PCF</b>	Professional Capabilities Framework
<b>PLO</b>	Public Law Outline
<b>POCA</b>	Protection of Children Act list of adults considered unsuitable to work with children
<b>POVA</b>	Protection of Vulnerable Adults
<b>PSHE</b>	Personal, social, health and economic education
<b>RC</b>	Responsible clinician
<b>RRA</b>	Race Relations Act 1976
<b>RR(A)A</b>	Race Relations (Amendment) Act 2000
<b>SAB</b>	Safeguarding Adults Boards
<b>SAO</b>	School attendance order
<b>SAR</b>	Subject Access Request
<b>SCIE</b>	Social Care Institute for Excellence
<b>SCT</b>	Supervised community treatment
<b>SDA</b>	Sex Discrimination Act 1975
<b>SEN</b>	Special educational needs
<b>SENCO</b>	Special Educational Needs Coordinator
<b>SENDA</b>	Special Educational Needs and Disability Act 2001



<b>SI</b>	Statutory Instrument
<b>SOA</b>	Sexual Offences Act 2003
<b>SRE</b>	Sex and relationships education
<b>SSFA</b>	School Standards and Framework Act 1998
<b>SSI</b>	Social Services Inspectorate
<b>UKBA</b>	United Kingdom Border Agency
<b>UNCRC</b>	UN Convention on the Rights of the Child
<b>YISP</b>	Youth inclusion and support panel
<b>YJB</b>	Youth Justice Board
<b>YJCEA</b>	Youth Justice and Criminal Evidence Act 1999
<b>YOP</b>	Youth Offender Panel
<b>YOT</b>	Youth offending team
<b>YRO</b>	Youth rehabilitation order

## Law Reports

<b>AC</b>	Appeal cases
<b>All ER</b>	All England Law Reports
<b>BHRC</b>	Butterworths Human Rights Cases
<b>BMLR</b>	Butterworths Medico-Legal Reports
<b>CCLR</b>	Community Care Law Reports
<b>Ch</b>	Chancery Division
<b>COP</b>	Court of Protection Law Reports
<b>Cr App R</b>	Criminal Appeal Reports
<b>ECHR</b>	European Court of Human Rights
<b>EHRR</b>	European Human Rights Reports
<b>EWCA</b>	England and Wales Court of Appeal
<b>EWHC</b>	High Court of Justice for England and Wales
<b>Fam</b>	Family Division
<b>FCR</b>	Family Court Reporter
<b>FLR</b>	Family Law Reports
<b>IRLR</b>	Industrial Relations Law Reports
<b>QB</b>	Queen's Bench Division
<b>UKHL</b>	UK House of Lords
<b>WLR</b>	Weekly Law Reports

## Journals

<b>BJSW</b>	British Journal of Social Work
<b>CC</b>	Community Care
<b>CFLQ</b>	Child and Family Law Quarterly
<b>Crim LR</b>	Criminal Law Review
<b>DCLD</b>	Discrimination Case Law Digest
<b>Fam Law</b>	Family Law
<b>JCL</b>	Journal of Child Law
<b>JSWFL</b>	Journal of Social Welfare and Family Law
<b>LAG</b>	Legal Action Group Bulletin
<b>LS</b>	Legal Studies
<b>MLR</b>	Modern Law Review
<b>NLJ</b>	New Law Journal
<b>SJ</b>	Solicitors Journal



# Part 1

## Legal context of social work practice

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