

SOCIAL WORK LAW

Applying the Law
in Practice

Michelle Evans and Denise Harvey

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Endorsement

This highly readable book is a great guide for students seeking to understand the range of relevant legislation. The use of case studies really brings the law to life, making it easier to understand and remember. The materials are attractive and colour-coded, which enables students to link the law more clearly. The study skills chapter designed to help students with law essays and law exams is particularly innovative and helpful. An authoritative but accessible guide that should be required reading.

Dr Andrew Whittaker, Professor of Social Work
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Meet the authors

Dr Michelle Evans

Michelle is a published author, filmmaker, placement link lecturer, Senior Fellow of the Higher Education Academy and senior lecturer at London South Bank University (LSBU), where she is module lead teaching law for social workers at master's level. Michelle takes great pride in finding innovative and interesting ways to engage and teach students to enable them not only to reach their full potential in terms of assignment grades but to take academic learning and apply it in social work practice, increasing students' personal professional development.

Denise Harvey

Denise is a qualified social worker with over 21 years' experience working within various areas of children and families' services. She is a Fellow of the Higher Education Academy (FHEA) and professional lead for social work at LSBU. Having significant current practice experience in both the youth court and the family court, she uses her practice skills as the module lead on the undergraduate 'Law for Social Work' module. Denise is an experienced and published researcher, whose areas of expertise include youth justice law, risk and decision making. She is currently undertaking her PhD.

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Introduction to using this book

INTRODUCTION

This book is designed to enable you to understand, apply and use the law in your social work practice. The idea for the book emerged as a result of an online survey to ascertain the learning needs of social work students studying law. In addition, we also consulted with students to identify their learning needs and what they would like to be taught when undergoing academic and practical social work law studies. Sometimes social work students, newly qualified practitioners or practitioners who are embarking on a new area of practice are unsure of the intricacies of the law and how to apply it in practice or they may find it daunting and intimidating. This book has been designed not only to support you, as a social work student, in your academic studies and on placement, but also to help newly qualified social workers, developing practitioners, practice educators, on-site supervisors and lecturers to understand and apply the law effectively.

Each chapter is written as we teach, by using a variety of techniques to make law more accessible, understandable and less daunting; for example, mindmaps, case studies, a discussion around how the decisions were made on the case studies, key points to remember and tasks to test your legislative knowledge (answers are at the back of the book). Throughout you are encouraged to conduct research yourself, as wider reading increases knowledge and contributes to presenting arguments in a more succinct and analytical way.

At the end of each chapter there is also the opportunity to consider if any anti-discriminatory practices or any anti-oppressive practice issues stood out for you, as well as activities to capture personal reflection and individual thoughts.

Reflection can be described as critically evaluating and analysing situations and experiences, thinking about what you have done, how you did it, what went well and what could have been done better (Brown and Rutter, 2008; Rutter and Brown, 2019) and therefore is beneficial for effective social work practice. Professor Donald Schön (1983, 1987) conceptualised two types of reflection in practice: reflection on action, for example thinking about something you have already done, and reflection in action, for example thinking about what you are doing at the time you are doing it (Brown and Rutter, 2008). At the end of each chapter, you are encouraged to reflect on what you have learned and record your own personal feelings, perhaps writing it in your own personal copy of this book, so that you have a quick reference should you wish to refer to it in the future. A variety of reflective models are considered in the chapters: for example, Chapter 6 considers Kolb's (1984) reflective cycle, Chapter 7 examines the weather model of reflection (Maclean, 2016), while Chapter 10 explores Gibbs' (1988) reflective cycle.

2 SOCIAL WORK LAW

In our lectures we use colour coding to present material to enable students to easily identify areas of legislation; therefore, chapter headings have been colour coded to facilitate cross-referencing with the mindmaps. For example, the **child legislation** chapter headings in Chapters 3, 4 and 5 are in pink; Chapter 6 on the **Mental Capacity Act 2005** is in yellow; Chapter 8 on the **Mental Health Act 1983/2007** is in red; while Chapter 10 on the **Care Act 2014** is in green.

To give you an idea of the topics that are covered in this book, each chapter is briefly introduced here. The next chapter, Chapter 2, considers the English legal system, with Chapters 3, 4 and 5 focusing on various aspects of child legislation such as child in need (s17) or risk of significant harm (s47), when children become looked after (s20, s31, s38) and children in the criminal justice system. Chapter 6 looks at the Mental Capacity Act 2005 with Chapter 7 exploring Deprivation of Liberty Safeguards (DoLS), Liberty Protection Safeguards (LPS) and the Mental Capacity (Amendment) Act 2019. The next two chapters, Chapters 8 and 9, reflect upon legislation that can affect both children and adults, with Chapter 8 primarily focusing on the Mental Health Act 1983 and the 2007 amendment and Chapter 9 considering various legislation pertaining to impairment seen and unseen. Next, Chapter 10 turns its attention to adult care and support and discusses who would be eligible (s13) by concentrating on the Care Act 2014. Chapter 11 is something a little bit different for a law textbook as it focuses on study skills, providing you with some skills and techniques for not only applying the law in practice but how you could approach your exam or essay on your social work course and when training in placement. You will also see the sections of the law referred to, as has been done above, so for example when referring to an assessment under the Care Act 2014, section 9 would be referred to; this is to help you to see how easy it is to apply sections of the law when working with vulnerable adults and children in your social work practice to support and safeguard.

WHY IS IT IMPORTANT TO UNDERSTAND HOW TO USE THE LAW IN PRACTICE?

Although you are not expected to become a legal expert, as a social worker student, it is essential that you reflect upon the fact that social work is a people profession where social workers manage risk and use the law only when needed and in a person-appropriate way. This is important because, as you will learn as you journey through the case studies, in every decision you make you will need the law to guide you.

THE DIFFERENCE BETWEEN GUIDANCE AND ACTS OF PARLIAMENT

There is a difference between guidance and Acts of Parliament. Guidance is just what it says, guidance, it is not compulsory. However, if guidance is not adhered to and something goes wrong you can be liable to judicial review. So, for example, guidance such

as *Working Together to Safeguard Children* (HM Government, 2018) or *What to Do If You Are Worried a Child Is Being Abused* (HM Government, 2015) could be used to improve practice or give guidance if a serious issue arises. Let's consider the guidance *Working Together to Safeguard Children* (HM Government, 2018); this document provides guidance on the actions required by professionals when a child dies suddenly, for example: inform agency, the need for a rapid response, how to provide support to the family, how to refer to specialist support services and also how to seek support for yourself, your own mental health and well-being (supervision/counselling services). Thus, although documents such as these are guidance, you can see how they benefit not just social work professionals but all professionals who work to safeguard and support vulnerable people.

An Act of Parliament creates a new law or changes an existing law. An Act is a bill that has been approved by both the House of Commons and the House of Lords and been given Royal Assent by the Monarch. Acts of Parliament are compulsory and it is an offence not to uphold the law; examples of Acts of Parliament are the Children Act 1989 and the 2004 amendment, the Mental Capacity Act 2005 and the 2009/2019 amendments, the Care Act 2014, and the Mental Health Act 1983 and the 2007 amendment (for more information, see UK Parliament, 2022).

REFERENCES

- Brown, K and Rutter, L (2008) *Critical Thinking for Social Work*. London: Learning Matters Ltd/Sage.
- Gibbs, G (1988) *Learning by Doing: A Guide to Teaching and Learning Methods*. Oxford: Further Education Unit, Oxford Polytechnic.
- HM Government (2015) *What to Do If You Are Worried a Child Is Being Abused*. [online] Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/419604/What_to_do_if_you_re_worried_a_child_is_being_abused.pdf (accessed 7 March 2022).
- HM Government (2018) *Working Together to Safeguard Children*. [online] Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/942454/Working_together_to_safeguard_children_inter_agency_guidance.pdf (accessed 7 March 2022).
- Maclean, S (2016) A New Model for Social Work Reflection: Whatever the Weather. *Professional Social Work*, March: 28–9.
- Rutter, L and Brown, K (2019) *Critical Thinking and Professional Judgement for Social Work*. London: Sage.
- Schön, D (1983) *The Reflective Practitioner: How Professionals Think in Action*. London: Temple Smith.
- Schön, D (1987) *Educating the Reflective Practitioner*. San Francisco: Jossey-Bass.
- UK Parliament (2022) What is an Act of Parliament? [online] Available at: www.parliament.uk/about/how/laws/acts (accessed 4 March 2022).

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The English legal system in relation to social work practice

INTRODUCTION

This chapter starts with a disclaimer: *my aim is not to make you a legal professional* but rather to consider the law as it relates specifically to social work practice within the wider context of the English legal system. This is something I find myself saying to students at the beginning of the semester when teaching the law module as part of the social work programme. Often students believe that taking the social work law module is like doing a law degree in 12 weeks, when in fact it is about gaining knowledge of the law and how it applies directly to the work we do as social workers. Have you ever considered how people who are not trained in law come to know about it? Well, it is simple; it is by practice and legal advice from trained family lawyers whose job it is to practise law.

Having a degree in law is not a prerequisite to becoming a social worker

The Professional Capabilities Framework (PCF 5–Knowledge) outlines clearly that at the prequalifying entrance point students (including Assessed and Supported Year in Employment) should:

Develop and apply relevant knowledge from social work practice and research, social sciences, law, other professional and relevant fields, and from the experience of people who use services. We develop our professional knowledge throughout our careers and sustain our curiosity. As a unified profession, we develop core knowledge that relates to our purpose, values, and ethics. We also develop specific knowledge needed for fields of practice and roles. Our knowledge comes from social work practice, theory, law, research, expertise by experience, and from other relevant fields and disciplines. All social workers contribute to creating as well as using professional knowledge. We understand our distinctive knowledge complements that of other disciplines to provide effective services.

(British Association of Social Workers, 2018)

WHAT IS THE LAW?

Let us begin by understanding what the law is. Laws are essentially a complex system of customs, traditions, regulations and rules which state how we must behave. There are three main components that make laws different from simple societal rules.

1. Laws are set and established and enforced by government.
2. Laws are compulsory.
3. Laws involve consequences, which are enforced through the legal system (in the UK this is usually the courts though it can also be tribunals).

The law can also be defined as a system of rules and regulations to govern society, things made by judges, means by which people can seek justice and/or reparation, rules which keep society manageable, rules which serve to oppress and or control society.

(Partington, 2021)

Rules on the other hand denote something about morally accepted behaviours that help people to understand how they should behave (Partington, 2021).

Law-making system in England and Wales

We often hear about laws being made in the Houses of Parliament; this is the main law-making body. The link between Parliament and the Court is that any legislation passed by Parliament is then accepted by the Court and understood that this take pre-eminence over any common law (law that is made by the judge through cases).

Head of state

The relationship between Parliament and the state is that most laws are exercised by the government in the name of the monarch. The Queen (Elizabeth II) is the current monarch and the head of state. Her primary role as the monarch is to remain legally responsible for any powers that the government exercises in law.

Structure

The UK Parliament comprises two separate Houses: the House of Commons and the House of Lords.

The House of Commons is a representative body, the membership of which is elected, and it has legislative powers (ie laws that the Commons has the sovereignty to make). The leader of the party in power (the prime minister) chooses their cabinet, which is made up of members from that political party who are also members of the House of Commons (MPs).

The House of Lords is not elected and is not a representative body. Most members of the House of Lords are life peers appointed under the Life Peerages Act 1958. Such peers are appointed by the monarch on the advice of the prime minister, who receives advice on who to put forward from a non-political Appointments Commission (Rabb, 2021).

THE LAW WITHIN THE ENGLISH LEGAL SYSTEM

The law is embedded within the English legal system, which is constituted of:

- law-making bodies, eg parliament, judiciary, legislature;
- those that enforce the law;
- institutions, processes and personnel that contribute to the operation and enforcement of the law;
- workings of the courts and tribunals;
- legal professionals;
- police, prosecutors and jurors;
- organisations that support access to justice, eg Citizen Advice Bureau, legal aid, law shops, advocacy projects.

Sources of law in the English legal system

The sources of law cover the principles that include legislation, common law, statutes, bills and delegated legislation.

Legislation

Legislation is the law created by the legislature (people elected to make law for a state). It mainly deals with Acts of Parliament. The UK Parliament is the body that has the power to pass laws that can be applied in all four countries. The UK Parliament consists of the House of Lords and House of Commons.

Common law

Common law is derived from the judicial decisions of courts and similar tribunals. The English legal system of England and Wales is a common law one.

Statutes

Statutes are formally written down law which has been executed by a legislative body other than Parliament – Parliaments pass Acts.

Bill

A bill is a proposed law which has been discussed and debated in Parliament. It is then approved by Parliament and goes on to receive royal assent and becomes law.

Delegated legislation

Delegated legislation is an Act of Parliament that may give a minister or some other party the rights to make legal provisions.

LEGAL JURISDICTION

Legal jurisdiction is defined as the extent of power to make legal decisions and judgements within a defined geographical area. The courts in England and Wales have legal jurisdiction to try cases in relation to offences committed in the UK and a single legal system known as the English legal system. Ireland and Scotland have their own legislation, as do other areas that are not strictly part of the UK, such as the Isle of Man and the Channel Islands (which are Crown dependencies). Wales is currently looking at its own jurisdiction having law-making legislature, but no jurisdiction presents as incongruent for Wales.

In England you only need to concern yourselves with English and European laws unless you go on to practise in other parts of the UK (EU legislation applied until 31 December 2020). England and Wales currently have the same laws though Wales is developing its own legal system. Scotland and Ireland have completely different legal systems (Scottish Law Online, 2021).

THE COURTS IN ENGLAND AND WALES

If like me, you are a visual learner, describing the structure of the English Legal system would be lost on you. Figure 2.1 offers a pictorial representation of the structure of the English legal system and its different branches.

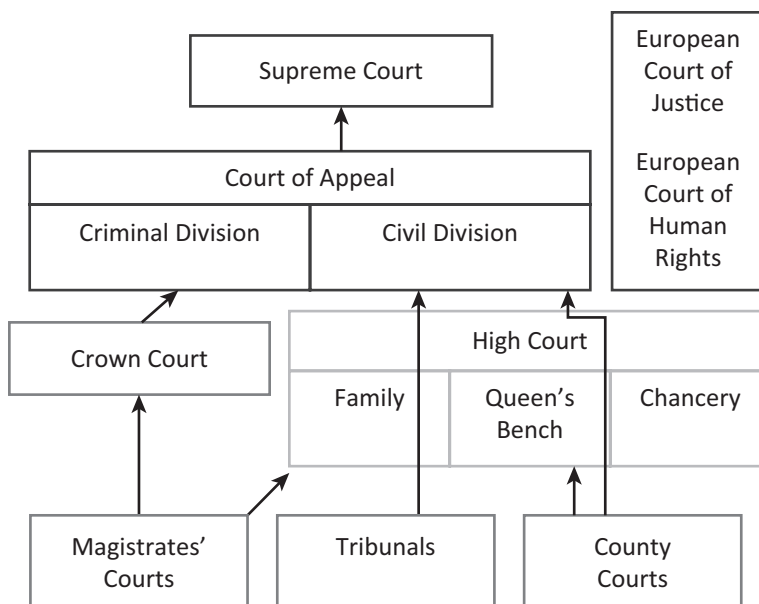


Figure 2.1 The English legal system structure

The courts in England play an important role in the execution of the law in relation to different parts of the law. There are different courts that deal with different matters; those that relate specifically to social work practice are highlighted below.

Magistrates' Courts

These courts hear all criminal cases at first instance. Less serious cases and those involving juveniles are tried in the Magistrates' Courts, as well as some civil cases. Magistrates deal with three kinds of offence: summary (less serious cases), either way (cases that can be heard either in a Magistrates' Court or before a judge and a jury in the Crown Court) and indictable only (serious cases).

The Family Court

The Family Court was established in 2014 and sits within the Magistrates' Court. It has national jurisdiction and brings all levels of family judiciary to sit together in the same court.

The County Court

There are approximately 160 county courts that hear cases within their geographic catchment area. These courts deal with civil (non-criminal and non-family) cases. The County Court hears (subject to exceptions) money claims with a value up to and including £100,000 and claims for damages for personal injury with a value up to £50,000. Cases are ordinarily held where the defendant resides.

The Crown Court

The Crown Court sits in centres around England and Wales. This court deals with indictable (meaning it can be tried by jury) criminal cases that are transferred from the Magistrates' Courts, including serious criminal cases. The Old Bailey is a type of Crown Court.

The High Court

The High Court has jurisdiction for more serious and complex civil and family cases at first instance. It contains three divisions: Queen's Bench, Family and Chancery. The Queen's Bench Division is the biggest of the three High Court Divisions. Included within it are a number of specialist courts: the Admiralty, Commercial, Mercantile, Technology and Construction, and Administrative Courts. The Chancery Division deals with company law, partnership claims, conveyancing, land law, probate, patent and taxation cases. This division has three specialist courts: the Companies Court, the Patents Court and the Bankruptcy Court. The area that relates to social work is the Family Division, which deals with cases that pertain to children and appeals from family proceedings, cases which have been transferred from one of the lower courts (such as County Court or Family Court).

The Court of Appeal

The Court of Appeal and the High Court constitute the 'senior courts' of England and Wales. The Court of Appeal is an appellate court and is divided into two divisions,

Criminal and Civil. It is useful to understand this particular court as often in cases where parents appeal a decision made by the local authority, it will be heard at this court.

The Supreme Court

The Supreme Court is the final court of appeal in the UK. It hears appeals on arguable points of law of public importance for the whole of the UK in civil cases, and for England and Wales and Northern Ireland in criminal cases. In Scotland, appeals can be made from the lower courts in criminal cases to the High Court of Justiciary. The Judicial Committee of the Privy Council, which comprises justices of the Supreme Court and some senior Commonwealth judges, is the final court of appeal for a number of Commonwealth countries, as well as the UK's overseas territories, Crown Dependencies and military sovereign bases (Supreme Court Online, 2021).

DIFFERENT COURTS THAT RELATE TO SOCIAL WORK PRACTICE

Having identified the different courts within the English legal system, in this section we will take a closer look at the ones that most closely relate to social work practice. In children social work practice, we are concerned with the functioning and use of the Family Court; with adults we are concerned with the Court of Protection, tribunals, Magistrate, and Crown Courts (in criminal proceedings); while within youth justice we are concerned with the Magistrates' Court which becomes a Youth Court and the Crown Court.

Family Court

The Family Court deals with the following in relation to children and young people:

- parental disputes over the upbringing of children;
- local authority intervention to protect children;
- decrees relating to divorce;
- financial support for children after divorce or relationship breakdown;
- some aspects of domestic violence;
- adoption.

Court of Protection

We will examine the Court of Protection in more detail in Chapter 6 on mental capacity.

Youth Court

The Youth Court is a criminal court that deals with young people who offend. A traditional Magistrates' Court then sits as a Youth Court. For more detail, see Chapter 5 on youth justice.

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The main criminal courts in England in Wales are:

- the Magistrates' Courts;
- the Youth Court – for ages 10–17 (part of the Magistrates' Court);
- the Crown Court.

All criminal offences are classified as one of the following:

- summary only offences, which are offences that are only tried at a Magistrates' Court and cannot be tried by a jury, eg public order offences or minor criminal damage;
- either way offences, triable in either the Magistrates Court or the Crown Court, eg theft or deception;
- indictable only offences, triable only in the Crown Court and serious enough offences that warrant a trial by jury, eg sex offences, grievous bodily harm or murder.

TYPES OF LAW THAT RELATE TO SOCIAL WORK PRACTICE

As social work is a profession that deals with people as well as the state, this will invoke a different part of the law to come into effect. Phrases like public law and private law are common occurrences in social work language.

Public law

Public law deals with areas in which society, the government or the state has decided to interfere in a direct manner with the behaviour of individuals, for example care proceedings where the state has set parameters in the relevant legislation (Children Act 1989) for how children should be brought up. In extreme circumstances, the state in the form of the local authority will step in and take over the upbringing of children by accessing orders through the court that allow them to take on parental responsibilities. Many arguments for the interference of the state in family life surround the human rights of that individual (Article 8 of the Human Rights Act 1998, right to private and family life) and how much of a restriction or oppression the state poses if it interferes with it. The key in social work practice is about the balance of state control through the application of the law and safeguarding duties in legislation, and people's human right to freedom and to live their lives.

Public law cases brought by local authorities or an authorised person (currently only the NSPCC) include matters such as:

- care orders, which give parental responsibility for the child concerned to the local authority applying for the order;
- supervision orders, which place the child under the supervision of their local authority;
- emergency protection orders, which are used to ensure the immediate safety of a child by taking them to a place of safety, or by preventing their removal from a place of safety.