Part 1

Legal context of social work practice

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Chapter 1

Introduction to law and social work practice

Learning objectives

To develop an understanding of the following:

- The legal framework for social work.
- The framework for qualification as a social worker.
- Regulation of social work.
- Incorporating an anti-oppressive and anti-discriminatory practice perspective into the study of law.
- The relationship between law and social work practice.
- The skills and knowledge required to work effectively with the law.
- An appreciation of the limitations of law.
- Values which influence social work practice and their link to the law.

Visit www.mylawchamber.co.uk/brammer to access further resources related to this chapter, including multiple choice questions, podcasts, flashcards, glossary, weblinks and regular updates to the law.
Introduction

In this introductory chapter the relationship between law and social work practice and reasons for the study of law are examined. The discussion begins with consideration of why law has become more prominent in social work education and practice, supported by reference to the new framework for social work education. Relevant sections of the Local Authority and Social Services Act 1970 are outlined as the major legal framework that establishes Social Services Departments, with relevant additions from the Children Act 2004. A summary of key legislation relevant to social work practice demonstrates further the dominance of law. The chapter continues with explanation of some of the key legal concepts for social work practice: confidentiality; accountability; rights, duties and powers; and the introduction of key values – partnership, choice, empowerment, anti-discriminatory and anti-oppressive practice – and the extent to which these values are supported by the law.

Relationship between law and practice

The relationship between law and social work practice and the place of law as an element in taught social work programmes continues to be the subject of ongoing debate. Polarised views have developed. Both positions on the relationship between law and social work practice are encapsulated in the following quote:

Deciding when to invoke the law is not a simple matter. Both Blom-Cooper’s (1998) view that the law is the beginning and the finish of any action, and Stevenson’s belief that an ethical duty of care is the mainspring of social work action, distort by over-simplification the reality of practice. Competence in practice, requires both an acknowledgement of the relevance and applicability of the law and also assessment skills inspired by social work values, theoretical knowledge and practice wisdom.1

Law clearly plays an important role in social work practice today. Substantial legislation has been passed in recent years which has a profound effect on social work practice, notably the Children Acts of 1989 and 2004, the National Health Service and Community Care Act 1990, the Crime and Disorder Act 1998, the Adoption and Children Act 2002 and the Mental Capacity Act 2005. The understanding of law underpins and provides duties and powers for social work and understanding the statutory and legal requirements is essential for effective and fair social work practice. Nevertheless, research has found that social workers were uneasy about acting as statutory agents.2 Furthermore, Jones et al. found that social workers became stressed when their work brought them into the sphere of law, believing they were considered as having limited credence and status in that field.3 Recent evidence in a SCIE review suggests continuing unease: ‘ . . . social work students and practitioners experience contact with the law and legal system as stressful.’4

Clearly it is not sufficient for instruction concerning pieces of legislation relevant to social work practice, such as the Children Act 1989, to be delivered without reference to contemporary social work practice and the incorporation of social work values relating to oppression, service users’ rights and discrimination. Good social work practice is of much greater complexity than simply executing prescribed duties under legislation. Questions of interpretation and application of legislation are not confined to lawyers. The law attempts to balance apparently conflicting principles and practices which must be applied by social
workers and key legal judgments have dealt with the relationship between the law and social work practice. For example, in *R v. Gloucestershire County Council, ex parte Barry* [1997] 2 All ER 1, a rather confused picture emerged over the extent to which social workers, in exercising a duty to assess disabled people for support services, can take a local authority’s resources into account. Another decision made it clear that where legal remedies are available they must be applied proportionately, as in where a supervision order was made, as a proportionate response to the circumstances of the case rather than the care order applied for: *Re O (A Child) (Supervision Order: Future Harm)* [2001] EWCA Civ 16. Inappropriate use of legal powers is potentially dangerous and has proved damaging to the social work profession in the past.

Preston-Shoot *et al.* (1998) argue that the role of law now has a ‘centrality, pre-eminence . . . within social work practice’. Even so, it is also true that neither child abuse nor delinquency or other social problems that social workers encounter can simply be legislated away. The effective teaching and learning of social work law must acknowledge the relevance and application of law but that needs to be set against a context of social work values and practice skills. Taking this approach, it is argued that a new academic discipline has emerged, that of ‘social work law’.

In the mid-1980s there was significant media interest in social work, with particular emphasis on social workers’ apparent lack of knowledge of law and legal procedures arising from a number of significant child abuse inquiry reports. Following these tragedies, research emerged which critically confirmed a deficiency within practitioners to identify and observe legal duties and positively to use available legal powers. Rules and Requirements for the DipSW were published in 1995 (replaced by the new framework – see below) and stated that: ‘Students must be required to demonstrate through formal written assessment their understanding and application of the legislation relating to social work in the country in which they train’ (para. 3.4.2). CCETSW produced Rules and Requirements relating to legal knowledge (set out as background information at note 9). It is clear then that there has been an expectation for some time that, to be legally competent, a social worker must be able to apply relevant law to factual situations and not simply regurgitate its provisions in the abstract. Knowing which action a social worker might take in response to an emergency, or how a social worker might present materials to a court, requires understanding of the relationship between law and social work practice. Understanding and application of law in social work practice is now addressed within the new framework for social work qualification. We may expect to see some changes to the qualification framework following the Laming report of 2009, ‘The Protection of Children: A Progress Report.’ Within the report, Lord Laming recommends ‘A major change in the training and professional development of social workers including a greater focus on practical skills and specialist training at the end of the first year of study.’

**The qualifying framework**

The current social work qualification, a degree in social work, was introduced in September 2003 as an aspect of the Department of Health’s objectives to raise the profile and status of the profession. It replaced the Diploma in Social Work (DipSW). Masters level qualifications in social work are also available at many academic institutions. The degree incorporates an emphasis on practical application of skills and knowledge, including legally based skills and knowledge. To support this, students spend a minimum of 200 days in practice and, where possible, the expertise of service users and carers are actively involved in shaping and delivering degree programmes.
The teaching, learning and assessment curriculum for the new degree (incorporating law teaching) is provided through three key sources:

- The Requirements for Social Work Training (DH).\(^{10}\)
- TOPSS National Occupational Standards for Social Work.\(^{11}\)
- Quality Assurance Agency Subject Benchmark Statement.\(^{12}\)

It will be necessary to become familiar with these requirements in their entirety during the qualification process and to be continually aware of the requirements as they inform practice. Here, the focus is on how these requirements impact on social work and the law, and on identifying those requirements of most obvious application.

### The Requirements for Social Work Training (DH, 2002)

As part of the social work degree, the DH requirements stipulate that students must have experience: in at least two practice settings; of statutory social work tasks involving legal interventions; of providing services to at least two user groups (e.g. child care and mental health). Programme providers are also required to demonstrate that students undertake specific learning and assessment in key areas, such as: assessment planning intervention and review; partnership working and information sharing across professional disciplines and agencies; and law.

### National Occupational Standards

TOPSS, the Social Care Workforce Strategy Body (England), which produced National Occupational Standards for Social Work, became ‘Skills for Care’ in April 2005. The focus of Skills for Care is primarily concerned with adult social care, and the new Children’s Workforce Development Council will focus on the strategy for the children’s services workforce. The National Occupational Standards for Social Work are organised around areas of competence, or key roles of social workers. For each of the key roles, there is a requirement to ‘understand, critically analyse, evaluate, and apply . . . knowledge’ of the legal, social, economic and ecological context of social work practice, country, UK, EU legislation, statutory codes, standards, frameworks and guidance relevant to social work practice and related fields, including multi-disciplinary and multi-organisational practice, data protection and confidentiality of information.

The key roles are:

**Key role 1:** Prepare for, and work with individuals, families, carers, groups and communities to assess their needs and circumstances.

**Key role 2:** Plan, carry out, review and evaluate social work practice, with individuals, families, carers, groups, communities and other professionals.

**Key role 3:** Support individuals to represent their needs, views and circumstances.

**Key role 4:** Manage risk to individuals, families, carers, groups, communities, self and colleagues.

**Key role 5:** Manage and be accountable, with supervision and support, for your own social work practice within your organisation.

**Key role 6:** Demonstrate professional competence in social work practice.
QAA benchmarks

Students will be expected to demonstrate knowledge before award of a degree, which is to include:

The significance of legislative and legal frameworks and service delivery statements (including the nature of legal authority, the application of legislation in practice, statutory accountability and tensions between statute, policy and practice). The current range and appropriateness of statutory, voluntary and private agencies providing community-based, day-care, residential and other services and the organizational systems inherent within these. The significance of interrelationships with other social services, especially education, housing, health, income maintenance and criminal justice.

The complex relationships between justice, care and control in social welfare and the practical and ethical implications of these, including roles as statutory agents and in upholding the law in respect of discrimination.

In summary, the study of law as part of a social work programme can be broken down into three component parts:

1. As a structure within which social workers must practise, in many cases giving evidence in court or providing reports for court. Awareness of court procedures and the roles of others within the justice system may help to ease the anxiety and unease which often accompanies this area of practice and make contact with legal advisers and others in the legal process more effective. Working knowledge of the court system will also enable a social worker to advise and provide support to a service user facing court proceedings.

2. Law as the instrument which gives social workers licence to practise through legal powers, duties and limitations, e.g. the duty to investigate suspicion of abuse, the power to provide support services. An understanding of how law develops and the various sources of law, policy and procedure, and accountability.

3. The need to have an understanding of legal issues which service users may face even though there may not be a direct social work responsibility involved in the issue, e.g. legal remedies for domestic violence.

Regulation of social work

Under the Care Standards Act 2000 (CSA), responsibility for training and regulation of social workers has been vested in the General Social Care Council (GSCC). (The GSCC took over the function of professional social work education and training from CCETSW.)

The role of the GSCC is described as ‘the guardian of standards for the social care workforce’, its aim being to increase protection of service users, their carers and the general public. A key role for the Council is regulation of qualifying and post-qualifying training in social work. Codes of practice for social care workers and their employers have been developed by the Council. The CSA 2000 provides a registration requirement for social workers (included in the term ‘social care workers’ under the Act) to register with the GSCC (s. 56). The ultimate aim of the Council is for all individuals engaged in social care work (currently approximately 1 million) to be registered. In practical terms, registration requirements are being phased in over a period of time and linked to the provision of training programmes which enable individuals engaged in social care to acquire relevant qualifications (as approximately
80 per cent of the workforce has no relevant qualification). The first category to be required to register are qualified and student social workers. Social workers make up around 14 per cent of the social care workforce. The requirement for registration under the CSA 2000 applies to: anyone engaged in relevant social work; a person who is employed in or manages a children’s home, care home or residential family centre; a domiciliary care agency; a fostering agency or voluntary adoption agency; a person from a domiciliary care agency who provides personal care in an individual’s own home (s. 55). 13

It is possible for a person to be removed from the register under s. 59, and there is a right of appeal against removal under s. 68 to the First Tier Tribunal (Care Standards). This process and its relation to the Protection of Children Act list (see further in Chapter 9) was considered by the Care Standards Tribunal in Arthurworrey v. Secretary of State for Education and Skills [2004] EWCST 268 (PC). The applicant, Lisa Arthurworrey, was employed as a social worker by Haringey Council and was allocated the case of Victoria Climbié in 1999. She subsequently gave evidence at the public inquiry into Victoria’s death. Following an internal review panel Part 8 inquiry at Haringey, she was suspended from duty and the Council referred her to the Protection of Children Act list. She successfully appealed against inclusion on the list and her name was removed from the list. The tribunal had to consider whether, under the Protection of Children Act 1999, she was, guilty of misconduct that harmed a child or placed a child at risk of harm, and unsuitable to work with children (s. 4(3) PCA 1999). In future such cases would fall within the Safeguarding Vulnerable Groups Act 2006. Misconduct can include omissions. The 11 particulars of misconduct presented to the tribunal included: failure to conduct a proper interview with Ms Kouao (Victoria’s aunt); failure to complete all the tasks required of her and identified at a strategy meeting; and failure to make contact or to take adequate steps to make contact with Victoria.

The tribunal considered the definition of misconduct and noted the need to consider the context in which the individual was working, including levels of support and supervision. In considering whether her actions amounted to misconduct, the tribunal considered five factors which were relevant to all of the allegations: experience, training, the complexity of the case, the question of supervision, and the office environment.

The tribunal found no misconduct and, whilst as a result it did not have to decide on suitability to work with children, it commented that Ms Arthurworrey was a suitable person to work with children, describing her as a ‘straightforward and caring individual who has fully acknowledged the mistakes she made in connection with this case’.

As to the use of POCA (the Protection of Children Act list of adults considered unsuitable to work with children), the tribunal made it clear that to list an individual for ‘professional mistakes should be an unusual occurrence, to be used only in the most clear cut cases’. It suggested that the procedure to remove an individual from the General Social Care Council register is the preferable route in cases of mistakes and poor professional practice. The concluding comments of the tribunal were: ‘The message that we wish to make beyond the particular case that we have been considering is that Government must ensure that social workers are better trained, better resourced, and better supervised. In this way, it is hoped that the tragedy of Victoria will not be repeated.’

Since the introduction of the register, over 50 social workers have appeared before the GSCC conduct committee. In around half of these cases the social worker has been removed from the register. In other cases a suspension order or admonishment (caution) may be made. Conduct has included forming inappropriate relationships with clients; being abusive to colleagues; and failure to follow child protection procedures, thereby placing a young person at risk.
For example, the conduct committee of the GSCC ruled that social worker Ifikhar Choudri had exploited the vulnerability of two women, who had ‘serious enduring mental health problems’. Choudri had a consensual sexual relationship with Ms X after their professional relationship ended. As well as sharing intimate details of his personal life with Ms X, Choudri also made inappropriate comments to her and another service user, Ms Y. The committee ruled that Choudri should not be able to practise as a social worker because he failed to understand and work within appropriate professional boundaries and abused the power given to him by his professional position.14

The standard of proof in conduct hearings is the civil standard, balance of probabilities, even where the matter of concern is of a criminal nature, e.g. an allegation that a social worker stole from a client.

A different scenario arose in Skervin v. GSCC [2007] EWCST 1076. Here the GSCC refused an application for registration from S, who held a DipSW, on the ground that he was not of good character, having failed to disclose incidents of poor performance (dismissal for poor time keeping) to a subsequent employer and in his application for registration.

**Protection of title**

It is an offence for a person to use the title ‘social worker’ or imply that he is a qualified social worker if he is not registered with the General Social Care Council (s. 61 CSA).

**Legal framework of social work**

The statutory context of social work is provided by the Local Authority Social Services Act 1970 (LASSA) (as amended) and a summary of the main provisions is a useful reference point.

Section 1 establishes the authorities which have social services functions as county councils, metropolitan and London boroughs and unitary authorities, but not district councils.

Sections 2–5 of the LASSA are repealed by the Children Act 2004 to give effect to the organisational changes introduced following recommendations in the Climbié report.

Personnel requirements specified by the LASSA are amended by the Children Act 2004. The duty to appoint a Director of Social Services is removed and replaced by a requirement to appoint a Director of Children’s Services for each children’s services authority, and a Director of Adult Social Services. The Director of Children’s Services is appointed for the purpose of prescribed functions including those exercisable by the LEA: social services that relate to children; children leaving local authority care; the children’s services authority for cooperation, safeguarding and promoting the welfare of children and information databases; and any health services for children that are transferred to the local authority. Guidance has been published on the ‘Role and Responsibilities of the Director of Children’s Services’, and on the new role of DASS (Director of Adult Social Services) ‘Guidance on the Statutory Chief Officer Post of Director of Adults Social Services’ (2006). Within councils there will also be a lead member (councillor) appointed for each area, children’s services and adults’ services.

Recently, in some areas children’s and adults’ services have merged back into a new single department to be led by a single director. For example, Oldham launched its new joint department, to be known as the ‘People, Communities and Society Directorate’, in April 2009.

Adequacy of staffing levels is a matter for debate in the current climate of under-resourced local authorities, increasing responsibilities of social services and heavy caseloads carried by
individual social workers. It would not be surprising to see this issue raised via judicial review proceedings or as an aspect of a human rights challenge. Whilst ‘adequacy’ is a difficult term to define, extreme staff shortages, excessive caseloads and unallocated cases would be difficult to defend. *R v. Hereford and Worcester County Council, ex parte Chandler* (1992) (unreported) was a case where leave for judicial review was granted, one of the grounds being that *C* had not received the one-to-one service he required because the authority had inadequate staff in breach of its s. 6 duty. The case was settled before hearing by providing the service and compensation. This issue has been formally recognised by Lord Laming in ‘The Protection of Children in England: A Progress Report’ (2009), prepared following the ‘baby P’ case, in which he recommends that the Social Work Task Force should: ‘develop national guidelines setting out maximum case-loads of children in need and child protection cases, supported by a weighting mechanism to reflect the complexity of cases, that will help plan the workloads of children’s social workers.’

Section 7 of the LASSA 1970 contains a number of important provisions. It provides for the Secretary of State to produce directions for the exercise of social services functions (discussed further in Chapter 2); establishes complaints procedures (discussed further in Chapter 4); contains the power for the Secretary of State to require an inquiry into social services functions (discussed in Chapter 9); and provides for the default powers of the Secretary of State (see Chapter 4). The LASSA 1970 also contains a list in Sch. 1 (updated regularly) of the permitted actions or functions of social services authorities.

Summary of key legislation impacting on social work practice and defining service user groups

**General**

- Equal Pay Act 1970
- Local Authority Social Services Act 1970
- Local Government Act 1972
- Sex Discrimination Act 1975
- Race Relations Act 1976
- Interpretation Act 1978
- Disability Discrimination Act 1995
- Housing Act 1996
- Data Protection Act 1998
- Human Rights Act 1998
- Access to Justice Act 1999
- Immigration and Asylum Act 1999
- Public Interest Disclosure Act 1999
- Freedom of Information Act 2000
- Local Government Act 2000
- Race Relations (Amendment) Act 2000
- Nationality, Immigration and Asylum Act 2002
- Homelessness Act 2002
- Housing Act 2004
Civil Partnership Act 2004
Gender Recognition Act 2004
Domestic Violence, Crime and Victims Act 2004
Disability Discrimination Act 2005
Equality Act 2006
Safeguarding Vulnerable Groups Act 2006
Health and Social Care Act 2008

Legislation relating to children and young persons
Children and Young Persons Acts 1963 and 1969
Family Law Reform Act 1969
Child Abduction Act 1984
Children Act 1989
Human Fertilisation and Embryology Act 1990
Child Support Act 1991
Education Act 1996
Family Law Act 1996
Protection of Children Act 1999
Children (Leaving Care) Act 2000
Special Educational Needs and Disability Act 2001
Adoption and Children Act 2002
Children Act 2004
Children and Adoption Act 2006
Childcare Act 2006
Children and Young Persons Act 2008

Legislation relating to adults’ services
National Assistance Act 1948
National Assistance (Amendment) Act 1951
Health Services and Public Health Act 1968
Chromically Sick and Disabled Persons Act 1970
Mental Health Act 1983
Disabled Persons (Services, Consultation and Representation) Act 1986
National Health Service and Community Care Act 1990
Carers (Recognition and Services) Act 1995
Disability Discrimination Act 1995
Community Care (Direct Payments) Act 1996
Care Standards Act 2000
Carers and Disabled Children Act 2000
Community Care (Delayed Discharges etc.) Act 2003
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Carers (Equal Opportunities) Act 2004
Mental Capacity Act 2005
National Health Service Act 2006
Mental Health Act 2007

Criminal justice legislation
Bail Act 1976
Police and Criminal Evidence Act 1984
Public Order Act 1986
Criminal Justice Act 1991
Probation Service Act 1993
Criminal Justice and Public Order Act 1994
Sex Offenders Act 1997
Protection from Harassment Act 1997
Crime and Disorder Act 1998
Youth Justice and Criminal Evidence Act 1999
Criminal Justice and Court Services Act 2000
Powers of Criminal Courts (Sentencing) Act 2000
Sexual Offences Act 2003
Anti-social Behaviour Act 2003
Criminal Justice and Immigration Act 2008

The above summary does not include all legislation which a social worker may encounter in everyday practice. It is, however, a selection of some of the more important pieces of legislation that directly impact on social work practice. There are also areas of overlap as some pieces of legislation could apply, for example, to children and adults, e.g. the Chronically Sick and Disabled Persons Act 1970, though it tends to be associated more with adult service users. The Local Authority Social Services Act 1970, Sch. 1 contains a comprehensive list of enactments conferring functions assigned to social services committees.

Limitations of law

Whilst accepting that law shapes social work practice and provides social workers with powers and duties, it is also necessary to appreciate the limitations of the law.

- Law will not always provide clear direction – rather it sets boundaries for practice, and there is often a huge discretion on ways to practise within those limits (this may also be seen as an advantage).
- Particular provisions are often open to interpretation and may appear unclear. Sometimes it is necessary to ‘wait and see’ until case law clarification is produced, e.g. case law on meaning of ‘significant harm’.
- Discrete laws may appear to be in conflict with each other.
- Law may not keep pace with practice developments, e.g. greater openness in adoption was not anticipated in the Adoption Act (AA 1976) 1976, but the need to consider contact was incorporated into the Adoption and Children Act 2002.
• Legal language may not be updated to reflect terms adopted in practice.
• There are gaps in the law. An example of this is the lack of a legislative duty to investigate and powers to intervene in adult protection.
• Law may not help a social worker decide when to act; that may be a matter of risk assessment.
• Law may appear to be discriminatory itself, e.g. restriction on voting rights for detained patients under the Mental Health Act 1983, or may be applied in a discriminatory fashion, e.g. police discretion to stop and search exercised disproportionately to include high numbers of young black men.16
• Law is reactive rather than proactive – with the exception perhaps of the Human Rights Act 1998, English law tends to react to situations that have occurred, by punishing or providing a remedy, rather than setting out codes of behaviour.
• The law can seem to be a bureaucratic machine, concerned more with processing forms accurately and following procedures than dealing with the central issue in a case. This approach is partly due to the need to follow principles of natural justice and for justice to be seen to be done.

Key legal concepts

Confidentiality

An important source for social workers faced with ethical dilemmas is the ‘Code of Ethics for Social Work’ adopted by the British Association of Social Workers.17 In the principles of practice, the Code provides the following guidance on sharing information:

The social worker recognises that information clearly entrusted for one purpose should not be used for another purpose without sanction. The social worker respects the privacy of clients . . . and confidential information about clients gained in relationship with them or others. The social worker will divulge such information only with the consent of the client (or informant) except where there is clear evidence of serious danger to the client, worker, other persons or the community, or in other circumstances, judged exceptional, on the basis of professional consideration and consultation.

Confidentiality is also addressed in the GSCC Code of Practice as an aspect of the requirement for social care workers to ‘strive to establish and maintain the trust and confidence of service users and carers’. In particular, this includes: ‘Respecting confidential information and clearly explaining agency policies about confidentiality to service users and carers.’

As a starting point in any discussion on confidentiality the social worker can draw guidance from the above statements. It is clear that a presumption of confidentiality of information surrounds much of the work of a social worker but also that there are exceptions which will displace the presumption. Without any principle of confidentiality the extent to which individuals would be prepared to share sensitive and private information would be limited, frustrating the objectives of many areas of social work. An absolute guarantee of confidentiality should never be given to a service user, however, as there are circumstances where the law and good practice require information to be shared. A further qualification is necessary here in that, where it becomes apparent that information of a confidential nature needs to be shared, this should be carried out with sensitivity and limited to the minimum number of people/agencies necessary. In many situations, if information needs to be shared, the first
step will be to ask for permission from the service user or other person who provided the information. As any duty of confidentiality is owed to that person, then once consent is obtained, assuming the individual has the capacity to consent, there should be no concerns about breach of confidentiality provided the information is disclosed in an appropriate way. For example, permission to disclose information to another professional would not justify disclosure to the press. The legal basis which supports confidentiality and is relied upon to justify non disclosure is ‘public interest immunity’. For example, in an early case, D v. NSPCC [1978] AC 171, the House of Lords ruled that the identity of someone who had alleged a child had suffered abuse could not be revealed to the child’s parents. The information was immune from disclosure.

It may not be possible to maintain confidentiality in the following circumstances.

**Statutory duty**

Under a limited number of pieces of legislation there is a statutory duty to disclose information. Currently, relevant statutes are the Prevention of Terrorism Act 2005, the Public Health Acts, the Road Traffic Acts, the Misuse of Drugs Act 1971 and the Police and Criminal Evidence Act 1984 (PACE). The relevant legislation applies to very specific circumstances and it would be appropriate to obtain legal advice before disclosing on this basis.

**Crime and Disorder Act 1998**

This legislation is dealt with separately because it contains a section which gives permission for disclosure but does not contain a duty to disclose. Section 115 provides that:

\[s. 115\]

(1) Any person who, apart from this subsection, would not have power to disclose information—

(a) to a relevant authority; or

(b) to a person acting on behalf of such an authority,

shall have power to do so in any case where the disclosure is necessary or expedient for the purposes of any provision of this Act.

[CDA 1998]

Relevant authority includes the police, health authorities, probation and other local authorities.

**Interest of the subject**

Professionals will often have to share information about an individual in the best interests of that person. This is at the heart of multi-disciplinary work and is supported by a number of official documents. For example, ‘Working Together’ (2006) states, in the section on sharing information: ‘Where there are concerns that a child is, or may be at risk of significant harm, however, the needs of that child must come first. In these circumstances the overriding objective must be to safeguard the child’ (para. 7.28). ‘Professionals can only work together to safeguard children if there is an exchange of relevant information between them’ (para. 7.29) (see also Re G (a minor) [1996] 2 All ER 65). The emphasis must be on sharing relevant information with appropriate professionals who are likely to work with or have an
interest in, for example, the protection of a child. The same principle can be applied to the conduct of a child protection conference. ‘Working Together’ also advises that: ‘Effective collaboration requires organisations and people to be clear about . . . the protocols and procedures to be followed, including the way in which information will be shared across professional boundaries and within agencies, and be recorded’ (para. 5.2).

Information sharing under the Children Act 2004

The Children Act 2004 provides some clarification on information sharing between professionals working with children. Information databases are established under s. 12 in order to support professionals carrying out their duties to cooperate and safeguard and promote the welfare of children. The information that will be held on the database is prescribed by the Act and includes basic identifying information about the child, an identification number, names and contact details for parents/carers, and contact information about providers of key services, e.g. health and education and the lead professional for the child (if appointed). The database will not include case information or assessment details. It is intended to provide a speedy mechanism for professionals involved with a child to locate each other and share relevant information. The information database is known as ‘Contactpoint’.

Cross-government guidance, ‘Information Sharing: Practitioner’s Guide’ has been published (2006) which aims to provide some clarification of this difficult area. The guidance includes: principles of information sharing; core guidance on sharing information including a checklist and flowchart; good practice illustrations; and further guidance on legal issues.

Public interest

There may be occasions where the public interest outweighs the subject’s interest in maintaining confidentiality, especially where there is a real threat of harm to others. It is a balancing exercise. In W v. Egdell [1989] 1 All ER 1089, a psychiatric report was disclosed to the Home Secretary on the basis that the public interest in the appropriate authorities being made aware of the ‘dangerousness’ of a patient outweighed the duty of confidence to the patient.

Court order

The need for justice in every case that reaches court provides the public interest to justify disclosure of confidential material in court proceedings. There is a duty to provide all relevant information to the court (whether or not it supports the social worker’s argument). Rules of disclosure also mean that most relevant information, including statements, will be exchanged by the parties prior to the hearing. Information which becomes part of the court proceedings in this way cannot be disclosed to anyone beyond the parties to the case without the court’s permission. For example, in child protection proceedings the court may authorise disclosure of material which is necessary to enable an expert to conduct an assessment of the child; or for use in criminal proceedings if prosecution of an alleged perpetrator is being considered. The court will order disclosure in other circumstances, for example to a professional body, if it is in the public interest to protect the public from a member of the profession upon a question as to suitability or misconduct.

Further specific guidance on confidentiality in relation to Social Services Departments is contained in circular LAC (88) 17, which should be read in the light of developing case law.

Accountability

Accountability in social work practice is an increasingly significant yet complex area. A social worker may be accountable on a number of levels. At the very least, accountability lies to the Social Services Authority in its role as employer and also as holder of the social services functions that are delegated to social workers acting as agents of the authority. Correspondingly, the local authority is liable for the actions of its employees. Only when acting as an Approved Social Worker does a social worker acquire individual liability for action. In addition, a social worker must be accountable to the service user, in that it is possible to explain and justify why particular decisions are made. This accountability may be tested via the Local Authority Complaints System if a service user is dissatisfied, by complaint to the Local Government Ombudsman and ultimately by invoking judicial review procedures or action against a public authority under the Human Rights Act 1998. Other formal processes, including the functions of registration and inspection, support the notion of accountability, and in specified areas there is a duty to consult with service users (NHSCCA 1990). In cases involving statutory responsibilities toward children, accountability is to the child who is the subject of the case. There are circumstances where the social worker effectively works as an officer of the court and is accountable to the court, e.g. when directed to prepare and present a report or to comply with an undertaking or to follow the court’s directions as to supervision of contact. Beyond those clear instances, accountability may also lie to team managers, section heads, practice teachers, the university or other institution during prequalification placements.19

The issue of local authority liability in tort is discussed in the context of challenging decisions in Chapter 4.

Inspection and regulation

Performance of public services, including social services, is increasingly being monitored through inspection and audit systems as a means of ensuring greater accountability. The role of the GSCC in relation to social work as a profession has been discussed above. The Care Standards Act 2000, which established the GSCC, also set up a new regulation and inspection body, known as the Care Standards Commission. After the first year of operation its role was taken over by the Commission for Social Care Inspection, which also brought together into one regulatory body, the work of the Social Services Inspectorate (SSI) and the Audit Commission.

At the same time, a second independent inspectorate with a remit covering health services was established, known as the Commission for Healthcare Audit and Inspection (CHAI). In both cases the Government objective was to strengthen accountability of those responsible for the commissioning and delivery of health and social services and the two inspectorates are expected to work closely together.

A new body, the Care Quality Commission took over the functions of CSCI and CHAI, together with the functions of the Mental Health Act Commission as a single inspection body in 2009.

One of the functions of CSCI was to publish star ratings for social services authorities based on their performance in meeting targets. This is to be replaced by ‘comprehensive area assessments’. Assessment will focus on proposal for improvement, and will be in the form of a narrative judgment.

Reflecting the ‘Every Child Matters: Change for Children’ policy, the CSCI functions in relation to children’s social care have been merged with Ofsted to create a single children’s
services inspectorate, cutting across education and social care, the Office for Standards in Education, Children’s Services and Skills (still referred to as Ofsted). Ofsted has responsibility for: registration and inspection of childcare; state schools; arrangements for care and support of children and young people; joint area inspections of children’s and young peoples’ services; inspection of CAFCASS and of teacher training.

Duties and powers

Most social work areas of responsibility defined by legislation may be categorised as either duties or powers.

Duties

Where a **duty** is imposed by law, social services are obliged to carry it out; it is a mandatory obligation to carry out a particular function. There is no discretion or allowance for shortfall of resources. Breach of a duty could found an action for judicial review. An example is the duty to carry out an assessment for community care services under s. 47 of the National Health Service and Community Care Act 1990. The section reads:

**s. 47**

[1] where it appears to a local authority that any person for whom they may provide or arrange for the provision of community care services may be in need of any such services, the authority—

[a] shall carry out an assessment of his needs for those services; . . .

[2] The authority may—

[a] make payments to—

[i] a parent of the child; . . .

in respect of travelling, subsistence or other expenses incurred by that person in visiting the child;

The important word is *shall*, which suggests an imperative. As a general rule, where ‘shall’ appears, a duty is imposed.

Powers

Where a **power** is provided, there is an element of discretion. Power provides the authority to act in a particular way but there is scope to decide how to act. An example is the power in para. 16 of Sch. 2 to the Children Act 1989 in respect of children looked after by a local authority.
The important word is *may*. The authority may act in a particular way; they have a discretion but are not under an obligation. Guidance may be issued, which assists the interpretation of powers.

In some provisions what appears to be a duty is in effect softened by adding an element of discretion or choice. To return to the National Health Service and Community Care Act 1990, s. 47, the provision continues with para. (b): having regard to the results of that assessment, the local authority shall then decide whether his needs call for the provision by them of any such services. The duty is to carry out an assessment, but the authority then has a discretion: it can *decide* whether to provide any services. Another way in which duties are softened is by use of terms such as ‘as far as is reasonably practicable’, again introducing some leeway into the obligation. The word ‘responsibility’ is sometimes used loosely to refer to duties and powers and in so doing suggests a rather fuzzy position. If there is a duty or power contained in legislation, it is preferable to talk in those terms and to be clear about the distinction between the two and the consequences.

The circumstances where it would be appropriate to refer to responsibilities are in respect of a professional’s ethical code, or in relation to agency policies which cover matters other than those set out in legislation.

**Rights**

The term ‘rights’ is open to wide interpretation, ranging from moral rights in the widest sense, through civil, political and cultural rights to a rather more restrictive interpretation of rights as something that an individual is legally entitled to. Unlike other countries which have a formal written constitution, often based on a Bill of Rights, UK law tends not to be expressed in positive rights. Rather it takes a more negative and reactive stance so that it is fair to assume that a person has the right to act in a particular way unless the law expressly prohibits it. This position may change over the years: it has been suggested that the introduction of the Human Rights Act 1998 will result in a rights-based culture and accessible avenues in which challenges can be brought if rights are infringed.

In social work, rights which have already been clearly incorporated into law include:

- The right to an assessment for services under the National Health Service and Community Care Act 1990.
- The right of a carer for an assessment of their needs to provide care under the Carers and Disabled Children Act 2000.
- The right not to be discriminated against in specified circumstances, e.g. provision of goods and services on specified grounds, including race, sex and disability.
- The right of a child (if of sufficient understanding to make an informed decision) to refuse a medical or psychiatric examination under the Children Act 1989.
- The right of access to information held about you under the Data Protection Act 1998.

Chapters 7 and 16 include discussion of children’s rights and the rights of vulnerable adults, particularly in cases where capacity is limited.

**Values**

It is crucial to recognise that the law does not exist in a vacuum. Each day social workers make numerous difficult decisions relating to the lives of service users. Law is one of many factors that will be balanced in arriving at an appropriate decision reflecting good social
work practice. A value system is an essential prerequisite for making such decisions. It is also appropriate for use of law to be informed by a framework of values. Values may influence which route to follow if there are a range of legal options available, e.g. the choice between removing a child or an adult from home if child abuse is suspected, or even whether it is appropriate to have recourse to law at all, recognising that the law itself has deficiencies.

The GSCC sets out core values for social work in its Code of Practice.

Core Values for Social Work Practice

- Protect the rights and promote the interests of service users and carers.
- Strive to establish and maintain the trust and confidence of service users and carers.
- Respect the rights of service users whilst seeking to ensure that their behaviour does not harm themselves or other people.
- Uphold public trust and confidence in social care services.
- Be accountable for the quality of their work and take responsibility for maintaining and improving their knowledge and skills.

In addition, it has already been noted that the British Association of Social Workers has developed a Code of Ethics (2002).

It may be argued that some social work values directly conflict with the objectives of available law. For example, it is difficult to reconcile the values of anti-discriminatory and anti-oppressive practice with some of the terminology utilised in the Mental Health Act 1983 and its tendency to define and categorise individuals by reference to one characteristic, their medical diagnosis of mental health. Conversely, there will be cases where the law can be used directly to support values. For example, it may be empowering for an individual who has been abused to have direct recourse to the Family Law Act 1996 and to obtain an injunction removing the abuser from the household. It may also be argued that certain values that are often closely associated with social work are actually enshrined within legislation. For example, Art. 14 of the European Convention on Human Rights, the right not to be discriminated against, supports the social work value encapsulated in the Code of Ethics, i.e. recognising ‘the value and dignity of every human being irrespective of origin, race, status, sex, sexual orientation, age, disability, belief or contribution to society’.20

Social care legislation is increasingly including statutory principles as explicit statements of the values underpinning the legislation. The Mental Capacity Act Code of Practice explains that the principles are:

the values that underpin the legal requirements in the Act. The Act is intended to be enabling and supportive of people who lack capacity, not restricting or controlling of their lives. It aims to protect people who lack capacity to make particular decisions, but also to maximize their ability to make decisions, or to participate in decision-making as far as they are able to do so.21

The effect of personal values should also be acknowledged. It is important constantly to question individual values and consider the effect they have on practice. The position
taken on a particular issue will probably be arrived at by the application of a combination of personal values, social work values and legal values, as demonstrated by, for example, the issue of whether a mature person with Alzheimer’s disease should be able to live independently, be cared for by family members or move to residential accommodation. Factors which influence the position taken will include: personal views on whether you would be willing and able to care for a parent in such circumstances or would want to be cared for by your children; the values of empowerment, autonomy and choice; and the extent to which a person whose capacity is reduced should enjoy the same rights of autonomy, in the context of risk factors associated with living alone. The legal position includes a duty to provide community care support, and a duty to provide residential accommodation, direct payments, issues of substitute decision-making and management of financial affairs.

This example illustrates the complexity of everyday situations social workers will face. An approach based exclusively on either social work values or legal values provides an incomplete picture.

**Partnership**

Partnership may operate at a number of levels. On at least two levels it is integral to good social work practice.

**Service users**

Partnership with service users may include working to involve them fully in decision-making processes, whether by provision of appropriate literature and information, advocacy services, etc., or active involvement in, for example, conferences and reviews. The concept of partnership is integral to the philosophy and practice of the Children Act 1989. Yet there is no specific mention of partnership within the Act itself. It features in the Guidance which supports the Act, e.g. Volumes 2 and 3 of the *Children Act 1989 Guidance and Regulations*, and may be read in to certain provisions, notably, under s. 17, the duty to promote the upbringing of children in need by their families so far as that is consistent with promoting welfare. Whether a true, meaningful partnership can exist between a professional social worker and a service user has been questioned in view of the obvious power imbalance. It may be an objective which is easier to realise in a case where Social Services are providing support to a child in need than in a contested child protection scenario. In the latter case, where the views of the social worker and the parents may be in direct conflict, it is still important that the social worker applies elements of a partnership approach, particularly by keeping lines of communication open, sharing and explaining information and any decisions that have been taken and not adopting an inflexible or adversarial stance. Aldgate (2001) suggests further that some of the key features of partnership with parents are:

- A shared commitment to negotiation and actions concerning how best to safeguard and promote children’s welfare.
- A mutual respect for the other’s point of view.
- Recognising the unequal nature of power between parents and professionals.
- Recognising that parents have their own needs which should be addressed.
- Good communication skills on the part of professionals.
VALUES

- The establishment of trust between all parties.
- Integrity and accountability on the part of both parents and professionals.
- Shared decision-making.
- A joint recognition of constraints on the services offered.
- A recognition that partnership is not an end in itself.\(^{24}\)

Professionals

Another application of partnership may be evident in working relations between different professional groups in an inter-disciplinary framework. The need to work together gained explicit recognition in guidance such as ‘Working Together to Safeguard Children’ (2006) and ‘No Secrets’ (2000) and the consequences of failure to work together and share information is well documented in a number of Child Abuse Inquiry Reports.\(^{25}\) The Youth Offending Teams (YOTs) established under the Crime and Disorder Act 1998\(^{26}\) present a formal template for multi-disciplinary work to prevent youth crime. The Children Act 2004 develops partnership between professionals further. A statutory duty to cooperate with a view to improving children’s wellbeing is imposed on children’s services authorities and their relevant partners (s. 10). Relevant partners include district councils, police, probation boards, youth offending teams, health authorities and Connexions (see further discussion in Chapter 7).

Choice

Promoting choice has been recognised as an important value for some time, particularly in the context of adults whose decision-making capacity may be limited.\(^{27}\) The GSCC Code of Practice identifies that promoting the interests of service users and carers includes: ‘Supporting users’ rights to control their lives and make informed choices about the services they receive.’ The reality of choice, however, is firmly located in a resources debate. Against a context of community care policy which purports to enable people to live independently in their own homes for as long as possible, across the country individuals whose care needs reach a level that costs more to meet in the community than by residential care may feel they have little real choice. Equally, if local authorities cannot recruit sufficient foster carers or prospective adoptive parents then a young person in a care home may struggle to see how he or she can make a positive choice about his or her home.

Empowerment

Social workers may be able to provide support to an individual and empower that person to take action for him- or herself to improve circumstances. Working in a very paternalistic manner might be seen as restricting opportunities for empowerment. Promoting empowerment is closely linked to anti-oppressive and anti-discriminatory practice and to recognition of rights.\(^{28}\)

Anti-discriminatory, anti-oppressive practice

The legal context to anti-discriminatory and anti-oppressive practice can be found in anti-discrimination legislation and various references in other pieces of legislation (see
Chapter 6). Good practice in social work has, however, developed beyond these legal minimum standards for anti-discrimination. Anti-discriminatory, anti-oppressive practice is integral to social work and the GSCC Code of Practice stresses the importance of ‘Promoting equal opportunities for service users and carers’ (1.4) and ‘Respecting diversity and different cultures and values’ (1.5). This is an area where the role of law has been questioned, in particular because, although the aim of early anti-discriminatory legislation was to alter entrenched attitudes and promote change, is it possible for the law, with its focus on dealing with individual problems, and which itself has been charged with discriminatory practice, to be an instrument of social change? A simple evaluation of the effectiveness of the legislation would suggest that, whilst the legislation and the work of the Equality and Human Rights Commission (which assumed the functions of the Equal Opportunities Commission (EOC), Commission for Racial Equality (CRE) and Disability Rights Commission (DRC) into one body) has broken down some barriers, much systematic discrimination still continues.

It is important, however, for social workers to have a basic understanding of anti-discrimination legislation, as there may be circumstances where clients encounter discrimination and may seek their social worker’s advice.

In addition, social workers have a legal obligation to comply with the law and social work actions themselves may be covered by anti-discriminatory legislation. The scope of existing anti-discrimination legislation is covered in detail in Chapter 6. At this stage, it is important to be aware of the following provisions, which support the need to promote anti-discriminatory and anti-oppressive practice.

The Race Relations (Amendment) Act 2000 includes a positive duty on local authorities to promote race equality and includes within the remit of the Act certain previously excluded bodies, such as the police. A new s. 71 is inserted into the Race Relations Act 1976, which states that:

**s. 71**

(1) Every body or other person specified in Schedule 1A[^29]... shall, in carrying out its functions, have due regard to the need—

(a) to eliminate unlawful racial discrimination; and

(b) to promote equality of opportunity and good relations between persons of different racial groups.

[RRA 1976]

This is supported by a power for the Secretary of State to impose duties to ensure better performance of the above duties.

A similar disability equality duty is imposed by the Disability Discrimination Act 2005. The 2000 Act also inserts a new s. 19B into the Race Relations Act 1976, which states that it is unlawful for a public authority, in carrying out any of its functions, to do any act that constitutes discrimination. This provision has clearly been introduced in response to the introduction of the Human Rights Act 1998. Section 6 of the 1998 Act imposes a duty on public authorities to act in compliance with the articles of the European Convention, including Art. 14, which reads:
VALUES

Art. 14

The enjoyment of the rights and freedoms in this Convention shall be secured without discrimination on any ground such as sex, race, colour, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

This article clearly envisages discrimination on a wider range of grounds than covered by our existing legislation. Although it is currently limited to discrimination in the enjoyment of rights set out under the Convention, the introduction of a free-standing discrimination article is possible in the future.

Other specific provisions in legislation direct anti-discriminatory practice. For example, s. 22(5) of the Children Act 1989 requires that, in making placement decisions, due consideration be given to a child’s religious persuasion, racial origin, and cultural and linguistic background.

The structures and provisions of the English legal system can themselves be viewed as disempowering and discriminatory. It is thus essential to deal proactively with issues of equal opportunities. All legislation employs the male pronoun, though under the Interpretation Act 1978 ‘he’ is intended to include ‘she’. Unless directly quoting from legislation, it is important to avoid talking in a way which might be construed as sexist and explain the above reasoning if it is necessary for the sake of accuracy. Other ‘discriminatory’ language which is present in legislation such as the National Assistance Act 1948 has been referred to earlier.

It is important in acknowledging the limitations of law to recognise that law will not always provide the answers: e.g. in discrimination issues, practice developments have progressed more rapidly than law. Such an approach encourages critical awareness and may reassure those who feel that legal solutions are being imposed on their practice at the expense of other interventions more traditionally associated with social work, which are therapeutically based.

Formal guidance on values and principles

There are examples of value frameworks, sometimes expressed as principles in both legislation and policy guidance. ‘No Secrets: Guidance on developing and implementing multi-agency policies and procedures to protect vulnerable adults from abuse’, includes a statement that agencies should adhere to the following guiding principles:

1. actively work together within an inter-agency framework;
2. actively promote the empowerment and wellbeing of vulnerable adults;
3. act in a way which supports the rights of the individual to lead an independent life based on self-determination and personal choice;
4. recognise people who are unable to make their own decisions;
5. recognise that the right to self-determination can involve risk and ensure that such risk is recognised and understood by all concerned and minimised wherever possible;
6. ensure the safety of vulnerable adults.
A second example can be found in the Mental Capacity Act 2005, which includes in s. 1 general principles to be followed in relation to individual capacity. The inclusion of principles in a piece of legislation is significant and the principles referred to support good practice.

### s. 1

**The principles**

1. The following principles apply for the purposes of this Act.
2. A person must be assumed to have capacity unless it is established that he lacks capacity.
3. A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success.
4. A person is not to be treated as unable to make a decision merely because he makes an unwise decision.
5. An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests.
6. Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person’s rights and freedom of action.

### A framework for decision-making

The application of a framework for decision-making provides a logical format in which to balance social work and legal values in order to reach a decision. This approach has been advocated by Braye and Preston-Shoot (1997), and the following simplified version (adapted from the above) can be adopted and applied to the majority of decisions a social worker will face. Given the approach of the media to social work crisis, which focuses on scapegoating, it is essential that processes of decision-making are clear. Further imperatives for openness and transparency in decision-making are provided by the Data Protection Act 1998 and the Human Rights Act 1998. Thus, ‘a decision-making framework is both a safety device and a moral imperative’. The framework suggested here is divided into stages of background work and taking action, but it is acknowledged that in practice there may not be a clear dividing line between the two.

**Background**

- Identify the problem requiring social work intervention, source of referral, background information, previous involvement in the case. How is information to be recorded?
- Obtain further information if necessary, making use of inter-agency contacts.
- Identify the level of risk in the situation – there may be different levels of risk to different people.
Consider the purpose of intervention – in the long and short term – what do you want to achieve and why?

Are there competing interests among the individuals concerned (e.g. different assertions of ‘rights’, safety of professionals may be an issue)?

Does the legal framework mandate or permit types of action, duties or powers?

Is it appropriate to seek legal advice at this stage, relevant, e.g., to collection of evidence, immediate protection?

**Taking action**

Is an emergency response required, possibly requiring police involvement?

Is there a level of agreement or is it necessary to invoke formal powers (not mutually exclusive concepts)?

What guidance exists as to how a decision to intervene is reached – e.g. is a formal meeting such as a planning meeting or case conference required? Who holds the decision-making power in the authority (team manager, director)? Has adequate supervision been present?

Have consultation responsibilities been complied with?

Is everybody involved who needs to be – within the agency and in partnership with other agencies, e.g. health, education?

What mechanisms will achieve the desired outcomes? Is it necessary to go to court; are resources available?

What review requirements exist after action has been taken?

**Chapter summary**

- Law provides for the structure of Social Services Departments and the mandate to practise.
- Law sets parameters within which discretion may be exercised in reaching decisions.
- Law does not exist in a vacuum as a discrete entity but should be incorporated into social work practice.
- A value framework should inform use of law and selected values – partnership, empowerment, anti-oppressive and anti-discriminatory practice find some support in the law but may also be interpreted as contradictory in places.
- The concept of accountability is complex and may lie to various bodies, including your employer and the courts.
- The confidentiality of information and records may be protected by public interest immunity. Confidentiality of information and records cannot be guaranteed, however, and it may be necessary to disclose information where it is in the interest of a child, in the public interest, ordered by a court, or as part of multi-disciplinary work.
- A framework for decision-making, incorporating analysis of legal options and values can support good practice and guard against defensive practice.


Websites

General Social Care Council: this body replaced CCETSW and has responsibility for regulation of the social care workforce, including social workers:

www.gscc.org.uk

British Association of Social Workers: including the Code of Ethics:

www.basw.co.uk

Directgov – the entry point for Government information and services online, this website incorporates an open.gov section, which has an alphabetical listing of central Government departments, agencies and bodies and of local councils (a really useful bookmark):

www.direct.gov.uk

Further reading

A number of articles explore the relationship between law and social work practice:


Useful reference sources include:


The documents that provide the framework for the social work degree:


Notes

6. Ibid., p. 65.
8. CCETSW ceased to exist from 2002 upon implementation of the Care Standards Act 2000, which introduced the General Social Care Council (s. 54).

   i. that the law gives social workers their mandate to practise:

      (a) as employees of the statutory bodies (when, for example, employed as a local authority social worker); or officers of the court (when employed, for example, as a probation officer),

      (b) by defining the various groups of people in respect of whom social workers have duties and powers,

      (c) by defining a social worker’s legal functions in relation to each client group;

   ii. that legally accountable powers, when appropriately used, can promote and encourage good social-work practice: e.g. by emphasising the importance of prevention and rehabilitation; by setting out the conditions upon which compulsory intervention is permissible; by ensuring that compulsory intervention with a person’s rights takes place in accordance with proper legal safeguards, such as due process of law and adherence to principles of natural justice;

   iii. that the exercise of legal powers may be oppressive or discriminatory if not used in ways that avoid discrimination and respect clients’ rights; and that social and legal institutions and processes, such as the court system, to which social work practice must often relate, are frequently identified as discriminatory and racist in operation and practice.
CHAPTER 1 | INTRODUCTION TO LAW AND SOCIAL WORK PRACTICE

Students need to know:
   i. the substantive law which is relevant to social work practice, and its nature and sources;
   ii. the relationship between local authority and probation policy and the law;
   iii. the structures and processes of the relevant court and tribunal systems.

13 See the GSCC website: www.doh.gov.uk/gscc/ for further information.
17 The Code referred to may be accessed via the BASW website at www.basw.co.uk.
26 Section 39.
29 Schedule 1A includes government departments, armed forces, NHS, local government, educational bodies, housing bodies and police.
30 Department of Health (2000).