LAW FOR SOCIAL WORK PRACTICE

Law for Social Work Practice

Working with Vulnerable Adults

Robert Johns and Andrew Sedgwick

palgrave
macmillan

© Robert Johns and Andrew Sedgwick 1999

All rights reserved. No reproduction, copy or transmission of this publication may be made without written permission.

No paragraph of this publication may be reproduced, copied or transmitted save with written permission or in accordance with the provisions of the Copyright, Designs and Patents Act 1988, or under the terms of any licence permitting limited copying issued by the Copyright Licensing Agency, 90 Tottenham Court Road, London W1P 9HE.

Any person who does any unauthorised act in relation to this publication may be liable to criminal prosecution and civil claims for damages.

The authors have asserted their right to be identified as the authors of this work in accordance with the Copyright, Designs and Patents Act 1988.

First published 1999 by
MACMILLAN PRESS LTD
Houndmills, Basingstoke, Hampshire RG21 6XS
and London
Companies and representatives
throughout the world

ISBN 978-0-333-69378-0   ISBN 978-1-349-14473-0 (eBook)
DOI 10.1007/978-1-349-14473-0

A catalogue record for this book is available
from the British Library.

This book is printed on paper suitable for recycling and made from fully managed and sustained forest sources. Logging, pulping and manufacturing processes are expected to conform to the environmental regulations of the country of origin.

Editing and origination by
Aardvark Editorial, Mendham, Suffolk

Contents

<i>Preface</i>	vii
<i>Legislation, Regulations and Circulars</i>	xi
<i>Legal Cases</i>	xiii
1 Social Care Law in Practice	1
Purposes and aims	1
Who are vulnerable adults?	2
Applying the law to practice	3
The law as it applies to vulnerable adults generally	5
Statute law and common law	6
Discrimination and the law	10
Rights of redress generally	14
Conclusion	18
Further reading	19
2 Assessing Needs and Providing Services	20
Introduction	20
Assessing immediate needs	22
Issues for professional workers	27
Role of social services departments	29
Relating social work practice to the law	32
Social policy context	44
Conclusion	49
Further reading	50
3 Advocacy: Speaking on Someone's Behalf	51
Introduction	51
Issues for professional workers	52
Relating social work practice to the law	55
Appointing an advocate	59
The broader issues	64
Conclusion	75
Further reading	76
4 Advocacy: Acting on Someone's Behalf	77
Introduction	77
What are the immediate needs?	80
What are the roles of those involved in this case?	83
Which law is relevant here?	86
Social policy context	100

	Conclusion	102
	Further reading	103
5	Preparing to Live with Someone Else	104
	Introduction	104
	What are the immediate issues?	107
	What are the issues for professional workers?	111
	What are the long-term issues and choices?	113
	Conclusion	130
	Further reading	131
6	Protecting Adults From Abuse or Harm	132
	Introduction	132
	The cases	136
	Which law is relevant here?	149
	Social policy context	158
	Conclusion	160
	Further reading	161
7	Protecting People From Themselves	162
	Introduction	162
	What are the immediate needs?	165
	What are the issues for professional workers?	166
	What are the roles of those involved in this case?	170
	Which law is relevant here?	173
	What are the broader issues?	187
	Conclusion	191
	Further reading	192
8	Adults Who Become the Victims of Crime	193
	Introduction	193
	What are the immediate needs?	194
	What are the issues for professional workers?	197
	What are the roles of those involved in this case?	199
	Which law is relevant here?	206
	Social policy context	216
	Conclusion	218
	Further reading	219
9	Promoting Rights	220
	Introduction	220
	Proposals for reform	222
	Conclusion	225
	Further reading	226
	Bibliography	227
	Index	232

P

Preface

Social care is provided for people and the law makes certain rules about it. Sometimes the law identifies which people are to receive care and which people are to provide it. Sometimes the law is silent about this. Nevertheless, the law must apply to the kinds of social care needs and circumstances that occur day by day.

Yet those who are engaged in social care work, especially the care of vulnerable adults, often regard the law as being not really relevant to their work. The law is seen as theoretical, as distant, even as a nuisance. The complaint is frequently that the law is too complex: it is not clear what can or should be done or how one piece of legislation relates to another in the practice context. This is understandable, since social care is after all offered by professional and non-professional carers who are not lawyers.

This book is therefore dedicated to those who care for vulnerable adults who need a book that is firmly rooted in social care practice. For this is not a legal text book as such. Instead, its aim is to provide a map through the relatively uncharted territory of the law relating to the social care of vulnerable adults. It does this by starting with the types of real-life situation confronting carers and exploring how the law relates to them.

We believe that this is an approach which will commend itself to practitioners. We believe that there is a need for texts that explain and explore the interconnections between law and social care. We also believe that vulnerable adults need carers and professional helpers who are more knowledgeable about the law generally. Knowledge is power, and in encouraging carers to become more knowledgeable about the legal context of their practice, this book is in effect about empowerment.

As teachers of social workers on professional training courses, we have noted for some time that students find applying the law to social work practice quite problematic. Students may understand what the law says; they may understand what social work principles and values are; they may skilfully assess and interpret the needs of vulnerable people; but they are thrown when trying to put these all together. When confronted with a real-life situation or even a simulation exercise, there is a tendency to choose *either* social work principles *or* the law. Even quite experienced practitioners have on several occasions informed us that what was being said about the law was all very well and good, but what they did in their social services department was quite different. In one or two cases we have a lurking anxiety that they may have inadvertently been telling the truth.

It quickly became obvious that the difficulty students encountered was reflected in the approaches taken in textbooks. Many of these were good at presenting systematic overviews of the law, chapters being neatly subdivided by subject matter. For legal texts this was fine, but carers who work with vulnerable adults obviously start with people and then proceed to assessing their needs by relating them to the law. So why not a book that did this?

Thus this text takes a relatively novel approach. The main chapters start with a brief introduction, followed by some fictional but realistic case material, usually a case study. The case material is then analysed. The ensuing discussion sets out an analysis of the case, highlighting relevant issues for social care workers, including reference to social work principles and values. There is also a discussion of the social policy context in which the current care arrangements were made. In our view this fills a gap in the current literature since practitioners need to be aware of the broader context within which they practise and within which the law was formulated.

The reason for adopting this case study approach is twofold. First, it accurately reflects the reality of everyday practice. Second, social care is by its nature diffuse, and it is sometimes difficult to identify boundaries of roles. Carers and social workers can unwittingly stray into unfamiliar territory or, worse still, move into areas that are more properly the prerogative of another profession. In some situations this can be dangerous, so clarity of role and purpose is essential. For this reason we have endeavoured to direct the reader to the relevant legislation with some indication of why it is pertinent to the particular case.

Any references to law are, of necessity, references to the law of England and Wales as it stands at the time of writing. Where the law

is quoted directly, readers will note that legislation uses the male personal pronoun – this is a legal convention, not ours; in the rest of the book we have endeavoured to use inclusive language at all times. Readers will be aware that the law changes from time to time, and the book should not be taken as a definitive statement of the law. Legal reference books, suitably updated, or advice from specialist legal practitioners, would be more authoritative, although strenuous efforts have obviously been made to make the book as accurate and as useful as possible.

It should also be noted that while the general principles of practice and the role of the law in social care practice are relevant to practitioners and carers in Scotland and Northern Ireland, there are significant differences in the law itself. In Scotland the law relating to managing property on behalf of vulnerable adults, for example, is substantially different. Court processes and procedures are also different, so readers may need to refer to more specialised legal texts for further clarification.

The case examples are of course fictional, but are all based on typical real situations. The situations presented are diverse, and there has been an attempt to cover as broad a spectrum as is possible. Background information has been confined to what is directly relevant, so, for example, references to specific racial or cultural groups is only included where there is a specific point relevant to this that we wish to make. We have tried to keep to contemporary conventions with the use of terms such as ‘service users’ and ‘carers’, although it is acknowledged that some practitioners consider carers as service users for very obvious and logical reasons. Similarly, ‘community care services’ is taken to include residential care, although again some commentaries draw a clear distinction between the two. We have also recognised that it is not possible to separate out values from social work practice and the law, so some discussion is given over to this in each case study. This book acknowledges that law, social policy, social work values and everyday practice are intertwined.

The focus throughout the book is on the social care of vulnerable adults, and for this reason a number of topics are explored more fully than in other texts. At the same time it is only possible to touch on some topics, and some omissions will be noticed. One such is welfare rights. It is not practicable to include this, principally because of the complexity of social security and benefit regulations. This is not because we underestimate its importance; instead it is our view that welfare rights issues are already adequately dealt with elsewhere, especially in a number of excellent guides that are now

available, so it is preferable to concentrate on the issues that tend to be overlooked.

For this reason the choice of topics may seem a random mixture, but there is overall coherence to them. The book is primarily about social or personal care. This is taken to include protecting people who are potentially being abused or exploited. The empowerment of vulnerable adults is a recurrent theme, although there are areas of social work or social care that border on this but are excluded: assisting vulnerable adults who are themselves accused of committing an offence, for example. This topic would have brought in quite different issues requiring familiarity with police and court procedures, together with an awareness of legal approaches to issues of criminal responsibility, which were considered to be beyond the scope of this book.

So what topics does the book actually address? In Chapter 1 we examine some general principles and broad legislation that apply across the board, that is, to all vulnerable adults. Discrimination and rights of redress are a particular feature here. In Chapter 2 the focus is on assessment for community care services. Chapter 3 concentrates on the provision of services and ensuring that these meet people's diverse needs. Chapter 4 asks what happens when people cannot manage their own affairs, and what happens when they move from hospital to the community. In Chapter 5 we explore the general issue of how vulnerable adults might live together and examine special provision for their needs. Chapter 6 deals with the abuse of vulnerable adults, specifically with local authority responsibilities for responding to allegations of abuse of whatever sort. Chapter 7 examines procedures for protecting people from themselves when they are especially vulnerable. Chapter 8 raises the issue of what happens when vulnerable adults are the victims of crime.

Each of these chapters includes a general conclusion that summarises the main themes of each chapter and in some cases includes reference to the strengths and weakness of current provision. These analyses are brought together in Chapter 9, which asks how the law could be reformed in order to provide a better system for responding to the needs of vulnerable adults. Why is the system so piecemeal and haphazard? What can be done about it?

While conceding that even all the chapters taken together can never be truly comprehensive, the book nevertheless aims to scan the broad spectrum of social care with adults and introduce readers to the many different ways in which, within the legal framework, the needs of vulnerable adults can be met. If readers find the book a useful tool in meeting this objective, we will have achieved our ambition.

Legislation, Regulations and Circulars

Access to Personal Files (Social Services) Regulations 1989	41
Access to Personal Files Act 1987	60
Carers (Recognition and Services) Act 1995	26, 34–5, 62, 155
Children and Young Persons Act 1933	154
Children Act 1989	19, 35, 38, 58, 66, 222–3
Chronically Sick and Disabled Persons Act 1970	22–3, 33–4, 38–9, 40–1, 56, 67, 86, 126, 138, 155, 201
Community Care (Direct Payments) Act 1996	87–8
Complaints Procedures Directions 1990	43, 215
Court of Protection Rules 1994	7
Criminal Courts Act 1973	211
Criminal Injuries Compensation Act 1995	7, 212
Criminal Justice Act 1982	211
Criminal Justice Act 1991	211
Criminal Justice and Public Order Act 1994	151
Disability Discrimination Act 1995	13, 42
Disabled Persons (Services, Consultation and Representation) Act 1986	33–4, 36, 56–7, 59–60, 62, 215
Enduring Power of Attorney Act 1985	94
Family Law Act 1996	130, 153
Health Services and Public Health Act 1968	38, 40, 86, 111, 145, 149
Health and Social Services and Social Security Adjudication Act 1983	71, 83, 145, 156
Home Office Circular 20/88 Victims of Crime 1988	214
Housing Act 1985	118
Housing Act 1988	121, 124–5
Housing Act 1996	114, 117–19
Insolvency Act 1986	70
Local Authority Circular (92)12: Housing and Community Care 1992	114
Local Authority Circular (92)27: The National Assistance Act 1948 (Choice of Accommodation) Directions 1992	86, 90
Local Authority Circular 93(18): The National Assistance Act 1948 (Choice of Accommodation) (Amendment) Directions 1993	90
Local Authority Circular 95(17): Arrangements for reviewing decisions on eligibility for NHS continuing in-patient care (also HSG95(39)) 1995	83, 101
Local Authority Circular 95(5): NNS responsibilities for meeting continuing care needs (also HSG95(8))1995	25, 81, 83, 89, 90, 101, 186

Local Authority Circular (93)10: Approvals and Directions for arrangements made under the National Health Service Act 1977 and sections 21 and 29 of the National Assistance Act 1948, 1993	37, 39
Local Authority Social Services Act 1970	8, 9, 67
Local Authority Social Services Letter LASSL(96)11:	
Community Care (Direct Payments) Act 1996	87
Local Government Act 1988	10
Local Government and Housing Act 1989	126
Marriage Act 1983	109
Matrimonial Causes Act 1973	109
Matrimonial Homes Act 1983	130
Mental Health (Hospital, Guardianship and Consent to Treatment) Regulations 1983	182
Mental Health Act 1983	7, 25, 55, 58, 60, 66, 92-3, 96-8, 109, 111-12, 122, 151-2, 157, 159-60, 171-7, 179-91, 214, 225
Mental Health (Patients in the Community Act) 1995	171, 186, 188
Mental Health Act 1983 Code of Practice 1991	58, 183, 187
National Assistance Act 1948	8, 10, 23-4, 36, 38-9, 41, 45, 66, 84, 86-8, 100-12, 145, 152, 156, 158, 164, 171-3, 178, 186, 191, 200
National Assistance Act 1948 (choice of accommodation) Directions 1992	8
National Assistance Amendment Act 1951	158, 178
National Health Service (General Medical Services) Regulations Act 1992	8, 81
National Health Service and Community Care Act 1990	6, 9, 14, 18, 20, 22-5, 29, 33-6, 41, 43, 48-9, 61-2, 65-7, 81, 83-7, 112, 114-16, 120, 126, 138, 145, 155-6, 171, 174, 183, 185-6, 188, 190, 200, 206-7, 214
National Health Services Act 1977	81, 83, 86, 173
Offences Against the Person Act 1861	150
Police and Criminal Evidence Act 1984	153, 172, 202, 209
Police Act 1964	202
Powers of Attorney Act 1971	94
Prosecution of Offences Act 1985	202
Protection from Harassment Act 1997	154
Race Relations Act 1976	7, 12-13, 73-4
Registered Homes Act 1984	25, 71-2, 147, 201, 206
Registered Homes Amendment Act 1991	72, 147, 206
Sex Discrimination Act 1975	11
Sexual Offences Act 1956	110-11, 143, 151, 182
Sexual Offences (Amendment) Act 1976	206
Theft Act 1968	150, 208
Vagrancy Act 1824	151

Legal Cases

- Ann's v. Merton London Borough Council [1978] AC 728
- L. v. Bournewood Community and Mental Health NHS Trust, *Times*, 8 December 1997
- Patel v. Patel [1988] 2 FLR 179; (1988) 18 Fam Law 213
- R. v. Avon County Council, ex parte Mark Hazell [1994] 2 FCR 259; [1994] 2 FCR 1006, QBD
- R. v. Civil Service Appeal Board, ex parte Cunningham [1991] 4 All ER 310; [1992] ICA 816
- R. v. Cleveland County Council, ex parte Cleveland Care Homes Association and Others 17 BMLA 122, 12 November 1993 (QBD)
- R. v. Durham County Council, ex parte Curtis [1995] 1 All ER 72 CA; [1995] 1 All ER 89 QBD; [1993] 91 LGR 479
- R. v. Gloucestershire County Council, ex parte Barry and Others 30 BMLR 20 (QBD), 94 LRG 593, 16 June 1995
- R. v. Gloucestershire County Council, ex parte Mahfood *Times* Law Report, 21 June 1995 (QBD)
- R. v. Hereford and Worcester County Council, ex parte Chandler [1991] CO/1759/91 discussed by Clements in *Legal Action*, September 1992: 15–16
- R. v. Islington London Borough Council, ex parte Rixon *Times*, 17 April 1996 (QBD)
- R. v. Kingston-upon-Thames, ex parte T [1994] 1 FLR 798
- R. v. Kite and Others [1996] 2 Cr App R (S) 295, Court of Appeal, 8 February 1996
- R. v. Lancashire County Council, ex parte Royal Association for Disability and Rehabilitation and Gilpin, Court of Appeal, 27 June 1966
- R. v. London Borough of Ealing, ex parte Leaman *Times*, 10 February 1984 (QBD) (Crown Office List) CO/562/83
- R. v. P&O European Ferries (Dover) Limited [1990] 93 Cr App Rep 72