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Practising Social Work Law

Second Edition

Suzy Braye

and

Michael Preston-Shoot

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List of Abbreviations

AA	Adoption Act 1976
ASW	Approved Social Worker
CA	Children Act 1989
CAYP	Children and Young Persons Act 1933; 1969
CCETSW	Central Council for Education and Training in Social Work
CI	Chief Inspectors Letter
CJA	Criminal Justice Act 1982; 1991; 1993
CJPOA	Criminal Justice and Public Order Act 1994
C(RS)A	Carers (Recognition and Services) Act 1995
CSDPA	Chronically Sick and Disabled Persons Act 1970
DipSW	Diploma in Social Work
DoH	Department of Health
DPA	Disabled Persons (Services, Consultation and Representation) Act 1986
DPMCA	Domestic Proceedings and Magistrates' Court Act 1978
DPP	Director of Public Prosecutions
DVMPA	Domestic Violence and Matrimonial Proceedings Act 1976
ECT	electro-convulsive therapy
EPO	Emergency Protection Order
FLA	Family Law Act 1996
HA	Housing Act 1996
HASSASSA	Health and Social Services and Social Security Adjudications Act 1983
HO	Home Office
HSG	Health Service Guidelines
HSPHA	Health Services and Public Health Act 1968
LAC	Local Authority Circular
LASSA	Local Authority Social Services Act 1970
LASSL	Local Authority Social Services Letter
LEA	Local Education Authority
MAHA	Matrimonial Homes Act 1983
MHA	Mental Health Act 1983

MH(PIC)A	Mental Health (Patients in the Community) Act 1995
MHRT	Mental Health Review Tribunal
NAA	National Assistance Act 1948
NHS	National Health Service
NHSA	National Health Service Act 1977
NHSCCA	NHS and Community Care Act 1990
NR	nearest relative
PACE	Police and Criminal Evidence Act 1984
PCCA	Powers of Criminal Courts Act 1973
RRA	Race Relations Act 1976
SOAD	second opinion appointed doctor
SSD	Social Services Department

Table of Cases

AC	Appeal Cases
All ER	All England Law Reports
CO	Crown Office
Cr App R (S)	Criminal Appeal Reports (Sentencing)
Crim Law	Criminal Law Review
ELR	Education Law Reports
FCR	Family Court Reporter
FLR	Family Law Report
HL	House of Lords
HLR	Housing Law Reports
QB	Queens Bench
WLR	Weekly Law Reports

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Preface to the Second Edition

Since publication of the first edition much has changed in social work law. The NHS and Community Care Act 1990 has been fully implemented, followed by a burgeoning number of research and evaluation studies and a hotly contested debate about the effectiveness of community care. Nowhere has this debate been sharper than in mental health, where highly publicised assaults by mentally disordered people have prompted arguments about registers and supervised discharge orders and led to new legislation (Mental Health (Patients in the Community) Act 1995) and guidance. Meanwhile, concerns about resources have come to permeate the entire community care field.

Similar fierce debates have characterised criminal justice, for instance around secure training orders and the right to silence (Criminal Justice and Public Order Act 1994), and the process of securing antidiscriminatory legislation for disabled people (Disability Discrimination Act 1995). The jury is still out on whether either Act will prove effective.

The needs of carers have been recognised but without the provision of additional resources for already hard-pressed local authorities (Carers (Recognition and Services) Act 1995). The balance between the interests of children and parents continues to evoke strong emotions in the area of family support. The Children Act 1989 has generated a substantial volume of case law, not all of which interprets the Act in ways that social work and legal practitioners would believe to be consistent with the spirit and purpose of the legislation. Nonetheless the Act continues to enjoy a positive consensus. This cannot be said for reforms to the law on divorce, domestic violence, asylum and housing homeless people. Increasingly, vulnerable people are being denied the social care assistance they need.

Not that social work and social work education have escaped major change. Social services departments have experienced major upheavals, reflected in local government reorganisations, and

divisions into purchaser/provider functions and/or children's and adult services. They are also subject to increasing regulation, as for example in the development of national standards. The requirement for probation officers to hold a social work qualification has been rescinded by the Home Office, despite near unanimous opposition. Social work education has been reviewed, in part because of the rapidly changing legislative framework, but also because of government unease with its anti-oppressive practice agenda.

The period between the two editions has also witnessed the emergence of a new discipline: social work law. A social work law association (Preston-Shoot, 1993) has brought together academics, practitioners, trainers and researchers around two themes: teaching and assessment of competence to practise social work law; and developing a critical awareness of the interface between the law and social work practice. CCETSW, through the social work law research group, has revised and extended its guidance to Diploma in Social Work programmes on teaching and assessing social work law (Ball *et al.*, 1995), coinciding with an increased prominence for the law in the requirements for social work qualification. The emergence of this new discipline has involved defining its scope. CCETSW's guidance defines the discipline narrowly, as the powers and duties given to local authority social services departments, whilst acknowledging the importance of social workers having knowledge of wider social welfare law provisions. This book takes a wider view, including within its definition not only those powers and duties which social workers implement directly but also those mandates in the operation of which they must take an interest when working with service users and their carers. Accordingly, the law relating to homelessness, divorce and special educational needs is included. The focus of the book remains the law in England and Wales.

Each chapter has been thoroughly revised to take account of these changes and developments. The intervening period between the two editions has seen us on an upward learning curve and, perhaps, even more appreciative of the fact that competence to practise, in social work law as elsewhere, should be a lifetime journey. One of us (SB) has moved from academe to management of social services provision; the other (MPS) has engaged in research with users and carers into the effectiveness of social work law practice. Both of us have continued to engage in critical reflection of law and practice, whilst

also negotiating our way around the minutiae of law as a discipline. Law reports and transcripts of judgements have become as much a part of our reading as social work practice texts and have made us keenly aware of the inadequacy of much reporting in social work journals and literature of legal judgements.

We have continued to benefit from the encouragement and friendship of colleagues, friends and family. We would like to thank Jo Campling for her continued support and friendship, and Stuart Vernon both for his lawyer's perspective and his enthusiasm for bridging law and social work. We would like to thank Stuart and Sue, Vic and Linda, Margaret and Bill, and Eileen and John for practical and moral support in our work on this new edition. Finally, Hannah and Sebastian deserve a special mention for their patience and love.

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