Legal aspects of care in the community

Also by Bridgit Dimond

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Bridgit Dimond

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In memory of Stuart

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Preface

Community care has always existed. Once it was provided on a formal basis as outdoor relief by the monasteries, later in history state support was provided through the Poor Law. Recently the term has been used to contrast with the care provided in institutions especially for the old, mentally ill and mentally impaired. The Community Care Plans published in 1963, which followed the Hospital Plans of 1962 overseen by the then Minister of Health Enoch Powell, envisaged that the large institutions provided by the National Health Service for long-stay patients would be reduced in size – even razed to the ground – and community care would take their place. The plans have been a long time in the implementing, each successive Government emphasising the priority which should be given to care in the community, and gradually the number of institutional places has been reduced with varying degrees of community provision being made. Important legal changes were made in 1983 enabling joint financing and funding to take place between health and local authorities to facilitate the discharge of patients.

The second Griffiths Report and the white paper, *Caring for People*, followed by the National Health Service and Community Care Act 1990 have made major changes in the responsibility for financing community care and shifted more responsibility from the health service to the local authorities. For the first time a statutory definition was given to community care which is set out in Chapter 2.

This book is specifically concerned with the health aspects of community care and seeks to identify some of the legal problems faced by the various professionals who work in the community caring for people. It is focused on five areas:

- A. The rights of the client in relation to care, powers of entry and removal from premises, consent and confidentiality.
- B. The duties and responsibilities of the many professionals providing care, initially in relation to their accountability and professional liability and then in relation to health and safety concerns (specific chapters deal with individual professional groups, volunteers and carers).
- C. The statutory bodies and other organisations involved in the provision of care, also considering enforcement provisions.
- D. The legal issues relating to the provision of accommodation.
- E. The financing of individuals.

The aim is to provide a readable guide to the many issues which arise in the care of the client in the community with special emphasis on the practical problems and situations which are likely to occur. The law is explained in relation to specific situations which are frequently encountered by professionals. Inevitably any division of the subject area will lead to an artificial treatment of the topic in that there will be overlaps and omissions. The goodwill of the reader is sought in tolerating the cross references which are necessary to avoid repetition of such material.

The decision was taken not to divide the legal issues into client groups, for example mentally ill, learning disabilities, elderly, physically disabled and so on, since services are not necessarily categorised in that way and many professionals work across any such boundaries.

Two major areas of the law, those relating to children and education (except in the context of health care), are omitted. The reason for the omission is simply space. There are sufficient specialist books dealing with these areas to justify excluding them from this text. This has allowed more focused concentration on the issues of community care in the context of health and social services. Midwives have also been omitted from the health professionals considered in Section B, not because they do not have a community role, but because a specific book on midwifery law has just been published which deals more appropriately with issues particularly their concern.

Where possible the emphasis is on practical problems rather than academic niceties. It is a book for the practitioner rather than the lawyer. Where relevant cases have been cited and the facts given since this reveals clearly to the practitioner the extent to which their work is subject to oversight by the courts. To illustrate other problems, not yet the subject of court hearings, situations have been envisaged which are fictional but useful

in illustrating potential hurdles. They do not represent any living persons.

The actual wording of statutes has been quoted where relevant, and this has been placed in the figures so that the continuity of the text is not destroyed. Those practitioners who are interested in the actual words of the sections concerned can study these. Reference material which should be of assistance to the practitioner is included in the appendices.

The aim is to make the law meaningful to the practitioner who cannot leave all legal knowledge to the lawyer. Practitioners must be aware of the legal framework within which they practice and know at which point they require to bring in the legal experts.

It is apparent that each chapter could be a book in its own right and omissions are inevitable. The book therefore includes a list for further reading confined to books on law. There is also in Appendix 3 limited specialist bibliographies on Health and Safety and HIV/Aids and on Community Care assessments. Such bibliographies, including current Health Circulars and so on, are maintained by major reference libraries and the libraries of educational establishments. The interested reader is referred to these.

In addition in this book a selective list of useful addresses is provided and a glossary to chart a way through the many technical terms. Terminology in relation to the recipient of services, variously called the client, consumer, customer, patient or resident, can cause difficulties and in the main the term 'client' has been used, except in relation to accommodation where the term resident was considered more appropriate.

Finally, the perennial problem of he or she, his or her has been resolved by generally referring to all in the plural or in the feminine gender unless the context is clearly to the contrary. So for 'she' read also 'he' and for 'her' read also 'him'.

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Abbreviations

CA	Court of Appeal
CHC	Community Health Council
CHP	Council for Health Professions
COSHH	Control of Substances Hazardous to Health
CPN	Community Psychiatric Nurse
CPSM	Council to the Professions Supplementary to Medicine
CSSD	Central Sterile Supply Department
DHA	District health authority
DSS	Department of Social Security
FHSA	Family Health Services Authority
GP	General practitioner
GPFH	GP fund-holder
HAG	Housing Association Grant
HCHS	Hospital and community health services
HIV	Human Immunodeficiency Virus
HL	House of Lords
HSC	Health Services Commissioner (Ombudsman)
HSE	Health and Safety Executive
JCC	Joint Consultative Committee
JP	Justice of the Peace
MDU	Medical Defence Union
NAA	National Assistance Act
NHSME	National Health Service Management Executive
PRN	As required (of medicines)
QBD	Queens Bench Division (of the High Court)
RHA	Regional Health Authority
RMO	Responsible Medical Officer
RPSGB	Royal Pharmaceutical Society of Great Britain.
RSC	Rules of the Supreme Court
SNMA	Special Needs Management Allowance
SPPA	Special Projects Promotional Allowance
SSD	Social Services Department
SSI	Social Services Inspectorate
UKCC	United Kingdom Central Council for Nursing, Midwifery and Health Visiting
WHC	Welsh Health Circular