

## Copyright Notice

Staff and students of this University are reminded that copyright subsists in this extract and the work from which it was taken. This Digital Copy has been made under the terms of a CLA licence which allows you to:

- access and download a copy
- print out a copy

This Digital Copy and any digital or printed copy supplied to or made by you under the terms of this Licence are for use in connection with this Course of Study. You may retain such copies after the end of the course, but strictly for your own personal use.

All copies (including electronic copies) shall include this Copyright Notice and shall be destroyed and/or deleted if and when required by the University.

Except as provided for by copyright law, no further copying, storage or distribution (including by e-mail) is permitted without the consent of the copyright holder.

The author (which terms includes artists and other visual creators) has moral rights in the work and neither staff nor students may cause, or permit, the distortion, mutilation or other modification of the work or any other derogatory treatment of it, which would be prejudicial to the honour or reputation of the author.

**Book Title: Using The Law in Social Work (3<sup>rd</sup> edition)**

**Name of Author(s): Johns, R.**

**ISBN : 9781844451142**

**Year of publication: 2007**

**Place of Publication: Exeter**

**Publisher: Learning Matters Ltd**

**Title of extract:: But I want to be a social worker, not a lawyer**

**Author of extract:: Johns, R**

Name of Visual creator (as appropriate): C Hall

Name of Designated Person authorising scanning: K Cooper

If obtained as copyright cleared please include:

Date obtained: ILL Request Number: |

# Chapter 1

## But I want to be a social worker, not a lawyer

In which case, this is the book for you. For this book is about social work practice, it is not a legal textbook. Yet it is about the law – the law that informs and underpins social work practice in England and Wales today.

This book is written for student social workers who are beginning to develop their skills and understanding of the requirements for practice. Whilst it is primarily aimed at students in their first year or level of study, it will be useful for subsequent years depending on how your programme is designed, what you are studying and especially as you move into practice learning. Social work education has undergone a major transformation to ensure that qualified social workers are educated to honours degree level and develop knowledge, skills and values which are common and shared. A vision for social work operating in complex human situations has been adopted. This is reflected in the following definition from the International Association of Schools of Social Work and International Federation of Social Workers:

*The social work profession promotes social change, problem solving in human relationships and the empowerment and liberation of people to enhance well-being. Utilising theories of human behaviour and social systems, social work intervenes at the points where people interact with their environments. Principles of human rights and social justice are fundamental to social work.*

Human rights and justice are also fundamental to law. Law is a very important component of social work practice in Britain. The majority of social workers in Britain today are employed by statutory agencies, that is, organisations such as local authorities whose every action has to be based on some kind of legal power that authorises it. Even for social workers employed outside the statutory sector, the law provides the framework within which services are offered, and is crucial in areas such as child protection where interagency co-operation is essential and where every social worker has responsibilities. It is impossible to practise without coming up against the law; it is impossible to practise effectively without an in-depth understanding of how the law affects everyday social work practice. That is what this book is about.

## Professional standards and subject benchmarks

By reading this book you are completing the first stage of fulfilling the Department of Health requirement that law should be one of five key components of the social work curriculum. You will also be meeting the National Occupational Standards requirements in

relation to social work. The law is relevant to a large number of these and each chapter starts with a list of relevant standards. Here we will start with a table that sets out all the occupational standards relevant to social work law.

Key role	Unit	Occupational standard	Chapters in this book
<b>Key Role 1</b> Prepare for, and work with individuals, families, carers, groups and communities to assess their needs and circumstances	<b>Unit 2</b> Work with individuals, families, carers, groups and communities to help them make informed decisions	2.1 Inform individuals, families, carers, groups and communities about your own, and your organisation's duties and responsibilities 2.4 Work with individuals, families, carers, groups and communities to enable them to assess and make informed decisions about their needs, circumstances, risks, preferred options and resources	All chapters in this book inform you about social workers' legal duties and obligations so will help in achieving these standards
	<b>Unit 3</b> Assess needs and options to recommend the course of action	3.2 Assess needs, risks and options taking into account legal and other requirements 3.3 Assess and recommend an appropriate course of action for individuals, families, carers, groups and communities	Chapters 4–7 in particular explain these legal and other requirements
<b>Key Role 2</b> Plan, carry out, review and evaluate social work practice, with individuals, families, carers, groups and communities and other professionals	<b>Unit 4</b> Respond to crisis situations	4.2 Identify the need for a legal and procedural intervention	A key theme in Chapters 4 and 5
	<b>Unit 6</b> Prepare, produce, implement and evaluate plans with individuals, families, groups and communities and carers, professional colleagues	6.3 Carry out your own responsibilities and monitor, co-ordinate and support the actions of others involved in implementing the plans 6.4 Review the effectiveness of the plans with people involved	Chapters 2–7 set out social workers' key responsibilities derived from the law; together they provide a comprehensive overview of these
	<b>Unit 9</b> Address behaviour which presents a risk to individuals, families, carers, groups and communities	9.1 Take immediate action to deal with the behaviour that presents a risk	Chapters 2, 4 and 5 present the legal framework for direct action that addresses risk and harm
<b>Key Role 3</b> Support individuals to represent their needs, views and circumstances	<b>Unit 10</b> Advocate with, and on behalf of, individuals, families, carers, groups and communities	10.1 Assess whether you should act as the advocate for the individual, the family, carer, group and community 10.2 Assist individuals, families, carers, groups and communities to access independent advocacy 10.3 Advocate for, and with, individuals, families, carers, groups and communities	All of this book will provide underpinning knowledge for these standards
	<b>Unit 11</b> Prepare for, and participate in decision-making forums	11.1 Prepare reports and documents for decision-making forums 11.3 Present evidence to, and help individuals, families, carers, groups and communities to understand the procedures in and outcomes from decision-making forums 11.4 Enable individuals, families, carers, groups and communities to be involved in decision-making forums	Chapters 6 and 7 focus on this

<b>Key Role 4</b> Manage risk to individuals, families, carers, groups, communities, self and colleagues	<b>Unit 12</b> Assess and manage risks to individuals, families, carers, groups and communities	<b>12.2</b> Balance the rights and responsibilities of individuals, families, carers, groups and communities with associated risk	Chapters 4 and 5 focus on this
<b>Key Role 5</b> Manage and be accountable, with supervision and support, for your own social work practice within your organisation	<b>Unit 14</b> Manage and be accountable for your own work  <b>Unit 16</b> Manage, present and share records and reports	<b>14.2</b> Carry out duties using accountable professional judgement and knowledge-based social work practice <b>16.1</b> Maintain accurate, complete, accessible, and up-to-date records and reports <b>16.2</b> Provide evidence for judgements and decisions <b>16.3</b> Implement legal and policy framework for access to records and reports <b>16.4</b> Share records with individuals, families, carers, groups and communities	All of the book is relevant to this, with Chapters 4 and 5 focusing on duties  Chapters 6 and 7 cover report writing and providing publicly accountable evidence
<b>Key Role 6</b> Demonstrate professional competence in social work practice	<b>Unit 18</b> Research, analyse, evaluate, and use current knowledge of best social work practice <b>Unit 19</b> Work within agreed standards of social work practice and ensure own professional development	<b>18.1</b> Review and update your own knowledge of legal, policy and procedural frameworks  <b>19.1</b> Exercise and justify professional judgements <b>19.2</b> Use professional assertiveness to justify decisions and uphold professional social work practice, values and ethics	All of the book is of direct relevance to this standard  Chapters 3–5 cover the legal framework for decision-making; Chapters 6 and 7 promote professional assertiveness

As an academic text, this book is intended as an introduction to the study of social work law as a specific topic area. In this regard, the book is directly relevant to some key social work benchmarks (Quality Assurance Agency for Higher Education [QAA], 2000):

- significance of legislative and legal frameworks and service delivery standards (3.1.2 Knowledge of the service delivery context);
- models and methods of assessment, including factors underpinning the selection and testing of relevant information, the nature of professional judgement and the processes of risk assessment (3.1.4 Social work theory).

## What's in this book?

Before launching into the main part of this chapter, it may be worth saying something about the general approach of this book. This book is part of a series that outlines and explores the knowledge base of social work as it applies to everyday practice. It is an example of applied theory and knowledge, with a strong emphasis on how knowledge underpins sound professional social work practice. It was written very much with the needs of future social work students in mind, in the sense that it places the application of law to everyday social work practice centre stage.

The book is interactive. You are encouraged to work through the book as an active participant, taking responsibility for your learning, in order to increase your knowledge, understanding and ability to apply this learning to practice. The activities have been devised

to encourage reflection and help you to incorporate learning undertaken into practice. In this way your knowledge will become deeply embedded as part of your development.

We begin with an overview of the purpose of law in social work, looking at the role of law, how it is made, different kinds of law and the purpose they serve.

In Chapter 2, there is a focus on basic human rights with an overview of the European Convention on Human Rights, the key legal benchmark, implemented in Britain through the Human Rights Act 1998. By way of illustration we look at the development of legislation that attempts to address the needs of people with serious mental health problems as a case example of how human rights legislation applies to social work. Key issues addressed in this example are:

- is it acceptable for people to be protected from themselves?
- to what extent can laws protect the public from people who might present an apparent threat?
- what is the extent of the responsibility of the state?
- to what extent do people have the right to determine their own future, even when their capacity to make judgements and decisions is seriously affected by mental health problems?

These are not just legal issues. They are fundamental debates about values and ethics in social work.

Chapters 3 and 4 explore the crucial issue of the relationship between social workers, the family and the state. In Chapter 3, the focus will be on children's basic needs and how these are provided for through legislative means. How does the state, Britain today, ensure that children have their basic needs met? What overall legal frameworks govern this? What measures does the law promote in relation to children's safety? What about their education? What about their care and support, especially where parents are not able to provide care themselves? Here the book explores the range of services available to support children, with social workers working in partnership with parents, and the provision of alternative accommodation when children cannot be cared for in their own homes.

Chapter 4 concentrates more specifically on various provisions in the Children Act 1989 and the Children Act 2004. These are crucial Acts for any intending social worker to understand, regardless of whether they are employed in voluntary settings or the statutory sector. This chapter focuses on the principles underlying the Children Act 1989 in particular, especially working in partnership and ascertaining children's wishes and feelings. What happens when the law has to intervene directly in family life and sort out such matters as who cares for children after a divorce? What are the legal issues relevant to a social work assessment of children's needs? What happens when there is an allegation that a child is being abused? When legal intervention is being considered on behalf of children, what do legal proceedings offer by way of offering a better future for certain children?

In Chapter 5, the focus switches to social workers' role in relation to adults, particularly vulnerable adults who may be in need of community care services or, in extreme cases, protection from themselves or other people. Here the book explores the issue of provision of services under various legal enactments that comprise what might loosely be called

'welfare'. The majority of this chapter is taken up with an overview of the legal basis for community care services, but the discussion is also extended to measures by which local authorities, the voluntary sector and independent organisations can protect vulnerable adults who are at risk of various forms of harm.

Chapter 6 is a more specialist chapter, applicable to social workers who work in the field of youth justice. This book does not cover work with adult offenders since in England and Wales this is the prerogative of the National Probation Service. However, social workers are employed in a nationwide network of Youth Offending Teams, multidisciplinary agencies that implement all aspects of youth justice legislation with a prime responsibility for preventing 'offending behaviour'.

Chapter 7 addresses the role of the courts as a key forum in which social workers are held publicly accountable. It focuses on practice issues that sometimes cause social workers anxiety: what actually happens in court, court's expectations, giving evidence in court, writing reports. This chapter highlights the main issues for social workers when they are called to account for their actions. Courts are the forum where the law is put into practice in the sense that cases are 'tried' or 'heard', and where independent decisions are made about social work practice or recommendations. It is therefore essential to understand the role courts play in social work generally, but most especially in the fields of youth justice and child protection.

Finally, Chapter 8 addresses a number of issues that are sometimes overlooked when social workers study the law. For this chapter is not about what social workers do, it is about who they are: their credibility and the standards of professional practice that the public is entitled to expect. The emphasis in this chapter is on public accountability in the sense of ensuring that high standards of professional practice are maintained. What legal provisions exist to ensure that social workers are reliable and trustworthy? What standards apply to the kinds of services provided, especially in relation to residential care? How are social workers accountable to service users and employers?

The book concludes with an overview of its coverage, indicating areas for further study and urging a watching brief on the ever-changing world of social work law.

Each chapter begins with a reference to the relevant occupational standards together with a summary of the chapter contents. The structure of each chapter varies, but in all cases there will be illustrative case material incorporated into the discussion. In keeping the discussion practical yet clarifying a number of complex issues, it is necessary to make some accommodation for readers' and social work practitioners' needs and so the following points need to be borne in mind.

- This book should not be treated as an authoritative statement of the law – it is intended as an introduction to relevant law, not an advanced legal textbook.
- Legislative sources will be cited as accurately as possible, but extensive quotation of legislation is avoided, so if you need to refer to specific sections of particular Acts you will need to use additional sources such as other textbooks and the internet (see Further Reading and website addresses at the end of each chapter).
- Professional practice and decision-making should not be based solely on this book, which is intended as an introductory text for professional qualifying courses in social work (BA or MA in Social Work).

- This text does not cover every aspect of social work law, but should provide some indication of the areas which are of most direct relevance to practice in England and Wales.
- There are major differences in the law in Scotland and Northern Ireland, and significant differences in relation to Wales. Whilst every effort has been made to incorporate legislation and guidance in relation to Wales, practitioners may need to double check on references to regulations and current policy.

Whilst the book is as accurate as possible at the time of going to press, legislation and practice is constantly changing, so it is important to check out the latest legislation.

## Chapter outline

This chapter sets the scene by setting out a number of reasons as to why the law is an integral part of good social work practice. It is important to be clear about why the law is relevant, and how a detailed knowledge of what the law actually says is sometimes necessary for social work practitioners – this book sets out precisely those areas where social workers need to be thoroughly familiar with the law in everyday practice. The law is a major way in which people's rights are promoted, offering protection from discrimination, informing social workers and social work agencies of what they can and cannot do, and at a broader level clarifying the relationship between the state and the individual or family. Social workers need to know about all of this. The majority of this chapter therefore is given over to a consideration of how the law sets the boundaries for social work practice. It does this through a 'case study' – not the usual kind of case study where we look at the needs of a family or individual, but a policy case study, an example of how the law has developed in relation to one area of social work practice. The case study in question is the events that occurred in Cleveland in the mid-1980s that led to a highly influential government report that became a blueprint for the relationship between the state, social work and the family. Do remember though when you read this case study that it is simply meant as an example of how changes in the law occur. It is the 'peg' on which to hang explanations of how the law changes and why. It is hoped that you will find this more interesting than simply reading a dry account of political and legal processes. By proceeding through this case example, you will encounter a number of terms which may be new to you; it may be helpful for you to note these as you proceed, so that you build up your own glossary of legal terms.

## Why law?

In order to explain the importance of law to social work practice, it is necessary to reflect on the roles and responsibilities of social workers and how they might impinge on people's everyday lives.

The majority of social workers in Britain today are employed by publicly accountable organisations – local authorities or agencies directly commissioned by them. Much of social workers' professional lives are spent in providing services to people and, in some cases, intervening in people's lives in order to protect them from themselves or other people.

Immediately it becomes obvious that social workers are deeply involved in issues to do with people's rights: rights of access to information, rights and entitlements to services, rights to be protected from harm. The extent to which social workers can offer services and can offer protection is bound to be determined by some kind of framework, and that framework is, of course, the law. So it is essential for social workers to know about the law.

### ACTIVITY 1.1

*Why else might social workers need to know about the law?*

*List as many reasons as you can for social workers learning about the law.*

There are a number of reasons you could have listed so don't worry if what you have does not quite correspond to what follows. Generally, social workers need to know about the law because:

- it tells them what their powers and duties are;
- in some areas of practice it sets out what they have to do, what they have discretion to do, and what they may not do;
- it sets out clear lines of accountability which can include bodies that adjudicate when necessary;
- it ensures that processes whereby decisions are made are fair and equitable;
- it may help clarify ethical practice issues;
- through the court system, the law makes or ratifies decisions made by social work agencies;
- it acts as a final arbiter between social workers and service users where there is a dispute that cannot be resolved by any other means.

It may be also worth mentioning some things that the law cannot do. The law cannot tell social workers what to do in every circumstance: it can only set out a framework. The law cannot resolve the everyday tensions and dilemmas of social work practice, since there is no ready prescription for resolving the complex problems that sometimes confront social workers. Above all, the law cannot substitute for sound professional practice. Critically, social workers need to abide by a code of ethics and set of practice principles that are over and beyond what the law may offer. In this respect it is important to acknowledge that there may occasionally be a conflict between the law and social work values. For example, social work has a strong commitment to anti-oppressive practice. When it comes to counteracting discrimination in relation to race, the law supports and indeed encourages the anti-discriminatory approach of much social work practice (in particular the Race Relations Amendment Act 2000 directs local authorities to promote anti-racist policies). Yet until its repeal by the Local Government Act 2003, section 28 Local Government Act 1988 prohibited the promotion of homosexuality by local authorities, a law that clearly conflicted with social work values and principles which require people of different sexual orientations to be treated equitably. Furthermore, there is a danger that in seeing the law as the ultimate determinant of social work practice the practitioner might then look to the law for 'easy'



solutions to complex problems. For example, it is sometimes not easy to decide how exactly a child's cultural needs are to be met when it is necessary to provide a foster care placement outside of that child's own family. It would be easy if the law said that children can only be offered placements with foster carers whose background matched the child's, yet the law does not say this. Instead it declares the general principle that local authorities should take this factor into account when placing a child. Likewise, it is tempting to expect the law to determine when some child-rearing practices are abusive, yet the law cannot do this because so much depends on the context and the intention of those who are parenting the child. When you are more experienced as a practitioner, you will undoubtedly have to return to these sorts of dilemmas and may sometimes find the law frustrating where it does not apparently offer clear direction or guidance.

The whole issue of the extent to which the law should be involved in everyday social work decisions was a key issue that arose in the Cleveland case. This case has been chosen precisely because it says a great deal about the role of the law and social work, and also sets out the framework for the relationship between the state (the government) and families who can justifiably claim rights to determine their own lives, rights that are now enshrined in Article 8 European Convention on Human Rights (1950) (see discussion in Chapter 2).

## What went wrong in Cleveland?

The integration of social services through the amalgamation of former children's departments, welfare departments and certain health-related functions was brought about by the implementation of the Seebohm Report (1968) which was translated into law through the Local Authority Social Services Act 1970. A number of issues quickly emerged in relation to the protection of children that resulted in what appeared to be an unending series of inquiries that started with the Colwell Inquiry in 1974 (DHSS, 1974), although this was not the first example of inquiries into child abuse (Packman, 1975, Chapter 8). These inquiries focused on the apparent lack of competence and professionalism in social workers who had 'failed' to protect children from death at the hands of a parent or carer, although there was also a feeling that social work itself was being undermined for political reasons (Parton, 1985). The findings of these inquiries were brought together by the Department of Health (1991a) who drew lessons from them which, together with the research-based findings (Aldgate, 2001), are important reading for intending practitioners in this field. In the majority of these cases social workers were criticised for their lack of action, whereas in Cleveland the issue was over-readiness, indeed alleged zealous enthusiasm, for intervening in families in order to 'protect' children. The Cleveland Inquiry was instigated as a result of a large number of children being taken into care against the wishes of parents on the grounds that they were possibly sexually abused. The social services department and the local consultant paediatrician worked together in identifying what they thought were cases of serious abuse, but at that time the law afforded only limited provision for oversight of decisions to take children away from their parents by force. Furthermore, it appeared to be extraordinarily difficult for parents to challenge the diagnosis of the paediatrician and the professional practice of social workers. The following extracts from the Cleveland Report provide a flavour of the kind of issues confronting parents and children.

**CASE STUDY**

- 2.12 *A number of parents complained that their consent was not sought or not obtained for medical examinations; or for the taking of photographs; or for disclosure work to be carried out with their children.*
- 2.17 *Grandparents, who were bringing up their 10-year-old grandson, told the Inquiry: We were simply told by a social worker [named] that [our grandson] had to be examined and our permission was not sought.*
- 2.25 *... received a letter from social worker which referred to children she (Mother) might have in the future and which included: '... there would be no guarantees from us that you would be entrusted to look after any children you may have.' The mother said she was pregnant at this time but as a consequence of receiving this letter the pregnancy was terminated.*
- 2.34 *The parents of three children aged 9, 7 and just under 2 years, described the total denial of access to their children both whilst in hospital and in foster care ...*
- 2.36 *Many parents felt strongly that they should be heard at case conferences. A number told the Inquiry that they were informed that case conferences were to be held. Some said they were told they could not attend. Others said they were informed they could attend but would not be admitted or would not be heard whilst the meeting was in progress. Some said they were told the results of case conferences. Others complained they were told neither of case conferences nor of decisions reached there.*
- 2.52 *...The parents' complaints were threefold:*
- 1. They were denied or unable to obtain information about their children or what was happening or what was planned for the future;*
  - 2. That social workers were not interested in and not enquiring into the family environment and history; and*
  - 3. That paediatricians and social workers had concluded that the parent (usually father) or parents were abusers and, until that was accepted by one or both, were indifferent, unresponsive and lacked compassion.*
- 2.53 *The father of one family referred to making numerous calls to social services but to being met with what can only be described as utter stonewalling.*

(extracts from DHSS, 1988, pp38–44)

These are simply a few extracts that give a flavour of the issues at stake. It is easy to see straight away how parents saw themselves as being totally undermined and abused by professional action and the lack of legal safeguards. Critically, they were not afforded proper rights to present their views, a complaint echoed by service users in other areas of social work practice (Clarke, 1993, Chapter 5). Yet the Cleveland Report goes much further than this and acknowledges the underlying dilemma of child protection work, namely that

social workers are *damned if they do, and damned if they don't* – pilloried if they fail to act when they should have done (with the benefit of hindsight), and castigated if they seemed to be too ready to remove children. The specific legal issues were:

- the law as it then existed appeared to offer few avenues for parents to challenge social workers' or paediatricians' decisions;
- magistrates appeared to rubber stamp decisions and did not really call social workers or doctors to account for their actions;
- there appeared to be limited avenues of redress, with few appeal possibilities;
- children could be kept in care for some considerable time without anyone having to justify to the courts substantive reasons why they should be;
- the courts and the legal system generally appeared to be weighted against parents, in an adversarial system where the child's voice could not be heard;
- children were seen as objects of concern and not the central subjects of the court proceedings.

There were a whole host of other professional practice issues, not least of which was the relationship between different professions, including the police, but our concern here is to focus on the issue of rights and what this case demonstrates about the operation of the legal system.

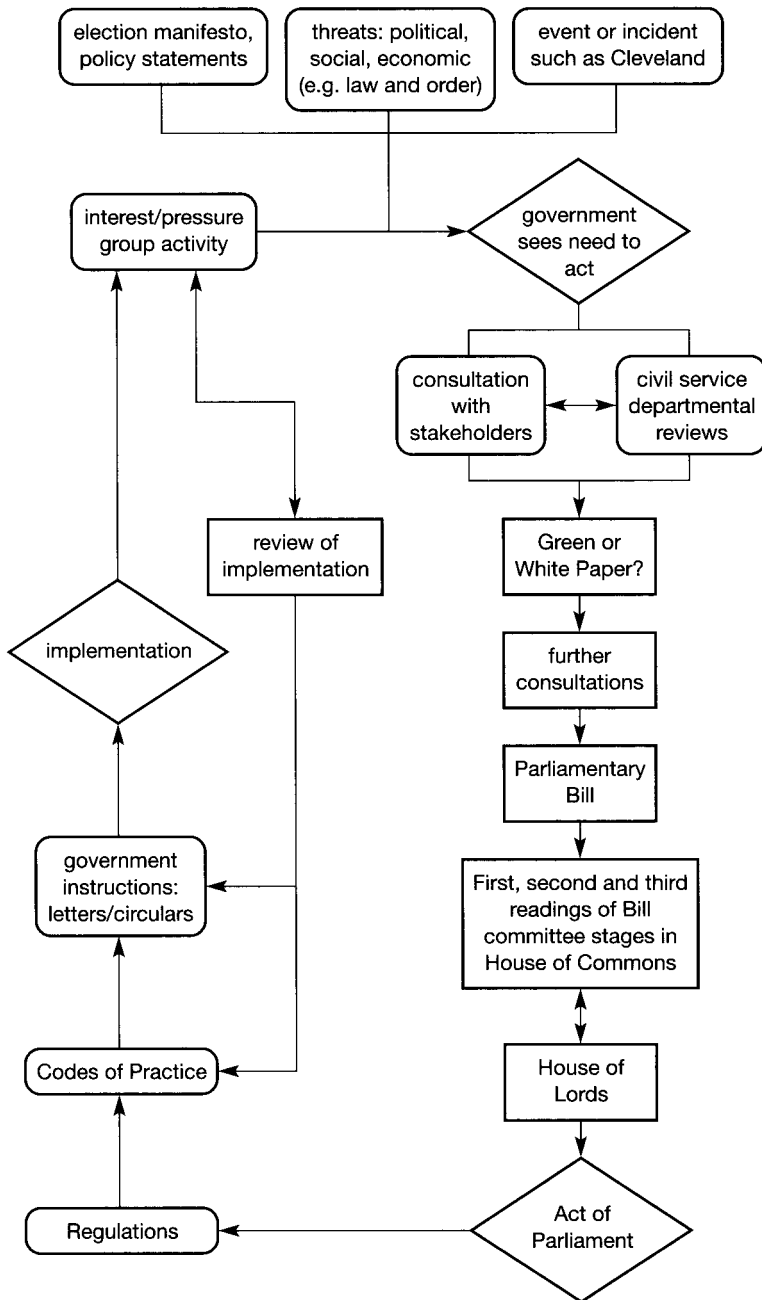
It is apparent from the above that the legal system pre-Cleveland offered few safeguards for parents or children, and there was lack of clarity about the role of the law and more specifically the courts. The public furore aroused by Cleveland led to Parliamentary debates and a clear commitment to change the law. The Butler-Sloss Inquiry (DHSS, 1988) promoted the idea that the law needed to be much clearer in establishing the boundaries between parents, children and social workers. In addition, the law needed to take a much more active role in regulating social work practice – not with a view to constraining it, but in order to clarify where and when social workers should intervene on children's behalf. The report also very strongly promoted the idea that the child should be the primary focus of the law's concern, and this particular area of the law needed far greater attention generally.

As a consequence Parliament passed the Children Act 1989. This legislation addressed many of the issues highlighted by the Cleveland incident and in particular clarified the ways in which the law was to protect children. Chapter 4 will explain what the law says and how it relates to current social work practice, but in this chapter we need to explore the background to the Act. Why was the law changed? How does a law get changed? What kind of law is the Children Act 1989 and what other kinds of laws are there? How does legislation such as the Children Act 1989 operate so as to set boundaries but without interfering too much in everyday practice? More generally how can professional power be challenged and how does the law address infringements of people's rights?

We shall now address each of these questions in turn.

# How and why is the law changed?

The formal mechanism, whereby the law is changed, is best demonstrated by a diagram.



## How laws are made

This is the process whereby the law is changed. Perhaps a more interesting question is why laws change. In this case example, why was the Children Act 1989 passed?

## ACTIVITY 1.2

*Why do you think the law changes? What reasons can you suggest for changes in legislation such as the Children Act 1989?*

*Spend a few moments reflecting on this. The answer is not quite as obvious as it may appear. Clearly one could simply say that the law was changed because Parliament said so, but this task is asking you to think about why Parliament changed the law.*

*Who do you think may have exerted pressure on MPs? Whose interests were served by the introduction of the Children Act 1989? What are the wider and broader issues here?*

*If you have already studied some social policy, you may find it slightly easier to answer the question in a systematic way by looking at changes at different levels and related to different ideologies. Even if you have not done so, you should still be able to suggest people and institutions that were key agitators for change.*

We are not going to stray too much into the area of social policy, which is the academic discipline that tries to explain developments in the welfare state and social welfare legislation, but listed below are some suggestions as to why this Act was introduced. They are issues to think about and consider; there are no right and wrong answers here, simply matters of opinion. You'll find academics divided about the role law plays in social work, and whether it is always positive or beneficial. Listed at the end of this chapter are some suggestions for further reading in the area of social policy.

### Reasons for the introduction of the Children Act 1989

- Individual MPs took up the plight of parents in Cleveland who considered themselves falsely accused of child abuse, and pressed for a full investigation which eventually took the form of a judicial inquiry (DHSS, 1988). Those MPs then pressed for changes in the law along the lines recommended by the Inquiry Report.
- Lawyers acting for the parents and others involved in child care court proceedings seized on the events in Cleveland as a demonstration of the inadequacy of child care legislation. They influenced Parliament directly and indirectly through pressure groups such as the Law Society.
- Social workers and other child protection professionals shared a common concern about the extent to which they are expected to intervene in families. They welcomed the Cleveland Report and the clarity that would be obtained by the Children Act 1989.
- Pressure groups representing the interests of children and families likewise seized the opportunity to press for 'reform' and they would have been able to provide other case illustrations of the need for change through the media and through contact with government departments and MPs.

All of these explanations, and there may well have been others that you could suggest, relate to people acting as individuals and groups. If we examine wider spheres of influences, it is possible to suggest additional factors operating.

- There was a broad ideological division between those who saw social workers and other child care professionals as always knowing what is in the best interests of the child, ranged against those who saw a need for the powers of professionals to be curtailed. The Children Act 1989 can be seen as part of the move to challenge professional power by involving the courts more in decision-making rights throughout the process of assessment.
- There may have been political differences, between those who argue that it is a duty of the state to promote the welfare of children and therefore there ought to be extensive legal powers available to ensure this, contrasted with those who see the law as infringing parents' rights and duties to look after their own children. Those in the latter category see the law as relevant only in a very narrow range of cases where child abuse has clearly been proven.

At an even broader level, the Children Act 1989 may demonstrate something about the relationship between the family and the state. Some would interpret this as reflecting economic changes that require families to take greater responsibility for themselves and a diminution of the role of the state. According to this argument, curbing welfare professionals' power is necessary in order to reduce public expenditure and dependency on government officials such as local authority social workers (Clarke, 1993; Fox-Harding, 1997). Debates about the welfare of children are complex, and arouse deep feelings in people. Some believe that the extent of child abuse is grossly exaggerated, and find it particularly difficult to accept that there is extensive sexual abuse of children. Conversely, some would argue that the extent of abuse is seriously underestimated. Media portrayals of social work tend to adopt one of these two extremes, whereas policymakers and legislators need to take a balanced view and this is achieved through requiring courts to make the key decisions.

If you are unfamiliar with the broader explanations of law and social work do look at the list under Further Reading at the end of this chapter for ways in which you can extend your knowledge and understanding.

There are a number of other potential explanations that may have occurred to you. Do not worry if you failed to identify those enumerated here. What matters is not the number that you correctly 'guessed' but that you can now see why the law needs to be involved in social work and what it is anticipated that the law will achieve.

## What kinds of laws are there?

What kind of law is the Children Act 1989 and what types of law are there?

The difference between criminal law and civil law is familiar to most people. Criminal law is the law that provides sanctions or penalties for 'breaking' the law. It proscribes (prohibits) certain behaviour. If you steal, you commit a criminal offence. If you evade paying tax by not declaring something you know you must by law declare, you commit a criminal offence. If you break the speed limit, you commit an offence. All will result in some kind of punishment (penalty or 'sentence') – assuming you get caught, of course!

Civil law is about a legal wrong that results in harm to someone, for which they seek redress: recompense, compensation, matters put right, or some other course of action. It is not about punishment, so intention is often irrelevant. For example, you may unwittingly damage your neighbour's car when the tree in your garden falls on it. Or you may have caused injury to

livestock by accidentally leaving a gate open, or failed to pay a debt. If you are libelled, you can claim for the damage done to your reputation and your career prospects. If you took lots of photocopies of this chapter without permission you would be in breach of copyright and the publishers could sue you (so be warned)! If parental action or inaction results in *significant harm* to a child the courts can take steps to address this – this is exactly what the Children Act 1989 says, so the Children Act 1989 is an example of civil law. If central or local government fail to carry out their duties properly, the courts can declare them to be in error. Likewise compensation can be ordered by the courts if an employer fails in their obligations to their employees or a trader sells faulty goods, and so on.

The differences are summarised in this table.

*Table 1.1 Criminal law and civil law*

	<b>Criminal law</b>	<b>Civil law</b>
<b>Fundamental purpose</b>	prosecution	redress
<b>Referred to as</b>	R v Smith	Smith v Smith Ayrshire v Smith Re C.S. (a child)
<b>Outcome</b>	sentence/punishment	judgment or resolution by agreement
<b>Essentially about</b>	'breaking the law', threat to society, intention (technically called <i>mens rea</i> ) is important	tort – legal wrong, no intent need be proved, protection of vulnerable, defence from actions of powerful bodies
<b>Cases decided on (burden of proof)</b>	proof beyond reasonable doubt	balance of probabilities

In social work much of the law is civil law, and often it is implemented through tribunals rather than courts themselves. Tribunals are in effect specialist courts, dedicated to a specific purpose. For example, there are tribunals that hear appeals concerning registration of residential homes (Care Standards Tribunal) and Mental Health Review tribunals that decide on detention of patients under the Mental Health Act 1983.

One other key difference between laws is a difference between what is written down – which is what most people assume is 'the law' – and unwritten laws which are effectively principles and assumptions handed down over the years. These are the differences between statute law and common law.

*Table 1.2 Statute law and common law*

<b>Statute law</b>	<b>Common law</b>
written down laws: deal with specific topics (for example, local authority social services) or specific group of people (for example, the 'chronically sick and disabled'), can also be more general (for example, Race Relations Act 1976)	general unwritten rules which are commonly understood to be the law of the land: for example, the limits of the role of local authorities, rights of courts to intervene in what a local authority does, can fill the gaps between statutes
interpreted by reference to what the law actually says and how judges interpret what Parliament intended	interpreted by judges' reference to long-established unwritten rules and what has happened before
judges cannot change what statute law says but Parliament can	judges can change common law but statute law always overrides common law so ultimately authority lies with Parliament

Clearly the Children Act 1989 is an example of statute law, as is any law that is an Act of Parliament.

### ACTIVITY 1.3

Below is a list of criminal laws that are statute; criminal laws that are common law-based; civil laws that are statute; and civil laws that are common law-based. They are all mixed up. Fit them into the matrix below so that you end up with examples of laws that fall into all of these categories.

Do bear in mind that statute laws sometimes fall into the categories of both criminal and civil law, since they can contain provision for criminal and civil offences. An example would be the Protection from Harassment Act 1997 which creates the offence of harassment (section 2) and potential for injunctions to prevent harassment (section 3). In this exercise opt for the category that primarily or mainly applies to that law.

Here is a list of laws you have to fit into the matrix below.

*Chronically Sick and Disabled Persons Act 1970*

*Once found not guilty of an offence by the court a defendant cannot usually be retried*

*People who are accused of crimes are assumed innocent until found guilty*

*Actively assisting someone to commit suicide is murder*

*An employer's duty of care to employees*

*Failing to pay a TV licence fee*

*Failing to pay rent*

*All employees must be provided with a contract of employment*

*National Health Service and Community Care Act 1990*

*Crime and Disorder Act 1998*

*Family Law Act 1996*

*Spending money on a service which a local authority does not have statutory authority to provide means it is acting 'ultra vires'*

*Sexual Offences Act 2003*

*Care Homes Regulations 2001*

*Theft Act 1968*

Here is the matrix. Fit the laws listed above into the category of law that best fits or describes that kind of law.

	Statute law	Common law
Criminal law		
Civil law		

You will find the answers in Exercise Answers, p143.



## How does the law operate to set boundaries but without interfering too much in everyday practice?

We now need to explain some of the ways in which the law achieves its aims on a day-to-day basis. If you look at the Children Act 1989 you will find the law set out in very broad terms, with procedures outlined and guidelines, such as criteria by which courts decide cases, set out. For example, right at the start of the Act it tells us that in deciding children's cases the court must pay paramount consideration to the welfare of the child (section 1 Children Act 1989).

In this and other legislation, local authorities are given powers to provide services but the Act of Parliament itself does not necessarily say what those services should be. Part III Children Act 1989 empowers local authorities to provide services for children and parents, but does not make precise stipulations as to what the services might be. However, the Act does insist that certain categories of children are defined as being 'in need': principally children with disabilities.

There are a variety of mechanisms for putting the flesh on the bones, for providing instruction and guidance in addition to the Act, yet without telling social workers what to do in every single case. These mechanisms are statutory instruments, Circulars and Codes of Guidance.

### Statutory instruments

This is the general term for a variety of means of implementing laws. One such statutory instrument is the Schedules or Rules linked to a specific Act. These set out how an Act is to be implemented and are compulsory. For example, a social worker writing a report for a court explaining how a child came to be placed for adoption would follow the Family Procedure (Adoption) Rules 2005. Procedures adopted by tribunals about care standards in homes have to conform to the Protection of Children and Vulnerable Adults and Care Standards Tribunal Regulations 2002 (Care Standards Act 2000). The terms Rules, Regulations and Directions may be regarded as roughly interchangeable. They are all in effect the means (instruments) of implementing statutes (Acts of Parliament) and therefore must be obeyed in the same way as the Act itself must be.

They can be very important indeed. For example, the Mental Health Review Tribunal Rules set out the procedures for hearing cases where people are detained in hospital against their wishes and appeal for discharge. The Children Act 1989 Regulations cover a wide variety of matters, including placement of children and rules concerning allowing children on care orders to resume living at home with their parents (covered further in Chapter 4).

### Circulars and Codes of Guidance

Implementation of an Act of Parliament can also be achieved through:

- circulars from the relevant department which set out how legislation should be implemented: these do not have the full force of law;
- Codes of Guidance or Codes of Practice: these are likewise models of good practice rather than enforceable directions.

There are quite a large number of Circulars or Letters issued by the Department of Health: so many in fact that they are listed separately on the Department's website (address at end of chapter). Their main purpose is to set out arrangements whereby law and policy can be translated into practice, so much of it may be financial. However, their significance for social work practice must not be underestimated. In community care a number of Circulars set out the precise kinds of services that local authorities may offer to individuals (see Chapter 5 for examples). Collaboration between health authorities and local authority social services departments is often facilitated and enabled by Circulars.

Some Codes of Practice give precise guidance regarding procedures to be adopted in certain kinds of circumstances. For example, the Mental Health Act 1983 delegates to the Code of Practice advice on procedures to follow regarding assessment of potential hospital patients, transport arrangements and similar detailed (but important) issues. Likewise the Police and Criminal Evidence Act 1984 refers to a Code of Practice (section 66) which sets out procedures for interviewing suspects, detaining people, taking samples and the like. Social workers called to an interview at a police station would need to know what the Code of Practice says. The advantage of a Code of Practice is that it can be amended from time to time without changing the Act of Parliament on which it is based and from which it derives its authority.

Whether a Code of Practice is obligatory depends on its status. Some are more compelling than others: for example, those specifically issued under Local Authority Social Services Act 1970 are strongest. Section 7(1) 1970 Act states that local authorities shall *act under the general guidance of the Secretary of State*. This has been taken to mean that local authorities should not depart from the 'statutory' guidance (i.e. guidance issued under section 7(1) 1970 Act) without good reason. So it is important to be clear when looking at a Circular as to whether it is issued under the authority of this Act: it will usually say so right at the start.

The law clearly cannot tell social workers what to do in every particular case. It is probably best to regard the law as a framework within which there may be a series of additional frameworks: the Circulars, Codes of Practice or whatever. The social worker's employer may offer additional policy guidance, but inevitably much depends on the assessment of the individual circumstances and the social worker's professionalism. To clarify this it may be worth setting out some key principles underlying the law and this relationship to social work.

## Principles behind application of public law

- The group for whom services are provided needs to be identified, either specifically (for example, Chronically Sick and Disabled Persons Act 1970) or by interpretation (for example, the National Health Service and Community Care Act 1990 in practice applies to particular categories of people in need and the Children Act 1989 focuses on specific groups of children).
- If Parliament says action must be taken then the law applies to all, across the board. The duty cannot be refused on the grounds of difficulty, such as geographical isolation or lack of resources. The law also means what it says: for example, each local authority will have to appoint a Director of Children's Services when the Children Act 2004 is fully implemented (section 18 Children Act 2004). Duties cannot be delegated to another department although, if the law allows, services may be provided by other agencies, including those in the independent sector.

- There is a very sharp distinction between mandatory and permissive powers. In everyday language mandatory means must, permissive means may. In fact, the law rarely makes the provision of specific services as such mandatory, preferring to make provision of information about services compulsory (as in Chronically Sick and Disabled Persons Act 1970 and National Health Service and Community Care Act 1990). Permissive powers are important since without these, local authorities would not be able to do anything. A local authority needs to be empowered to act since local authorities can only act when and where the law says it can. This contrasts with the position of individuals who are free to do whatever they wish unless the law says that they may not. In short, local authorities can do nothing unless the law says they can (otherwise they are acting *ultra vires*, beyond powers). Individuals can do what they want unless the law says they cannot.
- Furthermore, social work providers must offer services and exercise their powers (if they have powers established by law), in accordance with anti-discrimination legislation. In Britain, this legislation has until recently only covered three areas: gender or sex discrimination, racial discrimination and disability discrimination. However, age discrimination in employment is now covered by regulations (Employment Equality (Age) Regulations 2006), as is sexual orientation, whilst legislation concerning religious discrimination and stirring up *religious hatred* (Part 2 of the Equality Act 2006; Racial and Religious Hatred Act 2006) awaits implementation – although in the meantime it should be noted that ethnic discrimination (that might apply to the term Jewish, for example) may be covered under the Race Relations Act 1976 and Public Order Act 1986.

It is not intended to cover anti-discriminatory legislation in detail in this book. You may be surprised to learn that much of this does not directly address everyday social work practice. This is simply explained. Social work legislation is essentially positive action directed towards groups who are often disadvantaged or discriminated against, such as people with disabilities. By contrast, anti-discrimination legislation in Britain primarily provides for sanctions against people or bodies who 'unlawfully' discriminate against someone. Cases are, with a few exceptions, confined to individual people who would claim to be the victims of discrimination. Employment has historically been the main focus. Legislation in Britain, in contrast to other countries, places the responsibility on the claimant to prove they were discriminated against, rather than offering a general obligation on all employers, for example, to treat people fairly.

However, the tide now appears to be turning. The Race Relations (Amendment) Act 2000 requires public bodies to work towards the elimination of unlawful discrimination and promote equality of opportunity and good relations between different racial groups. The Equality Act 2006, when fully implemented, will require the new Commission for Equality and Human Rights to encourage and support the 'development of a society in which people's ability to achieve their potential is not limited by prejudice or discrimination, there is respect for and protection of each individual's human rights, there is respect for the dignity and worth of each individual, each individual has an equal opportunity to participate in society, there is mutual respect between groups based on understanding and valuing of diversity and on shared respect for equality and human rights' (section 3 Equality Act 2006).

Much of this accords with key principles and values of social work, with its emphasis on anti-discrimination principles and anti-oppressive practice (Dalrymple and Burke, 1995; Thompson, 2001). Exactly how the new Commission will set about its task remains to be seen.

# C H A P T E R S U M M A R Y

This chapter set out a number of reasons as to why the law is important in social work. It was suggested that the law should be seen in a positive light, setting the framework within which social work operates. It then offered a case example of a major legislative change that took place in Britain in the late 1980s, namely the Children Act 1989. This resulted indirectly from the events in Cleveland where social workers were accused of acting over-zealously. As a consequence, the judicial inquiry into events in Cleveland set out many of the key principles that are now enshrined in the Children Act 1989. Among these is the accountability of social workers to the law, and as you will see in Chapter 7 the courts play a key role in this.

The chapter then went on to consider the way in which laws are passed, and raised for consideration the issue of why the law changes. You may wish to read further on this, and will certainly be expected to do so if your social work training includes social policy.

You were then introduced to different ways of categorising legislation, and the different ways in which legislation is enacted through statutory instruments and guidance. The chapter concluded with reference to the principles that underpin the operation of public law in Britain: public law meaning the law that concerns the operation of public bodies and the relationship between the state and the individual. This then brings us full square into the ambit of human rights, which is where the next chapter starts.

## FURTHER READING

To understand the purpose of law and law in context, it is essential to have some knowledge of social policy in relation to social work. One of the following will help.

**Adams, R** (2002) *Social policy for social work*. Basingstoke: Palgrave.

**Alcock, P, Erskine, A and May, M** (eds) (2003) *The student's companion to social policy* (2nd edition). Oxford: Blackwell.

**Fox-Harding, L** (1997) *Perspectives in Child Care Policy* (2nd edition). London: Longman.

**Lavalette, M and Pratt, A** (2005) *Social policy: theories, concepts and issues* (3rd edition). London: Sage.

## WEBSITES

To keep up-to-date with developments the following websites can be recommended:

Commission for Equality and Human Rights: [www.cehr.org.uk/](http://www.cehr.org.uk/)

Department for Education and Skills: [www.dfes.gov.uk/childrenandfamilies/](http://www.dfes.gov.uk/childrenandfamilies/)

Department of Health: [www.doh.gov.uk/](http://www.doh.gov.uk/)

Learning Matters: [www.learningmatters.co.uk/](http://www.learningmatters.co.uk/)

Legislation including statutory instruments: [www.opsi.gov.uk/legislation/uk.htm](http://www.opsi.gov.uk/legislation/uk.htm)

Ministry of Justice: [www.justice.gov.uk/](http://www.justice.gov.uk/)