

research  
in practice

# Managing and supervising legal literacy in adult social work

## An Evidence Scope

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## 1 Introduction

This evidence scope is part of the Legal Literacy: Change Project which aims to:

- > explore the topic of legal literacy in adult social care
- > co-create knowledge
- > fill some of the gaps in existing resources.

The evidence scope describes the concept of legal literacy and highlights how expectations and requirements have evolved in order for practitioners and their managers to confidently apply and comply with legal rules.

### **The evidence scope:**

- > describes what legal literacy is
- > presents the available evidence on legal literacy in practice, including how supervisors and operational and strategic managers can support its development
- > sets out the current policy and regulatory context.

Legal literacy is a requirement of all practitioners across adult social care. Social workers, occupational therapists and people working in adult social care need to know and engage in social care legal rules. The current evidence on legal literacy mainly covers the quality of decisions taken by registered social workers so, as a result, this scope focuses on this area. The regulatory requirement for social workers differs from other professions – however, much of the legislative backdrop is the same.

This evidence scope applies to England: Scotland and Northern Ireland have distinctive legislative systems. The legal rules for adult social care in Wales are increasingly diverging from those in England as a result of its National Assembly having legislative competence for social welfare. Similarly, the regulation of social work and requirements for social work education have evolved differently in the four UK nations.

## 2 Defining legal literacy

### What is legal literacy?

Legal literacy is defined here as **the ability to connect relevant legal rules with the professional priorities and objectives of ethical practice** (Braye and Preston-Shoot, 2016b).

Legal literacy begins with sound knowledge of relevant legal rules. These include **powers** and **duties** given by primary and secondary legislation and amplified by statutory guidance, alongside principles for decision-making drawn from administrative law. Administrative law is explored further in the **Show your workings: Making good decisions tool**.

Legal literacy also entails the skilled application of legal rules. This means identifying how real-world circumstances fit with the grounds for legal intervention, while also ensuring that human rights principles are maintained and weighing the balance between different possible courses of action. This is because deciding to invoke the law frequently requires the use of discretion in complex situations where the right decision might not be immediately apparent.

So, legal literacy involves integrating law (doing things right), ethics (doing right things) and human rights (rights-based thinking). Figure 1 below illustrates the dynamic between these three domains.

- > **Doing things right (technical legal knowledge):** Observance of the legal rules might be described as a concern to 'do things right'.
- > **Doing right things (professional ethics):** Ethics can be described as a focus on 'doing right things'.
- > **Rights-based thinking (human rights principles):** 'Rights thinking' roots practice in principles of human rights and equality.

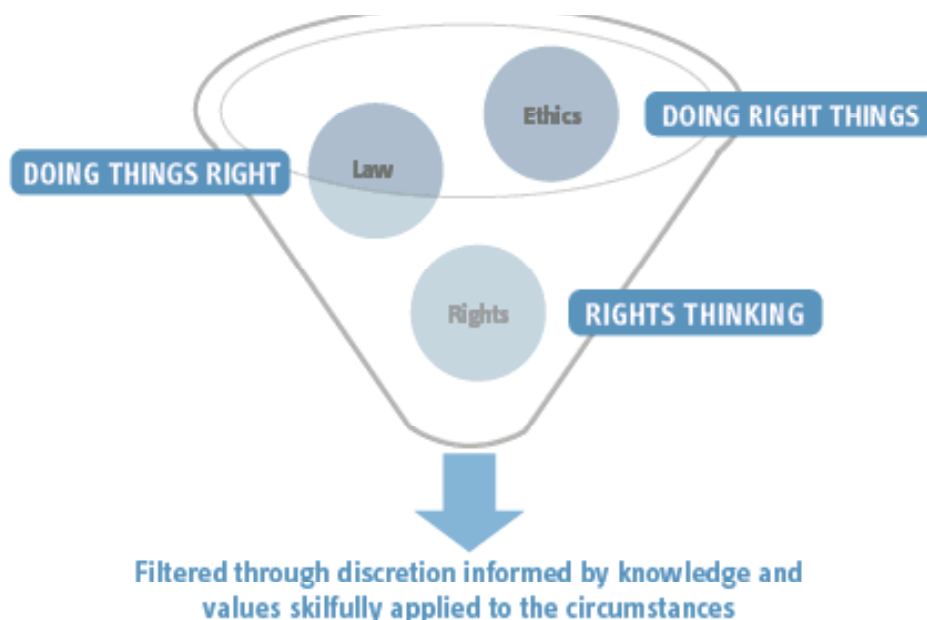


Figure 1:

### The concept of legal literacy

The concept of legal literacy in adult social care has its roots in longstanding debates about the relationship between law and social work, and has evolved over more than 40 years (Braye and Preston-Shoot, 2016b).

### 3 Evidence on legal literacy in practice

This section brings together evidence on how legal literacy works in practice. Drawing on research and other sources, such as regulators' reports and case reviews, it considers:

- > The evidence relating to legal literacy among practitioners, and the extent of their knowledge and confidence in practice.
- > The available evidence on how managers and supervisors can support legal literacy.

#### Practitioners' knowledge, skills and confidence in practice

##### Variations in knowledge and confidence

Some social work students and experienced social workers appear to experience the law as difficult and hostile, while others are both respectful and fearful of the legal rules (Braye et al., 2007). This unease would appear to be longstanding, with earlier studies finding evidence that social workers experience the legal framework as stressful (Jones et al., 1991) and as a hurdle to be overcome rather than a tool to be used constructively (Braye and Preston-Shoot, 1994).

The Social Work Task Force highlighted in 2009 that levels of legal knowledge and confidence in its skilled use was variable, with social workers often lacking basic legal knowledge needed to be effective. Although law is now a mandatory core part of initial social work education, many students have been found to lack confidence in their legal knowledge on qualifying, and in how to use it (Preston-Shoot and McKimm, 2012a, 2012b, 2013).

Recent evaluation of the Think Ahead fast-track mental health social work programme reported that the intensive preparation for practice had targeted learning and assessment effectively, for example on law (Smith et al., 2019). However, within an overall finding that the programme offered a rich and robust learning experience and preparation for practice, participants would have welcomed more teaching on law.

In 2014, the [House of Lords Select Committee](#) on the [Mental Capacity Act 2005](#), concluded:

*The presumption of capacity, in particular, is widely misunderstood by those involved in care. It is sometimes used to support non-intervention or poor care, leaving vulnerable adults exposed to risk of harm. In some cases this is because professionals struggle to understand how to apply the principle in practice. In other cases, the evidence suggests the principle has been deliberately misappropriated to avoid taking responsibility for a vulnerable adult.*

(Point 105)

##### Consequences of limited legal literacy

There is variability in how levels of risk are defined and the difficulties of quantifying risk assessment, which can result in defensive practice (O'Hare et al., 2013). Discussing the implications of the [Human Rights Act 1998](#) for social work practice, Williams (2001, 2004) observes that Convention rights should be at the heart of social work practice and that interventions in people's lives should be according to law, legitimate, necessary and **proportional**. However, Preston-Shoot (2010, 2011, 2019) draws on case law and findings by the Local Government Ombudsman to highlight where this is not the case using examples of unlawful, irrational, unreasonable and procedurally incorrect practice, all in breach of **administrative law requirements**.

A lack of challenge to organisational procedures and decisions, and a tendency to conflate rather than recognise the difference between law and agency policy has been identified (Braye, Preston-Shoot and Thorpe, 2007; Braye, Preston-Shoot and Wigley, 2013; Doel et al., 2010; McDonald et al., 2008; Rixon and Ward, 2012). Procedures can be thought of as creating perceptual and conceptual blinkers for social workers, whose practice is determined not by the law itself but by managers' interpretations of the law (Howe, 1986).

## Approved Mental Health Professionals

Decisions by Approved Mental Health Professionals (AMHPs, formerly Approved Social Workers – ASWs) to use powers under the *Mental Health Act 1983* to effect compulsory admission to mental health hospital have come under particular scrutiny. The organisational context in which ASW decisions take place may influence how the law is interpreted (Hatfield et al., 1992). A range of non-legal criteria has been found to influence decision-making, and account for its unpredictability (Peay, 2003); this may include practical consideration of whether viable alternatives are available (Quirk et al., 2003).

Implementing statutory duties has been found to increase stress and job dissatisfaction in ASWs (Evans et al., 2005). Exploring decisions by AMHPs, Buckland (2016) casts light on the socially constructed nature of the decision, which is influenced by individual conceptual understandings of mental health and treatment, by ethical considerations and legal criteria. Just as practitioners and managers may hold different ideas about 'autonomy and vulnerability', so too they might hold different constructs about mental health difficulties or risk (Morgan et al., 1999; Stone, 2018), leading to different responses in their work with people. Additional legal rules under the *Mental Capacity Act 2005* also influence AMHP's decision-making and these restrict arbitrary decision-making through requiring more empowering engagement with people (Campbell et al., 2018).

## Autonomy and mental capacity

A number of studies refer to the challenges practitioners face in balancing the autonomy or self-determination of a person with mental capacity, and a duty to safeguard that person from abuse or neglect (Keeling, 2017; Mackay et al., 2012; Stevens et al., 2017). Some studies discuss the different conceptualisations that practitioners may bring to definitions of autonomy and individual circumstances (Stevens et al., 2018). There is some evidence that the Deprivation of Liberty Safeguards are under-used (Liberty, 2013). Lennard (2015) reviews and explores possible reasons for this, although this is a sector-wide pattern not necessarily confined to social care professionals. Hubbard (2018), reflecting on the best interests assessor role, observes that it takes time (not just training) to understand and develop confidence in applying complex legal and procedural knowledge. This may explain some of the variability between those practitioners who are very knowledgeable about legislation and others who are uncertain about legal options, such as powers of entry (Norrie et al., 2018; Stevens et al., 2018).

## Personal orientations

Personal orientations to the law can also influence how legal rules are used, and some studies identified different approaches among practitioners and managers (McDonald, 2010). Research into early impact of the *Mental Capacity Act 2005* identified three different types of approach: legalistic, actuarial and rights-based (McDonald, 2010). Referring to rational/technical, moral/ethical and rights-based orientations to practice Braye and Preston-Shoot (2016a, 2016b) argue that defensible decisions require a blended approach that considers what these orientations might offer to the demands of each unique set of circumstances.



## Learning from ‘non-statutory’ placements

In exploring concerns about the range of ‘non-statutory’ practice settings that social work students are provided, Scholar et al. (2012) conclude that:

- > Legal literacy is one of three key skills on which non-statutory placements can focus in order to prepare social work students for statutory roles.
- > More work is required to ensure students become familiar with the ways in which legislation is translated into policy and practice in settings where law may be implicit rather than explicit.
- > More work is required to identify circumstances in which social work students can use the law.

## Legal literacy is valued by social workers

There is evidence that legal literacy is a competence that social workers value (Manthorpe and Samsi, 2013). Some researchers have found that the law explicitly informs social workers’ decision-making and is a constant reference point. For example, decisions by best interest assessors under DoLS were found to be rooted in the principles of the legal safeguards and informed by an appreciation of case law (Carpenter et al., 2014). They also found that the practitioners were generally confident in their judgments.

In a study of approaches to self-neglect work that had achieved positive outcomes, legal literacy was identified by practitioners and managers as a key contributor to successful practice along with:

- > trust in relationships
- > a focus on ‘finding’ and understanding the person
- > creative interventions
- > effective multi-agency working.

(Braye et al., 2014)

Research has been carried out into an early intervention service for people who self-neglect (Anka et al., 2017). The following statutory adult safeguarding duties introduced under the **Care Act 2014** apply in this context:

- > preventing and delaying the need for care and support
- > promoting wellbeing.

The study provided evidence of preventative, outcome-focused, **strengths-based** and relationship-based work within the new legal context. Equally, research into implementation of the **Care Act 2014** requirement for **Making Safeguarding Personal** found evidence of wide roll-out of training, with implementation of Making Safeguarding Personal being strongly driven by practitioners, who saw it as a welcome return to core social work values (Briggs and Cooper, 2018).

## Legal literacy and non-social care practitioners

There is some evidence that legal literacy is also helpful to those outside adult social care when referring people to the local authority. In a study of early progress in meeting the care and support needs of homeless people under the **Care Act 2014**, practitioners reported harnessing the language and terminology of the Act to optimise the likelihood of their referrals being accepted by statutory adult social care (Mason et al., 2017-18). They were able to ‘frame their advocacy’ and articulate needs with ‘greater structure and clarity’. Equally, they found that referring to the safeguarding duties of the Act helped secure local authority acceptance of referrals. The researchers conclude that practitioners were coping with legal change by seeking ‘to become legally literate, building the skills, knowledge and professional values associated with understanding and interpreting the law’.

## Safeguarding Adults Reviews

Absence of legal literacy is a common theme in [Safeguarding Adults Reviews](#) (Braye et al., 2015a, 2015b; Braye and Preston-Shoot, 2017; Preston-Shoot, 2017), where it is sometimes framed as a failure to:

- > identify a concern as a safeguarding issue
- > apply carers' legislation or mental health law, or
- > consider all possible relevant routes to intervention.

The most common area for development is in application of the [Mental Capacity Act 2005](#). Failure to conduct a mental capacity assessment is often noted, particularly in cases of self-neglect, where capacity is assumed rather than tested; or an assessment fails to consider the extent of the person's decision-making ability (for example, as noted in [Plymouth Safeguarding Adults Board's review of Ruth Mitchell's death](#) – PSAB, 2017).

Variable knowledge of [mental health law](#) has also been highlighted, with reviews concluding that a better understanding of all legal options is required (Preston-Shoot, 2018). The evidence here points to misunderstandings about the Act and how it should be applied, and to broader concerns about the extent to which decision-making considers a wider range of legal rules.

## Case law and Local Government Ombudsman reports

A number of Court of Protection cases have highlighted failures to properly assess capacity. They have also identified issues around when local authorities should apply to the court where there are disputes, covered in cases such as:

- > [London Borough of Hillingdon v Neary \[2011\] EWHC 1377 \(COP\)](#)
- > [Essex County Council v RF & Ors \(Deprivation of Liberty and damage\) \[2015\] EWCOP 1](#)
- > [Milton Keynes Council v RR & Ors \[2014\] EWCOP B19](#)
- > [Somerset v MK \(Deprivation of Liberty: Best Interests Decisions: Conduct of a Local Authority\) \[2014\] EWCOP B25](#)

When to refer to court is sometimes absent from guidance that social workers could be expected to consult – for example, [Care Act 2014 statutory guidance](#) (DHSC, 2018a).

The Local Government Ombudsman has similarly noted issues with using the [Mental Capacity Act 2005 and Deprivation of Liberty Safeguarding](#):

- > Not carrying out (or delaying) assessments to determine whether someone has the capacity to make decisions for themselves.
- > Decision-making when deciding on someone's best interests.
- > Not involving friends and families in decision processes.
- > Depriving people of their liberty in care homes without the proper assessments being carried out. (LGSCO, 2017)

## Reviews of adult social care

Reviews find that many people are receiving good and safe care, underpinned by dedication from adult social care practitioners and which complies with the relevant legal rules (CQC, 2018a; 2018b; DHSC, 2018b). However, CQC (2018a; 2018b) has also reported that adult social care is characterised by:

- > too many people receiving fragmented and inadequate assessments and care and support services
- > services built around organisational targets and priorities rather than people's needs
- > rising levels of unmet need and care being provided to fewer people with increasingly complex needs.

As well as examples of good practice, reviews identify uneven use of DoLS and advocacy (with implications for people's human rights), coupled with low awareness and use of the core principles of the *Mental Capacity Act 2005* (CQC, 2018a, 2018b).

It remains to be seen whether, when implemented, the *Mental Capacity (Amendment) Act 2019* will lead to improvements in legally literate practice through the introduction of Liberty Protection Safeguards and the role of the Approved Mental Capacity Professional. It is likely that strong, legally, ethically and organisationally literate leadership is necessary to maintain a culture of compliance with legal rules, to promote equality and human rights, and to support practitioners to remain resilient, creative and resourceful.



## 4 Evidence on how supervisors and managers support the development of legal literacy

The need to support practitioners with implementation of legal powers and duties is recognised in the literature. However, although research identifies the importance of local authorities supporting practitioners to uphold people's rights, it is less specific on:

- > exactly who should be providing that support
- > how it should be offered
- > how managers themselves are supported to develop both their own and their supervisees' legal literacy.

Some studies have also questioned the legal literacy of managers themselves, identifying that they are more likely to refer to agency procedures and requirements than to law (Norrie et al., 2018; Skinner and Whyte, 2004).

### Training and continuing professional development

Training features prominently in efforts to enable adult social care employees to appreciate how legal rules govern decision-making and to manage their anxiety about using statutory powers. However, its effectiveness is sometimes called in to question. Campbell and Chamberlin (2012) found an absence of research evaluating the impact of training on employee knowledge and understanding of legislative provisions. They concluded that knowledge was below expectations and that 'carefully designed verification of the impact' of training was required.

Another study (Pike et al., 2011) concluded that **training** improved participants' knowledge only by 20 per cent. The Institute of Public Care's (2013) evidence review of adult safeguarding found people were not following procedures consistently, and reports a lack of robust evidence about how best to equip practitioners with the knowledge and skills to respond effectively. Others have noted the lack of training in particular aspects of legal intervention – for example, in recognising and responding to situations of financial abuse (Phelan et al., 2018).

On its own, training is unlikely to be enough to ensure legally literate practice. The following offer opportunities to revisit legal knowledge, explore interpretation of legal rules, share responsibility for risk assessment, and maintain confidence:

- > supervision
- > the provision of online resources
- > opportunities to discuss complex situations in meetings attended by practitioners in specialised roles who can share their expertise.

(Manthorpe and Samsi, 2013; McDonald, 2010).

Training can increase practitioners' legal literacy, and enhance their confidence and capability in applying the law to practice (Hubbard, 2018).

However, support is also necessary (Hubbard, 2018). In identifying how practice can disempower people with care and support needs and constrain their procedural rights, Mackay (2012) observes that AMHPs need to be supported to uphold such rights and to follow procedures correctly. This suggests that if the knowledge and skills acquired through training are not further reinforced in supervised practice, any gains are likely to be modest and/or deteriorate over time (Braye and Preston-Shoot et al., 2005). Initial and sustained continuing professional development is required to meet the challenges of keeping up-to-date with legislation and of interpreting legal rules that can be experienced as confusing or difficult to apply (Manthorpe and Samsi, 2013).

### **Practitioner anxiety**

A number of studies comment on the impact on people of working in challenging circumstances in direct practice. Some people may experience anxiety when assessment involves multiple variables, incomplete information and the possibility of adverse outcomes (Mackay et al., 2012; McDonald, 2010). This may lead to risk-averse practitioners (Stone, 2018) and previous negative experiences of using the law may deter people from considering legal options (Norrie et al., 2018).

Anxiety may also be compounded by workplace features, for example:

- > The use of IT systems that do not allow separate capacity issues to be recorded can be a source of anxiety for practitioners, who were aware of the evidentiary weight attached to records (in this research recording of capacity was located under 'mental health' or risk domains) (McDonald, 2010).
- > The impact of high workloads on investigations of financial abuse (Phelan et al., 2018).

As well as making adjustments in practice, managers and supervisors may therefore also need to facilitate adjustments in the workplace systems that support practice.

### **Managerial oversight and 'quality assuring' practice**

A theme emerging from safeguarding adult reviews is a lack of management scrutiny of key decisions, such as risk management plans or deciding to stop working with someone (Braye and Preston-Shoot, 2017; Preston-Shoot, 2017, 2018).

Occasionally, managers, people in specialist roles and lawyers are explicitly named as having responsibility to support practitioners in complex assessments. An explicit part of their role is to ensure balanced consideration of the circumstances by encouraging reflection on the conceptualisations and orientations that are influencing how a person's situation is seen, and therefore what options are favoured (Ruck Keene et al., 2015; Stevens et al., 2018). Manthorpe and Samsi (2013) refer to the benefits when those in expert or advisory positions offer detailed legal updates or case discussions; Norrie et al. (2018) note the value of team and peer discussions; and Williams (2004) refers to supervisors' involvement in exploration of the ethical hierarchies that practitioners bring to their direct practice.

McDonald (2010) suggests managers should be concerned with quality assuring practice and overseeing how decisions are reached. Ruck Keene et al. (2015) identify the importance of having proper support from legal services and time to bring 'forensic rigour' to direct practice work. By this they mean adopting a rigorous process (involving senior managers and lawyers) to ensure that:

- > the evidence on which reliance is placed is clear and logical
- > information sources are reliable
- > balanced consideration has been given to the person's circumstances
- > concerns have been shared with other parties where safe to do so
- > any application to the court is properly framed.

Strategic and operational management support is especially necessary in situations where people are enmeshed in complex social or family networks, where access is being prevented (Phelan et al., 2018; Ruck Keene et al., 2015).

## **Supervision**

Preston-Shoot (2019) and Stone (2018) reiterate the importance of supervision and managerial support in enabling social workers to reflect on how they understand a particular situation, including foreseeable risks, thereby opening up possibilities rather than excluding options from consideration. Supervision is essential when enabling practitioners to articulate their decision-making clearly. Managers may need to remind other agencies of their obligations, such as the duty to cooperate, and to promote work allocations that prioritise practitioners' skill sets and experience (Norrie et al., 2018).

While the studies described above recognise the importance of managerial and supervisory support for legal literacy, they do not provide extensive evidence of managers' and supervisors' experience of providing such support, or the effectiveness of resources that support them to do so. Research exploring how managers of newly qualified social workers combine both managerial and professional functions highlights a lack of attention in the literature to the experiences of social work line managers generally (Manthorpe et al., 2014).

Research in adult social care teams identified that, despite management attempts to direct practice, professionals retained considerable discretion in their decision-making (Evans, 2011). This suggests that managing and supervising legal literacy may be something of a challenge. A high proportion of practice takes place out of sight of supervisors and managers. Practice often also involves decisions about whether and when to exercise discretion afforded by the legal rules, and how to balance rights against risks where certainty about the right outcome, or way forward, may not be obvious.

Supervisor and managerial oversight is crucial to ensure that:

- > decision-making is defensible in law
- > professional autonomy and discretion have been exercised reasonably and rationally, drawing on evidence and knowledge, to reach what has been described as a position of safer uncertainty. (Mason, 2019)

## 5 Conclusion

Although requirements of legal knowledge and skills have ranged across all levels of adult social care practice, most attention has been paid to articulating what practising social workers need to know. So, as the concept of legal literacy has developed, attention has tended to focus on continuing professional development for social workers. There has been less consideration of how operational and strategic managers might keep their legal knowledge up-to-date, and on how legally literate practice can be supported and enhanced through supervision and in other ways.

A range of valuable resources on which operational and strategic managers can draw to consolidate and update their own legal knowledge, and to support legal literacy across their organisations, exists. These include resources specifically for supervisors and managers, which can be used to ensure reflective and robust exploration and oversight of decision-making. See the *Legal Literacy: Change Project* [additional resources](#).

Evidence from [Safeguarding Adults Reviews](#) highlights that resources to support practice (procedures, guidance, supervision and access to specialist expertise) are not always utilised. This suggests challenges exist for managers and supervisors in identifying resources that can be used to develop legal literacy among supervisees, in ensuring defensible decision-making, and embedding the resources that already exist in day-to-day supervisory and managerial practice.

There are a number of challenges in embedding legal literacy, including a perceived lack of time for supervision and reflection in the context of demanding and increasingly complex work and other organisational pressures. Efforts to embed legal literacy are most likely to be effective within the context of a whole system approach (Preston-Shoot, 2019), with leadership from practitioners, supervisors, operational and strategic managers and elected representatives. [The Legal Literacy: Change Project resources](#) have been designed to support the embedding of legal literacy across organisations.

## Appendix 1: The policy and regulatory context

This Appendix reviews:

- > current and recent national statutory and advisory guidance (see note below) on the knowledge and skills of social workers and the extent it covers legal literacy
- > national guidance on the role of managers and supervisors in supporting supervisees' development of legal literacy.

### Expectations of social workers

*Knowledge and Skills Statement for Social Workers in Adult Services*

**The Knowledge and Skills Statement for Social Workers in Adult Services (KSS)** (Department of Health, 2015) does not refer specifically to legal literacy, it sometimes *implicitly* includes legal literacy when outlining expectations – for example, when referring to social workers' ability to:

- > complete assessments
- > plan personalised and integrated care
- > make best use of available resources.

It also specifies the role of social workers:

- > In demonstrating social work principles through professional judgment and decision-making.
- > Being able to recognise situations where liberty is being deprived and knowing how to respond.
- > Making appropriate use of whistleblowing provisions.

The statement is more explicit about the legal underpinnings of practice, such as when acknowledging that the **Care Act 2014** places the wellbeing principle at the centre of social work practice. It specifies that social workers should be able to:

- > discharge their legal duties with respect to person-centred practice and safeguarding
- > understand and work within legal frameworks, including the **Mental Capacity Act 2005**, **Mental Health Act 1983** and **Care Act 2014**.

The law is given greatest prominence where the statement focuses on mental capacity. It specifies the role of social workers in:

- > having 'a thorough knowledge' of the **Mental Capacity Act 2005** and the accompanying **Code of Practice** (DCA, 2007)
- > being 'able to apply these in practice', including understanding how to complete a lawful assessment and when to refer to a best interests assessor.<sup>1</sup>

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<sup>1</sup> The **Mental Capacity (Amendment) Act 2019** will, when implemented, introduce Liberty Protection Safeguards and the role of the Approved Mental Capacity Professional.

## HCPC Standards of Conduct and Proficiency

The **Health and Care Professions Council** (HCPC) held responsibility for the regulation and registration of social work in England between 2012 and 2019 and continues to hold this responsibility for occupational therapists and other health and care practitioners. The HCPC *Standards of Conduct, Performance and Ethics* (HCPC, 2016) refer explicitly to law in outlining that registrants need to keep up-to-date with, and follow, legal requirements and that disclosure of information might be necessary when the law (now the *Data Protection Act 2018*) allows. The standards also state:

- > Records should be accurate and held securely.
- > Confidentiality should be respected and consent for assessments and provision of care and support obtained.
- > It may be necessary to report concerns about the safety or wellbeing of people with care and support needs.
- > That registrants must:
  - ensure their knowledge and skills are current
  - work in partnership with people with care and support needs, carers and other professionals
  - challenge discrimination
  - provide accessible information.

The HCPC *Standards of Proficiency* for social workers (HCPC, 2017) explicitly referenced the law in requiring registrants to understand current legislation and to practise within legal boundaries, including safeguarding and exercising authority within legal frameworks. They stated social workers:

- > must understand the development and application of legal rules
- > be aware of applicable health and safety legislation
- > uphold the rights of people with care and support needs, and of carers.

In other respects, law and legal literacy were implicit – for example, in the requirements to:

- > keep knowledge and skills up-to-date
- > take account of inequality and discrimination
- > practise in non-discriminatory ways
- > maintain (but know the limitations of) confidentiality
- > practise safely
- > undertake and respond to risk, need and capacity assessments
- > reach reasoned professional judgements
- > assist people to exercise their rights.



## Social Work England

**Social Work England** became the regulatory body for social work in December 2019. Its **professional standards** (2019a) require social workers to:

- > handle confidential information in line with the law
- > avoid using forms of electronic communication unlawfully or unethically
- > respect and promote human rights
- > enable access to advocacy
- > balance rights with risks.

**Guidance on the standards** (Social Work England, 2019b) is more explicit, outlining the social worker's role in:

- > knowing the law
- > complying with legal frameworks
- > protecting and promoting people's rights.

These requirements are explicitly linked to legal frameworks relating to advocacy, privacy and confidentiality, responding to harm, neglect and/or abuse, and reporting concerns about wrongdoing or unsafe practice under the *Equality Act 2010*, the *Data Protection Act 2018*, the *Care Act 2014*, and the *Human Rights Act 1998*.

## Professional Capabilities Framework

The **Professional Capabilities Framework** (British Association of Social Workers (BASW), 2018) focuses on the values, knowledge and skills expected of social workers at different points in their careers and when occupying different roles and responsibilities. It begins with entrants to the profession and then spans the knowledge, skills and attitudes expected of newly qualified social workers, social workers, experienced social workers, advanced social workers and strategic social workers. There is a strong emphasis on supervision, promoting human rights, challenging inequality and discrimination.

Expectations increase incrementally as social workers journey through their career. During qualifying social work education, students are required to:

- > develop an understanding of how the law informs and mandates social work practice
- > begin to challenge discrimination and apply the law
- > use a variety of frameworks to assess, plan and review work with people
- > demonstrate initial skills in report writing and recording
- > recognise the importance and use of supervision.

Newly qualified social workers are required to:

- > demonstrate and apply the legal framework
- > recognise where there is scope for professional judgment and, in exercising it, apply legal reasoning and use professional legal expertise and advice appropriately.

As social workers acquire more experience, they are expected to:

- > apply the law to protect and advance people's rights and entitlements, including highlighting where interpretations of the law are neither 'proportionate or fair to promote autonomy and self-determination'
- > challenge interventions that are unlawful
- > communicate legal issues to other professionals
- > promote access to advocacy
- > use different legal mandates to achieve the best outcomes for people
- > draw on other areas of knowledge to work in partnership and apply ethical reasoning to practice.

## Expectations of managers and supervisors

### The Knowledge and Skills Statement for Social Workers in Adult Services (KSS)

The Knowledge and Skills Statement (KSS, 2015) reinforces the support that managers and supervisors should provide. Social workers need access to regular, good quality supervision. The section on supervision does not explicitly refer to legal knowledge and skills, but it is implicit – for example, in references to reaching reasoned conclusions and recommendations in relation to situations involving mental capacity, mental health and safeguarding.

The statement outlines that practitioners should be able to fulfil their statutory responsibilities confidently, working effectively within legal frameworks such as the *Human Rights Act 1998*, *Equality Act 2010*, *Care Act 2014*, *Mental Capacity Act 2005* and *Mental Health Acts 1983 and 2007*, and any accompanying guidance and codes of practice.

More recently, following a [national consultation](#) (DHSC, 2018d) the DHSC has published *Post qualifying standards for Practice Supervisors in adult social care* (DHSC, 2018c). They emphasise the supervisor's role in supporting legal literacy development in those they supervise. Practice supervisors are required to:

- > [Play a key role in] 'implementing a framework for effective social work practice, underpinned by social work values, theory, research, contemporary social work models and methods and the legislative framework' (p. 5).
- > '... promote and enable social workers to adopt a positive approach to managing risk which is underpinned, where necessary, by relevant legislation' (p. 8).
- > '... secure, maintain and model a current and working knowledge of the legislative framework, particularly the *Care Act 2014*, the *Mental Capacity Act 2005* and mental health legislation and its related case law ... [and] ensure that practice is lawful and seek legal advice when required' (p10).
- > '... ensure practitioners understand the legal, regulatory, procedural and performance framework within which they operate and within which they are held accountable' (p. 11).

## Local Government Association Standards for Employers of Social Workers

There are **eight standards** for the support of social workers (LGA, 2014). In these are recommended requirements to ensure:

- > sufficient numbers of social workers, with the right levels of knowledge and skills, to meet service demands
- > practitioners can maintain their professional registration
- > practitioners can practise safely and effectively
- > practitioners receive regular and appropriate supervision.

The standards require practitioners, managers and supervisors to have:

- > a sound knowledge of good social work practice, including the research underpinning it, and
- > a supportive environment that:
  - focuses on health and safety and includes an annual ‘health check’ of practice conditions and the working environment
  - enables a culture of reflective, challenging, consistent and rigorous supervision within explicitly specified frequencies (dependent on the practitioner’s level of experience)
  - enables the raising of concerns
  - enables appropriate professional judgments to be made
  - enables access to legal advice
  - enables regular training for supervisors
  - protects employees from the risks associated with high direct practice workloads and ‘unallocated cases’.

## HCPC Standards of Conduct and Proficiency

Some managers and supervisors will have been registered professionals with the HCPC during its period of functioning as social work’s regulatory body. **Standards of conduct, performance and ethics** (HCPC, 2016) and proficiency (HCPC, 2017) were generic and did not distinguish between job roles, although managers must provide appropriate supervision and support for the people for whom they are responsible. All registrants must recognise the value of supervision and use it to enhance the quality of social work practice (HCPC, 2017).

## Social Work England Standards

Since December 2019, some managers and supervisors will be registered professionals with Social Work England. The professional standards (Social Work England, 2019a) are generic and do not distinguish between job roles.

## Professional Capabilities Framework

The **Professional Capabilities Framework** (PCF, BASW, 2018) sets out expectations of the knowledge, skills and attitudes of advanced level and strategic social workers, likely to be those in management or supervisory roles. The emphasis is not only on legal knowledge, but also on the ability to ensure practice is compliant with the legal rules through the provision of:

- > supervision
- > legal expertise
- > social work advice.

As with social workers at earlier points in their career, there is an expectation that advanced and strategic social workers will draw on other types of knowledge, but the focus is on creating a learning organisational environment that supports practitioners to:

- > meet regulatory and registration requirements
- > promote the application of social work values
- > manage ethical dilemmas (such as balancing a person's autonomy and self-determination with safeguarding responsibilities)
- > challenge discrimination
- > reach evidence-informed decisions.

The leadership of advanced and strategic social workers involves the use of a human rights and ethical framework to support complex decision-making. The PCF requires that they:

- > respond to changes in legislation
- > ensure compliance with health and safety legislation
- > create an organisational culture that works in partnership with advocates.

### A note on the status of guidance

Health and Care Professions Council requirements of registered professionals (HCPC, 2016, 2017) had statutory force, as do the requirements now set out by **Social Work England** (2019a). The **Knowledge and Skills Statement for Social Workers in Adult Service** (Department of Health, 2015) is not mandatory. The **Professional Capabilities Framework** and the **Standards for employers** (LGA, 2014) do not have statutory force.

## Appendix 2: Connecting legal literacy with other literacies

Effective legal literacy depends on a supportive organisational context and on the ability of practitioners' managers and supervisors to:

- > develop knowledge and skills in using a range of legal mandates
- > draw on other literacies to support sound professional decision-making.

Preston-Shoot (2019) developed a framework that suggests effective social work practice, supervision and management should draw on eight literacies:

<b>Legal literacy</b>	<ul style="list-style-type: none"> <li>&gt; Were legal options known and considered?</li> <li>&gt; Is law visible in how social workers and their managers and supervisors talk about a case?</li> <li>&gt; Is practice compliant with the legal rules?</li> </ul>
<b>Ethical literacy</b>	Is there evidence of reflective and critical consideration and application of values – for instance, when balancing autonomy and a duty of care?
<b>Professional literacy</b>	Is there evidence that the requirements of codes of ethics and conduct were understood and applied?
<b>Knowledge literacy</b>	Did practitioners and managers draw on different sources of knowledge, including research findings, and apply these?
<b>Organisational literacy</b>	Do agency and inter-agency procedures, cultures and decision-making encourage questioning and make error less likely?
<b>Relational literacy</b>	Did social workers engage with people's biographies and lived experience, sharing concerns and perspectives with them, demonstrating professional curiosity, care and appropriate challenge?
<b>Emotional literacy</b>	How well did those involved manage stress, anxiety and emotional dilemmas?
<b>Decision-making literacy</b>	Were the principles of administrative law embedded in practice and supervision – for example, to ensure timely decision-making that gave balanced consideration to all available information, reach reasonable and rational conclusions, and provide reasons for decisions?

Given social work's longstanding commitment to the promotion of human rights and social justice (IASSW and IFSW, 2014), practice also needs to demonstrate structural literacy. Levels of inequality are increasing for disabled people and people from ethnic minority backgrounds (Equality and Human Rights Commission, 2018). So, whether commissioning services to respond to the needs of disabled people or individuals experiencing multiple exclusion (for example, homelessness), or completing assessments and putting together care and support packages, it is important to reflect on what focus is being given to the impact of poverty, oppression and discrimination.

## Appendix 3: Methods

The evidence in this scope is drawn from published research about the profile and outcomes of law teaching in social work education, and about the visibility, use and outcomes of law in social work practice, Safeguarding Adults Reviews, national guidance and other resources, and is set within a policy and regulatory context. The approach taken has been to identify:

### a) Material located in relevant policy documents

- > Searches on the websites of relevant organisations, such as Department of Health and Social Care, Health and Care Professions Council, British Association of Social Workers, Local Government Association, Care Quality Commission, and the Association of Directors of Adult Social Services.
- > Following links to key documents mentioned on those websites, but hosted by other organisations.
- > Drawing on key documents such as the *Professional Capabilities Framework* and the *Knowledge and Skills Statement for Social Workers in Adult Services*.

### b) Material published in academic journals in the field

- > Searches on three relevant databases (Scopus, Web of Science and Social Care Online) using keyword combinations of 'legal literacy' / 'law' / 'legal' / 'legisl\*' combined with 'social work' / 'adult social care' and 'supervision' / 'learning'.
- > Hand-searches of a small selection of highly relevant journals, including *British Journal of Social Work*, *Journal of Social Work*, *Journal of Adult Protection*, *Health and Social Care in the Community*.
- > Citation tracking to source relevant work cited by others that had not been otherwise identified.

The material was read to determine its relevance to the topic, with some sources excluded on that basis. Relevant sources were then subject to thematic analysis using the framework drawn from the aims of the evidence scope: the concept of legal literacy, its development in adult social care, legal literacy in practice and available resources.

This evidence scope differs from a systematic review. While searches were carried out systematically, they were designed to give a flavour of the range and nature of the evidence and as such were not exhaustive - it is possible that additional material exists. Equally, the quality of the evidence found has not been evaluated.



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