

research
in practice

Managing and supervising legal literacy in adult social work

An Evidence Scope - Executive Summary

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Introduction

This evidence scope is part of a Change Project seeking to promote legal literacy across adult social care. As the concept of legal literacy has its roots in social work (Braye and Preston-Shoot, 2016b), and much of the evidence to date resides in social work practice, the focus is on social work with adults in England.

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.

Defining legal literacy

Legal literacy is defined as the ability to connect relevant legal rules with the professional priorities and objectives of ethical practice (Braye and Preston-Shoot, 2016b). It requires the exercise of professional discretion that integrates three key domains:

- > Technical legal knowledge – enabling social workers to ‘do things right’.
- > Professional ethics – enabling social workers to ‘do right things’.
- > Principles of human rights – leading social workers to use ‘rights thinking’.

(Braye and Preston-Shoot, 2016a)

Evidence on legal literacy in practice

A range of sources provide evidence on how legal literacy works in practice:

- > Care Quality Commission reviews point to fragmented services, inadequate assessment and provision, rising levels of unmet need and uneven implementation of legal rules (CQC, 2018a; 2018b).
- > Absence of legal literacy is a common theme of **Safeguarding Adults Reviews**, (Braye et al., 2015a, 2015b; Braye and Preston-Shoot, 2017; Preston-Shoot, 2017), which highlight a need to better consider legal routes for intervention, identify safeguarding needs, apply carers’ legislation, mental health law and mental capacity law.
- > Case law (see **full evidence scope**) and Ombudsman judgments highlight failures to properly assess capacity and to apply to the Court where there are disputes (LGSCO, 2017).

Key findings from research studies that consider practitioners' knowledge, skills and confidence include:

- > Legal knowledge is variable and many practitioners lack confidence in using it. Although law is now a mandatory part of social work training, many students appear to lack confidence in their legal knowledge on qualifying.
- > The law is often experienced as difficult and hostile rather than as a tool for practice. This can be so for experienced practitioners as well as students or newly qualified social workers.
- > Practitioners may conflate legal rules with agency policy which can mean constraints that policy places on practice are left unchallenged (Braye, Preston-Shoot and Thorpe, 2007; Braye, Preston-Shoot and Wigley, 2013; Doel et al., 2010; McDonald et al., 2008; Rixon and Ward, 2012).
- > Studies in the fields of mental health and mental capacity demonstrate variability of decision-making within the context of very specific legal rules. More teaching on law is called for by those preparing for such specialist roles (Smith et al., 2019).
- > Personal orientations can influence how legal rules are used (McDonald, 2010).
- > Research suggests social workers do value legal literacy, and for some it is a constant reference point (Manthorpe and Samsi, 2013). The *Care Act 2014* is seen as providing a favourable context for strengths-based practice and a return to core social work values.
- > There is some evidence that legal literacy is also helpful to those outside adult social care, in particular in helping them to refer people appropriately (Mason et al., 2017-18).

Evidence on how supervisors, managers and organisations support the development of legal literacy

The need to support practitioners in implementing legally literate practice is recognised in the literature, but there is limited evidence on who provides that support or how it should be provided, or on what support managers and supervisors themselves receive to promote this aspect of the organisation's practice.

Organisations appear to rely heavily on training, but there is evidence to suggest that **training transfer** – the transfer of legal knowledge into the workplace – is not straightforward. If knowledge and skills are not reinforced in supervised practice, for example, gains may be modest or not endure (Braye and Preston-Shoot et al., 2005).

On its own, training is unlikely to be enough to ensure legally literate practice. Supervision, the provision of online resources, and enabling practitioners to discuss complex practice in meetings (with expert input) all offer opportunities to explore the interpretation of legal rules and to develop and maintain confidence (Manthorpe and Samsi, 2013; McDonald, 2010).

Overall, the evidence suggests that a legally literate organisation is one that:

- > Understands the nature and importance of legal literacy, in particular the integral relationship between knowledge of legal rules, professional ethics and a commitment to upholding rights.
- > Recognises that it takes time to develop confidence in understanding and applying complex legal knowledge, and that this is an ongoing and career-long undertaking.
- > Recognises that training on its own – important though this is – is unlikely to be enough to secure and embed legal literacy, and that practitioners need ongoing and sustained support, for example through supervision.
- > Is committed, even in the face of organisational pressures, to protecting space for practitioners to explore legal issues within supervision, and to offering opportunities for discussion of complex cases in wider meetings that include specialist expertise input.
- > Considers the need for training and ongoing guidance and support, in particular aspects of legal intervention where practitioners identify such a need – for example, financial abuse.
- > Is committed to embedding legal literacy through a whole system approach that embraces leadership from social workers, supervisors, operational and strategic managers and elected representatives.
- > Recognises that legal literacy extends beyond social work – people in many roles in adult social care need to be familiar with the powers and duties of the local authority – and so supports managers to consider how best to promote legal literacy (for example, in supervision arrangements) for a wide range of practitioners and with differing levels of experience.
- > Has leaders who, in the face of organisational pressures (including limited resources and large and complex caseloads) recognise their vital role in supporting practitioners to remain resilient, creative and resourceful.

Current policy and regulatory background

- a) The following documents set out the current requirements for social workers' knowledge and skills. While not using the term legal literacy, all contain some (albeit limited) mention of legal knowledge.
- > The *Knowledge and Skills Statement* for Social Workers in Adult Services (Department of Health, 2015) specifies that social workers must work within specific legal frameworks and discharge their legal duties.
 - > **Social Work England** (and the **Health and Care Professions Council** before it) set out professional standards that social workers must attain and maintain in their practice, which include compliance with legal frameworks.
 - > The **Professional Capabilities Framework** (BASW, 2018), in setting out a career progression framework, references law at all levels of social work practice, with expectations increasing as progression through the levels takes place.
- b) The following documents set out the current expectations of managers and supervisors in relation to promoting the legal literacy of their staff:
- > *The Knowledge and Skills Statement for Social Workers in Adult Services* (Department of Health, 2015) specifies that social workers must have access to regular, good quality supervision to enable them to confidently fulfil their statutory responsibilities and work effectively within legal frameworks.
 - > *Post Qualifying Standards for Practice Supervisors in adults social care* (DHSC, 2018) - following a **national consultation** DHSC has published **standards** for those supervising social workers working with adults. These are explicit about the role of supervision in supporting lawful practice.
 - > The *Local Government Association Standards for Employers of Social Workers* (LGA, 2014) include reference to regular and appropriate supervision and access to legal advice to enable practitioners to practise safely and effectively.
 - > The **professional standards** set out by Social Work England (and by the Health and Care Professions Council before it) emphasise supervision to guide decision-making.
 - > The **Professional Capabilities Framework** (BASW, 2018) explicitly states that social workers in advanced and strategic roles have responsibility to ensure that practitioners comply with legal rules through the provision of supervision, legal expertise and social work advice. The Professional Capabilities Framework comes close to the definition of legal literacy in its focus on legislation, ethics and human rights at this level.

Conclusion

The evidence scope demonstrates the emphasis on legal literacy in social work over many years, but also the lack of focus to date on how supervisors, operational managers and strategic managers can support and enhance the practice of people working across adult social care. It has identified resources on which managers and supervisors can draw to consolidate their own legal knowledge as well as to gain support in providing robust exploration and oversight of practitioners' legal literacy through supervision. Embedding such mechanisms in organisational structures, culture and practice is a challenge, however, particularly in workplaces under pressure.

A further challenge is to extend the focus on legal literacy beyond social work, recognising that a wide range of people working in adult social care require familiarity with the powers and duties of the local authority, and confidence in their use. Embedding legal literacy across organisations requires a whole system approach, in which leadership from social care practitioners, operational and strategic managers is crucial. [The Legal Literacy: Change Project resources](#) have been designed to support the embedding of legal literacy across organisations.

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