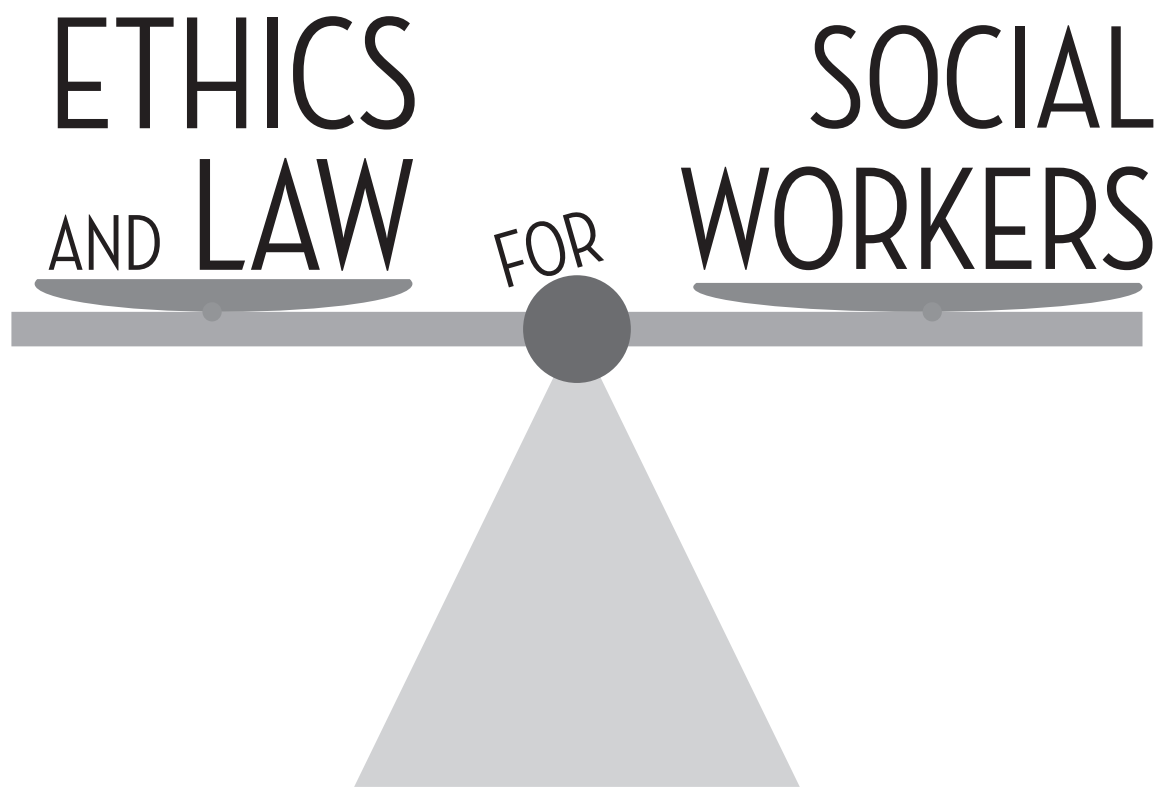




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Introduction: But I Want to Be a Social Worker, Not a Philosopher!

The Challenge of Ethics and Law

This book addresses a challenge. It is a challenge all social work practitioners must tackle, and it is a particular challenge for students on social work qualifying and post-qualifying programmes, for whom the book is particularly intended. In a nutshell the challenge is this: how do social workers, practising within the UK legal context, act ethically and legally?

Behind this lies a more fundamental question: what do we understand by ethics and how does social work law relate to it? Social work practice in all countries incorporates a clear, unstinting commitment to social justice, but what is social justice? A preliminary understanding of ethics and ethical theory together with clarification of what is meant by social justice, is absolutely essential for anyone intending to practise social work.

From the social work practice perspective, a number of issues then arise. Given that the majority of social workers are employees or agents of state-sponsored agencies that must operate within clearly defined legal boundaries, what dilemmas arise for social work? What challenges do practitioners face when they try to reconcile their commitment to social justice with their legally circumscribed duties to service users? What tensions might arise between their loyalty and obligations to their chosen profession and the legal context within which they operate? How does the law itself address such issues? What decisions have the courts made when balancing conflicting ethical demands, for example the duty to protect people and the commitment to empowering people to make decisions for themselves? How has the legal system adjudicated on ethical issues related to social work? For some social workers there may also be issues of reconciling their own personal beliefs and values with those of a profession that requires compliance with a code of conduct that is, ultimately, enforced through legal requirements. Is this possible for social workers in everyday practice without resorting to legal-technical or bureaucratic responses? How can social workers move beyond asking what the law says, in the hope that this tells them

what to do, towards the professional maturity that can use the law as a means of empowerment and can also challenge laws that are oppressive or fail to meet service users' needs? Ultimately, to put it succinctly, how can social workers respond to laws that both constrain and empower?

While this book cannot answer all of those questions, it aims to address many of them. There is certainly a gap between the texts on ethics and law which this book bridges. Specifically, there is a substantial and growing literature on ethics in social work (for example: Banks, 2012; Beckett and Maynard, 2013; Gray and Webb, 2010; Parrott, 2015). Also there are a number of authoritative texts on social work law (for example: Brammer, 2015; Braye and Preston-Shoot, 2010; Brayne, Carr and Goosey, 2015; Johns, 2014b). All are valuable, yet some of us who, as social work practitioners and educators, teach social work law, have identified a tendency for social work students to treat ethics and law as two distinct animals. This, of course, is compounded in many social work programmes by having ethics and law as two distinct modules, which in many cases is an unavoidable necessity. Yet it can yield undesirable consequences. Students feel challenged, and sometimes deeply perturbed, by the ethical debates in which they are compelled to engage, and in some cases by the disjunction between their personal beliefs and professional values. In the case of social work law, students then demand more than it can give: they expect the law to tell them what to do in every circumstance. In some cases they hope the law can help them reconcile ethics and practice, and are often disappointed when told that the law simply sets the boundaries within which they as practitioners must decide the best course of action. After all, the Highway Code and the rules of the road lay down the principles of good driving and penalise poor driving, but they do not direct drivers as to what to do in every circumstance which they may encounter when actually driving along a road.

This book is practical. It cannot, of course, tell anyone what to do in any particular circumstance and would never seek to do so. However what it can do is explore some of dilemmas that social workers encounter in everyday practice where they need to reconcile social work ethics and law. It does this not by a deep theoretical exposition – although there will be summaries of ethical theory and theories of justice – but by inviting readers to reflect on how to address the everyday complexities of social work practice. Every chapter will draw on case study material which, as a general principle, will be as current and real as possible. Such cases will, naturally, be anonymised unless they are in the public domain. Every chapter will also include reference to statute law and case material that is relevant to that chapter's considerations. However readers should note that, not only can laws change and therefore may have changed since the publication of this book, but also that some legislation is country specific. Some of the regulations that apply to England, for example, do not apply to Wales although there may be equivalents. Some legislation itself does not apply to Scotland or to Northern Ireland. This book should not be taken as an authoritative statement of law as it applies to all countries in UK, therefore, although it was as accurate as it was possible to be at the time of publication.

WHO IS THIS BOOK FOR?

This book is primarily intended for students undertaking modules on courses that lead to a professional qualification in social work. It would also be highly suitable for qualified practitioners in their first year of practice or later in their careers when they are undertaking further studies on post-qualifying modules, most especially in mental health, mental capacity (for example, as Best Interest Assessors) or advanced child care practice.

In qualifying programmes, both at undergraduate and postgraduate level, it is almost certain that there will be at least one law module, and at least one that incorporates values and ethics – although, interestingly, rarely one that incorporates both. Law teaching was specifically itemised as a compulsory area of teaching for qualifying programmes by the Department of Health in their programme requirements for the (then) new degree in social work (Department of Health, 2002). Social work practice is imbued with both ethics and law in the shape of rights and social justice. This is made transparently clear in the Professional Capabilities Framework that applies to social workers in England, the National Occupational Standards for Social Work that apply to social workers in Wales, Scotland and Northern Ireland and in the various relevant codes of practice (see below).

It is recognised that readers will come from variety of backgrounds, with different levels of experience. Some of the case studies in this book raise complex issues and presuppose some limited familiarity with professional practice. Nevertheless even readers with minimal practice experience will be able to engage with the kinds of issues which arise from the case study examples, and indeed sometimes it is beneficial to adopt a fresh approach that does not make any assumptions about how practice is currently carried out. Readers will find it enormously helpful to undertake wider reading in order to enhance understanding and learn about different ways in which different people approach complex ethical issues. At various points in the text there are indications as to where further reading may be helpful. The book has deliberately been designed for readers to engage in its interactive approach, and to this end some critical thinking exercises are incorporated into the text. These are intended to spur thinking in a more analytical way, but crucially also to help students and practitioners apply the benefits of this analysis to the kinds of practical situations which they are likely to encounter in social work practice.

Requirements of Social Work Education

Social work is a moral activity that requires practitioners to recognise the dignity of the individual, but also to make and implement difficult decisions (including restriction of liberty) in human situations that involve the potential for benefit or harm. Honours degree programmes in social work therefore involve the study, application of, and critical reflection upon, ethical principles and dilemmas. As reflected by the four care councils' codes of practice, this involves showing respect for persons, honouring the diverse and distinctive organisations and communities that make up contemporary society, promoting social justice and combating processes that lead to discrimination, marginalisation and social exclusion. (QAA, 2008: 4.6)

Social work education is governed by regulations and requirements set out separately by the governments of the four countries that comprise the UK. While there are some minor differences between these, in general terms they consist of expectations in relation to practice (the Professional Capabilities Framework for Social Workers in England, National Occupational Standards for Social Work for Wales, Scotland and Northern Ireland), academic requirements as set out by the Quality Assurance Agency for Higher Education, and codes of practice emanating from the Care Councils. The next three sections highlight the relevance of this book to these sets of requirements.

The Professional Capabilities Framework and National Occupational Standards

Two sections of the Professional Capabilities Framework, applicable to social workers in England, are directly relevant to this book. In the values and ethics section social workers are expected to 'conduct themselves ethically' and to this end need to demonstrate 'confident application of ethical reasoning' and be able to 'recognise and manage conflicting values and ethical dilemmas'. Social workers are expected to be 'knowledgeable about the value base of their profession, its ethical standards and relevant law'. In a similar vein under Rights, Justice and Economic Wellbeing, the Framework states that social workers should 'recognise the fundamental principles of human rights and equality' in law and policy and as part of their role should 'routinely integrate the principles of, and entitlements to, social justice' (The College of Social Work, 2012).

Elsewhere in the UK, the National Occupational Standards for Social Work reflect similar expectations. In the original version (General Social Care Council, 2002) Key Role 3 expected social workers to 'advocate with and on behalf of individuals, families, carers, groups and communities' while Key Role 6 required social workers to be able to 'manage complex ethical issues, dilemmas and conflicts'. National Occupational Standards for Social Work for Wales, Scotland and Northern Ireland are all currently being revised but doubtless will include very similar requirements in the future.

The Quality Assurance Agency Subject Benchmarks for Social Work

Subject Benchmarks apply across the UK to all universities. The Quality Assurance Agency Subject Benchmark Statements for Social Work (QAA, 2008) set out expectations about standards of knowledge, skills, understanding, and competence that students would be expected to attain by the end of an honours degree in social work (not Masters programmes yet). They indicate both areas of knowledge and skills for social work practice.

Listed below are the benchmarks that are generally covered in this book, with considerable emphasis on benchmarks falling under 5.1.3.

Subject Knowledge and Understanding

5.1 During their degree studies in social work, honours graduates should acquire, critically evaluate, apply and integrate knowledge and understanding in the following five core areas of study.

5.1.1 Social work services, service users and carers, which include:

- the social processes (associated with, for example, poverty, migration, unemployment, poor health, disablement, lack of education and other sources of disadvantage) that lead to marginalisation, isolation and exclusion, and their impact on the demand for social work services
- explanations of the links between definitional processes contributing to social differences (for example, social class, gender, ethnic differences, age, sexuality and religious belief) to the problems of inequality and differential need faced by service users
- the nature of social work services in a diverse society (with particular reference to concepts such as prejudice, interpersonal, institutional and structural discrimination, empowerment and anti-discriminatory practices)
- the nature and validity of different definitions of, and explanations for, the characteristics and circumstances of service users and the services required by them, drawing on knowledge from research, practice experience, and from service users and carers
- the focus on outcomes, such as promoting the well-being of young people and their families, and promoting dignity, choice and independence for adults receiving services
- the relationship between agency policies, legal requirements and professional boundaries in shaping the nature of services provided in interdisciplinary contexts and the issues associated with working across professional boundaries and within different disciplinary groups.

5.1.2 The service delivery context, which includes:

- the location of contemporary social work within historical, comparative and global perspectives, including European and international contexts
- the changing demography and cultures of communities in which social workers will be practising
- the complex relationships between public, social and political philosophies, policies and priorities and the organisation and practice of social work, including the contested nature of these
- the issues and trends in modern public and social policy and their relationship to contemporary practice and service delivery in social work
- the significance of legislative and legal frameworks and service delivery standards (including the nature of legal authority, the application of legislation in practice, statutory accountability and tensions between statute, policy and practice)
- the current range and appropriateness of statutory, voluntary and private agencies providing community-based, day-care, residential and other services and the organisational systems inherent within these
- the significance of interrelationships with other related services, including housing, health, income maintenance and criminal justice (where not an integral social service)

- the contribution of different approaches to management, leadership and quality in public and independent human services
- the development of personalised services, individual budgets and direct payments
- the implications of modern information and communications technology (ICT) for both the provision and receipt of services.

5.1.3 Values and ethics, which include:

- the nature, historical evolution and application of social work values
- the moral concepts of rights, responsibility, freedom, authority and power inherent in the practice of social workers as moral and statutory agents
- the complex relationships between justice, care and control in social welfare and the practical and ethical implications of these, including roles as statutory agents and in upholding the law in respect of discrimination
- aspects of philosophical ethics relevant to the understanding and resolution of value dilemmas and conflicts in both interpersonal and professional contexts
- the conceptual links between codes defining ethical practice, the regulation of professional conduct and the management of potential conflicts generated by the codes held by different professional groups.

5.1.4 Social work theory, which includes:

- research-based concepts and critical explanations from social work theory and other disciplines that contribute to the knowledge base of social work, including their distinctive epistemological status and application to practice
- the relevance of sociological perspectives to understanding societal and structural influences on human behaviour at individual, group and community levels
- the relevance of psychological, physical and physiological perspectives to understanding personal and social development and functioning
- social science theories explaining group and organisational behaviour, adaptation and change
- models and methods of assessment, including factors underpinning the selection and testing of relevant information, the nature of professional judgment and the processes of risk assessment and decision-making
- approaches and methods of intervention in a range of settings, including factors guiding the choice and evaluation of these
- user-led perspectives
- knowledge and critical appraisal of relevant social research and evaluation methodologies, and the evidence base for social work.

5.1.5 The nature of social work practice, which includes:

- the characteristics of practice in a range of community-based and organisational settings within statutory, voluntary and private sectors, and the factors influencing changes and developments in practice within these contexts

- the nature and characteristics of skills associated with effective practice, both direct and indirect, with a range of service users and in a variety of settings
- the processes that facilitate and support service user choice and independence
- the factors and processes that facilitate effective interdisciplinary, inter-professional and inter-agency collaboration and partnership
- the place of theoretical perspectives and evidence from international research in assessment and decision-making processes in social work practice
- the integration of theoretical perspectives and evidence from international research into the design and implementation of effective social work intervention, with a wide range of service users, carers and others
- the processes of reflection and evaluation, including familiarity with the range of approaches for evaluating service and welfare outcomes, and their significance for the development of practice and the practitioner.

Academic Skills Development

As far as skills are concerned, this book will mirror the importance attributed in Social Work Benchmark 4.7 to accountability, reflection, critical thinking and evaluation. The skills to be acquired by the time students graduate are specifically addressed and developed in certain chapters of this book and at the start of each chapter those that are most relevant to that chapter will be listed. Readers will be encouraged to learn to think logically, systematically, critically and reflectively (Benchmark 5.5.1) and to acquire higher-order skills as follows:

Skill 1 demonstrating understanding and application of theoretical ideas

Skill 2 comparing and contrasting different viewpoints and experiences

Skill 3 relating different views to underlying philosophies or ideologies

Skill 4 evaluating different perspectives and ideas

Skill 5 evaluating evidence

Skill 6 synthesising arguments

Skill 7 reflection

Skill 8 reviewing, re-evaluating and reformulating your own views

Codes of Practice

The current codes of practice applicable to social workers across the UK are:

England: Health and Care Professions Council Standards of Practice for Social Workers in England (Health and Care Professions Council, 2012)

Wales: Code of Practice for Social Care Workers (Care Council for Wales, 2011)

Scotland: Code of Practice for Social Service Workers and Employers (Scottish Social Services Council, 2009)

Northern Ireland: Codes of Practice for Social Care Workers and Employers of Social Care Workers (Northern Ireland Social Care Council, 2002)

For the sake of brevity what follows highlights the key expectations common to all codes of practice that are most relevant to this book.

Perhaps not surprisingly, codes of practice generally are quite specific in their insistence that social workers act ethically. In the Professional Capabilities Framework, for example, social workers are explicitly required 'to be able to practise within the legal and ethical boundaries of their profession' (Health and Care Professions Council, 2012, section 2). In all of them there is an expectation that social workers will:

- treat each person as an individual;
- respect the views and wishes of service users and carers;
- promote dignity;
- respect confidentiality;
- declare conflicts of interests;
- respect diversity in all its forms;
- promote independence and people's rights;
- challenge abusive or discriminatory behaviour;
- practise in a safe way;
- be honest and trustworthy;
- be reliable and dependable;
- be accountable for their actions and quality of their own practice.

Furthermore social workers will not:

- abuse neglect or harm people;
- abuse people's trust;
- engage in inappropriate relationships;
- behave in a way that calls into question their suitability for professional practice.

From this selective list the ethical dimension is apparent, but it may also be worth noting at least two requirements that require social workers to be certain kinds of people, rather than act in certain kinds way. For example, social workers are required to be honest and trustworthy, reliable and dependable. We will see later in this book that there is a debate about whether ethics is a matter of principles that require people to act in certain ways, or whether ethics is a matter of how people are, about the characteristics and qualities that make someone the kind of person who would know how to act ethically or even 'be ethical'. We will also see later in the book that there is a debate about the law and what constitutes justice, an issue which is of great importance in social work with its strong commitment to the pursuit of social justice.

THE FOCUS OF THIS BOOK

The book is interactive and practice focused. Each chapter in this book brings the two strands, law and ethics, together. They do this by focusing on an area of practice, highlighted by one or more selected case studies. The majority of case studies comprise decisions handed down by the courts, rather than examples directly from social work practice. Necessarily they are highly selective; they have been chosen to represent specific points at which law and ethics intersect, focusing on those that present the most acute issues for social work practitioners. It is not practicable in a book of this size to cover every aspect of social work practice or to present definitive answers which imply that there are right or wrong answers. In social work there is rarely just one right answer, and it would be quite deceptive for any textbook to pretend that this is the case.

Each chapter starts with an introductory paragraph explaining the coverage of the chapter. In each chapter there will be one or more case studies. Readers will be challenged to think about how to identify the ethical components and to recognise the relevant legislation. Reference will be made to the law of England in force at the time of the book's publication and where possible reference will be made to law in other countries of the UK. Use will also be made of the various national codes of conduct or ethical guidelines laid down by regulatory or professional bodies. The discussion in each chapter is geared towards the needs of student social workers, assisting them to analyse and evaluate those aspects of the case that relate to law or to ethical considerations. There will be some tentative guidance as to how to approach various issues but this is not an instruction manual!

The book assumes basic knowledge of social work law, although it will remind readers of the relevant legislation. The discussion in each chapter is intended as a worked through analysis of legal and ethical issues, and to this end will incorporate some reflective exercises to enable readers to distinguish the various components of the practice dilemmas that they face. The book will not pretend that there are easy, quick fix solutions to profound ethical dilemmas. It will however encourage readers to identify what these dilemmas are, and to devise avenues whereby they might set about seeking to address or even resolve them. Towards the end of the chapter there will be encouragement to draw up a balance sheet reflecting on legal requirements, ethical dimensions, and strategies for addressing them. Finally each chapter will include a summary that points to a wider context and may refer to opportunities for further reading, consideration of relevant case law, or for reflection on practice.

WHAT IS IN THIS BOOK?

The book opens with a consideration of social workers as ethical actors. How do we judge whether something is 'ethical'? What theories help us to understand this? Here will be found an overview of the different key approaches to ethics: principle-based

ethics (deontological, utilitarian) and person-based ethics (virtue ethics, ethics of care). The discussion then turns to the importance of ethical practice and its connections to the law that underpins this.

Leading on from this, Chapter 2 has a strong focus on social justice, which is a core principle underpinning much of social work practice. It is social justice which most readily connects ethics and law in social work. Identifying the key components of social justice, the chapter provides an overview of different philosophies that promote human rights and principles of empowerment, again key social work values. Necessarily this includes a discussion of what rights are being promoted and what is meant by social justice. This chapter offers an important analytical approach that is taken forward in subsequent chapters when specific aspects of social work practice are analysed. Towards the end of the chapter, analysis of the case study is used to exemplify the different approaches to social justice. This serves to highlight some of the potential dilemmas that may confront social workers when addressing the needs of service users on whom social policy changes have had a particular impact.

Chapter 3 focuses on the issue of accountability. The underlying principle behind codes of ethics that undergird social workers' professional practice is respect for service users and promotion of their interests. There is potential for conflict here with expectations from employers and the public. The chapter therefore begins with some examples of where social workers may encounter that conflict. This may be between their own personal values and the formalised codes of ethics to which they are officially committed, or it may be between what they see as ethical practice and the law. There may be ways in which social workers as professionals may be required to do more than just observe the regulations and requirements of their employers, and likewise how employers and professional bodies are entitled to expect social workers to observe ethical principles in all that they do. The different avenues of accountability are highlighted and explained. This chapter concludes with an example of gross abuse of trust which was only revealed after a sustained personal campaign by a residential social worker determined to stop the abuse of youngsters in the care system and to pursue justice on their behalf. This raises the question of safeguards for professionals who bring malpractice to public attention and asks readers to reflect on the fundamental question: what are social workers' duties and obligations and to whom are they responsible?

In the second part of the book, duties and obligations within an ethical social work framework as a theme is then applied to specific areas of practice. The selected areas are not meant to be comprehensive, but offer valuable examples for an exploration of how law and ethics relate to each other in social work. So from this point onwards the focus moves towards consideration of challenges and dilemmas relating to particular service user groups.

We begin in Chapter 4 with one of the most challenging areas: how to balance the protection of children with support to parents. In the vast majority of cases it can be taken as read that providing support to parents has the benefit of promoting the upbringing of children in their own families, which conforms exactly to the principles underpinning the Children Act 1989. However in a very small percentage of cases

needs of children must be addressed separately from those of their parents, yet the law requires practitioners to work in partnership with parents even in those cases, and to avoid legal action such as care proceedings unless it is absolutely necessary. How should practitioners interpret these requirements? What does the law say? Some recent case decisions have brought this issue into the limelight, and it is one in which practitioners need to be very clear about their objectives and ethical principles.

What is good enough parenting? Are there any circumstances in which parents can be compelled to give up children for life? If so what should the circumstances be? How do social workers operate within a legal context that allows for compulsory adoption, as the Adoption and Children 2002 does? What are the ethical considerations here? How do practitioners address this issue within the context in which there are different cultural views concerning the value of adoption? These are all issues which are considered in Chapter 5.

In Chapter 6, there is further consideration to notions of justice through an examination of the whole notion of youth justice with its emphasis on putting clear boundaries around the behaviour of young people. What is the social work role in this and how does it connect to the ethical commitment to social justice? It helps here to learn from history so the chapter explores an attempt to place children and young people's needs first in the youth justice system by adopting a purely welfare approach to offences committed by them. Lessons learned are salutary and indicate that there needs to be a balance between the needs of young people and the rights of the wider society, as the remainder of the chapter explains.

The focus then shifts to adult care for Chapter 7. Much practice is dominated by what policymakers call personalisation, which in essence is a comparatively straightforward notion of ensuring that services are configured so as to meet the needs of the individual, rather than the individual having to fit into available services and resources. This is facilitated by laws such as the Health and Social Care Act 2008, the Health Act 2009, and latterly the Care Act 2014, that encourage service user choice, including individual budgets and similar measures that fall under the umbrella of personalisation. In practice, personalisation can raise substantive ethical and practice issues, which often centre on the question of how need is to be defined and what is the best way of ensuring that need is met. The parallel between people choosing services and choosing goods from a supermarket does not quite apply when service users may not be able to evaluate the extent to which services will truly meet their needs, or how best services should be organised to ensure that they do so fairly – taking into account the needs of others. Issues of empowerment and rights to self-determination need to be balanced here with the social work imperative of ensuring that services meet all people's needs.

Chapter 8 concerns the issue of mental capacity. This is a very topical issue in social work, being of critical importance in social work both with children and adults. In work with children, case law has attempted to clarify how practitioners decide if children are competent to make their own decisions. In adult care, following implementation of the Mental Capacity Act 2005, practitioners now have a comprehensive set of values and ethics enshrined in legislation. The ethical principles that underpin the Act reflect a particular approach to social justice

that demands respect for individual autonomy, yet permits decisions to be made on behalf of otherwise autonomous individuals in certain circumstances. The chapter therefore includes an exploration of examples where serious life-changing decisions may need to be made on behalf of others. Inevitably, this means that the majority of the chapter focuses on deprivation of liberty which – excluding very specific provision in mental health – is relevant to two service user groups in particular: older people and people with learning disabilities. In the course of analysis the chapter addresses real crunch ethical issues that the law has tried to address, namely assessing competence to make decisions and the extent to which people lose the right to make decisions for themselves.

Finally, Chapter 9 adopts a slightly different approach in that it offers several examples of practice that was alleged to be unethical and on which the courts have had to adjudicate. Included here are examples from the field of mental health, where professionals are charged with making decisions in the public interest and protection of the public. When it comes to the critical issue of detention or deprivation of liberty, the law has to tread a fine line between the rights of service users (or patients as people are often called in this context) and the rights of the public at large, and has to operate in accordance with European Convention on Human Rights principles which ultimately reflect a particular approach to individual liberty and social justice. Furthermore, family members themselves may have legal rights which, when exercised, could impede professional decision-making. Likewise, child care social workers can be tempted to skirt around the edges of the law and ethical practice when they are convinced that a certain course of action is in a child's best interests.

Astute practitioners will no doubt note that this means that some key areas of practice have been overlooked. In one book it just is not possible to cover all areas of practice, even if some of these do raise substantive legal and ethical issues. Principally here there is not space to devote to more specialist areas of practice such as work with refugees and asylum seekers, work with the homeless, hospice or end-of-life care. All are, of course, important in their own right, and their omission here is certainly not intended to indicate otherwise. Rather, the overall ambition is to help social workers, especially those comparatively new to the profession, to learn more about how to engage generally with social work law and ethics, and thereby to be equipped to practise better in whichever field they choose.

The book concludes by reflecting on the interconnections between earlier discussions of ethical theories, social work law and social justice. The challenge to be addressed is how social workers can balance a natural desire to follow what the law requires with a commitment to person-centred ethical social work practice. Ultimately there is a need for a commitment to social justice that brings together law and ethics into a viable framework for practice. Understanding law is important, understanding ethics is vital, understanding both is imperative.