

Introduction

The original plan, hatched many years ago, was for a simple, straightforward community care casebook comprising a themed selection of case summaries culled from the *Community Care Law Reports*. If only I had had the time to write that book how much simpler life would have been.

Instead, along came the Care Act 2014, and the native hue of resolution became sicklied o'er with the pale cast of thought.

In the end, after a year or so of sporadic sickly thought, it seemed to me that a simple casebook would not be of much practical use. One needs to know how and why the older cases are relevant now we have the new Act. And in any event, one needs to know the context. In adult social care, cases are only one part of the overall picture so that, to my mind, a simple casebook would afford such an incomplete view of the whole as to be deeply unsatisfactory.

On the other hand, the creation of a full-scale textbook on adult social care struck me as being a task of such monumental proportions, it was best left to writers of genius – such as Professor Luke Clements and the late, greatly missed Pauline Thompson, both colleagues of mine at the *Community Care Law Reports* and authors of the brilliant *Community Care and the Law*, of which I am the proud owner of two copies (at home and chambers), plus one one for luck.

Accordingly, having screwed my courage to the sticking point, I embarked upon the series of compromises, that now form the spine, if it has one, of this book.

I've tried not to compromise on the cases too much because this remains, at its heart, a casebook. I've endeavoured to include all the cases, of any significance, that form part of adult social care and also all the cases that many adult social care practitioners will want to know about from time to time – for example, cases about the NHS, mental health and persons subject to immigration control. I've based my selection on the *Community Care Law Reports* but have often gone beyond them. Where this book differs from other casebooks is that it contains citations and sometimes extensive citations from the judgments and I make no apology for that. On the whole, judgments are the culmination of a lengthy process involving contributions from many different sources and judges think long and hard about how to summarise and adjudicate upon this material. I remain strongly of the view that the words of judges are in general worth a lot of more than the words of textbook writers and repay detailed, careful consideration. So I've included a lot of them. Not everyone has access to all the law reports, or has the time or inclination to read them in the regular, repeated manner they deserve (!), so my hope is that there is enough in v

the citations in this book to provide for the needs of the average busy practitioner for a lot of the time.

I've taken a similar approach to the legislation and guidance, being of the view that the precise words used are important and useful; a lot of thought has gone into, for example, the *Care and Support Statutory Guidance* which, in many respects, renders superfluous the efforts of the commentator. On the other hand, all the legislation and materials comprise a huge amount of text. So I've tried to strike a balance here, setting out verbatim as much of the legislation, guidance and other material as LAG has allowed me to get away with, whilst summarising the less important passages and, in some cases, simply signposting the reader to documents and websites that will enable him or her to explore particular areas in greater depth. Again, I hope that this method will save the time of busy practitioners and make it possible to use the book as a self-contained resource in some cases and as a starting point, at least, in others.

Finally, at the risk of being shot down in flames, I've tried to introduce each chapter, in particular the chapters with a case-law focus, with a short overarching summary of the legal framework so that readers can get an overview, from the start. I hope readers will find these introductions useful or at least forgive them: I had to write them because I was in blood stepped so far that should I wade no more, returning were as tedious as go o'er.

I intended, initially, to include children's social care but there has been such an explosion of cases and material in this area in recent years, and in areas closely associated with children's social care, in particular relating to children from abroad, that this will have to wait for another book.

I'd like to thank the whole team of editors at the *Community Care Law Reports*: Richard Gordon QC, Stephen Cragg QC, Paul Bowen QC, Simon Bull, Luke Clements, Jean Gould, Nicola Mackintosh QC, Kate Markus, Sophy Miles, Camilla Parker, Paul Ridge and Lucy Scott-Moncrieff, and in particular the headnote editors: Christopher Baker, Tim Baldwin, Stephen Broach, Bethan Harris and Stephen Simblet whose case summaries I have relied on a great deal and, in a few cases, verbatim. I would like to recollect, with gratitude and deep respect, the contribution made by Pauline Thompson before her death. I give a special thanks to Roger Pezzani for his guidance on the mental health chapter and to David Lock QC for his assistance on the health chapter; both pre-eminent mental health and health practitioners.

My editor Esther Pilger has been absolutely brilliant. I can't thank her or the team at LAG enough, especially Lesley Exton and Lucy Logan-Green.

I have tried to make the book as up to date as possible, and whilst some of the more recondite of recent materials may have passed me by, I think the law is up to date as at the end of August 2016. I aim to update the book each quarter in its ebook format and I would be very grateful indeed for any corrections, additions and observations that readers send in: please write to SKnafler@landmarkchambers.co.uk.

I count myself as having been extremely fortunate to have practised as a barrister in the social care field for many years and to have had the
vi opportunity to advise and represent across a very broad spectrum from

individuals and families needing care and support, to private and social sector operators and to social services, housing and health authorities and regulators. It's been an eye-opening and often an amazing and humbling experience. I hope that this book gives something back that others find useful. That is the purpose of the book. Ultimately, it's the people who need care and support and the families and friends who support them who need help the most and I really hope that in some way this tome will, in the difficult years that lie ahead, provide a sword and shield for those who need its help most and who often achieve incredible things in the face of huge adversity. But it would be churlish and wrong not to acknowledge, also, the sympathetic devotion and hard work of many who toil in the often unloved social and public sector, and private sector operators, who do their very best, but so often get the brickbats and not the compliments. If this book is of some practical use, saves time and helps everyone concerned reach fair and equitable solutions, I will shuffle off my mortal coil just that little bit more happily when the time comes, hopefully after many more editions of this epistle which, despite the best efforts of the drafters of some of the secondary legislation, I have very much enjoyed writing.

Stephen Knafler QC
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