Glossary

Administrative law
Legal rules that regulate the balance of power between the state and individuals. The law allows for review of executive power by the judiciary and sets out the principles to be observed in professionals’ decision-making.

Adult Protection Committees
Established by the Adult Support and Protection (Scotland) Act 2007, these committees oversee in Scotland the effectiveness of the work of local authorities and partner agencies in the statutory, private and voluntary sectors relating to adult safeguarding. The committees are required to produce biennial reports which are public documents.

Care Quality Commission
Created by the Health and Social Care Act 2008 for England and Wales, the CQC covers all adult social care services, including mental health, residential and non-residential provision, across local authorities, voluntary organizations and independent agencies. It also covers health, both hospitals and care homes. It registers and inspects service providers and can take enforcement action when agencies have failed to comply with regulations and standards. It uses outcomes for adult services, including health and well-being, quality of life and dignity, when inspecting services, and monitors management, staffing, record-keeping and the handling of complaints. Its remit is broad and its effectiveness has been seriously questioned (Francis, 2013).

Case law
Judicial decisions which may concern the lawfulness and reasonableness of decisions taken by social workers, or which may revolve around how particular sections and clauses in primary and secondary legislation are to be understood, such as the ‘likelihood of significant harm’. When interpreting the meaning of particular legal rules, judges may refer to debates in Parliament, to the ordinary and everyday meaning of words, and to the intent of the Act and the particular clause within it. In a decided case, courts distinguish between ratio decidendi (the reasons for a decision) and obiter dicta (other comments).
Discretion
The ability to decide whether and how to act in a particular case. Decisions must be lawful and reasonable, that is capable of justification. Properly exercised discretion will draw on knowledge of law and ethics, research evidence and other types of knowledge, applied skilfully to the circumstances of a particular case.

Duties
Social work law comprises two types of duties. Absolute duties, such as s. 117 Mental Health Act 1983, require local authorities to act in a particular way. More common are discretionary duties, such as s. 47 NHS and Community Care Act 1990. Here, social workers have to exercise their discretion in order to determine whether the duty to act in a particular way is triggered. Discretion is often indicated in primary legislation by the phrase ‘where the local authority considers it necessary’.

Equality and Human Rights Commission
Created by the Equality Act 2006, and covering England and Wales, the EHRC has investigation and enforcement powers with respect to public bodies. It covers all the protected groups under equality legislation. Its mandate includes disseminating awareness of human rights and securing equality and good relations between diverse groups. It may intervene in court cases covering equality and human rights issues.

Independent Reviewing Officer
This role was created in England and Wales by the Adoption and Children Act 2002 and extended by the Children and Young Persons Act 2008. IROs monitor local authorities’ performance of care plans for looked after children. They may refer a case to the Children and Family Court Advisory and Support Service, having drawn any shortcomings to the attention of senior managers, where unable to ensure that a local authority is delivering the commitments outlined in an approved care plan. The IRO must ensure that the child’s wishes are understood and taken into account. They must assist young people to make representations and complaints, and to obtain legal advice and access to advocacy. Their role now encompasses not just reviews but all local authority functions.

Judicial review
This procedure focuses on the relationship between individuals and the state. It provides for High Court scrutiny of the lawfulness, reasonableness and rationality of decisions taken by public bodies. Decisions are binding and enforceable but also appealable. Various orders may be made. An injunction is an order not
to proceed or to proceed in a particular way. A declaration is a statement of the legal position. An order may be made quashing a decision, rendering it null and void, or prohibiting a particular proposed action. The court may mandate a public body to act in a particular way, essentially giving direction.

Local government ombudsman
A quasi-judicial inquisitorial consideration of an individual complaint or of a series of similar cases. Sometimes undertaken jointly with the PSHO, the outcome can be particularly critical of local authorities and other public bodies. The recommendations are not binding and there is no appeal. Financial remedies are not uncommon.

Local Safeguarding Adults Board
Although not named as such in statutory guidance for England and Wales on adult protection, each local authority was required to establish a body to oversee multi-agency arrangements. The Care Bill, being debated in Parliament 2013–2014, promises to establish LSABs on a statutory footing, with functions and powers closely resembling those of LSCBs.

Local Safeguarding Children Board
Established in England and Wales by the Children Act 2004, and designed to overcome the weaknesses of previous Area Child Protection Committees, their remit has been elaborated by statutory regulations and guidance. The role includes the commissioning and publication of serious case reviews, the provision of multi-agency safeguarding training and the auditing of inter-agency procedures and practices for protecting children. These boards must have an independent chair.

Managerialism
This approach to public sector management gives prominence to agency procedures, instrumental goals and performance measures which demonstrate organizational success. Performance is prescribed, regulated and evaluated, drawing heavily on quantitative data.

Negligence
A social worker or the employer may be held to have been negligent where a duty exists, which has been breached, with damage the result. Damage may be psychological and emotional.

Office for Standards in Education, Children’s Services and Skills
OFSTED inspects local authorities and third-sector providers. It monitors compliance with statutory requirements. It produces ratings for providers
across such services as adoption, foster placements, meeting the needs of disabled children and looked after children, and care planning.

**Precedent**
The principle that the decisions of higher courts are binding on lower courts when hearing similar cases. Thus, in England and Wales, Court of Appeal decisions are binding on all lower courts unless overruled by the Supreme Court, the highest court in the UK. Supreme Court decisions bind all other courts until the Supreme Court changes its own decision or Parliament changes the law. Precedent has the advantage of seeking to ensure consistency in administration of the legal rules but the disadvantage that the law can be very slow to evolve.

**Primary legislation**
Acts of Parliament that contain the powers and duties to be given to local authorities. Primary legislation sets out the basic framework, for instance, with respect to mental capacity, detention of people with serious mental distress, or child protection. The detail of how, when and with whom powers and duties are to be exercised is elaborated in secondary legislation, policy guidance and practice guidance.

**Proportionality**
Introduced by the Human Rights Act 1998, this is the principle that, using lawful authority, the state and its officers should only intervene as much as is necessary to achieve a legitimate goal. It is not a new principle. Approved Mental Health Professionals have long had the duty under mental health legislation to look for the least restrictive alternative when seeking lawfully to protect individuals or those around them.

**Secondary legislation**
Sometimes known as regulations or Statutory Instruments, secondary legislation is made by the relevant secretary of state on the authority of Parliament as given in primary legislation. Acts of Parliament often enable the relevant secretary of state to ‘make regulations’. They may contain powers and/or duties. Regulations must be followed by social workers.

**Serious case reviews**
Commissioned by LSCBs and LSABs (and the equivalent committees in Scotland) where a child or adult dies or sustains significant harm as a result of abuse or neglect by others and where there appears to have been failings in multi-agency collaboration. Statutory guidance (HM Government, 2013) outlines the procedures to be followed in England and Wales by LSCBs.
Social Work Task Force
Established by the New Labour government to review social work practice and social work education in England. Its recommendations were taken forward by the Social Work Reform Board.

Statutory guidance
In England and Wales such guidance is issued by central government departments under s. 7 Local Authority Social Services Act 1970. It requires local authorities to act in accordance with the guidance issued. This is sometimes referred to as policy guidance. Only if there are exceptional reasons should an authority depart from the guidance.

Tribunals
First-tier tribunals have a legally qualified chairperson and two lay members. The procedure is less formal than a court and rules of evidence are less strict. They are subject to judicial review. They cover such matters as special educational needs, immigration, mental health reviews, and employment. An upper tribunal hears appeals from first-tier tribunal decisions.

Vicarious liability
This is the concept that employers are responsible for the actions of their employees rather than staff members themselves being held personally accountable for their actions. Employers may escape this responsibility if they can show that an employee has been fully trained and supported to act in a particular way. Increasingly too, as a result of the Human Rights Act 1998, individual practitioners may have to defend themselves if they have acted outside of lawful authority or practised in such a way that no social work authority would support.