

Chapter 1: The law and the legal system in England and Wales

Explain the differences between courts and tribunals.

Here it would be good to draw on any experience you have had of going to court or tribunals. Theoretically courts are more formal, they follow the rules of evidence more closely, and they are more dominated by lawyers. Tribunals generally include lay or professional members who draw on expert knowledge, take a more inquisitorial approach and are used to applications by unrepresented parties. However the differences do not necessarily stand up in practice and it can be difficult to tell the difference between a hearing in chambers in the county court and a tribunal hearing.

2. *Accountability*

A service user is dissatisfied with a decision you have made. Outline the various options open to her and indicate in which circumstances which option is likely to be most appropriate.

The answer to this question depends upon the type of decision that the service user is unhappy about. Read the chapter and look in particular Table 1.2, which sets out the different forms of mechanisms for challenging decisions, including complaints. Another useful thing to do is to find out what the complaints procedure in your department is, and what procedures have to be if someone complains.

1. Legal options – the courts

If the decision is about the exercise of discretion by the local authority then the service user may be able to judicially review the decision.

If it is a decision made by the court under the Children Act 1989, then there may be possibilities of appeal, or discharge. Similarly there are opportunities to challenge all decisions which need to be endorsed by the courts, for instance decisions about adoption.

2. Tribunals

The decision may be one about which there is an appeal to a tribunal, such as a decision to place someone's name on the Sex Offenders Register.

3. Complaints procedures

Complaints procedures must be established relating to the discharge of social services functions under the Local Authority social Services Act 1970, and in relation to children, under the Children Act 1989. As you prepare your answer, consider the limitations of these procedures.

4. Ombudsman complaints – relating to maladministration. See the chapter for the limits on these complaints.

5. Complaints to local councillors, MPs etc. Don't forget, people have the right to go to the press about their grievances.

6. Inquiries etc. – note the variety and the scope of these inquiries.
7. Do not forget the Children’s Commissioners for both England and Wales.

Finally remember that individual cases cannot be taken to regulators despite their role in monitoring the quality of services.

3. *The Ombudsman*

Find the local government ombudsman site on the web. What types of complaint are most common?

Look at the annual report to find the answer.

4. *Reading statutes*

Find the Care Standards Act 2000 – on the web or find a paper copy. Now answer the following questions:

(The web link to the Act is <http://www.legislation.gov.uk/ukpga/2000/14/contents>)

1. How many Parts are there to the Act?

Nine Parts.

2. What is the title of Part IX and how many chapters does it have?

GENERAL AND SUPPLEMENTAL; two chapters

3. How many Schedules are there to the Act?

There are six Schedules

4. Find s. 11 of the Act. Does this impose criminal or civil liability on the person who fails to register?

Criminal liability

5. Find s. 16 of the Act. What is the legal status of regulations made under this section?

The Secretary of State has a power to make regulations which are a form of secondary legislation.

6. Look at s. 23. What powers does the minister have? What statutory duties are imposed upon him?

Subsection 1 of s.23 gives the minister a power to publish statements of national minimum standards and subsection (2) gives a power to publish amended statements when appropriate to do so.

He/she has a duty to keep the statements of standards under review subsection (2) and to consult before issuing a statement or an amended statement - subsection (3)

The duties imposed in subsection (4) are not imposed upon the minister but upon the regulator

7. What section of the Act deals with the title “social worker”? Write, in your own words, what it provides.

Social workers are defined in s.55 of the Act. However use of the title social worker is dealt with in s.61.

Anyone who is not registered as a social worker who uses the title or suggests that s/he is registered intending deceive someone else commits a criminal offence.

8. How does the Act define “vulnerable adults”?

Under s.80(6) "Vulnerable adult" means-

- (a) an adult to whom accommodation and nursing or personal care are provided in a care home;
- (b) an adult to whom personal care is provided in their own home under arrangements made by a domiciliary care agency; or
- (c) an adult to whom prescribed services are provided by an independent hospital, independent clinic, independent medical agency or National Health Service body

9. Has s. 81 of the Act come into force?

The answer to this is yes. It was brought into force on 26th July 2004 by way of Statutory Instrument 2004/1757. But the real question is how do you find the answer? We searched on Lexis-Nexis, a commercial database which will find the section, and then set out the history of the section. It informs us when the section came into force (or, if that is the case, that it is not yet in force), and that there is no information about when it will come into force. Printed sources of the same information are Current Law Legislation Citator and ‘Is it in force?’ Government websites will sometimes set out similar information.

10. Is your version of the Act up to date? How do you know?

Unless you have access to a subscription database, there is always a risk that material you find on the web has not been updated. Any printed copy is likely to be quickly out of date. You are therefore only able to use these sources if you already know the legislation has not been amended (but how can you know that?).

Loose-leaf encyclopaedias of law are very useful if your library or workplace can afford them. Individual pages are replaced frequently (and there is a list of updates kept at the beginning, so you can check that subscriptions are still up to date). Otherwise, if you are working in a local authority or any large organisation, you can check with your legal department. They are paid to know.

5. Reading cases

Find *Gillick v West Norfolk and Wisbech* [1986] AC 112 and answer the following questions:

1. In which court was the case heard?

The House of Lords

2. Name the judges

Lord Frazer of Tullybelton, Lord Scarman, Lord Bridge of Harwich, Lord Brandon of Oakbrook, Lord Templeman

3. When was the case heard? On what date was the judgement handed down?

June 24 – 27 1985, July 1 – 4, 1985, October 17th 1985
The judgement was handed down on 20th December 1985

4. Who were the parties to the case?

Mrs Victoria Gillick was the respondent. West Norfolk and Wisbech Health Authority was the first appellant. The Department of Health and Social Security was the second appellant.

5. Set out briefly the legal history of the case

The case originated in judicial review proceedings issued by Victoria Gillick against the DHSS and the health authority. The case was heard in the High Court by Woolf J who dismissed the claim. The case was then heard in the Court of Appeal which allowed Mrs Gillick's appeal. The House of Lords reversed the decision of the Court of Appeal

6. Is the case one of statutory interpretation, or is it about the common law?

The case was about whether the guidance issued by the Health Authority was lawful under common law.

7. Was the decision of the court unanimous?

It was a majority decision with Lord Brandon and Lord Templeman dissenting.

8. Who were the barristers in the case? Who were the solicitors?

Gerald Wright QC, David Poole QC, Patrick Field, for the plaintiff, John Laws for the defendants. The solicitors were the Treasury Solicitors for the appellants, and Ollard and Bentley, March for Mrs Gillick

9. Find Lord Scarman's judgement and copy it. If you have time, read it. It is a good decision to read as it has been extremely influential as you will find out in the next chapter