

The Approved Social Worker's Guide to Mental Health Law by Robert Brown

Published by Learning Matters (2006) £20

Approved social workers are something of an endangered species. We all know that their unique role will shortly be subsumed into that of the “approved mental health professional” (AMHP). However, for a number of years the juggernaut of mental health policy has been moving inexorably in the direction of ‘joined-up working’, which in practice translates into a takeover of mental health social services by the priorities of the NHS. Social workers increasingly feel that their skills in assessment and careful case management are becoming undervalued in favour of medication and ‘quick-fix’ CBT. For those of us who care about the ‘social model’ of mental health care it matters that the expertise and individual accountability that ASWs have developed over the last 24 years should be valued and encouraged.¹

The central function of an ASW is, of course, the thankless task of assessing individuals for possible detention under the Mental Health Act 1983. It is vitally important that they know what they are doing: both what the law requires and how to carry out effectively their duties under the law. This is something that Rob Brown has been teaching for years: he is currently the Director of the ASWs Course in South West England, and before that he was a practising ASW in Hampshire. (Before that he was a Mental Welfare Officer – if you have been around for long enough to know what those were – so he has a lot of experience to call on.)

The present book, which was completed in January 2006 and published in May 2006, is a distillation of Brown’s expert knowledge. It is designed to support trainee ASWs but, as he says in his preface, “it should also be useful for practising ASWs, other mental health professionals, service users, carers and others interested in the field of mental health law.” The book is a not-very-daunting 165 pages long and is written in approachable language. (I found some of the diagrams baffling, but this may be a fault in me.)

So how has the book turned out? First, I am relieved to report that Brown’s statement of the relevant law is, so far as I can see, both thorough and accurate. It covers the most-used parts of the Mental Health Act in detail. On the odd occasion where I have thought “Is that really right?” I have checked in the Act and found that it was. Take the example of a patient who is not resident in the UK: Brown surprised me by asserting that he or she could have a nearest relative who was similarly non-resident. I had not interpreted section 26(5)(a) in this way before, but when I checked the 1983 Memorandum I found that he was absolutely right: the legislators had deliberately changed the wording of the 1959 Act to achieve this very result.

Similarly, Brown’s summary of recent case law is both correct and appropriate for a practising ASW. Take *Ward v Commissioner of Police [2005] UKHL 32*, which considered whether a s.135 warrant specifying a particular ASW and medical practitioners was lawful. Baroness Hale gave careful reasons why the magistrates did not have such a power: Brown simply says (p.22): “... magistrates may not apply additional requirements, e.g. naming the ASW, doctor or police officer who would then have to attend.” This seems to me to say all that an ASW needs to know about their Lordships’ decision.

¹ For further discussion, see ‘The Mental Health Bill 2006 – a social work perspective’ by Roger Hargreaves in this issue of the JMHL

Some cases are not described as fully as I would have liked. He gives, for example, a very cursory run-down of the recent run of 'medical necessity' cases, particularly *R (application of DR) v Mersey Care NHS Trust* [2002] EWHC 1810 Admin, with its troubling elision of the difference between treatment 'in' and 'at' a hospital. But of course ASWs do not need to know the details of such cases, which concern activity within hospitals; it is more important that the cases which affect their own professional role are reported accurately, and as far as I can see they are.

I should mention some small but annoying legal inaccuracies. For example, there is not one 'European court' (preface), the Lord Chancellor's Department' (page 96) no longer exists, the Divisional Court (page 100) was abolished in 1999 along with the term 'mandamus' (page 115), and the chapter on 'Other relevant legislation' needs to be amended in several places. I would urge the publishers to have the next edition checked by an experienced lawyer. But these are minor points, and really very few faults can be found with Brown's description of the law.

However, I have three serious problems with the book. First, I find its scope confusing. It is entitled "The approved social worker's guide to mental health law", but it also contains lengthy discussions on non-binding guidance (e.g. assessments under the CPA), aspects of good practice such as report-writing, and a digest of various models of mental disorder. These may well be useful things to bring together but they are hardly 'the law'. Perhaps the title could be reconsidered before the next edition.

The second issue was partly, but not completely, beyond Brown's control: he finished his work in January 2006, and therefore gave much space to the draft Mental Health Bill 2004. As we know, the draft Bill was pulled in March 2006, and by the time the book was published in July we knew the Government's plans for amending the 1983 Act which are, at the time of writing, before Parliament. So the book was out of date by the time it was published, which was very bad luck.

However, other recent changes to the law which were available to him, have not been dealt with adequately. For example, in his preface Brown states that he covers the Mental Capacity Act 2005, which was on the statute book well before he finished writing. But the chapter on 'Consent to treatment and mental capacity' needs a complete overhaul. First he sets out what the MHA Code of Practice has to say about capacity without any reference to the 2005 Act. He then spends over a page on the 1991 Law Commission consultation, concluding: "It is not always clear in law when decisions may be taken on behalf of a person who is mentally incapacitated", as if the test in the MCA did not exist. On page 90 he says: "There is a variety of current legislation which is relevant to these issues (i.e. of incapacity) but, as noted above, it is fragmented, complex, and in many respects out of date." That was indeed the case *before* the MCA was passed- but afterwards? It is true that the 2005 Act was still some way from being implemented when the book went to press, but its principles were already in use.

It appears that the bulk of this chapter was written long before the MCA went through Parliament, and the main provisions of the Act were tacked on to the end rather than being integrated into it. A sentence on page 96 gives the game away: "All this will change *if* the Mental Capacity Bill becomes law" (my italics).

A similar problem arises with Brown's treatment of the important ASW case of *R (on the application of E) v Bristol CC* [2005] EWHC 74 (Admin), which concerns how to interpret the 'practicability' of consulting the nearest relative in the light of Article 8 ECHR. Brown says (p.50): "... in the meantime the High Court has been supportive of Jones' view on 'practicability' ... ASWs may need to seek further advice on specific cases", but makes no reference to the Department of Health briefing on how ASWs should proceed in the light of the case. This may be forgivable; but then on pages 61-62 Brown quotes

extensively from the Mental Health Act Code of Practice, including the guidance on the meaning of 'practicability' (para 2.16) which was expressly disapproved by the judge in the Bristol case, and comments "See Chapter 3 on relatives to see how this *might not be seen* as a correct view" (my italics).

All of which leads to my main criticism of this book, which is that it shows no signs of having been edited. I don't mean that it has not been proof-read; on the contrary, the text is pretty free from mistakes (apart from an unfortunate error in the preface in the address of Mark Walton's website). What it lacks is an attempt to pull the material into a coherent shape.

The result is a bit of a hotch-potch. To give a couple of examples: Why do sections 2 & 3, which are used to detain some 26,000 patients each year, together justify only 4½ pages, while guardianship (966 cases a year) gets 3½ pages and supervised discharge (some 600 cases) a remarkable 5½ pages, when it isn't even an ASW section? Why is section 117, which affects many thousands of people, considered to be worth less than one page? On a different tack, the chapter entitled 'Mental Health Review Tribunals, Hospital Managers Reviews' spends four pages on the law, then gives six pages of guidance on the writing of social circumstances reports for a variety of purposes, including proceedings which have nothing to do with MHRTs or managers.

Writing a book, particularly a technical book such as this one, is immensely time-consuming. I can't help coming to the conclusion that Brown started by putting together various materials he had written for previous lectures and articles - which is an entirely legitimate thing to do - but then was unable to spare the time to edit them together into a consistent text. This would not perhaps matter in itself, but unfortunately the publishers clearly did not spend time on the editing process either. As a result, the clarity of Brown's exposition of the law is let down by the disjointed way in which it has been presented.

It is a commonplace to describe something as 'nearly a good book', but this is truly the case here. At the moment I would recommend that it should be used with some caution. However, it has the great advantage that it will need to be revised very soon anyway, because of the forthcoming changes in the law. If the publishers can find an editor to edit it, and a lawyer to check it, I am confident that the second edition² will be a real asset to trainee ASWs (and eventually AMHPs) as they struggle to get to grips with their difficult role. I hope that next time it will do justice to Rob Brown's erudition, experience and commitment to helping them on their way.

Simon Foster

Solicitor; independent legal consultant

² Publication date – 1 October 2007.

