Allan Norman looks back at some of the court cases and rulings that have had a major impact in the 50 years since BASW was formed

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Legal cases that shaped social work

1. Gillick Competence

In 1981, Victoria Gillick asked her health authority for assurances that contraceptive advice would not be provided to her daughters without her knowledge and consent. Their refusal to provide those assurances ultimately reached the House Of Lords. The ruling sets out how children gradually take on rights and responsibilities in accordance with their maturity and understanding, which therefore has to be assessed. Gillick competence is about a lot more than just contraception, and social workers are among those who today still have to assess a child's competence to make important and life changing decisions.

Gillick v West Norfolk & Wisbech Area Health Authority [1985] UKHL 7 (17 October 1985)

2. Liability for negligence

Do social workers owe a "duty of care" to those they support? Many social workers would assume they do. But the legal consequences of such a duty include the possibility of being sued in negligence by service users. In this case the Lords ruled that introducing liability in negligence would complicate decision-making, potentially distract social workers into defensive practice. This case has long limited the circumstances in which social workers can be sued.

X (Minors) v Bedfordshire CC [1995] UKHL 9 (29 June 1995)

3. Statutory guidance

The Local Authority Social Services Act of 1970 included at section 7 a power for government ministers to issue guidance that social workers and others should follow. In 1996, in the course of a dispute the details of which are largely forgotten, the High Court had to make sense of this. If it is statutory, in the sense that it is authorised by an Act of Parliament, how can it also be guidance? The court answered, explaining this special hybrid status of "statutory guidance". The term was not used much before, but all social workers will now be familiar with statutory guidance, which has proliferated in the years since this judgment.

R v Islington London Borough Council, Ex p Rixon [1997] 32 BMLR (17 April 1996)

4. Rationing Scarce Resources

When is a need not a need, and when is the cost of meeting a need relevant to an adult community care assessment? This was the question in Barry, and the answer from the House of Lords confirmed the status of adult community care law as a scheme of lawful rationing. Later cases even under the Care Act 2014 seem to show adult community care is still better seen as a framework for rationing than a scheme of entitlements.

Barry, R (on the Application of) v. Gloucestershire CC & Anor [1997] UKHL 58 (20 March 1997)

LEGAL VIEW

5. Deprivation of Liberty

In 1998, a young adult HL was deprived of his liberty in Bournewood Hospital in Surrey. The European Court of Human Rights held in 2004 that the common law used to do this did not meet human rights standards, and eventually in response, Deprivation of Liberty Safeguards came into being. The case cast a long shadow, not least as the Supreme Court in Cheshire West showed that the safeguards covered nowhere near as many people as needed them. Adult practitioners are coming to terms with greater scrutiny of their actions by courts as a result, even while an effective system of safeguards continues to elude us.

HL v. The United Kingdom - 45508/99 [2004] ECHR 720 (5 October 2004)

6. Common Law

An Order had been made to protect a child with significant disabilities from a forced marriage. Munby had to decide whether and how it might be possible to extend this order into adulthood. He observed that judges' ancient powers to protect vulnerable adults on behalf of the monarch had survived into the modern era and went on to use those powers in a social work context.

In an evocative phrase, Alex Ruck Keene has said that Munby in this case was "finding tools down the back of the legal sofa". Today, social workers use common law and the court's inherent jurisdiction to protect children and vulnerable adults frequently, often without even realising it.

A Local Authority v MA & Ors [2005] EWHC 2942 (Fam) (15 December 2005)

7. Privatisation

An 83-year-old with Alzheimer's lived in accommodation which Birmingham council had transferred to Southern Cross. It turns out what exercised the lawyers was the effect of privatising social services on her rights, and the House of Lords held that as a commercial enterprise, Southern Cross was not bound by them.

The precarious nature of human rights in an era of social work privatisation owes much to the missed opportunities in this case, when a majority of commercial judges showed their commercial colours.

YL v. Birmingham City Council & Ors [2007] UKHL 27 (20 June 2007)

8. Family Court Transparency

In a turn of events that could not be orchestrated, a care-experienced mother gave birth early to her son, the same day as a judicial review of her pathway plan was being considered in the High Court.

Social workers removed the baby without a court order; the barrister in the public High Court hearing told the judge, who promptly ordered the baby's return to his mother; the media had a field-day speculating whether social workers did this sort of thing all the time. The judge was Munby again. As President of the Family Courts, and influenced by this case, he became known as a champion for transparency.

G, R (on the application of) v Nottingham City Council [2008] EWHC 400 (Admin) (05 March 2008)

Allan is qualified in both social work and law. He is in independent practice at Celtic Knot.

9. Human Dignity

Lady Hale would have found for Elaine MacDonald who, not being incontinent, did not want to wear incontinence pads. But she was in a minority of one, while a majority of the Supreme Court said they "totally disagree with, and deplore" parts of her analysis about how we see human dignity in adult social care. At least she may have managed a wry smile when the European Court of Human Rights endorsed her approach to human dignity in this case, one that sits comfortably with BASW's Code of Ethics.

McDonald, R (on the application of) v Royal Borough of Kensington and Chelsea [2011] UKSC 33 (6 July 2011)

10. When "Nothing Else will Do"

Lady Hale is alone yet again as four male judges reject an appeal on behalf of an "over-anxious mother" whose daughter was placed for adoption. But who in the field of child protection and adoption hasn't come across "nothing else will do", Lady Hale's legal explanation that the most draconian intervention is the last resort after careful elimination, not the gold standard?

In a minority judgment she still won the argument - a swathe of successful appeals against placement orders followed, and this case's impact can be seen in the requirements of the Social Work Evidence Template.

B (a Child), Re [2013] UKSC 33 (12 June 2013)

11. Wellbeing concerns

Scotland's Parliament legislated for a state official to oversee the wellbeing of every child in Scotland. A broad alliance of organisations led by the Christian Institute challenged its right to interfere in the lives of families in this way. The Supreme Court judgment striking down the legislation serves to remind us that we cannot interfere in family life just because we think we could do better. It sets out a blueprint for thinking about when interference is necessary and proportionate, and when we should leave families to get on with it on their own if they wish to.

The Christian Institute & Ors v The Lord Advocate (Scotland) [2016] UKSC 51 (28 July 2016)

12. Fitness to practice

Felix Ngole was removed from his MA social work course after remarks he made about homosexuality on a public website. The High Court dismissed Mr Ngole's challenge to his removal. Judges carefully considered human rights and equality rights around religion and sexual orientation, the nature of a university's duties to its students and its obligations to the public at large in respect of students undertaking a professional programme such as social work.

The Court of Appeal found the university had interfered disproportionately with Mr Ngole's freedom of expression (though judges also noted "offensive" language condemning homosexuality could bring the profession into disrepute). Together the rulings show the difficult path universities with professional courses must navigate between duties to students, regulators and the public. The cases will likely shape fitness-to-practice regimes for years to come.

Ngole, R (On the Application Of) v University of Sheffield [2017] EWHC 2669 (Admin) (27 October 2017)