

A model to support the development of courtroom skills

Clare Seymour¹

Summary: There is widespread interest on the part of social work degree students in developing their courtroom skills within a framework of learning about social work law, but it is often not until they qualify and are 'thrown in at the deep end' that anyone gives any serious thought to the need for preparation and skills development in this area. As a result, students and newly-qualified social workers are frequently apprehensive about court work, which means that they do not always do themselves, or the people who use social work services, justice when faced with court involvement. This article offers a model for practice assessors to use with students in agencies where court work is undertaken, and encourages skills development against a foundation of critical analysis and reflection. The term 'practice assessor' has been adopted by the General Social Care Council in preference to the previously widely-used term 'practice teacher' to describe the person responsible for facilitating learning and supervising and assessing social work students in practice. Within this model, 'practice assessor' is interchangeable with 'practice teacher', and indeed most of the suggested learning activities primarily involve a facilitative or teaching, rather than an assessment, role.

Keywords: social worker; social work students, courtroom skills; model for skills development, observation and shadowing, reflection, evidence, cross-examination, values

1. Senior Lecturer in Social Work

Address for Correspondence: Anglia Ruskin University, Faculty of Health and Social Care, William Harvey Building, Bishop Hall Lane, Chelmsford CM1 1SQ. c.v.seymour@anglia.ac.uk

Introduction

Law is a key area of teaching and learning in the social work degree. Knowledge of legal rules and skills in their application are included in the social work benchmark statement (QAA, 2000) and in the knowledge and key role requirements of the national occupational standards for social work. However, most commentators agree that the relationship between social workers and lawyers in practice is often strained, characterised by antagonism and distrust, and that social work students frequently approach learning the law with fear and lack of confidence (Preston-Shoot et al, 1998, cited in SCIE, 2005). Many qualified social workers also experience court work as extremely stressful, which can result in defensive practice in which the values of their profession appear to become side-lined or obscured. The courtroom is an arena where preparation and rehearsal is difficult, and yet frequently court work is where the robustness of social workers' practice, professional confidence and knowing the rules can make a key difference to the experience of people who use social work services (SCIE, 2005, p.174).

Preston-Shoot (2000) suggests that competent practitioners are those who are:

- confident (to challenge);
- credible (in presenting the rationale for decision-making);
- critical (to make their practice and legal rules accessible to those with whom they work, to assess the impact of policies on people's lives and to navigate through questions of ethics, rights and needs); and
- creative (in order to exploit the possibilities that legal rules present and to manage the practice dilemmas and conflicting imperatives that the interface between law and social work practice generates).

Cull and Roche (2001) further argue that health and social welfare professionals do not need to learn to *think like a lawyer*, but instead to engage with the complexity of the law-practice interface. This encompasses factors such as the values and principles which shape the two professions, and the motivation and personal attributes of their respective practitioners. Also important are the differences in the nature of the relationships which lawyers and social workers have with their clients and in the structure and regulation of law and social work, and the frequently negative influence of preconceptions and stereotypical

assumptions. The comprehensive SCIE review on the teaching, learning and assessment of law in social work education (2005, p.49) emphasised the need for social workers to develop the conceptual tools to understand law, rather than simply learning what the law says. These principles can only be developed against a practice framework in which students feel able to question, challenge and debate issues which arise in the legal context of social work.

The SCIE review found that courtroom skills were, for the most part, not identified specifically in social work education, but tended to be included in generic learning objectives, such as *being confident in using the law* and *understanding the legal system*. Despite, or perhaps because of, apprehension about court work, there is evidence of considerable interest in the part of social work students in developing their knowledge and skills in this area. When Anglia Ruskin University introduced an elective module on courtroom skills as part of its social work degree, the module was heavily oversubscribed and well-received. However, as with any area of learning, knowledge, skills and values have to be applied to be effective, and practice assessors in agencies where social workers regularly undertake court work can play a key role in helping students develop and apply relevant skills, such as keeping up-to-date with changes in law and policy, advocacy, communication, fact-finding and research, writing and presenting reports, presenting an argument, using facts to formulate an opinion, problem-solving, negotiation and responding to challenge. There is evidence, too, that learning about the law is often not retained (Preston-Shoot et al, 1997, cited in SCIE, 2005), and it is suggested that this may be because academic learning is *insufficiently linked to practice, failing to connect the law and social work, or to engage students on a personal level with the context of what they are learning* (SCIE, 2005, p.30). It follows, therefore, that practice assessors are in a key position in which to maximise the effectiveness of students' learning.

It is possible for students to undertake academic preparation for court work, by, for example, researching the historical development of the courts, the structure of the legal system, court rules, legal language and concepts, and there are many accessible texts available to facilitate this. However, without practical application, such information is likely to prove difficult to understand and retain. This model offers a framework with which to support students in developing confidence and competence in court settings.

Reflecting on attitudes to the law

As preparation for professional involvement with courts, students should reflect on their own experiences and consider how these may influence their current attitudes to courts and lawyers, and their understanding of the legal system. Sitting on a jury, ending a marriage or partnership, being convicted of a motoring offence or having to wind up a relative's estate will each shape perception and understanding of legal processes and the people involved, which in turn can influence professional behaviour. Comparing their attitudes towards lawyers with those they have towards other professionals will help students identify the preconceptions they hold, and form the basis for devising creative ways of overcoming the barriers which can impede effective professional relationships.

Law reports appear in the *Times* on most days when the High Court is sitting. Other newspapers usually publish them weekly, and they are available on various websites (www.lawreports.co.uk). Encouraging students to keep any cuttings which relate to decisions in cases within their particular areas of interest will give them a flavour of legal decision-making and provide a framework for professional debate in the context of the ways in which opposing views are determined.

Values and principles

Key aspects of the relationship between social work and law are the values and principles which shape the two professions. This is highlighted in the SCIE report as an area which is neglected by many social work degree programmes, and yet one which worries many social workers, despite the shared commitment of both professions to social justice. Critical analysis of how lawyers are governed and the principles which underpin their profession, including fairness, honesty, transparency, confidentiality and anti-discriminatory practice encourages students to see themselves as entitled to be regarded as equal players when in a professional role in court, and therefore in a unique position to make a difference to the experience of service users faced with court involvement. The General Social Care Council became the regulator of social care services in England (with companion organisations in Scotland, Wales

and Northern Ireland) in October 2001 and produced the first codes of practice for social care workers and their employers in 2002 (GSCC, 2002). These codes describe the standards of professional conduct and practice required of social care workers, and also the responsibilities of social care employers. Whilst student social workers are learning to work in accordance with these codes and develop their understanding of the nature of professional relationships and boundaries, it is also helpful for them to consider service users' expectations of different professionals. This can be facilitated by means of structured exercises or reflections on personal experiences.

Observation and shadowing

Observation or shadowing can reduce anxiety by increasing knowledge of unfamiliar processes, but most importantly from a practice learning perspective, it is a means of developing self awareness and providing a framework for reflection.

The observational stance requires social workers to be aware of the environment, the verbal and non-verbal interaction; to be aware of their own responses as a source of invaluable data, provided that they are aware of what comes from them and what comes from their clients; and to develop the capacity to integrate these and give themselves time to think before arriving at a judgement or making a decision (Trowell and Miles, 1996, in Knott and Scragg, 2007, p.43).

Most courts, even those whose hearings are not open to the public, will permit people with a professional interest to attend a hearing, and many judges and magistrates are willing to have informal discussions afterwards, if approached through their clerk. Dickens (2005, 2006) has explored the tensions which can arise between local authority lawyers, social workers and managers, and Brammer (2007, p.107) suggests that barriers to effective relationships between social workers and lawyers would be reduced by, among other things, the clarification of their respective roles and responsibilities. Students can be supported in developing their understanding of the legal/social work interface by being offered the opportunity to meet with and, if possible, shadow other

professionals, for example in-house lawyers, children's guardians and independent advocates, which is particularly beneficial if it occurs away from the tensions of actual proceedings. In addition to using supervision to encourage reflection on the opportunities and constraints of multidisciplinary working, practice assessors could devise a mini project as a framework for learning, such as preparation of an information leaflet for a particular client group on roles and responsibilities in legal proceedings.

Careful observation in the course of everyday activities will support the development of students' presentation skills, which are an important component of effective court work. Watching people presenting their views, or answering questions, in a variety of settings, such as television discussion programme, church service, lecture or party political broadcast, enables students to identify what seems to support effective communication and what creates barriers between speaker and listener.

Observation of inter-professional decision-making forums is also helpful, particularly if combined with an activity such as compiling a diagrammatic representation of group processes. It also helps students to understand the challenges of individual decision-making in the context of different cultures and priorities, and differing perceptions of professional duty, power, responsibility and autonomy.

Giving evidence

Students should be familiar with the concept of gathering evidence which relates to learning objectives, and the criteria put forward by Parker (2004, p.96) specifically to evidence practice learning, with the possible exception of the last element, can be transferred to the process of presenting evidence to court, thus further demonstrating that courtroom skills can be developed within a generic professional framework:

- Is it valid?
- Is it sufficient?
- Is it relevant?
- Is it based in social work values (and, I would add, codes of practice)?

- Is it reliable?
- Is it clear?
- Is it agreed?

Simple memory exercises, process recording or comparing different assessments of the same trigger will demonstrate the influence on evidence of shortcomings in memory and errors in perception, judgement or estimation and consequently the vital importance of comprehensive, accurate and fair recording.

Although courts need to know what professional opinions are being advanced, they are, if anything, more interested in how they were formed. In other words, what facts informed the analysis and how they were interpreted. Through their academic training, social work students should be developing an ability to move from description to the formulation of a rationale for their actions and opinions. This can be supported by practice assessors acting as 'devil's advocate' in suggesting alternative views, and encouraging students to incorporate four further Rs into the process:

- Reading (about relevant theories);
- Research (about 'what works');
- Resources (what are needed and, more importantly, are available to support any proposed plan); and
- Reflection.

It is worth remembering that the best way to be a helpful witness is to understand the task facing the court, and so role plays (as in, for example, a planning or review meeting) can provide the opportunity to practise advancing, or defending, different professional judgements and opinions.

In relation to the sufficiency of evidence, an important aspect of court work is the need for social work evidence to include everything which might be relevant to the decision, even that which might be prejudicial to an individual's performance or the result they are hoping for. Also important in the context of collaborative and inter-disciplinary working is for students to learn to work with the fact that once in court, social workers are required to give evidence of their own knowledge and opinions, not those of anyone else. They do not have to support the line of the party on whose behalf they are giving evidence if, on professional

grounds, they do not. (Seymour & Seymour, 2007, pp.100-101). This is potentially difficult, since it requires professional confidence which usually only develops with experience. However, practice assessors can encourage students to question proposed courses of action, seek out and analyse alternatives in terms of the work they are doing, and also to identify and reflect upon things that, with hindsight, they might wish to do differently in the future. All of these activities will encourage the open-mindedness and fairness that courts, and also people who use social work services, seek (ibid, p.73).

Report writing

In most situations in which social workers are involved professionally, their evidence will be presented to the court in writing, and consequently it is through their written work that their practice will, initially at least, be exposed to the scrutiny of others. Thus, reports and records are an important factor in determining the image of social work from the perspective of other professionals and potentially hold enormous power in the minds of service users.

There have been too many instances of social work reports to court failing to reach expected standards; specific criticisms have included lack of focus, failing to distinguish between fact and opinion, reproducing large sections of case records with little structure or editing, and, worst of all, failing to address the best interests of the child (Cooper, 2006, pp.1-2). Dickens (2004) found that a major complaint of local authority lawyers was the amount of time they had to spend on overseeing the quality of social workers' written statements. They were critical of standards of literacy, but their main concern was the proliferation of unnecessary detail and the inadequacy of analysis. Judges, too, cherish brevity and clarity (Bond and Sandhu, 2005) and reports which are poorly written or structured are likely to result in a negative opinion of the writer which is hard to reverse, however commendable their subsequent performance.

All of these areas can be addressed in the practice learning setting, by devising specific tasks, based on actual case records, which could include all, or some, of the following:

- Compiling a genogram or chronology (neither of which should contain any opinion – a fact often overlooked);
- Reducing large amounts of information without losing essential material or compromising fairness and balance;
- Distinguishing between fact, analysis and opinion;
- Expressing a rationale for opinions and decisions;
- Presenting relevant theoretical and research material to support a rationale, including that which may not support the case being put forward;
- Critical analysis of, and clarity in, use of language, including the identification and minimal use of jargon and acronyms.

Cross examination

As the aim of cross-examination is to expose any flaws in the evidence, it follows that evidence which has been properly prepared and presented by people who are familiar with their material, confident in their role and clear about the rationale for any opinions expressed, has the best chance of standing up to scrutiny. An effective cross-examiner is one who succeeds in obtaining from another party's witness evidence which assists their client's case, which means obtaining answers which the witness accepts are accurate, or at least more accurate than their previous evidence (Seymour & Seymour, 2007, p.113).

Although witnesses in the UK should never be coached on their actual evidence (unlike in the United States, where witness coaching is widely practised), preparation for the experience of being cross-examined can be facilitated by:

- Compiling and maintaining records in such a way as to make them suitable to be shared with people who may have different interests in the case;
- Anticipating the grounds on which evidence of fact might become subject to challenge (perception, memory, bias or prejudice, untruthfulness);
- Anticipating the grounds on which evidence of opinion might be challenged (level or range of qualifications, experience or expertise, rationale);

- Considering the influence of, and personal responses to, the cross-examiner's personal style;
- Learning to recognise different types of question and their relationship to the sort of response sought;
- Developing strategies to establish some control over the process, such as objectivity, controlling the pace, seeking clarification where necessary and keeping responses brief and focused.

The extensive transcripts of the Climbié Inquiry (www.victoria-climbié-inquiry.org.uk) provide a fascinating insight into the reality of cross-examination and are an invaluable learning resource for students.

After the hearing

At one level the justice system can be understood as the major institutional way we deal with losses, largely around our expectations of how other people will behave towards us. (Dawes, in Thompson, 2002, p.176)

Any court experience is likely to involve loss for one or more of the people involved and this can provide a theoretical framework within which to plan responses in the aftermath of what could be distressing and damaging experiences. Potential losses range from those which are severe and permanent, such as the decision to place a child for adoption, to those from which recovery is possible and lessons can be learned, such as the restriction of liberty by means of a community sentence or having part, or all, of your evidence rejected by a court. For social workers, knowledge of models and theories of loss and of variations in the cultural needs of people experiencing loss can potentially make a significant difference to their own experiences and those of others who have been involved in the process. Supervision which actively encourages reflection and the application of relevant theories to practice will help students develop the confidence and independence of thought to question and critically analyse legal and court processes, which in turn will encourage them to see themselves as equal players in the court setting.

Conclusion

Social workers often describe their court experience as the most demanding of their career (Seymour & Seymour p.151). Sometimes the experience is viewed negatively, but with effective preparation and support, it offers opportunities and challenges which do not arise in other areas of work. This article has sought to encourage practice assessors to help students build the foundations for developing the necessary knowledge and skills during the course of practice learning opportunities in which court work is undertaken.

Where the law meets social work, there may be a new mix of skills that brings together the principles and values of both professions and applies them to the task of developing lawful, ethical social work practice. (SCIE, 2005, p.187)

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