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LEGAL EDUCATION AND WELLBEING: CONSIDERATIONS FOR STUDENT SOCIAL WORKERS

RICHARD MACHIN* AND PETER BENBOW**

ABSTRACT

This article explores the challenges of delivering legal education to social work students, while at the same time promoting wellbeing. Social work degrees should produce compassionate individuals who are able to make decisions based on legal provisions. It is the responsibility of social workers to safeguard the needs of some of the most vulnerable groups in society, but ethical dilemmas and challenges to wellbeing can be evident when legislation is not always aligned to core social work values. A key role of social work education is to provide students with the coping strategies to deal with the pressure of the job. However, working in a complex and often-stressful environment can challenge wellbeing.

Two specific areas of UK legislation will be discussed to explore the issue of wellbeing in a social work legal context. Firstly, the Mental Health Act 1983 (MHA) will be analysed. The MHA gives significant powers to the Approved Mental Health Professional implementing it. Decisions are made on whether to apply the MHA and compulsorily detain someone against their wishes. Secondly, the Welfare Reform and Work Act 2016 will be discussed. This introduced a two-child limit for means-tested benefits in the UK. This raises ethical questions as entitlement to state benefits is based on the size of the family rather than the needs of the family. There are a number of exceptions to this provision, most controversially the so called 'rape clause'.

WELLBEING IN A SOCIAL WORK CONTEXT

There has been an increased focus on the concept of wellbeing in both academic and professional circles over the last two decades.¹ Much attention has been placed on how wellbeing can be achieved and on definitions of wellbeing itself. A prominent multi-disciplinary review of wellbeing proposed that wellbeing should be considered as "a state of equilibrium or balance that can be affected by life events or challenges".² The importance of wellbeing has also been recognised by leading international organisations such as the United Nations (UN) and Organisation for Economic Co-operation and Development (OECD). The UN Sustainable Development Goal 3 "Good

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¹ Martin Seligman, *Flourish, A new understanding of happiness and well-being – and how to achieve them* (Nicholas Brealey Publishing, 2011).

² Rachel Dodge, Annette Daly, Jan Huyton, and Lalage Sanders 'The challenge of defining wellbeing' (2012) 2(3) *International Journal of Wellbeing*, 222.

Health and Wellbeing” emphasises that prosperous societies rely on healthy lifestyles and the promotion of wellbeing.³ Similarly, the OECD, in developing the “Better Life Index”,⁴ acknowledge that the wellbeing of individuals is key to the effective functioning of modern societies. This index allows the measurement of wellbeing across a population and reveals where there are wellbeing inequalities (for example by gender, age or ethnicity).

Wellbeing is also an important principle in the social work profession. A global definition of Social Work adopted by the International Federation of Social Workers states that “social work engages people and structures to address life challenges and enhance wellbeing”⁵. The British Association of Social Workers (BASW) endorses this definition in the UK. Furthermore, the Professional Capabilities Framework (PCF),⁶ a set of knowledge, skills and behaviour competences developed by BASW, embodies these wellbeing principles in its nine domains. The PCF underscores the importance of wellbeing alongside the fundamental principles of human rights and social justice.

The prominence of wellbeing in these professional benchmarks for social work is reflected in the important role that it plays in the education of student social workers. Research by Grant and Kinman has emphasised the importance of helping student social workers to develop a “tool-box of coping strategies” to help to deal with the pressures of the job.⁷ They argue that wellbeing will not be achieved in a social work environment without an acknowledgement of the structural causes of stress and that emotional intelligence, empathy, and resilience are important elements of wellbeing. Similarly, it has been suggested that the development of an “emotional curriculum” can only be achieved with a high level of reflective practice and mindfulness.⁸ Research indicates that the promotion of wellbeing amongst social workers who have experienced trauma in their own lives is particularly important as they may over-empathise with service users.⁹ Shier and Graham have also highlighted the connections between wellbeing and mindfulness.¹⁰ They found that work-life balance, being able to reflect on key experiences in life and openness are central components of wellbeing and that these issues should be a focus of professional supervision and reflective exercises.

THE MENTAL HEALTH ACT 1983

³ United Nations, ‘Good Health and Wellbeing: Why It Matters’ (United Nations No date) <https://www.un.org/sustainabledevelopment/wp-content/uploads/2017/03/3_Why-It-Matters-2020.pdf> accessed 1 April 2021.

⁴ OECD, ‘OECD Better Life Index’ (*OECD Better Life Index*, No date) <<http://www.oecdbetterlifeindex.org/#/1111111111111>> accessed 1 April 2021.

⁵ International Federation of Social Workers, ‘Global Definition of Social Work’ (*International Federation of Social Workers*, 2021) <<https://www.ifsw.org/what-is-social-work/global-definition-of-social-work/>> accessed 1 April 2021.

⁶ British Association of Social Workers, ‘Professional Capabilities Framework (PCF)’ (*BASW*, 6 April 2018) <<https://www.basw.co.uk/social-work-training/professional-capabilities-framework-pcf/>> accessed 1 April 2021.

⁷ Louise Grant and Gail Kinman, ‘Enhancing Wellbeing in Social Work Students: Building Resilience in the Next Generation’ (2012) 31(5) *Social Work Education* 605.

⁸ Louise Grant, ‘Hearts and Minds: Aspects of Empathy and Wellbeing in Social Work Students’ (2014) 33(3) *Social Work Education* 338.

⁹ Victoria MacRitchie and Stacey Leibowitz, ‘Secondary Traumatic Stress, Level of Exposure, Empathy and Social Support in Trauma Workers’ (2010) 40 *South African Journal of Psychology* 149.

¹⁰ Micheal L Shier and John R Graham, ‘Mindfulness, Subjective Well-Being, and Social Work: Insight into Their Interconnection from Social Work Practitioners’ (2011) 30(1) *Social Work Education* 29.

The Mental Health Act 1983 (MHA), amended by the 2007 Act,¹¹ allows for the assessment and possible compulsory admission to hospital for people experiencing mental health problems. Chapter 2 of the MHA confers statutory powers on social workers, one of which is the creation of specialist mental health professionals who make decisions alongside doctors in the assessment and treatment of people under the Act. Created through the 2007 amendments, the Approved Mental Health Professional (AMHP) replaced an earlier incarnation of this role (the Approved Social Worker) and was made open to other professionals, such as nurses, occupational therapists and psychologists, although it is still social workers who make up the vast majority of practising AMHPs, with only 5% of AMHPs coming from non-social work professions.¹²

The provision of AMHPs is under the control of local authority social services departments (MHA, s 114) which must make available sufficient numbers to provide a 24-hour service, as stipulated in DoH Circular (93) 10 and the Mental Health Act 1983 Code of Practice.¹³

AMHPs undertake key duties within the MHA assessment process, as set out in the Mental Health Act Code of Practice.¹⁴ These include responsibility for setting up and coordinating the assessment, arranging for medical assessment, and identifying and liaising with the person's nearest relative.¹⁵ Most importantly, the AMHP makes an application for compulsory admission to hospital if they are satisfied that the statutory criteria for detention have been met, and that admission to hospital is the most appropriate manner of intervention.¹⁶ In undertaking this role, the AMHP must act independently and exercise their own judgement; they cannot take instructions from their employer (the local authority) despite acting on their behalf.¹⁷

Social workers in adult practice have increasingly found their duties shaped by statutory roles.¹⁸ With regards to mental health, the AMHP role takes place in a national context that has seen a steady rise in compulsory admissions under the MHA over recent years, representing increased pressure on AMHP services. The last report by the Care Quality Commission noted a 40% increase in use of the MHA between 2005/06 and 2015/16.¹⁹ Legislative developments appear to have contributed to this

¹¹ Mental Health Act 2007.

¹² Association of Directors of Adult Social Services, 'AMHPs, Mental Health Act Assessments & the Mental Health Social Care Workforce' (ADASS Benchmarking Network 2018) <<https://www.adass.org.uk/media/6428/nhsbn-and-adass-social-care-national-report.pdf>> accessed 5 May 2021.

¹³ Department of Health, 'Code of Practice: Mental Health Act 1983' (The Stationery Office 2015) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/435512/MHA_Code_of_Practice.PDF> accessed 5 May 2021, paragraph 4.33.

¹⁴ Ibid, paragraphs 14.49 to 14.56.

¹⁵ Mental Health Act 1983, s 26.

¹⁶ Ibid, s 13 (2).

¹⁷ Department of Health, 'Code of Practice: Mental Health Act 1983' (The Stationery Office 2015) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/435512/MHA_Code_of_Practice.PDF> accessed 5 May 2021, paragraph 14.52.

¹⁸ Emad Lilo and Colin Vose, 'Mental Health Integration Past, Present and Future A Report of National Survey into Mental Health Integration in England' (Mersey Care NHS Trust, NHS North West Health Education 2016) <<https://londonadass.org.uk/wp-content/uploads/2017/01/MH-Integration-Past-Present-Future.pdf>> accessed 5 May 2021.

¹⁹ Care Quality Commission, 'Mental Health Act The Rise in the Use of the MHA to Detain People in England' (Care Quality Commission 2018)

rise. There is now an increased awareness of the position of service-users who may lack the capacity to agree to informal admission; this is as a result of the Bournemouth judgment (*HL v UK*)²⁰ and subsequent case law. Furthermore, following the Supreme Court judgment (*Cheshire West and Chester Council v P*)²¹ on the definition of “deprivation of liberty” there has been a decline in the number of voluntary or informal service-users. The resulting national picture can be viewed as “a costly and coercive approach to psychiatric care”.²²

The AMHP therefore exercises considerable power, in what can be challenging and distressing circumstances, at a time of increased demand on their services. Alongside deciding whether to remove a child from its parent(s) or carer(s), this is possibly the clearest and most high-profile example of social work’s ‘difficult decisions’. With regards to the role of the AMHP, it has been argued that undertaking this function of social control amounts to “dirty work”.²³

Promoting service-user well-being within this framework is a challenge. There is an obvious tension between the power to detain, and the duty to protect and promote individual rights and autonomy which are embedded in the social work profession; “...the very idea of coercion in social care seems contradictory, and, to many, even abhorrent”.²⁴ Ethical opposition to enforced treatment of people via legislation has been well documented. The use of coercion through the MHA runs counter to promoting the principles of autonomy and freedom which are central to UK legislation and health care practice.²⁵ Moreover, in a departure from most legislation governing harm, the MHA can be applied on the basis of predicted acts of harm as opposed to instances of harm which have occurred.²⁶ The difficulty of harm prediction is widely recognised, especially for statistically rare events such as homicide²⁷ but also for more frequent events such as suicide.²⁸

Educators thus face the challenge of equipping AMHPs with the necessary legal knowledge and capabilities, whilst also ensuring they are able to enact these in an ethical manner which is respectful of, and sensitive to, the needs of the service-user. Social Work England, the regulatory body for social work, has established guidance for the education and training of AMHPs which reflects the complex nature of the role. These are based on standards laid out in Schedule 2 to the Mental Health (Approved Mental Health Professionals) (Approval) (England) Regulations 2008.²⁹ Knowledge of “legislation, related codes of practice, and national and local policy and guidance

<https://www.cqc.org.uk/sites/default/files/20180123_mhadetentions_report.pdf> accessed 5 May 2021.

²⁰ 45508/99 [2004] ECHR 471.

²¹ [2014] UKSC 19.

²² Alice Wickersham, Shilpa Nairi, Rebecca Jones and Brynmor Lloyd-Evans, ‘The Mental Health Act Assessment: Process and Risk Factors for Compulsory Admission to Psychiatric Hospital: A Mixed Methods Study’ (2019) 50(3) *British Journal of Social Work*, 642.

²³ Lisa Morriss, ‘AMHP Work: Dirty or Prestigious? Dirty Work Designations and the Approved Mental Health Professional’ (2015) 46(3) *British Journal of Social Work* 703.

²⁴ Alison Brammer and Jane Boylan. *Critical issues in social work law* (Red Globe Press, 2017), 59.

²⁵ Alastair Morgan, Anne Felton, Bill Fulford, Jayasree Kalathil and Gemma Stacey, *Values and ethics in mental health* (Palgrave Macmillan, 2016).

²⁶ *Ibid* 17.

²⁷ George Szumkler, Rowena Daw, and John Dawson, ‘A model law fusing incapacity and mental health legislation’ (2010) 20 *Journal of Mental Health Law* 11.

²⁸ Sonya Stanford, Elaine Sharland, Nina Rovinelli Heller and Joanne Warner, *Beyond the Risk Paradigm in Mental Health Policy and Practice* (Palgrave, 2017).

²⁹ Schedule 2 to the Mental Health (Approved Mental Health Professionals) (Approval) (England) Regulations 2008, SI 2008/1206.

applicable to the role of an AMHP” highlights the legal aspects of required knowledge acquisition.³⁰ Other key learning requirements illustrate the complex arena where this knowledge must be applied. Hence, the following also appear as learning criteria categories:

- Autonomous Practice;
- Informed Decision-making;
- Equality and Diversity;
- Collaborative Working.

Qualification to become an AMHP is configured into a post-graduate level qualification, reflecting the demanding nature of the role. As part of this training, practice placements are “integral”,³¹ allowing trainee AMHPs to have protected learning within a dedicated AMHP practice setting. Ethical principles can be a key source in promoting wellbeing, and for social work practice are found within both the regulatory body (Social Work England) and the professional body (British Association of Social Workers).³²

Given the potentially repressive outcomes of decisions being taken at an MHA assessment, and the vulnerable position of mental health service-users who find themselves as the subject of these decisions, AMHPs’ legal and practice knowledge needs to be combined with an understanding of, and a commitment to implementing, a clearly defined set of values.

The MHA Code of Practice contains Guiding Principles, which are to be used when making decisions under the MHA:

1. Least restrictive option and maximising independence;
2. Empowerment and involvement;
3. Respect and dignity;
4. Purpose and effectiveness;
5. Efficiency and equity.³³

These Principles are not statute but are present in the Code of Practice and professionals have a duty to observe them.³⁴ The Code states that they should always be taken into consideration, although the “weight given to each principle in reaching a particular decision will depend on context and the nature of the decision being made”.³⁵

Whilst wellbeing as a term is not overtly promoted as a concept in the MHA, it could be argued that the first three of these principles match closely to the promotion

³⁰ Social Work England, ‘Education and Training: Approved Mental Health Professions (AMHP) Guidance’ (Social Work England 2020) <<https://www.socialworkengland.org.uk/media/3487/amhp-guidance.pdf>> accessed 6 December 2020, 11.

³¹ Ibid 21.

³² Social Work England, ‘Professional Standards’ (*Social Work England* no date) <<https://www.socialworkengland.org.uk/standards/professional-standards/>> accessed 1 May 2021; British Association of Social Workers, ‘Code of Ethics’ (*BASW*, 6 April 2018) <<https://www.basw.co.uk/about-basw/code-ethics>> accessed 29 April 2021.

³³ Department of Health, ‘Code of Practice: Mental Health Act 1983’ (The Stationery Office 2015) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/435512/MHA_Code_of_Practice.PDF> accessed 5 May 2021, section 1.1.

³⁴ Ibid, paragraph 22.

³⁵ Ibid.

of individual wellbeing.³⁶ However, though their inclusion in the Code offers a reference point for good practice, the application of these principles is far from straightforward. To take Principle 1 as an example; this may be simple to understand but is vulnerable to being overlooked in practice. This is a requirement to use the powers of the MHA only if necessary, and whenever possible to utilise community services instead to provide alternatives to hospital admission. However, providing alternative care can be dependent on resource availability and the agreement of other professionals to take on what could be seen as the additional risk of supporting a vulnerable person to remain in the community. Interestingly, this difficulty in securing alternatives to admission is cited as a key factor in stress and poor morale amongst the AMHP workforce.³⁷ Similarly, Principle 3 states that practitioners should recognise and respect the individual differences and background of service users, ensuring that there “must be no unlawful discrimination”.³⁸

It is noteworthy that the introduction to the MHA Code of Practice references the more recent Care Act 2014, which does explicitly have the promotion of service-user wellbeing as a core principle in s 1(1). The MHA Code of Practice creates a clear link to this:

“In addition to the requirements of the Act, relevant professionals (particularly those involved in discharging or treating patients in the community) should also consider the general responsibilities of local authorities under Part 1 of the Care Act 2014”.³⁹

Wellbeing is described in the Care Act as relating to a broad range of concepts, including personal dignity, physical and mental health and wellbeing, control over day-to-day life and family and personal relationships.⁴⁰ Evidence shows that mental ill-health, and associated factors (such as discrimination and economic disadvantage), have significant negative effects on wellbeing.⁴¹ Statistics demonstrate rates of detention for those people from a “Black and Black British” group are still over four times those of people from a “White” background.⁴² This illustrates the challenging context in which AMHPs must look to promote wellbeing. Hence, the inclusion of the wider Social Work England learning criteria noted above (Autonomous Practice,

³⁶ Simon Abbott, ‘Navigating practice at the interface between mental health and social care law’ in Suzy Braye and Michael Preston-Shoot (eds) *The Care Act 2014: Wellbeing in Practice* (Learning Matters. 2020).

³⁷ Mithran Samuel, ‘Councils urged to tackle AMHP salary disparities and stress in national workforce plan’ (*Community Care* November 11, 2019) <<https://www.communitycare.co.uk/2019/11/11/councils-urged-tackle-amhp-salary-disparities-stress-national-workforce-plan/>> accessed 1 May 2021.

³⁸ Department of Health, ‘Code of Practice: Mental Health Act 1983’ (The Stationery Office 2015) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/435512/MHA_Code_of_Practice.PDF> accessed 5 May 2021, para 1.4.

³⁹ *Ibid*, paragraph 20.

⁴⁰ S 1(2).

⁴¹ Department of Health and Public Health England, ‘Improving the Physical Health of People with Mental Health Problems: Actions for Mental Health Nurses’ (Public Health England 2016) Gateway Reference 04603 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/532253/JRA_Physical_Health_revised.pdf> accessed 1 May 2021.

⁴² NHS Digital, ‘Mental Health Act Statistics, Annual Figures England, 2019-2020’ (NHS Digital 2020) <<https://files.digital.nhs.uk/99/3916C8/ment-heal-act-stat-eng-2019-20-summ-rep%20v1.1.pdf>> accessed 30 April 2021.

Informed Decision-making, Equality and Diversity and Collaborative Working) as crucial to AMHP practice development.

The AMHP role represents a clear challenge to practitioners. They are expected to manage the expectations of various stakeholders: the service-user, their family, the state and the public. Further pressures have been created by a shortage of AMHP practitioners nationally.⁴³ Educating the AMHP to critically appreciate how their role sits within a complex web of “legal, organisation and human systems” is key to enabling them to manage the unique tensions of the role and continue to promote wellbeing amongst mental health service-users.⁴⁴

THE WELFARE REFORM AND WORK ACT 2016: LIMITING BENEFIT ENTITLEMENT TO THE FIRST TWO CHILDREN IN A FAMILY

In March 2016, the Welfare Reform and Work Act (WRWA) received royal assent and instituted four significant changes to the UK social security system. These amendments introduced stricter rules for Employment and Support Allowance which is the main welfare benefit in the UK for people who are unfit for work;⁴⁵ placed a benefit freeze on most working-age benefits for a period of four years⁴⁶ and reduced the level of the existing benefit cap which limits the total income derived from social security benefits that a household is entitled to.⁴⁷ This article focuses on the impact of the fourth change which introduced a two-child limit to the UK’s main means tested benefits.⁴⁸ The child elements of Universal Credit and Child Tax Credit are no longer awarded for the third or subsequent child born on or after 6 April 2017. Sections 13 and 14 of the WRWA apply to single people who form a new family unit with three or more children, but ignores any children born before 6 April 2017:

"(3A) Subsection (3B) applies in the case of a person or persons entitled to child tax credit where the person is, or either or both of them is or are, responsible for a child or qualifying young person born on or after 6 April 2017.

(3B) The prescribed manner of determination in relation to the person or persons must not include an individual element of child tax credit in respect of the child or qualifying young person unless –

(a) he is (or they are) claiming the individual element of child tax credit for no more than one other child or qualifying young person, or

(b) a prescribed exception applies."⁴⁹

⁴³ All-Party Parliamentary Group on Social Work, ‘Social Workers and a New Mental Health Act Final Report’ (All-Party Parliamentary Group on Social Work 2019) <<https://www.basw.co.uk/system/files/resources/Inquiry%20Report%20-%20APPG%20on%20Social%20Work%20-%20Social%20Workers%20and%20A%20New%20Mental%20Health%20Act..pdf>> accessed 30 April 2021.

⁴⁴ Jim Campbell ‘Deciding to Detain: The Use of Compulsory Mental Health Law by UK Social Workers’ (2010) 40(1) British Journal of Social Work, 328.

⁴⁵ Ss 15 and 16.

⁴⁶ Ss 11 and 12.

⁴⁷ Ss 8 and 9.

⁴⁸ Ss 13 and 14.

⁴⁹ S 13.

There are special circumstances where the two-child limit does not apply:

- When a third or subsequent child is born as part of a multiple birth.
- When a third or subsequent child is “likely to have been conceived as a result of a non-consensual sexual act (including rape), or at a time when the claimant was subject to ongoing control or coercion by the other biological parent of the child”.
- When a child is adopted.
- When a child is living with family or friends in a non-parental caring arrangement, whether formal, such as through a Guardianship Order, or informal, where “it is likely that the child would otherwise be looked after by a local authority”.
- When a child for whom the claimant is responsible has their own child.⁵⁰

The two-child limit is one of the most controversial elements of the UK government’s decade long programme of welfare reform. Strong criticism has come from academia (“the worst social security policy ever”⁵¹) and the social welfare law sector (“you could not design a policy better to increase child poverty than this one”⁵²). As there is no retrospective application of this policy, the Institute for Fiscal Studies estimate⁵³ that the full impact of the two-child limit will not be felt until the mid-2030s; projections indicate that 700,000 families will experience a reduction in benefit entitlement, with average annual losses of £3,000. Since the policy was introduced, we can see a steady increase in the numbers affected, with the latest figures demonstrating that 911,000 children live in households affected by the policy.⁵⁴

The government’s rationale for the two-child limit is to create parity between those receiving benefit and those in work:

“Benefit entitlement adjusts automatically to family size, whilst families supporting themselves solely through work do not see their incomes rise in the same way when they have more children”.⁵⁵

⁵⁰ Reg 9(2) Child Tax Credit Regulations 2002 SI 2002/2007, as amended by SI 2017/387 and Reg 40(2), Universal Credit Regulations 2013 SI 2013/ 376, as amended by SI 2017/376.

⁵¹ Jonathan Bradshaw, ‘The Two Child Policy Is the Worst Social Policy Ever’ (*Social Policy Association*, 1 November 2017) <<http://www.social-policy.org.uk/50-for-50/two-child-policy/>> accessed 5 May 2021.

⁵² Josephine Tucker, Senior Policy and Research Officer at Child Poverty Action Group (CPAG), in House of Commons and Work and Pensions Committee, ‘The Two-Child Limit’ (House of Commons Work and Pensions Committee 2019) HC 51 <<https://publications.parliament.uk/pa/cm201919/cmselect/cmworpen/51/51.pdf>> accessed 5 May 2021.

⁵³ Tom Waters, ‘Reform to Two-Child Limit Addresses Retrospection, but Does Not Change Long-Run Cut to Support for Big Families’ (*Institute for Fiscal Studies*, 11 January 2019) <<https://www.ifs.org.uk/publications/13804>> accessed 5 May 2021.

⁵⁴ HM Revenue and Customs and Department for Work and Pensions, ‘Child Tax Credit and Universal Credit Claimants: Statistics Related to the Policy to Provide Support for a Maximum of 2 Children, April 2020’ (HM Revenue and Customs, Department for Work and Pensions 2020) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/900788/Two_children_and_exceptions_in_tax_credits_and_Universal_Credit_April_2020.pdf> accessed 5 May 2021.

⁵⁵ Department for Work and Pensions, ‘Exceptions to the Limiting of the Individual Child Element of Child Tax Credit and the Child Element of Universal Credit to a Maximum of Two Children Public Consultation’ (Department for Work and Pensions 2016)

The distinction that the government makes is a false one as the UK social security system has long been used as a mechanism to provide 'top-up' income for those in low-paid work. Currently 60% of households affected by the two-child policy contain an adult who is in employment. The two-child limit moves the emphasis of the UK social security system away from meeting the financial needs of individual children, and towards a system based on judgement about appropriate family size. This significant ideological shift presumes that families are always able to make informed choices about how they will provide an income to support children. It neglects to acknowledge a wide variety of unforeseen circumstances in life which could mean a family needs to make a claim for a means-tested welfare benefit, for example bereavement, separation, or unwanted pregnancy. The COVID-19 pandemic has emphasised the unpredictability of life and the fact that benefit claimants are not a static population. The need for a functioning welfare safety net to compensate people in uncertain times has become even more apparent. In the two months that followed the first UK coronavirus lockdown in March 2020, nearly 2.5 million people made a claim for Universal Credit.⁵⁶

The government's rationale for this policy is also challenged by the disproportionate impact that it has on some groups in society and the strong arguments that it breaches human rights law. Faith based organisations argue that the policy can be classed as 'anti-family', disproportionately affecting those with larger families due to religious conviction.⁵⁷ Women are more likely to be affected by this policy, particularly those from certain ethnic groups and those who have moved to the UK from abroad. O'Brien argues that the policy is "the most significant violation of human rights that has yet been written into the fabric of the UK social security".⁵⁸ She argues that the two-child limit conflicts with the UK's legal obligations as set out in the UN Convention on the Rights of the Child (UNCRC). She argues that the policy is "patently opposed" to the best interests of the child which were barely considered during the formation of the policy, and that it discriminates on the grounds of family size, ethnicity and religion.⁵⁹

The two-child limit is the subject of a legal challenge to the Supreme Court; a remote hearing was heard on 20-22 October 2020: *SC, CB and 8 children (Appellants) v Secretary of State for Work and Pensions and others*.⁶⁰ Two lone parents who both had a third child born after 6 April 2017 have brought the case. The first appellant has a range of physical and cognitive health problems which make the use of contraception problematic; her third child was unplanned. The second appellant left an abusive relationship and then fell pregnant despite using the contraceptive pill. Neither woman

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/561641/exceptions-to-the-limiting-of-the-individual-child-element-of-child-tax-credit-and-the-child-element-of-universal-credit-to-a-maximum-of-2-children.pdf> accessed 14 November 2020.

⁵⁶ Department for Work and Pensions, 'Universal Credit Statistics: 29 April 2013 to 8 October 2020' (*GOV.UK*) <<https://www.gov.uk/government/statistics/universal-credit-statistics-29-april-2013-to-8-october-2020/universal-credit-statistics-29-april-2013-to-8-october-2020>>.

⁵⁷ Harriet Sherwood, 'UK Faith Leaders Unite to Challenge Welfare Penalties on Larger Families' *the Guardian* (10 November 2015) <<http://www.theguardian.com/politics/2015/nov/10/uk-faith-leaders-unite-to-challenge-welfare-penalties-on-larger-families>> accessed 29 September 2020.

⁵⁸ Charlotte O'Brien, 'Done because we are too menny: the two-child rule promotes poverty, invokes a narrative of welfare decadence, and abandons children's rights', (2018) 26 *International Journal of Children's Rights* 700,731.

⁵⁹ *Ibid* 753.

⁶⁰ UKSC 2019/0135 (unreported).

was prepared to have an abortion on moral grounds. The legal challenge argues that the two-child limit unlawfully discriminates against women, children, large families, children with multiple siblings and those with a moral or religious opposition to birth control. It is argued that the policy is a breach of article 14 of the European Convention on Human Rights (Prohibition of discrimination), article 8 (Right to respect for private and family life) and protocol 1 of article 1 (Peaceful enjoyment of possessions). If the appeal is allowed the two-child limit will be ruled incompatible under Section 4 of the Human Rights Act 1998.

For social work students the two-child limit presents a number of ethical challenges which must be reflected on in a sensitive manner.⁶¹ The overriding tension, and challenge to wellbeing, comes from developing appropriate ways to support service users who may be subject to the two-child limit, when the ethos and ideology of this policy clashes with established social work values. Two of the nine competencies of the PCF are of particular relevance when exploring the ethical dilemmas of the two-child limit. Domain 2 “Values and Ethics” places an expectation on social workers to promote human rights and social justice, to manage conflicting or competing values, and to promote individuals’ privacy and confidentiality. Domain 4 “Rights, Justice and Economic Wellbeing” obligates social workers to understand and address the effects of oppression, discrimination and poverty. It emphasises the importance of understanding how policy can constrain people’s rights and to promote a service user’s economic status by accessing welfare benefits.

Without doubt, the most controversial element of the two-child limit is the exception commonly referred to as the ‘rape clause’. This exception has drawn strong criticism from many groups in the social welfare sector (e.g. Child Poverty Action Group)⁶² and women’s advocacy groups (e.g. Engender).⁶³ This exception applies where a third or subsequent child is conceived as a result of rape or if the claimant was in an abusive relationship and subject to coercion and control. This exception has significant implications as a third-party evidence system requires professionals such as social workers to verify that a claimant’s circumstances are consistent with the exception being applied for. Under the third-party evidence system social workers are not required to provide evidence but must confirm that the rape or coercion has been reported to them. Clearly, this has the potential to change the social worker-service user dynamics and to shift the role of a social worker from that of an enabler to a gatekeeper. There is a risk that this may affect a social worker’s reputation and professional standing, and as a consequence almost certainly impact on professional wellbeing.

Trust is a key element to social work practice and concerns have been raised that accidental breaches of confidentiality may occur⁶⁴ as it become apparent that a

⁶¹ Richard Machin, ‘The Professional and Ethical Dilemmas of the Two-child Limit for Child Tax Credit and Universal Credit’ (2017) 11(4) Ethics and Social Welfare, 404.

⁶² Tom Sefton and Tucker, ‘Unhappy Birthday. The Two-Child Limit at One Year Old’ (Child Poverty Action Group 2018) <<https://cpag.org.uk/sites/default/files/files/policypost/Unhappy-birthday-report-on-two-child-limit-final.pdf>> accessed 15 September 2020.

⁶³ Engender, ‘UK Government Consultation On Exceptions To The Reforms Which Limit The Child Elements In Child Tax Credit And Universal Credit To A Maximum Of Two Children Engender Response’ (Engender 2016) <<https://www.engender.org.uk/content/publications/Engender-two-child-limit-consultation-November-2016.pdf>>.

⁶⁴ Social Security Advisory Committee, ‘The Social Security (Restrictions on Amounts for Children and Qualifying Young Persons) Amendment Regulations 2017’, 2, para 1 (31 January 2017) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/590932/ssac-to-damian-hinds-2-child-exceptions.pdf> accessed 15 September 2020.

claimant is subject to the 'rape clause' exception when they apply for housing, seek debt advice or apply for student finance. As we have seen, the two-child limit has a disproportionate impact on larger families, families with disabled children, certain ethnic groups and potentially on bereaved parents. These are amongst the groups that a social worker is most likely to work with. The opening to this article referred to a "tool-box of coping strategies"⁶⁵ which must be fostered in social work education. This is particularly important when working with these marginalised groups.

EQUIPPING FUTURE SOCIAL WORK STUDENTS FOR ETHICAL CHALLENGES

How then can social work legal education prepare students for these challenging ethical situations in a way which also promotes wellbeing and resilience? Ethical role modelling and professional supervision are key; leaders in a social work setting (e.g. service directors, senior practitioners) should set the standards which are expected of staff. Leaders should recognise that the ethical dilemmas described in this article are complex and social workers need carefully planned supervision and support to discuss concerns and promote staff welfare. In a social work legal education context, academic staff must also behave in similar way, role modelling the ethics and values that are embedded in social work practice, avoiding favouritism and promoting the rights of groups who suffer from discrimination.⁶⁶

Legal educators must be mindful of the language used to describe service users experiencing mental health problems or encountering issues with the social security system. In both of these situations, individuals will often have been inappropriately labelled by the media⁶⁷ and can be subject to stereotyping by professionals with whom they work. An appreciation of the language that we use to describe service users, and the way that we communicate with them must be explored with student social workers.⁶⁸ Social work education should acknowledge the causes of structural discrimination and discuss the power of language which can promote, or undermine wellbeing, for both staff and service users.

Social work students should be encouraged to critically analyse the ways in which legal provisions are developed within in a political environment. Alongside the teaching of social work theory, students should be encouraged to consider the impact of political ideology on policy-making. In a UK context, the last decade has been dominated by the politics of austerity and a "shrinking state"⁶⁹ and students need to

⁶⁵ Op cit, n 7, 617.

⁶⁶ Marietta Anne Barretti 'Teachers and Field Instructors as Student Role Models' (2007) 27(3-4), *Journal of Teaching in Social Work* 215.

⁶⁷ Emma Briant, Nick Watson, and Gregory Philo, 'Reporting disability in the age of austerity: The changing face of media representation of disability and disabled people in the United Kingdom and the creation of new 'folk devils' (2013) 28(6) *Disability and Society*, 874; Kayleigh Garthwaite, 'Fear of the Brown Envelope: Exploring Welfare Reform with Long-Term Sickness Benefits Recipients' (2014) 48 *Social Policy & Administration*, 782; Alessandra Maiorano, Antonio Lasalvia, Gaia Sampogna, Benedtaa Pocaï, Mirella Ruggeri, Claire Henderson, 'Reducing Stigma in Media Professionals: Is there Room for Improvement? Results from a Systematic Review' (2017) 62(10) *The Canadian Journal of Psychiatry* 702.

⁶⁸ Jane Dalrymple and Beverley Burke. *Anti-Oppressive Practice. Social Care and the Law*. (Open University Press, 2006).

⁶⁹ Linda Lobao, Mia Gray, Kevin Cox, and Michael Kitson, 'The shrinking State? Understanding the assault on the public sector' (2018) 11(3) *Cambridge Journal of Regions, Economy and Society*, 389.

reflect on how this has affected the day-to-day lives of service users. The individual role of a social worker will dictate the extent to which they feel able to be an active political campaigner. However, political awareness should not be placed on the margins of social work practice. The British Association of Social Workers has developed an 'Anti-poverty Practice Guide for Social Work' which states: "social workers should adopt a multi-dimensional approach, which emphasises equal rights to participation in society".⁷⁰ Student social workers should be encouraged to consider how they can build resilience and access support when working in this overtly political environment.

Discussions around complex issues of mental health and entitlement to social security inevitably raise issues of client confidentiality and the potential for conflicts of interest. These are key issues which are explored in a classroom setting with social work students, and then applied in practice during professional placements. An emphasis on advocacy is important; advocacy strategies have been identified as a key way in which social workers can promote social justice and assist service users with complex legal processes.⁷¹ Students are encouraged to actively reflect on appropriate ways to support service users where a MHA assessment is undertaken or attendance at a social security appeal tribunal is required. Discussions within sessions are held around appropriate referral and support services to which service users can be signposted. Role-play can be a challenging but valuable way of exploring many of the above issues. This works most effectively in a safe environment with well-defined learning needs, ground rules and effective feedback⁷² and can be an opportunity to "experience practice dilemmas and to be able to reflect on these in a safe environment".⁷³

⁷⁰ British Association of Social Workers, 'The Anti-Poverty Practice Guide for Social Work' (BASW, 2 September 2019) <<https://www.basw.co.uk/what-we-do/policy-and-research/anti-poverty-practice-guide-social-work>> accessed 17 November 2020.

⁷¹ Anne Marie McLaughlin, 'Clinical Social Workers: Advocates for Social Justice' (2009) 10(1) *Advances in Social Work*, 51.

⁷² Rosalind Hargreaves and Jan Hadlow 'Role-play in social work education: Process and framework for a constructive and focused approach' (1997) 16(3) *Social Work Education* 61.

⁷³ Malcolm Kinney and Elaine Aspinwall-Roberts 'The use of self and role-play in social work education. *Journal of Mental Health Training*', (2010) 5(4) *Education & Practice* 27, 32.