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Legal Literacy Change Project

Law talk: Putting law on the supervision and team development agenda

Dartington Trust

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Law talk: Putting law on the supervision and team development agenda

This resource provides a set of concepts and exercises designed to lay the foundations for introducing legal literacy into the supervision, team development or learning agenda. The activities in this resource are designed to:

- create a shared vision across organisations for legal literacy discussions through supervision and learning events
- promote understanding of how the components of legal literacy – law, ethics and rights – provide orientations to law that can affect decision-making
- promote exploration, discussion and reflection on:
  - attitudes to law
  - experiences of learning about the law
  - orientations to law
- Support appraisal of people's knowledge of legal rules and confidence in using them
- Support people to identify where they may need support to further develop their knowledge of the law and skills in applying it in practice.

Each team member, from practitioners to managers, will bring personal and professional perspectives about the role of law in adult social care. As such, it is important that colleagues working together know their own and each other's perspectives on law.

This resource offers a number of ways in which those involved in supervision, team learning and development can 'get talking' about the law. The exercises may prove helpful when introducing legal literacy conversations into supervision or team development. They are most usefully completed in the order in which they appear below.

1. Introducing legal literacy into the supervisory, team development or learning relationship

Educational, professional and personal experiences all impact on how we orientate to law. Exploration of these experiences and of the orientations to law that they generate is an important foundation for embedding legal literacy in supervision and team development.

a. Attitudes to the law

In giving legal literacy a higher profile in supervision or team development, it can be helpful to start with questions that can open up discussion about attitudes towards the law, namely:

- How effective do you find the law in protecting adults?
- How effective do you find the law in meeting people's needs for care and support?
- How effective do you find the law supports people to live the lives they want?
- What would you say about the law's ability to promote equality and human rights?
- In your experience, where does law endorse social values and where might it challenge those values?

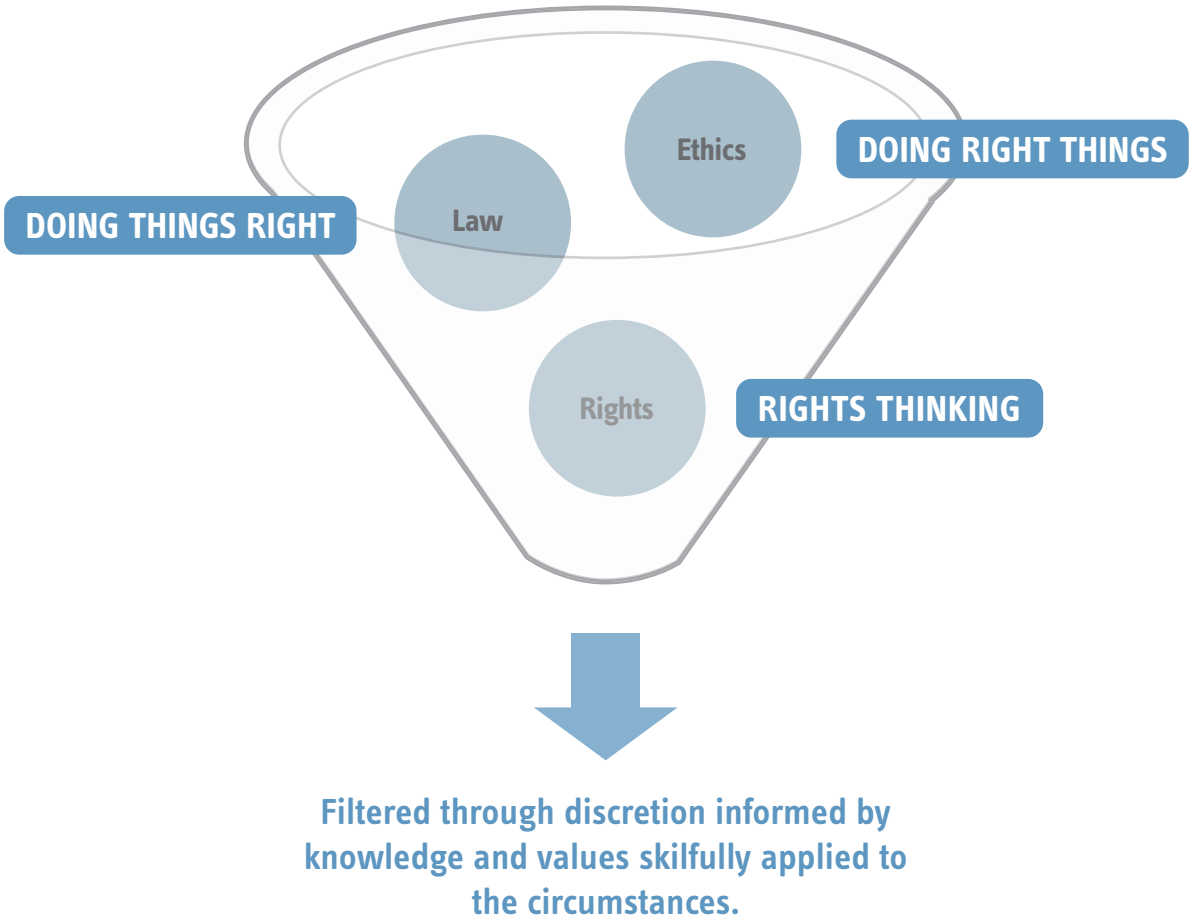
b. Experiences of learning about the law

There are questions that can open up discussion about learning about the law, namely:

- What have you found useful when learning about the law?
- What has enabled you to implement your law learning?
- What has got in the way of using your knowledge of the law in practice?
- How can we best develop your learning in this aspect of practice?

c. Orientations to law

Technical legal knowledge (that enables us to 'do things right') is only one component of legal literacy. Legally literate practitioners will negotiate between the technical legal rules and other influences on decision-making - ethics ('doing right things') and rights ('taking a rights-based perspective)'.



In addition, where practitioners act under the powers and duties delegated by Parliament, they must respect the employer's policies, procedures and guidance, provided these are lawful and do not compromise professional registrations. How practitioners balance these responsibilities will be influenced by how they interpret the law/practice relationship and the reference points they use when negotiating situations or practice dilemmas.

Each person will bring different approaches to their work, for example:

- **attitudes towards risk**
- individual autonomy and self-determination
- approaches to meeting care and support needs in a context of financial austerity.

These attitudes may be conceptualised as orientations to the law/practice relationship. Seen through this lens, practitioners may be more inclined to see situations as requiring prioritisation of one or more of the following:

- technical legal knowledge – a focus on doing things right
- ethical principles – a focus on doing right things
- human rights – a focus on rights thinking
- agency procedures – a focus on proceduralism.

Individual orientations to practice are not of themselves right or wrong, and practitioners are likely to draw on each, but to varying degrees. However, when one orientation is dominant, there is a risk that other ways of understanding and intervening in a situation are relatively unexplored.

One way to tease out orientations is to ask the practitioner or team members to outline an example of their direct work with a person, listening out for how it is described. There may be explicit reference to named legal rules, values or rights, or implicit references through the phraseology that is used. The supervisor or team manager may then reflect the balance of law, values, rights and procedural talk. Further discussion might be prompted by questions, such as:

- What influenced how you understood this situation?
- What influenced your decision-making?

Another way of teasing out orientations is to ask the practitioner or team members to consider the following scenarios, which illustrate the influence of the different orientations.

Consider each scenario and decide, from a practice perspective, which of the arguments listed (A-D) you would be most drawn to using. Place a 1 in the adjacent column, then number the rest in order of preference. There is no right or wrong order, just different ways of approaching the situation.

Scenario 1

You are undertaking a care and support assessment with a couple who have been married for forty years and have never spent any time apart. The wife has complex needs due to a degenerative health condition and the husband has dementia. You and they have concluded that residential care is necessary. They want a shared room but none are available in the homes the local authority contracts. Your line manager comments:

> **"While I understand your concern, you are being unrealistic in advocating for a shared room. There are few such rooms within our current contracted arrangements with residential homes in our fee band. In any event the authority does not have to agree to provide what you as the assessor recommends and it sounds as if they require different forms of care. An alternative plan will be necessary."**

Would you:

Urge caution about resource-driven decision-making, arguing that to base the decision on resources alone could be challenged in law?	A	✔
Argue that your recommendation is based on a thorough assessment conducted with the couple, and that separation would be damaging to them?	B	
Remind your manager that the local authority's decision-making should not undermine the couple's right to maintain their family life?	C	
Accept that the local authority does not have the resources to provide what you have recommended and so investigate an alternative care package?	D	

Scenario 2

You have reviewed the care and support plan for an older woman who has increasingly high support needs but lives at home and wishes to continue to do so. You put your request for enhanced services to the resource panel and receive this response:

> **"This person has been supported with a care and support package at the ceiling allowed by the local authority. The services you are now requesting exceed the financial limit allowed. We cannot breach our resource allocation model. You must either consider residential care or propose an alternative plan."**

Would you:

Argue that prioritising the authority's resource position is unlawful because it imposes an arbitrary ceiling, is in breach of statutory guidance, and fetters discretion?	A	
Argue that the authority should support the person in her own home because this promotes her self-determination and respects her autonomy?	B	
Argue that the person should remain at home because to do otherwise would interfere with her right to a private and family life under the **European Convention on Human Rights** (ECHR)?	C	
Follow the panel's request because the authority has to be fair and consistent in its decision-making in complex situations, and resource constraints make some limits necessary?	D	

Scenario 3

A community police officer has made a safeguarding referral about a man in his mid-40s who is living in self-neglect. He is known to have worked with mental health services in the past but appears to have withdrawn from all support contacts. His diet is poor, he neglects his personal care and struggles to maintain a habitable home environment. He is surrounded by an accumulation of hoarded materials, which pose considerable fire risk given his drinking and smoking habits. He has told the officer he doesn't want any help.

> **The safeguarding team, who usually conduct initial enquiries under section 42, Care Act 2014, have determined that the situation "does not meet the threshold for a section 42 intervention because it is self-neglect and it's clear he may well have care and support needs", and has sent the referral to adult social care, advising that they also consider referring to mental health services. It is added to the list of referrals awaiting assessment (currently a waiting time of several weeks).**

Would you:

Argue that self-neglect cannot be excluded from section 42 duties, and that an enquiry should proceed, as it appears he is unable to take steps to protect himself?	A	
Decide that the risks inherent in the situation mean that early assessment should take place, moving the referral up the priority list?	B	
Argue for balance between his right to privacy and the state's duty of care, and that help should be proactively offered, even if his refusal is then respected?	C	
Look for guidance in the Safeguarding Adults Board's policies and procedures?	D	

Scenario 4

You have undertaken an occupational therapy assessment for a young woman with multiple sclerosis recently discharged from hospital. She is well supported at home by her family but the physical restrictions in her living environment restrict her independence. You conclude that in addition to some minor aids and adaptations provided by the local authority under the ***Care Act 2014***, she should be supported to apply for a **Disabled Facilities Grant (DFG)** to undertake more substantial alterations within the property. You discuss your plan in supervision and receive the following response:

> **"The person's needs appear to be well met and her wellbeing is not compromised by the current arrangements. She does not therefore meet the eligibility criteria and we cannot support a DFG application."**

Would you:

Argue that DFGs are provided under the ***Housing Grants, Construction & Regeneration Act 1996***, and that therefore the *Care Act* eligibility criteria do not apply. It is sufficient that the grant is 'necessary and appropriate'.	A	
Argue that the local authority should support the grant because home adaptations would enable her to live more independently and promote her wellbeing, as well as delaying the further development of care and support needs.	B	
Argue that the provision of suitable living accommodation promotes her rights under article 8 **(ECHR)** to respect for private and family life.	C	
Search for guidance on how to fulfil your professional responsibilities in the face of local constraints on your decision-making.	D	

Ordering the arguments might have proved difficult. In many situations there will not be an obvious front-runner and each argument has something to offer, because orientations are not automatically right or wrong. Each offers a different contribution to the task of practising securely within the legal framework and they need to be combined in a holistic approach.

Below is an outline of how the orientations can be significant to practice:

Selecting option A reflects a technical orientation where practitioners:

- pay close attention to technical legal knowledge and its relevance for situations encountered
- ensure they regularly update the details of their knowledge and understanding
- ask their employer to ensure access to the latest guidance and influential case law
- underpin and justify their arguments by reference to accurate legal knowledge and sound reasoning.

Selecting option B reflects an ethics orientation where practitioners:

- engage openly with ethical dilemmas posted, both within the situation and in the context of organisational policies
- seek to understand the person's own perspective and support them to achieve goals that are personally important
- pay close attention to the requirements of their professional code of conduct
- underpin and justify their arguements by reference to the obligations society owes people with care and support needs.

Selecting option C reflects a rights orientation where practitioners:

- ensure they understand how the law confers or limits the rights of people with care and support needs
- seek to promote people's rights in relation to their own and their agency's practice and support them to secure their rights in other areas of their lives
- prioritise people's rights as the guiding principle of decision-making
- underpin and justify their arguments by reference to the rights held by individuals and groups in society.

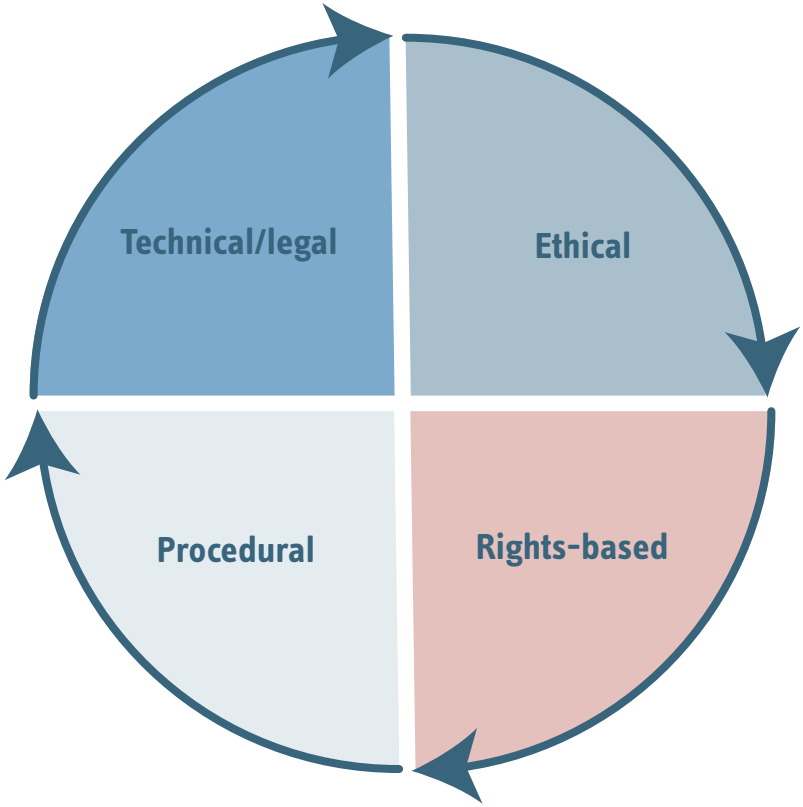
Selecting option D reflects a procedural orientation where practitioners:

- ensure they understand their employer's policies and procedures for implementing the legal rules
- seek guidance from their employer on any matters not covered by policy and procedure
- seek advice from, and abide by, the decisions of their manager
- underpin and justify their arguments by reference to their employer's expectations and the trust that their employer places in them to pursue the organisation's aims.

In the box below reflect on the order in which you placed the possible actions. Your reflections may help you to identify your dominant orientation and the balance between that orientation and the others.

If you discovered that you predominantly argue from the ethical perspective reflect on how you can sharpen up on your use of technical legal points, or rights perspectives. If you predominantly argued from the rights perspective, think about how you can also take account of technical legal points and ethics as well. This should provide pointers to how you might develop particular aspects of your legal literacy. In the box below record your reflections and state how you might draw on the orientations that feature less in your practice in future.

Legally literate practitioners will move with ease between different orientations, drawing on what each has to offer in the balancing exercise that characterises professional judgement.



Such a balancing exercise is exemplified in ***Westminster CC v Sykes*** **[2014] EWCOP B9** where the question was whether to authorise a return home from nursing care of an older person with advanced dementia, balancing the known risks with the benefits of a plan that more closely met her known wishes, feelings and values. Arriving at a holistic and multi-faceted evaluation of her welfare required the negatives and positives and the pros and cons of each option to be taken into account.

2. Auditing knowledge and confidence

Wherever a practitioner is located on the spectrum of orientations to law, it is clear that technical legal knowledge is essential. Legally literate practice will comply with:

- primary legislation
- secondary legislation
- statutory guidance, and
- take account of codes of practice.

A wide range of legal rules may shape practice. For example, the relevant powers and duties on care and support, and their interface with health care, mental health and mental capacity law, as well as law on human rights and equality. Effective practitioners will also often involve engaging with other agencies to trigger and support their use of their own legal duties and powers.

Before embarking upon detailed legal literacy discussions in supervision, it is suggested that you audit your technical legal knowledge and your confidence in using it. First, make a list of all the statutory powers and duties you believe are relevant in your work:

Acts of Parliament	Statutory Guidance	Related Codes of Practice

The following tables can be used to undertake an audit of your confidence on your knowledge of a range of legal rules, and your confidence in using them.

- Table 1 lists key Acts of Parliament and other legal rules relevant to adult social care.
- Table 2 lists common ways in which the legal rules may need to be applied.

First, match your own list of the statutory powers and duties relevant to your job with the content of Table 1 below and make a note of any omissions. The scope of knowledge needed will vary, dependent upon your role, whether you have strategic or operational responsibilities and whether you undertake specialist functions. There is no formal guidance on which occupational roles require knowledge of which legal rules. This will differ according to agency context, role within that agency and level of qualification or experience. It will also vary dependent upon the nature of the needs of the people you are working with.

Asterisked entries denote those with which people in all roles could expect to be familiar, but are offered as a guide only. Those later in the table relate more to specialist roles, or to specific circumstances in which legal rules beyond those relevant to adult social care come into play – for example in work involving domestic abuse, self-neglect, asylum or homelessness. Practitioners and supervisors can use the table to make judgements about what knowledge is essential.

Use Table 1 as follows:

- In column 1, place a tick beside any legal knowledge that is essential to you in your work and focus on these areas of the table.
- In column 2, rate how confident you are that you have sufficient knowledge about the listed legal rules in order to do your job.
- In column 3, identify as priorities for learning over the next six months any aspects of law for which your confidence is 1 or 2, but for which knowledge is essential. The next activity will ask you to complete an action plan to pursue that learning.
- Revisit Table 1 in six months' time, and complete column 4 to record your new levels of confidence in your knowledge about the legal rules listed.

Table 1: Self-audit - how confident are you that you know enough about these legal rules to do your job?

Date task started:	1 Essential for your work?	2 Confidence rating (1 = no confidence, 2 = low confidence, 3 = moderate confidence, 4 = high confidence)	3 Priority for learning? YES/NO	4 Repeat confidence rating after 6 months
*Human Rights Act 1998**		1	YES/NO	1
*Equality Act 2010**		1	YES/NO	1
*Data Protection Act 2018**		1	YES/NO	1
Care Act 2014: Wellbeing*		1	YES/NO	1
Care Act 2014: Integration of services		1	YES/NO	1
Care Act 2014: Prevention		1	YES/NO	1
Care Act 2014: Market shaping		1	YES/NO	1
Care Act 2014: Assessment, eligibility: Adults and Carers*		1	YES/NO	1
Care Act 2014: Personal budgets, care planning*		1	YES/NO	1
Care Act 2014: Transition - children's to adult social care		1	YES/NO	1
Care Act 2014: Charging for services*		1	YES/NO	1
Care Act 2014: Adult safeguarding*		1	YES/NO	1
Care Act 2014: Advocacy*		1	YES/NO	1
Care Act 2014: Portability – Ordinary Residence and Continuity of Care		1	YES/NO	1
Care Act 2014: Ordinary residence		1	YES/NO	1
Mental Health Act 1983: Core principles*		1	YES/NO	1
Mental Health Act 1983: Compulsory detention		1	YES/NO	1
Mental Health Act 1983: Guardianship		1	YES/NO	1
Mental Health Act 1983: After-care		1	YES/NO	1
Mental Health Act 1983: Advocacy*		1	YES/NO	1
Role of the Approved Mental Health Professional		1	YES/NO	1
Mental Capacity Act 2005: Core principles*		1	YES/NO	1
Mental Capacity Act 2005: Assessing capacity*		1	YES/NO	1
Mental Capacity Act 2005: Best interests decisions*		1	YES/NO	1
Mental Capacity Act 2005: Advocacy*		1	YES/NO	1
Mental Capacity Act 2005: Lasting Power of Attorney		1	YES/NO	1

Date task started:	1 Essential for your work?	2 Confidence rating (1 = no confidence, 2 = low confidence, 3 = moderate confidence, 4 = high confidence)	3 Priority for learning? YES/NO	4 Repeat confidence rating after 6 months
Mental Capacity Act 2005: Deprivation of Liberty Safeguards (DoLS), see below: SCHEDULE A1: Hospital and care home residents - deprivation of liberty SCHEDULE AA1: Deprivation of liberty - authorisation of arrangements enabling care and treatment Role of the Approved Mental Capacity Professional		1	YES/NO	1
Role and remit of the Court of Protection		1	YES/NO	1
Inherent jurisdiction of the High Court		1	YES/NO	1
Housing Grants, Construction & Regeneration Act 1996		1	YES/NO	1
Modern Slavery Act 2015		1	YES/NO	1
Forced Marriage (Civil Protection) Act 2007		1	YES/NO	1
Female Genital Mutilation Act 2003		1	YES/NO	1
Counter-Terrorism and Security Act 2015		1	YES/NO	1
Serious Crime Act 2015		1	YES/NO	1
Police and Criminal Evidence Act 1984		1	YES/NO	1
Housing Act 2004		1	YES/NO	1
Housing Act 1985 and 1988		1	YES/NO	1
Building Act 1984		1	YES/NO	1
Town & Country Planning Act 1990		1	YES/NO	1
Public Health Act 1936 (and subsequent environmental and public health law)		1	YES/NO	1
Animal Welfare Act 2006		1	YES/NO	1
Anti-social Behaviour, Crime and Policing Act 2014		1	YES/NO	1
Regulatory Reform (Fire Safety) Order 2005		1	YES/NO	1
Housing Act 1996		1	YES/NO	1
Children Act 1989		1	YES/NO	1
Child Abduction Act 1984		1	YES/NO	1
Coroners and Justice Act 2009		1	YES/NO	1
Youth Justice and Criminal Evidence Act 1999		1	YES/NO	1
Crime and Disorder Act 1998		1	YES/NO	1
Criminal Justice Act 2003		1	YES/NO	1

Date task started:	1 Essential for your work?	2 Confidence rating (1 = no confidence, 2 = low confidence, 3 = moderate confidence, 4 = high confidence)	3 Priority for learning? YES/NO	4 Repeat confidence rating after 6 months
Anti-Terrorism Crime and Security Act 2001		1	YES/NO	1
Domestic Proceedings and Magistrates Court Act 1978		1	YES/NO	1
Family Law Act 1996		1	YES/NO	1
Offences against the Person Act 1861		1	YES/NO	1
Domestic Violence Crime and Victims Act 2004		1	YES/NO	1
Domestic Violence Crime and Victims (Amendment) Act 2012		1	YES/NO	1
Protection of Freedoms Act 2012		1	YES/NO	1
Protection from Harassment Act 1997		1	YES/NO	1
Crime and Security Act 2010		1	YES/NO	1
Criminal Justice and Court Services Act 2000		1	YES/NO	1
Immigration and Asylum Act 1999		1	YES/NO	1
Nationality, Immigration and Asylum Act 2002		1	YES/NO	1
Immigration Act 2014		1	YES/NO	1
Homelessness Reduction Act 2017		1	YES/NO	1
Localism Act 2011		1	YES/NO	1

Focusing on skills for legal literacy, use Table 2 to rate how confident you are in your skills in applying the legal rules.

Table 2: Self-audit - how confident are you in carrying out these activities?

Date task started:	1 Essential for your work?	2 Confidence rating (1 = no confidence, 2 = low confidence, 3 = moderate confidence, 4 = high confidence)	3 Priority for learning? YES/NO	4 Repeat confidence rating after 6 months
Identifying and applying relevant legal rules to direct work with people that come to my attention.		1	YES/NO	1
Making decisions about when, why and how to use legal powers and discretionary duties.		1	YES/NO	1
Consulting and instructing lawyers.		1	YES/NO	1
Matching needs and risks against eligibility criteria.		1	YES/NO	1
Challenging colleagues' interpretation of legal rules and options.		1	YES/NO	1
Challenging other agencies' interpretation of legal rules and options.		1	YES/NO	1
Preparing or reviewing evidence for a court case.		1	YES/NO	1
Explaining legal rules to people with lived experience and carers and involving them when legal mandates are being used.		1	YES/NO	1
Drawing on legal mandates to secure good inter-agency collaboration.		1	YES/NO	1

Action planning

If you have scored 1-2 in an area you have identified as a priority development need, plan how to improve your confidence. This will require targeted activity. Action planning can assist with setting personal priorities. Consider how you will progress your technical legal knowledge and confidence in using it by completing an action plan for each area of learning.

The following is a worked example relating to one hypothetical development need (understanding of mental capacity assessment):

Development need:	I need greater understanding of how to undertake a mental capacity assessment.
Activities:	> Access advice from mental capacity specialists. > Shadow a colleague who is undertaking an assessment (following the guidance on shadowing that appears in resource 2e). > Request live observation and feedback on an assessment you undertake. > Read and reflect on Court of Protection judgments in which capacity assessment has been considered (take advice from legal colleagues on specific legal cases to consider). > Ensure court judgments and commentaries are routinely discussed within the team. > Take difficult decisions to a 'complexity' panel.
People who can support me:	> Legal department. > Colleagues with experience of conducting assessments; Independent Mental Capacity Advocates, Approved Mental Capacity Professionals (once operational following introduction of the Liberty Protection Safeguards in April 2022). > People with lived experience and carer groups.
Sources of information:	> Case Law and Legal Summaries. > England and Wales Court of Protection Decisions. > *Mental Capacity Guidance Note: A Brief Guide To Carrying Out Capacity Assessments* – June 2020. > Court of Protection Hub.
Date for completion:	[ENTER TIMESCALE FOR COMPLETION]
Monitoring:	Supervision sessions on [DATES]

The template below should be completed for each specific area of development.

Action planning for developing technical legal knowledge	
Development need:	
Activities	
People who can support me:	
Sources of information:	
Date for completion:	
How progress will be monitored:	

3. Maintaining a law focus in supervisory discussions and/or team development or training sessions

Once legal literacy has been established within the supervisor-supervisee relationship, or as part of team development or training, the supervisor's, manager's or trainer's role is to enable practitioners to consistently step back from their direct work with people in order to reflect upon how law informs and shapes it.

(a) Routine law talk

Throughout supervision or team learning and development discussions, the following may be helpful in giving law a higher profile:

Conversations in supervision	Ideas for prompting questions
How supervisees and practitioners talk about their work with people might suggest that emotional responses and reactions are playing out.	*"I was wondering whether you might be feeling ...?"*
Practitioners may make implicit reference to theoretical and professional knowledge, which would benefit from being made explicit.	*"What exactly is informing your understanding of ...?"*
Practitioners may refer implicitly to legal terms without locating their specific place in the legal rules. Working with risk, capacity or safeguarding enquiries may be examples. It is helpful to explore whether practitioners can explicitly locate these legal terms.	*"Where is the mandate to work with risk?"* *"What does the law mean by capacity?"* *"When is a safeguarding adult enquiry required?"*
When practitioners explicitly name a legal rule, a power or a duty to act, the supervisor or manager can ask for elaboration.	*"What do you understand as required by ...?"*

Such questions are designed to avoid legal knowledge being taken for granted or assumptions being made that legal rules and requirements are understood. The supervisor, manager or trainer is checking for understanding, rendering decision-making more transparent and contributing to learning.

(b) Direct practice discussions

When practitioners outline their work with a person, and their approach so far, law talk can be promoted through use of some of the following questions to ensure that legal rules are embedded within the understanding of a situation and in next steps decision-making. The questions that follow can be used to probe and enhance the legal component of any discussion about direct practice and, as such, to develop legally literate work.

- What are the legal issues here – for instance mental capacity, wellbeing?
- What rights do people in this situation have?
- Specific legal questions – for example, when and under what mandate can information be shared without consent? How and when might Article 8 be qualified?
- What powers and duties are relevant in this situation?
- What powers or duties might other agencies possess that could be drawn on here?
- How might these powers and duties frame how the practitioner responds here?
- With whom does the law require us to consult and for what purpose?
- What legal knowledge would it be useful to draw on in this situation and why?
- What legal principles should we be mindful of here and why?
- What dilemmas are present in this situation and how might human rights, values and the legal rules, coupled with the use of knowledge to understand the situation, help us to move forward?
- What would you do here and what is your justification?

(c) Thematic review of direct practice

A further way to enhance law talk in supervision or team learning and development is to take one theme that has strong roots in law – examples might be:

- human rights
- mental capacity
- deprivation of liberty
- wellbeing.

First, ensure a strong grasp of what the law might require in relation to the theme selected – i.e. if wellbeing, what does the *Care Act 2014* provide by way of legal rules in relation to wellbeing (for example, the wellbeing principle, the role of wellbeing within the care and support eligibility criteria). Then review a range of current direct practice to identify:

- how the chosen theme is reflected in the circumstances of each of these
- how it has been addressed in practice so far
- the implications of the chosen theme for practice in those areas going forward.

In subsequent supervision or development sessions, select additional or alternative themes and conduct a similar review of current practice.

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Research in Practice is a programme of
The Dartington Hall Trust which is a company
limited by guarantee and a registered charity.
Company No. 1485560 Charity No. 279756 VAT No. 402196875

Registered Office:
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