The closed world of Warner: a comment on "choosing with care"

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The Warner Report at the end of 1992 proposed new means of recruiting and selecting people to work in residential child care. The aim was to minimise the risk of abuse to children looked after by local authorities following a series of high profile court cases. In attempting to identify more accurately the "right" sort of person to work in residential care the Warner Report lay heavy emphasis on pre-employment screening by means of a criminal record check. The article explains the administrative and ethical questions raised by checks and tries to locate the Warner Report in a wider theoretical context.

It was perhaps always asking for too much for the Warner Report "Choosing with Care" to try and open up the wider social debate on the recruitment, selection, and management of staff in children’s homes. More extensive and thorough police criminal record checks were a central plank of the proposed reforms. Conceived in the aftermath of the Frank Beck conviction in Leicestershire (O’Sullivan and Jones, 1991), it was bound to have a pragmatic, hands-on approach to its work. To that extent we have not been disappointed - welcome to the closed world of Warner. For Warner and his colleagues vetting presented "problem areas that need addressing" (Warner Report, 1992). Since its publication nearly two years ago local authorities have been wrestling with putting its principles into practice.

First and foremost was the problem of delays. On no account should anyone be appointed prior to concluding the check. Then came:

* "fast tracking" - some checks are more important than others. Residential staff should be first in the queue (para.5.14).

* "small exemptions" - checks need to be widened to include private and voluntary homes (para.5.15).

* "Be more diligent in the future" - local authorities need to check out agency staff (para.5.16).

* "Confusion about precisely what ..." (para.5.17) Warner provides us with clarity; its information "casting doubt on the suitability of any would be employee" (para.5.17) - with information from the contents of local police intelligence systems.

* "sensitive but relevant information" received in writing or by telephone (para.5.18).

* "a little purist": Warner finds a way out of Crown Prosecution's concerns for civil liberties, and the tainting of reputations (para.5.21).

* "types and characteristics of behaviour that are deemed unacceptable": these should be provided by central government to local employers (para.5.25).

* "requirement to consult": there should be a statutory requirement to consult the Dept. of Health Consultancy Service and DES List 99 (para.5.27).

(For a description of these two services see Dept. of Health 1993,
Annex B and C.

The Warner Report might have been a forum in which to publicly air some of the pro's and con's of criminal record checks. This is an area that the present authors have been looking at in some detail over the last few years (Hebenton and Thomas, 1993). The pre-employment vetting of both field and residential social workers has become an accepted part of life in social services since 1986.

Warner devoted some space and time to police checks but the analysis is slim and the chance for a wider public debate went missing. Even within its own terms the Report made a number of omissions and rarely inspired confidence that local authorities are giving any critical thought to criminal record checks.

The Report did express concern about the length of time it takes to complete a check, and also called for the co-ordinated extension of checks to the private and voluntary sector. There is no advice at all, however, on how local authorities should "interpret" criminal records in terms of relevance, context, or frequency.

This particular omission is not surprising because there has hardly been any debate on the "interpretation" of criminal records as a pointer to a person's future behaviour in the last six years. The question was not even considered by the original joint Home Office/DHSS working party of 1985 that only had the limited bureaucratic brief to "devise a system" (Home Office/DHSS 1985: para.1.2).

The result has been that decisions are often made on nothing much more than "common sense" and have varied from place to place depending on the "common sense" of the decision maker. Offences against children as listed in the Children and Young Persons Act 1933 Schedule 1 are not the problem, but as the police disclose the whole record of an individual decisions have to be made on offences that are arguably nothing to do with child protection. In 1991 new regulations on the disqualification of childminders did make an isolated attempt to list relevant and irrelevant offences, but this initiative has not been more widely adopted (see Hebenton and Thomas, 1992).

The authors are aware of decisions varying even within one authority. A student placement refused by one arm of the authority because of the criminal record, but offered by another arm of the same authority making decisions based on the same information and offering identical access to children.

Warner offered no guidance on interpreting records or even on the failure to disclose. Some authorities see the failure to disclose with its overtones of "dishonesty" as sufficient grounds for concern in itself, even though in similar circumstances in an adoption approval a court has ruled that the dishonesty should not of itself be taken into account (Re an adoption application IFLR 341 Family Division 1992).

The child protection relevance of old convictions remains unresolved as soon as we depart from Schedule 1 offences. One Director of Social Services is on record as telling his staff to "err on the side of extreme caution by not employing anyone with any record with access to children" (Guardian, 30 Aug. 1989, emphasis added).
Interestingly the authority was Kent and the Director at the time was Norman Warner, author of the current report.

So for the last six years we have entered into arrangements with local police forces to channel information on criminal history records from their Police National Computer, the National Identification Bureau, and local police station files into our Social Services offices for decisions to be made behind closed doors, with hardly any training or guidance and based largely on "common sense". The applicant has no automatic right of appeal.

Even on these procedural arrangements, Warner had little to say. The Report condemned the practice of running checks on all short-listed candidates rather than on just the successful applicant, but it did so more out of concern for wasting police time rather than the invasion of the unsuccessful candidates' civil liberties or the making of the selection decision on the check rather than through adequate selection procedures.

There is nothing on the practice of passing information through by telephone, even though the Home Office's own 1991 Scrutiny Report on criminal records (which Warner refers to) condemns the practice as "dangerous", (Home Office 1991: para.155).

Warner also had nothing to say on the way criminal record checks are organised entirely on the basis of government circulars. Police checks are often referred to as "the statutory checks" which must be carried out. In fact, they are not statutory at all, but exist in that nether world of administrative guidance based on Home Office and Dept. of Health circulars, with only the tenuous legal tie in of the Local Authority Social Services Act 1970 s.7 requiring Social Services departments to follow Secretary of State guidance.

Warner also failed to recognise that the circulars in Northern Ireland and Scotland are both different to those used in England and Wales, even though we are told that members of the Committee made visits to all of these parts of the United Kingdom (Warner Report 1992: para.1.5). The Scottish circular, for example, is much clearer on the undesirability of checking all short-listed candidates than the vaguer England and Wales circular.

The current England and Wales guidance referred to by the Warner Report was issued in 1988 (Dept. of Health 1988). A new draft Circular put out for consultation in the summer of 1992 presumably came too late for Warner to comment on, but was in any case, withdrawn after criticism from numerous quarters; criticism mostly concerned that the new proposals would limit the extent of checks carried out (see "Two-tier vetting axed", Community Care 18.3.93).

A new circular replacing the 1988 Circular was eventually published in 1993 but was essentially only an attempt to tighten yet further the already existing systems of making criminal record checks (Dept. of Health, 1993); it contained hardly any new initiatives (see also Hebenton and Thomas, 1994).

Where the Warner Report had held back from opening up a debate the Home Office has now tried to take the bull by the horns, and in September 1993 issued a consultation document asking for comments on all aspects of pre-employment screening by means of a criminal record.
check. Amongst some of the more contentious ideas floated was that of taking the national collection of criminal records out of the hands of the police and giving them over to a private agency. An even more radical proposal suggested a charge be levied on each check carried out at an estimated £17 a time. Local authorities would have to find some £11 million to finance the amount of checks they now carry out (Home Office, 1993). The Home Office intends to make public the responses it receives at some point in 1994.

If the proposals for a private agency and private funding do materialise it could result in what can only be called the “commodification” of criminal records. Like any private agency trying to fund itself it will be liable to market forces rather than regulatory ones. New markets may be targeted as the agency realises just how marketable the personal histories of people have become, and we indulge in a trade in people's pasts. We can even speculate that a regulating authority will "Mirror the Market" in the same way as law enforcement agencies have done in different circumstances (see Dorn et al, 1992).

Europe is another area of concern that seems only to have figured marginally in Warner's deliberations and it seems somewhat late in the day to be recommending the Home Office and Dept. of Health look into the implications of greater union. The 1993 Consultation Paper includes a breakdown of all European Union countries in terms of their respective vetting procedures (ibid.: Annex 'F').

We already knew that many European countries would not disclose criminal records for pre-employment vetting and that some prefer to use so-called "good conduct certificates" instead. Social Services departments must also have experience of employing people from the Republic of Ireland given the long-standing open border the mainland has with that country. They must also know that the Garda refuses to disclose criminal records for employment purposes (ibid.: Annex 'F'). What have we been doing?

As for the "good conduct certificates" themselves, they have been criticised in much the same way as criminal record checks. They vary in quality and interpretation and the Council of Europe has recommended that because of the arbitrary nature of certificates, and their use in the past for political purposes, "the issue and use of conduct certificates be restricted" (Council of Europe, 1984: 48).

The authors are aware, for example, that in the Netherlands there is considered to be a more liberal regime of certificate issuing in Rotterdam than there is in Amsterdam some 45 miles away.

We also know that behaviour designated criminal in some countries is not so designated in other countries. Pornographic material is freely available in parts of Europe when it would be illegal to possess it in the UK.

Different ages of sexual consent in other countries mean behaviour considered criminal here might not be in other countries. How will we vet a man from the Netherlands who has had lawful sex with a girl under 16? Will we allow him to work in our childrens' homes because he has no criminal record? We are a long way off from harmonising a criminal code for the whole of the European Union.

Given the overwhelming desire to protect children at all costs, it
might seem churlish to pick up Warner for failing to address wider issues. It's hardly Warner's fault that black people, for example, are over-represented in the criminal justice system and so more likely to have a criminal record and be subject to possible further discrimination as a result when it comes to employment vetting (see e.g. NACRO 1986: Gordon, 1988). Yet whether or not Warner picked up on these issues or not, they remain. The whole area of police criminal record checks for employment and other purposes has never been the subject of any national debate, until the present Home Office consultation exercise. In the final analysis we still do not even know if criminal record checks make any difference at all to the incidence of child abuse in the work place, and at worst they may be little more than an act of faith (see Unell, 1992).

But in the closed world of Warner this is probably not surprising. This is the increasingly administrative domain, where we are finding ways of reducing complexity and making decisions bureaucratically accomplishable. Warner's world is established through a closed mode of discourse centring on certain vocabularies, structure of argument and types of common sense motives. It's only when we begin to start dissecting these that we can begin to perceive the dangerousness of this new-order-of-things.

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