Striking the Balance

The case for a common sense approach
to the Vetting and Barring process.

We have '*to strike the right balance between the rights of some individuals to live down their past crimes and the need to safeguard other individuals.*
Home Secretary, Michael Howard, 1996.

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Executive Summary:

In recent years there have been increasingly negative debates about both the Criminal Records Bureau (CRB) system of checks on people working with children and adults at risk of abuse, as well as the proposed Vetting and Barring system managed by the Independent Safeguarding Authority. Some of that criticism has been about a perception of very bureaucratic and costly processes, while other criticisms have been about the degree of intrusion which these systems are seen to represent into the lives of ordinary people.

As a leading adult safeguarding charity in the UK we believe that there are justifiable grounds for reviewing the scope and operation of the schemes, but that this is different from suggesting that CRB or vetting and barring is not needed, or that such systems have no role within the concepts of a 'Big Society'. We believe that the principle is well established in relation to standards of behaviour expected within certain working roles, and that society already accepts that people can be excluded from withholding information relating to criminal convictions when applying for designated jobs, or from undertaking certain roles (through the use of either a blanket ban or a register) for similar reasons.

However, society cannot reasonably expect any system by itself, or in a combination of systems, to guarantee the safety and wellbeing of every child or adult at risk of abuse in the UK. We cannot expect the systems in their totality to achieve that end and we therefore do not believe it is wise to promote or perceive any scheme in a way that removes the responsibility of good management practice, or the common sense of adults. In that context, safeguarding systems should be supplements to the responsibility of organisations, communities and individuals, and not replacements for them.

- For all these reasons, we are calling for a scheme which focuses upon employees or volunteers with sufficient direct hands-on access to people or their property to justify an additional vetting procedure i.e. very specific roles. We believe the argument for the scheme, and the evidence, becomes much less clear in relation to ancillary staff or more general volunteering.

- To avoid unnecessary duplication we believe that it should operate more closely with other regulatory bodies (e.g. the Nursing and Midwifery Council) and thus prevent multiple registration. Someone removed from one register (and thus barred from that employment) should be referred to and considered for barring by other regulatory bodies). This approach however includes an expectation that all regulatory bodies will adopt a clear and robust response to issues of abuse.

- We believe the scheme should have a one-time entry, with online checking to verify any new conviction information since a previous CRB was last issued, and that any fee should not act as a barrier to employment for low paid workers. It should be user friendly, immediately easy to access, and low cost.

- We believe the principle of barring should apply to people either (a) convicted by the courts of a designated offence (e.g. neglect of an adult under the Mental Capacity Act 2005); (b) accept a police caution in respect of a relevant act of wrong-doing; or (c) dismissed by an employer for an abusive act .

- We believe the need for portability of CRB has been adequately articulated. Creating duplication is unnecessarily bureaucratic, creates a lack of confidence in the systems and their purpose and is wasteful of scarce resources, funding etc.We believe the system should maximise the use of computer technology to allow portability and validation as necessary.

- In our view, so-called 'soft intelligence' (which has not been validated or risk assessed), should not form part of a disclosure process, and should not be used to form decisions about the suitability of someone to be employed as a worker or volunteer.

- We believe that guidance should be issued by the Association of Chief Police Officers to Chief Officers as to what is relevant to be disclosed in CRB checks, and that care provider umbrella groups should issue similar guidance to employers on how to effectively use such information.

Ultimately, we believe that Michael Howard, In his foreword to the White Paper that led to the creation of the Criminal Records Bureau (CRB), adequately summarised one aspect of what we should be seeking to achieve, when he suggested that we have '*to strike the right balance between the rights of some individuals to live down their past crimes and the need to safeguard other individuals'*. And Sir Roger Singleton, in his report, Drawing the Line, some thirteen years later, addressed an alternative aspect when he observed that the '*Vetting and Barring Scheme aims to ensure that people whose behaviour towards children (and* adults at risk of abuse – AEA) *has given grounds for legitimate concern are not free simply to move down the road or across the country and engage in similar behaviour'*.

Which is why this debate must be about striking the right balance.

Gary FitzGerald, Chief Executive,
Action on Elder Abuse, January 2011

What is it we are considering?

The Vetting and Barring system (established by the Safeguarding Vulnerable Groups Act 2006) has replaced the three previous barring lists in England and Wales (Protection of Children Act (PoCA) List, List 99 (the list of those prohibited from working with children in education) and the Protection of Vulnerable Adults (PoVA) List), with two new barred lists administered by the Independent Safeguarding Authority (ISA) rather than by several Government departments.

In Northern Ireland the new system replaces the Disqualification from Working with Children (DWC) List, the Unsuitable Persons List (UP List) and the Disqualification from Working with Vulnerable Adults (DWVA) List. Volunteers who are defined as having frequent or intensive contact with children need to be registered. Following Sir Roger Singleton's review, 'frequent' is now defined as contact that takes place once a week or more often with the same children. This was previously defined as an activity that happened once a month. 'Intensive' is now defined as contact that takes place on four days in one month or more with the same children or overnight. Previously this was defined as three times in every 30 days or overnight - between the hours of 2am and 6am.

The ISA came into existence on 2 January 2008 and after 31 March 2008 it assumed responsibility for advising ministers on barring decisions taken under the current schemes. [1] From 20 January 2009, barring decisions in England and Wales began to be taken by the ISA, taking responsibility from the Secretary of State [2] and this was extended to Northern Ireland from 13 March 2009. [3] On 20 February 2009 detailed guidance on the ISA's decision making process was published.[4] And then, from 12 October 2009, increased safeguards came into effect with around five million more jobs and voluntary positions (including most National Health Service jobs) covered by the barring arrangements.[5]

The system therefore is at a transitional stage, having replaced previous registers but not yet becoming fully implemented.

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[1] http://www.isa-gov.org/Default.aspx?page=369
[2] http://www.isa-gov.org/default.aspx?page=378 and http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm090120/wmstext/90120m0001.htm#09012042000003 and http://www.everychildmatters.gov.uk/_files/ISA%20decisions%20message%20to%20stakeholders%20update.doc
[3] http://www.egovmonitor.com/node/24106
[4] http://www.isa-gov.org/default.aspx?page=382
[5] With due acknowledgement to http://en.wikipedia.org/wiki/Independent_Safeguarding_Authority#cite_note-1

Background:

The Report of the inquiry headed by Sir Michael Bichard (set up in the wake of the Soham Murders) was published on 22 June 2004 and made thirty-one recommendations, of which one called for a new registration scheme:

> "*New arrangements should be introduced requiring those who wish to work with children, or vulnerable adults, to be registered. This register – perhaps supported by a card or licence – would confirm that there is no known reason why an individual should not work with these client groups. The new register would be administered by a central body, which would take the decision, subject to published criteria, to approve or refuse registration on the basis of all the information made available to them by the police and other agencies. The responsibility for judging the relevance of police intelligence in deciding a person's suitability would lie with the central body*"[6]

After deliberation, this led to the Safeguarding Vulnerable Groups Act 2006 which established the Independent Safeguarding Authority, and the wider principle of vetting and barring individuals who wished to work (or volunteer) with children and vulnerable adults. It had a wider remit, both in terms of those who would be required to register and those deemed 'vulnerable', than seemed to be implied by Bichard and this has generated increasing concerns and a consistent media campaign. A Freedom of Information Act (FOI) response by the Criminal Records Bureau (CRB) to the Manifesto Club (MC) in April 2010 indicated that two million volunteers would be required to register with the ISA[7] and the Club estimated that over eleven million workers were being captured by the scheme prior to the Singleton Review[8], and nine million afterward.

On the 15 June 2010, the Home Secretary Teresa May announced that implementation of the system was being halted and that the Vetting and Barring Scheme would be severely "scaled back". The Government explained that this was in response to public concerns that in its current form the scheme was overly bureaucratic and burdensome. In the News Release which announced the Terms of Reference for the Review, Home Office Minister Lynne Featherstone said:

> *"While it is vital that we protect the vulnerable, this scheme as it stands is not a proportionate response. There should be a presumption that people wishing to work or volunteer with children and vulnerable adults are safe to do so unless it can be shown otherwise. We are also announcing a review of the criminal records regime which has developed piecemeal for*

[6] The Bichard Report pp 15-16, Home Office website
[7] The Manifesto Club (2010), Volunteering made difficult: how the child protection bureaucracy is obstructing volunteers
[8] Singleton, R (2009), 'Drawing the Line: A report on the Government's Vetting and Barring Scheme',

years and is due for an overhaul to ensure that we strike a balance between protecting civil liberties and protecting the public."

In the same News Release Care Services Minister Paul Burstow said:

"We have to strike the right balance in safeguarding vulnerable people. The risk of abuse can come from people close to victims not just from paid staff and volunteers. No one can subcontract responsibility for protecting at risk people, we all have a part to play. This review will help strike that balance and to consider afresh whether the scheme is the best way of moving forward."

While Children and Families Minister Tim Loughton commented:

"Children must be protected when vulnerable and this is everyone's responsibility. Any vetting system should not be a substitute for proper vigilance by individuals and society. At the moment the pendulum has swung too far and threatens to drive a wedge between children and well-meaning adults. Such individuals should be welcomed and encouraged as much as possible, unless it can be shown that children would not be safe in their care." [9]

The Review is intended to:

- consider the fundamental principles and objectives behind the vetting and barring regime, including:
    - evaluating the scope of the scheme's coverage;
    - the most appropriate function, role and structures of any relevant safeguarding bodies and appropriate governance arrangements;
    - recommending what, if any, scheme is needed now; taking into account how to raise awareness and understanding of risk and responsibility for safeguarding in society more generally[10]

Why is this Review necessary?

It could be argued that the Review is no more than a reflection of the Coalition Government's approach toward encouraging the 'Big Society', in which State intervention in the lives of its citizens is significantly reduced, and individuals are instead empowered to take responsibility for their own communities and actions. But this would not be a true reflection of the current situation. No Government is likely to take a decision of this nature if it could be perceived or presented as endangering children (and to a lesser extent 'vulnerable' adults), simply as a

[9] http://www.crb.homeoffice.gov.uk/media/press_releases/scrutiny_of_vetting_and_barrin.aspx
[10] http://www.homeoffice.gov.uk/publications/crime/vbs-review-terms/

means for them to follow through on a political philosophy – at least not unless they considered themselves on firm ground.

And this is precisely the case. The Vetting and Barring Scheme has been discredited on a number of levels, even before it has come into existence, and it is perceived as flawed in a number of different ways. There is a body of opinion that presents the whole concept of vetting and barring as an unnecessary intrusion into civil liberties; there is another suggesting that it is unnecessarily bureaucratic and cumbersome and innately unfair in its application; there is a view that it will be ineffectual and counter-productive in terms of the negative messages that might be inferred from the simple act of being 'checked'. And there is the view that the drive to 'safeguard' is creating unnecessary suspicion about the motives of all adults, and preventing or discouraging what should be normal intergenerational interaction.

Lynne Featherstone, the Liberal-Democrat MP for Hornsey and Wood Green (and the Home Office Minister quoted previously) describes the current situation on her website blog as follows,

> "*Of course it is vital that we protect vulnerable adults and children – but the current scheme - were it to go ahead - is not proportionate. There should be a presumption that people wishing to work or volunteer with children and vulnerable adults are safe to do so unless it can be shown otherwise and checks will only be made where necessary. That 'where necessary' is crucial to the review. If we can remodel the scheme in a proportionate way we will seek to reduce significantly the nine million people currently within reach of the scheme and limit the numbers of volunteers required to register. We are also reviewing the criminal records regime which has developed piecemeal for years and is well due for an overhaul – to ensure that a balance is struck between preserving civil liberties and protecting the public*." [11]

At the heart of this issue is the debate about the anticipated presumption that potential workers or volunteers are safe unless it can be shown otherwise. The question is how this can be achieved, other than through checking the previous actions of such individuals? But, conversely, do we really want to check some 14 million people in total, as the current scheme is estimated to do?

So, this is more than a new Government coming in and 'wiping away' the actions of its predecessor, and it is more than simply a doctrinaire approach toward the philosophy of safeguarding. This is about responding to a deep-seated public unhappiness with the scheme; an unhappiness at different levels of society and, at times, for different reasons.

[11] http://www.lynnefeatherstone.org/2010/10/vetting-and-barring.htm

However, if a potentially valid criticism of the whole process that has occurred, from the original Bichard Report through to the establishment of the ISA, is that it is '*a child of moral panic. It is a textbook case of how media hype, political expediency and bureaucratic process lead to conclusions that can later appear disproportionate...Our democracy is regularly buffeted by panics which make rational, considered discussion impossible until the dust settles years later*,' [12] it must surely follow that we should not now repeat this error. It is important that we have a rational debate, and that the Review is not overwhelmed by assumptions, fears, political dogma, or the use of media hype to obtain a conclusion that no-one would really want i.e. people, whether adults or children, ending up as victims of abuse because an effective (and proportionate) system was not employed to protect them.

To put this in context, Martin Narey, Barnardo's chief executive, observed that the decision to review the scheme would be a popular move, but warned that the Government would be "rash" to dilute it dramatically. "*It has the potential to restore parental confidence in the safety of their children and that is paramount*," he said. "*A robust system is needed to ensure effective barriers are in place to prevent people from negotiating themselves into positions of trust in order to sexually abuse children*." The Alzheimer's Society also warned against a less robust version of the scheme, arguing it was essential that people with dementia were not left at risk of neglect and abuse.[13] The view of Action on Elder Abuse is outlined in this document.

Considering a starting point

What can we reasonably expect to achieve?

British society, in general, has a balanced and fair attitude about people who find themselves in vulnerable situations. There are often very strong emotions expressed about the need to protect our children, and indeed there is some concern that our nations in the UK may have become over-protective in that regard.

Equally, however, there is an increasing unhappiness about the manner in which some of our older people are cared for and treated, either by institutions or organisations, or by their own family members. It may well be that there is less tolerance toward people who create their own vulnerability by inappropriate, short-sighted or crass behaviour, but when we consider the causes of abuse and neglect of adults or children, it is rare to find situations where such intolerance would apply. We do not like to see vulnerable, dependent people hurt and in that context we will usually cooperate with systems that are obviously intended to protect – on condition that we feel them to be fairly applied and not overly intrusive into our lives. There is a delicate balance to be struck with regard to

[12] http://www.bbc.co.uk/blogs/thereporters/markeaston/2009/09/when_panic_shapes_policy.html
[13] http://www.guardian.co.uk/society/2010/jun/15/charities-warn-diltuing-vetting-scheme

what, and the amount of, information we are willing to share before we begin to perceive the system as generally intrusive.

However, in a wider context, we accept that there are roles in society where a certain level of behaviour is expected and we exclude people if they do not meet those standards. For example, you cannot be an MP if you are an un-discharged bankrupt, a prisoner serving more than a year in jail, or if you have been found guilty of certain electoral offences. And there are a large number of roles which are exempt from the Rehabilitation of Offenders Act 1974 (ROA), relating in particular to matters of national security, the care of those who are considered to be vulnerable and to the administration of justice. [14] And, of course, in order to work in certain professions, you need to be registered with a professional body e.g. to work as a nurse or midwife in the UK you must be on the Nursing and Midwifery Council (NMC) register[15] or registered with the Financial Services Authority if you carry on a regulated activity under Section 19 of Financial Services and Markets Act 2000.[16]

So, the principle is well established that our societies have certain expectations and standards of behaviour in relation to designated working roles and we exclude people from either withholding information relating to criminal convictions when they are seeking employment, or from undertaking certain roles through the use of either a blanket ban or a register.

The question therefore arises as to why this principle seems to have become such a major problem in relation to CRB and ISA checks and registration? If we go back to the original expectations of these activities we believe they were essentially to,

> *'prevent people dismissed (or who would have been dismissed as part of a completed disciplinary process) for abusive or neglectful acts in a working environment (or who had committed wider predefined criminal acts) from working in a direct caring capacity with adults in vulnerable situations.' [17]*

In essence the objective is straightforward. If someone has committed a relevant serious crime that has a bearing on their employment it should prevent them from working in that role (following the same principle as the un-discharged bankrupt and the MP, or the convicted sex offender and the childcare worker). Similarly, if someone has been dismissed for an abusive or neglectful act, following correct employment procedures, then it is reasonable that they should not be engaged by another employer elsewhere to undertake the same role. This is as much

[14] http://www.yourrights.org.uk/yourrights/privacy/spent-convictions-and-the-rehabilitation-of-offenders/exceptions-to-the-roa.html
[15] http://www.nmc-uk.org/Registration/Joining-the-register/
[16] http://www.fsa.gov.uk/Pages/Doing/Do/index.shtml
[17] Action on Elder Abuse submission to the Review of the Vetting and Barring Scheme

about public confidence as it is about the prevention of abuse. But the problem of course, as always, is in the detail.

In his foreword to the White Paper that led to the creation of the Criminal Records Bureau (CRB), the then Home Secretary, Michael Howard, said that we have '*to strike the right balance between the rights of some individuals to live down their past crimes and the need to safeguard other individuals'*.[18] Sir Roger Singleton, in his report, Drawing the Line, some thirteen years later, indicated that the '*Vetting and Barring Scheme aims to ensure that people whose behaviour towards children has given grounds for legitimate concern are not free simply to move down the road or across the country and engage in similar behaviour'*.[19] Neither of these statements are unreasonable, both apply to children and adults in dependent and vulnerable situations, and both are equally true now.

> We therefore think it is reasonable to expect the effective operation of a system that excludes people from further direct health or social care work if their previous actions or behaviour has made them unsuitable to continue in that work, and if that decision is based upon evidence established either through the conclusion of a court process leading to conviction, or the conclusion of a disciplinary process that either led to dismissal, or would have done if the employee had not resigned.

We think the debate about whether such decisions are reached through the civil test of 'balance of probabilities' or the criminal one of 'beyond reasonable doubt' is irrelevant. All current employment decisions are taken on the civil test, and this is equally true of decisions by the NMC Professional Conduct Committees, so the principle in this regard is well established.

However, we do not believe any scheme should be perceived or promoted in a way that removes the responsibility of good management practice, or the common sense of other adults. Safeguarding systems should be supplements to the responsibility of organisations, communities and individuals, and not replacements for them. In that context we would agree with the concerns expressed by the Manifesto Club in its report, The Case against Vetting, that,

> *'Vetting is endowed with an almost mystical power to distinguish a 'safe' from an 'unsafe' adult. 'Have you been checked?', people ask, as if a clean sheet from the bureau indicates your moral integrity. But this is placing too much faith in vetting.'* [20]

[18] Home Office (1996), 'On the Record: The Government's Proposals for Access to Criminal Records for Employment and Related Purposes in England and Wales', Home Office: London
[19] Drawing the Line' - A report on the Government's Vetting and Barring Scheme,Sir Roger Singleton
[20] The Manifesto Club (2006), The case against Vetting

This was not and should never be the effect of any safeguarding process, even unintentionally and if there is evidence that the CRB/ISA process is having such an impact we believe that steps should be taken at promotion and implementation stages to ensure that this is addressed in any revised system. Both responsibility and accountability must remain at local level.

What can we not expect to achieve?

> Society cannot reasonably expect any system by itself, or in a combination of systems, to guarantee the safety and wellbeing of every child or adult at risk of abuse in the UK. Indeed, we cannot expect the various systems in their totality to achieve that end, however much we might collectively wish it to be so.

There are too many variables in relation to people's lives and circumstances, (including individual choice; isolation; coercion; or the various abuse dynamics that are recognised and understood within domestic abuse) for there to be any reasonable expectation that every person in every vulnerable situation can be safeguarded. What we can expect however is a recognition that people, whether adults or children, do not choose to be abused and can reasonably expect a certain level of support and protection from the society in which they live.

To put the reality into context, despite several decades of child protection systems and processes, 16% of women and 7% of men indicated in a survey that they had been sexually abused (involving physical contact) before they were twelve years old, (one in every nine pre-teen children). If non-contact sexual abuse such as exposure is included, the proportions rise to 21% and 11% respectively. If the findings are even close to reality, it means that there are hundreds of thousands of people living undetected in the UK right now who, at some point, sexually abused children. Most paedophiles, of course, never get caught. [21]

Further information from the NSPCC indicates that 7% of children experienced serious physical abuse at the hands of their parents or carers during childhood.[22] 1% of children aged under 16 experienced sexual abuse by a parent or carer, and a further 3% by another relative during childhood. 11% of children experienced sexual abuse by people known but unrelated to them and 5% of children experienced sexual abuse by an adult stranger or someone they had just met. [23]

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[21] http://www.bbc.co.uk/blogs/thereporters/markeaston/2008/06/the_spectre_of_the_paedophile.html

[22] *Cawson et al. (2000)* Child maltreatment in the United Kingdom: a study of the prevalence of child abuse and neglect . *London: NSPCC. p.35*

[23] *Cawson et al. (2000)* Child maltreatment in the United Kingdom: a study of the prevalence of child abuse and neglect . *London: NSPCC. p.85 and 86.*

The Manifesto Club, in its report entitled, Why we should scrap the Vetting database,[24] asks the question, *'while the scheme may make it harder for those 'known to pose a risk' to gain access, what if they are not known, or find another route?'* In our view that is an argument for strengthening other safeguarding and regulatory systems, (e.g. the No Secrets[25] Adult Protection systems and regulation under the Care Quality Commission[26]) rather than a sustainable argument against vetting and barring itself. It is perhaps worth remembering that Bichard made thirty-one recommendations, only one of which related to this scheme and we should perhaps perceive Vetting and Barring in that wider context.

Basically, this is a question that assumes universal protection through one mechanism, Vetting and Barring, and in isolation from everything and everybody else. It is a false assumption, but it probably derives from the manner in which such processes have developed over the last decade, and which appear to present them as separate from, and a replacement for, the responsibilities that society in general (all of us) should hold for the care and protection of people in vulnerable situations.

> As suggested previously, safeguarding systems should be supplements to the responsibility of organisations, communities and individuals, and not replacements for them. And, equally importantly, the fact that protective systems will inevitably have limitations cannot be an argument for us to do nothing.

What are the current issues?

There are several different levels of criticism leveled at the current CRB and ISA systems, and in our view these can be categorised as follows:

- a philosophical objection to the concepts underlying Vetting and Barring/CRB, including arguments that the scale of the problem does not warrant such actions, and that the schemes undermine inter-generational activity;
- objections relating to the scope of the schemes, with similar arguments about their impact on inter-generational activity and volunteering;
- objections to the cost and operation of the schemes, including arguments as to who should pay the required fees, and arguments that the processes are unnecessarily bureaucratic;
- objections to the fairness of the operation of the schemes.

[24] The Manifesto Club, Why we should scrap the Vetting database

[25] http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4008486

[26] http://www.cqc.org.uk/

In our opinion, there is merit within some of the arguments as articulated, but by no means all of them, and the Review will have to separate the 'wheat from the chaff' in order to arrive at a balanced and proportionate position.

Philosophical arguments

There is clearly a political and philosophical discussion to be had about the extent to which the State should intervene in the lives of its citizens, and what State actions can be considered to be legitimately in the interests of its people, as opposed to those that can be reasonably described as 'hyper-regulation'. To some degree this dividing line has been dictated by the pressure of 'public opinion' (which is often code for the effect of a media campaign), but in many other cases it is borne either of overwhelming evidence (e.g. the seat-belt requirements, or the drink-driving requirements) or the enshrinement in law of minimum expectations of behaviour (e.g. the Mental Capacity Act 2005). However, it is equally important that legislation, its implications and expectations, are fully understood by those responsible for its implementation and this can often be where matters go awry. And, in terms of CRB, there is a body of evidence that suggests the overzealous application of the scheme by some organisations, usually erroneously.

> But this is different from arguments that suggest CRB or vetting and barring is not needed, or that they have no role within the concepts of a 'Big Society'. We would argue that it is the scope and breadth of the current scheme which has created such perceptions, but that the principle of checking whether people are 'fit persons' to work with children or adults in vulnerable situations remains valid.

To consider this in a slightly wider sense, communities continue to demand that paedophiles are registered with the police and that their living circumstances are known within those communities. In general, no-one would argue that this represents 'hyper-regulation', although there are legitimate concerns as to how communities might react to those individuals when they are identified. However, it cannot be an unreasonable extension of that position to argue that the wider principle (of registering and barring) should also apply to people either (a) convicted by the courts of a designated offence (e.g. neglect of an adult under the Mental Capacity Act 2005); (b) who have accepted a police caution in respect of a relevant act of wrong-doing; or (c) been dismissed by an employer for an abusive act (e.g. the Deputy Care Home Manager (Kate Ugochugwu) who was dismissed from her job, reported to the Nursing and Midwifery Council, and given a 24 month conditional discharge after force-feeding a 102 year old man in her care).

> This is different than suggesting that all carers should be considered as latent or inherent abusers and therefore guilty until proven innocent, but that the vetting process should instead be considered in the same light as

obtaining references before offering employment, a matter of good practice to protect everyone involved. Of course, this pre-supposes that it is only focused upon very specific roles and is not imposed upon a high percentage of the working population.

Does the prevalence of abuse warrant these systems?

The Manifesto Club has stated that '*nobody working in social work or social care would deny that many adults suffer serious and sustained abuse. Such a position would be untenable'*. But then goes on to dismiss the experiences of those adults by suggesting, '*it is not the case that there is an epidemic of abuse that requires a state monitoring system of all adult carers'*.[27] It quotes the 2007 UK Study of Abuse and Neglect[28] as justification but use the lesser of the percentage figures within that report to sustain their arguments.

However, the Prevalence Study 'operationalised' elder abuse, meaning that someone had to be neglected ten times in order to be counted once in the study, with a similar approach taken toward psychological abuse. Additionally, it did not include anyone who had some form of dementia or cognitive impairment, and nor did it include people in care homes or hospitals.

Withn these parameters, and using the common definition contained within No Secrets[29], coupled to the AEA definition of elder abuse[30], the UK Study of the Abuse and Neglect of Older People still indicated that 4% of older people experienced some form of elder abuse (342,000 people). Adjusting for the 'operationalising' of the data, the percentage is probably closer to 7%.

Within that data, 9% of the abusers identified by older people were domiciliary care workers, with 13% of neglect attributed to them and 20% of financial abuse. Given the state of domiciliary care across the nations this is perhaps not too surprising, although we should not receive this news with complacency. The regulator in 2006 referred to the sector as effectively a 'cottage industry', and this was not a criticism so much as an analysis of its systems, structure and funding.

There is no comparable data for residential care. However, consistently, 23% of calls to the AEA Helpline are about abuses perpetrated within care homes, where 4.9% of older people live. This is a disproportionate call rate, although allowances have to be made for the fact that it is easier to identify abuse within an institutional setting.

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[27] The Manifesto Group, Carers or Suspects (2010) Ken McLaughlin/Josie Appleton

[28] http://www.elderabuse.org.uk/AEA%20Services/Useful%20downloads/Prevalence/Prevalence%20Report-Full.pdf

[29] http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4008486

[30] http://www.elderabuse.org.uk/About%20Abuse/What_is_abuse%20define.htm

Figures relating to child abuse are given on page 8.

> However, the key issue is not the prevalence of abuse. Such figures vary depending upon definitions and the willingness of participants to disclose information. It is instead about targeting schemes at those employment roles wherein people have the capacity to harm or hurt, and then preventing those who have been proven to have previously acted unacceptably in such roles from continuing to work in those privileged situations.

An obvious scenario to consider in this context would be the situation where Vetting and Barring did not exist, older people were seriously harmed by a care home worker, and it subsequently transpired that the worker had acted similarly elsewhere. As it is quite normal practice for workers to have more than one employment, and to move frequently between employers[31], it is not difficult to hide the fact of dismissal from subsequent employers. This was a very real scenario facing AEA helpline operators prior to the Protection of Vulnerable Adults List (POVA list).

To put that in context, an analysis in 2005[32] of the first one hundred referrals to the Protection of Vulnerable Adults List indicated,

> *'Almost all (85%) referrals involved Neglect (33%), Physical abuse (29%), or Financial abuse (25%). Verbal and psychological abuse were involved in about one third (33%) of referrals (16% and 17% respectively). An examination of (the data) suggests that there is more of a likelihood of referrals involving physical (33%), psychological (17%) and verbal abuse (19%) from residential settings. In contrast, there was more of a likelihood of referrals from domiciliary providers involving financial abuse (42%). Male and female staff were found to be involved in different patterns of misconduct. Over two fifths (41%) of male staff were referred for misconduct involving physical abuse, compared with under a quarter (23%) of female staff. However, almost one third of female staff (32%) were referred for financially abusing service users, compared with about one eighth (12%) of male staff'.*

Scope of the Scheme

Who should the scheme cover?

There is a strong argument that the scheme is too all-encompassing, despite the effects of the Singleton Review. As it stands, millions of volunteers and workers are covered by the scheme.

[31] http://www.rec.uk.com/_uploads/documents/2CRBdisclosuresandtheISAJuly10.pdf
[32] POVA referrals, the fist 100 (2005) Kings College London, Social Care Workforce Research Unit

The Manifesto Club suggests that this includes school secretaries, governors, caretakers, plumbers; parents who volunteer, and parent-teacher association members; Hospital doctors, nurses, porters; cleaners, and laundry and maintenance workers; child psychologists who review adoption applications; Volunteers, football coaches, cricket umpires, Guides and Scout volunteers; volunteers in churches, charities and community centres; Foster carers and their friends and visitors; University staff, students, and academics who teach 17-year-olds; Child entertainers, musicians, magicians, organisers of children's parties, etc.

It is a formidable list and, in outlining it, the Club argues that people who work with children are now subject to more stringent criminal tests than those who sell explosives, or practise law. It reports Disclosure Scotland as saying that a Standard Disclosure may be required for senior bank managers, in the interests of national security, or for those applying for explosives or firearms licences, but that the highest level, 'Enhanced Disclosure', is applied to those involved in caring for children. They make the point that this means running an after-school club requires a higher level of security clearance than selling explosives. [33]

> We believe that we must be mindful of the original intention of Bichard's recommendation and consider this whole situation in the light of proportionality. For example, it is an acceptable objective to focus upon employees who have direct hands-on access to children or adults in vulnerable situations, and there is good evidence (certainly in relation to the care of older people and people with learning disabilities) to justify that focus. But the argument, and the evidence, becomes much less clear when we consider ancillary staff or more general volunteering.

While there may be an argument for a system that includes a maintenance worker in a children's setting (and that discussion is outside of our experience and remit) it becomes much less certain when we consider a similar role in a residential care home for older people, or a cook in a similar establishment? That is not to say that the potential does not exist for such workers to abuse; the recent case of the 17 year old kitchen assistant, Maxwell Laycock, who raped an 86 year old woman on Christmas Day 2009 while doing the afternoon tea round, is the most graphic example. But there seems no evidence of widespread abuse by such staff.

We do however have to address the anomalies created by the previous Government in relation to the status and role of Personal Assistants, employed by individuals using money obtained through either Individual Budgets or Direct Payments. In the early developmental stages of these Personalisation models it was argued by some service recipients/employers that any requirement for advance CRB or (as then was) POVA checks was an automatic infringement of their rights to choice and control. We believe that this was an argument borne of

[33] The Manifesto Club (2006), The case against Vetting

the poor experiences of some individuals who had the capacity and wish to exercise legitimate control over their care services but who were unreasonably denied such rights. While we have no wish to marginalize either their previous experiences or their lifestyle wishes, this is not an argument that would be proffered or sustained by the majority of people who are now targeted as potential recipients of personalised services. Furthermore, we would hold the view that the State must inevitably retain some responsibility for 'due diligence' with regard to the expenditure of pubic money, and this must extend to the minimal level of protection afforded by CRB and ISA checking.

Having focused primarily on employees, we believe it is important not to duplicate actions. For example, as indicated previously, nurses are required to be registered with the Nursing and Midwifery Council (NMC) and hold a PIN number from them in order to be employed in that capacity. If they are dismissed for actions incompatible with their role they can be referred to the NMC Professional Conduct Committee and, following a hearing at which they can be represented and where the decision is based upon the civil test of 'balance of probabilities' can be struck from the register. There are many similar professional bodies operating in much the same way.

> We believe that the role of professional bodies should be marginally enhanced, that employers should have an automatic duty to refer instances of dismissal to them, and that this should negate the need for such employees to be part of the current Vetting and Barring scheme. This would represent no more than a slight change of current practice, would significantly reduce the number of employees captured by the current scheme, but would achieve the same objectives.

This approach however includes an expectation that all regulatory bodies will adopt a clear and robust response to issues of abuse, and there have been examples in the past where the perception is that this has not always been the case. To be effective however such Professional Bodies would have to refer such situations to the Vetting and Barring scheme, which should then register the individual concerned as also barred from working in a 'hands-on' capacity with children or adults in vulnerable situations. This would prevent, for example, a nurse from simply transferring from an NHS role to a similar social care role, despite having been struck from the nursing register for abusive or neglectful act.

Is the Vetting and Barring System discouraging volunteering:

Clearly, the Vetting and Barring Scheme is deterring some people from volunteering, and the most notable and public examples would be Phillip Pullman and other authors who felt offended by the very suggestion that they should be checked in this manner in view of what they were doing.

But the reality is that there is no empirical evidence to suggest that volunteering has suffered as a consequence of the Vetting and Barring scheme. The Manifesto Club provide individual testimonials in their Report[34] but this gives no indication as to how representative these views might be. Instead they make the argument that the very act of vetting effectively brands volunteers as suspects. This is of course a philosophical argument, but it is valid in the sense that volunteers are giving something (their time) freely and therefore have a different relationship to an organisation than someone who is in an employment role. They perhaps expect to be treated differently. Equally, however, it could be argued that this is a perfect role for someone who wished to gain access to children or adults in vulnerable situations in order to abuse, and in that context it is spurious to argue that someone who '*with years of experience, who by all rights should have earned respect'*, should automatically be assumed to be 'safe'. This is simply unsustainable when the role and status of abusers is examined, and the recent scandals in relation to Catholic priests are an obvious example of this.

Where research has been undertaken in this regard the findings have challenged the idea that disclosure checks create widespread threats and barriers to volunteers. The 2008 SportScotland Report indicated that, in principle, support was high for both child protection generally and the need for disclosure checks specifically. They acknowledged however that there was a risk that those with unrelated past criminal convictions would not put themselves forward to volunteer.[35] Equally, research in England in 2005 for Volunteering England and the Institute of Volunteering[36] found that the organisations surveyed had concerns about the disclosure checking time which they considered consuming and complicated, and this reinforced findings by Rochester in 2001.[37] Smaller organisations, however, considered that the process deterred new volunteers. Lack of transferability of disclosure checks was problematic for those who volunteered for several organisations. In addition there was a feeling that the system was a barrier for some sectors of society, for example gay men with sex offences due to unequal age of consent or people who were unable to produce the required documentation.

All of which suggests that the issue is perhaps less about the relationship between volunteering and Vetting and Barring, and more about whether the types of volunteers affected should be more narrowly defined, and whether the

[34] The Manifesto Club, Volunteering made difficult, Josie Appleton
[35] Child Protection Legislation and Volunteering in Scottish Sport: Summary Report (2008) **sport**scotland
[36] Gaskin, K. (2005). Reasonable Care? Risk, risk management and volunteering in England. Research conducted for Volunteering England and the Institute of volunteering Research. http://www.volunteering.org.uk/WhatWeDo/Projects+and+initiatives/volunteeringandriskmanagement/Risk+Toolkit/
[37] Rochester, C. (2001) Regulation: the impact on the local voluntary sector. In Margaret Harris and Colin Rochester (eds.) *Voluntary organisations and social policy in Britain*. Basingstoke: Palgrave. 64 – 80.

system is sufficiently smooth and flexible to be almost unnoticeable (which of course it currently is not).

> Bearing in mind that our expertise relates to the experiences of adults who have been abused, and not that of children, our view would be that this should be very precisely focused upon volunteering roles within health and care environments, where the volunteer has direct hands-on personal care activities, or which gives them immediate access to someone's finances.

The cost and operation of the Schemes

Does the financial cost outweigh the benefits:

There is no doubt that the cost of the CRB system, both alone and when combined with the ISA scheme, is very high. The Manifesto Club has indicated that the total cost for CRB checks for those working with vulnerable adults was £164.7 million since 2004. In 2009–10 alone, the bill for CRB checks for the medical and care sectors was £69 million.[38]

There is a reasonable debate to be had about who should pay for both CRB and ISA vetting, the individual employee, the employer, or indeed the State through taxation, because there is clearly inconsistency across the sectors. But this would not negate the fact that that the care sector already carries very high overheads, while the cost within the NHS is likely to fall on taxpayers. There is therefore a strong motivation to ensure that systems are cost-effective, and this must result in a review of how and when CRB checks are requested, and their portability between job roles (see below) rather than what appears to be repetitive duplication. What does seem apparent is that some employers of both paid staff and volunteers have used the CRB scheme (and the POVA list) as an alternative to what should be their own good recruitment practices (a point covered earlier at the bottom of page 11).

> Additionally, of course, we need checking systems that maximize the use of computer technology. For example, if someone presents their CRB form to an employer who then checks it on the Bureau website, it would make sense to allow that search to immediately provide details of any change in circumstances, rather than simply advise the employer that a further CRB check is required. Why should there be a need for the additional costs associated with getting something on paper that could instead be displayed immediately on screen?

We also need to ensure that employers only access CRB and Vetting and Barring systems in accordance with the guidance. For example, an investigation by *Personnel Today* found that hospitals were seeking CRB checks for laundry,

[38] The Manifesto Club (2010) Carers or Suspects: CRB checks and the regulation of the caring professions

maintenance and administrative staff who rarely or never met patients. In response the NHS Confederation said, 'We have issued a reminder to the NHS that CRB checks may only be requested for posts that allow access to patients in the course of normal duties.' [39]

> We believe that this again reflects the way in which the process has been used as a replacement for good recruitment and safeguarding practice, rather than as a supplement, and this suggests a more robust implementation strategy in order to ensure that (a) the systems are used when they should be and (b) they are *only* used when they should be.

Is there is a lack of portability?

The need for portability of CRB has been repeatedly articulated since the inception of the scheme. Creating duplication is unnecessarily bureaucratic and creates a lack of confidence in the systems and their purpose.

For example, a criticism by the Manifesto Club is that *'where checking previously occurred only once – when a teacher started their first job – now it occurs for every new position. So if a person is a football coach, a teacher, and a mentor, they will generally need to get three different checks. If they change job or organisation they will usually have to get rechecked'*.[40] While the Recruitment and Employment Confederation have pointed out that, *'It is common for supply teachers, agency nurses, locum doctors and other agency staff to register with more than one agency to find work. Currently they will take out a criminal disclosure with each new agency, even though there is probably no additional information on their disclosures, they are applying for similar jobs and their last CRB was very recent. This leads to constant re-checking of the temporary workforce, to no great gain*.' [41] This situation has changed legally as agencies are no longer covered by the CQC regulator, but anecdotal evidence suggests these practices continue anyway.

> We therefore believe that a system that maximises the use of computer technology to allow the portability of CRB and ISA validation is necessary. We obviously need data to be continuously updated at source, in order to cope with changes in criminal or employment records, and for there to be automatic notification of such changes to employers, but we believe that this is achievable through the effective use of such technology.

[39] Personnel Today 23 January 2006
[40] The Manifesto Club (2006), The case against Vetting
[41] http://www.rec.uk.com/_uploads/documents/2CRBdisclosuresandtheISAJuly10.pdf

The fairness of the Schemes

Is the system unfair to those barred:

We believe that this matter has been adequately considered and addressed by the Court case recently taken by the Royal College of Nurses. There is clearly a balance to be struck between the protection of people in vulnerable situations on the one hand and the need to be fair to an accused person on the other, with a close eye on the costs associated with making the system work effectively.

In *Royal College of Nursing and others, R (on the application of) v Secretary of State for the Home Department and another [2010] EWHC 2761 (Admin)*, the High Court held that Article 6 of the ECHR was engaged when a person's name was added to the Barred Lists because such acts affected their civil right to remain in employment or, if unemployed, to engage in a wide variety of jobs. Because the VBS requires ISA to place individuals who have been convicted or cautioned for a wide range of offences on the Barred Lists, without the right to make representations prior to listing, the High Court considered this was contrary to Article 6 and Article 8 of the ECHR. It granted a declaration of incompatibility. Mr Justice Wyn Williams said: "*In my judgment and notwithstanding the fact that the person concerned has been convicted or cautioned of a specified offence the denial of the right to make representations in advance of listing is a denial of a fundamental right. It is not justified … I regard the denial of the right to a person to make representations as to why he should not be included upon one or more of the barred lists as being a breach of Article 6…… I consider that it is the (often irreversible) detrimental effect of the inclusion in the list that makes the breach of Article 6 at the first stage of the process incurable by any of the measures later in the process which are designed to afford a sufficiency of procedural protection to the person concerned.*"[42]

> Fundamentally, this is not about whether the evidence exists to bar someone from future employment in designated jobs, but about the method employed to do so. Again, to take the example of the NMC, even where someone has been dismissed for obviously abusive acts there must still be a Professional Conduct Committee hearing (at which the accused nurse can be represented) in order to strike them from the register. Despite the dangers associated with someone continuing to seek work in designated sectors, there is a fundamental issue of justice associated with this point.

Which raises a second area of concern in this regard. In 2009, the outgoing Information Commissioner, Richard Thomas, warned that the use of 'soft intelligence' could damage an innocent person in his or her career 'financially and socially'. Civitas has suggested that '*Concerns about civil liberties tended to be*

[42] http://www.shoosmiths.co.uk/news/3314.asp

outweighed by the idea that you cannot argue with a scheme that intends to protect children'. [43]

When considering the use of 'soft intelligence', we believe it is crucial to define what is meant by this phrase because on the one hand such action can be considered a legitimate use of factual information to prevent crime, while on the other it can be viewed as an unacceptable intrusion into civil liberties by the use of information which at best might be considered 'hearsay'. Bichard recognised this in paragraph 4.44.1 of his Report when he advocated the development of a code of practice which encapsulated 'the key principles of good information management (capture, review, retention, deletion and effective use) *with regard to policing purposes, the rights of the individual and the law*' (our italics). And 4.45.1 'In terms of striking the balance between the various rights and interests involved, retaining information represents considerably less interference than using (that is, disclosing) that information, and is correspondingly easier to justify.[44]

The issue does not arise in terms of 'Standard Disclosures' as these relate to spent convictions on the Police National Computer, and details of any cautions, reprimands or warnings held at national level. In our view it is legitimate to access such information where an individual is seeking to work in a 'hands on' capacity with a child or an adult in a vulnerable situation. It is where an 'Enhanced Disclosure' relies upon information 'which in the opinion of the Chief Constable is relevant to the application' that causes concern.

The difference between 'information' and 'intelligence' is clarified in the NIM Manual as follows, 'Information refers to all forms of information obtained, recorded or processed by the police, including personal data and intelligence. Intelligence is defined as information that has been subject to a defined evaluation and risk assessment process in order to assist with police decision making'. [45] It is the discretionary nature of such disclosure, coupled to the use of un-evaluated information, which gives rise to concerns about civil liberties in this regard.

Although we have heard and understood the arguments put forward by police and others as to the merits of 'soft intelligence' and sympathise with their objectives, (indeed, we are aware of circumstances in which this has uncovered information not otherwise available) we nevertheless feel that the disclosure and use of un-evaluated information is inappropriate and morally wrong unless it has been obtained against a transparent set of criteria, has been evaluated and has been established as having a basis in fact, again set against a transparent set of criteria, and is then disclosed against an equally transparent set of criteria i.e. not

[43] http://www.civitas.org.uk/press/prLTH2ndEdSept10.htm
[44] The Bichard Inquiry Report (2004), London, The Stationery Office
[45] Guidance on the National Intelligence Model (2005), ACPO and NCPE

subject to the opinion of any individual. Otherwise it is open to inaccuracies, misunderstandings and is very difficult to challenge.

> In our view, so called 'soft intelligence' which has not been obtained, evaluated and disclosed against a set of transparent criteria should not form part of a disclosure process, and should not be used to form decisions about the suitability of someone to be employed as a worker or volunteer.

Finally, there is the question of whether or not the information disclosed through a CRB check is relevant and, equally importantly, whether employers are using that information appropriately. Enhanced CRB checks provide multiple information about people, including convictions for minor offences, cautions and police reports. The only restriction is that a local chief police officer 'thinks [it] may be relevant in connection with the matter in question'. [46] This obviously has two implications; firstly, it can discourage competent people from applying for positions because of something of a minor nature they may have done years previously, and secondly it can encourage employers to become needlessly overcautious.

For example, is it relevant to someone in their mid-forties, who may have raised a family and is now seeking a caring role, to have it disclosed that they stole something from a sweetshop when they were in their mid-teens? Is it a reflection of their character or the likelihood that would go on at a later date to steal from a care home resident?

> We believe that guidance should be issued by the Association of Chief Police Officers to Chief Officers as to what is relevant to be disclosed in CRB checks, and that care provider umbrella groups should issue similar guidance to employers on how to effectively use such information.

A final thought…

In this report we have confined our comments, observations and recommendations to the vetting and barring scheme as it presently exists. However, an alternative might be to consider creating a licensing system for all workers in the care sector (from doctors and other professionals to care staff who do not yet possess formal qualifications, or indeed receive the public respect due to them for the work done).

Some would 'automatically' qualify for inclusion - such as doctors, nurses, teachers and others recognised and registered by a professional body; others would need to apply. It would involve one central register and a Personal

[46] Explanatory Guide, CRB, http://www.crb.gov.uk/PDF/code_of_practice.pdf#search=%22crb%20explanatory%20guide%22

Identification Number, which could also be the membership number of the relevant professional body. Others, perhaps those newly entering the sector as care assistants, classroom assistants etc could be issued with a provisional licence subject to satisfactory completion of an academic component of qualification and subject to the employer expressing satisfaction at the quality of work observed.

This approach, whilst initially requiring considerable co-ordination, would have the ability to deliver a one-stop-shop for checking a person's status, it could be used for confirming continued professional development, recording impairments to the licence (a points system similar to the driving licence system) and ultimately the suspension or withdrawal of the licence.

As part of such an approach, one could build into the licensing process a check of the barred lists and, where appropriate, refuse to issue a licence. Such an approach would meet the long heard criticism of duplication of checks and lack of 'portability'.

Who we are:

AEA is nationally and internationally recognised as a specialist organisation dedicated to highlighting the abuse of older people within the UK, and this is acknowledged by statutory, voluntary and independent organisations. The charity was formed in 1993 and has continually operated across the four nations of the UK since that time. It does so at a strategic, rather than a community level, and consequently interacts directly with Governments/Assemblies, civil servants, political representatives, regulatory bodies, care providers and a myriad of other statutory and voluntary organisations. Its focus has increasingly been to work directly with older people themselves or other organisations who have demonstrated an understanding of the dynamics and construction of abuse.

Helpline: AEA runs the UK's only helpline specialising in responding to people concerned about or experiencing elder abuse. There is a translation facility on the helpline enabling operators to assist those whose first language is not English (and which is also able to assist those who are hard of hearing).

Information and Communications: Information from AEA is regularly provided across the elder abuse spectrum; leaflets are available on abuse in residential and day care settings, as well as information on abuse by family members. Posters and flyers on elder abuse are also distributed in luncheon clubs, GP surgeries, residential homes, etc through mail-outs and direct requests from organisations.

We work extensively with media organisations, including newspapers, television and radio. It has established a substantial capacity and network of broadcasters, journalists and reporters and is invariably the first point of contact on matters

relating to elder abuse. In addition to pro-active media work AEA has established an extensive portfolio of case histories and case studies, and has developed significant expertise in assisting media research into abuse environments.

Training: Research in both the UK and the USA has demonstrated that one of the primary contributors to elder abuse in an institutionalised setting is poor knowledge and ignorance. To redress this balance, since 2001, AEA has provided training to key practitioners in the care industry on the abuse of vulnerable older adults

Conferences: Since its inception the charity has run a highly successful annual conference which is now widely recognised as the primary event in the adult protection/elder abuse calendar. Additionally, at least four other events are organised throughout the year on specialist themes.

Membership: The charity provides membership services to organisations and individuals working or interested in the field of adult protection/elder abuse and provides a regular information newsletter and discounted access to conferences and training. Membership is spread across the four nations of the UK, although predominantly in England.

Social Policy: The initial strategy adopted by AEA at its inception was to challenge governments about the lack of policy and legislation to protect vulnerable older adults throughout the four nations. This core activity still remains a vital aspect of the charity's work, although we tend to work more in conjunction with administrations in recent years.

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