The vetting epidemic in England and Wales

Chris Baldwin
Senior Lecturer in Law, University of Sunderland

Keywords: Vetting, Criminal Records, Disclosure, CRB, Soham

Abstract: This article charts the rise of criminal vetting by employers and voluntary organisations in England and Wales. It examines the historical roots of vetting and its progress from being initially a marginal concern for specialised groups to its position as an integral part of the recruitment process for over 3,000,000 people per annum by 2007. Critical exploration of this shift is provided – key events such as the Conservative government consultation of the early 1990's and the incremental implementation of its recommendations are re-evaluated. This article identifies and examines the correlation between the media reporting of, and subsequent public reaction to, a series of high profile child murders and the response of the legislature and the judiciary to these which lead ultimately to the development of a vetting epidemic in England and Wales by 2007. The role played in this development by vested interests, such as voluntary groups and employers, will be traced and critiqued, along with the missed opportunities for reform which might have prevented the epidemic's spread.

Introduction

The last few years have been quite remarkable so far as criminal records in England and Wales are concerned. A public and media backlash[1] against 'the vetting epidemic'[2] seems to have set in while the Government have acted with surprising haste – firstly convening an independent review into the existing vetting regime, secondly by implementing a raft of amendments to criminal records legislation as recommended by that review and then thirdly, without almost any discernible warning, by dismantling the Criminal Records Bureau ('the CRB') and replacing it with the Disclosure and Barring Service ('the DBS').

This article provides a much needed context for the recent tumult by examining the rise of the vetting regime in England and Wales. This will highlight key staging posts in the metamorphosis of the system from a marginal and piecemeal administrative data collation exercise into a multi-million pound commercial operation which affects millions of citizens per annum. The author will identify a number of critical turning points for reform, including the comprehensive government consultation and review in 1993, and will show that a number of opportunities for effective development and reform have been missed.

The author demonstrates that this transition came initially through a gradual, almost imperceptible creeping growth of localised schemes which allowed for increased levels of employment screening followed by a combination of pressure applied by vested interests entreating for greater levels of disclosure and a reactionary process stemming from a number of highly emotive and well-publicised child murder cases, rather than by predetermined policy grounds. This correlation between high-profile child abduction cases and increased demands for vetting has often been presumed but rarely extrapolated fully. Here it will be contended that three particular incidents, namely the murders of

[1] T. Thomas, 'Old Criminal records Playing a Familiar Tune' (2012) 176 JPN 539
[2] T. Pitt-Payne, 'Employment - The Shadow of the Past' (2009) 159 NLJ 1530 and R. Scorer, 'A Vetting Epidemic?' (2007) 157 NLJ 985

Marie Payne in 1983, Sarah Payne in 2000 and Holly Wells and Jessica Chapman in 2002, created an unprecedented and wholly disproportionate climate of fear and mistrust which generated a perfect breeding ground for invasive criminal vetting. It is submitted that this heightened concern of paedophiles and of 'stranger-danger' justified, and indeed positively encouraged, a rapid expansion of criminal record checks far beyond that initially envisaged under the legislative framework. Some of the more excessive examples of vetting in individual cases and the application of general vetting principles will be highlighted to demonstrate the scale of criminal checks which, by 2007, had reached epidemic levels.

Vetting – a potted history

The system of criminal vetting in England and Wales via a single, designated, centralised organisation has *in situ* for only thirteen years.[3] That is not to say that vetting is a new phenomenon in the UK; in fact there is a history which can be traced back to the 1740's when Henry Fielding first took the names of convicted offenders at Bow Street Magistrates Court.[4] This list formed the 'Universal Register Office' in 1749.[5]

By 1863, the Chief Constable of Lincolnshire was 'constantly receiving letters from private enquiry offices seeking information as to the character, respectability and money value of persons residing in the towns and villages'[6]. Victorian politicians, apparently wary that the scaling back of capital punishment and the transportation of offenders on hulks to Australia might mean that there were more criminals re-entering society, decided to keep records relating to them and implemented the Habitual Criminals Act 1869 to ensure that such records were retained in England and Ireland.[7] The Prevention of Crimes Act 1871 did likewise for Scotland and between them these Acts laid the responsibility for maintaining records squarely with the police where, save for a period between 1876 and 1896 when the task was transferred to the Home Office, responsibility still lies today. To facilitate this, the police opened the Criminal Records Office at Scotland Yard in 1913 to store, in hard-copy, criminal records.[8]

An examination of the system during the middle part of the 20th century demonstrates a prevailing attitude towards vetting far removed from that of today. In 1954, a working party of Chief Police Officers (under the chairmanship of the Home Office) published a circular which provided that:

> It has been a fundamental rule that police information should not be used except for the purposes for which it was acquired, and therefore that it should not be disclosed to persons in authority, however, responsible, other than those concerned with police functions, unless the consideration of public interest is sufficiently weighty to justify departure from this general rule...A person who has served his sentence or otherwise paid the penalty for a crime should not, by artificial action, be placed in a position where he finds it impossible to rehabilitate himself and build a new and honest life.[9]

---

[3] S. Room, 'Meeting the challenges of Climbie and Soham – part 3' (2004) 154 NLJ 590

[4] T. Thomas, Criminal Records: A database for the criminal justice system and beyond, (Palgrave MacMillan: London, 2007) 106

[5] M. Bichard, The Bichard Inquiry Report, HC653 (22 June 2004) 56

[6] C. Emsley, The English Police: a political and social history (Harvester Wheatsheaf, 1991) 107 cited above n.4

[7] T. Thomas, 'National collection of criminal records – a question of data quality' (November 2001) CLR 886 – 896 at 886 – 887

[8] Ibid at 887

[9] Home Office, Disclosure of Criminal Records for Employment Vetting purposes, Cm2319 (1993) 10

In 1967 the Criminal Law Act repealed the two Victorian Acts and, such was the lackadaisical attitude to criminal vetting, from 1967 to 1984 there appears to have been no statutory basis for the collection of records at all.[10] A Home Office review of the overarching policy stipulated in the 1954 circular was undertaken in 1973 and resulted in a new circular[11] which decreed that the status quo be maintained – criminal records were to remain confidential save in the limited circumstances where probity of law, national security or the protection of vulnerable adults required otherwise.[12]

In the rare circumstances that a request was made for a report, what was compiled was a 'Police Report of Character'; a written report outlining convictions held on the local constabulary database and the Police National Computer (PNC) at New Scotland Yard, information regarding pending cases and 'other factual material, such as, for example, might be admissible in court'.[13] The latter might, and indeed did, include information regarding acquittals, cases where proceedings were commenced but dropped through lack of evidence, allegations of child abuse which were unfounded and indeed information regarding abuse suffered by the applicant as a child (on the grounds that the abused are more likely to become the abuser as adults).[14]

Even where reports were issued they were often inaccurate, out of date or simply plain wrong; when James Rule wrote of his experience at the Criminal Records Office in the 1970's he spoke of records 'entered in large manila folders, filed numerically according to the sequence of their creation, and shelved very nearly from floor to ceiling in row after row of racks (which) give the distinct impression of the stacks of a closed-access library.'[15] Rule noted that a simple request for an antecedent history was plagued by problems; contents of the records and recording practices varied hugely 'according to the habits of the police force',[16] there were often unacceptable delays and indeed 'one regional official even reports obtaining 'no trace' reports on persons known with certainty to have criminal records, suggesting that the frustrated staff of the London offices have simply refused to check the files as requested'.[17]

Moving the goalposts: *Marie Payne*

> It will never be possible to take all risk out of situations in which people are placed in positions of trust or have responsibility for the young and vulnerable. There is a price to be paid for the mitigation of risk and in the case of vetting it involves the invasion of personal privacy and, however carefully implemented, the likelihood of some people being denied jobs for reasons which are unfair or unjustified. Vetting can only remove a small amount of risk and can lead to complacency in personnel practices, which in themselves may add to the risks'.[18]

By combination of creeping statutory incrementation, the establishment of various local vetting schemes and the rather inviting fact that the cost of a police check was at that time borne by the

[10] See Thomas, above n.8
[11] Home Office, Police reports of convictions and related information, circular no. 140/1973
[12] Above n.9
[13] Ibid at 11
[14] Ibid at 11 – 12
[15] J. Rule, Private Lives and Public Surveillance (Allen Lane: London, 1973) 49
[16] J. Rule, Private Lives and Public Surveillance (Allen Lane: London, 1973) 51
[17] J. Rule, Private Lives and Public Surveillance (Allen Lane: London, 1973) 69
[18] Above n.9 at 29

vetting police force, the lackadaisical attitude to criminal records began to change.[19] Many of the local schemes which had been instituted related to security staff working at bars and clubs and other working people who did not deal with children or vulnerable people but were rather employed in positions where they held (sometimes little more than a rudimentary) position of trust; one example cited included vetting for those who installed burglar alarms in residential areas.[20] This demonstrated the development of a new, fourth justification for vetting – that of crime prevention.

The system of vetting came under sustained and widespread attack after four-year-old Marie Payne disappeared from her local park in Dagenham on 11 March 1983. Despite an extensive search and considerable media coverage, there was no trace of the girl for six months until the tattered and bloody remnants of her clothes were recovered from a tree in Epping Forest and it was not until another year later that Colin Evans, a local lorry driver arrested whilst trying to abduct two other children in the area, confessed to Marie's murder and led police to the location of her buried body. She had been savagely beaten and sexually assaulted before being murdered.[21] Evans was convicted of the murder in December 1984 in a trial that received extensive media attention – two tabloid newspapers allocated five pages each to the story[22] – and it soon emerged that Evans had an extensive history of sexual offences. Moreover, thanks to the efforts of his probation worker in recommending him to a Christian voluntary organisation (without disclosing his criminal past), Evans was able to establish himself as a credible and trustworthy individual who ultimately set up a babysitting organisation.[23]

The press and public reacted with fury, directed variously at Evans, the probation officer and the vetting system itself, and there were calls for a public enquiry and the establishment of a register for sex offenders.[24] These were resisted but s.27(4) of the Police and Criminal Evidence Act 1984 reintroduced a statutory requirement for the collation of criminal records and conferred upon the Home Secretary the power to regulate on criminal record matters. An interdepartmental working party was also established and its recommendations, namely that those who worked with children or who would have substantial access to children should be routinely checked through a specified process, were initially proposed and then fully outlined by a pair of Home Office circulars published in 1986.[25] These effectively expunged all previous vetting guidance and established a system of routine checks for child-care workers and teachers by which a local authority looking to employ to those positions could ask the police to search the PNC and report back as to the information held.

1986 has subsequently been described as 'the big leap forward' so far as vetting is concerned.[26] It had been estimated that some 100,000 checks per annum would be processed under the new regime[27] but a considerable change of heart at the Home Office saw the publication of no less than eight further circulars in seven years which significantly widened the vetting net to include NHS staff, agency staff,

---

[19] Above n.9
[20] Ibid
[21] H. Lacey, 'Time fails to fade memories of Marie: The discovery of little Rosie Palmer's body stirs sad and bitter recollections of another killing' (10 July 1994) The Independent.
[22] B. Franklin, Social Policy, the Media and Misrepresentation (Routledge: London, 1999) 96
[23] Ibid.
[24] Ibid.
[25] Home Office Circular 44/1986, which was then almost immediately superseded by Home Office, Police reports of convictions and related information, circular no. 45/1986.
[26] T. Thomas, 'The One Stop Shop' (2 March 2001) 151 NLJ 298
[27] Above n.9 at 28

students, volunteers, those who worked in residential care, bailiffs and taxi-drivers[28] to name but some of the twenty or so different posts where checks were now required.[29] Whilst this significant policy shift 'sparked hardly a ripple of public or professional debate',[30] it was positively encouraged by the voluntary and care sectors: one social care journal stated that 'everyone in social work should welcome last week's government circular giving local authorities power to check on the criminal records of people wanting to work with children'[31] while voluntary organisations such as the NSPCC and Barnardos lobbied vociferously for inclusion.[32] Fifteen other organisations, including fire-services and a board of school governors, applied to be able to obtain records but were refused as calls were made to include private security staff, nannies and those working with vulnerable adults in the vetting regime.[33]

Meanwhile, those excluded often vitiated this by requiring prospective employees to access their criminal record through a subject-access request under s.21 of the Data Protection Act 1984 – the so-called 'Do-It-Yourself check'. The Data Protection Registrar thought this method so contrary to the spirit of the data protection legislation that it ought be criminalised.[34] There were some concerns raised that 'irrelevant' material was being disclosed but these were 'muted by the overriding concern to protect children'.[35]

As the net widened, the problems mounted. In October 1986, the press reported that a woman was refused a position in a special programme for delinquent teenagers after police mistook her for another person who shared the same maiden name and disclosed that person's criminal record.[36] The London Criminal Courts Solicitors' Association publicly declared that bail and sentencing decisions were being made on the basis of inaccurate antecedent information.[37]

In 1990, the Law Society claimed that criminal records were 'in a terrifying state of inaccuracy'[38] – an allegation which so alarmed a Home Office Affairs Committee that they broke off their intended review of the Crown Prosecution Service to first conduct one into criminal records. The committee affirmed the Law Society's claim and found that over 30,000 records had not been updated after two and half years had passed since a recordable change of circumstances.[39] A Scrutiny Committee was appointed to investigate the situation further[40] and it found that the criminal record collection was 'in a very unsatisfactory state' and recommended that a new agency be created to act as custodian of the records collection.[41]

---

[28] Ibid. at 25 – 26
[29] Ibid. at 5
[30] J. Unell, 'Checks within the voluntary sector: an evaluation of the pilot schemes' (1992) Volunteer Centre UK 18 cited T. Thomas, 'Employment Screening and the Criminal Records Bureau' (2002) 31(1) ILJ 60
[31] T. Thomas, 'Employment Screening and the Criminal Records Bureau' (2002) 31(1) ILJ 55 – 70 at 60
[32] Ibid. at 61
[33] Above n.9 at 30
[34] Thomas, above n.31 at 62. This practice, referred to as 'enforced subject access', was finally outlawed by s.56 of the Data Protection Act 1998 on 10 March 2015.
[35] Thomas, above n.32
[36] Police find a Catch-22 for data victim (8 October 1986) The Guardian
[37] Thomas, above n.7 at 890
[38] Home Affairs Committee, Criminal Records – Third Report, HC285 (1989 – 90) para.1
[39] Ibid.
[40] Home Office, The Government Reply to the Third Report from the Home Affairs Committee, Cm 1163 (1989 – 90)
[41] Thomas, above n.7 at 891

Against this backdrop of slow, inaccurate and incomplete data collection and supply, the number of checks being requested was escalating dramatically and by 1993 the system was close to breaking point; the number of checks being processed by police forces per year amounted to some 665,000 in respect of 'child protection' positions, 97,200 taxi-drivers and 150,000 others (excluding national security). These figures represented a 30% increase on the previous year.[42] With all costs borne by the police, the estimated cost to the taxpayer of administering these checks had risen to £14m per year.[43] According to Thomas, this was 'all evidence of a growing culture of demand for disclosure'.[44]

An epidemic proposition – the 1993 Review

Faced with an expensive and increasingly unmanageable situation, the Conservative government issued a consultation paper in September 1993[45] which outlined in full the significant, inherent flaws in the vetting system at that point. This highlighted, among other concerns, the strain being placed on police to handle requests, the inconsistency between forces in interpreting the circulars and deciding what should be disclosed, the growing cost, and that, even at this point:

> There is evidence that the system is being misused to obtain checks on individuals whose access (to children) is limited. At a time of heightened awareness of child abuse, organisations are understandably concerned to protect against the possibility of child abuse by their staff and, despite the limitations of the process, police checks are perceived as a reliable means of doing so, especially as they are free at the point of use.[46]

The proposed response of the Government to this maladministration and misuse of the system was to give it full statutory footing[47] and to expand it to other sectors. Whilst recognising that around 35% of men and 8% of women in the UK has at least one conviction by the age of thirty-five, and that it was 'common sense' that rehabilitation prospects increase when ex-offenders are able to find employment,[48] the paper rhetorically asked: 'since a criminal conviction is a matter of public record when a person is found guilty, why not make convictions open to anyone willing to pay a fee to consult them'?[49]

The disclosure criteria were again reviewed and it was suggested that checks should be expanded to include voluntary and charitable organisations and that checking could also include positions where a person has access to vulnerable adults.[50] It was proposed that one way to reduce the number of checks being requested was to charge those applying for them, rather than the police bearing the cost.[51] Another proposal to reduce the load on forces was to take the responsibility for producing checks away from them entirely and to pass this to a new organisation. It was noted that discussion to this end had thus far considered mainly the possibility of a public body being created to administer checks, but, consistent with a decade-long Governmental policy of privatising long-standing public concerns,

---

[42] Above n.9 at 7
[43] Ibid.
[44] Thomas, above n.31 at 61
[45] Home Office, Disclosure of Criminal Records for Employment Vetting purposes, Cm2319 (1993)
[46] Ibid. at 28
[47] Ibid. at 20
[48] Ibid. at 13
[49] Ibid.
[50] Ibid. at 15 – 16
[51] Ibid. at 16 – 17

it was mooted that 'it is not clear that there is any reason in principle why private enterprise should not provide his service more efficiently than the public sector can'.[52]

The thorny issue of disclosure of non-conviction material was revisited. The paper asked whether such material should be disclosed at all (noting that in Scotland it was not ever disclosed)[53] and, if so, when it should; after all: 'is it right that a person be denied a job – or a chance to volunteer – on the basis of information which has not been tested in court or which has been tested and found wanting'?[54] If such information was to be disclosed, it was asked when it should be so done and if it might be advisable to create a two-tier disclosure process where there was a disclosure report merely containing conviction data and another which contained the same plus the additional non-conviction police intelligence.[55] It was noted that the Crown Prosecution Service had already been sounded out about their possibly playing a role in determining what non-conviction data should be retained and released but that they had declined, arguing that it would impact on their impartiality if they were to play a role in the vetting process and, in any event, the police were happy to continue dealing with non-conviction data requests.[56]

The importance of this paper to development of the vetting in England and Wales cannot be overstated. In many respects the review merely placed on official record what had become apparent over the preceding years. It recognised that vetting was no longer a marginal consideration. It noted that organisations and employers were increasingly reliant on criminal checks and that more and more organisations wanted access to them.

Some of the recommendations for reform, however, were quite startling. The proposal for 'open disclosure' amounted to little more than a vetting 'free-for-all' with the opportunity to check people as a matter of course. While this represented a complete *volte-face* from the vetting policies of the 1970's, it arguably provided an accurate reflection of the prevailing attitudes of employers and voluntary organisations at the time. Of course, the question of whether employers should be *entitled* to more access simply because they *wanted* it never seemed to have significantly troubled the reviewers. Moreover, the damaging effect this would have on the rehabilitation prospects of a substantial portion of the working population seem to have been overlooked in an extremely blasé manner – universal vetting threatened a death-blow for the Rehabilitation of Offenders Act 1974. Unfortunately, those looking for checks and balances were looking forlornly.

The proposal to remove vetting from the police was not new but the Government had seemingly resisted until it realised that the new organisation could be privatised – this was the first time such a position had been proffered – at which point the Executive position shifted sharply. Such an organisation could only realistically function if charging for certificates was introduced. If implemented, the notion of charging for certificates effectively turned criminal records data into a commodity to be bought and sold – an extraordinary postulation considering the sensitive nature of the data, the parlous state of the collation process and the previous policy disposition against disclosure of that data except in extreme circumstances.

---

[52] Ibid. at 19
[53] Ibid. at 14
[54] Ibid.
[55] Ibid. at 16
[56] Ibid. at 14

Not only was the data to become a commodity, if the proposition to outsource the disclosure to a private organisation came to fruition, then that commodity would be turned into a 'product' to be bought and sold for profit to 'customers'. Additionally, the failure to consider in full the process by which non-conviction information might be disclosed, or, perhaps more importantly whether such information should be disclosed at all, was a grievous one. Time would illustrate the significant errors of undertaking such a trifling level of discourse on this issue, which ultimately would result in the tarnishing of thousands of innocent individuals through the so-called 'soft disclosure' of non-conviction material. The failures here would have serious ramifications, for individuals and the Government, in later years.

The 1993 review marked a critical staging post so far as criminal records was concerned. From this point, vetting would either be restricted for the foreseeable future to the kind of small-scale operation undertaken for decades or it would be expanded exponentially. At this stage, it was difficult to predict precisely which way the die would fall.

The legislative framework: The Police Act 1997 and creating the Criminal Records Bureau

The 1993 review received some 180 responses.[57] It took almost three further years before formal proposals were published. Much of the delay was attributable to the Government's concern that the public might object to criminal records being commodified and a series of suspicious-seeming 'leaks', which looked to Thomas like 'a sounding out process', were made to the press.[58]

However, the public reaction was again one of complete indifference and a White Paper was finally published on 19 June 1996[59] with a separate consultative document published almost simultaneously in Scotland.[60] A three-tier disclosure process was proposed, with all employers in all fields entitled to apply for a 'Criminal Conviction Certificate' ('CCC') – a certificate providing details of all unspent convictions – whilst other, registered organisations would be able to apply for either a 'full check' (details of all convictions, spent or otherwise) or an 'Enhanced check' (spent and unspent convictions and 'soft', non-conviction intelligence held on local and national police records).[61] It seemed that 'vetting-for-all' had won the day.

All of these certificates would be issued by a new, centralised Criminal Records Agency ('the CRA') who would have access to records centrally recorded on the Phoenix computer database.[62] Those who intended to ask for full or enhanced checks would have to register with the new scheme and agree to adhere to a Code of Practice.[63] The CRA would fund itself by charging applicants for their certificates. It was envisaged that CCC's and 'full' certificates would cost either £5 or £6 each whilst

[57] Home Office, On The Record: The Government's proposals for access to criminal records for employment and related purposes in England and Wales, Cm3308 (1996) para.9
[58] Thomas, above n.31 at 63
[59] Home Office, On The Record: The Government's proposals for access to criminal records for employment and related purposes in England and Wales, Cm3308 (1996)
[60] The Scottish Office, On the Record in Scotland. Proposals for Improved Access to Criminal Records, Dep/3 3523 (1996)
[61] J. Lourie, Police Bill [HL] [Bill 88 of 1996/97]: Access to Criminal Records, Research paper 1997/23 11 and also ibid. paras. 17 – 32
[62] J. Lourie, Police Bill [HL] [Bill 88 of 1996/97]: Access to Criminal Records, Research paper 1997/23 11
[63] Ibid.

an ‘enhanced’ check would cost £8 to £10.[64] However, it was proposed that the CRA would stay in public hands as part of the Home Office[65] and would open in the middle of 1998.[66]

These proposals formed part of the Police Bill 1996 which made its way through Parliament during the 1996 – 7 session. Concerns regarding the general availability of CCC’s, and the serious detrimental impact they might have on rehabilitating ex-offenders, were raised at the Second Reading stage[67] but a suggested amendment to remove these from the bill was defeated at Committee Stage[68] and again at Report Stage.[69] An amendment to provide free checks for those in the voluntary sector was approved by two votes, in spite of Government opposition.[70]

The Police Act 1997 was granted Royal Assent on 21 March 1997, though the power to implement the provisions of Part V (where the new criminal records regime was set down)[71] lay with the Home Secretary and, with a general election looming, it was not clear that the new mechanisms would ever come into force. The incoming Labour government initially prevaricated, reasoning that the new regime seemed to contradict their manifesto promises of social inclusion.[72] Indeed, the new Home Secretary Jack Straw had reported his personal misgivings to Parliament from opposition as recently as February that year, stating that mistakes at a new CRA would be ‘catastrophic for public confidence and would undermine the purpose for which it was established’.[73]

In the end Straw decided to press ahead. On 14 December 1998 he told Parliament that he had authorised the creation of a new ‘Criminal Records Bureau’ (‘the CRB’) to administer the regime under Part V of the 1997 Act. On the same day he informed the media that ‘dangerous people need to be stopped from working with children and young people. The creation of the CRB is an important step towards achieving that’.[74] It was anticipated that the CRB would be operational within two years.[75]

In the meantime, vetting remained the responsibility of the Police and their interpretation of the aforementioned Home Office Circulars. There was mounting evidence by this point that vetting had already extended beyond the permitted ‘child protection’ remit – the reality by February 2000 was that ‘in practice, checks are run on posts offering only the most marginal contact with children on the basis that “you can't be too careful”. In fact many local authorities are now departing from the guidelines completely and running criminal record checks on posts with no contact with children at all’.[76]

---

[64] Ibid. at 13
[65] E. Blatch, HL Deb, 11 November 1996 c.834.
[66] Lourie, above n.62 at 12
[67] Ibid. at 17
[68] Ibid.
[69] Ibid. at 19
[70] Lourie, above n.67
[71] For a fuller outline of the legislative provisions as originally enacted, see C. Baldwin, ‘Necessary Intrusion of Criminalising the Innocent? An exploration of modern criminal vetting’, (2012) JCL 76(2) 142 – 43.
[72] See Thomas, above n.26 at 299
[73] J. Straw, HC Deb, 12 Feb 1997 c.379
[74] Home Office, Criminal Records Bureau to Strengthen Child Protection Safeguards (14 December 1998) Press Release 494/1998.
[75] Ibid.
[76] T. Thomas, *Pre-employment screening of prospective child care workers*, (2000) 150 NLJ 282 at 282 – 3

In the background, work continued on the CRB. The Government decided against incorporating the Bureau into the Home Office. It elected instead to institute a 'Public-Private Partnership', issuing a prospectus to potential bidders on 8 October 1999 with a formal start date of July 2001 for 'Enhanced' certificates only officially proposed on 16 December 1999. Standard certificates would begin to be issued in July 2002.[77] On 21 December 1999, three bidders were shortlisted – Capita, PricewaterhouseCoopers and e.CRES[78] – and it was announced on 20 July 2000 that Capita had won the right to sell people's criminal records for profit[79] with a 10-year, £400m contract to do so signed on 3 August 2000.[80]

By early 2001 it was abundantly obvious that attitudes towards those with criminal records has hardened: on 28 March 2001 a Select Committee on Home Affairs convened[81] to review the progress being made on the CRB declared baldly that 'those working with children or vulnerable adults will need to obtain a certificate showing that they have no criminal record'.[82] So much for the Rehabilitation of Offenders Act 1974 or criminal records constituting one part of an informed recruitment process. The general hardening of views was succinctly put in May 2001:

> Most employers would like to know if their staff or prospective staff have criminal records, particularly where convictions relate to dishonesty. Trust and confidence is central to the employment relationship and many employers would be reluctant to employ an individual with a criminal record in case themselves, their clients or other employees become victims of similar offences.[83]

This charge towards universal vetting came seemingly in spite of the fact that criminal records data remained in a wholly unsatisfactory condition. In July 2000, HM Inspector of Constabulary published a report on his review of the PHOENIX database and the quality of the records on it.[84] He found that the problems of the early 1990's persisted, with incorrect recording, missing data and incorrect classification causing records to be inaccurate for up to one year in some cases and an overall error rate of between 15 – 65% was found on inspected records.[85]

The new CRB Chief Executive tried to mitigate the problem, telling Parliament that these problems included 'every kind of error or omission, including the colour of people's eyes and the fact the postcode is missing, as well as the things that are very important'.[86] The Home Secretary fielded supplemental questions in Parliament, stating that 'the Home Office certainly does not have a defence against the charge that the police records system is seriously inadequate...This has been the case consistently for a very long period of time...It is a very bad state of affairs.[87]'

---

[77] Home Office, Criminal Records Bureau – Outcome of the Timetable review, Press Release 441/1999 (16 December 1999)
[78] Home Office, Criminal Records Bureau – Bidders Shortlist, Press release 446/1999 (21 December 1999)
[79] Home Office, Capita wins competition for Criminal Records Bureau programme, Press Release 211/2000 (20 July 2000)
[80] Home Office, Criminal Record Checks to Protect Children and Vulnerable Adult on the Way, Press Release (3 August 2000)
[81] Select Committee on Home Affairs, Second Report – Criminal Records Bureau HC 227 (2000 – 1)
[82] Ibid at para.1
[83] C. De La Mare and K. Sandison, 'Criminal Convictions', (1 May 2001) Employment Law Newsletter 81.
[84] K. Povey, K, On the Record – Thematic inspection report on Police Crime Recording, the Police National Computer and Phoenix intelligence Systems Data Quality, HMIC: London (July 2000)
[85] Ibid. at ix
[86] Select Committee on Home Affairs, Second Report – Criminal Records Bureau HC227, (2000 – 1) para.25
[87] Ibid. at para.24

Nonetheless, the Government pushed ahead. Charles Clarke MP told Parliament on 6 February 2001 that voluntary organisations would be able to apply for free certificates on volunteers once the CRB opened.[88] Generous and well intentioned though this was, the ramifications of such a decision on the number of disclosure requests made should have been abundantly obvious. The Home Affairs Select Committee concluded a month after the announcement that 'it is not possible to judge whether the decision to provide free checks for volunteers will lead to a substantial increase in estimated demand from the voluntary sector although we believe this to be likely' and that 'a contingency plan' should be drawn by the CRB to cope with any surge in demand.[89] This circumspect approach, even at that time, seems extremely naïve. The voluntary sector had, for over a decade, been a principal driving force in the expansion of the vetting regime, lobbying regularly and vociferously in favour of greater access to records. Quite why, therefore, neither Clarke nor the Select Committee were unable to see clearly the likely avaricious uptake of checks by those organisations remains a mystery. For everyone else, the cost of obtaining a certificate would be £12.[90]

By 2001, the statutory framework for wholesale criminal vetting was *in situ* but the entire system was effectively in abeyance. While it was clear that there now existed a broad political consensus on the necessity of a regimented checking regime, the mechanisms responsible for implementing it remained beset with problems. Four years after the Police Act had received Royal Assent, giving statutory footing to the most complex and wide-reaching system of vetting yet devised in England and Wales, legitimate concerns regarding the quality of the raw data (which remained in an extraordinarily disorganised state), the balance to be struck between 'standard' and 'enhanced' checks and the necessity of providing voluntary organisations with a satisfactory mechanism for obtaining cost-effective checks meant that political will for pressing forward was being superseded by the reality of opening for business in a state of practical unreadiness. This conundrum was summarised by the Select Committee when it declared that 'it is more important for the Criminal Records Bureau to get it right when it does open than for it to start operating in July 2001, its original target date'.[91]

The public awakening: *Sarah Payne*

> It would be unacceptable if errors on the Police National Computer let even one undesirable person through the checking system...The manifest levels of Police National Computer error make us doubt whether it can support a system of criminal records certificates.[92]

The struggles of the Executive to make tangible progress were being exacerbated by a sharp upturn in public interest in vetting. While earlier attempts to engage the public in the vetting discourse had universally failed, by the turn of the 21st century, the public mood had noticeably shifted and indeed 'a paedophile panic', fuelled by exaggerated media reporting, was setting in.[93]

---

[88] Ibid. at para.10
[89] Ibid. at para.14
[90] Home Office, Fees for Criminal Record Checks Announced, Press Release (2 April 2001)
[91] Above n.86 at para.44
[92] Ibid at para.32
[93] Above n.26

It is difficult to determine the precise origins of the panic. As early as February 1997, one editorial piece highlighted the 'highly emotive' nature of child sex offences and the dangers of public and legislative overreaction[94] while Williams and Thompson noted in 2000 that residents of one estate:

> simply feared a paedophile presence, *any* paedophile presence, because of the way that the media had spent the last 20 years promoting a battery of irresponsible self-styled experts (frequently fêted and employed by police officers, social service personnel and charities who share their religious beliefs), and numerous other interested agencies who exploited the issue of child abuse to justify their existence...It was these 'experts' and organisations that had added the fuel to the flames by generating fears that paedophiles are everywhere and growing in number.[95]

The traditional starting point, however, is the disappearance and murder of Sarah Payne. The eight-year old girl was abducted by Roy Whiting on 1 July 2000 whilst she was playing outside her grandparent's home with her older brother. Whiting drove off with Sarah in the back of his van and subsequently murdered her. He was convicted on 12 December 2001 and received a life sentence.[96]

This case was reported by the media in an extremely lurid manner which evoked extremely strong public reaction and debate, much of which centred on the controversial *News of the World* campaign to list the names and addresses of sex-offenders in a so-called 'name and shame' campaign. This arose after it became known that Whiting had previously been convicted of a sex offence against a young girl and had been released from prison shortly prior to the attack on Payne. The public reacted to this development with unusual frenzy, with some citizens forming vigilante groups who conducted arson attacks on properties listed by The News of the World.[97] There were reports that a paediatrician was attacked in her home after an angry mob were unable to differentiate a paediatrician from a paedophile[98] and one newspaper claimed that a riot on a council estate was a result of anger caused by Sarah Payne's murder.[99]

The Payne case captured the public imagination in a way unseen since Marie Payne case almost two decades previously. From a strict legal perspective, the case cannot be said to directly relate to the vetting tale. No amount of vetting would have prevented Whiting, a local man, from committing his crime. But the outpouring of emotion which accompanied this case[100] illustrated the significant public resonance in it, which in turn began to stoke the perception that citizens needed hitherto unprecedented governmental measures to protect their children.[101]

The epidemic strikes: *Soham* and *Bichard*

---

[94] 'Dangerous Dogs' (7 February 1997) 147 NLJ 153.
[95] A. Williams and B. Thompson, 'Vigilance or vigilantes: the Paulsgrove Riots and policing paedophiles in the community: Part 1: the long, slow fuse' (2004) Pol. J. 2004, 77(3), 99 – 117 at 111
[96] Sarah Payne – The Timetable (12 December 2001) The Guardian

[97] T. Corbitt, 'Criminal Records Bureau' (2003) 167 JPN 572
[98] Ibid.
[99] D. Hill, After the Purge (6 February 2001) The Guardian. It should be noted that the widely reported version of events was disputed by Williams and Thompson (above n.95) who provide a forceful rebuttal of the reports and also offer an alternative explanation for the Paulsgrove Riots.
[100] N. Gerrard, Don't mourn only for Sarah (23 July 2000) The Observer
[101] D. Kirk, 'People's law' (2012) JCL 76(3) 187 – 190 at 189

The almost unprecedented public apprehension for the safety of children, coupled with the continuing failures of the legislature to implement a system of vetting to protect them despite over four years of planning and discourse, was brought into the sharpest imaginable focus by the actions of Ian Huntley in Soham in August 2002. Huntley had lived in Humberside for most of his life but by July 1999 he had changed his name by deed poll to Ian Nixon and had begun a relationship with Maxine Carr.

In October 2001, Huntley successfully applied for a position as a caretaker at Soham Village College, Cambridgeshire, and he commenced work in mid-November that year; roughly the same time at which Carr moved in with him. By Easter 2002, Carr was working at the St Andrew's Church of England Primary School in Soham and by the summer she was a classroom assistant to the year five class, where she came into regular unsupervised contact with young children, including two ten-year old girls named Holly Wells and Jessica Chapman. Huntley, by this time, had changed his name back to his birth-name.[102]

In the late afternoon of 4 August 2002 the two girls were walking through Soham on their way to buy sweets when they passed Huntley's house, where, it is presumed on the false pretext that Carr was inside, they were enticed in. Once inside, Huntley murdered them both. There was, contrary to some reports, no evidence of any sexual assault before or after the murders. Huntley then drove the bodies to a remote ditch and burned them before joining the increasingly frantic search for the girls, presenting for the thirteen days before his arrest a calm and concerned persona to neighbours and the media.[103] Huntley was convicted of murdering both girls on 17 December 2003[104] and sentenced to serve a minimum of 40 years imprisonment,[105] with the judge iterating that Huntley has 'little or no hope of eventual release'.[106]

After his conviction, a public inquiry was convened to investigate the murders.[107] It was through this inquiry that the systematic failing of the vetting processes became apparent. It transpired that Ian Huntley had come into contact with Humberside Police and/or Humberside Social Services in respect of eleven separate criminal incidents between August 1995 and July 1999. These involved a television licence fine and a burglary while the remaining nine involved allegations of sexual offences. The latter included three allegations of unlawful intercourse with fifteen-year old girls and a further allegation involving a girl aged thirteen. There were four separate allegations of rape and a further allegation of indecent assault of an eleven-year old girl.

Huntley was not convicted of any of these alleged offences: the burglary case progressed to Court but prosecuting counsel believed that the police interview contravened the Police and Criminal Evidence Act 1984 so the case was discontinued (though left to 'lie on file'), while one of the rape cases progressed to court but did not reach trial after the CPS discontinued the case due to inconsistencies in the complainant's evidence.[108]

In relation to the ease with which Huntley obtained his position of employment, the inquiry found that the college had asked Huntley to complete the necessary form for a police check, which he did under

[102] Above n.5 at 23 – 24
[103] R v Ian Huntley [2005] EWHC 2083 at [4]
[104] Ibid. at [3]
[105] Ibid. at [15]
[106] Ibid. at [16]
[107] Above n.5
[108] Ibid. at 24

his present name of Nixon, and, despite Huntley's significant police history, in January 2002 that check was returned with the words 'no trace' – in other words, there was nothing recorded.[109]

In looking for explanations, the inquiry found that the records department of Cambridgeshire Police, who had processed the check request, was in disarray; short-staffed and short of trained staff, beset with sickness and disciplinary problems and faced with an apparently unanticipated increase in applications (presumably by those trying to get free checks before the paid CRB regime was implemented).[110] The processing system in place was a complex 'in-tray' system where checks were processed on different systems by different staff and then moved on accordingly to a 'foreign force' if necessary.[111] Bichard found that no formal written instructions for utilising this system were in place,[112] that the system was 'inconsistent' [113]and that 'there was no adequate safety net to ensure that all of the checks had been properly completed', including checking with 'foreign forces'.[114]

The result was a check on Huntley riddled with errors. After receiving the request on 8 December 2001, Cambridgeshire Police added Nixon/Huntley to their Child Access Database (albeit with an incorrect date of birth entered).[115] A check was then made on 9 December on one of the systems for both Ian Huntley and Ian Nixon, but nothing was found. A Police National Computer (PNC) search was made by a different member of staff who picked up the half-processed check from the in-tray system, on 21 December. This was made against 'Ian Nixon' but not 'Ian Huntley'. The member of staff who failed to check both names had only been employed since 1 October 2001 and her supervisor had been off work through sickness for seven weeks.[116] Even if the correct search had been undertaken, it would only have shown the burglary offence which was 'lying on file' and in any event the force admitted that it would have probably not disclosed it due to the nature of the offence, the age of the allegation, and overarching concerns regarding proportionality.[117]

Ultimately, it was Humberside Police, rather than Cambridge Police, who held the details of the above-listed allegations. The inquiry found that a fault in the system at the material time made it impossible to know for certain if Cambridgeshire Police had asked Humberside Police to check their records[118] but after analysing the fax records of the force Bichard concluded that 'it is extremely unlikely that any 'foreign force' fax was sent by Cambridgeshire in respect of Huntley'.[119] In any event, Humberside's systems at that time were such that the information stored was only partially recorded at the time it was obtained and only some of that partially recorded data had been retained by 2001. Additionally, the system used by Humberside to conduct checks did not include a search of the database where the allegations were recorded and the alias 'Ian Nixon' had not been added to their records. The net result was that, even if a 'foreign force' request had been made, it would have still been returned as 'clean'.[120]

---

[109] Ibid. at 59
[110] Ibid. at 61
[111] Ibid. at 62 – 64
[112] Ibid. at 67
[113] Ibid.
[114] Ibid. at 66
[115] Ibid. at 68
[116] Ibid.
[117] Ibid. at 70
[118] Ibid. at 71
[119] Ibid. at 7
[120] Ibid. at 74

The Soham murders were a 'disturbing' and 'horrifying' crime[121] which inspired considerable public revulsion.[122] Press reporting of the case was rabid – in the summer of 2002, the Attorney General was moved to write directly to newspaper editors reprimanding their 'frankly unacceptable' coverage[123] and warning about possible contempt of court[124] – but the vigilantism of the Sarah Payne case was not repeated. Instead, anger was turned against the authorities, whose apparent failings had allowed Huntley such a position of employment in the first place.

From a vetting perspective, *Soham* was a perfect storm of inertia, misfortune, complacency and tragedy. Decades of poor practise had meant that criminal records were incomplete and inaccurate and this time the failure to update Huntley's records, an issue which had been highlighted time after time by officials and academics, had resulted in a blank certificate being issued against a man who, even under the regime provided by the Circulars, would have almost certainly not been so cleared. A laissez-faire attitude as to who had checked what, when and how pervaded the entire system – inexperienced staff in understaffed departments shuffling papers between them without any real structure or rigour and it is difficult to shake the view that, for police forces, the production of checks was an administrative task which detracted from the real business of proper police work and (in the immediacy prior to *Soham*) was in any event about to be passed over to the CRB.

The obvious lack of a conjoined strategy among even neighbouring police forces highlighted the limited value of the checks being produced and showed the naivety of employers/organisations who relied so heavily on them. The Bichard Report which followed *Soham* highlighted all of this and more and paved the way for a 'one-stop-shop' approach to vetting, including the barring lists on which the likes of Huntley would be included and the retention of almost all 'criminal' intelligence, not just conviction data.

Nonetheless, it is important to place *Soham* in its proper vetting context. It is often erroneously presumed that *Soham* (and, to a lesser extent, the Sarah Payne murder) triggered the creation of the modern vetting regime and the CRB to administer it but, as has been outlined at length, the modern regime was all but in place by 1998 and all that was left at the time of Huntley and Carr's arrest was for the CRB to finally open. These high profile murders certainly hastened the perceived necessity for the new vetting regime, but they did not create it.

Nonetheless, the importance of these murders is not that they created the regime. It is that they legitimised it. In the wake of these cases there was an almost universal acceptance among the public and the Executive that the benefits of the new system, with its 'checks for all' and its 'enhanced certificates' filled with hearsay, rumour and accusation, far outweighed any perceived concerns for rehabilitation, proportionality, privacy and the like. As Room said in January 2004: 'in this post-Soham world, it might be reasonable to conclude that the privacy angle will play a lesser role in the implementation of key child protection policies'[125] before later declaring that arguments that the new system would destroy reputations on rumour 'should prove to be unfounded scaremongering, and the system robust enough to sort wheat from chaff'.[126]

---

[121] D. Pearl, 'The protection of children v the right to work with them' (23 January 2004) 154 NLJ 100
[122] C. Booth, 'In search of children's rights' (2003) J.L.G.L. 6(2), 19 – 25 at 19
[123] K. Hanley, 'Pre-Trial Publicity: Press and Prejudice' (15 March 2007) LS Gaz, 20
[124] S. Wardis, 'Withering Contempt' (26 September 2002) LS Gaz, 22

[125] S. Room, 'Data sharing – efficiency or confusion?' (16 January 2004) 154 NLJ 51 at 55
[126] S. Room, S, 'Reflections on Bichard' (2 July 2004) 154 NLJ 997

The vetting epidemic spreads: post-*Soham*

> Certainly, the protection of the public must come first. Criminals are not deserving of sympathy.[127]

The CRB opened for business on 11 March 2002 and was fully operational by the summer of that year, issuing 'standard' and enhanced' certificates.[128] It was immediately inundated with tens of thousands of applications and chaos ensued when demand for certificates began to outstrip the capacity to issue them.[129] By August 2002 the Bureau was processing around 24,500 disclosure certificates per week[130] and by 15 February 2003 some 1,174,267 certificates had been issued.[131] This had increased by 31 May that year to a total of 1,758,759.[132] This was despite problems which meant that healthcare staff were not being checked.[133]

Suddenly, and almost entirely as envisaged, vetting began to permeate into disparate tracts of society. A Home Office 'Good Practice Model' for children's websites in 2003 insisted that online moderators be 'properly screened and CRB checked'.[134] In 2004 it was announced that solicitors who worked in child law would require CRB checks.[135] Children's charity 'Fair Play for Children' boasted in their 2004/5 annual report that they had processed nearly a thousand applications, 'almost all at the enhanced level', in a wide array of fields such as religious groups, youth clubs, drama and dance groups, parenting groups and skate projects.[136] In the financial year 2003/4, some 2,287,109 disclosure certificates were issued.[137]

This increased in 2004/5 to 2,434,290 (*ibid*) Wheel-clampers were required to undergo CRB checks from February 2005.[138] In July 2005, the CRB told the press that 20,000 'unsuitable people have had job offers withdrawn' as a result of disclosures made with 56% of these involving a conviction for 'theft or violence'.[139] No-one seemed to think to ask what precisely was meant by 'unsuitable people' or to comment that 'theft' and 'violent offences' are very wide terms which cover everything from armed robbery to the shop-theft of an apple.

Press hysteria seemed unrelenting – when Iorworth Hoare, the so-called 'lotto rapist', was 'located' by *The Sun* in Sunderland on 30 September 2005, the newspaper trumpeted that his neighbours 'had a

---

[127] A. Samuels, 'Rehabilitation of Offenders Act 1974' (31 August 2002) 166 JPN 685
[128] S. Room 'Meeting the challenges of Climbie and Soham – part 3' (16 April 2004) 154 NLJ 590. For reasons that have still yet to be properly explained, the 'basic' certificates, namely those which only include non-spent conviction material, were not implemented and are still only available in Scotland.
[129] Home Office, Government announces new measures to improve the Criminal Records Bureau, Press Release (27 February 2003)
[130] Home Office, New fee structure as CRB extends checks after doubling capacity in nine months, Press Release (5 June 2003)
[131] Above n.129
[132] Above n.130
[133] Ibid.
[134] M. Ambrose, 'Websites aimed at children – the Nickelodeon perspective' (2003) 5 EBL 6
[135] R. Rothwell, 'Child Law Solicitors face police checks' (2004) LS Gaz, 14 Oct, 1(1)
[136] Fair Play for Children, Making progress on for the child's right to play, Annual Report (2004 – 5) 2
[137] HC Deb 28 June 2006 c.505W
[138] T. Howell, 'Wheel-clamping comes of age' (11 February 2005) 155 NLJ 210
[139] Home Office, Customer confidence in Criminal Records Bureau's vetting service at an all-time high, Press Release (15 July 2005)

right to know' where he was. Local MP Chris Mullins noted in his diary that presumably this was 'so that his house could be torched and he be lynched by a mob of shaven headed Sun readers'.[140]

By 2006, vetting was practically everywhere. In January 2006 an 'NHS Employers' spokesman had to reprimand local hospitals who were conducting checks on support staff who had contact with patients rarely, if ever.[141] The Telegraph reported in February 2006 that 'an urgent review' of home tutoring had been called for after it emerged that many firms were not subjecting tutors to CRB checks. A spokesman for the National Confederation of Parent and Teacher Associations described the situation as 'scandalous' and 'yet another hole in the vetting procedure...the majority of parents would not have dreamt that agencies were not vetting tutors properly before sending them out for one-to-one sessions with children'.[142]

That same month it was reported that Derby City Council were conducting checks on all new and existing teachers, in spite of official Department for Education guidance providing that existing staff need not be checked. One councillor dismissed the official guidance, stating that 'we think we know our communities and parents better than central government' and that the £100,000 spend required to ignore the guidance (which came from the education budget) was worthwhile so that the council was 'ahead of the game.'[143]

Councillors in East Riding went even further, conducting CRB checks on every single teacher, support staff and governor within its remit and then requiring the process to be repeated every three years. When one head objected that such a process was extremely expensive and contrary to official advice, he was told by the council's director of Children, Families and Adult Services 'if this exercise uncovers just one member of staff who shouldn't be working with children, then I will be pleased'.[144]

The paedophile menace seemed to be all-encompassing. The Football Association were conducting checks on anyone who applied to be a referee, regardless of the age group of the players they would actually referee. Taking their stance directly from media reports, the FA website stated that 'it is best practice to complete a CRB check. It is obvious from information in the media that child abuse has no boundaries.[145]

When Craig Wilson, a 26-year old builder, was jailed for grooming a 14-year-old he had met whilst working as part of a renovation team at her school, the National Confederation of Parent and Teacher Associations declared that builders and contractors must be checked. Indeed, a spokesman told the press that: 'with builders on site, especially on a large campus, it is not possible to supervise them. They may come into contact with the youngsters. They will have the ability to get to know children while on site. If they decide to try to meet a pupil outside then the kids will think, 'well, I know him because he has been working in school, he's not a stranger'.[146]

One survey showed that 67% of employers were conducting CRB checks on potential new employees. By comparison, the number of employers who checked academic qualifications was 56%. 33% of

[140] Above n.101 at 190
[141] NHS over-zealous in criminal checks (24 January 2006) The Daily Post (Liverpool)
[142] L. Lightfoot, Call for end to 'scandal' of unvetted home tutors (13 January 2006) The Telegraph
[143] S. McCormack, Councils tell heads to have all teachers checked (28 February 2006) The Guardian
[144] Ibid.
[145] Editorial – Child Protection and CRB in refereeing (29 September 2006) The Football Association
[146] Loophole fear in sex offender rules (17 September 2006) The Yorkshire Post

employers claimed that the CRB check was 'the most useful checking process' available to them.[147] All solicitors were now being checked.[148] Questions were raised in Parliament about the suitability of families to host foreign exchange students without their having been vetted first.[149] In total, the number of disclosures made in the financial year 2005/6 disclosures was 2,772,929.[150] By 2007, the number had risen to 3.3 million. [151]

Some individuals subjected to disclosures opted to pursue legal proceedings against the police forces who made them, affording the judiciary an opportunity to mitigate the overzealous expansion of vetting. It elected instead to facilitate it. In *R (on the application of X) v Chief Constable of West Midlands Police*[152] a man of good character challenged a 'soft disclosure' to his employer of a discontinued case which had cost him his job in social care. His judicial review application was dismissed in the Court of Appeal by the Lord Chief Justice, who in doing so swept away the old common law presumption against disclosure and told police forces that such information should be disclosed 'even if it only might be true'. This was justified as serving 'a pressing social need'.[153] This decision was roundly criticised and facilitated the proliferation of enhanced disclosure of non-conviction material.[154]

The inevitable result was that people were barred from employment or, in some cases where checks were conducted on staff in long-held position, dismissed Such a fate befell John Pinnington; another man of good character who lost his job as a deputy principal at a college for autistic children when he was asked to provide an enhanced CRB certificate to an employer he had worked with for many years. When the police made a 'soft disclosure' of sexual abuse allegations made against him which were so weak they didn't result in any charge being brought, he was summarily dismissed and launched a judicial review.[155] Despite admitting that 'none of the allegations could be substantiated in a court of law',[156] the Court of Appeal upheld the decision to disclose and said that enhanced disclosures could only be challenged successfully if found to be Wednesbury unreasonable.[157]

Conclusion

This article has charted the metamorphosis of the vetting regime in England and Wales and demonstrates the direct correlation between legislative action on criminal checks and the gradual hardening of public opinions resultant from widely reported child-abduction cases. The murder of Marie Payne in 1983 brought, for the first time, the issue of criminal checks to wider consciousness which in turn saw triggered a hitherto unparalleled executive interest and involvement in the vetting regime. This culminated in radical proposals in 1993 to implement a centralized vetting system, commodify of criminal records and extend of checks into all spheres of public life through a policy of 'vetting for all'. These proposals effectively reversed all pre-existing vetting policies. These proposals were implemented entirely when Part V of the Police Act 1997 made its way onto the statute book.

---

[147] Yardstick Update; Pre-employment screening checks proliferate (18 July 2006) Personnel Today
[148] N. Rose, 'Solicitors face police checks to get on roll' (13 April 2006) LS Gaz 13 1(1)
[149] HC Deb, 19 June 2006, c.1139
[150] Above n.139
[151] Home Office, Criminal Records Bureau, Annual reports and accounts for the period 1 April 2012 (2013) 4
[152] [2004] EWCA Civ 1068
[153] Ibid. at [47]
[154] For a full analysis of the decision in X, see C. Baldwin, 'Necessary intrusion or criminalising the innocent? An exploration of modern criminal vetting' (2012) 76 JCL 140–163 at 146–148
[155] R (on the application of John Pinnington) v Chief Constable of Thames Valley Police [2008] EWHC 1870
[156] Ibid. at [55]
[157] Ibid. at [47]

The Government's decision making process has been flawed. Under significant pressure from those with a vested interest in requesting criminal checks, the Executive failed to properly consider whether the desire for extended checks was justified in all circumstances. The fact that someone wants to see the full criminal history of an individual is not, per se, sufficient justification for allowing them to do so.

The Home Office deferred too easily to those who wanted to check everyone for everything and failed to put into place effective mechanisms to ensure that checking would be relevant, proportionate or even justifiable. An aged conviction for shop theft committed as a juvenile is often irrelevant to a particular position and the disclosure of it is often disproportionate in very many cases. In their deference to the vested interests, the Government facilitated the development of a vetting epidemic which has caused significant damage to the rehabilitation prospects of many tens of thousands of individuals.

It is clear that the legislative framework which has facilitated the widespread disclosure of criminal records is the result of a series of reactive policy decisions, rather than any long-term strategic planning. The Government made a significant error in allowing the narrative on vetting to be largely driven by the media. This was particularly so in the *Soham* case, where public anger was fueled by reporting which laid the blame almost in equal measure between the perpetrators and those who allowed them to be employed in positions where they might have access to children.

The Government, faced with a rhetoric surrounding a 'paedophile panic', chose to accept its existence and react to it, rather than challenging the panic itself. In doing so they both facilitated it and failed to highlight a fundamental flaw in the media tale. Better vetting might have prevented Huntley from working as a caretaker in Soham, but there is no evidence to show that he would have been preventing from committing his crime were he employed elsewhere or indeed at all. While the desire of elected representatives to appease public anger by being seen to do something to prevent future occurrences is understandable, it led to decisions being made which lacked an empirical basis: there has been almost no examination of whether the blanket barring of individuals has resulted in a reduction in offending.

These policy decisions facilitated among employers and other organisations a vetting 'arms-race': a desperate desire not only to conduct as much vetting as possible but also to be seen to conduct it lest anyone be accused on 'letting another Huntley' slip through the net. In their haste to prevent another Soham, however, politicians, the judiciary and employer's seemed to forget the devastating toll that this vetting free-for-all was having on individual lives. People who had no contact whatsoever with children or vulnerable adults found themselves unemployed because of the inappropriate disclosure of old, minor offences or on the basis of unproven 'soft' intelligence. By 2007, that overarching policy was sufficiently well-entrenched as to have given rise to a vetting epidemic.

However, hindsight has shown that by 2007, though the epidemic was well entrenched, the tide was beginning to turn. Dissenting academic voices began to surface. For example, Scorer asked; 'is the furore surrounding sex offenders in schools a synthetic row stoked up by the tabloids and opposition politicians, or a genuine problem which the government has failed to address?', noting with understandable concern that ministers in charge of the vetting mechanisms seemed to think that people accepting cautions were in some way 'innocent'.[158] That same year, pressure group The

[158] R. Scorer, 'Blacklisted' (27 January 2006) 156 NLJ 125

Manifesto Club published a report[159] which provided that 'people are being vetted who pose no danger to children',[160] bemoaned the adverse impact vetting was having on volunteering[161] and claimed that:

> the expansion of vetting both reflects and encourages the mistrust of adults. It implies that every adult is a potential abuser, and must be declared 'safe' before they are allowed to interact with a child. As a result, interacting with children who are not your own becomes a special procedure, requiring state clearance, rather than a normal part of being an adult citizen. This has a poisonous effect on relations between the generations.'[162]

Judicial attitudes were also beginning to soften. In *Pinnington*, although the Court found itself bound to find against the applicant, it felt compelled to comment that:

> I am troubled by the fact that the claimant's new employer in this case apparently operated a blanket policy of insisting on a 'clean' certificate…It is important that employers understand how low that threshold is and the responsibility that it places in practice upon them…. The operation of a blanket policy of insisting on a 'clean' certificate leaves no room for taking into account what the employee may have to say. That is a matter of particular concern.[163]

Media reporting also began to soften and shift focus and disconcerting examples of inappropriate and over-zealous vetting came to light and the adverse effect of the vetting epidemic on individuals' lives started to become apparent. Several news media reported the *Pinnington* case in a sympathetic light.[164] In a separate instance, a gardener was dismissed from his employment when a CRB check showed he had a drink-driving and a theft conviction from more than a decade prior. His employer justified the decision on the grounds that 'vulnerable adults lived on the estate where he was working.'[165]

By 2007 the problems of overzealous, disproportionate and inappropriate vetting were beginning to come to light and critical scrutiny was at last beginning to form. As time began to both dim the anger over the Soham case and illustrate that such cases were as rare as they were inflammatory, it was clear that there was a growing mood that change might be implemented, if the political will to do so was forthcoming. When the Government began a legislative process to introduce legislative changes in 2009 which would transform the rules regarding enhanced disclosures and the release of aged, minor conviction material, it became clear that 2007 was to prove the high watermark of the vetting epidemic.

---

[159] J. Appleton, The case against vetting. How the child protection industry is poisoning adult-child relations (16 October 2006) The Manifesto Group
[160] Ibid. at 2
[161] Ibid. at 3
[162] Ibid. at 14
[163] Above n.155 at [58 – 59]
[164] For example see A. Palmer, John Pinnington: Police should be able to let false allegations lapse (29 June 2008) The Telegraph
[165] Illegal checks jeopardising jobs (8 August 2008) The BBC