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Social Work Admissions: applicants with criminal convictions - the challenge of ethical risk assessment

Peter Nelson and Malcolm Cowburn

Abstract

The decision to admit an ex-offender to social work training may play a part in combating the social exclusion of people who have committed criminal offences, but it may also knowingly place social work service users and carers in positions of increased vulnerability. This paper brings together critical perspectives on both the nature of risk and ethical decision making in the context of social work admissions of applicants with criminal convictions. It locates the concepts of risk and risk assessment within General Social Care Council (GSCC) guidance. The epistemological assumptions underpinning risk assessments are explored and the differences in psychological and sociological approaches to understanding risk are outlined. However, decisions to admit or reject an ex-offender involve ethical and moral judgements. The contribution of ethical thinking to decision-making, in relation the admission of ex-offenders, to social work training is described. The paper concludes by suggesting that social work admissions procedures need to be informed by: an explicit epistemological standpoint; transparent risk assessment procedures and clearly articulated ethical thinking.

Introduction

Consideration of the suitability of people with criminal convictions to train and work as social workers brings into sharp focus ethical and political issues that lie at the heart of the professional identity of social work in the twenty-first century. The origins of social work in Britain lie in the recognition that people can change and that social hardships require amelioration (Payne, 2005). Although there are competing interpretations as to the nature and purpose of social work (see Wilson *et al.*, 2008, pp 48-73 for a useful summary of these positions), professional ethical codes (BASW, 2002; IFSW and IASSW, 2004) indicate that social work is concerned with social justice and widening the capacity of socially excluded groups of people to participate fully in social benefits (Crisp and Gillingham, 2008). However, social work is increasingly adopting a protective role towards people deemed to be vulnerable and at risk of harm (Munro, 2002). These twin concerns of social justice and public protection have the potential to conflict with each other (empowerment of one group may increase the vulnerability of another group). This conflict is at the centre of the admissions process in relation to qualifying social work education (Madoc-Jones *et al.*, 2007).

The General Social Care Council (GSCC) of England was established in 2001 under the Care Standards Act 2000 (General Social Care Council, 2008; p. 4). It has the responsibility for ensuring the suitability and high quality of persons registered as social workers or social work students within England. In 2003 it introduced the Social Care Register and in 2005 it became compulsory for social workers and social work students to be registered; similar arrangements are in place in, amongst others, the US, New Zealand and

other UK nations (Crisp and Gillingham 2008; Perry, 2004). In the 'registration rules' the GSCC (2008; p. 6) stated that in order to be registered a person must provide evidence that they: (a) have the necessary qualifications; (b) are physically and mentally fit; and (c) are of good character and conduct. It is also a requirement for applicants to declare any information, including criminal convictions that may relate to these criteria. Between 1st April 2003 and 31st March 2007 the GSCC received 109,341 applications for registration, of these 23,515 were from students. (GSCC 2008; p. 8). Although there is not separate information available about the student population, of the overall number of applications 13,186 people declared that they had a criminal conviction, and of this number 442 were subject to further investigation by the GSCC. The GSCC note:

Any application with a declaration is subject to a risk assessment and each case is considered on its own merits (GSCC 2008; pp 6-7)

Although this paper is primarily concerned with the selection of social work students in England and reference is made to English policy documents the theoretical elements – concerning the social construction of risk and thinking ethically – are relevant to international social work and, where appropriate, reference will be made to international literature.

The decision to admit an ex-offender to social work training may play a part in combating the social exclusion of people who have committed criminal offences, but it may also knowingly place social work service users and carers in positions of increased vulnerability. Haski-Leventhal, Gelles and Cnaan

(2010) in a review of admission processes in American schools of social work, identify the ethical and legal dilemmas decision-making can involve. The process of making these decisions has been explored in a paper by Madoc Jones et al (2007), who in reflecting on the real life experiences of applicants, demonstrate the importance of assessing risk within a model for good practice. In this paper we suggest that decision making should be informed by an understanding of risk and risk assessment but also underpinned by clear ethical thinking.

This paper outlines the dilemma in social work admissions of protecting the public from offences that ex-offenders might commit during and after their professional education, whilst widening the participation of ex-offenders in social work training. We explore the concepts of risk and risk assessment and highlight the distinct differences in psychological and sociological approaches to understanding risk and risk assessment. Generally, these two discourses do not overlap, the former being concerned with the refining of technical practices whilst the latter focuses on social processes.

Underpinning both approaches are assumptions about the nature of knowledge. Whilst sociological approaches problematise knowledge and consider the socially constructed nature of risk, the more technically based psychological perspective operates within a very narrow epistemological paradigm. The implications of this paradigm for social work admissions practice are explored, paying particular attention to the inclusion of ethical perspectives within epistemology. The paper then moves on to explore in greater depth approaches to ethical thinking and how these can be focused on the conduct of the individual, the benefit of the majority, the specifics of

particular situations and/or include wider considerations of social fairness and equity. The theme of equity is further developed through exploring a case study that brings the tension of ethical perspectives and social exclusion into sharp focus. The paper concludes with suggestions for developing an ethical approach to social work admissions that is keenly aware of its responsibility to avoid undue risks whilst ensuring equity and social justice in its decision making process. However, it is prudent at the start of this paper to review the guidance of the GSCC in relation to applicants, with criminal convictions, for social work training.

GSCC guidance

Whilst the GSCC note that many applicants with criminal records are what they call 'low level' convictions, they identify how they deal with the more serious cases:

Where someone has declared an offence or disciplinary matter, we will consider issues like the serious (sic) of the offence, the length of time since it was committed, the relevance to social care and whether the applicant has a pattern of behaviour. (GSCC 2008; pp 7)

Moreover, identifying distinctions between offences and offence types forms a framework within which risk assessment occurs. Their 'risk assessment document' (GSCC 2005; p. 3) categorises offences as being 'low', 'medium' or 'high' risk. In relation to 'high risk' offences they state that these offences:

... suggest the offender is likely to pose a risk to the safety and well-being of service users, and is therefore unsuitable to work in social care.

High-risk offences include:

- offences against children and young persons under 18
- offences involving the abuse of trust
- offences involving violence or cruelty

They provide a list of thirteen 'examples' of this type of offence (GSCC, 2005; p. 3).

'Medium risk' offences are defined as:

offences that suggest the offender may pose a risk to the safety and well-being of service users, and may therefore be unsuitable to work in social care. (GSCC, 2005; p. 3).

The examples of medium risk offences that are cited are:

drink driving

failure to provide a breath test

theft

possession of Class A drugs

dealing in a controlled substance

serious driving offences

repeated low risk offences

The situation here is not prescribed by the GSCC; the offender may pose a risk and s/he may be unsuitable to work in social care.

Low risk convictions are described as 'Offences which suggest the offender is unlikely to pose a risk to the safety and well-being of service users, and therefore is likely to be suitable to work in social care.' Typically, these offences are 'Shoplifting offences as a teenager, Possession of cannabis, Minor motoring offences' (GSCC, 2005, p. 3). It is in the area of 'medium' and, to some extent, 'low' risk that social work admissions tutors are most taxed in weighing the balance between protecting the public and widening participation of groups traditionally socially excluded from higher education and professional training.

A critical review of risk and risk assessment

Madoc-Jones *et al.* (2007) highlight the importance of assessing risk posed by ex-offenders, when considering applicants to social work training. In this section we address conceptions of risk and risk assessment from three perspectives: epistemological, psychological, and sociological. The epistemological critique of risk assessment lies at the centre of this section and it particularly relates to how societies construct risk and risk assessments. At issue here are fundamental assumptions about what constitutes knowledge, how scientific inquiry is conducted and the place of ethics in the

construction of knowledge. Psychological based work largely focuses on developing rigorous 'scientific' methodologies for identifying and more accurately assessing risk (of re-offending) of people convicted of criminal offences. Generally these endeavours concentrate on: reconviction patterns of types of offenders, defined by the nature of the offences that they have committed; personal histories; and current social circumstances of the people convicted of offences. Sociological approaches move away from considering individuals or groups of individuals defined by offences, and are more concerned with identifying the functions that societal preoccupation with risk fulfil in communities and societies. The section concludes by suggesting that assessing the risk posed by applicants to social work training is both an interpretative and an ethical endeavour that involves the consideration of more than the likelihood of reconviction.

Epistemological perspective

The objective of risk assessment within a forensic psychology context is to identify as precisely as possible the risk of reoffending posed by individual offenders. The precision is aspired to through refining scientific methodologies. Scientific methodologies are characterised by their 'rigour' and their 'objectivity'. The epistemological framework for this endeavour is that of the natural sciences (Nicolson, 1995). Proponents of a natural science approach to social data suggest that empirically validated data can be discovered through systematic observation, measurement, and collection of facts which, when analysed, reveal laws about the physical and social world which form the basis of predicting future events (Van Langenhove, 1995). In

many ways the task of the social work admissions tutor in relation to ex-offenders is one of prediction – which person is likely to re-offend (and harm vulnerable service users and/or carers).

Inextricably linked to the epistemological foundation of the scientific approach is methodology. The most important feature of this is objectivity. It is not necessary, here, to describe in any detail the debates surrounding the possibility, or not, of value-free, objective research (see Harding, 1991; Code 2006). However, Harding (1991; p. 81) notes that the conventional approach in natural science ‘...fails to grasp that modern science has been constructed by and within power relations in society, not apart from them.’ It is the power of the admissions tutor to exclude ex-offenders from social work training that is the issue here. In reflecting on the process of scrutinising the suitability of ex-offenders to train as social workers we suggest that the likelihood of re-offending is not the only consideration. The process *itself* requires critical examination. Code (2006; p. 101) has highlighted the important distinction between ‘matters of fact and matters of concern’ in the construction of knowledge(s). She notes that greater effort is put into establishing the ‘matters of fact’ and thus:

The investigations, consultations, deliberations, negotiations and equally significantly, the values that collaborate in the production of knowledge disappear from view. (Code 2006; p. 101)

For Code, a fuller ‘ecological’ approach to knowledge production requires:

... not just a matter of looking more carefully, being more objective, but of value-infused investigations that, for this very reason, involve learning how to see accurately, outside the rigidity of standard empiricist terms.

(Code 2006; p. 102)

It is from this standpoint that we suggest that the social work admissions process has to include considerations of social exclusion (and inclusion), social justice and ethics, and as Code suggests the process must involve an awareness of how 'facts' are chosen and what values inform the process of assessing ex-offenders for social work training. This requires the identification of both the constructions of risk against which students are assessed and the processes whereby assessments are completed. These decisions are stronger when based clearly and transparently on ethical principles.

Psychological approaches to assessing risk

Psychological approaches to risk assessment are concerned with developing accurate means of predicting the likelihood of reconviction of persons with prior convictions. They underpin social work approaches to assessing risk (Munro, 2002). The literature distinguishes between actuarial and clinical approaches to assessing risk (Grubin, 1999; Munro, 2002). Actuarial approaches use risk factors that have been consistently identified in research studies of convicted offenders – typically these factors are: previous offences and relationship history (Beech and Ward, 2004); p. 32) and are described as being *static* (i.e. not amenable to change). Clinical assessment generally includes consideration of *dynamic* factors (for example, mood, attitudes,

physical circumstances – including the availability of victims) affecting the individual under assessment. Whilst there is some evidence to indicate that actuarial approaches are more accurate in predicting reoffending (Bengtson and Långström, 2007; pp 135-153), they are not without their critics. Silver and Miller (2002; p. 138) suggest that the main concern of an actuarial approach is the efficient management of resources, and that by focusing on aggregate populations identified on the basis of data from criminal justice systems they contribute to stigmatising further populations that are already marginalised. Moreover, Beech and Ward (2004; p. 32) summarise a range of weaknesses with a pure actuarial approach, including its inability to deal with the unusual and contingent dynamic factors (for example losing employment and subsequent depression), and they note that the approach is based on official recidivism data only; this they consider may underestimate recidivism rates and therefore levels of risk. However, Beech and Ward (2004) suggest that assessment may variously incorporate elements of both approaches.

In relation to social work admissions, the overall emphasis of the selection process in relation to ex-offenders is 'clinical'. As part of their discussion of policies and practices informing the vetting of applicants to social work training who have previous criminal convictions, Madoc-Jones *et al.* (2007) have identified a number of issues to consider when 'assessing criminal convictions'. These relate to the nature and extent of offending behaviour; including motivations; personal and social changes relating to the ex-offender; and the length of time elapsed since his/her last offence. Details of previous offending patterns are considered but largely in the context of the applicant's

current circumstances, including their attitude to their previous criminal behaviour.

Whilst the GSCC has produced a list of proscribed offences this seems to be based on the serious nature of the potential harm, should such offences re-occur, rather than on the actuarial probability of reoffending: for example sex offenders, as a generic group have a low recidivism rate (approximately 13.5 % after five years (Hanson and Bussiere, 1998), whilst people convicted of domestic burglary have a high rate of reconvictions (78% after two years) (Shepherd and Whiting, 2006). Reconviction studies, however, generally indicate that the likelihood of being reconvicted of an offence reduces over time (Nadesu, 2007). Indeed, Rutherford (2002) argues the case that people convicted as young people 'grow out of crime'. This is particularly important, given that our subjective experience (as social work admissions tutors) is that the majority of people applying for social work training with criminal convictions acquired them in their adolescent and early adult years. Thus actuarial data are useful in that they appear to provide justification for requiring applicants for training to be free from any conviction for at least two years – a position taken by Madoc Jones *et al.* (2007).

However, for us, *predicting* who is likely to re-offend is a process that incorporates consideration of probabilities but also includes other personal and context specific issues (Munro, 2002). Whilst actuarial data provide indications in relation to an aggregated population they can only play one part

in the process of predicting which ex-offender is likely to re-offend. This is a difficult process and, as Madoc-Jones *et al.* (2007; pp 9-10) have indicated, is highly fallible and cannot be an exact science. Potentially an actuarial approach ignores the socially constructed nature of crime and criminal statistics. Patricia Ticineto Clough (1992; p. 2, cited in Plummer, 1995; p. 19) has noted that '... all factual representation of empirical reality, even statistics, are narratively constructed.' And the narrative is dependant on the epistemological and political standpoint of the person creating the particular story of 'crime'. The very nature of criminal conviction and criminal statistics is a contested area, particularly within criminology (Maguire, 2007). Issues such as crime definitions, policing patterns, decisions to prosecute, and patterns of conviction all affect how criminological data are interpreted and understood. The manner in which criminal statistics are created and interpreted is dependent on the role and function of the person producing the data. Part of the task of the social work admissions tutor is to interpret information with a view to widening participation in higher education (HEFCE, 2009) whilst ensuring that the general public are not put at risk from people who have previously committed offences. This requires that s/he not only has some understanding of psychological approaches to risk, but also appreciates risk as a socially constructed phenomenon that may play a part in socially excluding marginalised groups from social work education.

Sociological approaches to understanding risk

The key difference between psychological and sociological approaches to understanding risk is that whilst psychology focuses on individuals and aggregated groups of individuals, sociological approaches are concerned with risk as a social phenomenon. Although the main theorists (Beck, Giddens, Douglas and Foucault) differ significantly in their approach to understanding risk, they share a concern with locating risk(s) within a social context. Whilst concerns vary from understanding environmental and global threats (Beck, 1992; Giddens, 1990), to reflecting on the response to risk in a variety of cultures (Douglas, 1992a, b,) there is a common concern with late modernity's preoccupation with risk and the concomitant growth of the risk professional: the expert who assesses and measures levels of risk posed by particular, identifiable threats. Foucault (1977; 1984) is less concerned with the development of specific risk assessment expertise. Rather, he is concerned to show how the influences of scientific (medicine and psychology) and social scientific (criminology, social work and psychology) forms of knowledge construct 'dangerous' populations (for example in relation to class, gender and race). Although these theorists approach risk from very different standpoints, together they point to risk as a contemporary pre-occupation, socially and discursively constructed and embodied through expertise, and as serving social, cultural, moral and political purposes.

The social work admissions tutor may be seen as the 'expert' assessor of the risk posed by ex-offenders applying for social work training. However, this process of risk assessment does not occur in a social or political vacuum. Douglas (1992b; p. 26 cited by Sparks, 2001; p. 168) observes that 'risk' is a political vehicle used widely to legitimate the policies and practices of

particular groups at specific times. Foucault (1977; 1984) points to the underlying operations of power particularly in the 'disciplining' of populations labelled as 'deviant' thereby marginalising them from the benefits of mainstream society. Within this process there is a negative moral narrative attached to the deviant population (such as people who have been convicted of committing a crime). It is this moral narrative that underpins and justifies how ex-offenders are treated both by the system of criminal justice and thereafter by other social institutions. This moral narrative then becomes the justification for socially excluding certain (undeserving) groups from social resources, such as education and employment (Phillips, 2006).

Whilst Foucault indicates how scientific discourse constructs groups perceived to be a 'dangerous' or 'deviant' as being morally unworthy, Beck and Douglas highlight how the processes of identifying and assessing risk have erased ethical/moral considerations. Bauman (1993; pp199-200) notes that 'In the concept of 'risk society', 'risks' enter the stage already appropriated and managed by science and technology'. A key player in this management is the risk assessment 'professional' who describes and assesses risk using mathematical and scientific procedures and specialised language. Beck (1999; p. 51) suggests that this 'permits a type of 'technological moralization' which no longer need employ moral and ethical imperatives directly.' Douglas (1992c; p. 9) similarly points to the development of knowledge dissolving 'a tie that everywhere once used to connect morals and danger'. Both Beck and Douglas call for a more holistic consideration of risk that incorporates ethical and moral thinking. Beck (1999; p. 146) notes

...risks are *man-made hybrids*. They include and combine politics, ethics, mathematics, mass media, technologies, cultural definitions and perception; and –most important of all – you cannot separate these aspects and realities, if you want to understand the cultural and political dynamics of the world risk society.

Douglas (1992; p. 51) states that 'Instead of isolating risk as a technical problem we should formulate it so as to include, however, crudely, its moral and political implications'. It is the place of ethical and moral thinking within assessing ex-offenders for social work training that this paper is concerned and it is to ethical thinking that we now turn our attention.

Thinking ethically

The focus on a discourse of risk in making judgments about who should train as a social worker hides a fundamental philosophical problem, "the is/ought question" (Hudson, 1979). This problem concerns itself with how statements of fact are related to moral judgements. For example how the fact of an individual committing a particular offence is related to the judgement that they ought or ought not to be allowed to train as a social worker. The problem traditionally focuses on whether an "ought" can be reduced to an "is", for example whether committing a particular offence is of itself sufficient to say an individual ought not to train as a social worker. Alternatively the problem may focus on whether an "ought" can be derived from an "is", whether moral judgements can be derived from factual premises. Consequently the philosophical problem considers whether the moral judgement that an

individual ought not to train as a social worker can be derived from a series of factual statements regarding the offence. As the preceding discussion on epistemology indicates, what constitutes a fact is contested and value laden; however, what is here significant is the relationship between what is accepted as fact (by the admissions tutor) and subsequent moral judgements which are derived from these facts.

The development of GSCC risk assessment guidance and proscribed lists can be seen as reducing an “ought” to an “is” through the automatic debarring of an individual following conviction for a particular offence. The development of clinical approaches to risk assessment within GSCC guidance, which include amongst others consideration of circumstances surrounding the offence, the applicant’s explanation of the offence, whether the applicant’s situation has changed since the offence, can be seen as deriving an “ought” from an “is”. What both approaches arguably do is focus primarily on the “is” at the expense of the “ought”. In so doing they obscure the fundamental ethical and moral nature of the value judgement of whether an individual with a criminal conviction ought to train as a social worker.

Focusing on “ought” rather than “is” allows a consideration of the ethical and moral dimensions of decision making. If an individual has committed harm, betrayed trust and poses a risk to others, arguably they then ought not to train as social workers. If the individual is motivated, and rehabilitated then they arguably ought to be allowed to train as social workers. Where the primary responsibility of the decision maker is seen as one of protecting the public in

acting as a gatekeeper to the profession then, as Scott and Zeiger (2000) argue, no persons with convictions should be allowed to train as social workers. Where however a key responsibility of the decision maker is seen as integrating social work values into their practice (where those values are about widening participation and reducing inequality) then acting as an emancipator in widening access to education and countering social exclusion leads to a conclusion that those with convictions should be allowed to train as a social worker (Magen and Emerman, 2000; Crisp and Gillingham 2008). Tension between the moral views or standpoint of decision makers can lead to difficulties and conflict.

In clarifying matters of ethical conflict, Banks and Williams (2005; p. 1011) distinguish between ethical issues, problems and dilemmas in moral decision-making:

- ethical issues – where the decision may be straightforward but is taken in the context of a situation that involves social justice, public welfare and involves the decision maker having professional power.
- ethical problems – where the situation involves a difficult moral decision and moral choice but it is ultimately clear which choice to make.
- ethical dilemma – where the decision involves a difficult moral choice between two equally unwelcome alternatives which may involve a

conflict of moral principles and it is not clear which choice will be the right one.

For all decision makers the decision about whether to admit an ex-offender to social work training inevitably involves ethical issues. For some decision makers and with some candidates the decision will pose a greater or lesser ethical problem. For some decision makers, however, decisions about certain candidates can pose an ethical dilemma where a decision entails making a choice between two or more conflicting principles. In this case what is required is discussion and exploration of the ethical principles. Recourse to risk assessment models, or discussion of how the world “is”, the facts of the case, is unlikely to resolve the dilemma where the horns are ethical and moral.

Where the decision maker is influenced by social work values of human dignity and worth, social justice, service to humanity, integrity and competence (BASW, 2002) and principles of human rights and social justice are seen as fundamental to decision making (IFSW and IASSW, 2000) then their ethical principles are likely to stem from the philosopher Kant (1964) and his ‘categorical imperative’ of respect for the person - irrespective of previous crimes. For Kant being a person involves the capability of self determination and being able to provide reasons for your actions. Motives are more important than consequences and judging individual actions in the light of the categorical imperative allows for a focus on personal change over time. Thus, whilst a person, at the time of their offending, may rationalise an offence of

theft as being motivated by the need to obtain drugs, at a later date they may be able to review their actions in a wider moral framework and describe the personal changes that they have undergone since their offence(s). From a Kantian perspective the important consideration is the person and how they have changed, rather than the previous offending behaviour (Banks, 2006). Deciding whether an ex-offender can undertake professional training requires an emphasis on consideration of individual change alongside the offence, and consideration of how best to promote rehabilitation alongside protecting the public.

However, an equally strong influence on ethical decision-making is utilitarianism which describes right action as being that which brings about the “greatest good over evil” or “the greatest happiness of the greatest number” (Banks, 2006; p. 36). As such the utility principle supports the view that persons with criminal convictions ought not to be allowed to train as social workers; protecting the public is a greater good than promoting the rehabilitation of an individual.

There are difficulties in relying solely on principles in ethical decision making for as Statman (1997; p. 7 cited in Banks, 2004; p. 86) comments, “under the tyranny of principles the person seems to disappear.” Without any counterbalance, a risk assessment process purely based on utilitarian principles may unwittingly reproduce, through its discursive processes (Foucault, 1977), the power of the dominant social grouping. Consequently the patterns of social exclusion (Phillips, 2006) that marginalise subordinate

groups, including people who have committed criminal offences, are uncritically maintained.

In relation to Kantian perspectives the key focus is the individual and how they and others (morally) construe their actions. This, however, ignores the social context in which these moral judgements are operating. Thus, for example, a young Black man hitting someone who racially abused him would be judged as an individual divorced from the particularities of a racist society.

Sociological perspectives would variously require attention to be paid to the social context in which the event occurred and how it sustained, or challenged various cultures and related to the operation of power within society. By drawing attention to the role of culture in understanding risk Douglas (1992a, b) highlights the need to consider different judgements of 'right' and 'wrong' within their social context.

In making decisions about who ought to undertake professional training, a consideration of principles allied to cultural context remains insufficient.

Consideration of the rightness and wrongness of actions, primarily the concern of principle ethics, needs balancing with a consideration of the character, relationships and motives of the actor (Banks, 2006; p. 54).

Consequently a consideration of Aristotelian virtue ethics allows a consideration of the virtues an individual requires in order to become a good social worker. The ethical focus is not just on the nature of the offences and the potential risk attached to a specific offence but rather the qualities of the applicant's character and their motives which are apparent in their actions,

where the actions under consideration are not just those related to previous offending behaviour but to how the applicant acted before and since their convictions. Virtues are arguably culturally related so consideration of the applicant's societal and relationship context is important in such ethical decision-making. It is here that the cultural specificity of the way that risk is assessed is of key importance in developing socially inclusive admissions procedures (Douglas, 1992b).

Identifying all offenders in the same way based on a classification of offence or abstract principle designed to guide all conduct is replaced by a focus on the specifics of the individual under consideration: their character, motives, social context and relationships. Virtue ethics challenges principle-based approaches by directing the attention of the decision maker away from the duty of always acting similarly in similar situations, both in considering particular offending behaviour and individual offenders. In this ethical framework for decision-making the concept of "equity" has much to offer (Hollows and Nelson, 2006).

Banks (2004; p.154) discusses equity as an outcome measurement based on principle-based ethics and relating to the fair distribution of resources. In this reading equity is similar to equality and the principle of treating people equally and fairly irrespective, for example, of who they are and where they live. Equality as a concept is closely related to justice and fairness and for example Dworkin (1977; p. 182) concludes that:

justice as fairness rests on the assumption of a natural right of all men and women to equality of concern and respect.

The moral principle therefore assumes that everyone is to be treated equally until and unless reasons to the contrary can be demonstrated. Equity provides a measure of whether an individual has been treated fairly.

However, Aristotle describes equity as “a correction of law where it is defective owing to its universality” (Ross, 1972; p. 133). For Aristotle there are some things about which it is not possible to make a universal statement that is correct. Consequently equity does not equate with equality but rather is the spirit of justice, which enables us to interpret laws rightly. Equity goes beyond the notion of fairness and equality and the idea that not treating everyone the same is unfair. Rather equity is concerned with justice and what it means to act in a just way. In considering the relation between justice and equity Aristotle concludes that where rigid adherence to laws and principles would promote injustice, a consideration of equity allows those making decisions and judgements to depart from legal principles in order to promote justice (Beever, 2004). Applying this discussion to decisions about applicants with criminal convictions, it appears that Scott and Zeiger’s (2000) view that no person with criminal convictions should be allowed to train as a social worker, based as it is on the utility principle, would meet with the requirement of justice where that equates to equality and fairness of treatment. It would not however meet the Aristotelian measurement of equity. Such a view appears to be an example of a situation where it is not possible to make a universal

statement that is correct and consideration of equity is required to correct the universal principle. It seems unjust and inequitable to treat all offenders in the same way.

Decision-making involves resolving an ethical dilemma where protecting the public and the utility principle conflict with promoting rehabilitation and the categorical imperative. Promoting equality as an outcome measurement indicates that all those convicted of a similar offence ought to be treated in the same way, whether in the light of the utility principle or the categorical imperative. A consideration of virtue ethics, however, might indicate in one individual virtues of insight, humility, empathy and evidence of rehabilitation, which were lacking in another. Applying the Aristotelian concept of equity, to base the decision on principles alone, whether of equality or utility, would be unjust. It would not be equitable to treat both individuals in the same way. Moral judgement making then becomes in Aristotelian terms “the right discrimination of the equitable” (Ross, 1972; p. 152).

Widening participation, protecting the public and the search for equity: a case study

The following case study locates and illustrates the preceding discussion in a practice example. Based on actual examples from the authors’ experience, but with key details changed to preserve anonymity, the case study demonstrates how actuarial and clinical risk assessment perspectives need to

be allied with ethical thinking in order to both protect the public and achieve a just decision for the individual.

AB is a white woman aged 31. Selection processes identified her as suitable for professional training and she was invited for a further interview in respect of her convictions. Her offences were committed between the ages of 15 and 28. She described a troubled childhood, including a number of years as a looked-after child within a residential unit. She used alcohol and glue from an early age and was excluded permanently from school at the age of 14. She moved into using class A drugs (heroin and crack cocaine). She later moved into drug related offences, including prostitution, assault and theft and at the age of 28 she served 6-month prison sentence for benefit fraud. In interview she stated that her offending behaviour was directly related to her substance abuse. In the past three years AB has undertaken an extensive programme of drug rehabilitation, and has not taken drugs or alcohol for two years. She described her rehabilitation in some detail, showing both humility and insight. She lives in her own flat with her female partner of three year duration and has a strong group of friends from her local Church. She has worked as a volunteer counsellor with a drug rehabilitation organisation. She has undertaken Access to Higher Education programmes, and states that she is committed to becoming a social worker.

In terms of risk, assessing AB her offending behaviours fit within the GSCC 'medium' risk category. From an actuarial perspective, offenders convicted of theft have a high likelihood of re-offending within a very short period (120

days after previous conviction) (Shepherd and Whiting, 2006; p.5).

Additionally the overall reconviction rate within a two-year period is 71 per cent (Shepherd and Whiting, 2006; p. 8). A New Zealand study indicates that the rate of reconviction drops by a further 10 per cent after three years (Nadesu, 2007). Thus an actuarial perspective that focuses precisely on type of conviction and time elapsed after conviction would offer cautious assessment of the level of risk posed to the general public. However, a clinical perspective, paying particular attention to the desistance literature (Farrall, 2004; Smith 2007) draws attention to specific details of her current personal situation – employment accommodation and relationships. In the present case study the admissions tutor would focus on criminogenic factors such as substance (mis)use, accommodation, relationships and stress management.

The implication of applying a formulaic risk assessment is that it can be applied in a non-reflective way. In reality the ethical standpoint of the decision makers (often a combination of academic and social work agency or human resources staff) will influence the decision. This case involves ethical issues and poses an ethical problem, but may also represent for some an ethical dilemma - between two moral principles (Kantian and Utilitarian) and two unwelcome alternatives (potential threat to the public and profession or reinforcing social exclusion). Whilst a Kantian perspective emphasises the significant change the individual had undergone and the stability of her current situation, a utilitarian perspective would emphasise that the offences involve a breach of trust (benefit fraud), alongside relative recent use of class A drugs and previous violent behaviour. Consequently there is potential risk to agency

and professional reputation where public trust may be undermined by employing such an individual as a social worker, alongside a risk to service users' safety. A virtue ethics approach gives greater emphasis to the process of the interview in exploring aspects of AB's presentation – including her clarity, humility and ability to describe her process of personal change. The emphasis is on assessing the quality of the applicant's character and motives.

A potential way of resolving the conflict between conflicting moral principles is through the application of equity and justice. Consistent application of the principle of utilitarianism would meet the requirements of equity, where that is equated with equality of process and outcome, by treating all offenders who have committed such offences in the same way and denying them the opportunity to train in order to protect the public from immediate harm and the consequences of loss of trust in the profession. Such an approach however seems unjust. It is inequitable to treat all offenders in the same way. It is inequitable to ignore evidence of rehabilitation by focussing discussion and decision-making only on the nature of the offence. Applying the Aristotelian concept of equity, to correct the universal application of a utilitarian rule where that is defective because of its universality, allows the promotion of justice for the individual. We are not arguing for all offenders to be allowed to undertake professional training. Rather that for AB it is unjust to not take into account considerations of virtue ethics alongside risk assessments in making a judgement which is both ethical and clinical.

Towards rigorous and ethical social work admissions practice in relation to ex-offenders

This paper has considered issues relating to developing a critically aware and morally justifiable process of considering applications from ex-offenders for social work training. In developing a rigorous and ethical approach to considering ex-offenders as candidates for social work training we suggest that addressing the following three areas will help to develop a clear accountable approach:

1. *Epistemological standpoint*: establishing a clear epistemological standpoint that recognises the importance of data related to offending and risk of re-offending but also includes other relevant data such as patterns of social exclusion and deprivation. Such a stance would be akin to Harding's (1991) "strong objectivity" which includes the values of the assessor in any assessment.
2. *Risk assessment*: an approach to risk assessment that includes both an actuarial and a clinical perspective on reoffending. From the actuarial perspective candidates should not be considered for admission until at least two years after their most recent conviction. From a clinical perspective issues relating to changes in personal and social situation should be considered, along with details of their current living situation and their attitudes to the offences (See Madoc-Jones *et al.*, 2007; p. 10 for an example of issues that could be addressed).
3. *Ethical thinking*: concerns clearly identifying and accounting for the various ethical components in decision-making. The extent to which Kantian respect for the individual is balanced against utilitarian

concerns related to the well-being and safety of the general public. The extent to which virtue ethics were identified in the assessment interviews. The identification of difficult matters, as ethical issues, problems or dilemmas, will help working through alternative courses of action. Most importantly how does equity operate to compensate for the inflexible operation of principle ethics? Does equity include consideration of issues that are wider than the personal – social and political issues related to social exclusion, anti-oppressive practice and social justice?

As a profession guided by the tenets of social justice it is essential that the processes whereby people are admitted or excluded are clear and explicit; we hope that this paper has contributed to achieving that clarity.

References

- Banks, S. (2006) *Ethics and Values in Social Work* (3rd ed.) Basingstoke: Palgrave Macmillan.
- Banks, S. and Williams, R. (2005) 'Accounting for Ethical Difficulties in Social Welfare Work: Issues, Problems and Dilemmas', *British Journal of Social Work*, **35** (7), pp.1005-1022.
- Banks, S. (2004) *Ethics, Accountability and the Social Professions*, Basingstoke & New York, Palgrave Macmillan.
- Bauman, Z. (1993). *Postmodern ethics*. Oxford: Blackwell.

- Beck, U. (1992) *Risk Society: Towards a New Modernity* (M. Ritter, Trans.), London, Sage.
- Beck, U. (1999). *World Risk Society*. Cambridge: Polity Press.
- Beech, A. R. and Ward, T. (2004) 'The integration of etiology and risk in sexual offenders: A theoretical framework', *Aggression and Violent Behavior*, **10**, pp. 31-63.
- Beever, A (2004) 'Aristotle on equity, law and justice', *Legal Theory*, **10** (1), pp 33-50
- Bengtson, S. and Långström, N. (2007) 'Unguided Clinical and Actuarial Assessment of Re-offending Risk: A Direct Comparison with Sex Offenders in Denmark', *Sex Abuse*, **19**, pp. 135-153.
- British Association of Social Workers (2002) *A Code of Ethics for Social Work*, Birmingham, BASW.
- Clough, P. T. (1992) *The End (s) of Ethnography*, London, Sage
- Code, L. (2006) *Ecological Thinking: The Politics of Epistemic location*, Oxford, Oxford University Press.
- Crisp, B. R. and Gillingham, P. (2008) 'Some of my students are prisoners: issues and dilemmas for social work educators', *Social Work Education*, **27**(3), pp.307-317.
- Douglas, M. (1992a) 'Risk and Blame', in M. Douglas (ed), *Risk and Blame: Essays in Cultural Theory* (pp. 3-21), London, Routledge.

- Douglas, M. (1992b) 'Risk and Justice', in M. Douglas (ed), *Risk and Blame: Essays in Cultural Theory* (pp. 22-37), London, Routledge.
- Douglas, M. (1992c). Risk and Danger. In M. Douglas (Ed.), *Risk and Blame: Essays in Cultural Theory* (pp. 38-54). London: Routledge.
- Dworkin, R. (1977) *Taking Rights Seriously*, Cambridge, Harvard University Press.
- Farrall, S. (2004) *Rethinking What Works with Offenders: Probation, Social Context and Desistance from Crime*, Cullompton, Willan Publishing.
- Foucault, M. (1977) *Discipline and Punish: The Birth of the Prison*, London, Allen Lane.
- Foucault, M. (1984) *The History of Sexuality: An Introduction* (R. Hurley, Trans. 1984 ed. Vol. (i)), London, Peregrine.
- GSCC (2005) *Risk Assessment Document*, London, General Social Care Council.
- GSCC (2008) *Raising Standards: Social Work Conduct in England 2003-2008 (Summary)*, London, General Social Care Council.
- Giddens, A. (1990) *The Consequences of Modernity*, Cambridge, Polity Press.
- Grubin, D. (1999) 'Actuarial and Clinical Assessment of Risk in Sex Offenders', *Journal of Interpersonal Violence*, **14**(3), pp. 331-343.

- Hanson, R. K. and Bussiere, M. T. (1998) 'Predicting relapse: A Meta-Analysis of Sexual Offender Recidivism Studies', *Journal of Counselling and Clinical Psychology*, **66**(2), pp. 348-362.
- Harding, S. (1991) *Whose Science? Whose Knowledge? Thinking from Women's Lives*, Milton Keynes, Open University Press.
- Haski-Leventhal, D., Gelles, R. J., & Cnaan, R. A. (2010). Admitting convicted felons to social work programs: Conceptual dilemmas and practices. *International Social Work*, 53: 87-100.
- Higher Education Funding Council for England (2009) 'Widening Participation: Fair Access and Admissions', (<http://www.hefce.ac.uk/widen/access/>) Accessed 14th December 2009
- Hollows, A. and Nelson, P. (2006) 'Equity and pragmatism in judgement-making about the placement of sibling groups', *Child and Family Social Work*, **11**(4), pp. 307-315.
- Hudson, W. D. (1979) *The Is-Ought Question, a collection of papers on the central problem in moral philosophy*, London & Basingstoke, Macmillan.
- International Federation of Social Workers (IFSW) and International Association of Schools of Social Work (IASSW) (2004) 'Ethics in Social Work, Statement of Principles', <http://www.ifsw.org/p38000324.html> Accessed 14th December 2009.
- Kant, I. (1964) *Groundwork of the Metaphysic of Morals*, New York, Harper and Row Publishers, Inc.

- Madoc-Jones, I., Bates, J., Facer, B. and Roscoe, K. (2007) 'Students with Criminal Convictions: Policies and Practices in Social Work Education' *British Journal of Social Work*, **37**(8), pp. 1387-1403.
- Magen, R. H. and Emerman, J. (2000) 'Should convicted felons be denied admission to a social work education program? Yes!' *Journal of Social Work Education*, **36**(3), pp. 401-407.
- Maguire, M. (2007) 'Crime data and statistics', in M. Maguire, R. Morgan, & R. Reiner (eds), *The Oxford Handbook of Criminology* (pp. 241-301), Oxford, Oxford University Press.
- Munro, E. (2002) *Effective child protection*, London, Sage.
- Nadesu, A. (2007) 'Reconviction Patterns of Released Prisoners: A 36-months Follow-up Analysis',
<http://www.corrections.govt.nz/research/reconviction-patterns-of-released-prisoners-a-36-months-follow-up-analysis.html> Accessed 14th December 2009.
- Nicolson, P. (1995) 'Feminism and Psychology', in J. A. Smith, R. Harré, & L. Van Langenhove (eds), *Rethinking Psychology* (pp. 122-142), London, Sage.
- Payne, M. (2005) *The Origins of Social Work*, Basingstoke, Palgrave.
- Perry, R.W. (2004) 'The Impact of Criminal Conviction Disclosure on the Self-reported Offending Profile of Social Work Students, *British Journal of Social Work* 34: 997-1008

- Phillips, D. (2006) *Quality of Life: Concept, Policy and Practice*, London, Routledge.
- Plummer, K. (1995) *telling sexual stories*, London, Routledge.
- Ross, D (translator) (1972) *Aristotle: the Nichomachean Ethics*, Oxford, Oxford University Press.
- Rutherford, A. (2002) *Growing out of crime: the new era*, Winchester, Waterside Press.
- Scott, N. and Zeiger, S. (2000) 'Should convicted felons be denied admission to a social work education program? No!' *Journal of Social Work Education*, **36**(3), pp. 409-413.
- Shepherd, A. and Whiting, E. (2006) *Re-offending of Adults: Results from the 2003 cohort (report 20/06)*, London, Home Office.
- Silver, E. and Miller, L. L. (2002) 'A Cautionary Note on the Use of Actuarial Risk Assessment Tools for Social Control', *Crime and Delinquency*, **48**(1), pp. 138-161.
- Smith, D. J. (2007) 'Crime and the Life Course', in M. Maguire, R. Morgan, & R. Reiner (eds), *The Oxford Handbook of Criminology* (pp. 641-686), Oxford, Oxford University Press.
- Sparks, R. (2001) 'Degrees of estrangement: The cultural theory of risk and comparative penology', *Theoretical Criminology*, **5**(2), pp. 159-176.

- Statman, D (1997) 'Introduction to Virtue Ethics', in D Statman (ed), *Virtue Ethics: A Critical Reader*, Edinburgh, Edinburgh University Press pp. 3-41.
- Van Langenhove, L. (1995) 'The Theoretical Foundations of Experimental Psychology and its Alternatives', in J. A. Smith, R. Harré, & L. Van Langenhove (eds), *Rethinking Psychology*, London, Sage.
- Wilson, K., Ruch, G., Lymberry, M., & Cooper, A. (2008) *Social Work: An introduction to contemporary practice*, Harlow, Pearson Education Ltd.