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# 'Fit and proper' and fieldwork: A dilemma for social work educators?

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## **Abstract**

This article will focus on the four major issues that we have identified relating to 'fit and proper' policies and fieldwork. The first is the different levels of information that are held and shared by different entities. The second is the potential for such policies to directly contradict the principles of social work, and in particular social justice. Thirdly, it looks at the implications of being in a 'contracting' environment, and fourthly the position that social work educators are placed in as the 'expert' assessors of risk. Finally, we present some ideas that we hope will instigate a discussion amongst our profession and stakeholders. Throughout the article vignettes show practical applications of the issues that the article raises. While the vignettes are directly based on experiences that we have had while coordinating fieldwork, they do not correspond to specific cases.

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## **Introduction**

In 2003 the Social Workers Registration Act was introduced with the intention of providing the public with a system of quality assurance when using a social worker (Social Workers Registration Board, 2011). Section 47 of the legislation states the Social Workers Registration Board may exclude applicants 'if, and only if, it is satisfied that there are grounds on which a reasonable person would conclude that the subject is not a fit and proper person to practise social work' (2003, np). What is not clear, but implied, is that schools of social work have a responsibility to determine if people applying to study social work and therefore wanting to undertake placement would fall within these guidelines. Within our programme the decision on whether or not an applicant meets 'fit and proper requirements' is made on the basis of a Ministry of Justice Criminal Conviction check which is completed before the applicant is accepted and the Social Workers Registration Board's Fit and Proper Person: Policy Statement (2009) guides decision making and is discussed with potential students. The policy states that the 'Board is of the view that social work practitioners must be persons who possess the attributes of honesty and integrity appropriate to the professional position they hold' (Social Workers Registration Board, 2009, p.3). In the following article how social work educators make decisions about that in a sound and ethical manner will be explored.

After entry into a social work programme the placement agencies are the next in the devolution of responsibility, they can choose to accept or not a student on placement. Staniforth and Fouche (2006, p. 14) cite a study conducted by Gibbs (1994) that found that despite the fact 80% of respondent schools reported fewer than five students failing a practicum, many

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believe that the field placement is a time where a good proportion of gate keeping occurs. Mossman cited in Crisp (2006) also states that:

... if gatekeeping has not occurred at admission, then a crucial point can be at field placement. It has been argued that social work programmes have an obligation not only to any potential clients with whom a student may have contact, but also to the staff of agencies in which students are placed (Mossman, 1995, in Crisp, 2006, p. 5).

At the interface between placement agencies and educational institutions tension arises. The agencies may believe it is the social work educators' responsibility to ensure students attending placement are 'safe', however, there is pressure on staff within tertiary institutions to accept students who meet the academic entry criteria. It is harder to exclude a student for non-academic reasons than failure to meet academic entry criteria. Social work educators risk being challenged by the applicant, the institution they work for or both. Shardlow (2000) argues that institutions may face liability action if they deny a student from participating in fieldwork as it is such an integral part of social work education. Thus the 'gate keeping' at the point of fieldwork often occurs in an ad hoc way, where students' suitability in terms of 'fit and proper' requirements for particular placements are questioned by social work educators and potential agency supervisors.

An additional issue is the possibility of a student offending after being accepted to a programme. How is this offending identified? It could be via self report, yearly police checks, pre-placement police checks and/or agency-directed police checks. The question of whether offending undertaken whilst on a social work programme is considered more inappropriate than offending undertaken prior to commencing the programme needs to be considered. Ways of managing this situation also need to be considered by social work education providers.

## **The context**

The responsibility to exclude students based on the 'fit and proper' requirement of the Social Workers Registration Board is an uneasy and fraught task which has the potential to contradict section 2.4 of the Aotearoa New Zealand Association of Social Work (ANZASW) Code of Ethics, which states that members must 'promote socially just policies ... and ensure that everyone has access to the existing resources, services, and opportunities that they need' (2008, p.8). It is also noted that section 3 of the Social Workers Registration Board Code of Conduct policy section 3 (2008) states that the social worker is expected to uphold human rights and not discriminate against clients or associate with any form of discrimination. This needs to be considered in conjunction with section 4.8 of the ANZASW Code of Ethics which states that 'professional accountability to clients and the wider community is ensured by members through regular and ongoing evaluation of agency policies and services and of their own performance' (2008, p.8). Herein lies the potential site of conflict; how can social work educators maintain the integrity of applicants and not discriminate against them in relation to past criminal convictions while also maintaining the integrity and safety of potential clients?

Social work educators are 'plying their trade' in educational institutions where the dual roles of social work professional and educator is often contentious rather than complementary. Within tertiary institutions there are expectations that students will be accepted

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or rejected based on their academic history and potential to complete and succeed in the academic aspect of the programme, not on their past behaviour or assessment of risk of their future behaviour. Nelson and Cowburn (2010, p. 1081) describe the exclusion of potential social work students with criminal convictions in this way:

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 is the tension for both social work educators and social work agencies who are considering taking a student on placement. Do you exclude potential students on the basis of their potential risk to clients based on their past behaviour, or do you 'walk the talk' of social change and acknowledge the human capacity to change? If you go 'down the path' of exclusion, are you then potentially eliminating some of the most effective practitioners who are able to empathise and build relationships with our client groups? The argument against this is one of risk to clients and then there is the 'murky terrain' of whose responsibility it is to determine and police this, and to whom does the institution have the greatest 'duty of care' (Shardlow, 2000, p. 121). Stromwall (2002 in Gillis and Lewis, 2004, p. 392) acknowledges the dichotomy between the 'two competing ideologies underpinning the discussion: maintaining client protection on one hand, and promoting social justice and empowerment on the other'. It could be argued this sort of exclusion maintains existing social structures and perpetuates dominant discourses we are educating our students to view critically.

This is made even more difficult by the fact that determining 'what a reasonable person would conclude' can be difficult (Staniforth and Fouche, 2006, p. 12). This creates a moral conundrum, with social work educators potentially getting it wrong; the possibility of excluding an applicant who might in fact be eligible for registration and able to find a suitable work placement or accepting a candidate who will not be eligible for registration or not be able to find a placement. The Social Workers Registration Board policy on 'Fit and Proper Person' (2009) provides guidance in terms of how particular offences are considered and what other mitigating factors exist. Despite this the guidance still relates to what is likely, rather than what will happen and involves measures which are qualitative rather than quantitative, such as the notion of 'seriousness'.

**Issue one: Different information relating to 'fit and proper' is collected and received by different statutory agencies, non statutory agencies and schools of social work.**

A standard criminal conviction check provides information about any conviction entered against a person, except those that are excluded under the Clean Slate Act (Ministry of Justice, 2011). This is usually the minimum check done before a student is accepted onto a programme.

Students doing a work placement under the auspices of the Ministry of Social Development are provided an application form they must complete. The fact sheet that accompanies that application form states that along with the police check the Ministry will conduct bankruptcy checks and a benefit history check by the Ministry of Social Development as well as an SIS check (Ministry of Social Development, 2011).

Furthermore Police vetting, which is administered by the New Zealand Police, differs from a criminal conviction check, which is administered by the Ministry of Justice. The New

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Zealand Police (2011) Vetting involves the New Zealand police supplying the agency with information taken from family violence reports including:

- behaviours of a violent or sexual nature that may not have resulted in a conviction.
- any interaction, including as a victim, with Police, whether it resulted in a criminal conviction or not.

Institutions have the opportunity to apply to receive police vets, rather than criminal conviction checks from the Ministry of Justice, but they also have the option of making a conscious decision not to. Cournoyer (2008, p.135) states that professional social workers ... 'have a duty to respect the privacy of the people you serve... [including] those aspects of personal life that constitute a symbolic region which is that person's alone to share or reveal as he or she sees fit'. While there is certainly merit in the argument that having information about an applicant is always helpful to social work educators and agencies accepting students, this must be balanced with the person's right to privacy.

Within such a check is not just a check for criminal behaviour, but exposure of a person's 'story' as a victim. While not wanting to enter into a debate about the processes used when recruiting staff by employers this seems to run counter to the right of social work educators to protect their clients, students, by respecting their worth and dignity and working in non-discriminatory ways. The need to keep clients safe and the need to keep students safe is, at times, conflicting. If a student experienced family violence 10 years ago it may not preclude their placement, but they have been forced to expose this to strangers in order for their placement to proceed. With information supplied with more detailed vetting checks the applicant (usually) has had no opportunity to defend the stated 'facts' because it has not gone to court.

In some situations a student may also disclose something to the institution that is not evident in a Ministry of Justice criminal conviction check, as the vignette below illustrates.

When applying, Charlotte disclosed that she has received a conviction ten years ago for Using a Document for Pecuniary Advantage. At the interview she gave a very good explanation as to how this conviction came about, and it was decided to accept her for the programme conditional on this being the only conviction on her conviction check. Upon receiving the conviction check from the Ministry of Justice the conviction was not there, probably as a result of being 'clean slated'. The social work programme was then placed in a position where it had to determine whether or not it should disclose this to a potential placement agency who has not specifically sought this information. Should there have been an issue with a cheque book going missing at a placement agency while she was placed there, might it have been relevant to disclose it then?

There are other issues that social work educators face, and the institution may become aware of which would not be immediately apparent to an agency, even after police vetting. For instance Staniforth and Fouche (2006) argue that issues such as 'cheating' and plagiarism may be warning signs of questionable social work practice into the future. In a case where a student is suspected of intentionally plagiarising a piece of work, but these accusations are not proven, a question exists over whether the educator has an obligation to tell potential agencies where the student might be placed.

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Timing is also an issue. SWRB registration decisions are only made at the time of an application for registration being received. Social work educators must make the decision to accept or decline a student at the time of their application on the basis of an SWRB decision that will only be made at the completion of the student's qualification. This becomes less clear when the convictions are at the lower end of the scale. In some cases Clean Slate legislation may apply to the student part-way through their study or after the completion of their study. Potentially a student can shift from 'unlikely' to be approved to 'likely' to be approved over the course of their study, 'all things being equal'. However, the responsibility for determining what is likely and what is unlikely rests with the social work educator, and what decision they make is likely to be affected by their willingness to engage in a degree of risk, something that will be discussed later.

**Issue Two: Excluding students from placements or social work programmes may directly contradict the principles of social work.**

As mentioned in the introduction, social workers have a responsibility to promote social justice, and promote the rights of marginalised people to engage in activities and receive services. Excluding applicants from fieldwork on the basis of convictions may contravene this.

Most states will have some legislation that protects the rights of certain groups who have experienced discrimination or social exclusion ... Hence the university and the fieldwork agency share an obligation to ensure that equal access to human services education is provided for all groups in society. Similarly, there should be equality of access to the various opportunities for field education (Shardlow, 2000, p. 120).

While some of these groups may not be explicitly excluded, there is a possibility that large groups of already marginalised people may be discriminated against because of such policies. Statistics indicate that Maori, Pacific Islanders and males all have a disproportionate rate of imprisonment in New Zealand (Statistics New Zealand, 2011). Thus there is the potential for exclusion on the basis of criminal convictions to have a disproportionate effect on these groups' likelihood of receiving social work education.

*Discrimination against people whose criminal convictions are unjust, or a result of systematic injustices*

There are other situations where social justice might urge us as social work educators to support a student despite the fact they acknowledge that their conviction was correctly recorded, such as the following.

One applicant disclosed that she had a conviction relating to benefit fraud from more than 10 years ago. She provided the context of the conviction; she had experienced domestic violence, it was many years ago, she did not serve a jail sentence. Another applicant disclosed to us that she had committed benefit fraud, it was several years earlier and she had spent several months in prison. She was married but had an issue with overspending. The decision was made to admit the first applicant, but to exclude the second applicant.

In a discussion around whether or not we should exclude the first applicant, social work educators must consider what would happen if she was accepted on to the programme but had difficulties finding placements, or she had difficulties getting registered. However, they must also consider what it would mean to exclude her in terms of the ANZASW Code

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of Ethics, as well as their commitment to challenging the social exclusion of those who are marginalised. In this case those second considerations outweigh the first. In terms of the second applicant, those considerations did not exist as her imprisonment would preclude her from achieving social work registration (Social Workers Registration Board, 2009).

*Discrimination on the basis of mental illness*

Another issue relates to students who experience mental unwellness that impacts on their ability, learn or practise social work on placement. Such students may also be excluded by the clause 47,2(b) in the Social Workers Registration Act that states that a candidate may not be considered fit and proper if 'the Board is satisfied that the subject is unable to perform adequately the functions required to practise social work satisfactorily'. Gillis and Lewis (2004) found that 34% of the field instructors reported that they had had students with psychiatric problems in their placement.

Again this is an issue of social justice. The Human Rights Commission (2008) states it is unlawful to treat people differently because they have a mental illness now or have had in the past, and their position is supported by the World Health Organisation (2005). Kean (2007) describes an example of this discrimination when she discussed the statement made by an accreditation panel reviewing a social work degree. The panel stated that the institution was required to 'establish a process whereby students must disclose any mental health issues they may have or have had, for reasons of 'safety' (Kean, 2007, p. 38). The process is asking students to identify themselves as 'others' and expose themselves to potential discrimination. This view of mental illness as a safety concern perpetuates the myth of dangerous mentally ill (Cockerman, 2011; Gendall, 2006; Kean, 2007).

When social work educators have knowledge about these issues that social work agencies don't, do they have a responsibility to share this information with placement agencies?

A local social services manager has informed one of the authors in a public forum that she is not willing to employ social workers who have a mental illness, and therefore would not think that a person who experiences mental illness would be a suitable student for placement at her agency.

While this is discriminatory to employees under the Human Rights Act, 1993 it is also potentially discriminatory to potential students who have a mental illness and seek a placement with this agency. The Social Work Registration Board fit and proper policy deals with it by acknowledging that the board will 'from time to time, be required to make determinations regarding fitness to practise on the grounds of physical, mental or social conditions. It has a responsibility to ensure that all necessary advice and assessment is sought. Provisions in the Act ensure the rights of individuals are protected under such circumstances. The Board will consider and view each situation on a case by case basis' (Social Workers Registration Board, 2009, n.p.). In this sense the Board is indicating a considered and non-discriminatory approach; a person's mental health would only become an issue if it impacted on their ability to practise social work safely and competently.

*Issue Three: An organisation is bound by contractual obligations.*

Steve was a student in his early 20s, who several years ago had received a conviction for common assault. Steve acknowledged that while it was a drunken fight with a friend, it was inappropriate and that he had made significant changes to his life since that time. However,

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we had significant difficulties finding Steve a placement, not because managers questioned his competence but because they were concerned about breaching 'head office' policies, and contractual agreements with government agencies. He had a firm idea about where he wanted to go and was well placed to work in this field, which was at an NGO. Despite the agency manager's initial reluctance, he saw the value in taking Steve on placement and made the decision to do so. The placement was extremely successful.

In the situation above, the manager of the NGO had to balance the information she had with the risk-averse stance taken by funding agencies and then adopted by NGOs. As Walker (2010, p. 22) notes 'there has been the development of a massive bureaucracy geared to giving advice and direction about dealing with risk'. This combined with the current dynamics of government/ non-government relationships, whereby 'one powerful player (like a State organisation) often dominates the partnership by setting the agenda and rules of the partnership... [means that] small agencies remain at the margins of the partnership legitimating the decisions and activities without actually making the decisions' (ibid, p. 23).

As part of student placement negotiations we were informed by the manager of an NGO that:

... under their standards of approval contracted to MSD under their Standards of Approval document [they] cannot employ a person in a paid or voluntary capacity who has a conviction for crimes of violence against the person or dishonesty. Where there are exceptional circumstances CYF must be contacted and the situation presented in writing, in order to obtain approval for the exception.

As Dominelli (2004, p. 251) states 'social workers' capacity to advocate or act on behalf of dispossessed individuals has been compromised by their dependency on government'. Further 'The 'undeserving' group is further subdivided into those who are redeemable and those who are not' (ibid, p. 218). Within the student social worker framework Steve is at great risk of being considered part of the 'unredeemable undeserving' group due to a minor violence conviction obtained as a young person. The NGO's capacity to make a professional judgement concerning his ability to have 'changed' versus the risk to clients was constrained by the NGO's contractual obligations. As Sheehan (2009, p. 343) notes 'the growing trend for social work activity to be defined by legal interpretations and organisational directives creates an on-going dilemma for the profession.'

*Issue Four: Social work educators as 'the expert assessors of risk'.*

Increasingly, social workers are placed in a position where they must operate in a risk-adverse environment. Concerningly, they are expected to be the one who assesses that risk (Barry, 2007). In discussing the considerations that social workers must take in this environment, Banks (2004, p.86, cited in Nelson and Cowburn, 2010, p.1092) 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.

Inevitably social work educators find themselves in the uncomfortable position of being the 'expert assessor' of risk. A possible way forward it to use risk assessment

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tools, and in practice this may be the approach used, however the use of risk assessment tools raises the issues cited by Banks above. While they may be helpful they can be a means of intentionally or unintentionally excluding particular groups of potential students. Assessing risk is a complex and challenging task in which educators weigh up a number of factors outside of whether or not there is a risk to potential clients and the student themselves:

- What is the risk of the student enrolling on the course then not being able to commence placement because one cannot be found due to their criminal convictions?
- What is the risk of a student completing the degree and not being able to be registered?
- What is the risk of the student damaging the reputation of the institution amongst agencies that accept students for fieldwork, as well as the Social Workers Registration Board, and will the programme lose credibility amongst those stakeholders by accepting students with criminal convictions?
- Will agencies stop supporting the programme if information is withheld from them in order to protect student's privacy?

Being placed in the position of assessing risk may in itself pose an ethical issue for social work educators.

The 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 (Nelson and Cowburn, 2010, p. 1082).

Barry (2007, p. 1) acknowledges that risk has a useful role to play in social workers' lives, but questions if social workers are using risk in an appropriate way.

The 'blaming society' is now more concerned with risk avoidance and defensive practice than with professional expertise and welfare development (Parton, 1998). However, risk is a normal and often beneficial part of everyday life, but while it enables learning and understanding, in the case of potentially destructive consequences it may need to be monitored and restricted.

This is even more significant because of the issues that arise in the contracting environment that are discussed above, whereby risk assessment occurs on both a personal and an organisational level.

## **Conclusion**

The context in which social work educators practise is unique, in that it is located primarily in educational institutions rather than social service agencies. This results in tensions and contradictions which have to be resolved, managed or lived with; in particular these tensions and contradictions 'come into play' at the point of fieldwork. The expectation of accepting students based on academic standards as opposed to whether or not they are 'fit and proper' to be trusted to work in our community has at times been an unresolvable contradiction for us as social work educators and one we have to 'live with'. Furthermore, social work educators find themselves in a position where they are unable to find fieldwork placements for students who may have great potential as practitioners but appear to pose a risk, in an



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environment of risk aversion. These contradictions 'strike at the heart' of our professional values, belief in social justice, and our ethical responsibility to practise social work in a non-discriminatory manner. This article has exposed some of our dilemmas around fieldwork to engage in a dialogue with our profession and stakeholders about the measurement of 'fit and proper' and who is responsible for deciding what that means.

## Moving forward

In writing this article we are not seeking to provide a blueprint, but rather engage in some reflective thinking about what role 'fit and proper' has had in providing field education. Throughout the process of writing this article we have had the opportunity to ask ourselves and each other some interesting questions about both the processes and the ideologies that we employ as social work educators. We would like to finish this article by providing some of those questions, and would welcome any responses to what we acknowledge are contentious issues.

- Should institutions use criminal conviction checks or police vetting? If they use criminal conviction checks what responsibility do institutions have to provide applicants with information about what police vetting is and inform them that for many positions it is likely that they will have to undertake police vetting?
- How can we make it clear to applicants who are considering undertaking a placement or working at MSD at the end of their qualification about the checks that are undertaken there and the implications of that?
- If an institution chooses to take a student, does the institution hold a responsibility to that student to find them a placement, and advocate for them to be registered? Do they have a duty to inform students with criminal convictions that it might be difficult for them to get placements and be registered?
- As social workers and social work educators how do we actively reference the ANZASW Code of Ethics, as well as the underpinning ideals of the profession such as social justice and anti discrimination? How can we better reflect on whether or not we are 'walking the talk' of social justice, non-discriminatory practice and a belief in the capacity for people to change?
- As a profession how can we get more clear about whose responsibility it is to determine 'fit and proper'? Is it right that it often appears to be devolved to educational institutions? We need to communicate the information that we need in order to make informed decisions to the Social Workers Registration Board.

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