

Case study – richard phillips and family

[Family](#)



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In considering the actions available for the police and the social worker, this essay will initially look at the background to the present youth justice system. It will go on to consider areas of tension and conflict that exist at a number of levels within the system, for example the conflict between the welfare model of the Children Act 1989 and the justice model that underpins the Crime and Disorder Act 1998. It will examine the rights, duties and responsibilities of those involved before going on to summarise the impacts of the actions that might be taken. ... Youth justice has always been a contentious subject. Some people take the view that what is required is a "get tough" approach, while others see a more positive approach to the issue in welfare and community based initiatives... " (Workbook 3, p 38).

A consequence of this has been that "... The relationship between social work and the criminal justice system has been one of tension and ambivalence since the demise of the rehabilitative ideal of the latter decades of the twentieth century... (Reader, Worrall and Souhami, p 120). Had Richard's alleged offence taken place thirty years ago it would have been dealt with against the background of the Children and Young Persons Act 1969 where the aim was to depoliticise and decriminalise youth offending. The welfare principle contained in the Children and Young Persons Act 1933 would also apply. Together, these acts require courts to give concern to the welfare of the child in youth justice proceedings.

This doctrine was influenced by the developmental theory of adolescence which supports the view that while young people may commit minor crime as a part of the growing up process, they will naturally come to see such behaviour as unacceptable and reform themselves. Formal intervention

would only serve to bring young people into the crime system, tarnish their prospects, and consequently, increase the likelihood of re-offending and ultimately, the numbers of victims. However, shortly after the passing of the 1969 Act, the political tide had changed.

Magistrates became unhappy with social workers and custodial sentences increased. (Reader, Worrall and Souhami, p 123). Throughout the 1980s the tension between the two models led to a "... twin track approach to tackling juvenile crime..." (Workbook 3, p 38). The "get tough" lobby were satisfied by the introduction of the short sharp shock of new detention centres and yet at the same time politicians saw the dangers of criminalising young people. Change was inevitable and by 1996 the Audit Commission had published a report called "Misspent Youth" which was very critical of the youth justice system.

This led to the Home Office paper "No More Excuses" with its model of "restorative justice" which was a precursor to the Crime and Disorder Act 1998 and the Youth Justice and Criminal Evidence Act 1999. The 1998 Act has a statutory aim of prevention of offending by children and it is against this background that Richard's alleged offence will be treated. The political pendulum had swung from a culture that saw the welfare principles as the key to reducing offending, to one that, whilst recognising rights and welfare, sees them as subsidiary to the principles of restorative justice.

These principles are; restoration, where young offenders apologise and make amends, reintegration, where they pay their debt to society then rejoin it, and responsibility, which involves accepting the consequences of offending.

The Act also abolished the legal doctrine of doli incapax, removing the burden of proof on prosecuting lawyers that a child defendant under the age of fourteen knew what he did was wrong (Workbook 3 pp 38 - 45 and Reader, Vernon, p 221) A clear example of this swing from welfare to justice is in the context of the Child Safety Orders introduced by the 1998 act.

Breach of such an order can mean a child under ten is taken into care "... irrespective of whether the threshold criteria contained in s. 31 (2) of the Children Act 1989 are satisfied..." thus overriding the welfare principle (Workbook 3 p 40). Confusingly however, a contemporaneous counterbalance has been the introduction of Human Rights legislation such as the Human Rights Act 1998 as well as ratification of the United Nations Conventions on the Rights of the child. This legislation tends to reinforce the welfare principle.

Stuart Vernon's comment that "... these are interesting times for youth court magistrates..." is very relevant to this debate (Reader, Vernon, p 222), because it recognises the tensions that arise resulting from the divergent views held by all those involved and the resultant uncertainty as to outcomes; for victims and perpetrators of crime and their representatives. Having looked at the background to the tensions and conflicts it is now appropriate to consider how they impact on what happens next in Richard's case. Among the reforms introduced by the Crime and Disorder Act 1998 was the establishment of Youth Offending Teams (YOTs).

Prior to the act, a social worker would have had responsibility for Richard's case and would involve other professionals as necessary. The Act changed

this by shifting the responsibility to multi-disciplinary YOTs which comprise professionals from social services, the police, probation services, the health authority and the education authority. The establishment of these teams involved huge change and conflict between the occupational cultures of the different disciplines, for example, "... police officers disliking " woolly" social workers and social work stereotypes of anti-youth police officers... (Reader, Watson p 246).

The Act also introduced a system of reprimands and final warnings doing away with the former system of cautions. (Reader, Watson pp 242-248). "... The police are responsible for the investigation of crime. This responsibility includes the arrest, detention and questioning of suspects... " (Workbook 3 p 10). The police have contacted the YOT because they want to question Richard. Under the Police and Criminal Evidence Act 1984, (PACE) Richard is classified as a " vulnerable" suspect and it his right not to be questioned without the presence of what is known as an " Appropriate Adult".

This right can only be overridden in very exceptional circumstances which must be authorised by a police officer of superintendent rank or above and the circumstances must be recorded in the custody record. Amongst the functions of the YOT is the provision of an appropriate adult service and these duties are often performed by a social worker. (Reader, Watson, p 244 and Workbook 3 p 73). The role of the appropriate adult is to "... provide comfort and support to a child who might otherwise be disorientated in strange surroundings... (Workbook 3, p 73).

She should check that the child has had nourishment and is not under the influence of drugs or alcohol and is generally in a fit state to be questioned. Under the PACE code of practice guidance, it is stated that a parent or guardian should normally undertake this function; but in this case, Richard has refused to involve his parents. In any event, the parent may not have "... the experience or confidence needed to represent the child effectively in the potentially hostile atmosphere of the custody suite..." (Workbook 3, p 73)

It appears that Richard has not requested the presence of a solicitor and it is the duty of the social worker to encourage him to do so and explain the advantages. Marie Kearns, a youth justice worker describes how this can heighten the tension between the police and social workers because it will involve delay and the solicitor may encourage a "no comment" interview. "... The police may on occasions feel they "know" who has committed a particular offence, and they do not want the interference of solicitors and "do gooding" social workers to allow the guilty to walk free... (Workbook 3, p 75).

At this stage and indeed every stage, the social worker must practice within the Code of Practice of the General Social Care Council. It is very important to avoid being dragged into the police culture which is a risk in a multi-disciplinary team (Reader, Worrall & Souhami, pp128/9). The social worker must practice in an anti-oppressive way, despite the seriousness of the alleged offence, working in partnership with Richard and keeping him informed about the processes and his rights at all times.

It is equally important to practice in a way that is anti-discriminatory, not making any judgements about Richard because of his background (Workbook 1 pp 10 -13). The concept of partnership working between agencies involved with the welfare of children is now enshrined in law in section 10 of the Children Act 2004. Once the interview has taken place the police have to decide if there is sufficient evidence to charge Richard. They also have the option to issue a final warning under section 65 of the Crime and Disorder Act 1998. A further reprimand is not an option because Richard has already had one.

The social worker can do little to influence this decision as it is solely a matter for the police. (Workbook 3 p 53 and Law Card S35). In Richard's case, it is apparent that the police intend to charge him. Section 38 of the Police and Criminal Evidence Act 1984 recommends that children aged between ten and sixteen should be released; with or without bail once charged unless certain conditions are met. These conditions are several, but two examples are; when the custody officer has reasonable grounds to believe that detention is necessary to protect the defendant, or if it is in the defendant's best interests (Workbook 3, pp 54/5).

The police have decided, in Richard's case, that the conditions are met and intend to detain him. A decision that will highlight the "... continuous conflict between care and control..." (Reader Worrall and Souhami, p 121) that is part of the social worker's remit. Richard's detention will normally be in local authority accommodation. This can be in the form of secure or non secure accommodation. The local authority has the power to decide where Richard

is to be placed and this decision will rest with the social worker; availability of suitable accommodation being a significant feature.

If the decision is to place Richard in secure accommodation then this will be subject to the provisions of Section 25 of the Children Act 1989 which allows secure placement for up to seventy two hours, but only if the child has a history of absconding or is a danger to himself or others if kept in non secure accommodation; a difficult decision for the social worker in this case. Further detention is not allowed without court intervention. There are strongly held views about whether the welfare principle of the Children Act applies in these circumstances.

In 1995 the Court of Appeal stated that in such cases, whilst the welfare of the child is not irrelevant, it is not paramount. Again, confusingly however, it also ruled that social workers performing the functions of Guardian ad litem should make their reports based on what is in the best interests of the child. In practice, if the custody officer decides that provision of local authority accommodation is neither practicable nor available then Richard would remain in police custody. Contacting his parents would then become imperative (Workbook 2 p, 93 and Workbook 3 p 55).

It is also important to remember Rob, who is the victim. He is also a child and is entitled to the same rights as Richard. The Local Authority also has both general duties towards him, and specific ones should the circumstances result in Rob being regarded as a child "in need" under Section 17 of the Children Act 1989 (Workbook 2 pp 18-19). His father has insisted that action be taken against Richard but it is appropriate to consider Rob's wishes; the

wishes and needs of victims being an important principle of the National Standards for Youth Justice (Workbook 3 p 34).

As soon as is practicable, the next task for the police is to arrange for Richard to appear before the youth court, a panel of local magistrates. They would have the option to either release Richard with or without bail or to remand him to Local Authority accommodation. Again there is room for conflict, because such accommodation may not be locally available and this could infringe Richard's right to education under both the 1998 Human Rights Act and The United Nations Convention on Rights of the Child.

Interestingly, the convention appears to recognise the potential for conflict between justice and welfare using the word " primary" rather than " paramount" in Article 3 in the context of the best interests of children (Workbook, pp 16 - 17). In practice, much would depend on the outcome of the efforts to find Richard's parents. If the case goes to trial, this would also be in the youth courts where the culture has changed considerably in recent years, partly because of the tension between the welfare and justice models. In a very high profile case in 1993, two children were convicted of the murder of another child, Jamie Bulger.

The intimidating nature of the trial was the subject of much criticism by human rights lawyers and in 1999, the European Court of Human Rights found that the trial breached Article 6. 1 of the European Convention on Human Rights (now incorporated into the Human Rights Act 1998) which guarantees people who are accused of crimes, the right to an effective participation in their trial. The resultant changes in the youth courts mean

the use of clear language, an informal layout, better information for victims, better feedback for magistrates and more frequent lifting of reporting restrictions (Workbook 3, pp 57 - 59).

If Richard pleads guilty, then as this is his first offence, a Referral Order under sections 1 - 7 of the Youth Justice and Criminal Evidence Act 1999 is likely. This would involve making a contract between Richard and the YOT aimed at reparation and prevention of re-offending (Law Card C32 (EW)). A not guilty plea means the magistrates must decide on his guilt, based upon the evidence. In the event of Richard's guilt being established, the next social work task is the preparation of the pre-sentence report "... the social worker's most important contribution to the youth court... (Workbook 3, p 60) which allows the court to make an informed decision based on comprehensive and accurate information about Richard.

The report would be written in accordance with the National Standards for Youth Justice with a number of standard headings: Sources of information, which would include information gathered from school and home, an analysis of the offence including the impact on the victim, an assessment of the offender including risk to the community and risk of re-offending and a conclusion that would include a sentencing recommendation. (Workbook 3 p 62).

The report must take into account the welfare principle of the Children and Young Persons Act 1933 as well as the aim of section 37 of the Crime and Disorder Act 1998 which is to prevent re-offending. It must be written in a way that is consistent with the core values of the Code of Practice for Social

Workers with anti-discriminatory practice being a particular feature in the light of an HM Inspectorate of Probation review finding that African-Caribbeans are over represented in reports that recommend custodial sentences (Workbook 3, pp 62 - 63). After reading the report the magistrates must decide upon a sentence.

A wide range is available, formerly under a number of different pieces of legislation but now incorporated into the Powers of the Criminal Courts (Sentences) Act 2000. In Richard's case a Supervision Order under sections 63-68 of the act is likely, or an Action Plan order under section 69. These orders can include specific requirements such as where Richard is to live, what he is to do, and compliance with his supervisor's directions. The orders can last for up to three years. At the other end of the scale, should Richard re-offend, then a Detention and Training order under section 73 of the Crime and Disorder Act 1998 would be available.

This would deprive him of his liberty (Workbook 3, pp 65 - 67 and Update Supplement, p 22) and increase the likelihood of an ongoing spiral of crime, the worst impact for Richard (Workbook 3, p 68). In conclusion then, it can be seen that conflict and tension feature strongly in youth justice. Some people argue that aspects of the Crime and Disorder Act 1998 are unnecessary if the resources were made available to allow Local Authorities to carry out their duty to prevent offending that is stated in schedule 2 of the Children Act 1989.

The 1998 act also has a preventative aim although only 2.5% of the budget is committed to it (Workbook 3, p 46). It is against this background that

social workers in youth justice face the challenge of how to operate in a system where the measures of success are constantly swinging between retributive and rehabilitative goals, without compromising their own Professional Code of Practice (Workbook 3, p 5).