



Human Times – ‘Employer Social Negligence’. HR’s Newest Priority?

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Why Smarter Vetting Has Changed the Way Companies Approach Background Checks

A company's reputation has never been more important – or more vulnerable. The recent wave of scandals and sensationalist stories implicating bad hires demonstrates two critical truths that the HR and business world are coming to grips with. First, there exists a significant shortcoming in the traditional approach to screening, which has shown to be inadequately equipped to address the full spectrum of threats that face today's businesses. The second, is that bad hires can incur large costs – in terms of loss of productivity, staff turnover and replacement costs as well as significant reputation damage – as public condemnation carries unprecedented weight and has the ability to mass mobilise via social media.

What does this mean for the screening industry and the majority of companies that subscribe to it? An examination of the origins of background checks suggests where the practice is headed.

Negligent hiring and preventative protection

Interestingly, the growth of the background check industry originated not with a strict need for qualification validation but rather with the effort to prevent claims of employer negligence. As the application of negligent hiring and retention expanded, employers were increasingly rendered responsible for the provision of safe work environments. This duty of care included, above all, protection from discoverable threats, where such threats could or should have been known via reasonable due diligence. The implementation of criminal record checks in particular, served to reduce employers' exposure to such liability. Meaning that, were an individual with a history of dangerous or untrustworthy behaviour to inflict harm on a colleague, the employer could be liable for exposing their staff to unsafe conditions for which there was identifiable precedent. Therein lies the catalyst to background checks becoming the standard practice we currently know – and have known for the past several decades.

Consequently, the legal repercussions, financial impact of damage awards and negative publicity (or the fear thereof) served as a key motivator to implementing prevention controls as a means of curbing violent incidents and physical harm in the workspace. But what of emotional harm? It remained largely unaddressed for two principal reasons. The first is cultural. Mental health simply wasn't recognised on the same level that it is today; where anxiety, depression and trauma have entered mainstream conversation and command increasing social awareness. The second, is technological. There previously were no practical means by which to gauge character outside of professional or criminal contexts. Hence the forced reliance of traditional screening practices on reference and criminal record checks. This has now changed fundamentally. Today, there exist vast digital data sources through which adverse behaviour can be identified to mitigate potential risks posed to a company's reputation, culture and existing personnel. While the intentional infliction of emotional distress (IIED) is an existing common law tort, it is reserved to 'extreme and outrageous' behaviour. 'Lesser' infractions, including unsocial behaviour, bullying and harassment, have to date been mostly ungoverned and unmitigated at the pre-employment screening stage.

The Chartered Institute of Personnel and Development (CIPD) asserts that “careless approaches to vetting risk employing the wrong people, with resultant damage in terms of increased turnover and costs, and lower morale. They also risk legal challenge, which can undermine an employer’s reputation.”

Digital communication platforms have not only transformed the manner in which humans interact globally on a daily basis but have also proven revolutionary in the way in which they systematically archive each interaction. This means that years of high volume online activity have built up a critical mass of data. Whilst querying this data must be regulated and carried out responsibly in its own right, the wealth of publicly available information enables the screening of adverse content to a greater degree than ever before. The conclusion can be drawn that, much in the same way that criminal records were viewed as a determinant of potential future misconduct, the same may be said for adverse digital footprints serving as a basis for preventing physical and emotional harm from occurring in the modern workplace.

Why Smarter Vetting is the way forward for HR and Executive teams alike

This critical junction is nigh. In fact, we are already witnessing the effects that modern technology and communication channels are having on an increasingly hypersensitive, politically correct (or incorrect) and polarised society. The evidence is in the headlines and investigations, suspensions and firings and the subsequent inevitable retractions and apologies. It is proving to be bad business to be linked to individuals with a history of, or a propensity for, racial epithets, sexist attitudes, homophobic slurs or otherwise unsavoury or unprofessional public behaviour.

What may appear like a clash between freedom of expression and freedom from prejudice is actually more nuanced. It is not the expression of pejorative sentiment in and of itself that may be contentious (*important to note that companies should **NOT** seek license to examine or monitor any private content or direct messages*) but rather the nature of its public broadcasting and impact on others in a professional context. Free speech is alive and well and more vociferous than ever thanks to the ubiquity of the social media soapbox – an individual (where such freedom of expression exists) remains as entitled to express and share their opinion as ever. What has changed, is that many statements no longer exist in a vacuum. In fact,

when a private individual freely chooses to publicly publish their comments online (frequently with the deliberate objective of gaining as many shares, likes and retweets as possible) they are no longer off the record – the content becomes a part of public narrative and consequently, is subject to inevitable scrutiny from myriad viewers – including their employers, colleagues, clients, the press and the public at large.

Smarter Vetting analyses all publicly available online sources to mitigate candidate risk.

What Smarter Vetting DOES and DOESN'T include:

DOES

- violent/criminal activity
- unprofessional conduct
- inappropriate/abusive behaviour
- discriminatory conduct
- slander
- financial impropriety
- conflicts of interest
- falsified/exaggerated qualifications
- disclosure of sensitive information
- security breaches
- extremist/hate group affiliation
- sanctions

DOESN'T

- age
- disability
- gender reassignment
- marriage/civil partnership
- pregnancy/maternity
- race
- religion/belief
- sexual orientation
- non-consequential data

Any contentious content posted on, or linked to, a public profile that can be readily associated with a given employer by extension may be damaging to said employer, their employees and clients. Furthermore, the ubiquity of social media, propelled by the boom of 'on the go' mobile usage has brought about the ability to not only 'check in' from the workspace but to live tweet or post on the job – and frequently, *about* the job. Owing to our new behavioural patterns and evolved digital capability, we have carried social media into the workplace. Every day is a '*bring your social media to work*' day.

Screeener beware!

Many companies have responded by expanding their screening processes in an effort to address the potential risks their new hires pose. These attempts, however, have shown to be largely insufficient in addressing the problem. To date, the background check industry has reacted with stop-gap

measures, manifested most commonly in basic keyword 'media' searches that carry significant limitations in terms of identity validation, non-contextualised findings and a troubling lack of comprehensiveness. Similarly, those who undertake ad hoc social media checks in-house are subject to the above limitations with the added risk of potential liability for discrimination. This is due to their de facto viewing of non-consequential data as well as protected characteristics (listed above) that cannot be legally considered towards a hiring decision.

Open Source investigations can be highly valuable to organisations but only if they are carried out responsibly by specialists to avoid the risk of unconscious bias and to maximise vetting ROI.

'Social negligence'

Let us return to the idea of negligent hiring in the face of inadequate, preventative, due diligence. We are now living with an unprecedented critical dataset of both live and archived content that is public, identifiable and actionable. Were an incident, for which there was precedent, to occur to the detriment of an employee, it begs the question whether the employer could be held liable noting that the act could have been prevented. After all, claims of negligence hinge on a breach of duty – in this case, failure to perform reasonable due diligence to prevent avoidable damage to a safe and productive work environment. Welcome to the era of employer *social* negligence.

According to ACAS, the UK's Advisory, Conciliation and Arbitration Service, "many employers are unaware that they can be liable for a range of actions committed by their employees in the course of their employment – these can include bullying and harassment, violent or discriminatory acts or even libel and breach of copyright."

There is now greater scope for protecting against such liability and shielding employees from abuse. The onus is on businesses to recognise the risks of this new landscape and to adapt responsibly to the ensuing rules of play. Public scrutiny has shown to be largely unforgiving of public inappropriate behaviour, whether current or dated, and affected companies are painfully aware – mitigating damage via designated PR representatives and crisis response teams to appease the public and

clientele alike with statements of disavowal, promises of action and pledges of higher standards and 'never agains'.

Thus, were a given employee to be harassed or subjected to racial or sexual aggression for instance, it is no longer solely the act itself that warrants scrutiny but equally, the employer's ability to have forestalled the incident altogether. In an age where mental health and invisible scars are receiving greater attention than ever before, the duty of employers to vet against all possible threats to their staff has become paramount.

The Greater Good

Now, organisations that promote diversity and inclusion and positive company cultures can proactively exercise their commitments to these values. Companies that utilise Smarter Vetting have the competitive edge as they onboard larger pools of lower-risk hires, allowing them to continuously reinforce positive workplace culture and values. Conversely, those who subscribe exclusively to traditional screening processes, validating only conventional biographical data, are more vulnerable to higher-risk candidates infecting company culture and staff morale as well as increasing employee turnover and associated replacement costs.

Progressive companies adopting a utilitarian perspective (greatest good for the greatest number), have demonstrated that applying Smarter Vetting affords them a proactive means of providing their personnel with a safe, healthy and productive work environment – a greater good. Under this framework, each individual undergoes screening with the understanding that they in turn will be similarly protected from future toxic candidates. As a result, both company staff and reputation are better insulated from third-party threats.

Compliance

Under the General Data Protection Regulation (GDPR), organisations must have a legal basis for processing personal data and screening itself must satisfy several conditions – chief amongst which are adherence to relevant jurisdictional compliance mandates and screening permissions (for instance, the extent to which social media platforms may be examined can vary from country to country), respecting personal privacy and preventing subjective decision-making based on protected characteristics.

Industry practitioners apply different approaches to background checks and it is worthwhile distinguishing those that provide in-depth, Smarter

Vetting versus surface keyword internet searches or no Open Source checks altogether. Given that the GDPR has imposed limitations on the execution of criminal record checks, querying existing providers in regard to the breadth and depth of their search capability has become all the more imperative to achieve maximum value and genuine protection against reputation and security risk. It is equally critical for data controllers to ensure that their data processors are transparent, ethical and responsible in their operations to maintain compliance under the GDPR. As per best practice guidelines, vetting should be outsourced to a specialist, objective third-party provider to forestall conflicts of interest, protect against claims of discrimination and prevent social negligence.

A shifting paradigm

The existing screening industry has demonstrated little substantive innovation since the adoption of criminal record checks as a preventative measure against claims of negligent hiring. While many companies have embraced social media for recruitment purposes, most have found it difficult to implement meaningful and responsible digital screening strategies. The paradigm, however, is shifting. Due to today's accelerating demand for companies to act as responsible corporate citizens, we are witnessing a growing expectation for employers to proactively demonstrate a greater duty of care towards their staff.

Modern organisations increasingly view screening as more than a binary validation process or box ticking exercise as the potential ROI of vetting has become greater than ever before. Companies using Smarter Vetting are better positioned to carry out checks that not only guard against negligent hiring but also proactively foster stronger workplace cultures, solidify brand integrity and promote safe and inclusive work environments. With this in mind, HR professionals and Executives alike ought to be asking themselves, in the new world of employer social negligence, *is my vetting smart enough?*

For further information, or to receive a free consultation on Smarter Vetting and intelligence-driven recruitment, contact the Mint Analysis Team at hello@mintanalysis.co.uk

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Mint Analysis (M.INT) is a London-based reputation protection consultancy specialised in Open Source Intelligence delivering Smarter Vetting and onboarding solutions.

M.INT helps good companies hire good people.

> Follow M.INT on [LinkedIn](#) to see next week's guide on '8 Steps to Smarter Vetting'.



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