



**POLICING AND CRIME BILL 2009: SECTIONS
RELATED TO PROSTITUTION AND
TRAFFICKING**

UKNSWP: BRIEFING PAPER 3



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www.uknswp.org.uk

FURTHER INFORMATION

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You can go to our website to download a copy of our initial full response to the Home Office “Tackling The Demand for Prostitution: A Review” & the “Policing and Crime Bill”

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1.ABOUT UKNSWP

The UK Network of Sex Work Projects is a voluntary sector umbrella organisation to which projects providing support services to sex workers can affiliate. UK NSWP is a charity which facilitates networking and the sharing of good practice in the provision of support services for sex workers. The aim of the UK NSWP is:

“To promote the health, safety, civil and human rights of sex workers, including their rights to live free from violence, intimidation, coercion or exploitation, to engage in the work as safely as possible, and to receive high quality health and other services in conditions of trust and confidentiality, without discrimination on the grounds of gender, sexual orientation, disability, race, culture or religion”

Our criteria for assessing policy and law relating to prostitution is that it should enhance the health, safety, civil and human rights of sex workers and enable the provision of accessible, quality & needs based support services.

Annually UKNSWP has 60 member projects who offer frontline support services to and have direct contact with thousands of female and male sex workers throughout the UK. UK NSWP facilitates the sharing of good practice in the provision of support services for sex workers and promotes the health and safety of sex workers. Members are well placed to observe the impact of laws and policies on sex workers and on targeted services themselves.

2.INADEQUATE AND SELECTIVE EVIDENCE

The UKNSWP is alarmed by the inadequate and selective evidence on which the Bill's provisions relating to prostitution and trafficking appear to be based and fears that this may mislead parliamentarians.

- The Home Office have never explained the origin of their 2003 estimate that there are 4000 trafficked persons involved in the sex industry. There is no evidence whatsoever for the much higher claims (18,000 and 25,000) that have been made by some MPs. The Pentameter operations involving all police forces identified fewer than 300 such persons.

- It is frequently stated that 80% of sex workers in the UK are from overseas. This is entirely false. It is acknowledged that a high proportion of women working in brothels in the London area are from overseas. This is not the case in most areas outside London where the proportion of migrant sex workers varies considerably, while street sex work is almost entirely populated by British women everywhere in the country.
- It is also frequently stated that a high proportion of sex workers are drug dependent. High levels of drug dependence have indeed been found among street workers (by researchers and support projects) but not among indoor sex workers.
- Assertions that a high proportion of all sex workers were first involved through the coercion of another person or under the age of 18 are similarly unsubstantiated. Available research suggests varied life histories, age at entry and reasons for involvement in sex work, varying across different sectors and sex working populations. N.B. UKNSWP and its members approach the involvement of under 18's as sexual exploitation and abuse and support the national statutory guidance that recognise it as such.
- The discussions around the proposals have almost entirely referred to "women" and ignored male and transgender sex workers.
- "Tackling the Demand for Prostitution: A review" made the recommendations now enacted in the proposed legislation in the "Policing and Crime Bill". This review made extremely limited reference to the academic research in this area, and to the literature review which the Home Office themselves commissioned. We are still awaiting the publication of the literature review, which it was claimed would establish an evidence base from which proposals would be made.

3. CLAUSE 13: CRIMINALISATION OF THOSE WHO PAY FOR SEX WITH A PERSON 'SUBJECT TO FORCE, DECEPTION OR THREATS'.

The UKNSWP welcomes the change to 'force, deception or threats' from criminalisation of those who pay for sex with a person 'controlled for gain'. This change implicitly acknowledges that the terminology 'controlled for gain', used in the Sex Offences Act 2003, as well as in other clauses of the Policing and Crime Bill 2009, does not only capture abusive forms of 'control', but has the potential to criminalise non-abusive relationships where no force, deception or threats have been used against the sex worker(s) concerned. Indeed, several prosecutions have taken place for 'controlling for gain' where no such abusive behaviour has been demonstrated.

However, the UK NSWP also wishes to stress that even with this amendment, criminalisation of paying for sex will not address many important issues:

- It does not address sex workers' exposure to violence since violence against sex workers is frequently associated with *refusal* to pay. Criminalising payment for sexual services could increase this kind of violence and make prosecutions for violence more difficult.
- Criminalisation of clients through kerb-crawling legislation already undermines street sex workers' safety by making their activities more covert and criminalisation of clients who patronise indoor workers is likely to have the same effect.
- UKNSWP also consider this approach to be ineffective and potentially counter-productive in addressing trafficking and coercion, since clients who might be helpful in reporting such situations will be discouraged from doing so for fear of incriminating themselves.
- *The proposed offence should specify that the crime is knowingly paying for sex with someone who has been trafficked or forced by another individual. Any such offence should not be a strict liability offence. Those accused of this offence should have the opportunity to show they did not know someone was "subject to force, deception or threats".*

CLAUSE 15: REMOVAL OF THE TERM 'COMMON PROSTITUTE'

The UKNSWP does not support the ongoing criminalisation of loitering and soliciting but welcomes the removal of the term 'common prostitute' from the 1959 Street Offences Act.

Having scrutinised the proposed legislative changes it is unclear in practice how the amendments to the offence of loitering or soliciting for the purposes of prostitution would significantly "decelerate" the criminalisation of people soliciting on the street. Currently police are required to issue two street cautions, before someone can be charged with loitering. In practice these two cautions may be issued within one evening, over a couple of days, weeks or over a much longer period.

The proposed changes add the word "persistently" and state that the offence is only committed if the person acts persistently, defined as "conduct which takes place on two or more occasions within any 3 month period".

Hence in practice someone could still be charged within a short period of a day, several days or over a week and up to a three month period. Whilst it does create a 3 month "deadline" after

which the person would have to be seen again by police officers soliciting on two or more occasions, it does not provide a meaningful “deceleration” of the criminal process in the context of the work patterns of the majority of people involved in street sex work. Working patterns do vary and include a section of people soliciting only occasionally and intermittently. Yet the reality for the majority of women involved in street sex work is that the factors that lead to their entry into street sex work and continued involvement, particularly problematic drug use, mean that most have to solicit regularly, often every day. Hence most could still very easily become quickly caught up in the criminal justice system under the proposed legislation. ***There is also a danger that such legislation could encourage intensive short term policing operations which criminalise large numbers of women.***

This is another example of how the “Review of Demand” and proposals emanating from it again represents a piecemeal approach to the development of legislation relating to sex work and leaves in place fundamentally problematic legislation which criminalises women involved in street sex work, with all the associated detrimental impacts.

CLAUSE 16: ORDERS FOR SEX WORKERS CONVICTED OF SOLICITING

The UKNSWP does not support the proposed orders:

- The proposed order continues to criminalise street sex workers and reinforces a coerced criminal justice approach rather promoting voluntary engagement. ***The experience of member projects which operate voluntary court diversion programmes shows that compulsion is not necessary. Our members are happy to advise on such schemes and the learning from them***
- Adequate and sustained funding for interventions to assist street sex workers is required but no funding has been committed to support work with those to whom the orders would apply. Supporting street sex workers to address the reasons for their involvement needs investment in harm reduction, health care, housing, drug care, mental health support and exit strategies including education and employment support is vital. Without such resources the proposed order sets up a vulnerable group up to fail.
- The idea that someone can ‘exit’ an entrenched and complex lifestyle by attending 3 meetings is entirely in contradiction to the research literature on desistance and change (including Home Office funded research such as Hester and Westmorland, 2004).

- It is unclear what will happen if the orders are breached. There is concern that women could end up on a treadmill of broken orders, unattended meetings and unproductive intervention. It is not long since it was claimed that using ASBOs against street sex workers would produce the results now hoped for from the proposed orders. They did not work: on-going contact with support services was disrupted; many women were imprisoned for breaching ASBOs, and the problems behind their involvement in street sex work were not addressed.
- ***If orders are introduced there should be clear guidance that they should not be the primary means of offering support to street sex workers. Intervention should be taking place at a much earlier stage, with few women coming into the criminal justice system via soliciting charges, as is advocated in the national strategy on prostitution. Central government must ensure local areas have adequate funding for outreach and support projects which engage people on a voluntary basis, are able to offer a range of support interventions, including voluntary court diversion schemes.***

CLAUSE 18: CHANGES TO OFFENCES OF KERB-CRAWLING AND SOLICITING TO OBTAIN SEXUAL SERVICES

The UKNSWP does not support the increased targeting of street sex workers' clients that is aimed for in this provision.

- Research evidence and reports from projects working with street sex workers demonstrate that rigorous enforcement of legislation against both soliciting and kerb-crawling results in street sex workers operating in more isolated, unfamiliar and unsafe areas to avoid police surveillance, and less time to assess or negotiate with clients. Reduced numbers of clients means that women have to work longer hours to earn the money they require, creating more conflict with residents, extending the time they are exposed to the dangers of street work and increases "risk taking" in terms of health and personal safety. Rigorous enforcement also causes displacement and dispersal of street sex work and makes it more difficult for support services to engage with and maintain support for street sex workers.

CLAUSE 20 AND SCHEDULE 2 : CLOSURE OF PREMISES LINKED TO SEXUAL EXPLOITATION

The UKNSWP has grave concerns about the proposed closure orders and does not support their introduction. We fear in their current proposed form they will be used to disrupt indoor sex work settings which provide safer working conditions:

- Projects affiliated to the UKNSWP have extensive contact with indoor sex workers. Twenty-six projects in England responding to a recent UKNSWP survey reported contact with a total of 6569 indoor sex workers during 2007/8. The majority of these work in 'brothels' (saunas, massage parlours and sex flats). The consensus in the UKNSWP, supported by much academic research, is that this style of sex work is far safer than street work, less associated with other harms as well as causing far fewer neighbourhoods nuisance problems.
- Schedule 2 section 136A specifies that the grounds for closure notices and orders against premises where it is suspected that 'specified prostitution offences' have taken or may take place includes offences under section 53 of the 2003 Sex Offences Act. Section 53 (SOA 2003) relates to '**controlling for gain**'. The explanatory notes gave as an example of behaviour that might be caught by this offence "*where A requires or directs B to charge a certain price or to use a particular hotel for [their] sexual services [...] and B complies with this request or direction*". This definition of 'control' would apply to numerous responsible and non-exploitative relationships in many types of sex work.
- As indicated above with reference to the changes to Clause 13, the wide reaching term "controlled for another persons gain" can encompass a range of people involved in selling sex, from those vulnerable people the law says it intends to protect, as well as those who are voluntarily working with others (including family members) involved in the organisation of their sex work. For instance, those who work collectively in massage parlours and brothels, or two women who work together sharing the rent costs could also be included. Escort agencies and websites that charge a fee for organising bookings, and hotels that rent out rooms where individuals can meet clients, might all come under the definition of 'controlling for gain'.
- The UKNSWP therefore fears that these closure powers would be used against any establishment where prostitution was suspected to take place, rather than targeting those where trafficking or other coercion is suspected, despite the rhetoric from the Home Office to the contrary.

- Indiscriminate closure of indoor sex work premises would make it very difficult for projects to make or maintain contact with sex workers and would significantly jeopardize relationships between managers, sex workers and outreach projects which are fundamental to successful work on safety, sexual health, harm reduction & routes out.
- It would also be more difficult for the police to identify those premises where exploitative and unscrupulous individuals are operating. Those who currently work with official agencies (including reporting violence and suspected coercion to the police) will be less inclined to do so.
- Indoor sex work will become more covert, more indoor workers will operate entirely alone and some may turn to street work, all of which will make sex workers more vulnerable to violence and other harm.
- **The UK NSWP therefore recommends that clause 20 and Schedule 2 section 136A of the Policing and Crime Bill 2009 (Closure of Premises linked to sexual exploitation) and section 53 of the Sex Offences Act 2003 be similarly amended to remove the definition 'controlled for gain' and replace with 'subject to force, deception or threats'.**
- *UK NSWP supported previous government proposals to redefine the definition of a brothel to enable two or three women to work together to provide a safer working environment. We would still support such a measure.*

CONCLUDING COMMENT: ADDRESSING VIOLENCE & ENHANCING THE SAFETY OF SEX WORKERS

Our members are very disappointed that the government has announced no legislation or initiatives that address violence against sex workers and improve their safety. Enhancing the safety of sex workers and addressing violence against sex workers should be a priority for policy

makers. Yet as this document has explained there are worries that some of the proposals will have a detrimental impact on sex worker safety and will dilute police efforts to target violent and exploitative individuals. UKNSWP has continued to bring to the attention of government initiatives which could make a contribute to practically addressing violence against sex workers. UKNSWP is more than happy to discuss such initiatives further and share good practice developed by support projects more broadly on support services for sex workers. There is a wealth of knowledge amongst the professionals working in the projects within our network regarding effective health and social care support interventions for sex workers.