



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

UKNSWP: BRIEFING PAPER 2



4th February 2009

www.uknswp.org.uk

FURTHER INFORMATION

If you wish to discuss this response further please contact one of the following board members of UKNSWP:

Sian Kilconnors (Board Member & Co-Chair UKNSWP Policy Group)	sianpalma@yahoo.co.uk
Dr Teela Sanders (Academic Representative, UKNSWP)	T.L.M.Sanders@leeds.ac.uk
Rosie Campbell (Chair, UKNSWP)	rosiecamp1@aol.com

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”

**UK Network of Sex Work Projects
Unit 14, Cariocca Business Park
2 Sawley Road
Miles Platting
Manchester M40 8BB
Tel: 0161 629 9861
Fax: 0161 202 2132
Email: info@uknswp.org.uk**

Website: www.uknswp.org.uk

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.

UKNSWP has 63 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 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 ‘CONTROLLED FOR GAIN’.

The UKNSWP does not support the criminalisation of those who pay for sex with a person ‘controlled for gain’.

- 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.

- Our key concern with the proposed offence is use of the wide reaching term “controlled for another persons gain” which 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 proposed offence has the potential to criminalise a large proportion of men who buy sex. It would oblige police to target a very wide range of clients, thus diverting them from pursuing those who are abusive to sex workers. This includes diverting attention from investigating and prosecuting those who pay for sexual services with someone under 18 years old. This is already an offence but the legislation has not been widely enforced.
- UKNSWP also consider this approach to be ineffective and potentially counter-productive in addressing trafficking and coercion.
- It is feared that the proposed offence could be utilised as an opportunity for the entrapment and blackmail of male, female and transgender sex workers and their clients.
- ***The UKNSWP believes this proposed offence should be dropped. However, if the government is determined to persist with an offence targeting people paying for sex with trafficked or coerced people, the language of “control for another person’s gain” should not be used. The legislation should be redrafted to focus on violent and exploitative individuals and on those people who know a person is trafficked or forced into prostitution. It 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 “trafficked” or “forced”.***

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 then 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, but 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.

If the government are determined to maintain soliciting legislation, but want to make a more meaningful change to “decelerate” and reduce the cycle of criminalisation, they should specify a much shorter time period than 3 months and increase the number of times that a person was evidenced to be soliciting before being charged e.g. 3 or more occasions within a 1 month or 2 week period. Even with such amendments we are very mindful that this leaves in place a problematic legal framework, which criminalises women involved in street sex work, with all the associated detrimental impacts. There is also a danger that such legislation could encourage intensive short term policing operations which criminalised 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.

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.***
- 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 Sexual 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.
- 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.
- ***If the government is determined to press ahead with closure orders, the legislation should clearly be worded to ensure that they are used for premises where there is evidence that trafficking or other forms of forced prostitution are taking place and not for the general closure of indoor sex work premises.***
- ***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.