Written evidence submitted by the Sex Work Research Hub

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Whether criminal sanction in relation to prostitution should continue to fall more heavily on those who sell sex, rather than those who buy it

1 There is an extensive body of academic evidence demonstrating that criminalising any aspect of sex work has detrimental effects for sex workers, in terms of their safety and also the reporting of crimes against them (see: McKeganey and Barnard, 1996; O’Neill 1997, 2008; O’Neill and Campbell, 2002; Pitcher et al, 2006; Kinnell, 2006). Statistical evidence from the National Ugly Mugs scheme (2016) shows areas where police enforcement is high are correlated with low levels of crime-reporting by sex workers, and therefore low levels of intelligence about serious perpetrators. Pitcher and Wijers’ (2014) paper demonstrates that an enforcement-based approach can deter sex workers from approaching the police when violent or other crimes are committed against them. Not only does this relate to the criminalisation of those who sell sex, but also those who purchase sexual services (which includes people with disabilities who may otherwise find it difficult to form such relationships). Such a move to increase criminal sanctions would take away the rights of adult clients to purchase sex as well as the many adult sex workers who engage in consensual commercial sex. Pitcher’s (2015a) research on indoor sex work points to the implications of criminalising the purchase of sex which includes: removing workers’ right to a legitimate income (currently many independent sex workers are working legally as self-employed operatives) and increasing their social exclusion. Furthermore, criminalisation risks making their work more hidden because of the threat posed to their clients, including the many regulars with whom they currently report positive relationships. Research also demonstrates that street-based sex workers, and those working opportunistically, can have positive or, at worst, neutral relationships with clients (Laing and Irving, 2013). Many sex workers would prefer to work collectively for safety and companionship and to retain control over their working conditions. However, the current laws prohibit this because they would be defined as working in a brothel, which means that many people continue to work alone in less safe working environments where they are more susceptible to exploitation or violence (Cruz, 2013; Pitcher, 2015a).

2 The public health evidence strongly supports the removal of criminal sanctions against those who sell sex and those who buy it. Extensive research demonstrates how such sanctions exacerbate violence against sex workers (Krusi et al 2014; Sherman et al 2015; Shannon et al 2014). A recent systematic review showed that female sex workers who had previously been targeted by sex work criminalisation were up to seven times more likely to experience violence (Deering et al 2014). In London, for example, female indoor sex workers who had been arrested or imprisoned were 2.6 times more likely to have been assaulted by a client in the past year, regardless of where they worked, and whether or not they had a partner, were born in the UK or used drugs (Platt et al 2011).
3 Recent research shows that these harms are reinforced when criminal sanctions are moved from sex workers to sex buyers. In Vancouver, during a pilot period of enforcement against clients, sex workers explained how this model reduced their capacity to be selective over and screen out dangerous clients, with consequences including being forced to provide sexual services without payment (Krusi et al 2014). Fear of arrest, deportation, not being taken seriously by police or being publically identified deter sex workers from reporting violence against them including where clients are criminalised, and sanctions against clients are likely to discourage co-operation with police to report exploitation and trafficking (Mai 2009).

4 Criminal sanctions also harm sex workers’ broader health and access to care. Data from multiple countries link criminalisation of sex work with up to a 5-fold increase in risk of HIV infection or other sexually transmitted infections, and up to 4 times the likelihood of accepting more money for being pressured into or engaging in unprotected sex with clients (Erausquin et al 2011; Zhang C, et al 2013). In the UK, police raids on venues have disrupted access to outreach services (Boff 2012) shown to be vital for sexual and broader health; while in Sweden, anti-harm reduction policies accompanying the sex purchase ban leave sex workers without access to services to protect their health (Levy and Jakobsson 2014).

5 By contrast, decriminalisation is linked to considerable health benefits. In New Zealand, since the removal of criminal sanctions against adults who sell and buy sex, sex workers report being better able to refuse clients and insist on condom use, amid improved support from managers; and over half feel that police attitudes towards sex workers have improved (Abel et al 2007). Meanwhile, mathematical modelling estimates that decriminalisation could avert up to 46% of cases of HIV infection among sex workers and clients over a decade, if coupled with reduced client violence and police harassment, safer work environments and increased condom use (Shannon et al 2014), changes that experiences thus far in New Zealand suggest are achievable (Abel 2014).
6 From a public policy perspective, decriminalising sex work and defining it as a ‘real’ form of labour would ultimately serve to increase public revenues via taxation. ONS figures on the contribution of sex work to GDP suggest that the government may be missing out on a significant level of directly taxable revenue (see Brooks Gordon et al 2015). Of course, the income generated via sex work will invariably feed back into the economy and have local multiplier effects as sex workers spend the money they earn on housing, clothing, food and so on. Relatedly, by decriminalising sex work, national and local governments could save money in the short to long term as a consequence of diverting resources away from policing sex work (e.g. planning and conducting raids on brothels unless there is solid evidence of sexual exploitation and/or other criminal offences) to investing in peer-led sexual health and support programmes and engendering more positive relations and trust with the Police which would help them reduce costs in investigation crimes, especially murder, against sex workers.

What are the implications are for prostitution-related offences of the Crown Prosecution Service’s recognition of prostitution as violence against women

7 First, there is a problematic assumption that prostitution equals violence against women. However, studies show that there is a distinction between street-based sex work and indoor-based work, with indoor workers being generally less vulnerable to violence than their street-based counterparts, especially when they can control their working environment and work with others (Church et al, 2001; Jeal and Salisbury, 2007; Prior et al, 2015; Pitcher, 2015b). There is a considerable base of research showing that sex workers experience positive relationships with many of their clients, especially regular clients, and that many encounters take place without incident (Pitcher, 2015a). There is also evidence that violence is decreased where systems are in place for regulating establishments and protecting sex workers (Brents and Hausbeck, 2005; Hubbard et al, 2013; Pitcher and Wijers, 2014). Furthermore, as Sanders and Campbell (2007) demonstrate, measures can be put into place to reduce crimes against sex workers and thus violence is not an inevitable consequence of sex working.
Second, this policy ignores the fact that sex workers also include male and transgender people. Many policy initiatives ignore diversity amongst sex workers and thus contribute to their social exclusion (Laing, Pilcher and Smith, 2015). While the current evidence base suggests a majority of street-based sex workers are female, research shows that street-based sex workers only comprise just over a quarter of sex workers in the UK (TAMPEP, 2007; Pitcher, 2015b). The large proportion of the sex working population in the UK works in diverse indoor settings, particularly in independent work. A recent study by Pitcher (2015b) estimates that women comprise just over 80 per cent of indoor sex workers, with more than 17 per cent of indoor workers being male and just over 2 per cent transgender. A policy which defines prostitution as violence against women thus ignores the service needs of male and transgender sex workers, who may also be vulnerable to violent and other crimes against them (Laing and Gaffney, 2014). The exclusion of men and transgender people from criminal justice processes through language is stigmatising and especially problematic since male sex workers have consistently been written out of policy making processes in England and Wales for a number of years despite prostitution law being gender neutral (Whowell, 2010). Research has shown that men often experience multiple forms of stigma through their engagement in sex work, often in the context of their minority sexuality and sex working status (Bryce et al, 2015). Maintaining a false heteronormative dichotomy where women are always sex workers and men clients is simply inaccurate and fails to recognise the diversity of the sex industry, with men, women and transgender people being both sellers and buyers of sex (Smith, 2012; Kingston and Hammond, 2015).

What impact the Modern Slavery Act 2015 has had to date on trafficking for purposes of prostitution; what further action is planned; and how effectively the impact is being measured
It appears that thus far the Modern Slavery Act has had a somewhat limited positive impact upon trafficking for sexual exploitation and instead has led to the further exploitation of migrant sex workers. Protection provisions have not been extended under the Act and many in the voluntary sector believe that the 45 day recovery and reflection period remains too short, particularly for those who wish to claim asylum in the UK (Connelly 2016).

The Act also draws upon a highly-damaging analogy between contemporary trafficking and the trans-Atlantic slave trade. Yet this analogy fails to recognise that while trans-Atlantic slavery involved the coerced movement of people, those that are labelled as victims of contemporary trafficking are often voluntary migrant sex workers (Agustin, 2007; O’Connell Davidson, 2012). The label of victim may be applied to these sex workers in order to justify their deportation, under the noble guise of anti-trafficking. Furthermore, the Act has done little to help victims of trafficking or migrant sex workers because it has been implemented alongside increasing restrictive immigration practices. Without legitimate routes of entry in the UK, migrants are forced to engage in riskier practices, which leave them more vulnerable to exploitation. Though the Act itself symbolises a shift away from only viewing human trafficking through the lens of prostitution (to include greater focus on forms of labour exploitation), it has not done enough to ensure this is reflected ‘on the ground’. As such, the conflation of trafficking and voluntary sex work continues to pervade policy and practice, to the detriment of the safety of sex workers; prostitution policy continues to be based more upon morality than a sound evidence base.

Whether further measures are necessary, including legal reforms, to:

◦Assist those involved in prostitution to exit from it
◦Increase the extent to which exploiters are held to account
◦Discourage demand which drives commercial sexual exploitation.

Assist those involved in prostitution to exit from it -

There is no doubt that additional measures are needed to assist and support those who wish to exit prostitution. There are, though, two key phrases in the previous sentence – first, that the individual in question wishes to exit, and second that the measures be designed to assist. It must be considered that some sex workers will not wish to exit, and initiatives designed to facilitate exit should not be undertaken at the expense of providing support to those who continue to sell sexual services. There needs to be greater reflection on the diversity of sex work, which encompasses many different ways of selling sex and a diverse array of sex sellers. Policy that develops from the presumption that there is a need to assist exit tends to assume that all of those that are involved in prostitution are victimized women, whilst the reality is significantly more complex. A one size fits all approach is unlikely to be productive in this context, and more nuanced approaches are required to serve the more complex and varied needs of those individuals involved in sex work.
What is crucial is that realistic opportunities are created for those individuals who wish to do so to adopt alternative lifestyles: this means making drug and alcohol dependency treatments more readily available, ensuring access to counselling support for those who wish to have it, providing a range of educational and training opportunities, linking exit to alternative forms of employment that offer an adequate living wage, providing concrete assistance with childcare responsibilities, and more broadly facilitating in tangible and holistic ways individuals’ greater social integration and inclusion. What is not required, and is highly unlikely to produce any positive impact, are heavy-handed interventions that compel exit (either explicitly, or through thinly-veiled ‘incentives’ that carry repressive consequences for non-compliance) or initiatives that are insufficiently resourced and ill-equipped to respond to the complex desires and disadvantages that are experienced by many of those who currently sell sexual services. In this respect, Scoular and Carlile’s recent evaluation (2014) of engagement and support orders (under section 17 Policing and Crime Act 2009) is instructive, since it demonstrates that the use of ‘compulsory rehabilitation’ often further isolates those who are involved in the most vulnerable sectors of the sex work industry, negatively impacting upon their trust of, and engagement with, outreach organisations, hampering the ability of such organisations to conduct their harm-reducing work outwith the shadow of the criminal justice system.

Increase the extent to which exploiters are held to account –

Much of the response to this question hangs on the interpretation of the notion of ‘exploitation’. If by ‘exploiter’ we mean those who traffic persons in order that they provide sexual services against their will or in order that they may be put to work in conditions that constitute servitude, there is indeed a strong mandate for hefty punishment, but the provisions are already in place within the current (domestic and international) legislation to permit this; and the more significant obstacle lies in the difficulties associated with building prosecutions in such cases. If by ‘exploiter’ we mean those who run brothels or live off the earnings of prostitution, the position is more complicated. Again, provisions are already in place within current legislation to enable their prosecution, but it is far from clear – based on decades of research on divergent models of policing and their impact on sex markets and sex workers – that a focus on criminal enforcement is the most productive or progressive approach.
More broadly, linking prostitution with exploitation in this blanket manner makes it difficult to distinguish the different levels of harm that may be encountered in the sex industry, and makes it unlikely that criminal efforts will be appropriately targeted and measured accordingly. Reporting mechanisms via the National Ugly Mugs scheme, for example, have proven much more useful in tackling the actual forms of harm that sex workers most often speak of, and the efforts of the criminal justice system would be better directed towards working alongside such mechanisms to address these experiences in productive ways that empower sex workers. Evidence shows that where sex work is decriminalised in part, as in NSW (Australia), or in full (as in New Zealand), sex workers are better able to manage their working environment and assert their employment rights, which include being able to refuse certain clients and report instances of violence to the police (Abel et al, 2010; Donovan et al, 2012; Campbell, 2014).

Discourage the demand which drives commercial sexual exploitation –

To assume that demand is the primary driver of commercial sexual exploitation is over-simplistic and fails to acknowledge the multifarious push and pull factors (which can be grounded in inequalities) that lead to entrance into the sex industry. In jurisdictions where purchase is criminalised (e.g. many US states, Sweden, Norway) there is little clear evidence that concerted attempts to reduce demand have stopped supply or significantly diminished demand. Robust and reliable data on the impact of ‘tackling demand’ in terms of reducing the size of sex markets and encouraging ‘exit’ from prostitution is hard to locate, but the evidence we do have is that too much attention is given to reductions in numbers of kerb crawlers and not enough to the purchase of sex in clubs, private flats and via webcams. Attempts to criminalise purchase tend to change how sex is bought and sold, not the overall supply and demand (Levy, 2013).
16 Here, it is important to note that, as with those who sell sex, those who purchase it form a very diverse group with varying motivations (Sanders, 2008; Atchison, 2010). Once again, therefore, a one-size-fits-all approach to demand is unlikely to be effective. Further, if the primary means by which we measure ‘success’ in this context is not reduction of the visible scale of markets but improvement in the quality of life of those involved in prostitution, the prognosis for success is much more limited. Interventions that target purchasers will displace sex workers, compelling them to undertake more hurried transactions and to operate in physical spaces that are less visible and, thus, more risky. Absent the kind of social and economic support mechanisms which would at least enable those who wish to do so to ‘exit’, reducing demand will do little other than reduce visibility. This will leave sex workers in an increasingly precarious position, potentially reducing prices and engaging in less safe practices in order to become more competitive in a shifting marketplace, and encountering increased levels of poverty and exclusion as a result. In this respect, it could be argued that criminalising demand fuels the exploitation of sex workers, making their working conditions harsher and making them more reliant on third parties for protection (Scoular, 2015).

17 It is important not to overstate the abilities of criminalisation to modify behaviours for which there are a range of complicated motivations and drivers. Activities such as kerb-crawling are already criminalised but this has done little to ‘stamp out’ their occurrence (Sanders, 2008). Moreover, provisions under the Policing and Crime Act 2014, which target the purchase of sexual services from an exploited individual have been rarely enforced and had very little practical impact (Kingston and Thomas, 2014). Extending these provisions to cover all sexual transactions sits at odds with the preferred methods for policing sex work amongst many police forces in England and Wales. Moreover, considerable care would be needed to ensure that the type of media campaign required to accompany such legislation did not perpetuate problematic stereotypes in relation to the purchase of sex, that stigmatises buyers and sellers alike, and prioritises an individualised focus on client demand over a more complex engagement with the structural push and pull factors (poverty, inequality, social exclusion, addiction) that drive prostitution (Sanders, 2008).

FULL REFERENCES ARE AVAILABLE ON REQUEST