A civil remedy alternative to the criminalisation of demand for sexual services

The comments below are based on research I conducted on private law responses to sex trafficking. This research has produced several academic articles and the monograph *Sex-Trafficking: A Private Law Response* (Routledge 2013). I have given evidence in the past with regards to the Modern Slavery Bill (which was cited in the Joint Committee Report), and advised several domestic and international NGOs and legal practitioners on this subject.

The major claims I make in the book are as follows:

1. That a victim of trafficking ("VOT") has a right to both tort damages and full restitution of the profit made at her expense (a point which is not clear from existing case law, but has some support).
2. That a VOT has a right to sue the state for what was confiscated from the trafficker as the proceeds of crime and reflects, by way of tracing, amounts the trafficker made at her expense.
3. That a VOT can sue clients to whom she has provided sexual services, based on the tort of battery (and more controversially, in conversion) even if the clients were not aware that she was a VOT – namely, that the liability is strict.
4. That a VOT can sue in negligence, within several temporal and spatial restrictions, clients of sexual services to whom she did not provide services, based on the fact that indiscriminate consumption of commercial sex, without the ability to tell who has been trafficked and who has not, contributed factually and legally to the fact that the VOT was trafficked, and amounts to a breach of a duty of care owed by the client to the VOT. For difficulties explained in the book, the appropriate remedy is a significant yet flat amount, falling short of the principle of full compensation (the amount that the victim’s trafficker is liable to pay her), and the claimant can accumulate this amount from any client who contributed – factually and legally – to the claimant having been trafficked.

5. That the use of private law as one response to trafficking can partially respond to some of the critique mounted against the use of criminal law against criminalisation of the purchase of sex (be it under the Swedish model, or the English model as manifested by s 53A of the Sex Offenders Act 2003 as amended). In particular, civil liability of clients (accompanied or not by criminal responsibility) adequately balances the interests of clients, VOTs and women who sell sexual services and do not see themselves as victims.

6. That while VOTs suffer from limited access to justice, experience suggests (mainly the Israeli experience which I have researched alongside the UK experience) that a private law response is possible and useful. Moreover, the state is under an obligation to improve VOTs’
access to justice so that the causes of action discussed in the book would become more effective.

Focusing on prostitution more generally, I would like to make the four following comments and recommendations:

**The evidence against the Swedish model is shaky**

In my book (pp 163-9) I surveyed the evidence backing claims that criminalising clients undermines the interests of both VOTs and non-forced prostitutes (I prefer the term CSP – commercial sex provider – to ‘prostitute’).

After acknowledging the methodological difficulties in researching prostitution, the picture I found seems to be as follows: There is certainly no evidence that criminalisation increases the number of victims. If anything, the number of victims is expected to be lower, since criminalisation increases the costs of doing business for traffickers. Support for such a prediction was found in the research of Jakobsson & Kotsadam¹ and in a study produced by Transcrime for the European Parliament.² The Transcrime study found that generally speaking, violence in the trafficked prostitution market does not seem to be strictly dependent on the model of prostitution. Nevertheless, if one were to express a general rule it seems that the models allowing for outdoor and indoor prostitution (but prohibit either profiting from another person’s

prostitution or brothels) are those which may develop a slightly higher level of violence than other models.

The merits of the Swedish model in general and its arguable negative effects on the well-being of (mainly street) non-victims are hotly debated. The Swedish Government in a 2010 review of the Prohibition of Purchase of Sex Act\(^3\) claims that it has been successful and that, among other things, the law serves as a barrier to human traffickers; that it halved street prostitution without evidence of displacement into indoor prostitution; that the law had a deterring effect so that demand was decreased; and that there was no indication of either increased risk or worse living conditions of CSPs; it also claimed that the ban was supported by those who extricated themselves from prostitution while criticised by those still in prostitution.\(^4\)

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The report has been criticised as lacking in evidence and methodology.\textsuperscript{5} Some of this critique, however, is inconsistent. For example, critics of the Swedish model, and more generally, abolitionist models, find insufficient evidence of a reduction in consumption, yet accept that the industry is going underground (a claim contested by some abolitionists\textsuperscript{6}), and that this has detrimental effects on CSPs.\textsuperscript{7} However, if there is no deterrence, why is there an underground effect? There is also a discrepancy between the predictions of economic models, which suggest that criminalisation should lead to decreased demand, supply and equilibrium price, and some empirical research suggesting an underground effect without decreased demand, but merely displacement.\textsuperscript{8} Yet, according to the Malmö Prostitution Knowledge Centre, there has been an estimated drop of 20\% in the overall number of CSPs in Sweden (from 1,850 to 1,500) in the relevant period, a point obfuscated by Dodillet and Östergren, who describe the figures as ‘similar’ before and under the ban.\textsuperscript{9} Others came with a much lower estimation (650)

\begin{footnotesize}

Police (cited by Waltman, id, at 459) cited wiretapping showing traffickers and pimps disappointed with low demand in Sweden.


\textsuperscript{6} Waltman (n4) 462.

\textsuperscript{7} Dodillet & Östergren (n5) 14, 22.

\textsuperscript{8} See M Della Giusta, ‘Simulating the impact of regulation changes on the market of prostitution services’ (2010) 29 Eur J of Econ 1, 7.

\textsuperscript{9} (n5) 11.

\end{footnotesize}
of the total number of CSPs after the ban (compared with around 5,500 in the equivalent period in Denmark in which prostitution is legal).\textsuperscript{10}

The likelihood of displacement relates also to the persuasiveness of the concern that criminalisation increases fears for the safety of (mainly street) non-victims, due to either a sorting effect, in which the proportion of dangerous clients increases due to a decrease in demand or displacement of other clients, or a lesser ability to screen dangerous clients, since criminalisation requires a quick conclusion of negotiation.\textsuperscript{11} The evidence that such an effect exists is not strong,\textsuperscript{12} and no member of PRIS, a Swedish CSP’s organisation, has encountered any negative effect from the law. According to PRIS the law might improve women’s bargaining power since ‘theoretically women then have a way to tell the buyers that if they don't pay or are violent, the woman can call the police’.\textsuperscript{13} There are also claims that it is

\textsuperscript{10} Waltman (n4) 458–9.
\textsuperscript{12} In the context of the Swedish model Dodillet & Östergren ((n5) 22–3) rely on anecdotal reports from sex workers about fear from increased violence and an actual increase but ‘there has not been any specific research done on the level of violence’. Governmental evaluations in Germany and New Zealand of legalisation failed to find ‘measurable improvements to prostitutes’ social protection’ (Germany) or significant improvement in the lives of prostitutes (New Zealand). See Report by the German Federal Government, \textit{Impact of the Act Regulating the Legal Situation of Prostitutes} (Berlin, 2007) 79; \textit{Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003} (Wellington, 2008).
\textsuperscript{13} N Levenkron, ‘Could the master’s tools dismantle the master’s house? Sweden’s criminalisation of punters as a case study on the potential of legislation to transform the sex industry’ (Masters thesis, Tel Aviv University,
legalisation (at least in the form of toleration zones) that increases the risk of physical danger to CSPs,¹⁴ (and leads to other undesirable results since ‘the governmental apparatus to address [the illegal market] erodes because the industry is decriminalized’; ‘prostitution will become part of [the prostituted woman’s] official life story’ and legalisation attributes ‘agency … ignoring the unequal and violent material conditions of the life, [and this] can be a desperate grab toward lost dignity.’¹⁵).

However, even if the risk to street non-victims indeed increases, this phenomenon cannot be used to oppose criminalisation, since it fails to show that the overall level of violence is increased under criminalisation, rather than violence being merely displaced from victims to non-victims or from indoor non-victims to street non-victims. The dangerous and violent clients do consume sex (and injure CSPs) under regulationist regimes.¹⁶ If they

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¹⁴ See M Farley “‘Bad for the body, bad for the heart’: prostitution harms women even if legalized or decriminalized’ (2004) 10 Violence Against Women 1087, 1094. Mackinnon (n4) 305 claims that legalisation is more dangerous to the vulnerable women operating in the illegal sector which continues to exist (and arguably expands) under legalisation: however, Mackinnon’s argument is in fact about displacement (or its absence), namely, that the more dangerous practices, such as unprotected sex, are being performed by vulnerable CSPs in the illegal section of the market.


¹⁶ Report of the Prostitution Law Review Committee on the Operation of the
purchase sex under both regimes from the same group of non-victims, criminalisation does not increase the risk to these women. If they previously purchased sex from victims (a likely possibility given the fact that victims are generally less able to screen out clients) then the harm does not increase, but is rather shifted from victims to non-victims. The difference is that non-victims consent to this occupational risk—and it is the premise of sex work advocates that sex workers can and do form meaningful consent to work in the industry—while victims do not. Similarly, the findings that under criminalisation, CSPs lower their prices, are prepared to take more clients, and are prepared to give the service without protection, are typical of victims’ experiences, so if indeed criminalisation decreases the supply of

Prostitution Reform Act 2003 (Wellington: Ministry of Justice, 2008) 14, 57, - according to the New Zealand Report the majority of both sex workers and all respondents, including brothel operators, felt that the Prostitution Reform Act could do little about the violence that occurred; according to a brothel operator ‘clients getting stroppy will always happen. This was the case before the Act and after it.’


victims, the harm might just be shifted from non-consenting victims to consenting sex-workers.

In addition, sex-work feminists largely argue that off-street prostitution involves less risk to CSPs than street prostitution;\(^1\) yet at the same time they criticise criminalisation for the ensuing underground effect, despite the fact that a major part of this effect is the displacement of prostitution from the street to indoors. The claim that such a move increases the isolation of CSPs and their risk of injury and decreases the reach of service provision is inconsistent with the claims about reduced risks in indoor prostitution. Indeed, there is some evidence that in recent years the use of the internet by indoor Swedish CSPs has increased their control in negotiations with clients, and improved the overall clients profile by adding a segment of courteous and cooperative clients; more generally, PRIS is positive about the law’s effects.\(^2\)

In tension with the common belief that off-street prostitution is less risky to CSPs, there are somewhat conflicting findings by Bettio & Nandi that overall, trafficked women working in secluded places other than bars and nightclubs are more at risk of experiencing the worst cases of violation of our five rights than are those working on the streets. The


\(^{2}\) Levenkron (n13) 145–7.
worst locations in this respect are private apartments, followed by massage parlours and saunas, whilst working on the streets brings some (comparative) improvement. The least worse working locations are bars and nightclubs, whilst no clear pattern was found for escort girls.\(^\text{21}\)

If correct, this finding suggests somewhat ironically, that if criminalisation displaces both victims and non-victims from the street to brothels, the well-being of victims decreases (according to Bettio & Nandi’s study), while that of non-victims improves (according to findings of sex-work feminists that in general street prostitution involves more violence than off-street prostitution). In any event, for reasons explained elsewhere in the book, the thwarted expectations of non-victims to have the demand for their services remain intact (if indeed recognising a duty will decrease demand) cannot serve as a reason to deny a duty by clients to compensate VOTs.

**The promise of a civil remedy**

The criminalisation of demand is a controversial idea. The evidence about its effects are inconclusive. It might be that a better direction for a reform is to create statutory civil causes of action for CSPs against clients. The difference in the potential of tort and criminal law to stigmatise is also relevant in evaluating the objection that the criminalisation of clients further stigmatises

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and marginalises CSPs. Interestingly, regulationists oppose criminalisation due to the fear that the status of victims is imposed on sex workers.\textsuperscript{22} However, this concern is misplaced with respect to civil litigation which is controlled by the victim herself. Related to this, even if criminalisation should be opposed based on doubts concerning its deterrent and transformative effects, and based on its paternalistic nature, such concerns are misplaced as regards civil liability. Civil liability vindicates victims’ rights, hence it is remedial rather than punitive; its legitimacy does not hinge on showing that it creates effective deterrence or is likely to bring about an attitude change; it is based on the harm indiscriminate demand causes to victims and therefore is not paternalistic; it is controlled by the victim, not the state, and therefore does not raise the spectre of being sinisterly used as part of improper anti-CSP and anti-immigration sentiments; finally, the ensuing sanction is moderate and liability involves a lesser stigma to the client. Given the inconclusive nature of the evidence about the overall effects of criminalisation (or equivalent civil measures which reduce demand) it might be that criminalisation should be avoided, since the onus should lie on those asking to criminalise a certain activity, and yet, given the undisputable harm caused to VOTs from the practice of indiscriminate demand a civil remedy should be available.

In the book, I have supported a civil remedy to VOTs against those purchasing sex in the relevant time and venue, even if they did not buy sexual services from the claimant, based on the theory that such purchase

contributed to the claimant’s having been trafficked. It should be noted, however, that to the extent that we have reasons to doubt the quality of the consent of non-victims, a possible solution would be to have a civil remedy for CSPs against those who bought sex from them, even if criminalisation of demand is considered as one step too far. I offer below drafts of statutory torts VOTs could use and they might serve as a basis for drafting civil remedies to non-victims.

**Making civil claims of CSPs against clients enforceable**

The logic behind this inquiry – shifting the burden of prostitution from CSPs to clients – necessitates, if convincing, to allow CSPs to sue clients for what was promised to them, but never paid.

One could seriously doubt the common wisdom according to which the claim by a non-forced CSP against the client is ‘unenforceable as being contra bonos mores’\(^{23}\). Interestingly, there is no *direct* authority for such proposition. The existing dated authorities are either of claims of mistresses involving long term relationships\(^{24}\) or ancillary claims arising out of contracts between CSPs and those who provided them with services.\(^{25}\) More importantly, public policy changes with time; the unenforceability of prostitution-related contracts is a sub-set of Victorian morality condemning extra-marital sexual relationships. Since the broader category underwent a considerable change (so that, for

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\(^{23}\) *Inland Revenue Commissioners v Aken* [1990] 1 WLR 1374, 1383 (Parker LJ, obiter)

\(^{24}\) Eg *Franco v Bolton* (1797) 3 Ves. 368.

example, cohabitation agreements are not contrary to public policy\textsuperscript{26}), it is not out of the question that a modern court would not view a claim of a CSP against a client as unenforceable. Indeed, at least one case dealing with claims arising against the backdrop of prostitution could be interpreted as rejecting the view that prostitution-based claims are unenforceable.\textsuperscript{27} Moreover, the recent \textit{Mosley v NGN} \textsuperscript{28} decision in which the client’s interest in privacy was recognised in the context of a party involving CSPs provides another indirect (and weak) indication that prostitution-related contracts are not necessarily unenforceable any more. If there is no public interest in reporting the purchase of sex, could there be public interest in denying a claim for payment of the service rendered?

One cannot decide whether public policy still requires a conclusion that the claim by a CSP against a client is unenforceable without identifying the policy against the transaction, or the institution of prostitution. Was such a policy based on the general condemnation of extra-marital sexual relationships? If so, given the change of \textit{mores} on this point surely the CSP’s claim should be allowed.\textsuperscript{29} Is the policy based (today, presumably, not historically) on the

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\item Eg \textit{Tanner v Tanner} [1975] 1 WLR 1346.
\item \textit{Commissioners of Customs and Excise v Polok} [2002] 2 CMLR 4, [14] (owners of escort business are under obligation to pay VAT; prostitution, as such, is lawful). Cf \textit{Sutton v Hutchinson} [2005] EWCA Civ 1773 (Civ D); \textit{Sutton v Mishcon De Reya and Gawor & Co} [2003] EWHC 3166 (Ch).
\item [2008] EWHC 1777 (QB) (Eady J.). Cf the same Judge’s reasoning in \textit{CC v AB} [2006] EWHC 3083 (QB) [25]–[28] that there is no consensus in contemporary society about the reprehensible nature of adultery.
\item In the (factually unlikely) scenario in which the client paid in advance and the CSP refuses to provide the service, no doubt specific performance will be denied since the promise is for personal service. Whether restitution of what was paid by the client should be allowed depends on whether public policy
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understanding that even CSPs who are not forced are nevertheless exploited? But then again, if this is the rationale, surely a CSP who provided the service but was not paid should have a claim against the client. Is the policy based on the idea that paying for sexual services is bad in itself? If so, why?  

More generally, the traditional common law approach to illegality is unattractive (this is evidenced also by recent support in the Supreme Court, albeit, not unanimous, to adopt a balancing polycentric approach to deciding whether illegality blocks the claimant’s claim). The no-restitution rule fails to balance adequately between public policy considerations of deterrence and retribution, and the need to do justice between the two parties to the litigation (even though both of them are tainted with illegality). In the context of prostitution, a result according to which a CSP, who provided (even willingly) sexual services and did not receive consideration contrary to expectation or promise, cannot sue the client is manifestly unfair. Given the doubts whether the courts would reach the just result, any legislative reform ought to include a provision that for the removal of doubt, a claim by a CSP against a client for what was promised in return for sexual services already provided is enforceable.

demands that such a claim be banned due to the CSP’s vulnerability.

30 Surely sex-work feminists, socialist feminists and other middle ground feminists will tend to oppose the view that payment for sexual services is so bad that a restitution claim for a service rendered should be denied. But I also wonder whether denying restitution could be supported by radical feminists.

31 Eg, the majority in Houna v Allen [2014] UKSC 47. Different views were voiced in n Jetivia SA v Bilta (UK) Limited [2015] UKSC 23.
Introducing civil remedies for VOTs

While the focus of the inquiry is prostitution and not trafficking, it would be good to use this opportunity to remedy the ongoing legislative refusal to afford victims of sex trafficking – of forced prostitution – civil remedies in the process of enacting the Modern Slavery Act 2015.

1. Adding a civil cause of action against the trafficker

I suggest two versions for such cause of action.

Version A:

Insert new clause-

“Civil remedies for Modern Slavery
(1) A person (‘defendant’);
   (a) guilty of an offence under Clause 1, 2 and 4 of this Bill (‘the offender’); or
   (b) who could have been found guilty of such offence, had the standard of proof been a balance of probabilities; or
   (c) who knowingly benefits, financially or by receiving anything of value from participation in a venture which that person knew or should have known has involved an offence under Clauses 1, 2 and 4;
   commits a civil wrong against any victim of the offence.
(2) For the purposes of section 1(b), it does not matter whether a defendant has been acquitted or found not to be criminally responsible for his actions or has not been investigated, prosecuted or convicted under Clause 1,2 or 4 or has been convicted of a different offence or of a different type or class of offence.
(3) The available remedies for this civil wrong are damages, injunctive relief, and any other appropriate relief.
(4) The recoverable damages are both for the victim’s losses (loss-based damages) and for the gain made by the defendant at the victim’s expense (gain-based damages). In addition, the Court may also award the victim exemplary damages.
(5) Loss-based damages include:
   (a) pecuniary damages;
   (b) compensation for dignitary loss and loss of personal autonomy
(c) other non-pecuniary damages, including for pain and suffering, humiliation and distress;
(d) aggravated damages.

(6) Gain-based damages include gains made by:
(a) subtracting wealth from the victim; or
(b) committing a wrong against the victim; or
(c) saving necessary expenses, including of not paying the victim what was promised, represented, required by the law or expected under the circumstances.

(7) Gain-based damages will include at minimum:

(a) The higher of the actual profit made at the victim’s expense and minimum wage;
(b) In cases of deception, the difference between what was presented or promised to the victim and what was actually paid.

(8) The Court may award the claimant damages without proof of damage up to an amount of £15,000, or a higher amount as proven.

(9) It is not a defence to liability under this section that the victim has entered, remained, or was employed in the UK illegally, or that the victim was involved in unlawful activities to the extent that such involvement is a direct consequence of their situation as a victim of the offences under Clause 1, 2 and 4 of this Bill.

(10) Damages awarded under this section shall be offset by any compensation paid to the victim for the same act pursuant to Clause 8 [Reparation order following a criminal conviction for a relevant offence].

(11) Damages awarded under this section shall enjoy a priority, alongside a reparation order to the victim, over fines and confiscation orders.

(12) An action under this section must be commenced no later than 6 years after the later of the date on which the victim:
(i) left the situation of modern slavery; or
(ii) attained the age of 18.

(13) This limitation period may be extended where the civil court considers it just and equitable to do so.

(14) An action brought under this section may be stayed by the civil court either on its own volition or at the request of the Prosecution until the resolution of any criminal proceedings against a Defendant which arise from the same act in respect of which the victim has made the claim.

(15) This section does not preclude any other existing remedies available to the victim under the laws of England and Wales.

(16) There shall be the provision of legal aid to enable a civil claim under this section to be brought.

(17) In a successful action under this section, in addition to any award of damages or other relief, the victim’s costs shall be recoverable against the defendant.
This remedies clause shall have the same extra-territorial effect as Clauses 1, 2, and 4 of this Bill.

Version B

Civil wrong

(a) A person guilty of an offence under this part commits a civil wrong against any victim of the offence.
(b) The court convicting the offender has jurisdiction to award damages without proof of damage up to an amount of £200,000 to any victim of the offence.
(c) The court convicting the offender has jurisdiction to add the victim, or victims as claimants and to hear evidence about the damage, if the victim seeks to prove that his damage exceeded £200,000.
(d) Nothing in this section derogates from common law, equitable and statutory civil wrongs otherwise existing to the victim; in particular, the fact the accused was not found guilty does not prevent the victim from pursuing existing causes of action against the accused.
(e) An award under this section would enjoy a priority, alongside a compensation order to the victim, over fines and confiscation orders.
(f) In sentencing the offender, the court will take into account whether the award under this section, or a compensation order, has been satisfied.
(g) An unsatisfied award under this section and an unsatisfied compensation order to the benefit of the victim would be paid from the fund to which are put monies confiscated from persons found guilty under this part and paid as fines.

Comments:
The Israeli Supreme court in Jaack v K voiced support for a model of statutory civil wrong against traffickers and to the awarding of damages without proof of damage. The model of damages without proof of damage exists at several places in Israeli legislation and was also adopted by the District Court in the Jaack litigation (in which the claimant did not testify since she was deported prior to trial) based on the proposition that the injury is ingrained in the offence itself. Given that trafficking would necessarily

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32 3806/06 Jaack v K (26 May 2009, Supreme Court).
33 Plonit (K) v Jaack, Tak-Meh 2006 (1) 7885 (2006) (District Court, 8 March
involve trespass to the body and that these dignitary torts are actionable per se, awarding significant damages without proof of damage fits well with English principles of private law.

In Israel, Section 77 of the Courts Law (Consolidated Version) 1984 further assists victims’ claims by allowing a procedure of a civil claim attached to a criminal conviction heard by the same court convicting the offender. Attached claim proceedings have been used by some claimants in Israel.

2. Amending s53A of the Sexual Offences Act 2003 to include a civil remedy

Section 53A of the Sexual Offences Act 2003 creates a strict liability offence of paying or promising to pay for sexual services given by a person forced or deceived to do so. As a preliminary point, it would be useful to ensure that the definition of exploitation in that section corresponds with the definition in the Modern Slavery Act.

Regardless, I suggest adding at the end of the section a new subsection (5), which would clarify that a person found guilty has committed a civil wrong and is to pay damages, without proof of damage, up to a certain amount (of 2006).

34 SH 198.
35 Including in K, Civ (Haifa) 982/06 SY v Moaiseyv (District Court, 12 June 2007) (NIS 200,000 based on facts determined in prior conviction and without testimony; had physical or psychiatric disability been proven a much higher award would have been appropriate; an unjust enrichment claim should not be ruled out); and Civ (Tel-Aviv) 2727/06 Plonit (YM) v Shivas (District Court, 1 December 2011) (NIS 600,000 in non-pecuniary damages and NIS 150,000 in punitive).
perhaps £20,000). The section could be drafted similar to that suggested above for a civil wrong against the trafficker.

3. Making the indiscriminate purchase of sex a civil wrong

In my book I argue that a victim of trafficking (VOT) should be able to sue in negligence, within several temporal and spatial restrictions, clients of sexual services to whom she did not provide services, based on the fact that indiscriminate consumption of commercial sex, without the ability to tell who is trafficked and who is not, contributed factually and legally to the fact the VOT was trafficked, and amounts to a breach of a duty of care owed by the client to the VOT. For difficulties explained in the book, the appropriate remedy is a significant yet flat amount, falling short of the principle of full compensation (the amount that the victim’s trafficker is liable to pay her), and the claimant can accumulate this amount from any client who contributed – factually and legally – to the claimant having been trafficked. There is serious doubt whether English courts would recognise the cause of action discussed. I therefore propose that such a tort be created through legislation. It could be inserted as section 53B of the Sexual Offences Act:

53B Contributing to trafficking by creating indiscriminate demand
(1) A person (A) commits a civil wrong against B if—

(a) A makes or promises payment for the sexual services of a prostitute (D),

(b) a third person (C) has engaged in exploitative conduct of a kind likely to induce or encourage another prostitute (B) to provide sexual services in a market in which A has made or promised payment, and

(c) C engaged in that conduct for or in the expectation of gain for C or another person (apart from A, B or D).
(2) For the purposes of section (1)(b), B would be considered as providing sexual services in the market in which A has made or promised payment if B was exploited in the same town or city in which A made or promised payment in the period of time ending when B ceased to be exploited and beginning at a date calculated by deducting B’s total length of exploitation (since recruitment) from the date of recruitment.

(3) C engages in exploitative conduct if—

(a) C uses force, threats (whether or not relating to violence) or any other form of coercion, or

(b) C practises any form of deception.

(4) A person found to commit a civil wrong under this section is liable to B to pay a conventional award of £5,000.

Comments:

The amount in section 4 could be set as a maximum; another possibility would be to set a range with minimum and maximum amounts. The solution of a conventional award, while rare, was adopted by the House of Lords in Rees v Darlington Memorial Hospital.36

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36 [2003] UKHL 52.