Written evidence submitted by the National Alliance of Women’s Organisations

Executive summary

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- The Human Rights Act 1998 (“HRA”) and its relevance to policy development as above

Introduction

1. The National Alliance of Women’s Organisations (founded in 1989) is an umbrella organisation of over 100 organisations and individuals based in England. All members are concerned to ensure women gain access to their human rights, and to make equality between women and men a reality. We support the United Nations Sustainable Development Goals, with a particular focus on Goal 5, within which is the following:

   “5.2 Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation.”

2. We have been limited in the time and resources available to prepare these submissions and therefore wish to make the general points set out below that are directly relevant to the terms of reference of the Committee’s inquiry to ensure they are adequately considered as part of the Committee’s deliberations and recommendations, notwithstanding the Committee’s expertise and experience in these areas. We have been assisted in the preparation of this submission by legal advice from Louise Whitfield of Deighton Pierce Glynn who specialises in gender equality and human rights law.

The Public Sector Equality Duty

3. Under section 149 of the Equality Act 2010 (“EA 2010”), a public authority in the exercise of its functions must have due regard to
   - the need to eliminate discrimination and harassment of women (and any other conduct prohibited by the Act),
   - the need to advance equality of opportunity for women and
   - the need to foster good relations between women and men.

4. Schedule 19 of the Act lists public authorities to whom the duty applies including Ministers of the Crown, Government Departments and Her Majesty’s Chief Inspector of the Crown Prosecution Service. In addition, section 149(2) of EA 2010 confirms that: “A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1).”

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1 In this context, where women’s equality is in issue, the PSED will sometimes be referred to as the “gender equality duty”.
5. Thus the PSED is highly relevant to any development of legislation or policies concerning prostitution by Government departments, Ministers or the CPS, and in our view it will assist the Committee to consider the issues raised by its inquiry, the responses to its terms of reference and any recommendations it makes, through the prism of the PSED.

6. Case law has established a number of principles as to how this duty should be complied with\(^2\). These can be summarised as follows:

   a. The duty is an integral and important part of the mechanisms for ensuring fulfilment of the aims of anti-discrimination legislation;
   b. The duty must be exercised in substance, with rigour and an open mind;
   c. The duty must be complied with before and at the time a proposed policy is decided upon and must not be a “rearguard action”;
   d. The duty is upon the decision-maker personally and is non-delegable;
   e. The duty is ongoing.

7. There is also extensive guidance from the Equality and Human Rights Commission as to how public authorities should meet the equality duty, specifically its “Technical Guidance on the Public Sector Equality Duty: England” (revised in August 2014). At page 19, paragraph 2.20, the guidance states that “How much regard is ‘due’ will depend on the circumstances and in particular on the relevance of the aims in the general equality duty to the decision or function in question. **The greater the relevance and potential impact, the higher the regard required by the duty.**” [emphasis added]

8. Thus when considering matters, for example, such as what further measures are necessary to assist those in prostitution to exit from it, Ministers and Government Departments should recognise that such decisions are highly relevant to gender equality as articulated in the PSED, that policies and legislation in this area will have a very significant impact on gender equality (given that it disproportionately affects women and is recognised as violence against women) and the regard they must pay to gender equality in this context is therefore particularly high.

9. We therefore submit that it will assist the Committee in its deliberations to be aware of, and where necessary comply with, this crucial and highly relevant statutory duty when considering matters such as criminal sanctions on those selling sex, the CPS’ approach to prostitution constituting violence against women, the impact of the Modern Slavery Act 2015 and what further measures are necessary, including legal reforms, as set out in the terms of reference.

**The Human Rights Act 1998**

10. The Human Rights Act 1998 (“the HRA”) is composed of a series of sections that have the effect of codifying the protections of the European Convention on Human Rights into UK law. All public bodies (and other bodies carrying out public functions), must comply with the Convention rights. The State’s role in protecting women through policy development and legislation that addresses prostitution, must be HRA-compliant and we urge the Committee to place great weight on this when considering the inquiry’s terms of reference, evidence submitted and when making recommendations.

11. Article 2, the right to life, includes the right to be protected if your life is at risk. Article 3 prohibits inhuman and degrading treatment, and public authorities must also protect individuals from such

\(^2\) The leading case on the PSED is the Court of Appeal decision from November 2013, *R (Bracking & Others) v SSWP* [2013] EWCA Civ 1345.
treatment where it comes from someone else; for example, if they know someone is suffering inhuman or degrading treatment, they must intervene to stop it. Thus Articles 2 and 3 (both absolute rights) impose positive duties to protect and procedural (investigative) obligations. It is well-established that where the State (or other relevant public authority) is aware of a real risk of harm to a person of a type that would fall within Article 2 or 3, it is under an obligation to take reasonable and effective steps to prevent that harm, including where that risk emanates from private persons. The level of risk faced by women engaged in prostitution places a very significant burden on the State to afford them the necessary protection from breaches of these fundamental rights. Any legislative change or policy development must address these duties.

12. Also relevant to policy-making and legislation on prostitution is Article 4 of the Convention which prohibits slavery, servitude, forced or compulsory labour; and is again an absolute right. The State must have a legislative and administrative framework capable of enforcing this right. It must also investigate allegations of slavery, trafficking or forced labour, and again this is an area of human rights compliance that is self-evidently in play for many women engaged in prostitution.

13. Article 8 protects the right to respect for private and family life including a person’s physical and psychological integrity; this is a qualified right in that in certain limited circumstances it may be lawful for the State to interfere with that right. However, it is directly relevant to this area of decision-making given the obvious impact on women’s physical and psychological integrity of their engaging in prostitution and the risks they face as a result. Thus any failure by State bodies to protect women in this context may also amount to a breach of Article 8.

14. As to Article 14, this contains the Convention’s non-discrimination guarantee. Article 14, read with Article 3, for example, imposes positive obligations to investigate and protect against gendered forms of violence⁴, including sexual assault, and which the CPS now recognises includes prostitution. This reflects the obligations contained in the Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”): “gender-based violence is a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men” (§1). It accordingly constitutes a form of discrimination within the meaning of Article 1 of CEDAW (§7).

15. It is essential that any policy development and/or legislative changes are HRA-compliant and we submit that the Committee should consider the State’s obligations under the HRA during its inquiry to ensure that women’s human rights are protected whilst they remain involved in prostitution and subsequently.

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³ Opuz v Turkey (Application no 33401/02) (2010) 50 EHRR 6950.
⁴ General Recommendation no. 19