Written evidence submitted by Emma Boucher

Summary
1. Sexual exploitation is a major form of human trafficking in Wales.
2. The current law is fails to adequately reduce demand for prostitution which fuels human trafficking nor does it satisfactorily address coerced prostitution.
3. The law should be changed to address demand more directly.

The relationship between human trafficking and prostitution
4. Although there are many forms of exploitation for which people are trafficked, sexual exploitation is one of the most prevalent in the UK according to National Crime Agency (NCA) figures.\(^1\) We know from NCA intelligence reports that this exploitation takes a “commercial” nature and in many cases takes place in brothels.\(^2\)
5. In Wales about one third of all potential victims of trafficking referred to the National Referral Mechanism each year report sexual exploitation.\(^3\)
6. On a UK-wide basis since 2009 42% all adults referred to the National Referral Mechanism as potential victims of trafficking had been in sexual exploitation (38% of all victims including children).\(^4\)
7. Although critics often try to claim a distinction between prostitution and human trafficking, the fact remains that the two phenomena are closely linked. As a resolution from the Council of Europe Parliamentary Assembly states: “trafficking in human beings and prostitution are closely linked. It is estimated that 84% of victims in Europe are trafficked to be forced into prostitution; similarly, victims of trafficking represent a large share of sex workers.”\(^5\)

International obligations to address demand for human trafficking
8. There are obligations on states to discourage the demand which fosters exploitation in all the main international counter-trafficking treaties.
   o The UN’s “Palermo Protocol” says “States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.”\(^6\)
   o The Council of Europe Convention says “to discourage demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking, each Party shall adopt or strengthen legislative, administrative, educational, social, cultural or other measures”.\(^7\)

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\(^1\) National Crime Agency National Referral Mechanism Year End Statistics 2015, 11 February 2016
\(^2\) National Crime Agency Strategic Assessment The Nature and Scale of Human Trafficking in 2014, 9 December 2015 p16
\(^3\) 35% in 2012, 36% in 2013, 31% in 2014 National Crime Agency National Referral Mechanism statistics
\(^5\) Council of Europe Parliamentary Assembly Resolution 1983 (2014) Prostitution, trafficking and modern slavery in Europe, 8 April 2014 para 3
\(^6\) Article 9 UN Protocol to prevent, suppress and punish Trafficking in persons, especially women and children, supplementing the United Nations convention against transnational organized crime 2000
\(^7\) Article 7 Council of Europe Convention on Action against Trafficking in Human Beings 2005
The EU Directive says “Member State shall take appropriate measures...to discourage and reduce the demand that fosters all forms of exploitation related to trafficking in human beings”.

Although these international obligations do not narrowly refer to legislative measures, nor do they narrowly reflect trafficking for sexual exploitation, there is a clear international imperative to look to reduce the markets and societal structures which facilitate and drive human trafficking.

**Current law is inadequate to address demand**

10. The Policing and Crime Act 2009 sought to address demand for the sexual exploitation of victims of trafficking by making it a criminal offence to purchase sexual services from a person subject to force (section 53A of the Sexual Offences Act 2003).

11. **However, in the four years since the offence came into force for which data is available, there has not been even one single prosecution in Wales.**9 This is despite there being individuals identified as potential victims of trafficking for sexual exploitation and referred to the National Referral Mechanism (NRM). Moreover, as is well recognised (including by the Home Office UK-wide estimate published in 2014)10 only a small percentage of victims are correctly identified and referred to the NRM. We can be sure that these represent only the tip of the iceberg when it comes to victims of sexual exploitation in Wales.

| Potential victims of trafficking for sexual exploitation referred to the NRM from Wales (NCA statistics) |
|---|---|---|---|---|
| Year | 2012 | 2013 | 2014 | 2015 |
| Adult female | 10 | 18 | 19 | 28 |
| Adult male | 0 | 0 | 1 | 2 |
| Total adult sexual exploitation | 10 | 18 | 20 | 30 |
| Minor female | 2 | 0 | 2 | 10 |
| Minor male | 0 | 0 | 0 | 1 |
| Total minor sexual exploitation | | | | 11 |
| Total sexual exploitation | 12 | 18 | 22 | 41 |
| Total referrals | 34 | 50 | 70 | 134 |

12. Although there have been some prosecutions in England,11 the numbers are extremely low and tellingly there have also been no prosecutions since 2012, although there have been many victims of these crimes.12 The number of victims of trafficking for sexual exploitation that come to the attention of the authorities in the whole of England and Wales numbered over 600 adults in 2014 alone.13

13. The data demonstrates that victims of human trafficking exploited through prostitution are being identified and referred to the National Referral Mechanism. Intelligence also indicates that much of this exploitation takes place in contexts where victims are more likely to come into contact with law enforcement.

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8 Article 18 Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims
9 Parliamentary Question number HL 5304 in the House of Lords 4 February 2016
10 HM Government Modern Slavery Strategy November 2014 para 1.3
11 There is no equivalent offence in Scotland and the equivalent offence in Northern Ireland was replaced in 2015 by a general offence of paying for sexual services.
12 Parliamentary Question number HL5330 in the House of Lords 4 February 2016
(particularly brothels). It is clear therefore that the offence under section 53A of the Sexual Offences Act 2003 is being committed and that at least in a significant proportion they are taking place in locations where we can expect law enforcement agencies to be active, and yet these offences are not being prosecuted. This suggests that the current law is inadequate to deter or to penalise those who buy sex from victims of force and coercion.

14. A report from the All Party Parliamentary Group on Prostitution and the Global Sex Trade (APPG) published in 2014 critiqued the section 53A offence as “an insufficient measure for protecting victims because coercion is too difficult to prove.” Whilst the offence is one of strict liability and does not require that the offender knows or intends to buy sex from someone who has been coerced, there must still have been coercion. Proving that coercion can be difficult as the APPG heard during its inquiry, and this difficulty is intensified because the offence is eligible only for summary conviction meaning the charge must be made within six months of the offence being committed. The APPG concluded that “there are inadequate deterrents for ... those driving the demand for the sex trade. This promotes the UK as a lucrative destination for trafficking with the purpose of sexual exploitation.”

15. The Modern Slavery Act 2015 is a positive step forward in strengthening the law on human trafficking. However in so far as trafficking for sexual exploitation is concerned the Act only contains provisions to prosecute the traffickers. It contains no measures to address the demand that underpins the traffickers’ “business model”. This is in contrast to section 54 (Transparency in Supply Chains etc) of the Act which takes steps towards addressing the market in which labour exploitation takes place requiring companies to be more transparent about their suppliers and their anti-slavery verification processes.

Recommendations

16. The law should address demand for commercial sexual services in a more direct manner by making it an offence to pay for sexual services. This approach has been considered to be successful in the Nordic countries. For example:
   - Laws banning payment for sex in Sweden and Norway are readily enforceable and have been judged to reduce levels of prostitution and to make those countries less attractive for traffickers.
   - Surveys of sexual behaviour in the general Swedish population have noted a reduction in the number of men reporting that they have paid for sexual services.
   - In 2014 the European Parliament and the Council of Europe both affirmed laws that ban sex-purchase.

17. The law should not be changed to fully decriminalise prostitution, in particular offences relating to procuring, keeping a brothel and controlling others in prostitution should be retained in order to better prevent exploitation.
   - Decriminalisation and legalisation of prostitution have been linked to increased trafficking, and present challenges in the fight against human trafficking. One study involving an empirical analysis of

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15 Section 127 Magistrates’ Courts Act 1980
16 All Party Parliamentary Group on Prostitution and the Global Sex Trade, Shifting the Burden, March 2014 p6
18 Charlotta Holmström & May-Len Skilbrei eds. (2009), Prostitution in the Nordic Countries Conference report p29
150 countries worldwide, found that “on average countries where prostitution is legal experience larger reported human trafficking flows.”

- The 2015 US Department of State Trafficking in Persons report on New Zealand (which completely decriminalised prostitution in 2003) identifies the risks of coerced and forced prostitution among foreign women particularly from South East Asia and also the trafficking of young people particularly of Maori and Pacific Islander descent for sexual exploitation.

- Senior officers in the German police force have reported an "explosive increase in human trafficking from Romania and Bulgaria" describing Germany as a “centre for the sexual exploitation of young women from Eastern Europe, as well as a sphere of activity for organized crime groups from around the world.”

- Academics assessing the challenges of addressing trafficking in the Netherlands have concluded “the legalisation and regulation of the prostitution sector has not driven out organized crime. On the contrary, fighting sex trafficking using the criminal justice system may even be harder in the legalized prostitution sector.”

- A study carried out by the Dutch Police estimated between 50% and 90% of women in legalized brothels were ‘working involuntarily’.

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21 US Department of State Trafficking in Persons Report 2015, page 260