In the UK today, human trafficking for the purpose of sexual exploitation is a significant issue. In just three years (2013-2015), 2,635 adults and children have been referred to the National Referral Mechanism (NRM) as potential victims of sexual exploitation. In 2013 and 2014 this was the most common form of exploitation and in 2015 it was second only to labour exploitation. Throughout this period the number of potential victims of human trafficking for the purpose of sexual exploitation has steadily grown. It is a sad truth that the UK market in transactional sex includes therefore, not only voluntary sex workers but also victims of trafficking who have been threatened, forced, coerced, abducted, defrauded, deceived and/or abused by someone in a position of power, or controlled by another person.

Against this backdrop I have been asked to provide a response to the HASC inquiry, which is looking at whether there should be a change in the law to:

a. Decriminalise prostitution altogether
b. Shift the burden of criminality from the seller to the buyer

My stance will be framed by the need to examine the potential impact of any changes to prostitution policy on the trafficking of persons for the purpose of sexual exploitation. I will take an evidence based approach to reflect on each option, before giving some concluding recommendations.

a. Decriminalise prostitution altogether

Decriminalisation would see the Government eliminate the laws and penalties associated with the prostitution industry. Currently in the UK the act of buying and selling sex is not illegal, but brothel-managing, curb crawling, soliciting sex in a public place and causing, inciting and controlling prostitution for gain are legislated against. I would like to make two key points regarding this approach.

First, of fundamental concern here must be the question of whether decriminalisation would facilitate a growth in human trafficking for sexual exploitation into the UK. Recent quantitative studies by Jakobsson & Kotsdam (2013) and Cho et al. (2013) providesome clues. Drawing on detailed analysis of data gathered on a sample of up to 150 countries, both studies suggest that in countries where prostitution is legal, larger human trafficking inflows are reported. While there are limitations to these studies – not least that they are built on potentially inaccurate data sets – such findings necessitate consideration.

Second, I am aware of numerous arguments made in favour of this policy, the majority of which focus on purported improvements to the protection of voluntary sex workers. In particular, some of the benefits identified include: a reduction in violence and the social stigma attached to prostitution; the opportunity for improved access to health services;
enhanced working conditions; and importantly the ability for sex workers to seek help from the police. What is sometimes overlooked however, is that the immigration status of both sex workers and victims alike may remain a barrier to such improvements. Many sex workers in the UK are of non-EEA origin and are here illegally. Meanwhile, a high proportion of potential victims of trafficking for the purpose of sexual exploitation are also non-EEA (evidenced by NRM data). Thus, both sex workers and potential victims of trafficking for the purpose of sexual exploitation may still be reluctant to come forward and seek assistance, regardless of whether prostitution takes on a decriminalised status.

Indeed, from the perspective of tackling the trafficking of persons for sexual exploitation, the effects of decriminalising prostitution may be less than positive with regard to victim protection. Research released by the University of Marburg (Cho, 2016) indicates that the liberalisation of prostitution policies can be detrimental to protecting victims of trafficking. For, having opened up the prostitution market, the implementation of further victim protection and anti-trafficking measures are too often forgotten. Further, in the case of Amsterdam, where on street and off street prostitution is not only decriminalised but legal, research (Huisman & Kleesman, 2014) shows that even regulation cannot provide the necessary protection for victims. Rather, brothels have become the legitimate fronts behind which victims of human trafficking are kept – at times in plain sight. In 2008 the Netherlands National Police Service posed the question: “How is it possible that forced prostitution i.e. human trafficking, was able to take place (almost unimpeded) in the licensed window prostitution sector?” Their report provides an answer of significance: that law enforcement had less power and less incentive to investigate prostitution activities, since, as a general rule, law enforcement is less critical of legal (or decriminalised in the case of the UK) industries.

b. Shift the burden of criminality from the seller to the buyer

Often referred to as the “Swedish” or “Nordic model”, the second policy option that I have been asked to consider is shifting the burden of criminality from the seller to the buyer. This model upholds partial decriminalisation where the solicitation and buying of sex is illegal and criminalised, however, the sex workers themselves are not penalised. Much of the available evidence on the impact of this policy has focused on its Swedish iteration, which entered force in 1999. To evaluate the impact of the ban on the purchase of sexual services, the Swedish Government commissioned external research. On the subject of trafficking the subsequent report concluded that “according to the Swedish Police, it is obvious that the ban against the purchase of sexual services works as a barrier for human traffickers and procurers to establish themselves in Sweden”. It is unfortunate then, that there is very little information provided about the evidence upon which this claim is made. In particular, given the absence of any nationwide statistics on trafficking victims prior to the introduction of the policy, no direct comparison was made between the pre and post prohibition periods. Compounding this
issue, the same Swedish police authority quoted in the evaluation is known to have issued a contradictory press release, stating that: “serious and organised crime, including prostitution and trafficking, has increased in strength, power and complexity during the past decade”. Finally, since the authors of the report stated that “the starting point of our work has been that the purchase of sexual services is to remain criminalised”, concerns have also been raised around bias and the reliability of the research team’s findings (Dodillet & Ostergren, 2013; Skilbrei & Holmstrom, 2013).

Concluding recommendations

In this note I have reflected on the potential impact of two different prostitution policies on the trafficking of persons for the purpose of sexual exploitation. Building on this, I would like to make a series of recommendations in my role as Independent Anti-Slavery Commissioner:

- Before exploring alternatives to current prostitution policy it is essential that consideration is given to the existing powers already available to combat the trafficking of persons for sexual exploitation:

  I. In April 2010 a strict liability offence was introduced against individuals paying or promising payment for the sexual services of a person who has been subject to exploitative conduct of a kind likely to induce or encourage the provision of sexual services for which the payer has made or promised payment\(^1\). The maximum penalty for this offence is £1,000. Since this time, some reports have suggested that this legislation is under utilised. To understand why this is the case it would beneficial to undertake a full review, with a particular focus on barriers to implementation. This is an issue that I will be looking at in my role as Independent Anti-Slavery Commissioner.

  II. Following review of the aforementioned strict liability offence, it may be that a second piece of legislation would be beneficial. This legislation would make it an offence to knowingly pay or promise payment for the sexual services of a person who has been subject to exploitative conduct of a kind likely to induce or encourage the provision of sexual services for which the payer has made or promised payment. This offence would carry a prison sentence and send the message that exploiting the vulnerable for your personal gain will not be tolerated.

  III. To wrap around this legislative review, an awareness campaign would provide the opportunity to educate potential buyers of sex about the signs of exploitation.

- In Northern Ireland, Section 15 of the Northern Irish Human Trafficking and

\(^1\) Section 53A of the Sexual Offences Act 2003 (as inserted by section 14 of the Policing and Crime Act 2009)
Exploitation (Criminal Justice and Support for Victims) Act 2015 has made it illegal to pay for sexual services. It will be important to monitor and evaluate the impact of this legislation and its impact on human trafficking in Northern Ireland. The findings of this research may then help to further inform the response across the rest of the UK.

Finally, I would like to close by underlining again that human trafficking for the purpose of sexual exploitation is a significant issue in the UK today. We know that between 2013 and 2015, 2,635 adults and children were referred to the National Referral Mechanism (NRM) as potential victims of sexual exploitation. Yet, not only are these figures just the tip of the iceberg (while in 2013 the Home Office estimated there were between 10,000 and 13,000 potential victims of modern slavery in the UK, only 1,746 potential victims were referred to the NRM that year)\(^2\), but nowhere near enough cases are receiving an appropriate level of investigation.

In 2014, for example, less than a third of NRM referrals received a crime report. In 2015 I worked to ensure that the National Crime Agency (NCA) and Police Forces addressed this issue, and subsequently just under half of NRM cases were recorded as crimes. I am clear however, that this is not sufficient and I will continue to work with forces to make certain that every NRM referral receives a crime report. If a crime is not recorded, an investigation cannot be launched. This lack of investigation and the consequent lack of convictions not only allows criminals to operate with impunity but also reduces victims’ ability to access crucial forms of support.

Equally vital is ensuring that law enforcement across the UK utilises the powers provided to them through the new pieces of legislation introduced to tackle modern slavery and human trafficking (the Modern Slavery Act 2015 in England and Wales; the Human Trafficking and Exploitation Act in Scotland; and Section 15 of the Northern Irish Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act 2015); this is one of my core areas of focus, and while I am pleased to have seen recent advances in the law enforcement response, there is still significant room for improvement.

KEVIN HYLAND
Independent Anti-Slavery Commissioner

Bibliography


---


