



Scottish Prostitutes Education Project  
62 Newhaven Road  
Edinburgh  
EH6 5QB  
Scotland  
UK

Tel: 0131 622 7550  
Email: [office@scot-pep.org.uk](mailto:office@scot-pep.org.uk)

**Rhoda Grant MSP**  
**Room M1.06**  
**The Scottish Parliament**  
**Edinburgh**  
**EH99 1SP**

Date: 11 December 2012

Dear Rhoda

In response to your consultation document and proposals to introduce a bill to make it an offence to purchase sex we offer the following comments:

You have previously claimed, including in the meeting with some of our representatives, that your aim with the proposed bill is to protect women, to combat trafficking and to reduce the demand for prostitution.

SCOT-PEP does not support trafficking in any form.

It is often claimed that targeting the clients of sex workers will fight trafficking. In fact, the evidence suggests that such an approach can have precisely the opposite effect. Criminalising demand and imposing prohibition creates a black market which serves as a financial incentive for traffickers and is therefore a flawed and dangerous logic. Sex workers and their clients are best placed to identify potential victims of trafficking. Criminalisation will make clients and sex workers less likely to report a potential trafficking victim or to refer them to agencies who can offer them support.

This proposal is completely out of step with international guidance and recommendations regarding the law surrounding sex work.

In July of this year (2012) the Global Commission on HIV and the Law published its report 'HIV and the Law: Risks, Rights & Health' which states that countries should:

“decriminalise private and consensual adult sexual behaviour including voluntary sex work.”<sup>1</sup>

In November 2012 the UN Development Programme (UNDP), the UN Population Fund (UNFPA) and the Joint United Nations Programme on HIV/AIDS (UNAIDS) released their report *Sex Work and the Law* which examines 48 countries in Asia and the Pacific to assess laws, legal policies and law

---

<sup>1</sup> Global Commission on HIV and the Law, 'HIV and the Law: Risks, Rights & Health', July 2012  
<http://hivlawcommission.org/index.php/report>

#### **PROMOTING HEALTH AND DIGNITY**

enforcement practices that affect the human rights of sex workers and impact on the effectiveness of HIV responses. The report states:

Criminalisation of sex work increases vulnerability to HIV by fuelling stigma and discrimination, limits access to sexual health services and condoms.

Removing legal penalties for sex work allows HIV prevention and treatment programmes to reach sex workers and their clients more effectively.

There is no evidence that decriminalisation has increased sex work.<sup>2</sup>

In December 2011 the UNAIDS Advisory Group on HIV and Sex Work released their report to accompany the UNAIDS Guidance Note on HIV and Sex Work (2009), which states:

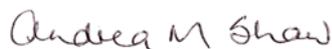
“States should move away from criminalising sex work or activities associated with it. Decriminalisation of sex work should include removing criminal penalties for purchase and sale of sex, management of sex workers and brothels, and other activities related to sex work.”<sup>3</sup>

This echoes the repeated calls for decriminalisation from the UN Secretary General Ban Ki-Moon and UNAIDS, which in 2010 (published 2011) stated that reducing by half the number of “*countries with punitive laws and practices around HIV transmission, sex work, drug use or homosexuality*” was an agency goal by 2015.<sup>4</sup>

SCOT-PEP does not support the attempt to introduce a bill to criminalise the purchase of sex in the Scottish Parliament. We fail to see why the Scottish Government would wish to go against the overwhelming international body of academically rigorous evidence that clearly demonstrates that this proposal is completely misguided.

We have looked carefully at your consultation document and would like to make some comments on the content. We have gone through the content and referencing of your paper by section and by footnote. We believe your document contains a large number of ‘untruths’ and that you have misused some of the academic reports you quote from. You have been conveniently selective in your use of quotes and references and you have misrepresented the findings of many of your source documents and the views of the organisations referenced, in order to achieve the desired result to support your flawed analysis.

Yours sincerely



pp George Lewis  
Co-chair  
On behalf of SCOT-PEP, Board of Directors & Campaign Group

---

<sup>2</sup> UNDP/UNFPA, ‘**Sex Work and the law in Asia and the Pacific**’, October 2012

<http://www.snap-undp.org/elibrary/Publication.aspx?ID=699>

<sup>3</sup> UNAIDS. **UNAIDS Guidance Note on HIV and Sex Work**, Geneva, 2011.

[http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2009/JC2306\\_UNAIDS-guidance-note-HIV-sex-work\\_en.pdf](http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2009/JC2306_UNAIDS-guidance-note-HIV-sex-work_en.pdf)

<sup>4</sup> UNAIDS, **Getting to Zero**, Geneva, 2010.

[http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2010/jc2034\\_unaids\\_strategy\\_en.pdf](http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2010/jc2034_unaids_strategy_en.pdf)

#### **PROMOTING HEALTH AND DIGNITY**

# Critique of 'Criminalisation of the Purchase of Sex (Scotland) Bill (2): A proposal for a Bill to make it an offence to purchase sex'

## 1 Introduction

Page 6, point 12

The starting point for this proposal is 'The majority of those involved in prostitution are unwilling participants'.

How do you justify this bold statement empirically?

Footnote 2: Melrose, M. (2002). Ties that bind – Young People and the Prostitution Labour Market in Britain, presented at Fourth Feminist Research Conference, Bologna: September 2000, ([www.women.it/cyberarchive/files/melrose.htm](http://www.women.it/cyberarchive/files/melrose.htm))

'For example 75% of women in prostitution in the UK became involved when they were children ...' (p.6)

*Ties That Bind* "was generated by in-depth interviews with forty-six women, all of whom had become involved in prostitution before they were 18. At the time of the interviews, 32 were still involved in prostitution. Approximately three-quarters of those interviewed were street-working prostitutes."

*Ties That Bind* is a study that focuses on how and why children and young people become involved in the sex industry. To that end, it interviews women (and some children) *who became involved in the sex industry as children*. It is *not* a study of the sex industry as a whole. It is a study of a sub-section (those who entered the industry as children) of a sub-section (women who work on the street). The majority of published evidence estimates that people who work on the street in the UK constitute between eight and ten percent of the UK sex industry.

Your proposals will have no effect on the number of people entering the sex industry as children. Sex with children, whether commercial or not, is *already* criminalised. It carries a potential life sentence. Furthermore, Margaret Melrose, your chosen source material on juveniles in the sex industry, doesn't recommend criminalising the clients of adult sex workers. Under 'Conclusions', she writes, "in order to tackle the causes of child prostitution, this author would argue that there is a need to tackle the poverty of the communities from which these young people so often come". Note: the term 'children' here means anyone who entered the sex industry before they were 18 as under the United Nations Convention on the Rights of the Child this is how 'children' are defined – it is not meant to suggest that young people who become involved in the sex industry are pre-pubertal as the majority of them are not.

To cite this study as evidence that 75% of *all* sex workers entered the industry as children is at best misrepresentation of the particular study, at worst it is a deliberate lie and unethical use of a perfectly legitimate academic resource.

**SCOT-PEP contacted the author of the study you cite, Professor Margaret Melrose, to inform her of the use of her research in your consultation document. She responded as follows:**

*'Thank you for contacting me. I support the rights of all (adult) sex workers to sell sex should they wish to; I am opposed to the criminalisation of those who purchase sexual services and agree that*

*much of the available evidence seems to suggest that criminalising this activity serves to render those involved in selling sex less safe.*

*The paper to which you refer is over 10 years old (it was a paper I presented at the 4th European Feminist Conference in Bologna, September 2000). The use of the term 'unwilling' is not meant to suggest that those involved in selling sex are doing so under duress or because they are forced - it is 'unwilling' in the sense that there are few viable alternatives available to those concerned - of course they might rather be stockbrokers but a job selling burgers in Macdonald's hardly compares in terms of income generation - so although many sex workers might prefer to be doing something else, in the context of poverty and social disadvantage, there are few viable options (for evidence to support this claim see Melrose, M. et. al. (1999) *One Way Street? Retrospectives on Juvenile Prostitution*, London, The Children's Society).*

*My work has consistently argued that, for some young people, in the context of poverty and social disadvantage selling sex may represent the 'best' option available to them (my work has primarily focussed on young people, rather than adults, involved in commercial sex markets). When young people make a decision to sell sex this is usually because the choices available to them have been so narrowed that they have few viable alternatives for income generation: the decision to sell sex therefore represents the exercise of agency within severely constrained circumstances. I have never advocated the criminalisation of commercial sexual transactions between consenting adults and have consistently argued that to tackle young people's (i.e. under 18 years) involvement in the sex industry is their socio-economic disadvantage, their need for housing and their need for viable employment opportunities that need to be addressed.*

*With best wishes,  
Professor Margaret Melrose'*

Footnote 3: Home Office (2006). A Coordinated Prostitution Strategy and a Summary of Responses to 'Paying the Price'. London: UK Government.

**'70% spent time in care and 45% of women in prostitution report experiencing familial sexual abuse'.**

These statistics are often repeated and used by organisations which have a clear stated aim to eradicate prostitution and follow a radical form of 'feminist' doctrine on sex work generally – most prominently in Money & Power (Zero Tolerance), Eaves / Poppy Project and WSP publications, etc. The statistics referenced have entered into the lexicon of myths propagated by these organisations and sadly have become commonly known as 'facts'. Clearly you are influenced heavily by these organisations.

Looking in depth, this statistic actually comes from Annexe C (Key Statistics) of Paying the Price: A consultation paper on prostitution, July 2004, Home Office (not the document referenced) which on P11 1.1 lists some common characteristics of studies and says '**as many as** 70% spent time in care'. These statistics are later explained in Annex C. Under 'background of care' there are in fact 9 key statistics derived from various studies – conveniently the one chosen here to typify all sex workers is the highest percentage from the 9 given. Other (lower %) statistics in this section can be seen on page 96.

This particular statistic is actually derived from:

'Pearce 2002, a study of 55 young women in a London Borough and a Northern City, 39 had been in care or looked after by a Local Authority. Those who had been looked after through local authority

care became involved in prostitution on average 3 years earlier' Furthermore this statistic is further sub referenced as being a study of '55 young women either selling sex **or at risk of being abused through prostitution**'. So we can speculate as to how many of the 55 young women studied were either selling sex **OR at risk** of being abused through prostitution.

Regarding the other statistic you use in this footnote, '**45% report experiencing familial sexual abuse**', no source material is offered in 'Paying the Price' for this statistic. Nor is it contained within the document you claim to be referencing.

Footnote 4: Church, S., Henderson, M., Barnard, M & Hart, G. (2001) Violence by clients towards female prostitutes in different work settings: questionnaire survey. British Medical Journal, 332:524-5.

The statistics given here on violence against women involved in street sex work are perfectly valid. The problem here is that this proposed bill would not reduce violence against sex workers. For example, SCOT-PEP would maintain that the Prostitution Public Places Act (2007) in Scotland has in fact significantly increased the risk of violence for street-based sex workers and this is reflected in the number of violent attacks reported by sex workers in the period after this law was introduced.

Footnote 6: Home Office (2004) Solutions and Strategies: Drug Problems and Street Sex Markets. London: UK Government. '**another paper links problematic drug use to those involved in prostitution**'.

The links between street-based sex work and drug use are well documented and could be discussed at length. However, the significant word used in this footnote is 'street' – which as indicated by the title of the study was the subject sub-population being studied and as we have established a relatively small percentage (8-10%) of the total number of sex workers. You extrapolate this in your quote to 'those involved in prostitution'. This again misrepresents the facts for political ends. You yourself state (page 9, point 24) that this '**proposed bill would bring indoor prostitution in line with legislation covering street prostitution where purchasers can be prosecuted.**' **So why are you constantly referencing documents that refer to street-based sex work?**

You are keen to stress in your introduction (point 14) that '**this proposed bill does not seek to further criminalise prostitutes.**' The problem is that the effect of this proposed legislation would do nothing to provide protection from violence against women, will not have an impact on trafficking and by criminalising the act of purchasing sex **will** effectively criminalise the way that sex workers make a living.

Importantly this legislation will result in harmful outcomes for sex workers. For example, in order to gather evidence of a crime having been committed law enforcement officers will be required to gather evidence of a criminal act having taken place. Condoms are very likely to be used as evidence of sexual activity (as they have in many other part of the world) and so sex work establishment are likely to stop stocking condoms for use by sex workers.

You state (p7, point 16), in a rather vague and limited admission that not everyone involved in the sex industry has in fact been coerced and trafficked, '**that a minority of individuals state that they have chosen to be a prostitute**'. However you offer no empirical data to back up your claim that these sex workers constitute a 'minority'.

Footnote 7: Ekberg, G. (2004). The Swedish Law That Prohibits the Purchase of a Sexual Service: Best Practices for Prevention of Prostitution and Trafficking in Human Beings, Violence Against

Women, Vol.10, No. 10, pp.1187-1218. Sage Publications, United States

&

Footnotes 22 & 23: Selected extracts of the Swedish government report SOU 2010:49. The Ban against the Purchase of Sexual Services. An Evaluation 1999-2008. Section B, English summary of the report, p.8. Ibid. p.9.

'A comprehensive evaluation of the Swedish law...indicates that the number of individuals involved in street prostitution has decreased, while no overall increase in prostitution activities has been observed...the number of men who bought sexual services has decreased considerably leading the evaluation inquiry to conclude that the law has affected their actions and decisions to purchase sexual services.'

You often reference the Swedish Model (The Swedish Sex Purchase Act) as an example of good practice. However, many academics have challenged the supposed successes of this piece of legislation and the Swedish Government's report on its own law. For example, Dodillet and Östergren state:

"The Sex Purchase Act **cannot** be said to have decreased prostitution, trafficking for sexual purposes, or had a deterrent effect on clients to the extent claimed"<sup>5</sup>

Furthermore in April 2012 Washington College of Law's Center for Human Rights and Humanitarian Law produced a report 'The Swedish Law to Criminalize Clients: A Failed Experiment in Social Engineering' which concludes that:

"In the thirteen years since the law was enacted, the Swedish government has been unable to prove that the law has reduced the number of sex buyers or sellers or stopped trafficking."<sup>6</sup>

## 2 Objective of the Proposed Bill

You begin this section with '**Prostitution is inherently harmful and dehumanising**'. A clear statement of belief and not backed up with any evidence to support such a global view of sex work. It could be hoped that elected politicians would seek to develop legislation that is evidence-based and backed up by empirical study – rather than push through bad laws that are based on personal, moral or dogmatic belief. Just because you don't like sex work is no reason to criminalise it.

Footnote 8: Macleod, J, Farley, M, Anderson, L & Goulding, J. Challenging Men's Demand in Scotland: A Research Report Based on Interviews with 110 Men Who Bought Women in Prostitution (Women's Support Project, Glasgow 2008).pp. 26-27

'International and Scottish evidence based research suggests that men who have purchased sexual activity believe that a number of consequences including legal penalties, financial or public exposure could act as an effective deterrent if effectively enforced.'

---

<sup>5</sup> Dodillet S., and Östergren P., '**The Swedish Sex Purchase Act: Claimed Success and Documented Effects**'. Presented at the International Workshop: *Decriminalizing Prostitution: Experiences and Challenges*. The Hague, March 3-4, 2011.

<http://www.plri.org/resource/swedish-sex-purchase-act-claimed-success-and-documented-effects>

<sup>6</sup> Ann Jordan, '**The Swedish Law to Criminalize Clients: A Failed Experiment in Social Engineering**' Washington College of Law's Center for Human Rights and Humanitarian Law. April 2012. <http://rightswork.org/wp-content/uploads/2012/04/Issue-Paper-4.pdf>

As this Scottish (not 'International') report is referenced a total of 6 times in your paper it deserves closer attention. (Note: you also reference this report in Footnotes 17-21)

This report when published by an abolitionist group in Scotland was subject to intense and wide ranging criticism from UK expert academics on sex work. Over 20 UK academics produced a commentary on the research (Sanders et al, 2008<sup>7</sup>). The signatories included the majority of key academic researchers on sex work in the UK most with over 10 years experience of researching the UK sex industry. The opening statement of the critique questions the quality, credibility and validity of the research alongside a fundamental critique over the failure to adhere to appropriate ethical standards of research;

“The reason that this report would not be accepted if it was subjected to ordinary academic peer review processes is not because it is biased *per se* but that the particular form of bias is one that translates the social, economic, political and ideological realities of commercial sex, and the complexity of the relationships involved, into (i) more or less 'simple' questions of violence or lack thereof; (ii) transposes what might be economic questions or other questions and realities into gender, i.e. everything is the result of gender; and (iii) conflates fundamentally different social phenomena (rape, paedophilia and other forms of sexual violence) in a way which closes off understanding rather than opens it up. In this way, this report makes no contribution to our understanding of either the 'problem' or the solution. As for criminalising clients (and invoking the same procedures, punishments and rehabilitation as those applied to people convicted of very serious sexual offences such as rape and child sexual abuse), the authors of this report are seemingly ignorant of even the most basic legal principles, such as the principle of proportionality, and of the actual mechanisms through which criminal justice is dispensed. The report makes no attempt to understand either the men concerned or the phenomenon, to explore the determinants of behaviour or to set these within the broader cultural context. Rather it attempts to take complex relationships and impose simple models of gender and violence” (Sanders et al, 2008)

The main criticisms of the report were;

**Lack of adherence to standard ethical practice & methods of producing objective knowledge:** there appeared to have been no ethical approval or peer-review and there was no evidence participants were asked for informed consent. The report was published in-house by the Women's Support Project, which was described as outside the normal academic peer review process.

The report was based on a **radical feminist position**, stated in the report introduction, that prostitution is violence towards all women and that voluntary consensual engagement in the sex industry is not possible. There was criticism that this shaped the research analysis and recommendations “leaving no opportunity for other viewpoints to be expressed or alternative realities other than this extreme version of prostitution to be valid”. One of the authors Melissa Farley, is a longstanding international campaigner for the criminalisation of paying for sex. This is not stated explicitly in the report, which would be good practice in research i.e. to declare interests and be reflexive about ones positioning in relation to the research topic. This created a bias in the research which distorted findings and shaped interpretation and recommendations.

Male participants were treated as offenders and men who perpetrate violence against women - there was no analysis of the men's criminal records, or any evidence that they have committed offences for which they may have been committed and sentenced by the courts. It was assumed all 110 interviewees who had bought sexual services commit actual sexual violence against women.

---

<sup>7</sup> <http://www.scot-pep.org.uk/A%20commentary%20on%20challenging%20men's%20demand%20for%20prostitution%20in%20Scotland.pdf>

There was limited review of other research on men who pay for sex particularly of that which includes analyses different from the authors. The report showed a lack of understanding of the research done on men who buy sex including important works in recent years<sup>8</sup>.

There was an assumption that belief in rape myths was strong amongst most men who pay sex, yet this is a misrepresentation (ignoring research on this issue Monto and Hotaling, 2001) and a distortion of the report's own findings. The report found that 22% made associations between sex workers and sexual violence, the *majority* of men interviewed did not make these links and did not hold the view that sex workers deserve sexual violence.

The report made recommendations which ignored the basis and workings of the criminal justice system, particularly sexual offences. The report not only supported making it a crime to pay for sex but also recommended men who do so should be treated as sex offenders and put on the sex offender register. This is an extreme position which ignores that; most commercial sexual interactions take place without violence or robbery, the majority of such transactions are between consensual adults, certain groups of men e.g. those living with disabilities, would be marginalised as rapists, advocating penal sanctions for buying sex has serious human rights implications & misunderstands the criminal justice system.

The report does not acknowledge that men can engage in the sex industry in a respectful, non-violent manner, or that they may be aware and concerned about issues of exploitation and coercive working practices (Sanders, 2008).

**Attitudes of Men who Pay for Sex:** A review of the existing research on why men pay for sexual services from women finds a wide range of motivations for purchasing sexual services and a wide range of attitudes to women generally and to women involved in sex work amongst research samples of men who purchase sexual services.

### 3 Background

Footnote 9: Details and documents:

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/25043.aspx>

You refer to the previous consultation carried out by Trish Godman. This consultation was blatantly skewed towards forcing respondents to vote in favour of criminalising the purchase of sex over criminalising the sale of sex. There was no option to recommend either the status quo or full decriminalisation.

Much of the 'evidence' used by Trish Godman was biased and regarded as being of low academic value and ethically poor. Significantly, of the nine academics who responded, eight fundamentally opposed the proposal, with one stating, "*The consultation is based on false premises and biased statements including sexist and paternalistic notions which have no place in a modern legislation*" (Dr Linda Cusick).

Footnotes 10 & 11: Criminalisation of the Purchase and Sale of Sex (Scotland) Bill, Summary of Consultation Responses (2011), p.5

---

<sup>8</sup> Brooks-Gordon, 2005, 2006, Kinnell, 2006, Lowman and Atchison, 2006, O'Connell Davidson, J, 2003, Perkins, R, 1999, Sanders, T, 2008

[http://www.scottish.parliament.uk/S3\\_MembersBills/Final%20proposals/20110316consultationresponsesummaryFinal.pdf](http://www.scottish.parliament.uk/S3_MembersBills/Final%20proposals/20110316consultationresponsesummaryFinal.pdf)

'The analysis of the previous public consultation suggested that this proposal was considered to be an effective mechanism for reducing the demand to buy sexual activity by making it clear that those who purchase will be prosecuted'.

This is at the very least a skewed and rather simplistic interpretation of the consultation responses. It does not reflect any 'weighting' to the relative knowledge or expertise of the respondents; nor does it mention any of the concerns raised publicly by key bodies such as ACPOS (see later in this response) who would have been responsible for implementing any resulting legislation.

For example, the Law Society of Scotland published their response<sup>9</sup> which raised doubts as to the proposals' compatibility with Article 8 of the European Convention on Human Rights which states that everyone 'has the right to respect for his private and family life, his home and his correspondence and that there shall be no interference by a public authority'. They stated: "the proposal seeks to criminalise an activity which is not illegal i.e. sexual intercourse between consenting parties, albeit against the background of a financial transaction" "the proposal has of course to be set against Article 8 and considered as to whether it can be construed as an encroach upon one's personal liberties"

The 'analysis' of the responses alluded to by you was carried out by Trish Godman's office. The referenced report itself does not even make the leap that you infer. Trish Godman's summary of responses actually ends with only ONE conclusion:

'The responses to consultation have provided a number of ideas that the member will consider and use to further develop the policy before completing the drafting of the bill.'

The consultation summary report was never scrutinised by the Justice Committee, it was never taken forward and the proposal fell at dissolution of the last Parliament.

The conclusions that you draw, from the results of the previous consultation, in order to justify your own proposal are weak and ill-founded.

#### **4 Challenging Demand**

Footnote 12: Home Office, (July 2004). "Paying the Price: a consultation paper on prostitution"

<http://webarchive.nationalarchives.gov.uk /+/>

[http://www.homeoffice.gov.uk/documents/paying\\_the\\_price.pdf?view=Binary](http://www.homeoffice.gov.uk/documents/paying_the_price.pdf?view=Binary); Kinnell, H (1999)

Survey of sex work characteristics and policies in the UK, Netherlands, Belgium, France, Ireland and Luxembourg. European Network for HIV / STD prevention in prostitution.

'It was estimated in 1999 that around 80,000 people were involved in prostitution (on street and off street) in the UK.'

The 80,000 figure is used exhaustively including in 2009 by the then Home Secretary, Jacqui Smith, in an interview about proposed new law around trafficking comes from research done by Hilary Kinnell, when she was working for an organisation providing health services to sex workers.

---

<sup>9</sup> The Law Society of Scotland's Response, February 2011

[http://www.lawscot.org.uk/media/245847/crim\\_purchase\\_and\\_sale\\_of\\_sex%20scotland\\_%20bill.pdf](http://www.lawscot.org.uk/media/245847/crim_purchase_and_sale_of_sex%20scotland_%20bill.pdf)

As the BBC reported at the time of Jacqui Smith's interview:

'Ms Kinnell contacted 29 projects that provided services for sex workers to ask how many prostitutes they were working with. She had 17 responses. The average number of prostitutes per project was 665. She then multiplied that figure by 120, the total number of projects on her mailing list, to get an estimation of the total number of prostitutes.

"That brought the total up to very close on 80,000, which is still being quoted," Ms Kinnell says. "And I find that quite bizarre really. The figure was picked up by all kinds of people and quoted with great confidence but I was never myself at all confident about it. I felt it could be higher, but it also could have been lower."

Ms Kinnell is the first to point out the possible problems with her method: the centres responding might be larger than most; some sex workers might use more than one centre, and some might not be on the radar at all.

Yet over time, these caveats have been forgotten. Only the number remains.'<sup>10</sup>

The main document that you reference here in relation to this figure is 'Paying the Price: a consultation paper on prostitution' (Home Office, July 2004).

This report again was heavily criticised at the time by academics:

'*Paying the Price* seeks solutions for sex work at the individual rather than structural level. Sex workers might be recommended to 'exitting programmes' and individual pimps and traffickers prosecuted, but there is no attempt to prevent sex worker abuse through human rights and employment laws'.<sup>11</sup>

Footnote 13: Scottish Executive (2004). *Being Outside: Constructing a Response to Street Prostitution*, A Report of the Expert Group on Prostitution in Scotland. Pages 1 and 4; see also paragraph 4.3.

'the 2004 Scottish Executive Report "Being Outside" estimated that approximately 1400 individuals were regularly involved in street prostitution'

Here is yet another example of your referencing of documents that study street-based sex work when you yourself state (page 9, point 24) that this 'proposed bill would bring indoor prostitution in line with legislation covering street prostitution where purchasers can be prosecuted.'

This is also an example of selective referencing in order to support the chosen political point you are attempting to make in this section titled '**Challenging Demand**'.

What you **do not mention** in relation to this particular Scottish Executive document is the main recommendations of this report.

Significant amongst the recommendations in 'Being Outside' was considering 'management zones' as a possibly useful local strategy as the group identified that unplanned redevelopment of areas

---

<sup>10</sup> <http://news.bbc.co.uk/1/hi/magazine/7819984.stm>

<sup>11</sup> 'Prioritizing punitive responses over public health: commentary on the Home Office consultation document *Paying the Price*', <http://csp.sagepub.com/content/25/4/596.abstract>, Linda Cusick University of Paisley & Lee Berney, University of Glasgow. *Critical Social Policy* November 2005 25: 596-606

had complicated the capacity of services to respond effectively, limiting access to services by the women involved. The Expert Group made a number of recommendations with regard to the law covering this area, uppermost of which was to **'not criminalise on a moral basis.'** The group specifically recommended changes to the law which would 'obviate the need for specific legislation regarding 'kerb crawling'.

The Scottish Government ignored the advice of their own expert group that met for 18 months to consider street prostitution by bringing in legislation that specifically criminalised 'kerb crawlers'. This again was despite the Expert Group stating that the law should 'avoid any tendency to increase risk to vulnerable people and to communities through unplanned displacement.'

Footnote 16: Letter from ACPOS to the Scottish Government regarding the Draft Guidance for Local Authorities and their Community Planning Partners on Tackling Street Prostitution (11 December 2006). <http://www.scotland.gov.uk/Resource/Doc/1099/0052354.pdf>  
'ACPOS recognises that the effects of prostitution are more widespread due to the "geographical spread of residence of both prostitutes and those using their services" '

Again, this was in reference specifically to street prostitution. This letter also started with the advice from ACPOS that:

'it is not appropriate to create a national forum or framework imposing a centralised approach for dealing with street prostitution. The proposal that individual local authorities affected by this issue should instead develop their own response is considered sensible and allows for the creation of local solutions to meet differing local needs'.

In the interests of transparency and properly reflecting the views of your sources, you could also have chosen to say how ACPOS responded to Trish Godman's previous consultation on her proposals. In their formal response ACPOS stated that they could not support **either** option tendered, and had significant concerns as to how the proposed offence would apply practically. ACPOS made the following statements in their response:

"ACPOS has concerns as to how sufficient evidence of such activity could be secured when balanced against the proportionality and necessity i.e. would it be justifiable and proportionate to carry out an intimate forensic medical examination of the purchaser and / or seller in such a situation in order to prove sexual contact?"

"ACPOS is of the opinion that officers may not be able to gather sufficient evidence to report to the Procurator Fiscal, which in turn would mean there would be too few convictions for the proposed new offence to deter others"

Page 12, Point 35

'Responses to Trish Godman's consultation raised some concerns that legislating on the criminalisation of the purchase of sex would push prostitution activities "underground". There is no substantive evidence to suggest that criminalisation of those who purchase sex would have this effect.'

Unfortunately, there **are** significant amounts of 'substantive evidence'.

Legislation that criminalises the purchase of sex results in harmful outcomes for sex workers, including increasing their HIV risk, vulnerability to abuse and exploitation and limiting their access to effective healthcare and support services. This has been well documented around the world, as highlighted at a 2010 UNFPA/UNAIDS conference:

“As a result of the criminalisation of sex work, the locales where sex work takes place are surrounded by other forms of criminality such as criminal gangs, gambling, large scale corruption and extortion. This negatively impacts the health, safety, and human rights of sex workers.”<sup>12</sup>

The *UNAIDS Guidance Note on HIV and Sex Work* makes the following observation related to law, policy and law enforcement:

‘In many countries, laws, policies, discriminatory practices, and stigmatising social attitudes drive sex work underground, impeding efforts to reach sex workers and their clients with HIV prevention, treatment, care and support programme’.<sup>13</sup>

‘There is very little evidence to suggest that any criminal laws related to sex work stop demand for sex or reduce the number of sex workers. Rather, all of them create an environment of fear and marginalisation for sex workers, who often have to work in remote and unsafe locations to avoid arrest of themselves or their clients. These laws can undermine sex workers’ ability to work together to identify potentially violent clients and their capacity to demand condom use of clients’.<sup>14</sup>

The approach of criminalising the client has been shown to backfire on sex workers. In Sweden, sex workers who were unable to work indoors were left on the street with the most dangerous clients and little choice but to accept them.<sup>15</sup>

Page 12, Point 37:

Alternative critiques of the Swedish legislation, other than the Swedish Government’s own research which you quote are available, even from the government’s own departments. Not surprisingly you have chosen not to quote from these sources in your document as they do not support your analysis or claims for the impact your proposals are likely to have.

For example, in a telling report from the Swedish National Board of Health and Welfare (2008) it states:

‘The overall picture emerging from the interviews is that the sex trade virtually disappeared from the street during a brief period immediately after the law went into effect. It later returned, albeit to a lesser extent. For instance, representatives of the Stockholm Prostitution Centre say that prostitution initially vanished from the streets when the law was passed, only to later return at about half the former extent. Now about two thirds of street prostitution is back, compared to the situation before the law against purchasing sexual services went into effect.’<sup>16</sup>

---

<sup>12</sup> ‘Creating an Enabling Legal and Policy Environment for Increased Access to HIV & AIDS Services for Sex Workers’, *Thematic Task Team on Creating an Enabling Legal and Policy Environment* in preparation for the 1st Asia and the Pacific Regional Consultation on HIV and Sex Work, 12 – 15 October 2010 in Pattaya, Thailand.

[http://www.nswp.org/sites/nswp.org/files/EnablingEnv\\_discussion\\_paper\\_FINAL\\_Sep2010\[1\].pdf](http://www.nswp.org/sites/nswp.org/files/EnablingEnv_discussion_paper_FINAL_Sep2010[1].pdf)

<sup>13</sup> UNAIDS, *UNAIDS Guidance Note on HIV and Sex Work*, Geneva, 2012.

[http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2009/JC2306\\_UNAIDS-guidance-note-HIV-sex-work\\_en.pdf](http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2009/JC2306_UNAIDS-guidance-note-HIV-sex-work_en.pdf)

<sup>14</sup> UNAIDS, *UNAIDS Guidance Note on HIV and Sex Work*, Geneva, 2012.

[http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2009/JC2306\\_UNAIDS-guidance-note-HIV-sex-work\\_en.pdf](http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2009/JC2306_UNAIDS-guidance-note-HIV-sex-work_en.pdf)

<sup>15</sup> D Kulick. Sex in the new Europe: The criminalization of clients and Swedish fear of penetration. *Anthropological Theory*, 3(2):199-218, 2003; Dodillet S., and Östergren P., ‘**The Swedish Sex Purchase Act: Claimed Success and Documented Effects**’. Presented at the International Workshop: *Decriminalizing Prostitution: Experiences and Challenges*. The Hague, March 3-4, 2011.

<http://www.plri.org/resource/swedish-sex-purchase-act-claimed-success-and-documented-effects>.

<sup>16</sup> National Board of Health and Welfare (2008), *Prostitution in Sweden 2007*.

[http://www.socialstyrelsen.se/Lists/Artikelkatalog/Attachments/8806/2008-126-65\\_200812665.pdf](http://www.socialstyrelsen.se/Lists/Artikelkatalog/Attachments/8806/2008-126-65_200812665.pdf)

## 5 Current Legislation

Page 16, Point 52:

We would challenge your assertion that your document ‘**makes references to international evidence-based conducted on the subject of prostitution**’ based on the point made earlier in our submission.

You also state that the previous consultation ‘**discussed the rise in human trafficking in Scotland as reported through the media.**’ Are you really suggesting, particularly in light of the criticism of the UK press e.g. at the Leveson inquiry, that the media is a reliable source of information upon which to judge the level of trafficking in Scotland? Particularly given that the report which you then go on to reference (EHRC inquiry into human trafficking) highlighted the many difficulties that the authorities and agencies engaged in this field have in identifying the true scale of trafficking in Scotland.

Footnote 38, 39, 41, 42: EHRC Inquiry into Human Trafficking in Scotland, 2011 - various  
You state that this report ‘**points to commercial sexual exploitation as the “most prevalent and pernicious manifestation of human enslavement.”**’

Again you are **misquoting** your source material. The EHRC report’s precise wording is ‘But it is **sex trafficking** that is the most prevalent and pernicious manifestation of human enslavement.’

As you identify in your Introduction (page 6) that you see ‘**prostitution as a form of commercial sexual exploitation**’ it is extraordinarily misleading of you to then conflate the terms ‘sex trafficking’ with ‘commercial sexual exploitation’ here. The implication you draw is that all prostitution is sex trafficking.

Turning to the EHRC report itself, refreshingly, Helena Kennedy does seem to challenge the growing orthodoxy espoused by the Scottish Government (in ‘Safer Lives, Changed Lives’) and prohibitionist groups around the definition of commercial sexual exploitation. Baroness Kennedy does state clearly, in relation to calls for all prostitution to be seen as exploitation, that “*the law should not make the judgement that, when a woman claims autonomy, she is in fact misguided.*” She also states that she made clear to all people at the inquiry that “*banning was not going to be included in my recommendations, as in my view it was both unworkable in law and in practice.*”<sup>17</sup>

Broadly, the findings of the report are welcome and sensible in concentrating on improved joint-working between agencies and enhanced support for victims of human trafficking.

Some concerns do arise in the narrative of the report of the inquiry however. The report does contain a number of seemingly contradictory statements, for example:

*“Human trafficking is substantially concerned with sex” (p8)*

*“It is sex trafficking that is the most prevalent and pernicious manifestation of human enslavement” (p9)*

*“The most common purpose of trafficking in Scotland leads with prostitution – then forced labour and domestic servitude” (p36)*

These appear to conflict with the statement:

*“The inquiry found it impossible to establish the extent of trafficking in Scotland. Reliable figures are impossible to come by and some support organisations give numbers that are hard to verify” (p11)*

---

<sup>17</sup> Equality & Human Rights Commission Scotland. **Inquiry into Human Trafficking in Scotland**. 2011. [http://www.equalityhumanrights.com/uploaded\\_files/Scotland/Human\\_Trafficking\\_in\\_Scotland/\\_inquiry\\_into\\_human\\_trafficking\\_in\\_scotland-full-report\\_pdf\\_.pdf](http://www.equalityhumanrights.com/uploaded_files/Scotland/Human_Trafficking_in_Scotland/_inquiry_into_human_trafficking_in_scotland-full-report_pdf_.pdf)

Of more concern is the fact that the EHRC's only commissioned piece of research to inform the inquiry was specific to human trafficking in relation to 'commercial sexual exploitation.' If indeed the inquiry wished to contribute to "undermining stereotypical images which associate trafficking solely with sexual coercion" (p41) then it appears to have missed an opportunity to research other forms of trafficking in Scotland.

The research itself was carried out by Roger Matthews who is "entirely against liberal approaches to prostitution"<sup>18</sup> and Helen Easton who believes "prostitution is harmful to women, damaging to gender relationships and is an exploitative practice."<sup>19</sup> The independence of their views could easily be questioned and their partisan approach is rather glaring in their research. For example, under the heading 'Responses to trafficking in Scotland' the authors seem to allow their focus to stray almost entirely from the topic in hand (trafficking) and concentrate on what seems to be their main cause for concern, i.e. that "the research highlighted concerns about the absence of a clear strategic direction or policy approach to indoor prostitution offered by the Scottish Government."<sup>20</sup>

Page 17, Point 58:/Footnote 44 & Footnote 54

'Article 18 of the Directive Challenge calls on Member States to...reduce the demand that fosters all forms of exploitation related to trafficking human beings.'

Again here you are selectively misrepresenting your source material and again conflating trafficking and coercion with sex work itself. Even your own footnote (Footnote 44) shows that the Directive refers specifically to the '**exploitation of the prostitution of others**'. The key emphasis here is exploitation – not prostitution itself. You repeat this error of emphasis again when quoting from CEDAW (Footnote 54.)

Footnotes 48-51 & 53

The source document quoted here and the emphasis seem compelling, at first glance. However, delving further into the report, the authors qualify the central finding – and indeed caution against using their report as an argument for criminalisation. For example:

*'Our central finding, i.e., that countries with legalized prostitution experience a larger reported incidence of trafficking inflows, is therefore **best regarded as being based on the most reliable existing data, but needs to be subjected to future scrutiny.***

*'The likely negative consequences of legalized prostitution on a country's inflows of human trafficking might be seen to support those who argue in favour of banning prostitution, thereby reducing the flows of trafficking (e.g., Outshoorn, 2005). **However, such a line of argumentation overlooks potential benefits that the legalization of prostitution might have on those employed in the industry. Working conditions could be substantially improved for prostitutes—at least those legally employed—if prostitution is legalized. Prohibiting prostitution also raises tricky "freedom of choice" issues concerning both the potential suppliers and clients of prostitution services. A full evaluation of the costs and benefits, as well as of the broader merits of prohibiting prostitution, is beyond the scope of the present article.***

This seems to be yet another example of selective quoting to justify your proposals.

<sup>18</sup> <http://www.guardian.co.uk/lifeandstyle/2008/feb/29/women.ukcrime>

<sup>19</sup> <http://www.grossefreiheit.dk/upl/9626/ReynoldsEastontale.pdf>

<sup>20</sup> Helen Easton & Roger Matthews. *Investigating the experiences of people trafficked into commercial sexual exploitation in Scotland*. Equality and Human Rights Commission Scotland, January 2012. [http://www.equalityhumanrights.com/uploaded\\_files/Scotland/Research/human\\_trafficking\\_in\\_scotland\\_research\\_report\\_jan\\_2012\\_.pdf](http://www.equalityhumanrights.com/uploaded_files/Scotland/Research/human_trafficking_in_scotland_research_report_jan_2012_.pdf)

Page 18, Point 64

'Prostitution is sexual servitude, reducing humans down to a commodity to be bought and sold for sexual activity. It perpetuates gender inequality and legitimizes the actions of purchasers of sexual activity to use the bodies of individuals'

This is a clear statement of belief - not supported by evidence – which is wildly stereotypical, denies the reality for the majority of sex workers and is extraordinarily inflammatory. We do not believe that language such as this belongs in a balanced, intelligent debate on this issue.

## **6 The Proposed Bill**

Page 24, Point 87

You quote here from the ACPOS response to the previous consultation held by Trish Godman MSP. You state that ACPOS said in that response that 'an effective deterrent is the key to tackling demand for prostitution'. This sentence **actually** continued with the words 'and any new legislation should enhance the opportunity for successful prosecution rather than reduce it.'

**You are misquoting ACPOS again.**

In their formal response ACPOS stated that they could not support **either** option tendered, and had significant concerns as to how the proposed offence would apply practically. Furthermore ACPOS made the following statement specifically regarding the issue of deterrents:

'ACPOS is of the opinion that officers may not be able to gather sufficient evidence to report to the Procurator Fiscal, which in turn would mean there would be too few convictions for the proposed new offence to deter others.'

Quoting from the Home Office publication 'Tackling the Demand for Prostitution: A Review' ACPOS noted the finding that the perceived risk of arrest was low, meaning that any deterrent effect is limited.

## **7 Anticipated costs of implementing the proposed bill**

Page 27, Points 99-102

Your costings section appears to be incredibly sparsely populated with evidence. The narrative seems to rely on conjecture about the supposed cost impact and enormous assumptions about decreasing court costs due to a 'reduction in prostitution', your hoped-for deterrent effect meaning our police force would in fact spend LESS time on enforcement in the long run.

Your proposals will place an additional financial burden on the new Scottish single police force and will divert resources from the detection of (for example) human trafficking, which you claim you wish to address, to enforcement of this legislation. This also comes at a time when those resources are already under extreme pressure.

## **8 Impact of the proposal on equalities**

Page 28, Points 103-106

Your proposals barely take account of male or transgender sex workers, or for example female clients of sex workers. Your proposals do not mention gay male sex workers or clients.

We believe your understanding of the sex industry is not sufficiently nuanced to make the claims you do with regard to the impact on equalities.

We do not accept your premise that your proposals would deter traffickers, who already work out with the boundaries of the law and so we do not believe you can claim that the proposed forthcoming bill would have the claimed positive effect on the numbers of women of different ethnicities who may be trafficked for sexual exploitation. You have also ignored the fact that sex workers and clients are best placed to identify a potential victim of trafficking – and so by creating a legal barrier between those parties and the police that you would actually reduce the chances of victims of trafficking for sexual exploitation in being given the support they need.

At a time when unemployment is rising uncontrollably and families are struggling to cope with rising costs your proposals would have a significant detrimental effect on the ability of sex workers to support themselves and their families financially. We do not see any proposals in your consultation document for offering alternative employment opportunities and sources of income.

To conclude our response to this consultation, we wish to make clear that underpinning our rebuttal of your evidence is a deep concern for those that this bill will have most impact upon – female sex workers. By presenting such misinformed and misguided information into parliament, the basic human rights of sex workers to livelihood and self-determination are being violated. Sex workers are already subject to extreme levels of stigmatisation, discrimination and marginalisation. This legislative proposal will only serve to exacerbate these well documented feelings attached to working in an already heavily criminalised context. At the expense of offering equal rights to sex workers, this bill represents a moralistic, paternalistic “helping hand” to those who choose to engage with the portrayal of themselves as victims to be pitied and rescued; whilst simultaneously further excluding those who do not align with your views. By choosing to ignore the agency of individuals involved in sex work, and instead putting forward a moral agenda that is premised upon the victimhood of women, you are strategically ignoring the diverse voices and experiences of sex workers in Scotland. SCOT-PEP will continue to advocate that only rights can stop the wrongs that have historically pushed sex workers into the margins of society where they are ‘othered’ and labelled according to policy agendas and moral crusades. We therefore sit in opposition to the proposal to criminalise the purchase of sex in Scotland due to the fundamental human rights abuses that will take place against sex workers as a result.