

CEASE

UK

CENTRE TO END ALL
SEXUAL EXPLOITATION

An evidence-based response to:

Hate crime laws

A Consultation Paper

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Summary Consultation Question 4:

Should any of the following groups be specifically protected by hate crime laws?

- sex workers
- homeless people
- alternative subcultures (for example, goths, punks, metallers, emos)
- philosophical beliefs (for example, humanism)

Please share your views below

Before responding to this question substantively, CEASE UK objects to the term “sex worker” as acceptable nomenclature as it applies to discussions regarding the system of prostitution. This is of course a contested point, but it is our position that “sex work” sanitises what is overwhelmingly the sexual exploitation of (usually impoverished) women and children across the world.

For example, conservative estimates place the number of women in prostitution in Europe who have been victims of human trafficking at one in seven¹; in the Netherlands (where prostitution is legalised), violence and coercion to keep women trapped in prostitution is commonplace, with an estimated 50% to 90% of women in licensed prostitution ‘*working involuntarily*’.² For example, in the *SNEEP* case,³ six defendants were found guilty of trafficking more than 100 women into State-regulated prostitution via a sprawling and organised network of accomplices, with the judgment detailing the levels of violence faced,

¹ Erika Schulze and others, ‘Sexual exploitation and prostitution and its impact on gender equality’ (*European Parliament* 2014) <[https://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/493040/IPOL-FEMM_ET\(2014\)493040_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/493040/IPOL-FEMM_ET(2014)493040_EN.pdf)> accessed 24 December 2020

² CAP International, ‘Assessment of ten years of Swedish and Dutch policies on prostitution’ (*CAP International*, August 2012) <<http://www.cap-international.org/wp-content/uploads/2017/10/Brief-prostitution-Sweden-and-Netherlands-EN-1.pdf>> accessed on 24 December 2020

³ The *SNEEP* Case LJN: BD6972, Almelo District Court, 08/963001-07 Print judgement

including ‘rape and coercion into breast enlargement or abortion’ used to control the women⁴; and further, because prostitution is often comprised of individuals who have other vulnerabilities such as poverty or addiction, this obliterates any notions of “choice”.⁵ To engage in prostitution *willingly* is predicated on being able *not* to engage in it when preferred. However, this is rarely an option. For example, Raymond found that:

‘...respondents said that they also suffered physical punishment when they made mistakes or tried to run away...they had to service men...even when they were ill or did not feel well...Their movement was highly controlled, and most were not allowed to leave the premises and were tightly guarded.’⁶

Therefore, we dispute the adoption of the term “sex work” in the consultation - which sanitises and masks widespread violence, exploitation and abuse - and implore the Law Commission to take an even-handed approach when reviewing policy proposals as it might apply to prostitution. This is not to say that those who use the term “prostitution” do not have any positionality; rather, we ask that the Law Commission consider a range of views and approaches and recognise that by choosing “sex work” this indicates a potential foregone conclusion on the part of the Law Commission, which would inevitably impact any subsequent law/policy reform proposals.

Further, we submit that the Commission should be cautious in their approach to “*adopting a broad view of sex work*” (para 14.7 Consultation Paper). Presumably any hate crime reform

⁴ *ibid*: ‘A characteristic feature of the organisation was its ruthless and violent conduct. The case file is bursting with violence and intimidations. The five defendants have no respect at all for the physical and mental integrity and right of self-determination of these women.’

⁵ For example, see Jacquelyn Monroe, ‘Women in Street Prostitution: The Result of Poverty and the Brunt of Inequity’ (2005) 9 *Journal of Poverty*; and Mimi Silbert, Ayala M. Pines, and Teri Lynch, ‘Substance Abuse and Prostitution’ (1982) 14 *Journal of Psychoactive Drugs* 193 respectively

⁶ Janice G Raymond and others, ‘A Comparative Study of Women Trafficked in the Migration Process’ (2002) available at < https://reliefweb.int/sites/reliefweb.int/files/resources/7092F5115C910FD8C1256F56003B65FD-Gender_Migration_CATW_2002.pdf > 61 accessed 24 December 2020.

would apply predominantly, if not exclusively, to those within prostitution specifically, given the near-endemic rate of violence and abuse faced by that same group. We submit that by blurring the definitional boundaries to include *anyone* who “provides”:

“...sexual or erotic acts or sexual intimacy in exchange for payment or other benefit or need”

this would inevitably and incorrectly include a variety of individuals/demographics whose only commonality is that of being involved in any given situation that stretches from the provision of vague “eroticism” (for example a webcam dancer), to an individual who is compelled against their will by a pimp to perform physical sexual services to any individual who can pay.

In light of this, when reviewing consultation replies, we submit that the Commission should recognise that “sex work” is not a phrase that lends itself to precise policy reform proposals.

In the alternative, we suggest that the Commission take note of pre-existing Crown Prosecution Service guidance, where it is stated:

There is no statutory definition of ‘sexual services’. It is normally deemed to include acts of penetrative intercourse (as set out in section 4(4) Sexual Offences Act 2003) and masturbation. It does not include activities such as ‘stripping’, ‘lap dancing’ etc.

Substantive Proposal Response

Without commenting on the adequacy or otherwise of current “hate crime laws”, we submit that this should not extend to the creation of, or application to, a separate category of “sex workers”. We propose to work through the Consultation’s points and proposals methodically for the Commission’s convenience.

At para 14.11, the Consultation states: *“Merseyside police have emphasised that the hate crime approach provides a framework which directs police away from treating sex workers as offenders, and flags crimes against sex workers as a police priority”*

We applaud the Merseyside police for recognising that those within prostitution should not be treated as offenders; however, it is not clear how or why doing this through a “hate crime framework” is necessary. If it is accepted that the crime level against those in prostitution is such that the police need to reconceptualise those same individuals as victims of crime as opposed to perpetrators, it questions the issue of criminalising those within prostitution *at all*.

Respectfully, viewing this through a framework of “hate crime” appears to be a somewhat arbitrary attempt to deal with the issue in a “top-down” manner, dealing only with the symptoms of violence against those in prostitution, as opposed to getting to the root of the issue; in that those who are subjected to violence within prostitution should not be considered offenders *in legal terms*, as opposed to simply being *treated* as non-offenders through a pseudo-convention that in reality has no legal basis.

Although at para 14.13 the Consultation states: *“The hate crime approach has been linked to an increase in reporting and conviction rates for crimes against sex workers in Merseyside, as well as higher levels of intelligence coming to the police from sex workers in relation to dangerous offenders”*

we submit that there is no reason that this should be construed as something inherent to the application of a “hate crime framework”. In Sweden, for example, through police training and education, officers were taught about the violence and abuse faced by those in prostitution, and coupled with wider law reform, this began to encourage systemic change where police

forces, social services, and those within prostitution could begin to combat sexual and physical violence in an effective manner.⁷

Therefore, we submit that using a “hate crime framework” to assist those within prostitution is unnecessary and arbitrary, and only acts as a sticking-plaster for something that requires more deep-rooted, systemic change.

In para 14.15, the Consultation discusses the issue of “demonstrable need”, including but not limited to issues such as the underlying reason for violence faced by those in prostitution, the “stigma” faced by prostituted individuals, and “prejudice and hostility” faced by “sex workers”.

For example, at para 14.22, the Consultation states: *“It has also been argued that sex workers are targeted for crime because of prejudice or hostility towards their status as sex workers.”*

And

“A key aspect of this prejudice is the stigma that sex workers face as a group in society”

And further:

“This stigma has been causally linked to violence against sex workers”.

We reject the assertion that “stigma” is the cause of violence against those in prostitution.

While undoubtedly those within prostitution *do* face social stigma (for many reasons, beyond the scope of CEASE’s submission), we submit that the reason those within prostitution face endemic levels of violence is because prostitution is *inherently* violent.

⁷ For example, see Nordic Model Now, ‘How the Swedish Sex Purchase Law moved the shame of prostitution from the women to the punters’, <<https://nordicmodelnow.org/2018/07/20/how-the-swedish-sex-purchase-law-moved-the-shame-of-prostitution-from-the-women-to-the-punters/>> accessed 24 December 2020

For example:

In the United States (US), the research examining sexual and physical violence within prostitution spans several decades. While this may raise questions as regards the relevance of research more than 30 years old, it is posited that the age of the research is beneficial. If certain experiences – in this case, sexual and physical violence – can be tracked throughout several decades, then that arguably speaks to its prevalence and consistent nature within prostitution.

For example, in 1982 Silbert and Pines found that 70% of women in prostitution in San Francisco had been raped by SBs;⁸ in 1993, Hunter found that prostituted women in Oregon were raped on average once per week by SBs;⁹ and in 1994, Parriott found that 85% of women in prostitution in Minneapolis had been raped during the course of being prostituted.¹⁰

In 2008 Farley et al interviewed 130 prostituted women in San Francisco, 82% of whom had been physically assaulted while in prostitution; 73% had been raped; and 59% had been raped more than five times while in prostitution.¹¹

In Colombia, of 96 women who were interviewed as to whether they had a) been physically assaulted in prostitution, b) been raped in prostitution, and c) been raped more than five times in prostitution the figures were 70%, 47%, and 64% respectively;¹² in Mexico, of 123 women

⁸ Mimi H Silbert and Ayala M Pines, 'Victimization of Street Prostitutes' (1982) 7 *Victimology* 122.

⁹ Susan K. Hunter, 'Prostitution is Cruelty and Abuse to Women and Children', (1993) 1(1) *Michigan Journal of Gender and Law* 91

¹⁰ Ruth Parriott, 'Health Experiences of Women Used in Prostitution: Survey Findings and Recommendations' (1994) Centre for Urban and Regional Affairs, available at <<https://conservancy.umn.edu/bitstream/handle/11299/205150/S9406.pdf?sequence=1&isAllowed=y>> accessed 24 December 2020

¹¹ Melissa Farley and others, 'Prostitution and Trafficking in Nine Countries: An Update on Violence and Posttraumatic Stress Disorder' (2004) 2 *Journal of Trauma Practice* 38

¹² *Ibid* p43

the figures were 59%, 46%, and 44%;¹³ in South Africa, of 68 women the figures were 66%, 56%, and 58%;¹⁴ in Thailand, of 166 women the figures were 56%, 38%, and 56%;¹⁵ in Turkey, of 50 women the figures were 80%, 50%, and 36%;¹⁶ and in Zambia, of 117 women interviewed the figures were 82%, 79%, and 52%.¹⁷

A 2002 study across five countries¹⁸ undertaken by Raymond and others found that:

*'Rates and frequency of violence and control are extremely high, with physical harm (almost 80 percent), sexual assault (over 60 percent)... leading the indicators.'*¹⁹

Further:

*'...acts...included being beaten, bit, burned... choked, crushed, dragged, hit with objects... punched, scratched... smacked, strangled... thrown out of a car, twisted, and hair pulled...being...urinated on, pinched in the breasts, sodomized, objects inserted in anus and vagina, bestiality... weapons used against women... being strangled with a bandana, burned... bound with extension cords, assaulted with...knives and guns, hit with shoes and a liquor bottle.'*²⁰

Clearly, physical and sexual violence is endemic within prostitution, globally speaking.

Further, evidence shows that where prostitution has been reconceptualised as “actual” labour

¹³ ibid

¹⁴ ibid

¹⁵ ibid

¹⁶ ibid

¹⁷ ibid

¹⁸ Indonesia, the Philippines, Thailand, Venezuela, and the United States

¹⁹ Janice G Raymond and others, 'A Comparative Study of Women Trafficked in the Migration Process' (2002) available at < https://reliefweb.int/sites/reliefweb.int/files/resources/7092F5115C910FD8C1256F56003B65FD-Gender_Migration_CATW_2002.pdf > 61 accessed 24 December 2020.

²⁰ Ibid 64

(and thus allegedly contributing to a destigmatisation of the phenomenon as a whole), violence still persists, and of particular relevance here, the “stigma” remains.

In New Zealand, where prostitution has been decriminalised, a 2008 Prostitution Law Reform Committee (PLRC) report found that 35% of all prostituted individuals felt that *‘they had to accept a client when they didn’t want to’*,²¹ with the PLRC finding that *‘there are still some sex workers who are being required to provide commercial sexual services against their will’*,²² 9.8% had been physically assaulted by a client in the previous 12 months;²³ 3% had been raped by a client in the past 12 months;²⁴ and that *‘the majority (of prostituted individuals) felt that the PRA could do little about the violence that occurred’*.²⁵ Further research found that 10.4% of all prostituted individuals *‘don’t know how to leave’*, and that 17.6% *‘don’t know what else to do’*.²⁶ In other words, they were trapped in prostitution, and could do nothing about it.

In New Zealand, prostitution is recognised as *literal* employment in an effort to reduce stigmatisation, yet the violence persists. This suggests it is not its status as employment or otherwise that impacts the violence, but the nature of prostitution itself.

At para 14.27, the Consultation states: *“Stigma against sex workers negatively affects their credibility and has resulted in sex workers being taken less seriously when they report violence.”*

²¹ Prostitution Law Review Committee, ‘Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003’ (Prostitution Law Review Committee 2008) <<http://prostitutescollective.net/wp-content/uploads/2016/10/report-of-the-nz-prostitution-law-committee-2008.pdf>> accessed 24 December 2020 p45

²² *ibid* p47

²³ *ibid* p56

²⁴ *ibid*

²⁵ *ibid* p14

²⁶ *ibid* p68

The issue of the authorities not taking the reporting of crime seriously is indeed a real problem, particularly in light of the levels of crime faced by those within prostitution. This is also recognised by the CPS who state:

‘...those who sell sex should not be treated as offenders but as people who may be or become victims of crime.’²⁷

Again, it is submitted that this is representative of a systemic, attitudinal problem on behalf of the authorities, but to view this through the prism of “hate crime” would be a mistake for two reasons. Firstly, it is difficult to envisage how this would impact the actual perpetration of crime against those in prostitution.

Research demonstrates that those within prostitution face such violence because of the attitudes that being able to purchase sexual access instils in the minds of those who do so.

For example, one study found that compared to non-sex buyers (NSBs), those who purchase sexual access lack – or have drastically reduced capacity for – empathy for those in prostitution, which itself is strongly linked to sexual aggression.²⁸ But as importantly, the lack of empathy affords buyers an opportunity to act on pre-existing desires to enact violence.²⁹

As regards links between sexual violence and sex buying: between 2010 and 2013 four UN agencies undertook a multi-country study to understand the driving factors behind male

²⁷ ‘Prostitution and Exploitation of Prostitution | The Crown Prosecution Service’ <https://www.cps.gov.uk/legal-guidance/prostitution-and-exploitation-prostitution#_Toc534624527> accessed 23 December 2020.

²⁸ David Lisak and Carol Ivan, ‘Deficits in Intimacy and Empathy in Sexually Aggressive Men’: (2016) *Journal of Interpersonal Violence*; also R. Karl Hanson, ‘Empathy deficits of sexual offenders: A conceptual model’ (2003) 9 *Journal of Sexual Aggression* 13-23.

²⁹ Melissa Farley and others, ‘Attitudes and Social Characteristics of Men Who Buy Sex in Scotland’ (2011) 3(4) *Psychological Trauma Theory Research Practice and Policy* 369

violence against women.³⁰ While the study covers many factors, one key finding was that rape perpetration was strongly linked with '*transactional sex*' (prostitution).³¹

This is supported by Farley's research which found that 15% of buyers were more likely to rape a woman if they thought they could get away with it compared to NSBs (2%).³² Buyers reported a higher level of sexually aggressive behaviour, as well as being more likely than NSBs (37% vs 21%) to believe that once sex has been paid for, the woman is obligated to do whatever the buyer wants;³³ in 2005, Monto and McRee found the buyers were more likely to have committed rape;³⁴ and in 2014, Heilman et al found that in a study of five countries, in each one buyers were more likely to perpetrate sexual violence.³⁵

What this seeks to demonstrate is that it is not the *legislation* that is the *cause* of violations of sexual autonomy, as argued by some,³⁶ but that buyers are more predisposed to committing violations of sexual autonomy, and being able to purchase sex reinforces these attitudes (and often presents an opportunity to act on them).³⁷

Therefore, we submit that it is trite to say that this violence would subside with the imposition of a mechanism that simply views the violence as aggravated (ie, increased

³⁰ Emma Fulu and others, 'Why Do Some Men Use Violence Against Women And How Can We Prevent It? Quantitative Findings from the United Nations Multi-country Study on Men and Violence in Asia and the Pacific' (2013) Bangkok: UNDP, UNFPA, UN Women and UNV

³¹ *ibid* p10

³² Melissa Farley and others, 'Comparing Sex Buyers With Men Who Do Not Buy Sex: New Data on Prostitution and Trafficking' (2017) 32 *Journal of Interpersonal Violence* 3601.

³³ *ibid*

³⁴ Martin A Monto and Nick McRee, 'A Comparison of the Male Customers of Female Street Prostitutes With National Samples of Men' (2005) 49 *International Journal of Offender Therapy and Comparative Criminology* 505.

³⁵ Brian Heilman, Luciana Herbert, and Nastasia Paul-Gera, 'The Making Of Sexual Violence: How Does a Boy Grow Up to Commit Rape?' (2014) *International Center for Research on Women (ICRW)*

³⁶ See For example, see: Christine Milrod and Ronald Weitzer, 'The Intimacy Prism: Emotion Management among the Clients of Escorts' (2012) 15 *Men and Masculinities* 447; Valerie Jenness, 'From Sex as Sin to Sex as Work: COYOTE and the Reorganization of Prostitution as a Social Problem' (1990) 37 *Social Problems* 403; and Carol Leigh, 'Inventing Sex Work' in Jill Nagel (Ed), *Whores and Other Feminists* (Routledge 2013)

³⁷ Farley (n32)

sentencing for carrying out violent attacks), as opposed to actually deterring the purchase of sexual access in its entirety (which would, it is submitted, consequently reduce violence).

As referenced previously, the supposed stigma-reducing tactic of reconceptualising prostitution as a form of work (presumably ones where the “workers” are just *coincidentally* the victims of violent crime at a disproportionate rate compared to other forms of labour, as opposed to that violence being an inherent feature) does not meaningfully reduce the violence faced by those within prostitution. It is respectfully submitted that applying a hate crime approach would be to view the issue at hand – namely violence against those within prostitution – in a logically backwards manner.

The second issue, which has already been discussed, is that there is no reason why changing the attitudes of police forces and/or the CPS is contingent upon viewing any crime as aggravated. With adequate training these authorities can be made aware of the reality of prostitution, and the violence therein, without it having to be conceptualised as somehow “aggravated” because of “stigma”, particularly in light of the aforementioned research that demonstrates violence and crime is inherent and intransient irrespective of whether “stigma” is reduced (which in any case, does not appear to be the case).³⁸ Therefore, we submit that the hate crime approach to tackling low-reporting and/or lack of meaningful prosecutorial support is misguided.

At para 14.33, the Consultation states:

“Above we have observed that much of the crime faced by sex workers has been linked to prejudice and hostility towards their status.”

³⁸ See n21

We reject this conceptualisation. In its immediacy, this formulation places the culpability onto those within prostitution, and not onto the buyers who perpetrate this violence.

Secondly, as outlined above, research shows that the attitudes that condone (and demonstrate a causal link towards) violence against those in prostitution stem from the acceptance of being able to purchase sexual access *at all*, and not just in a “socially acceptable” manner as would presumably occur if prostitution was stripped of its stigma.

For these reasons, we submit that the Law Commission should resist calls to view prostitution through a “hate crime” lens, or go further and create a new class of “protected individuals” – namely those in prostitution – under this banner. We submit that this will only serve to further normalise a system of exploitation that is inherently violent, and therefore, efforts should be made to reduce this at its root, as opposed to challenging the violence after the fact.

Centre to End All Sexual Exploitation (CEASE UK)

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