



Z E R O T O L E R A N C E C H A R I T A B L E T R U S T

Criminalisation of the Purchase and Sale of Sex

Response from Zero Tolerance to the consultation on Trish Godman's proposed member's Bill, February 2010

Zero Tolerance is a small national charity promoting innovative policy and practice to address the root causes of male violence against women and children. We pioneered the 3 P's approach to tackling male violence – protection, provision and prevention. Of these, we believe that primary prevention of violence through changing attitudes, structures and values is the key to changing the culture of endemic violence in which we live.

Summary of our position

We are strongly supportive of this proposed Bill and urge the Scottish Parliament to support it. We have specific comments to make on the questions posed in the consultation paper, which are set out below (p.5), but firstly, our general views on this Bill are as follows:

- We see prostitution as a form of violence against women, representing violation and inequality of women – not a free exchange between adults - and believe that all women prostituted are participating in a system which is itself unequal.
- We recognise that men can also be exploited in prostitution and welcome that this Bill will be able to tackle that; however our main focus is on the experiences of women selling sex and men purchasing it, since this is the pattern of experience in the vast majority of cases.
- We wish to challenge the normalisation of this so-called 'industry' and we aspire to a world without these forms of exploitation.
- We believe that it is important to promote harm-reduction approaches whilst also condemning the systems and structures that promote inequality. We would like to see demand criminalised; women supported to exit prostitution, and more education for all to prevent prostitution from happening or from being tolerated as socially acceptable.
- It is time for the 'invisible man' who purchases sex, who has for too long been absent from policy level discussions and from the criminal justice system, to be recognised, challenged and prevented from perpetuating this violence and abuse.

Prostitution represents violation and inequality

We see prostitution as a form of violence against women and children, and also recognise that it causes harms to the smaller number of men who participate as sellers of sex, and to some extent to the men who buy sex. The Scottish Government has also described it as such in the '*Safer Lives: Changed Lives*' document – noting therein that the harm that commercial sexual exploitation causes to *all* women, by sanctioning objectification of women's bodies, happens regardless of whether individuals claim liberation or empowerment from the activity.

Prostitution is a clear and obvious manifestation of continuing gender inequality. It is not a coincidence that the vast majority of people selling sex in Scotland are women and the vast majority of those buying sex from women are men. There is considerable evidence that selling sex for the vast majority of these women is not a freely made, positive choice but in fact a socially structured decision, which represents a submission to a *lack* of choice and options and a reflection of women's wider economic inequality. The decision to sell sex is driven by necessity or desperation, by factors such as poverty, drug dependency, domestic abuse or child sexual abuse. Prostitution represents survival behaviour. But these individual factors are not root causes – the root cause of a system wherein men buy women's bodies without sanction is the unequal distribution by gender of power, wealth and opportunity.

A Home Office report from 2007 said 'The majority [of individuals involved in street prostitution]... live chaotic lives and have complex needs, and most are Class A drug users. They often face a multiplicity of risks to their physical, emotional and psychological health as well as problems relating to homelessness, lack of food, clothes, warmth, shelter, money and lack of family networks. Many are disengaged from mainstream services such as healthcare, housing and benefits and have a history of frequent contact with the Criminal Justice System.'¹

The Tyneside Cyrenians '*Hidden for survival*' study (Feb 2008) found that sex was sold for as little as £5 (the average charge was £37), dispelling the myth of the lucrative career that media portrayals of prostitution such as 'Belle de Jour' perpetuate. This cannot be understood in isolation from a wider analysis of women's poverty – women experience significantly more poverty, in significantly different ways from men. Women have a lower income than men during work and retirement; smaller, if any, savings; and are more likely than men to experience unmanageable debt.² This is the context in which prostitution flourishes.

Prostitution can also be a consequence of other forms of neglect or abuse - 70% of those involved in street prostitution have a history of local authority care and 45% report experiencing sexual abuse during their childhoods

¹ 'Drug Interventions Programme: Good Practice Guide to Increasing the Engagement of Adults involved in Prostitution within the Drug Interventions Programme', Home Office, 2007

² <http://www.oxfam.org.uk/resources/ukpoverty/gender.html>

(Home Office 2006). The Tyneside study found links with other forms of violence such as domestic violence – 41% of respondents reported being in a violent relationship and there was evidence of domestic abuse deterring women’s involvement in drug treatment as partners did not allow it.

Prostitution also represents the exploitation of children and young people. A Glasgow study showed that 24.5% of the women surveyed had entered prostitution before age 18, with 8.2% starting at age 16 or under.³

On the issue of choice, we believe that individuals who claim that this is activity freely chosen constitute a tiny minority of women participating in this industry, and further note that women involved in prostitution often describe the activity as freely chosen at the time, as a coping and survival mechanism - for example in the European Women’s Lobby film ‘*Not for Sale*⁴, Fiona Broadfoot, a survivor of prostitution, says “Women have to tell themselves they have made a choice to survive. I told myself for many, many years I was OK. I had to do that to survive the industry”. Once in prostitution, 9 out of 10 surveyed women would like to exit but feel unable to do so.⁵

It is clear to us from this evidence that women selling sex are participating in an inherently exploitative and violent system and that it is time for more emphasis to be placed on those buying sex, generating the demand, and facilitating the system, hence our strong support for this Bill.

Prostitution should not be normalised

In February 2010, the Home Office published a review of Sexualisation of Young People. This review examined culture and society in the UK and found that jobs in brothels and lap-dancing clubs (where prostitution routinely happens) are advertised by Job Centre Plus and that “we are seeing the normalisation of [sex work] as viable career choices” which “sends out a powerful message to young people about what is of value” (para 29). The review also concludes that popular culture lends “credence to the idea that women are there to be used and that men are there to use them” (para 30).

In this climate, it is easy for young people to be groomed for involvement in prostitution: young women groomed as sellers and young men as users and controllers of women. It is increasingly seen as normal for men to use prostitutes as part of a night out with friends or colleagues⁶, or a ‘stag’ night⁷ – and many regret doing so. A significant number of men who buy sex later regret it: 25% of men interviewed in Scotland said that they felt “significant shame and regret” at having bought sex.⁸ One study of men who use prostitutes found that for 29% of the men, prostitution was their first sexual experience.⁹

³ “Where is she tonight? Women, street prostitution and homelessness in Glasgow”, Audrey Stewart, 2000.

⁴ http://www.womenlobby.org/site/video_en.asp

⁵ Farley et al, 2003

⁶ <http://www.fawcettsociety.org.uk/documents/Corporate%20Sexism.pdf.pdf>

⁷ <http://news.bbc.co.uk/1/hi/8457172.stm>

⁸ ‘Challenging Men’s Demand for Prostitution in Scotland’, Women’s Support Project, 2008

⁹ ‘Men who buy sex: Who they buy and what they know’ – Farley, Bindle and Golding – Dec 2009.

To call a halt to this culture of prostitution as mainstream it is vital to curb demand and send out a message that prostitution is not a normal, legitimate form of work or entertainment. Tackling those who create and sustain the demand for prostitution would send a message that Scotland rejects this exploitative industry and those who create and support it.

Supporting criminalisation of demand and protecting those in prostitution are not mutually exclusive

Whilst we strongly support this proposed Bill, we do not believe that this change alone would represent a panacea. We would also urge the Scottish Parliament to develop and fund other measures to tackle the harms of prostitution, including better funding and support for prostitution exit programmes, changing the way and timeframe in which prostitution becomes a spent conviction, decriminalising the selling of sex, and developing and supporting educational programmes to prevent prostitution and promote gender equality.

However, we would urge the Parliament to keep in mind that supporting amendments to criminalise the purchase of sex and developing policy or legislation to protect women involved in selling sex are *not* mutually exclusive. Supporters of the move to criminalise the purchase of sex are often characterised by our opponents as uninterested in the experiences of prostituted women or men and unconcerned with harm reduction, which is not the case. We have absolutely no wish to place women at further risk. In fact what we seek to do is to protect them from a systematic industry of exploitation and abuse, while also protecting *all* women, children, families and communities from the wider and longer term impacts of this industry.

We would also note that consideration should to be given to the need to prevent vulnerable young people and young women in particular from entering prostitution and that measures to criminalise demand will play a part in this.

It is time for the ‘invisible man’ to be recognised and tackled

Zero Tolerance has always believed that public discourse about men’s violence against women focuses too much on women, and what they should do or not do to prevent or avoid violence, and too little on challenging the men who perpetrate the abuse.

This is slowly changing and many statutory authorities are very clear now that the perpetrators of abuse need to be central to our decision making. For example, many local authorities have run ‘Zero Tolerance’ campaigns to tell perpetrators that there is no excuse for domestic abuse; Lothian and Borders Police recently ran an anti-rape campaign developed to communicate that “responsibility for rape will always lie with the rapist”¹⁰; and many authorities

¹⁰ http://www.lbp.police.uk/press_release/articles/2009%5CDecember%5C10%5C1.htm

now run perpetrator programmes for abusive men which challenge their attitudes, values and behaviours.

Yet in terms of prostitution, the focus for years has been on the women who sell sex rather than the men who buy it. Women have been arrested and imprisoned for soliciting, earning convictions that can never be spent. Men have largely been ignored. Kerb-crawling legislation has had some impact but by and large men have been free to purchase sex with impunity. This has to change.

Other jurisdictions have successfully legislated to criminalise demand (Sweden, Iceland) and have seen a resultant reduction in prostitution and trafficking but also a change in social attitudes. In Sweden, which has legislated to criminalise the purchase of sex, there has been a marked change in public perception with 80% of the public now viewing prostitution as unacceptable, compared to 49% in 1999¹¹. We believe that the proposed Bill, if supported, could deliver a similar cultural shift in Scotland.

Responses to the specific questions posed in the paper:

1. Preferred options for criminalising purchaser/seller

Our preferred option is option 2, to criminalise only the purchaser of sex and not the person selling sex acts. We strongly support criminalisation of the purchaser of sex, in recognition of the free choice that purchasers make to exploit women in prostitution.

We also advocate full decriminalisation of the seller of sex, in recognition of the harms caused to those in prostitution who are already participating in an inherently harmful system and should not be further penalised by being subjected to criminal sanctions.

This approach is consistent with the current strategic approach in Scotland, which recognises prostitution as a form of violence against women (cf. the *Safer Lives: Changed Lives* document cited above).

Criminalising the purchaser in all incidents regardless of where the sexual activity took place would address the current anomaly in Scots law whereby kerb-crawling is criminalised but purchasing sex in indoor settings such as saunas, brothels and private flats is not a crime.

2. Penalties and deterrents to purchaser

We have no set views on penalties or deterrents for purchasers of sex – however research has found that certain penalties would have a stronger deterrent effect on potential purchasers of sex than others. We would suggest for example that the penalty of inclusion on the sex offenders' register should

¹¹ See Ekberg, Gunilla (2005) 'The Swedish law that prohibits the purchase of a sexual service: Best practice for prevention of prostitution and trafficking in human beings'(update of article in journal of Violence Against Women 2004)

be considered. Other deterrents might include seizure of motor vehicle, fiscal penalties such as fines, and notification being sent to the offenders' employer or family, since this would remove the offender's sense of entitlement to exploit women who are at the margins of society without social sanction. We would also suggest that rehabilitation courses which challenge men's attitudes and values and education would be a useful penalty (learning from the experience of courses for men convicted of domestic abuse). Education and awareness raising campaigns would also have a deterrent effect.

We would anticipate that the mere existence of a crime of buying sex would be a deterrent to many casual users of prostituted women, and that the actual number of prosecutions would not have to be particularly high to have a significant effect on the supply side of the system.

We suggest taking evidence from experts on penal matters to further explore possibilities and would urge a creative approach to designing penalties.

3. Barriers to policing and enforcing prohibition on advertising

Enforcement and barriers to policing new legislation criminalising the purchase of sex are matters for the criminal justice authorities. We expect them to enforce any new law, as the settled will of the Parliament, however challenging. We urge caution in over-stating the difficulties of enforcement, given how commonly arguments about the unenforceability of different laws seeking to drive social progress (such as the smoking ban) have been proven wrong.

We would also note that laws and criminal justice processes which are intended to protect the rights of vulnerable women are often the least effective and well implemented (cf. the very low rape conviction rate in Scotland and the very limited use of exclusion orders in domestic abuse cases) and so there is an added imperative for the criminal justice authorities to seek ways in which to make any new laws work, to avoid creating the impression that there is a culture of inertia or indifference to women's inequality. We would remind the relevant authorities of their obligations under the General Equality Duty.

4. Penalties for advertising prostitution

We would suggest consulting with penal experts on this matter. However, we would support strong penalties for advertising prostitution, as the advertisements are a crucial part of this system of exploitation.

The proposals around prohibiting advertising and facilitation of prostitution are helpful as they acknowledge the role we all have in promoting a society free of men's violence against women and the ways in which seemingly passive bystanders can become complicit in harm. These will serve a valuable educational as well as legislative purpose.

We suggest that authorities seek to learn from the experience of Ireland, which has banned the advertising of brothels and prostitution.

We would also suggest that penalties should be weighted so as to take account of the extent to which those involved are part of organised crime.

5. Barriers to policing and enforcing laws on facilitation

Please see our answer to question 3. There may be barriers to policing this aspect but these can and should be overcome.

6. Penalties for facilitating prostitution

See our answer to question 4. We would support strong penalties for facilitating prostitution, with penalties weighted so as to take account of the extent to which those involved are part of organised crime.

In addition, those who are found to be part of serious and organised crime networks should be subject to forfeiture of assets/proceeds. This would place commercial sexual exploitation at the forefront of the criminal justice system and suggest equivalent seriousness with drugs offences. There is also an opportunity here to use seized assets to support people who have been exploited in prostitution, for example by funding the development and maintenance of exit services.

7. Costs arising from this proposal

There will clearly be some costs arising from this proposal, for example for training, guidance, and public education, but we would suggest that the costs of allowing a damaging system of exploitation to flourish must surely be higher than the costs of dismantling it. We would expect criminalisation of demand to bring significant savings to the public purse – e.g. to the NHS, criminal justice, addiction services etc – as rates of prostitution lessen and more women are supported to exit.

We also note that high quality and dedicated exit services for women leaving prostitution can be expensive and must be budgeted for as part of any policy initiative in this area.

8. Equality issues emerging from this proposal

Prostitution is a significant barrier to gender equality in particular, but also to other forms of equality, and it is impossible to achieve full equality for women in a society in which they can be bought and sold with impunity by men whose role in the transaction is not a concern of public authorities.

Criminalising the purchaser of sex would be a significant and important driver of gender equality, which the Gender Equality Duty compels public bodies to promote. We have doubts about how seriously this obligation is taken – we suggest it would be difficult for local authorities which currently turn a blind eye to prostitution in licensed saunas to evidence that they are compliant with

the Duty. Action needs to be taken on this issue if the credibility of other work on gender equality is not to be seriously undermined.

There are many intersections in prostitution practices between different forms of inequality, for example:

- gender and class (poverty being a key indicator for entry into prostitution)
- gender and race (brothels having a policy of offering different nationalities of women to cater for different 'customer' tastes, pandering to prejudices and racial stereotypes)
- gender and disability (prejudicial arguments about the sexual needs of certain disabled men only being met by women in prostitution being commonly made by pro-prostitution activists) etc.

It is clear to us that prostitution is a barrier to equality and that this must be tackled if we are to achieve a fair and flourishing Scotland in which all people are treated equally and enabled to reach their potential and live lives free of violence and abuse. Prostitution *is* preventable – and criminalising demand will play a key role in preventing the abuse of women now and in the future.

Further information

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