

*Human Trafficking and Exploitation (Further Provisions and Support for Victims)  
Bill*

Written evidence to the Justice Committee

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I would like to thank the Committee for the opportunity to provide written evidence in respect of the above Bill. I am a Reader in Criminology in the School of Law, Queen's University Belfast where I have taught and researched for the past decade. My principal research interests over the years have concerned policing and its governance, but also how particular social problems can best be regulated by law enforcement and other officials in terms of a broader harm reduction strategy. To this end I am currently principal investigator on a project funded by the British Academy to investigate the policing and regulation of male *and* female prostitution in four cities where the regulatory framework differs significantly. The cities in the study are Belfast, Manchester, Prague and Berlin. The project has a number of aims but one of these is to assess the regulatory models in these cities in light of sex purchase legislation that exists in some of the Nordic countries, of which the so-called 'Swedish model' is perhaps the best known.

I have concerns about a number of clauses in the Bill, but since some of these have been highlighted already by the Department of Justice (DoJ) in its oral evidence to the Justice Committee I will confine the thrust of my remarks to Clause 6 and Clause 7 in particular.

**Clause 6:**

**1 Tackling demand**

In the explanatory memorandum accompanying the Bill it is noted that one of the objectives of the Bill is for 'tackling the demand for trafficking' (p.1). An ostensible aim is to extend Northern Ireland's compliance, over and above the situation in GB, with the *European Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims* (2011). This of course is laudable but there is nothing in this directive that specifically requires criminalising the payment for sex. In fact, many EU jurisdictions fully comply with the directive but have *different* regulatory models regarding prostitution and brothel keeping. Some such as Austria, Germany, Switzerland, the Netherlands, and Greece have decriminalized prostitution, which is legal, and permit licensed brothels. This is not necessarily to make a case for decriminalization but simply to acknowledge that the proposed Bill has focused on a rather narrow range of experience from one jurisdiction (Sweden) when in fact there is a wealth of research material from within the EU and internationally that could usefully be drawn upon in order to obtain a 'bigger' picture. Many city councils and local government authorities across the UK have developed quite innovative strategies for dealing with prostitution and these might also be usefully assessed.

In terms of tackling demand the only apparent mechanism in the Bill that proposes to deal with the demand side of the trafficking equation is Clause 6 and then *only* in relation to sexual exploitation which it seeks to do by introducing a new offence of paying for ‘sexual services’ (as above). This however, raises a number of issues:

For example, the emphasis of the Bill collectively is about dealing with trafficking issues but the focus seems to be *primarily* on ending demand for sexual exploitation through Clause 6. Dr Dan Boucher, Parliamentary Advisor CARE Northern Ireland, stated in his oral evidence to the Justice Committee<sup>1</sup> that ‘*prostitution and trafficking are inextricably linked. [and] by far the greatest reason for trafficking is for paid sex*’. Certainly while *is* a relationship between sexual exploitation and trafficking there is also evidence from Northern Ireland and elsewhere in the UK that labour exploitation, including forced labour, is prevalent in a range of sectors and may have remained hidden given the attention on sexual exploitation. For example, in relation to Northern Ireland, Allamby et al identify ‘*problems of forced labour in the fishing, mushroom and catering industries and among Filipino and Romanian Roma migrants*’.<sup>2</sup> Similarly, a recent Home Office Research Report (October 2013), noted that sexual exploitation accounted for only around 31% of victims identified by the Human Trafficking Centre with the remainder (69%) concerning various forms of labour exploitation.<sup>3</sup>

Arguably, the proposed Bill needs to engage more widely with other dimensions of trafficking such as forced labour in the seasonal agricultural and service sectors. At the very least the emphasis on sexual exploitation and prostitution in particular, might inadvertently create the suspicion that the ostensible purpose of the Bill has little to do with trafficking per se but is a back-door way of attempting to criminalise prostitution.

## 2 The Swedish model

It is clear that the purpose of Clause 6 is in some way to emulate the Swedish *sexköpslagen* – the 1999 law that criminalised the payment for sex. This is evidenced, for example, in the testimony of Ms Gunilla Ekberg to the Justice Committee and also in the references by Lord Morrow, the proposer of the Bill, to the perceived “success” of the Swedish legislation. However, it should be pointed out that *sexköpslagen* has been controversial – even in Sweden.<sup>4</sup> Some Swedish academics and policy makers have questioned the veracity of the claims made about the *sexköpslagen* and whether in fact it has resulted in a ‘real’ reduction of prostitution or simply displaced it to other areas (indoor, online etc.).<sup>5</sup> The commonly cited “50% reduction” relates

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<sup>1</sup> 11<sup>th</sup> October, 2012.

<sup>2</sup> Allamby, L., Bell, J., Hamilton, J., Hansson, U., Jarman, N., Potter, M., & Toma, S., (2011) *Forced Labour in Northern Ireland: Exploiting Vulnerability*. Joseph Rowntree Foundation.

<sup>3</sup> Mills, H., Skodbo, S., Blyth, P., (2013) Home Office, *Understanding Organised Crime: estimating the scale and social and economic costs*, Research Report 73, October. Home Office: London

<sup>4</sup> Dodillet, S. & Östergren, P. (2011) ‘The Swedish Sex Purchase Act: Claimed Success and Documented Effects’, Conference paper presented at the International Workshop: Decriminalizing Prostitution and Beyond: Practical Experiences and Challenges. The Hague, March 3 and 4, 2011. Available:

[http://www.plri.org/sites/plri.org/files/Impact%20of%20Swedish%20law\\_0.pdf](http://www.plri.org/sites/plri.org/files/Impact%20of%20Swedish%20law_0.pdf)

<sup>5</sup> Dodillet, S. & Östergren, P. (2011) ‘The Swedish Sex Purchase Act: Claimed Success and Documented Effects’, *ibid*.

specifically to street-based prostitution but there is some doubt whether here *has* been a reduction in street-based prostitution<sup>6</sup> and if there has whether the *sexköpslagen* was even responsible for this.<sup>7</sup> First, the Swedish government does not have prevalence figures for *before* the Act came into force and has no way of measuring the effect of the law. Even the Swedish government's National Board in its 2007 report could not answer the question of whether prostitution had increased or decreased in the country following the *sexköpslagen*.<sup>8</sup> Second, if there has been a reduction in street-based prostitution it is likely to be symptomatic of the trends elsewhere in Europe. The development of the Internet is now the primary vehicle for transacting sexual commerce. An investigation of prostitution in Sweden and the Netherlands conducted by the Norwegian Ministry of Justice and Police noted however, that collecting data on 'up market' prostitution in Sweden - that which takes place in hotels and massage parlours - is notoriously difficult to quantify given its hidden nature.<sup>9</sup> However, there is evidence that Sweden, as is common in other countries, has a growing indoor prostitution scene.<sup>10</sup> Several managers of an online escort business that has expanded into Sweden and Norway in recent years indicated to me that in spite of the legislation both jurisdictions were becoming a highly competitive and lucrative market for the company. One representative even suggested that theoretically the worst possible business scenario for the company would be the legalisation of brothels in the countries in which it operates since this would take business away from the online escort sector.<sup>11</sup>

#### *Gender Equality, Harm Reduction and the Swedish model*

Contrary to the claims made by some feminists both here and in Sweden that the *sexköpslagen* reduces gender inequality; other commentators (including feminists) have claimed that the law has actually increased *gender inequality* and severely impacted on the lives of those disadvantaged women who sell sex.<sup>12</sup> There are

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<sup>6</sup> Dr Jay Levy for example, points out that some Swedish charities and NGOs have suggested that in their opinion the numbers involved in street based sector has remained fairly static over the years and has been augmented by increasing numbers of migrant sex workers. See Levy, J. (2011) 'Impacts of the Swedish Criminalization of the Purchase of Sex on Sex Workers', paper presented to *British Society of Criminology*, 4<sup>th</sup> July

<sup>7</sup> Ministry of Justice and the Police Norway, (2004) *Report by a Working Group: Legal Regulation of the Purchase of Sexual Services*, Ministry of Justice and the Police Norway; Ann Jordan, (2012) 'The Swedish Law to Criminalize Clients: A Failed Experiment in Social Engineering', Programme on Human Trafficking and Forced Labour, Issue paper 4, April. American University, Washington D.C.

<sup>8</sup> See Jordan, A. (2012) *ibid*.

<sup>9</sup> *Purchasing Sexual Services in Sweden and the Netherlands: Legal Regulation and Experiences*, Ministry of Justice and Police: Norway. *Ibid*.

<sup>10</sup> For example, research from Malmö's state funded prostitution programme provides evidence that the Internet is increasingly used to sell sexual services in Sweden. See *När prostitutionen flyttade in i vardagsrummet* (When prostitution moved into the living room) Malmö Prostitution Programme (2010). Available: [http://www.malmo.se/download/18.1e58ca66127664b20f4800033776/Nar\\_Pros\\_flyttade\\_in\\_i\\_vardagsrummet.pdf#search='prostitution'](http://www.malmo.se/download/18.1e58ca66127664b20f4800033776/Nar_Pros_flyttade_in_i_vardagsrummet.pdf#search='prostitution')

<sup>11</sup> Interview with online escort business conducted by Graham Ellison (October, 2013).

<sup>12</sup> In practice the law has impacted disproportionately on street sellers who are very often migrants and those who have addiction problems. As Pye Jackobsen from Rose Alliance has noted, for the majority of Swedish indoor sellers the law has had no impact on their business. See: 'An interview with Pye Jackobsen, a Swedish sex worker, on the criminalization of clients of sex workers in her country', Available: <http://www.youtube.com/watch?v=7D7nOh57-I8>

potentially a plethora of human rights concerns with this Bill: Harm reduction does not appear to be a strategy that is applied to commercial sex work in Sweden and sellers are stigmatised further to the point where they are denied access to a range of benefits and healthcare provision and in some cases they are deemed to be 'unfit mothers' and have had their children removed and taken into custody.<sup>13</sup> Contrary to the stated aims of the Swedish *sexköpslagen* that it only seeks to criminalise the buyer *not* the seller this does not work out in practice. It is impossible to criminalise only *one* actor in an exchange relationship such as that involving transactional sex. In practice, what has happened is that street-based prostitution is dispersed to more dangerous and out-of-the-way locations and sellers are forced to participate in more risky forms of sexual activity, thus increasing the potential for sexually transmitted infection and transmission.

### *Policing and Enforcement Issues*

One issue in relation to the enforcement of the *sexköpslagen* is that it is difficult to bring evidence to secure a conviction. If a defendant pleads 'not guilty' then evidence must be gathered and secured by the police as in any other criminal trial. This has however, resulted in a high number of charges being dropped and a relatively low conviction rate. As Professor Don Kulick has noted 'It is very difficult to obtain precise statistics about the numbers of clients who have been prosecuted under the law... [there] have been 86-110 arrests per year. Three quarters of these arrests never get prosecuted, and of those that do 65% of cases end up being dismissed.'<sup>14</sup> The principal problem appears to be the difficulty proving that money has in fact changed hands particularly when 'both parties deny it occurred, which of course they have a strong incentive to do'.<sup>15</sup> If we are speaking about consensual encounters negotiated between adults (which the majority of these interactions are) then I would question whether Clause 6 is the best use of police resources (given the many serious problems facing the PSNI already) and indeed the police here have acknowledged the difficulties it would pose for them.<sup>16</sup> The PSNI in Northern Ireland already have strong powers to deal with trafficking for sexual exploitation or sex with someone who is underage or otherwise vulnerable so I am unsure how Clause 6 would add anything over and above what is already in place.

### *Developing a joined up prostitution strategy*

Clause 6 deals with only one end of the equation i.e. that relating to demand. It is difficult to see how criminalising clients will address other issues in relation to prostitution such as the *reasons* and *motivations* why some men and women choose to sell sex. This is particularly pertinent to the street-based scene. It is arguably the case that many men and women who work on the street have comparatively fewer choices

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<sup>13</sup> Levy, J. (2011) 'Impacts of the Swedish Criminalization of the Purchase of Sex on Sex Workers', paper presented to *British Society of Criminology*, 4<sup>th</sup> July; Levy, J. (2011) 'Impacts of the Swedish Criminalization of the Purchase of Sex on Service Provision for Sex Workers', paper presented to *Correlation Final Conference*, Ljubljana, December; The Local (2013) 'Sex Workers cry foul over activists death', 17<sup>th</sup> July. Available: <http://www.thelocal.se/49120/20130717/>

<sup>14</sup> Kulick, D. (nd). 'The Swedish Model', talk delivered at Beijing Plus Ten Meetings, Available: [http://www.globalrights.org/site/DocServer/Don\\_Kulick\\_on\\_the\\_Swedish\\_Model.pdf](http://www.globalrights.org/site/DocServer/Don_Kulick_on_the_Swedish_Model.pdf)

<sup>15</sup> Kulick, *ibid.* p.2

<sup>16</sup> 'Criminalising people who pay for sex won't help anti-trafficking fight says police chief', *Belfast Telegraph*, 5<sup>th</sup> September, 2013. Available: <http://www.belfasttelegraph.co.uk/news/local-national/northern-ireland/criminalising-people-who-pay-for-sex-wont-help-antitrafficking-fight-says-police-chief-29553457.html>

and selling sex is often one of the only available opportunities open to them. What package of benefits, what kind of childcare provision, what provision to address addiction and substance abuse issues, homelessness, and domestic violence will be put in place? In many ways Clause 6 is tinkering with the symptoms of a myriad range of social problems (though this is not to say that *all* street workers experience these problems) rather than provide any realistic means to address the harder-to-do structural issues that demand a co-ordinated agency response from across a number of government departments.

### **3 The commercial sex sector in Northern Ireland**

I feel that aspects of the proposed Bill (though Clause 6 in particular) may be the equivalent of taking a sledgehammer to crack a nut. I would argue that Northern Ireland has a comparatively small commercial sex sector relative to other cities such as Manchester, Dublin, Edinburgh, Liverpool, Birmingham and London.<sup>17</sup> I am also convinced that whatever issues arise from prostitution in Northern Ireland can be dealt with via existing legislative provision but *also* the adoption of a much more effective multi-agency partnership approach to harm reduction for those sellers who operate on the street (both male and female). The Justice Committee could perhaps consider alternative regulatory approaches - as practiced in other UK cities that take harm reduction as their central objective.

#### **Clause 7: investigation & prosecution of offences**

In general terms it is not clear to me in what ways the current proposals in the Bill for the investigation of offences dovetail with the National Referral Mechanism (NRM) which is *the* statutory framework in the UK for identifying victims of human trafficking. In particular, the Bill does not adequately make clear who or what determines when a “victim” becomes a victim in the newly proposed arrangements and what the respective roles of the NRM, PSNI and the UK Border Agency will be in this process. I am just concerned in that in a fiscally challenged environment this Bill will needlessly add another level of bureaucracy and confusion to existing structures. In some respects the Bill seems to muddy rather than clarify existing service provision in respect of support for victims of human trafficking.

#### **General Observation**

##### *Evidence and disputed claims regarding prostitution research*

Mr Paul Givan from the DUP raised a very important question during one of the Justice Committee hearings when he asked Ms Gunilla Ekberg why academics seem to be so divided on issues relating to prostitution research. I am not sure, however, that Ms Ekberg satisfactorily answered Mr Givan’s question insofar as she implied that this was because the ‘evidence’ was interpreted differently. However, it is not simply an issue of differing interpretations. Where a lack of consensus is manifest it occurs between those who adopt *ideological* and *scientific* positions. The former are often advocacy campaigners who usually adopt fixed positions or standpoints. The latter tend to actually conduct empirical research on the ground and subject the various claims and evidence to empirical testing. Most researchers who have

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<sup>17</sup> I am willing to provide my estimation of prevalence statistics to the Justice Committee on request.

conducted research in the field and have spoken to sex workers, activist groups, clients, NGOs and other health professionals, using appropriate methodologies and without an agenda to push, concur on a number of issues relating to prostitution. In this sense there is in fact a high degree of consensus among those researchers who have actually studied prostitution and sexual commerce. This is why it is important that the Justice Committee seek to obtain as wide a range of viewpoints and evidence as possible – and this includes the viewpoints of sex workers and those who would be impacted by the legislation.