



# Decriminalising Sex Work in England and Wales

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## ABSTRACT

There are an estimated 70,000 individuals involved in prostitution in the U.K.<sup>1</sup> The sex industry is disproportionately represented by individuals with complex needs and adversities, including homelessness, addiction, and poverty. This paper analyses the ways in which prostitution policy in England and Wales currently fails to prioritise harm-reduction for a disadvantaged group. Heavy-handed law enforcement, often unpredictable, inconsistent, and unjust, is identified as one of the most significant barriers for sex workers to access protection and support. This paper suggests that the full decriminalisation of sex work provides a foundation for local authorities to implement policies which centre sex workers' rights; concentrate police resources on tackling the worst instances of violence and exploitation; and fund specialist support services. The final policy recommendations are informed by studies conducted within the U.K., as well as evidence collected from other international approaches to prostitution policy.

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<sup>1</sup> Home Affairs Committee, *Prostitution Inquiry*, (2016), p 3, <<https://publications.parliament.uk/pa/cm201617/cmselect/cmhaff/26/2602.htm>>, accessed February 2020.

# EXECUTIVE SUMMARY

This paper explores the complex range of harms and inequalities faced by those involved in prostitution and suggests how policy in England and Wales can be amended to alleviate them.

The sale and purchase of sex in England and Wales is legal; however, several associated activities, such as loitering, soliciting, brothel-keeping, and kerb-crawling, are criminalised. This paper concludes that criminalisation is responsible for limiting sex workers' access to justice and protection. As a means of harm-reduction and securing sex workers' rights, the authors of this paper recommend that policymakers focus resources on support services, rather than law enforcement.

There are four key issues for policymakers to consider when devising prostitution policy:

- The role of the Government in maintaining and introducing laws which target instances of exploitation and coercion in the sex industry, while also meeting the safety and welfare needs of sex workers.
- The need for local police forces to have discretion when meeting the specific needs of their local area, while also adhering to national guidelines which prioritise sex workers' ability to access justice and protection.
- The need for local authorities to ensure that there are properly funded, specialised support services in their area. These should be widely accessible, especially for migrant workers and other vulnerable groups.
- Due to the clandestine nature of prostitution, it is vital that the government invests in further research which prioritises gathering intelligence on instances of violence and exploitation in the sex industry.

**Role of the Government:** To ensure that laws in England and Wales prioritise sex worker safety and welfare, the authors of this paper recommend that the government immediately implement the following policy recommendations:

- Full decriminalisation of sex work by eliminating laws that prohibit soliciting, loitering, kerb-crawling, and brothel-keeping.

- Remove historical convictions for prostitution-related offences as part of a wider effort to provide housing, employment, and a national exit programme for sex workers.
- Establish anti-discrimination policies in housing and employment under the 2010 Equality Act.
- Recognise sex workers as a victim group under hate crime law.
- Work with legal charities and local support services to simplify and communicate any changes to the law to sex workers.

**Role of law enforcement:** To ensure that policing prioritises protection over enforcement, the authors of this paper recommend that local police forces implement the following policy recommendations:

- Prohibit the issuance of antisocial behaviour orders for prostitution-related activities under the Anti-Social Behaviour Crime and Policing Act 2014.
- Establish the principle of non-prosecution for victims who report violence and exploitation in the sex industry.
- Work with specialist support services and sex worker-led organisations to train members of the police force in the complexities of prostitution. Appoint a Sex Work Liaison Officer to monitor and review this training.

**Role of local authorities:** To ensure that support services are properly funded to meet the complex and diverse needs of all sex workers, the authors of this paper recommend that local authorities implement the following policy recommendations:

- Working with specialist support services and sex worker-led organisations, local authorities should provide mainstream services with training to tackle the problems of stigma and discrimination against sex workers.
- Fund specialist support services and ensure that they are non-coercive and operate independently from the criminal justice system.
- Organise a local multi-agency approach which invests in specialist holistic services. Organisations should link up single issue services to reduce administrative burden placed on sex workers, run outreach programmes in marginalised communities,

and provide advocates to accompany sex workers when accessing mainstream services.

- Establish a non-coercive and non-judgemental exit programme that provides sex workers with viable alternative sources of income. There should be no mandatory requirement for exiting prostitution to access this service.

**Further research:** Finally, this policy paper outlines the limitations of current proposals and the need for the Government to commit to further research to tackle the worst instances of violence and exploitation in the sex industry:

- Wider welfare reform to reduce the financial pressures which can drive individuals into prostitution and ensure support services are fully funded.
- Consider reform to immigration control to guarantee that migrant workers are protected under new policies.
- Retain commitment to targeting sex trafficking through ongoing research and cooperation with sex workers.

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# I. INTRODUCTION

## I.I. OVERVIEW AND CONTEXT

The legal model of partial criminalisation of sex work in England and Wales is, in part, responsible for the harms associated with the sex industry. As demonstrated by the findings of this paper, laws against soliciting and brothel-keeping, which include the sharing of premises by sex workers for their safety, reduce sex workers' ability to access resources for their protection, health, and welfare. This policy paper investigates the effectiveness of full decriminalisation as a method of harm-reduction. This would entail the removal of all criminal sanctions placed on sex workers, clients and third parties who participate in consensual sex work and all prostitution-related offences.

As well as considering the reform of criminal law, this paper also explores how policy and services can be improved to reduce the harms and inequalities associated with sex work. The University of Bristol's report on the prevalence and nature of prostitution and sex work in England and Wales, released in 2019, found that marginal, vulnerable, and disadvantaged groups were over-represented in the sex industry. This includes migrant workers who are largely unprotected by current policies, members of the LGBT community and others with vulnerabilities protected under the 2010 Equality Act.<sup>2</sup>

Among these groups, poverty is a key driver for those who are involved in sex work, and many individuals experience related harms such as mental illness, homelessness, and difficult housing arrangements. There is also a prevalence of substance abuse, mental or physical health needs, disabilities, and those with caring responsibilities in the industry.<sup>3</sup> Many organisations, including the Royal College of Nursing in the UK and the World Health Organization,

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<sup>2</sup>M Hester, N Mulvihill, A Matolcsi, A.L. Sanchez and S.J. Walker, *The Nature and Prevalence of Prostitution and Sex Work in England and Wales today*, Report by the Centre for Gender and Violence Research, University of Bristol (2019), <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/842920/Prostitution\\_and\\_Sex\\_Work\\_Report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/842920/Prostitution_and_Sex_Work_Report.pdf)>, accessed January 2021.

<sup>3</sup>K.N. Deering, A. Amin, J. Shoveller, A. Nesbitt, C. Garcia-Moreno, P. Duff, E., Argento and K. Shannon, 'A systematic review of the correlates of violence against sex workers', *American Journal of Public Health* 104:5 (2014), pp. 42-5.



advocate for decriminalisation as a means of safeguarding sex workers' human rights and improving public health.<sup>4</sup>

In the years since austerity, support service providers report ongoing cuts to programmes aimed at sex workers' health and other needs.<sup>5</sup> In the context of the COVID-19 pandemic, these harms and inequalities have been exacerbated. According to Amnesty International, sex workers have been intensively criminalised and excluded from schemes designed to provide socio-economic support as part of the government emergency response.<sup>6</sup> Indeed, the English Collective of Prostitutes reported that sex workers in England and Wales were being targeted by the Coronavirus Act for loitering and soliciting. They compared the situation to New Zealand, where sex work has been decriminalised since 2003. According to their international links with the New Zealand Prostitutes' Collective (NZPC), the police enforcing lockdown rules guided sex workers who continued to work on the streets to support services rather than arresting them.<sup>7</sup>

The following chapters explore how law and policy in England and Wales can be reformed to prioritise harm-reduction through the decriminalisation of sex work. The first chapter provides an outline of the government approach. This is followed by an analysis of how effectively local police forces provide sex workers with access to justice and protection in chapter two. Similarly, chapter three considers how effectively local authorities provide sex workers with access to support services. The fourth chapter gives an international review of the three main legal models on prostitution that continue to receive considerable political attention in England and Wales. These include the Nordic model (or 'sex-buyer law'), regulationism and decriminalisation. Their successes and limitations are used to inform our final policy recommendations.

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<sup>4</sup>Amnesty International, *Include Sex Workers in the Covid-19 Response*, Public Statement (2020). <<https://www.amnesty.org/en/wp-content/uploads/2021/05/POL3027882020ENGLISH.pdf>>, accessed August 2020.

<sup>5</sup> K. McVeigh and J. Eastham, 'Cut to NHS services for sex workers "disastrous" says experts', *The Guardian* (18 August 2016), <<https://www.theguardian.com/society/2016/aug/18/cuts-to-nhs-services-for-sex-workers-disastrous-say-experts/>>, accessed January 2020.

<sup>6</sup>Amnesty International, *Include Sex Workers in the Covid-19 Response*.

<sup>7</sup> English Collective of Prostitutes, 'ECP submission to Women and Equalities Committee Inquiry on Covid-19' (2020), <<https://prostitutescollective.net/submission-women-and-equalities-committee-inquiry-covid-19/>>, accessed January 2020.

There are four key areas considered which contribute to our final policy recommendations. The first considers how legislative change should be implemented to provide a foundation for effective policymaking for harm-reduction. Beyond the reform of criminal law, the writers of this paper also consider how police practices can be changed to improve sex workers' access to justice and protection. This paper also explores how support services can be improved to tackle stigma, discrimination and other barriers sex workers' experience when attempting to improve their welfare. Finally, this paper considers the impact of policies on the worst instances of violence and exploitation, including their impact on child protection and human trafficking, and gives suggestions for investment in further research.

## **I.II. METHODOLOGY**

This paper utilises the evidence published by the Women and Equalities Committee for their inquiry into prostitution in July 2019. This inquiry was concluded when Parliament was dissolved ahead of the general election on 12 December 2019.<sup>8</sup> This has enabled the authors to draw upon a diverse range of empirical evidence from organisations and individuals operating or working within the commercial sex industry in England and Wales, as well as police, local councils, and service providers.

The authors of this paper argue that centering the safety and rights of sex workers requires a sustained engagement with their individual testimonies and organisations. One of the major barriers to accessing protection and support identified in this paper was experiences of stigma and discrimination among service providers. Thus, it is essential that policymakers and service providers co-operate with sex workers themselves, offering extra attention to the needs and voices of marginalised individuals within these communities.

However, due to the clandestine nature of the sex industry, reliable data is patchy and over-represents certain individuals or groups. Migration status, for example, might prevent sex workers from coming forward due to concerns about their legal status and the potential repercussions of their profession being discovered. Financial difficulties and a lack of access to

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<sup>8</sup> Women and Equalities Committee, *Prostitution Inquiry*, (2019), <https://old.parliament.uk/business/committees/committees-a-z/commons-select/women-and-equalities-committee/inquiries/parliament-2017/prostitution-inquiry-17-19/publications/>, accessed January 2020.

resources, such as the internet, can also exclude vulnerable groups from partaking in surveys.<sup>9</sup> These limitations are also considered in our final policy proposals where there are suggestions as to how we can improve transparency, research and therefore the effectiveness of future prostitution policy.

Challenges also emerge from the use of empirical data obtained from the written evidence submitted to the Commission inquiry, as well as various academic studies and surveys utilised in this paper. The ideological and moral positions of these writers can be summarised into two paradigms: a radical feminist perspective views prostitution as a form of gendered oppression and decriminalisation as a form of legitimisation of gender inequality, and a liberal feminist perspective views prostitution as a legitimate form of employment and an expression of women's agency.<sup>10</sup> To maintain neutrality, we have contextualised the empirical evidence presented in this paper in light of the ideological and moral standpoint of the authors, as well as the legislative models they propose. We have also adopted a human-rights based approach and have avoided bestowing any moral value onto the sale and purchase of sex.

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<sup>9</sup> Hester et al., 'The nature and prevalence of prostitution and sex work in England and Wales today', p.1-79.

<sup>10</sup> R., Beegan and J. Moran, 'Prostitution and Sex Work: Situating Ireland's New Law on Prostitution in the Radical and Liberal Feminist Paradigms', *Irish Journal of Applied Social Studies*, 17:1(2017), p.72.

## II. POLICY AND LEGISLATION IN ENGLAND AND WALES

### II.I. OVERVIEW

Prostitution policy and legislation are devolved matters. Thus, this policy paper reviews legislation specific to England and Wales, although the policy approach taken by Scotland is similar. The current legal model criminalises several factors that facilitate the sale of sex, but not the act of buying and selling sex. Paying for sex has been illegal in Northern Ireland since 2015.<sup>11</sup>

The following section outlines the current government approach to prostitution policy and legislation in England and Wales. It also details how and why policies have been introduced by the National Police Chiefs' Council (NPCC) and Crown Prosecution Service (CPS) to focus enforcement on instances of exploitation, abuse, and harm. In the next chapter, these policies and their underlying principles are analysed in terms of their effectiveness as methods of harm-reduction for sex workers.

### II.II. CONCEPTUAL AND HISTORICAL FOUNDATIONS

In 2006, the Home Office Strategy on prostitution established two key aims: to regulate sex work with the eventual goal of abolishing it altogether, while also safeguarding the welfare of the workers who are considered 'victims' within the system. This involved targeting those 'who recruit others into prostitution for their own gain or someone else's by charging offences of causing, inciting, or controlling prostitution for gain, or trafficking or sexual exploitation'.<sup>12</sup>

However, the Home Office has been criticised for drawing a false equivalence between prostitution and abuse against women, viewing risks of violence as inherent, rather than occurring alongside, sex work.<sup>13</sup> While modern legislation has incorporated welfare-oriented

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<sup>11</sup> *Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act*, Northern Ireland (2015), c.2, Part 2, s15.

<sup>12</sup> Home Affairs Committee, *Prostitution Inquiry*, p 8.

<sup>13</sup> J. Scoular and M. O'Neill, 'Regulating Prostitution: Social Inclusion, Responsibilization and the Politics of Prostitution Reform', *The British Journal of Criminology*, 47:5 (2007); M. O'Neill, 'Cultural Criminology and Sex Work: Resisting Regulation through Radical Democracy and Participatory Action Research', *Journal of Law and Society*, 37:1 (2010)

options for those who wish to exit prostitution, it treats prostitution primarily as a moral and social problem.

This is partly explained by the historical context from which these laws were first created.

Offences surrounding prostitution, such as brothel-keeping and procuring prostitutes, arose from concerns about the exploitation of vulnerable young women. The Criminal Law Amendment Act of 1885 criminalised keeping, managing, and assisting in the management of a brothel. The term ‘brothel’ was defined in 1895 by the courts as a place that is used by more than one person for the purposes of prostitution.<sup>14</sup> These laws were incorporated into the Sexual Offences Acts of 1956 and 2003 with some adjustments made to target specific trafficking offences.

During the 1950s the government sought to evaluate and update policy relating to prostitution, which led to the production of the Wolfenden Report in 1957.<sup>15</sup> The report stated that the focus of prostitution policy should also be to protect the public from offence and emphasised that the morality of prostitution conducted in private was not the concern of the state.<sup>16</sup> The criminalisation of loitering and soliciting for the purpose of prostitution was consolidated in the 1959 Street Offences Act. Police guidance, as detailed below, continues to encourage police intervention in instances where individuals involved in prostitution are seen to pose a threat to public interests.

### **II.III. OVERVIEW OF PROSTITUTION LEGISLATION IN ENGLAND AND WALES**

Contemporary prostitution legislation in England and Wales is largely covered by the 2009 Policing and Crime Act which criminalised sex workers’ clients and provided compulsory rehabilitation of sex workers convicted of street offences. Other relevant legislation is found within the Sexual Offences Act 2003, the Policing and Crime Act 2009, the Street Offences Act 1959, and the Sexual Offences Act 1956. Key elements of this legislation are summarised below.

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<sup>14</sup> *Singleton v. Ellison* (1895), 1 Q.B. 607.

<sup>15</sup> Committee on Homosexual Offences and Prostitution, *Report of the Committee on Homosexual Offences and Prostitution* (1957), <<https://discovery.nationalarchives.gov.uk/details/r/C1386377/>>, accessed January 2021.

<sup>16</sup> *Ibid.*, pp. 79-80.

### **i. Street-based prostitution**

The act of kerb-crawling, to loiter or solicit persistently in a street or public place for the purpose of offering one's services as a prostitute, is punishable by a fine of up to £500 for a first offence, or £1,000 for a repeat conviction.<sup>17</sup> It might also be ordered that the individual attend meetings to assist the offender to 'address the cause' of prostitution and 'find ways to cease engaging in such conduct in the future'.<sup>18</sup>

The police also retain the right to enforce anti-social behaviour orders under the 2014 Crime and Policing Act.

### **ii. Brothel-keeping**

It is an offence to keep, manage, or assist in managing a brothel to which people resort for prostitution.<sup>19</sup> A brothel is defined as any premise where two or more persons are using it for the purposes of prostitution.<sup>20</sup>

### **iii. Pimping**

It is an offence to cause or incite a person to become a prostitute in the expectation of gain, or to control someone's prostitution in the expectation of gain.<sup>21</sup>

### **iv. Paying for sexual services**

It is only an offence to pay for the services of a prostitute that has been exploited by a third party, where the third party's exploitative conduct is likely to induce or encourage the prostitute to provide the sexual services, and the third party is acting in the expectation of a gain for themselves or a person that is not the buyer or the prostitute. The sexual services do not need to be provided, and it is irrelevant whether the buyer is aware of the exploitation.<sup>22</sup>

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<sup>17</sup> *Street Offences Act* (1959) c.57, s1; as amended by *Policing and Crime Act* (2009) c.26, Part 2, s16.

<sup>18</sup> *Policing and Crime Act* (2009) c.26, Part 2, s17.

<sup>19</sup> *Sexual Offences Act* 1956 c.69, Part 1, s33A (inserted by *Sexual Offences Act* 2003 c.42, Part 1, s55 (1) and (2)).

<sup>20</sup> *Stevens v Christy* (1987) Cr.App. R. 249, DC.

<sup>21</sup> *Sexual Offences Act* (2003) c.42, s 52-3.

<sup>22</sup> *Sexual Offences Act* (2003) c.42, Part 1, s.53A, inserted by the *Policing and Crime Act* (2009) c.25, s.14.

## II.IV. POLICING AND SENTENCING IN ENGLAND AND WALES

In practice, the offences summarised above do not consistently lead to enforcement or prosecution. As detailed in the following section, advice given by the National Police Chiefs' Council and Crown Prosecution Service encourages agents of the state to target those instances of violence and coercion. As an alternative to criminalisation, officers and prosecutors are given a range of options which prioritise offering support, protection and exit services to sex workers.

### i. National Police Chiefs' Council on Policing:

The police are afforded discretion in choosing when to make arrests. However, the NPCC's National Police Sex Work Guidance provides practical advice for dealing with prostitution-related offences and encourages consistent implementation of the law across local police forces.<sup>23</sup>

There are purportedly two aims which underpin this guidance: ensuring that the health and safety of sex workers is prioritised and addressing public safety concerns. To safeguard the health and safety of sex workers, this guidance recommends that laws against soliciting, loitering, and kerb-crawling should not be enforced in areas that are well lit and where CCTV is operating, as this potentially drives sex workers to operate in more isolated and dangerous environments. The guidance also encourages police forces to work with available regional support networks and provide training to officers to tackle stigma and discrimination against sex workers within the force.<sup>24</sup>

However, the guidance states that visible street-based prostitution can contribute to fears regarding public safety.<sup>25</sup> This gives some rationale as to why soliciting, loitering, brothel-keeping and other more publicly visible aspects of the sex work industry are criminalised.

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<sup>23</sup> National Police Chiefs' Council, *National Policing Sex Work and Prostitution Guidance*, (2019), <https://library.college.police.uk/docs/appref/Sex-Work-and-Prostitution-Guidance-Jan-2019.pdf>, accessed August 2020.

<sup>24</sup> *Ibid*, p.5.

<sup>25</sup> *Ibid*, p.5.

ii. **Crown Prosecution Service (CPS) on Sentencing:**

Offences are punishable by a wide range of sentencing options, from fines and rehabilitation to multiple years of prison time, with the more severe punishments reserved for those who are involved in exploitation or control of sex workers. Under the Proceeds of Crime Act and Trafficking Prevention Orders, there is also the option of seizing assets.<sup>26</sup>

However, CPS advises that those involved in prostitution should not be routinely prosecuted, and instead be directed towards diversionary measures. As part of a joint approach with the police, CPS advice focuses on helping those ‘involved in prostitution to develop routes out’.<sup>27</sup> It also states that the public interest lies in prosecuting those who ‘abuse, harm, exploit, or make a living, from the earnings of prostitutes’.<sup>28</sup>

### **III. ANALYSIS OF GOVERNMENT POLICY: LAW ENFORCEMENT AND SEX WORKER SAFETY**

#### **III.I. OVERVIEW**

This chapter analyses government policies on policing in terms of their ability to improve sex workers’ safety and access to justice and protection. It is concluded that, while the current model allows for a degree of flexibility which enables local police forces and service providers to choose their own priorities, policymakers need to ensure that there is a greater level of consistency and coordination in reducing the criminal burden faced by sex workers.

Within the sex industry, there is a significant risk of violence towards women from dangerous and violent clients. This includes mental and physical abuse, including rape, as well as pressure to have unprotected sex, increasing exposure to STIs. Indeed, homicide rates for women involved in prostitution are greater than any other occupational group in the UK.<sup>29</sup>

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<sup>26</sup> Ibid.

<sup>27</sup> Crown Prosecution Service, *Prostitution and Exploitation of Prostitution* (2019), < <https://www.cps.gov.uk/legal-guidance/prostitution-and-exploitation-prostitution/>>, accessed August 2020.

<sup>28</sup> Ibid.

<sup>29</sup> S. Cunningam, T. Sanders, L. Platt, P. Grenfell and P.G. Maciotti, ‘Sex Work and Occupational Homicide: Analysis of a U.K. Murder Database’, *Homicide Studies* 22:3, (2018).



In recent years, there have been several initiatives led by the government and local authorities to improve sex workers' access to justice and safety through reformed policing practices:

- Easing laws on soliciting and loitering to improve access to outreach services and health care
- Reducing criminal and financial burdens by avoiding fines
- Recognising sex workers as victims of hate crime to improve access to justice
- Encouraging police to avoid prosecution through official guidance
- Police are trained to prioritise protection and provision of specialist services

However, this section outlines the main limitations of these reforms:

- Recommendations are unevenly and inconsistently adopted by local authorities
- Differing levels of enforcement creates difficulty and uncertainty for sex workers
- Criminalisation of brothel-keeping limits sex workers' access to justice and protection
- Sex workers are targeted for misuses of public space
- Criminalisation of buyers attracts worst offenders
- Police disproportionately target migrant workers

### **III.II. SUCCESSES OF CURRENT LAW ENFORCEMENT:**

In some regions, the prioritisation of protection over enforcement has enabled trusting relationships to develop between sex workers and the police, thus reducing the risks associated with aggressive clients and improving sex worker access to justice and protection.

#### **i. Easing of laws on soliciting and loitering has improved access to outreach services and health care.**

Some local authorities have improved relationships with communities of sex workers by easing the enforcement of laws which criminalise elements of street-based prostitution, including soliciting and loitering. In 2014, the Leeds City Council and the West Yorkshire Police introduced a policy whereby, between 7pm and 7am, there were no prosecutions for soliciting

or selling sex.<sup>30</sup> Local police focused their activities on the safety and welfare of sex workers, encouraging them to access outreach services and health care. This contributed towards a 110% increase in interactions between street workers and support services. Sex workers were also more likely to report crimes committed against them to the police, which increased from 7% in 2013 to 52% in 2015.<sup>31</sup>

## ii. Avoiding fines and directing sex workers to specialist services

While legislation criminalising loitering or soliciting for the purposes of prostitution remains, the introduction of Engagement and Support Orders under the Policing and Crime Act 2009 offered an alternative penalty to fining whereby convicted individuals were required to attend three meetings with a court-appointed supervisor.<sup>32</sup> The stated aim of this legislative change was to provide those involved in street-based prostitution with an opportunity to access specialist services that targeted the ‘issues underlying their involvement’.<sup>33</sup> This included support services targeting substance abuse, medical care and housing arrangements.<sup>34</sup>

## iii. Recognition of sex workers as victims of hate crime improves access to justice

Similarly, in Merseyside, where crimes against sex workers have been treated as hate crimes since 2006, there has been a surge in the level of co-operation between sex workers and the police when attempting to identify dangerous offenders.<sup>35</sup> Since 2010, the Merseyside Police have reported a 67% success rate on convictions for rape against sex workers.<sup>36</sup> In addition to

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<sup>30</sup> Liberal Democrats, *A Rational Approach to Harm Reduction*, Policy Paper 126 (2017), <[https://d3n8a8pro7vhnmx.cloudfront.net/libdems/pages/13634/attachments/original/1487768795/SW\\_Policy\\_Paper\\_\(Online\).pdf?1487768795](https://d3n8a8pro7vhnmx.cloudfront.net/libdems/pages/13634/attachments/original/1487768795/SW_Policy_Paper_(Online).pdf?1487768795)>, accessed December 2020.

<sup>31</sup> K. Brown and T. Sanders, ‘Pragmatic, Progressive, Problematic: Addressing Vulnerability through a Local Street Sex Work Partnership Initiative’, *Social Policy and Society*, 16:3 (2017), pp. 429-44; Sex Work Research Hub ‘Written Evidence for the Women and Equalities Committee Inquiry into Prostitution’, (2019), <<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/women-and-equalities-committee/prostitution/written/104951.html>>, accessed January 2021.

<sup>32</sup> Home Office (2019), ‘Written Evidence for the Women and Equalities Committee Inquiry into Prostitution’, <<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/women-and-equalities-committee/prostitution/written/106801.html>>, accessed January 2021.

<sup>33</sup> Home Office, *A Review of Effective Practice in Responding to Prostitution*, (2011), p 24, <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/97778/responding-to-prostitution.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/97778/responding-to-prostitution.pdf)>, accessed August 2021.

<sup>34</sup> Home Affairs Committee, *Prostitution Inquiry*, p.8-12.

<sup>35</sup> Ibid, p.17.

<sup>36</sup> BBC, ‘Merseyside model for tackling crime against sex workers’, *BBC News* (20 October 2013), <<https://www.bbc.co.uk/news/av/uk-england-24520849/>>, accessed January 2020.

providing support services, they have employed a specialist trained Independent Sexual Violence Advisor to act as an intermediary when sex workers are the victims of crime.<sup>37</sup> This model was subsequently recommended by the Home Office to be rolled out across all police forces.<sup>38</sup>

### iii. Official guidance encourages police to avoid prosecution

To some extent, there has been an attempt to extend this policy of prioritising sex worker safety over enforcement action across local police forces in England and Wales. The National Police Chiefs' Council has also centred sex worker safety in their 'National Policing Sex Work Guidance'. For example, it encourages police officers to avoid prosecution under brothel-keeping laws where 'two independent sex workers are co-working due to safety concerns'.<sup>39</sup>

### iv. Police are trained to prioritise protection and provision of specialist services

The NPCC have also been involved in improving the relationship between the police and specialist services for those involved in prostitution. Their guidance asserts that the role of the police should not be to encourage individuals to exit prostitution, nor should they interfere with issues that require specialist care.<sup>40</sup>

This co-operation has also extended to non-governmental initiatives that prioritise sex workers' needs and offer specialist support. National Ugly Mugs (NUM), an organisation which aims to provide sex workers with access to justice and protection, has worked to improve relationships between police and sex workers.<sup>41</sup> NUM provides sex workers with access to client screening information to check numbers of punters and identify dangerous clients, supports them in filing reports to the police and ensures that they have access to professional support to help them

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<sup>37</sup> R. Jacobs, 'Policing Prostitution - The Merseyside Hate Crime Model That Prioritises Protection of Sex Workers', *Huffington Post*, (5 May 2014), <[https://www.huffingtonpost.co.uk/ruth-jacobs/prostitution-law-merseyside-model\\_b\\_4731381.html?guce\\_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&guce\\_referrer\\_sig=AQAAACSkvxLR\\_72Ka\\_cmGcEwtWVSadTivLm1B4\\_ph-6edWpSv8bfgKDCj8sNCvaYpT4LhRJRCv3xft7fD8WJpTOa-viSgEKVmDk1vZ76oZMpdWcGWvhFQIs0LuxQ9LFHPtnN21gvU1IHgp8fBR5nzWRd5R0\\_QJQvARJL91z-HimIEBH&guccounter=2/](https://www.huffingtonpost.co.uk/ruth-jacobs/prostitution-law-merseyside-model_b_4731381.html?guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&guce_referrer_sig=AQAAACSkvxLR_72Ka_cmGcEwtWVSadTivLm1B4_ph-6edWpSv8bfgKDCj8sNCvaYpT4LhRJRCv3xft7fD8WJpTOa-viSgEKVmDk1vZ76oZMpdWcGWvhFQIs0LuxQ9LFHPtnN21gvU1IHgp8fBR5nzWRd5R0_QJQvARJL91z-HimIEBH&guccounter=2/)>, accessed January 2020.

<sup>38</sup> Home Office, *A Review of Effective Practice in Responding to Prostitution*, (2011), <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/97778/responding-to-prostitution.pdf/](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/97778/responding-to-prostitution.pdf/)>, accessed August 2021.

<sup>39</sup> Ibid.

<sup>40</sup> National Police Chiefs' Council, *National Policing Sex Work and Prostitution Guidance*.

<sup>41</sup> National Ugly Mugs, 'About' [Website], <<https://nationaluglymugs.org/about-num/>>, accessed February 2020.

cope with the effects of crime. The organisation contributed to the 2019 NCPP guidance and training of police officers when dealing with matters of prostitution and sex work.<sup>42</sup> This produced positive results, with 97% of the police officers who participated in the training reporting that they felt ‘more informed and more aware of the issues facing sex workers’<sup>43</sup>.

### **III.III. LIMITATIONS OF LAW ENFORCEMENT**

#### **i. Recommendations unevenly and inconsistently adopted by local authorities**

Under a model of partial criminalisation, heavy-handed enforcement by the police persists, increasing harms associated with the sex industry and severing relationships of trust between the police and sex workers. This is because, despite the success of local authorities who have pursued policies which prioritise harm-reduction and sex worker safety, national bodies advising on police practices have failed to ensure evidence-based policy recommendations are implemented. According to SWARM, guidance provided by the NPCC is ‘widely disregarded by many police forces and individual police officers’.<sup>44</sup> Similarly, when the Home Office recommended that local authorities adopt measures which eased the criminal burden placed on sex workers (such as the Merseyside model), this advice was mostly ignored.<sup>45</sup>

#### **ii. Differing levels of enforcement creates difficulty and uncertainty**

The unpredictability produced by the differing levels of enforcement used by local authorities and police officers creates a difficult and uncertain situation for sex workers. According to the charity Kairos WWT, this means that sex workers are often reluctant to report harm and therefore crimes committed against them are under-addressed.<sup>46</sup> In 2017, for example, London’s Metropolitan police were criticised for threatening to arrest sex workers who

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<sup>42</sup> National Police Chiefs’ Council, *National Policing Sex Work and Prostitution Guidance*.

<sup>43</sup> Sex Worker Advocacy and Resistance Movement, *No silence to violence: A Report on Violence Against Women in Prostitution in the UK*, (2018), p 25, < <https://www.nswp.org/sites/nswp.org/files/nosilencetoviolence-swarmdec17.pdf>> accessed March 2020.

<sup>44</sup> Ibid, p.28.

<sup>45</sup> Liberal Democrats, *A Rational Approach to Harm Reduction*, p.26.

<sup>46</sup> Kairos Women Working Together, ‘Written Evidence for the Women and Equalities Committee Inquiry into Prostitution’, (2019), <<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/women-and-equalities-committee/prostitution/written/106568.html>>, accessed March 2021.

approached them for help as victims of crime.<sup>47</sup> To compensate for the lack of clarity in government and local authorities' procedure, legal charities such as Release provide free legal advice to sex workers and help them identify which laws the police are enforcing in their local area.<sup>48</sup>

### **iii. Criminalisation of brothel-keeping limits sex workers' access to justice and protection**

The criminalisation of brothel-keeping, which includes any two people sharing premises for the purpose of prostitution, means sex workers cannot legally work together for their safety. In police raids of these properties, officers can seize phones, cash and, in the case of migrant workers, detain them for deportation.<sup>49</sup> To avoid prosecution, sex workers often engage in riskier practices when finding customers and are pushed to work in more isolated locations.<sup>50</sup> Meanwhile, as suggested by the sex worker advocacy group SWARM, some aggressive clients use the law to their advantage, targeting women who sell sex together indoors as they know they do not feel able to report crimes to the police due to brothel-keeping laws.<sup>51</sup>

### **iv. Sex workers targeted for misuses of public space**

Evidence suggests that sex workers are disproportionately targeted by the police through anti-social behaviour orders and other misuses of public space.<sup>52</sup> Thus, even in instances where enforcement against soliciting and loitering is discouraged to prevent sex workers from resorting to dangerous locations, the use of these orders continues to criminalise sex workers from engaging in safer practices.

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<sup>47</sup> O. Bowcott, 'Police accused of threatening sex workers rather than pursuing brothel thieves', *Guardian* (3 August 2017), <<https://www.theguardian.com/society/2017/aug/03/police-sex-workers-brothel-thieves-london-keir-starmer/>>, accessed September 2021.

<sup>48</sup> Sex Worker Advocacy and Resistance Movement, *No silence to violence*.

<sup>49</sup> Ibid.

<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

<sup>52</sup> D. Worden, 'Sex work in a Pandemic: Criminalising Survival', *The Justice Gap* (22 December 2020), <<https://www.thejusticegap.com/sex-work-in-a-pandemic-criminalising-survival/>>, accessed January 2020; Sex Worker Advocacy and Resistance Movement, 'Written Evidence for the Women and Equalities Committee Inquiry into Prostitution' (2019), <<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/women-and-equalities-committee/prostitution/written/105062.html>> accessed January 2021.

#### **v. Criminalisation of buyers attracts worst offenders**

Despite police attempts to root out violent clients and potential offenders, laws on kerb-crawling, which criminalise buyers of sex, can deter ‘nicer clients’ from buying sex due to fears of being prosecuted.<sup>53</sup> This also encourages sex workers to resort to isolated locations to find clients, increasing the risk of violence and exploitation.

#### **vi. Police disproportionately target migrant workers**

Policing practices are also in part responsible for exacerbating inequalities within the sex industry, particularly for migrant workers who risk deportation if found to be engaging with criminal acts, such as operating within a brothel.

Migrant workers are often targeted by policing. This contributes towards their reluctance to report crimes committed against them, increasing their vulnerability to exploitation, and preventing their access to support services. Redbridge Council in London, for example, used a heavy enforcement approach, causing displacement and ‘high levels of fines and arrests of migrant women who sell sex in the borough’.<sup>54</sup> The Council were encouraged to expand their anti-prostitution policies as part of a £460,000 grant from the Government’s Controlling Migration Fund.<sup>55</sup>

#### **vii. Sex workers are not protected by employment laws**

Sex workers are not protected by employment law and therefore do not have access to workplace protection against exploitation if they work for someone else. Even when harms are reported, police will sometimes prosecute sex workers themselves. These punitive laws can drive street-based sex workers into unsafe working conditions and increase their vulnerability.

#### **viii. Criminal records bar sex workers from future employment**

Criminal records (specifically DBS) for sex-work related offences can make it harder for sex workers to find other jobs and choose to exit prostitution as employers are more reluctant to

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<sup>53</sup> T. Carrasquillo, ‘Understanding prostitution and the need for reform’, *Touro Law Review*, 30:3 (2014).

<sup>54</sup> A. Richardson, ‘Redbridge Council’s anti-prostitution tactics labelled “dangerous and reprehensible”’, *East London & West Essex Guardian* (1 October 2018), <<https://www.guardian-series.co.uk/news/16952693.redbridge-councils-anti-prostitution-tactics-labelled-dangerous-reprehensible/>>, accessed January 2020; Sex Worker Advocacy and Resistance Movement, ‘Written Evidence’.

<sup>55</sup> Ibid.

hire individuals with a criminal record.<sup>56</sup> While some areas have established diversion schemes, as described above, these policies are not universal or guaranteed.

### III.IV. CONCLUSION

Contrary to the Home Affairs Committee's suggestion in 2016 that there is insufficient evidence on the impact of alternative legal models for any to be adopted, this section has demonstrated how there are examples from within the UK of decriminalisation being successfully trialed and implemented. Working within the parameters of current UK law, some local authorities have pursued policies which prioritise sex worker safety, protection, and access to justice rather than heavy-handed law enforcement.

To some extent, this has reduced the criminal burden placed on sex workers and improved their access to specialist support services – the benefits of which are described in the next section. This has also helped to improve the relationship between police and sex workers, enabling higher levels of intelligence to come through to target the most severe instances of violence and exploitation in the sex industry.

However, variation in policy among local authorities and police discretion means that evidence-based best practices are not always applied. This creates an unpredictable situation for sex workers, particularly migrant women, which prevents them from accessing protection and support. Fears of prosecution also drive sex workers and their clients into remote, isolated locations which increases the risk of harm and exploitation. To ensure that the criminal burden associated with sex work is reduced, there must be changes to the law and rigorous review mechanisms in place to ensure they are properly implemented.

There are suggestions that the centering of sex workers' rights and safety in policy-making compromises on public welfare. In response to the Leeds City Council's easing of prosecutions for soliciting or selling sex in Holbeck, there was some backlash from residents who noticed an increase in activity and an associated increase in drug use, finding 'paraphernalia such as used condoms and needles' in public spaces.<sup>57</sup> However, a 2020 review of this approach 'did not

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<sup>56</sup> Worden, 'Sex work in a Pandemic'.

<sup>57</sup> Liberal Democrats, *A Rational Approach to Harm Reduction*, p.25.

identify any more effective interventions or ways of reducing the problems associated with on-street sex work within the parameters of existing UK law.<sup>58</sup> Some local authorities have chosen to focus on eliminating street-based prostitution, rather than focusing on reducing the harm sex workers face.<sup>59</sup> While this paper regards safeguarding sex worker safety as a primary aim for policymakers, the final policy recommendations have also considered how a common ground which also considers public interests could be reached.

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<sup>58</sup> J. Roach, K. Wood, A. Cartwright, B. Percy-Smith, M. Rogerson and R. Armitage, *An Independent Review of the Managed Approach to onstreet sex working in Leeds 2014-2020*, University of Huddersfield (2020), p 11, <<https://democracy.leeds.gov.uk/documents/s208220/Managed%20Approach%20Independent%20Review%20Report%20Appendix%20080720.pdf/>>, accessed December 2020.

<sup>59</sup> Home Office, *A Review of Effective Practice in Responding to Prostitution*, p.3.



## **IV. ANALYSIS OF GOVERNMENT POLICY: SUPPORT SERVICES FOR SEX WORKERS**

### **IV.I. OVERVIEW**

Following from the previous chapter, this section reviews government policies on providing support services to those involved in prostitution in terms of their accessibility and ability to provide multi-layered care. It concludes that there needs to be training for mainstream service providers and a greater level of funding for specialist support services for sex workers in England and Wales to access non-coercive and non-judgemental care.

Prostitution policy has shifted its focus and resources away from criminal justice, and towards support services which focus on harm-reduction. Given the wide and complex range of needs of those in the sex industry, the government has explicitly acknowledged the need for a multi-agency approach when providing support.

These agencies include specialist prostitution projects, health services, housing services, drug dependency programmes and social services. In a 2011 report, the Home Office recommended that local authorities ensure that three levels of care were available for sex workers in their area. These included outreach programmes which began the initial stage of engagement and building trust with sex workers; drop-in services which provided care plans and addressed immediate needs related to health and welfare; and services for long-term and sustained change (such as help with finding alternative employment and housing).<sup>60</sup>

### **IV.II. LIMITATIONS OF SUPPORT SERVICES**

While the government approach to providing sex workers with support broadly aligns with the stated aims of this paper, the limitations of current policies are given below.

#### **i. Cuts to sexual health and support services**

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<sup>60</sup> Ibid., p.5.

Specialist support services for sex workers have been weakened by budget cuts.<sup>61</sup> For instance, Bevan healthcare is a social enterprise, based in Bradford and Leeds, which focuses on supporting vulnerable groups, including sex workers. They provide an integrated model of health and social care to meet the ‘multiple needs’ of sex workers in one engagement with the service. It focuses on ‘continued engagement and rapport building with street-based sex workers who tend to be extremely mistrustful of institutions and professionals’.<sup>62</sup> This is used by women who were otherwise not accessing healthcare or registered with a GP. Initially funded by Public Health England, this service was decommissioned in April 2019. At present, Bevan Healthcare continues to run a limited service using the organisation’s reserves at a reduced rate of pay for staff.<sup>63</sup>

## **ii. Stigma and discrimination in support services**

According to SWARM, many sex workers report facing ‘discrimination from healthcare professionals’ which prevents them from returning to accessing health services in the future.<sup>64</sup> There is a lack of funding in training and specialist support for disabled, BME, immigrant and LGBTQ+ individuals who sell sex. Male sex workers, for example, are often ignored in debates on sex work. According to Changing Lives, an organisation that runs specialist services for vulnerable people, male sex workers report feeling doubly stigmatized and do not seek support, and even if they do, there is a lack of services that cater to them.<sup>65</sup>

## **iii. Housing discrimination due to brothel-keeping laws**

The Sexual Offences Act was amended in 2003 to make it an offence for the ‘tenant or occupier of any premises knowingly to permit the whole or part of the premises to be used for the purposes of habitual prostitution’. This motivates landlords to evict individuals if they discover that they are sex workers, often disregarding whether they were working from the

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<sup>61</sup> Sex Worker Advocacy and Resistance Movement, ‘Written Evidence for the Women and Equalities Committee Inquiry into Prostitution’.

<sup>62</sup> Bevan Healthcare, ‘About’ [Website], < <https://bevanhealthcare.org/about-us/>>, accessed January 2020.

<sup>63</sup> Ibid.

<sup>64</sup> Sex Worker Advocacy and Resistance Movement (SWARM), *Shadow Report for CEDAW*, (2019).

<sup>65</sup> Changing Lives, ‘Written Evidence for the Women and Equalities Committee Inquiry into Prostitution’, (2019), <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/women-and-equalities-committee/prostitution/written/106462.html/>, accessed January 2021.

property or only living there. This forces sex workers into situations of further insecurity and instability, sometimes causing homelessness.<sup>66</sup>

#### **iv. Exiting prostitution**

Support services are often aimed at helping sex workers exit prostitution. As such, progress made by support services for sex workers is often measured in terms of the ‘reduction in the numbers of hours or frequency of selling sexual services’.<sup>67</sup>

It is argued by sex workers themselves that support services offered in this way are coercive and stigmatising. They also reportedly deter the most marginalised members of sex worker communities from accessing help.<sup>68</sup> In their written evidence to the Women and Equalities Committee Inquiry on prostitution, Lizzy Richmond, a sex worker, states that the ‘[d]e-stigmatisation of sex work is absolutely essential if sex workers are to access essential services. ‘Exit’ services should only be available to workers who choose to use them. Forcing sex workers to stop working ‘for their own good’ is judgemental and unnecessary.’<sup>69</sup>

#### **v. Support services linked to criminalisation**

Under the Engagement and Support orders, services are presented as an alternative to the criminal justice system and are directed towards helping individuals exit prostitution.<sup>70</sup> Sex workers report that support services offered in this way feel coercive, forceful and damage trusting relationships with the state. In 2016, the London Borough of Hackney requested that sex worker patients registered with Open Doors. This placed them in drug cessation services where there was a significant police presence and reportedly ‘undid years of trust’.<sup>71</sup> This

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<sup>66</sup> Ibid.

<sup>67</sup> Home Office, *A Review of Effective Practice in Responding to Prostitution*, p.24.

<sup>68</sup> London School of Hygiene and Tropical Medicine, ‘Written Evidence for the Women and Equalities Committee Inquiry into Prostitution’, (2019), <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/women-and-equalities-committee/prostitution/written/106495.html> >, accessed January 2021.

<sup>69</sup> L. Richmond, ‘Written Evidence for the Women and Equalities Committee Inquiry into Prostitution’ (2019), <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/women-and-equalities-committee/prostitution/written/106451.html>, accessed December 2020.

<sup>70</sup> Release, *Sex Workers and the Law*, (2017), [https://www.release.org.uk/sites/default/files/pdf/publications/SEX\\_WORKERS\\_%26\\_THE\\_LAW\\_2017.pdf](https://www.release.org.uk/sites/default/files/pdf/publications/SEX_WORKERS_%26_THE_LAW_2017.pdf) >, accessed January 2021.

<sup>71</sup> S. Howard, ‘Better health for sex workers: which legal model causes least harm?’, *BMJ* 361 (2018).

illustrates how a reduction in police activity is vital for the improvement of relationships between sex workers and support services.

Moreover, the lack of separation between support services and the criminal justice system has been found to exclude the most marginalised sex workers from access to care.<sup>72</sup> For migrant workers, the threat of police intervention and deportation has been shown to deter many from accessing healthcare.<sup>73</sup>

#### **IV.III. CONCLUSION**

To some extent, there has been a shift away from criminal punishment. Under the 2009 Policing and Crime Act, Engagement and Support Orders have directed those involved in prostitution towards support services. More recently, NPCC police guidance has advised officers to avoid unnecessary prosecution and to cooperate with local support service providers with a specialist knowledge of sex workers' needs.

It is essential that policymakers weaken the link between law enforcement and support services which deter sex workers, particularly those who are migrants, from accessing support through fears of coercion and deportation.

Due to austerity, cuts to specialist services and healthcare have also reduced the ability for local authorities to shift resources away from police intervention. In the absence of specialist training, sex workers report experiences of stigma and discrimination when attempting to access support from mainstream service providers. This leads to a reduced uptake of support services.

Furthermore, specialist service providers who hold 'exiting prostitution' as their ultimate goal can also deter sex workers who, for financial or other reasons, might not be ready to leave the profession. Overall, as stated by the sex-worker led organisation SWARM, prostitution policy needs to prioritise 'long-term funding for holistic, non-judgmental support services'.<sup>74</sup>

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<sup>72</sup> London School of Hygiene and Tropical Medicine, 'Written Evidence for the Women and Equalities Committee Inquiry into Prostitution'.

<sup>73</sup> Sex Worker Advocacy and Resistance Movement, *Shadow Report for CEDAW*.

<sup>74</sup> Sex Worker Advocacy and Resistance Movement, 'Written Evidence for the Women and Equalities Committee Inquiry into Prostitution'.

## V. ALTERNATIVE LEGAL MODEL: ‘SEX-BUYER LAW’

### V.I. OVERVIEW

While this paper recommends policies which broadly follow a model of decriminalisation, the next three chapters provide an international review of other legislative approaches. For each model, there is an evaluation of their successes and limitations in terms of their ability to reduce harm and promote sex workers’ human rights, and a conclusion which demonstrates how the results of the model can be used to inform the policy recommendations given at the end of the paper.

The three main alternative legal models to the current model in England and Wales are the sex-buyer law (or the ‘Nordic model’), regulationism and full decriminalisation. The complete prohibition of prostitution will not be discussed in this paper as it has not received any substantial support as a model in England and Wales.

Following the 2016 Home Affairs Committee inquiry into prostitution, it was concluded that the UK would not recommend the adoption of any one legislative model as the ‘evidence base for any of these changes is not yet established’. In the past few years, more evidence on the effectiveness of these models has become available since the implementation of the sex-buyer law in Northern Ireland and France, providing an opportunity for an updated review. However, the extent to which these international examples can be used to inform policymaking in England and Wales is limited by contextual differences – such as the criminal justice system, policing methods, support services and employment laws.<sup>75</sup>

Organisations promoting the ‘sex-buyer law’, including EndDemand UK and the Fawcett Society, have been especially vocal in the debate around prostitution policy, submitting evidence to the 2019 Women and Equalities Committee inquiry on prostitution and garnering support from MPs. More recently, in December 2020, a Labour MP proposed the adoption of similar legislation in the Commons.<sup>76</sup> Given the potential for this legal model to be adopted in

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<sup>75</sup> Home Affairs Committee, *Prostitution Inquiry* (2016), p 35.

<sup>76</sup> M. Oppenheim, ‘Labour MP fiercely criticised for proposing legislation which would criminalise buying sex’, *Independent* (9 December 2020), <<https://www.independent.co.uk/news/uk/home-news/diana-johnson-sex-work-bill-b1768833.html>>, accessed December 2020.

the UK, or pursue policies which criminalise and target the buyer, the writers felt that a review of the potential consequences of this model was necessary.

## V.II. SUCCESSES OF ‘SEX-BUYER LAW’

The sex-buyer law or ‘Nordic model’ criminalises the buying but not the selling of sex. As such, there is no legal pressure on the sex worker as only the client can be criminalised.<sup>77</sup> However, most proponents of this model argue that policymakers should aim to abolish prostitution as it exploits vulnerable individuals and reinforces gender inequality.<sup>78</sup>

### i. Reducing the size of the commercial sex industry

According to the model’s stated goals, there has been some success in reducing the size of the commercial sex industry and working towards the abolition of prostitution. The Swedish 1993 Prostitution Inquiry found that between 1995 and 2008, the number of streetwalkers in some areas halved.<sup>79</sup> However, these figures have been disputed for only considering street-based sex work and it has been argued that that the level of sex work has remained the same in Sweden.<sup>80</sup>

### ii. Improves sex workers’ access to justice and protection

The sex buyer law aims to reduce harm as it enables sex workers to turn to the police for protection without fear of being criminalised.<sup>81</sup> This may be one explanation for the 54% increase in reports of crime made by sex workers in Ireland after the implementation of the Criminal Law (Sexual Offences) Act in 2017.<sup>82</sup>

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<sup>77</sup>J. Levy and P. Jakobsson, ‘Sweden’s Abolitionist Discourse and Law: Effects on The Dynamics of Swedish Sex Work and on the Lives of Sweden’s Sex Workers’, *Criminology & Criminal Justice* 4:5 (2014).

<sup>78</sup> Home Affairs Committee, *Prostitution Inquiry* (2016).

<sup>79</sup> M. Waltman, ‘Sweden’s prohibition of purchase of sex: The law’s reasons, impact and potential’, *Women’s Studies International Forum* 34:5 (2011).

<sup>80</sup> Levy and Jakobsson, ‘Sweden’s Abolitionist Discourse and Law’.

<sup>81</sup> Stand Against Sexual Exploitation, ‘Written Evidence for the Women and Equalities Committee Inquiry into Prostitution’ (2019),

<<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/women-and-equalities-committee/prostitution/written/105153.html>>, accessed December 2020.

<sup>82</sup> Sex Work Research Hub, ‘Written Evidence for the Women and Equalities Committee Inquiry into Prostitution’ (2019), <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/women-and-equalities-committee/prostitution/written/104951.html>, accessed December 2020.

### V.III. LIMITATIONS OF ‘SEX-BUYER LAW’

#### i. **Criminalising clients increases violence against sex workers**

Criminalising clients has reportedly led to an increase in violence against sex workers. The client desire to avoid prosecutions results in sex work taking place in more isolated locations where sex workers are vulnerable to violence and abuse. Some sex workers report that clients are also more reluctant to leave their contact information with them as they fear prosecution. This reduces sex workers’ ability to track clients who harm them and arguably shifts the power dynamic in favour of the clients.<sup>83</sup>

Health-related harms persist under this model as sex workers report that the increased power of the client means they feel less able to ask for condoms to be used. Furthermore, an increase in STD rates in France since the implementation of this legislation also indicates a failure in the Government to improve public health and sex worker well-being.<sup>84</sup>

Evidence also suggests that this legal change, which often forces sex workers to operate remotely, has made the occupation more dangerous. In France, the death rate per month of sex workers between June and December 2019 was double the rate in 2014 before the implementation of the sex buyer law.<sup>85</sup> One medical organisation stated that there was a 42% increase in sex workers reporting violence against them.<sup>86</sup>

#### ii. **Police target sex workers**

Under this model, sex workers continue to be subjected to violence and inequality by the police. In France, sex workers face more police enforcement than their clients, for example through identity checks.<sup>87</sup> Building trusting relationships between the police and sex workers is

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<sup>83</sup> Levy and Jakobsson, ‘Sweden’s Abolitionist Discourse And Law’.

<sup>84</sup> P. Bachlakova, P, ‘Long read: how the Nordic model in France changed everything for sex workers’, *Open Democracy*, (16 October 2020), <https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/long-read-how-nordic-model-france-changed-everything-sex-workers/>, accessed January 2021.

<sup>85</sup> Ibid.

<sup>86</sup> H.L. Bail and C. Giametta, *What do Sex Workers Think About the French Prostitution Act?*, A Study on the Impact of the Law from 13 April 2016 Against the “Prostitution System” in France, Médecins du Monde (2018), <[http://www.sexworkeurope.org/sites/default/files/userfiles/files/EN\\_synthesis\\_SW\\_final\\_2.pdf](http://www.sexworkeurope.org/sites/default/files/userfiles/files/EN_synthesis_SW_final_2.pdf)>, accessed December 2020.

<sup>87</sup> Levy and Jakobsson, ‘Sweden’s Abolitionist Discourse And Law’.

still difficult, with under 1% of sex workers in Ireland suggesting they would report a crime to the police.<sup>88</sup>

### **iii. Policies geared towards exiting prostitution perpetuate stigma and discrimination**

Reports also suggest that the sex-buyer law perpetuates stigma and socio-economic discrimination against sex workers. Sex workers operating under this model have stated that they are treated as victims who need to be saved from themselves.<sup>89</sup> In Ireland, sex workers report feeling more stigmatised after the sex buyer law was introduced.<sup>90</sup> Sex workers in Sweden have said that exits to prostitution were offered to them in pressurising and judgmental ways.<sup>91</sup> Public opinion in Sweden has become more negative towards sex workers, with the number of those who support criminalising both the buying and selling of sex increasing.<sup>92</sup>

### **iv. Does not address sex trafficking**

There is no clear evidence indicating whether the sex-buyer law has prevented human trafficking. One study in Norway found that the trafficking market reduced after the introduction of the sex buyer law.<sup>93</sup> Other evidence, however, disputes this: after the implementation of this model, trafficking cases increased by 25% in Ireland and the number of trafficking victims is increasing annually in Sweden.<sup>94</sup>

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<sup>88</sup> Sex Workers Alliance Ireland, 'Written Evidence for the Women and Equalities Committee Inquiry into Prostitution' (2019), <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/women-and-equalities-committee/prostitution/written/106548.html>>, accessed December 2020.

<sup>89</sup> K. Holland, 'Report Calls For Law On Purchasing Sex To Be Repealed', *Irish Times* (10 September 2020), <https://www.irishtimes.com/news/social-affairs/report-calls-for-law-on-purchasing-sex-to-be-repealed-1.4351972>>, accessed December 2020.

<sup>90</sup> Ibid.

<sup>91</sup> J.H. Matlary, 'A "Liberal Profession"? The Norwegian Debate on the "Sex Buying Act"', *Human Trafficking: Issues Beyond Criminalization*, The Pontifical Academy of Social Sciences (2016).

<sup>92</sup> All-Party Parliamentary Group on Prostitution and the Global Sex Trade, *Written Evidence On Prostitution And The Global Sex Trade*, <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/women-and-equalities-committee/prostitution/written/106468.html>>, accessed December 2020.

<sup>93</sup> Glasgow Violence Against Women Partnership, 'Written Evidence for the Women and Equalities Committee Inquiry into Prostitution', (2019), <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/women-and-equalities-committee/prostitution/written/106565.html>>, accessed December 2020.

<sup>94</sup> B. Campbell, 'Human Trafficking Cases in Northern Ireland up 25% Last Year, Says Crime Agency', *Belfast Telegraph* (18 September 2019) < <https://www.belfasttelegraph.co.uk/news/northern-ireland/human-trafficking-cases-in-northern-ireland-up-25-last-year-says-crime-agency-38508483.html>> accessed September 2021.



## V.IV. CONCLUSION

To some extent, the ‘sex-buyer law’ meets some of the stated aims of this paper in that there is evidence to suggest that the decriminalisation of sex workers improves their access to justice and protection. This is indicated by the increase in sex workers reporting crimes committed against them in the countries where this legal model has been implemented.

While further research is needed on the topic, there are also hopes that greater cooperation between police and sex workers could help law enforcement target the most severe instances of violence and exploitation in the sex industry. As suggested by Sex Workers Alliance Ireland, sex workers can also be the police’s ‘best allies’ for finding victims of human trafficking.<sup>95</sup>

However, the continued criminalisation of the client under this model forces sex workers to operate in more isolated, dangerous conditions and compromise on their safety. This reiterates the failures of kerb-crawling laws in England and Wales which criminalise the client, and policies which force those involved in prostitution to work in remote environments.

This model also illustrates the potential limitations of decriminalisation in terms of its capacity to increase the trust that those involved in prostitution have in law enforcement as they continue to be disproportionately targeted by the police for related offences. It is vital that the decriminalisation of sex work in England and Wales is also met with policies which focus on police training and the avoidance of heavy-handed law enforcement.

Finally, the failures of the ‘sex-buyer law’ illustrate how policies which are geared towards encouraging sex workers to exit prostitution perpetuate stigma and discrimination against them – thus contributing towards their social alienation and restricted access to support services. This suggests that policymakers should prioritise offering support services in ways which are non-judgemental and non-coercive.

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<sup>95</sup> Sex Workers Alliance Ireland, ‘Written Evidence for the Women and Equalities Committee Inquiry into Prostitution’.

## VI. ALTERNATIVE LEGAL MODEL: REGULATIONISM

### VI.I. OVERVIEW

Under the regulationism model, sex workers and brothels that fail to comply with certain regulations are criminalised. These regulations can take the form of conditions, such as general medical tests, STD checks, and registration, or mandated settings, requiring sex workers to only work in specified and supervised zones.<sup>96</sup>

Regulationism aims to increase state control and surveillance of those involved in prostitution.<sup>97</sup> This can improve safety for sex workers but is often primarily concerned with the health and order of the public.<sup>98</sup> It aims to reduce policing costs associated with the surveillance, arresting and handling of those convicted of crime in the sex industry, and to reduce public health costs such as STD checks, and physical and mental health treatments for victimised sex workers. Under this model, any administrative costs incurred should not exceed the money made from the taxation of prostitution.<sup>99</sup>

The model has been implemented in Germany (2016), the state of Nevada in the USA, and in the Netherlands (2000) but the precise regulations differ between countries.<sup>100</sup>

### VI.II. SUCCESSES OF REGULATIONISM

#### i. Improvements to health

Regulationism has led to significant health improvements. In Nevada, they significantly reduced the rate of HIV and STD transmission for legal workers.<sup>101</sup> However, for illegal workers, including migrant sex workers, the risk of HIV and STD transmission often increased.<sup>102</sup> This is

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<sup>96</sup> L. Platt, P. Grenfell, R. Meiksin, J. Elmes, S.G. Sherman, T. Sanders, P. Mwangi and A.L. Crago, 'Associations Between Sex Work Laws And Sex Workers' Health: A Systematic Review And Meta-Analysis Of Quantitative And Qualitative Studies', *PLoS Med* 15:12 (2018).

<sup>97</sup> Ibid.

<sup>98</sup> C. Brants, 'The Fine Art Of Regulated Tolerance: Prostitution In Amsterdam', *Journal of Law and Society* 25:4 (1998).

<sup>99</sup> M.D. Giusta, 'Simulating The Impact Of Regulation Changes On The Market For Prostitution Services', *European Journal of Law and Economics* 29:1 (2009).

<sup>100</sup> N. Bingham, 'Nevada Sex Trade: Gamble for the Workers', *Yale Journal of Law and Feminism* 10 (1998).

<sup>101</sup> T. Carrasquillo, 'Understanding Prostitution and the need for reform', *Touro Law Review* 30:3 (2014).

<sup>102</sup> Platt, 'Associations Between Sex Work Laws and Sex Workers'.

likely because, since their work is outside the regulated system and continues to be criminalised, they have less protection and consequently less power to insist on safety measures.<sup>103</sup>

## ii. **Protection from aggressive clients**

In comparison to the ‘sex-buyer law’, clients are not criminalised but there are protections in place to prevent violent, rowdy, or intoxicated clients from entering brothels.<sup>104</sup>

## VI.III. LIMITATIONS OF REGULATIONISM

### i. **Increase in sex trafficking and organised crime**

There are also reports of increased violence under this model. Research led by Stand Against Sexual Exploitation, a charity that aims to help women exit sex work, found that this model lead to a decrease in the monitoring of sex work and allowed a black market to grow in which sex workers, particularly migrant women, were not legally protected from abuse.<sup>105</sup> A Dutch National Police Report has also indicated that the sex industry continues to be dominated by organised crime.<sup>106</sup> A study on Germany also found the number of sex trafficking victims increased from 9,870-19,740 (the minimum to the maximum range) prior to the legalisation of prostitution to 12,350-24,700 in 2003 (a year after the country first legalised prostitution).<sup>107</sup>

### ii. **Limited rights and employment benefits**

Rights afforded to sex workers under regulationism continue to be limited. In Nevada, sex workers earnings are minimal as regulatory expenses are covered by taxing their income, and they do not have the same benefits as employees of other businesses, such as the ability to

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<sup>103</sup> Ibid.

<sup>104</sup> Carrasquillo, ‘Understanding Prostitution’.

<sup>105</sup> Stand Against Sexual Exploitation, ‘Written Evidence Provided to the Women and Equalities Committee’, <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/women-and-equalities-committee/prostitution/written/105153.html>, accessed December 2020.

<sup>106</sup> J. Raymond, *Trafficking, prostitution and the sex industry: The Nordic legal model*, Coalition Against Trafficking in Women (2010) <https://prostitutionresearch.com/Raymond%20Trafficking%20Prostitution%20and%20the%20Sex%20Industry%20The%20Nordic%20Legal%20Model.pdf>, accessed December 2020.

<sup>107</sup> A. Di Nicola, *National Legislation on Prostitution and the Trafficking in Women and Children*, European Parliament, Transcrime-Joint Research Centre on Transnational Crime (2005), <[https://www.europarl.europa.eu/RegData/etudes/etudes/join/2005/360488/IPOL-JOIN\\_ET\(2005\)360488\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/etudes/join/2005/360488/IPOL-JOIN_ET(2005)360488_EN.pdf)>, accessed January 2021.

collect insurance if they are fired.<sup>108</sup> Moreover, mandatory registration requires sex workers to carry a card and be ‘marked for life’. Due to continued stigmatisation and records of their involvement in prostitution, they are often unable to leave the industry.<sup>109</sup>

### iii. Limited access to justice and protection

While some sex workers report feeling more protected working within a legalised industry monitored by police, the relationship between those involved in prostitution and the police remains fraught. Many sex workers fail to report any abuse they suffer at the hands of clients and pimps as they do not want to negatively affect their business.<sup>110</sup>

## VI.IV. CONCLUSION

Policies which enforce surveillance and mandatory registration lead many of those involved in prostitution to operate underground where there is almost no access to protection. This indicates that successful policymaking should centre the rights of sex workers over police control and should focus on building trusting relationships rather than resorting to force or coercion.

These policies also exclude migrant workers from access to justice and protection, thus exacerbating inequalities in the sex industry. This can lead to some women, both willingly and unwillingly, to enter the black market. To combat organised crime and sex trafficking, it is essential to design policies where the needs of migrant women are met.

Furthermore, regulationism indicates some of the potential limitations of the final policy recommendations given in this paper. The removal of brothel-keeping legislation in England and Wales could also see many of those involved in prostitution reluctant to report any abuse they suffer at the hands of clients and pimps as they do not want to negatively affect their business. For the decriminalisation model to be effective, resources must be devoted to the development of support services which focus on the well-being of sex workers and improving their relationship with the police.

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<sup>108</sup> Bingham, ‘Nevada Sex Trade’.

<sup>109</sup> J. Raymond, ‘Prostitution as violence against women: NGO stonewalling in Beijing and elsewhere’, *Women’s studies international forum* 21:1 (1998).

<sup>110</sup> *Ibid.*

## VII. ALTERNATIVE LEGAL MODEL: FULL DECRIMINALISATION

### VII.I. OVERVIEW

Full decriminalisation legalises prostitution and all the activities associated with it, including brothel-keeping and soliciting sex. Additionally, prostitution is aligned with other businesses and there are no prostitution-specific regulations in place – as there is under the regulationism model.<sup>111</sup> The involvement of a minor, as well as forced labour and human trafficking remain illegal.

Prostitution has been fully decriminalised in New Zealand and in the state of New South Wales in Australia. In New Zealand, the 2013 Prostitution Reform Act decriminalised prostitution. Before this legislation, New Zealand prostitution policy followed the partial criminalisation model which is currently in place in England and Wales.<sup>112</sup>

### VII.II. SUCCESSES OF FULL DECRIMINALISATION

#### i. Improved relationship with the police

The likelihood of police violence is seen to be minimised under decriminalisation, particularly in terms of ending brothel raids which have been shown to have detrimental impacts on sex workers health and financial well-being.<sup>113</sup> Sex workers are less likely to hide information from the police and instead are willing to assist them, suggesting that a relationship of mutual trust has been built.<sup>114</sup> Since decriminalisation was implemented in New Zealand, 70% of sex workers were more likely to report violence.<sup>115</sup>

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<sup>111</sup> J. Wojcicki, 'Race, class and sex: the politics of the decriminalisation of sex work' *Agenda* 42 (1999).

<sup>112</sup> G. Abel, 'The Impact of Decriminalisation on the Number of Sex Workers in New Zealand', *Journal of Social Policy* 38:3 (2009).

<sup>113</sup> Platt et al., 'Associations Between Sex Work Laws And Sex Workers' Health'.

<sup>114</sup> G. Abel, 'Commentary: Sex Work Is Here To Stay And Decriminalisation Improves Safety And Social Justice', *BMJ* 361 (2018).

<sup>115</sup> English Collective of Prostitutes, 'ECP submission to Women and Equalities Committee Inquiry on Covid-19', (2020), <<https://prostitutescollective.net/submission-women-and-equalities-committee-inquiry-covid-19/>>, accessed February 2021.

Nevertheless, a 2012 New Zealand report acknowledged that the police continue to lack a clear sense of the prevalence and nature of the sex industry which presents difficulties when trying to offer protection.

## **ii. Protection from violent clients**

Studies indicate that there is an overall reduction in sex workers being subjected to violence from clients as they know that the police can be called by sex workers for protection.<sup>116</sup> Sex workers report that this model gives them more power in the client-worker dynamic, thus improving their power when negotiating and refusing violent clients. In New Zealand, 68% of sex workers feel able to refuse clients, compared to 47% before the model was implemented.<sup>117</sup>

## **iii. Reduces health-related harms**

Full decriminalisation is also successful at reducing health-related harms. In Australia, more sex workers in New South Wales benefited from training and information from sexual health clinics than those in other Australian locations without full decriminalisation.<sup>118</sup> Studies have shown that if there is no strict policing of prostitution, sex workers are half as likely to have HIV or STDS.<sup>119</sup>

## **iv. Anti-discrimination legislation offers legal protection**

Stigma and discrimination against sex workers persists under a model of decriminalisation; however, most sex workers feel that there is an overall reduction in their maltreatment.<sup>120</sup> There is anti-discrimination legislation in place that means sex workers now have legal protection against discrimination. Furthermore, brothels can advertise openly for workers instead of attempting to trick women into joining the industry through misleading advertisements.<sup>121</sup>

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<sup>116</sup> Abel, 'Commentary: Sex Work Is Here To Stay'.

<sup>117</sup> English Collective of Prostitutes, 'ECP submission to Women and Equalities Committee Inquiry on Covid-19'.

<sup>118</sup> C. Harcourt, 'The decriminalisation of prostitution is associated with better coverage of health promotion programs for sex workers', *Australian and New Zealand Journal of Public Health* 34:5 (2010).

<sup>119</sup> Platt, 'Associations Between Sex Work Laws And Sex Workers' Health'.

<sup>120</sup> L. Richmond, 'Written Evidence for the Women and Equalities Committee Inquiry into Prostitution', (2019) <<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/women-and-equalities-committee/prostitution/written/106451.html>>, accessed December 2020.

<sup>121</sup> B. Brooks-Gordon, 'Written Evidence for the Women and Equalities Committee Inquiry into Prostitution', (2019), <<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/women-and-equalities-committee/prostitution/written/106558.html>> accessed December 2020.

## **v. Labour and employment rights protected**

Decriminalisation also promotes sex workers' human rights as their labour and employment rights are protected.<sup>122</sup> In New Zealand, more than 90% of sex workers felt they now had more rights in employment and their health and safety, improving their capacity to control their working environment and report instances of assault or rape.<sup>123</sup>

## **VII.III. LIMITATIONS OF FULL DECRIMINALISATION**

### **i. Migrant workers are left unprotected**

However, full decriminalisation has, so far, failed to protect the rights of migrant sex workers.<sup>124</sup> In New Zealand, the full decriminalisation law does not apply to migrant workers. This means migrant workers are more likely to be exploited and discriminated against, creating disparities between different groups of sex workers.<sup>125</sup>

### **ii. Failure to reduce sex trafficking**

There are conflicting opinions on whether full decriminalisation leads to increased human trafficking. Stand Against Sexual Exploitation point to evidence that trafficking has increased following the new policy.<sup>126</sup> However, other groups have suggested that decriminalisation could encourage sex workers, particularly migrant women, to pass on information about sex trafficking to the police if their rights were secured.<sup>127</sup>

## **VII.IV. CONCLUSION**

Full decriminalisation has been shown to reduce the health-related harms and violence faced by sex workers from their clients and increase sex workers' access to legal rights. This indicates that successful policymaking should not only implement legislation which protects sex workers

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<sup>122</sup> Ibid.

<sup>123</sup> English Collective of Prostitutes, 'Submission to Women and Equalities Committee Inquiry on Covid-19'.

<sup>124</sup> Ibid.

<sup>125</sup> Amnesty International, 'Written Evidence for the Women and Equalities Committee Inquiry into Prostitution' (2019), <<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/women-and-equalities-committee/prostitution/written/106223.html>>, accessed December 2020.

<sup>126</sup> M. Farley, 'Theory versus reality: Commentary on four articles about trafficking for prostitution' *Women's Studies International Forum* 32:4 (2009).

<sup>127</sup> Sex Worker Advocacy and Resistance Movement, 'Written Evidence for the Women and Equalities Committee Inquiry into Prostitution'.

from discrimination, it should also work to inform sex workers of their labour and employment rights.

The New Zealand case also demonstrates how full decriminalisation can improve sex workers' access to police protection. Implementing policies which work on fostering these relationships, including specialist training to address the potential issue of police ignorance about the nature of the sex industry, is also vital.

However, the failures of decriminalisation in other jurisdictions reveal the potential limitations of this paper's policy recommendations. In the case of New Zealand, there has been a failure to provide access to support and protection for migrant workers. Policymakers must ensure that the rights of migrant workers selling sex are met through the devotion of resources to support services that are specifically designed to meet their needs and act independently from immigration control.

Finally, there is currently no clear evidence to indicate the impact that full decriminalisation would have on human trafficking. This point is considered in the section on future research in the final policy recommendations of this paper.



## VIII. POLICY RECOMMENDATIONS

### VIII.I. OVERVIEW

In response to our analysis of current government policies and alternative international legal models, the writers of this paper propose that working towards the decriminalisation of sex work is the most effective way to alleviate the harms and inequalities associated with the sex industry.

As well as indicating the necessary steps for decriminalisation, the following policy recommendations also suggest how the Government and local authorities can shift resources away from the criminal justice system and focus on long-term investment in support services. In the final section, the limitations of our proposals and the need for further research are also outlined.

The policy recommendations are divided into the following sections:

- **Decriminalisation of sex work:** This section provides recommendations on how the Government should change existing legislation, eliminating laws which inhibit consensual exchanges in the sex industry and adopting measures which enable sex workers to exercise their labour and human rights.
- **Reforming law enforcement:** This section suggests how law enforcement can be reformed to prioritise sex workers' access to protection and sex worker-police relations. This includes specialist training for police officers and guidance on avoiding unnecessary criminal charges.
- **Improving support services:** This section advises local authorities on how they can ensure there is a network of specialised, non-coercive and non-judgemental support services in their local area, particularly for the most vulnerable sex workers.
- **Limitations and further research:** This section addresses the limitations of our proposals and suggests there is a need for research and wider investment in welfare reform, migrant workers, and efforts to tackle sex trafficking.

## **VIII.II. DECRIMINALISATION OF SEX WORK**

Although not a silver bullet, the decriminalisation of sex work provides a foundation for sex workers to access their human and labour rights.

In practice, there has already been a shift away from criminalisation. Produced alongside sex worker-led organisations, the National Police Chiefs' Council (NPCC) guidance on prostitution encourages the police to prioritise the safety of sex workers over law enforcement. This includes avoiding the enforcement of brothel-keeping legislation where two sex workers are found to be operating together for their safety.

However, as demonstrated in the analysis of government policies, there is currently no legal requirement for this guidance to be followed and it is unevenly applied across England and Wales. Thus, instances of heavy-handed policing continue to contribute towards harms and inequalities experienced by those involved in prostitution, and fears of criminalisation prevent those in the sex industry from accessing services for their support and protection.

The following recommendations seek to enshrine these evidence-based best practices in law to ensure predictable, consistent, and coherent police enforcement, which targets instances of exploitation but does not criminalise consensual acts.

### **i. Eliminate laws prohibiting soliciting and loitering for the purposes of prostitution**

Eliminate legislation under the Sexual Offences Act 2003 (amended by the Policing and Crime Act 2009), which states that it is an offence for a person to loiter or solicit in a public place for the purposes of buying or selling sex.

This practice fails to make the lives of those involved in prostitution safer as the threat of criminalisation forces them to operate in unsafe, isolated environments when bargaining with clients. While some areas have set up diversion schemes that offer support rather than penalisation, these policies are unevenly applied and continue to rely on police intervention.

## **ii. Eliminate laws prohibiting kerb-crawling**

Policymakers should remove laws on kerb-crawling which criminalise the client. As explored in the analysis of the ‘sex-buyer law’, criminalisation of the client compromises the safety of the sex worker as it can attract more aggressive clients and often forces those involved in prostitution to work in isolated environments.

## **iii. Eliminate laws prohibiting brothel-keeping**

As suggested in the 2016 Home Affairs Committee report, the government should immediately repeal legislation banning the practice of brothel-keeping but retain the ability to prosecute those who use exploitation and coercion in brothels as per the Policing and Crime Act 2009, section 14.

The current law on brothel-keeping enables police to prosecute sex workers that may be working together for their safety. It is also responsible for police raids, which can have a significant impact on the mental health and financial stability of those involved in prostitution.

The official recognition and licensing of brothels would provide those involved in prostitution with access to protection under employment laws, including safe working conditions and legal justice in instances of sexual harassment in their workplace.

In collaboration with NHS advisors and sexual health specialists, local authorities should work on monitoring and elevating the health and safety standards of brothels, developing programmes promoting contraception and safe sex. As suggested by the National AIDS Trust, making this a statutory duty would ‘help empower sex workers to assert their rights and hold duty bearers to account’.<sup>128</sup>

## **iv. Erase historical convictions for prostitution-related offences**

As demonstrated by our evaluation of the current government approach, criminal records can lead to further stigmatisation and discrimination of those involved in prostitution, limiting their

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<sup>128</sup> National AIDS Trust, ‘Written Evidence for Home Affairs Select Committee Inquiry on Prostitution’, (2019) <<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/women-and-equalities-committee/prostitution/written/106524.html>>, accessed January 2020

access to loans, employment, educational opportunities, and housing options. They also act as a barrier to sex workers finding alternative work as they fear this information will be disclosed to their employers. Thus, we recommend the erasure of all past convictions and cautions for prostitution-related offences.

#### **v. Anti-discrimination policies in housing and employment under the Equality Act**

In supporting those involved in prostitution to enter more stable, long-term residences and employment, it is essential that the Government tackles discrimination and stigmatisation.

To some extent, this is helped by the decriminalisation of sex work. As previously stated, the erasure of prostitution-related offences on criminal records improves sex workers' ability to move into alternative employment. The removal of brothel-keeping laws means there is no threat of criminal sanction for landlords found to be letting their properties to sex workers. More broadly, as suggested by Amnesty International, the decriminalisation of sex work presents a clear commitment from the Government to move away from policies that treat sex work as 'intrinsically violent and degrading', thus reducing the stigmatisation and marginalisation of sex workers.<sup>129</sup>

As a further step, discrimination due to a person's current or prior involvement in prostitution should be made illegal under the Equality Act 2010. This would improve sex workers' access to justice and protection from discrimination, harassment, and victimisation, and increase their confidence in government agencies.

#### **vi. Recognise sex workers as a victim group under hate crime law**

Among those involved in prostitution, there is a general reluctance to report crimes committed against them due to a lack of trust in the police. While decriminalisation removes some of the barriers to accessing protection, a clear policy is needed to ensure that there is a swift police

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<sup>129</sup> Ibid.

response to reports of violence against sex workers and efforts to provide support services to those who experience victimisation.

Sex workers should be recognised as a victim group under hate crime law. In 2006, this policy was successfully implemented by the Merseyside police. They saw a surge in sex workers reporting crimes committed against them and a general improvement in sex worker-police relations. As explored in this paper, the NPCC recommended that this policy be adopted by all police forces. This has still not yet been widely implemented, suggesting a need for legislative change in this policy area.

### **vii. Communicate changes to the law to sex workers**

In collaboration with legal charities such as Release, local authorities should ensure that all changes to the law and local policies are clearly communicated to sex workers. The simplification of the law through full decriminalisation and a more centralised policing strategy should make this process easier.

## **VIII.III. REFORMING LAW ENFORCEMENT**

Currently, the policing of prostitution lacks a clear strategy and is unevenly resourced. While some local authorities have implemented effective strategies to improve sex worker safety, many continue to rely on ineffective and heavy-handed law enforcement. The National Police Chiefs' Council guidance on prostitution, which encourages local authorities to pursue policies that focus on 'increasing the safety of sex workers, reducing vulnerability and targeting those who exploit or cause harm', is frequently ignored.<sup>130</sup>

Local authorities should tailor policies to meet the complex and diverse needs of sex workers in their local area. However, the following policy recommendations provide a strong foundation for policing practices to be continuously monitored and reviewed in terms of their ability to alleviate the harms and inequalities associated with sex work.

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<sup>130</sup> Amnesty International, 'Written Evidence for the Women and Equalities Committee Inquiry into Prostitution', (2019).

As the following policy recommendations seek to divert sex workers away from the criminal justice system, this could alleviate pressure on police resources. This would allow the police to focus on the worst instances of violence and exploitation in the sex industry, rather than targeting consensual acts.

**i. Prohibit issuance of antisocial behaviour orders for prostitution-related activities**

Currently, street-based sex workers are disproportionately punished by these laws, contributing towards their criminalisation, stigmatisation and financial destitution.<sup>131</sup> The potential to over-use these orders would undermine the progress made by the decriminalisation of loitering and soliciting.

The Anti-Social Behaviour Crime and Policing Act 2014 should be amended to prohibit the penalisation and prosecution for prostitution-related activities, including soliciting and loitering. However, the writers of this paper support the All-Party Parliamentary Group (APPG) suggestion that orders legislation should only be used in instances where there is ‘persistent anti-social behaviour which causes harm to other members of the community.’<sup>132</sup>

**ii. Non-prosecution for sex workers who report violence**

As suggested by SWARM, there should be a ‘strict principle of non-prosecution of victims’ who report instances of violence and exploitation in the sex industry to the police.<sup>133</sup>

**iii. Develop specialist training and appoint Sex Work Liaison Officer**

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<sup>131</sup> Fawcett Society, ‘Written Evidence for the Women and Equalities Committee Inquiry into Prostitution’, (2019) <<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/women-and-equalities-committee/prostitution/written/106536.html/>>, accessed December 2020.

<sup>132</sup> S. Kingston, ‘The Anti-social Behaviour, Crime and Policing Act 2014: implications for sex workers and their clients’, *An International Journal of Research and Policy* 27:5, p 4.

<sup>133</sup> Sex Worker Advocacy and Resistance Movement, ‘Written Evidence for the Women and Equalities Committee Inquiry into Prostitution’.

Every police force should ensure that it has a small team, including Sex Work Liaison Officers, who are specially trained to understand the complex needs of those involved in prostitution. They should focus on devising policies which prioritise sex workers' safety, provide general police training which recognises the vulnerability of those involved in prostitution, and continuously review the effectiveness of policing practices in their local area.

Specialists should have a strong awareness of the multi-agency approach in their local area (described in more depth below) to ensure that the police focus on widening access to support services rather than prosecution. They should also ensure that sex workers, sex workers' organisations, and local NGOs are incorporated in the local reform of police practices.

## **VIII.IV. IMPROVING SUPPORT SERVICES**

### **i. Training mainstream service providers**

When accessing NHS-funded health advice, sex workers report experiences of stigmatisation, discrimination, and marginalisation from practitioners who lack an understanding of the complexities of prostitution.<sup>134</sup> Tackling this stigma and discrimination in support services is vital to increasing the number of sex workers who access them. All mainstream service providers, including the police and NHS workers, should receive training on the complexities and vulnerabilities of those involved in prostitution, including problems related to sexual exploitation, addiction, and homelessness.

### **ii. Fund independent specialist support services**

The decriminalisation of sex work needs to be matched with investment in specialist care and support across England and Wales. Funding for these services varies considerably from region to region and, under austerity, specialist care has been hit especially hard by cuts. In recent years, specialist NHS-funded services that cater to the needs of women involved in prostitution

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<sup>134</sup> Sex Worker Advocacy and Resistance Movement, *No silence to violence: A Report on Violence Against Women in Prostitution in the UK*, (2018), <<https://nswp.org/resource/member-publications/no-silence-violence-report-violence-against-women-prostitution-the-uk>>, accessed February 2020.

have seen a continuing reduction in funding. As stated by the British Medical Journal, these funding cuts are responsible for ‘avoidable harms and disastrous long-term costs’.<sup>135</sup> Helped by the reduction in police funding for prostitution-related offences, local authorities should prioritise fully funding these services.

As the burden of providing support has shifted to mainstream service providers, who often lack specialist training in matters related to prostitution, uptake of support services among sex workers has remained low. Mainstream service providers should focus on guiding those involved in prostitution towards specialist support services.

Services should also be non-coercive and independent from the criminal justice system so that there is no threat of criminal sanction – particularly for migrant workers, whose challenges are explored in greater depth in the next section on limitations and suggestions for further research. As demonstrated by the case of OpenDoors in Hackney, where a specialist NHS-funded service was found to be passing on intelligence concerning sex workers to the police, maintaining this independence is essential for building trust in support services among those involved in prostitution.<sup>136</sup>

### **iii. Devise local multi-agency approach, including specialist holistic support services**

Specialist holistic services, such as KairosWWT in Coventry, provide street outreach and drop-in services which offer an alternative to policing and law enforcement when identifying people who require support. Their specialist training can help to build relationships more effectively with marginalised groups. They can also provide a bridge for linking up ‘single issue’ services and reducing the administrative pressure on sex workers to continuously apply to new services.<sup>137</sup>

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<sup>135</sup> K. McVeigh and J. Eastham, ‘Cut to NHS services for sex workers “disastrous” says experts’, *Guardian* (18 August 2016).

<sup>136</sup> *Ibid.*

<sup>137</sup> Kairos Women Working Together, ‘Written Evidence for the Women and Equalities Committee Inquiry into Prostitution’.



Local authorities should ensure that specialist holistic services are properly funded as outreach programs have experienced ongoing cuts.<sup>138</sup> They should also prioritise being widely available to a diverse range of sex workers, ensuring venues are accessible to those with disabilities and that translators and language support is available for migrant workers. In recognition of the late-night working hours for many of those involved in prostitution, resources should be allocated to prioritise flexible working hours.

Finally, specialist holistic services should appoint individuals with specialist training to act as advocates to accompany sex workers to their appointments. This would ensure that the support provided by mainstream services is non-judgemental and meets the needs of the individual. This could be modelled on the LGBT Foundation's policy of attending sexual health appointments with those who receive a positive HIV test.<sup>139</sup>

#### **iv. Establish national exit programme**

Local authorities must ensure that there is a well-funded and coordinated exit programme that provides sex workers with opportunities to no longer depend on prostitution for their livelihoods. Given their knowledge of the complex and multi-layered needs of sex workers, and the various support services they can access in their area, specialist holistic services are best placed to run these exit programmes. They should focus on providing viable alternative sources of income that are flexible enough to meet sex workers' needs, especially for those involved in prostitution who are parents or carers.

Research suggests that programmes and support services geared too heavily towards exiting prostitution and reducing the size of the sex industry often fail.<sup>140</sup> Thus, there should be no mandatory requirement to exit prostitution to access any of these programmes, nor should

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<sup>138</sup> R. Robertson, 'What do cuts in sexual health services mean for patients?', *The King's Fund* (3 April 2017), <<https://www.kingsfund.org.uk/blog/2017/03/what-do-cuts-sexual-health-services-mean-patients/>>, accessed March 2020.

<sup>139</sup> LGBT Foundation, 'Written Evidence for the Women and Equalities Committee Inquiry into Prostitution', (2019) <<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/women-and-equalities-committee/prostitution/written/106527.html/>>, accessed March 2020.

<sup>140</sup> Brooks-Gordon, 'Written Evidence for the Women and Equalities Committee Inquiry into Prostitution'.

service providers assume that all sex workers want to leave their profession when they seek support.

#### **v. Provide emergency accommodation**

Many of those involved in prostitution experience difficult, unstable, or dangerous housing arrangements – including homelessness or living with an abusive partner. Local authorities should ensure there is emergency accommodation available which, in recognition of the vulnerabilities for those involved in prostitution, is free from drug use and violence.

### **VIII.V. LIMITATIONS AND SUGGESTIONS FOR FURTHER RESEARCH**

As reiterated throughout this paper, reliable data, and research on sex work in England and Wales in the U.K. is often patchy. This includes information on how full decriminalisation could potentially affect the position of migrant workers, sex trafficking, and wider welfare reform. Therefore, it is difficult to propose concrete solutions to the problems associated with prostitution in England and Wales. As outlined in this final section, there is a need for the government to commit to ongoing research into these issues to ensure that policies meet their aims, and to mitigate unexpected outcomes.

#### **i. Wider welfare reform:**

Wider welfare reform is essential for full decriminalisation to be effective in alleviating the harms and inequalities associated with sex work. Given the complex and diverse needs of sex workers, there needs to be a general improvement in funding for mainstream and specialist service providers in the public sector.

As acknowledged by the Work and Pensions Select Committee, addressing waiting times associated with Universal Credit is essential to reduce the number of vulnerable groups, particularly migrants and asylum-seekers, who turn to sex work to provide for their basic needs.<sup>141</sup> The improvement of financial aid for students should also be considered as a means

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<sup>141</sup> Ibid.

of reducing the number of young people who enter the profession as a means of sustaining themselves.<sup>142</sup>

## **ii. Wider immigration reform**

While the policy recommendations given in this paper have indicated how England and Wales can avoid the shortcomings of the New Zealand model of decriminalisation, which continues to deport migrant workers and limits their access to support, the threat of deportation remains for migrant sex workers in the U.K.<sup>143</sup>

For full decriminalisation to be fully effective, the government needs to think more broadly about reforming immigration policy and should decide how to treat migrant sex workers with visas that do not allow them to work or who have no legal permission to stay in the U.K.

Juno Mac and Molly Smith, who write from a sex worker perspective in their book ‘Revolting Prostitutes’, propose free movement and open borders as a means of alleviating these inequalities.<sup>144</sup> While this might not be immediately viable, the government should dedicate funds to monitoring the impact and mitigating the consequences of new policies on migrant workers.

## **iii. Commitment to combatting sex trafficking**

As indicated by the international review of full decriminalisation included in this paper, there is no evidence to clearly indicate what impact this reform would have on sex trafficking in England and Wales. However, the government should retain prevention measures included in the Sexual Offences Act 2013 and continue to invest in research for effective policymaking in this field.

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<sup>142</sup> Sex Worker Advocacy and Resistance Movement, ‘Written Evidence for the Women and Equalities Committee Inquiry into Prostitution’.

<sup>143</sup> L. Armstrong, *Almost Legal: migrant sex work in New Zealand*, Open Democracy (2018) <<https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/almost-legal-migrant-sex-work-in-new-zealand/>>, accessed January 2020.

<sup>144</sup> J. Mac, and M. Smith, *Revolving Prostitutes: The Fight for Sex Workers’ Rights*, (London: Verso, 2018).

Under full decriminalisation, there is the potential for more cooperation between sex workers and organisations for their safety. This could potentially lead to higher levels of intelligence on sex trafficking and focus police resources into uncovering violence and exploitation, rather than targeting consensual acts of selling sex.

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