

Justice Committee

Abusive Behaviour and Sexual Harm (Scotland) Bill

Written submission from the Women's Support Project

The Women's Support Project (WSP) welcomes the opportunity to contribute to this very important Scottish Government consultation on its proposed Abusive Behaviour and Sexual Harm (Scotland) Bill.

The Women's Support Project (WSP) is happy for our response to the above consultation to be made public.

WSP is a feminist charity working to raise awareness around violence against women and to improve services for those affected, including people affected by commercial sexual exploitation. There are clear links between child abuse, childhood neglect and domestic abuse and women's involvement in prostitution. These factors, along with poverty, addictions homelessness, trauma and mental health issues create vulnerability and inequality, which is exploited through men's payment for sexual activity.

WSP manages the national Challenging Demand project (CD), which has 3 broad aims:

1. To increase understanding of the myths and realities surrounding commercial sexual exploitation including prostitution.
2. To increase awareness of prostitution and other forms of commercial sexual exploitation as a form of violence against women
3. To lobby for approaches which focus on and target the men who make up the demand for prostitution; decriminalise those selling sex, and resource prevention work and support to leave prostitution.

We believe that the focus of work to reduce exploitation must be on the *demand to buy sex*, that is, the men who assume the right to purchase others in prostitution, commodifying and marketing their bodies. No one has the right to exploit, nor profit from the exploitation of, another person regardless of any form of exchange of money, goods or services. The WSP takes the view that in a Scotland striving towards equality and human rights, it is not acceptable to condone or ignore the exploitation of women (and men) in prostitution. Condoning or accepting prostitution undermines other work on gender equality and on violence against women. What sense could we make of work against sexual violence, rape, sexual harassment and stalking if men can simply buy these activities through prostitution?

We believe this Bill should be placed within the wider context of Equally Safe, Scotland's strategy to prevent and eradicate violence against women and girls (VAWG). Equally Safe recognises gender inequality as the fundamental cause of VAWG and is underpinned by equality and human rights principles.

Commercial sexual exploitation (CSE) is identified in Scotland as a form of VAWG and is inextricably linked with many other forms of violence such as domestic abuse, rape, childhood sexual abuse, stalking and sexual harassment.

Given the comprehensive approach to gendered violence in Equally Safe we believe it would be helpful to consolidate a range of offences under the auspices of one integrated 'Gender-Based Violence' (GBV) Law.

This could have several potential benefits, e.g.

- serve to limit the proliferation and fragmentation of separate new laws for different forms of GBV, which are rarely mutually exclusive
- strengthen and reinforce existing/associated laws on GBV e.g. in relation to domestic abuse, rape and sexual assault, harassment, stalking, human trafficking, FGM, Forced Marriage
- provide an opportunity to anchor a dedicated GBV law within the gendered analysis in Equally Safe

Effective implementation of the Equally Safe strategy requires adequate legislation to be in place to address ALL areas of VAW and to help ensure that Justice responses are robust, swift and co-ordinated, and that people who carry out or profit from any form of violence against or exploitation of women and girls are held to account.

We support the general principles of the Bill and, since it does not contain proposals for a specific "*coercive control*" offence as discussed in the pre-legislative consultation, would urge the Scottish Government to continue with their commitment to address violence against women by consulting on the introduction of a specific offence to address 'coercive control' within domestic abuse.

Work is needed in the following areas:

- Raising awareness of the important roles and responsibilities of civil society in identifying the demand from men to buy sex in prostitution as a root causes of human trafficking
- Targeted information campaigns aimed at the general public on the harms and realities of prostitution and targeted campaigns aimed at men who purchase sex.
(<http://www.stopdemand.org/wawcs0154995/idDetails=222/.html>)
- Preventive measures, including educational programmes on discrimination, gender equality and the dignity and integrity of every human being.

From: "*Sexual exploitation and prostitution and its impacts on gender equality – 2014*" from the Directorate General for Internal Policies, Policy Dept C: Citizens Rights and Constitutional European Parliament.

[http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/493040/IPOL-FEMM_ET\(2014\)493040_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/493040/IPOL-FEMM_ET(2014)493040_EN.pdf)

We are disappointed that commercial sexual exploitation (CSE) is not identified nor addressed under any current proposals within this Bill. In line with Equally Safe we support the establishment of a legislative framework in Scotland that is founded on addressing gender inequality as the root cause of gender-based violence.

We consider that such a framework would be instrumental in preventing the sexual exploitation of vulnerable individuals within Scotland and also act as a deterrent to sex traffickers.

To effectively tackle demand in Scotland we need comprehensive legislation that:

- decriminalises people selling sex
- provides long-term support and exiting services for those exploited through prostitution
- criminalises the buying of sex in any setting

Responses to the Current proposals

Section 1, which enables offences involving the abuse of a partner, or ex-partner to be treated as aggravated offences, meaning that the convicted person may be liable to a tougher sentence;

Aggravation of offence where abuse of partner or ex-partner

(1) This subsection applies where it is—

(a) libelled in an indictment or specified in a complaint that an offence is aggravated by involving abuse of the partner or ex-partner of the person committing it, and 10

(b) proved that the offence is so aggravated.

(2) An offence is aggravated as described in subsection (1)(a) if in committing the offence—

(a) the person intends to cause the partner or ex-partner to suffer physical or psychological harm, or 15

(b) in the case only of an offence committed against the partner or ex-partner, the person is reckless as to causing the partner or ex-partner to suffer physical or psychological harm.

For the purposes of this section, a person is a partner of another person if they are—

(a) spouses or civil partners of each other,

(b) living together as if spouses or civil partners of each other, or

(c) in an intimate personal relationship with each other.

Could a “punter” or client of a person in prostitution be considered “a partner” as they could be considered to be in “an intimate personal relationship with each other”, even if this intimate relationship is only for a very short period of time and based on the exchange of sex for money, resources or services?

There is a recognition that involvement in CSE is a form of VAW and likely to cause harm – so could a spouse, a civil partner or someone living with another as if a spouse or civil partner, who encourages a person to become involved in prostitution be accused of being reckless as to causing that person to suffer physical or psychological harm?

Section 2, which creates a new offence of disclosing, or threatening to disclose, an intimate photograph or film. The Committee would be particularly interested in hearing views on whether there is a gap in the law that justifies the creation of a new

offence and, if so, whether the definition of the offence in section 2 is sufficiently robust;

We welcome this new offense of disclosing or threatening to disclose an intimate photograph or film. We are concerned that the current proposal does not cover written materials such as a text message or email, nor audio materials such as voice recordings or audio messages. From our education work we have been made aware of women who have had private messages of a sexual nature shared without their consent.

We are concerned that a woman who has provided intimate and sexual acts via a web cam through a webcam agency for a client or paying customer is not offered protection in this current proposal. They could be said to have entered into an “intimate relationship” for a very short period of time, based on the exchange of sex for money, resources or services. We are aware of instances when women have had these sessions recorded without permission and used in other contexts without their consent.

Section 2(4) (b) – assumption of general consent

We would seek clarification around consent and general consent. Just because a person consents to an image being taken – it does not mean they consented to that image being shared. They may have consented to one image being shared but not necessarily other materials. They may have consented to an image being shared with one other person but that consent did not extend to wider distribution. There can be no blanket assumption of consent and this Bill should reinforce the idea that consent must be informed and given freely to every single image / file / message / recording being shared or distributed and specifically consent to every single means or method of distribution.

Section 4, via Schedule 1- offence against “hosts”, etc

We believe that sites or website providers who ‘host’ images shared without consent and who refuse to remove or take down such images should also be targeted and held accountable. The Bill currently refers to ‘ a person’ committing an offense and we feel there is a loop hole if this legislation does not place a liability on service providers, ISSPs and so forth.

We are also concerned that this legislation does not offer legal protection to women who have been involved in commercial sexual exploitation via escort agencies whose images are still used as advertising and promotion for sexual services after they have left and asked for them to be removed? Their intimate photographs are being knowingly disclosed by the escort agency/manager against their consent despite the potential for ongoing psychological harm.

Section 6, which would require a judge to give particular directions to the jury in sexual offence cases about whether to draw inferences from particular evidence being led or not led. The Committee would be particularly interested in hearing views on whether this provision amounts to a legitimate constraint on judicial discretion and

whether it would make it more likely that justice would be delivered in individual cases.

It can be difficult for people in prostitution who have been abused or assaulted to report such crimes to the police for fear of stigma or judgement. We would like to see requirements for judges to give particular direction to juries when the victim is or was involved in the sex industry at the time of the offence being committed against them.

Women's Support Project
16 November 2015