



## Response to the Research Commissioned by the Scottish Government on the Impacts of the Criminalisation of the Purchase of Sex

31 May 2017

This is a response from [Nordic Model Now!](#)<sup>1</sup> to the [report](#)<sup>2</sup> of the research commissioned by the Scottish Government on the Impacts of the Criminalisation of the Purchase of Sex.

Nordic Model Now! is a grass-roots group campaigning for the adoption of the Nordic Model approach to prostitution in the UK.

### Overall response

We welcome the findings that the legislation in Sweden and Norway has resulted in an overall decrease in the numbers of people involved in prostitution, a decrease in the acceptability of prostitution-buying, and an increase in general support for the legislation. We also welcome the observation that although women in prostitution expressed concern about punter violence, there is no statistical evidence that there is an increase in punter violence under the legislation.

However, we have some reservations, which we set out below under separate headings.

### Inclusion of some low-quality research

We are concerned at the inclusion of some low-quality research; for example, that by Amnesty International in Norway. There is evidence that Amnesty's pro-full decriminalisation of the sex industry position was decided in [advance](#)<sup>3</sup> of the research being undertaken and that the researchers set out to back that position up. Their desk-based research [included](#)<sup>4</sup> several studies that were carried out in full or in part before the introduction of the Nordic Model in Norway in 2009 and it relied heavily on research by Bjørndahl, even though her conclusion that violence has increased since 2009 has been recognised as invalid by Pro Sentret, the organisation that commissioned the research. Furthermore the Amnesty researchers interviewed only 30 women involved in prostitution and ignored what more than half of them said, including one woman who praised the police for helping her escape from her pimp. Policy officials who were interviewed have complained that their words were misrepresented.<sup>5</sup>

Dodillet and Ostergen's 2011 research is quoted a number of times in the Scottish report even though they draw conclusions that are not backed up by evidence. For example, on page 32 they are reported as noting that punters are "less willing to assist as witnesses in cases in which profiteers who exploit the sexual labour of others are prosecuted." However, punters do not have a good record at assisting women who have been coerced or trafficked under any regime. For example, a dedicated [Crimestoppers trafficking helpline](#)<sup>6</sup> in Scotland aimed at sex buyers received only three calls in an entire year – which indicates an existing unwillingness to help that would be hard to exceed.

Levy (2015) is quoted as finding selling sex online had become riskier because clients were reluctant to give out identifying information. However, that is common practice in Britain already, as attested to by the frequent conversations on UK Punting and similar forums about the best anonymous pay-as-you-go phones to use for making appointments. Keith Vaz [certainly didn't give his real name](#).<sup>7</sup>

We also question the relevance of including in the study a survey conducted in Northern Ireland **prior** to the introduction of the Nordic Model.

## Resistance and patchy implementation of the legislation

The criminalisation of the purchase of sex is one part of what is known as the Nordic Model approach. The other two key planks are the decriminalisation of those who are prostituted and the provision of services to help them exit prostitution. This approach requires a profound paradigm shift that provides a body blow to men's historic entitlement to sexual access to women and girls. Many people, particularly men, resist this shift.

As men retain disproportionate power within most of the public institutions (police, public prosecutions, legal system, treasury, etc.) even in countries that have passed Nordic Model style legislation, there are many opportunities for the spirit and implementation of the approach to be sabotaged – on a national, regional and local level. For example, police might simply fail to arrest punters, as happened in the [first year of operation](#)<sup>8</sup> in Northern Ireland, or they can use other legislation to harass prostituted women, or authorities can fail to provide funding for exiting services, public information and schools education programmes, training for the police and public officials, and all of the other measures that are imperative for the success of the approach. Although the patchy implementation is touched on and hinted at in the report, it is not discussed or examined in any depth.

Without fully understanding these forces and the extent to which the Nordic Model has been implemented in practice in the areas where the research was carried out, we believe there is a risk of misinterpreting the results.

## False premise

The research was based on a false premise concerning the binding obligations imposed by the [2000 Trafficking Protocol](#).<sup>9</sup>

The “What Counts as ‘evidence’” section of the report says:

*Proponents of legislation to criminalise the purchase of sex point to the 2000 Trafficking Protocol which calls upon Member States to adopt or strengthen measures that would ‘discourage the demand’ that fosters sexual exploitation, arguing that such legislation is a direct attempt to address the demand for prostitution and thereby sexual exploitation. **The Protocol does not specifically refer to prostitution in this way** however, and those who oppose criminalisation of the purchase of sex draw attention to the meaning of “sexual exploitation” (questioning whether prostitution*

*equals sexual exploitation per se). Where trafficking in humans for the purpose of sexual exploitation is referred to in the studies we have examined by way of contextualising legislation, we have referred to this; however the broader literature on human trafficking has been excluded.*  
[Emphasis added]

However, this is incorrect. The Protocol **does** refer to prostitution. Here is point (a) from its definition of the term “trafficking:”

*(a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the **exploitation of the prostitution of others** or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs; [Emphasis added]*

Article 9 of the Protocol deals with the prevention of trafficking, and includes the following:

*5. States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage **the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.** [Emphasis added]*

The definition of exploitation within trafficking starts with the “exploitation of the prostitution of others.” This clearly implies that the obligation to reduce demand for trafficking must therefore start with measures to reduce the demand for prostitution.

This makes absolute sense because [analysis](#)<sup>10</sup> by Eurostat, Europol and UNODC has found that trafficking for the exploitation of prostitution and other forms of sexual exploitation (sex trafficking) is the most common form of trafficking in Europe. Furthermore, sex trafficking is known to be hugely lucrative because so many men in Europe are prepared to buy women and girls in prostitution and men on average have a higher disposable income than women. It is the lucriveness and profitability that drives the sex traffickers. If men no longer paid to rent women and girls in prostitution, that lucriveness and profitability would stop and with it the motive for sex trafficking itself.

The UK has ratified the 2000 Trafficking Protocol. This means that Scotland has a binding obligation to discourage the demand for prostitution that drives sex trafficking. But the research not only does not use this as a starting point but disputes the existence of this binding obligation by incorrectly and unreasonably denying the very wording of the Trafficking Protocol.

It therefore seems clear that the research has been based on a false premise.

## Class, sex and race inequality

Article 9 of the 2000 Trafficking Protocol also places a binding obligation on ratifying states to address the inequality that makes people vulnerable to being trafficked:

*4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.*

This recognises that there are many factors that make women and girls vulnerable to pimps and traffickers exploiting their prostitution.

[Research](#)<sup>11</sup> overwhelmingly backs this up and shows that the majority of those in prostitution come from a background of poverty, neglect, abuse, the care system, black and ethnic minority communities and those with an insecure immigration status.

We believe that the success of the Nordic Model approach is not only dependent on the legislation and how it is implemented but also on addressing poverty and inequality. For example by ensuring: that robust support systems are in place for single mothers and those escaping domestic violence, and for young people transitioning from the care system; that training and higher education is accessible to all those who want it without being tied into decades of crippling debt; that decent work, affordable housing and childcare is available to all; that the immigration system doesn't leave people without financial support; and so on. Without these factors being addressed, the Nordic Model approach will have limited effectiveness in reducing the numbers in prostitution.

The report did mention that there had been an increase in the numbers in prostitution in Norway and Sweden after the 2008 financial crash, but it did not look into these factors in any depth. We feel that this is a flaw in the research and it means that shortcomings in the effectiveness of the Nordic Model approach in some countries could be incorrectly attributed to the legislation rather than the underlying social and economic environment.

## Criminalisation of buying sex from someone who has been coerced

We note that there was no research into the effectiveness of laws that criminalise buying sex from someone who has been coerced, forced or trafficked. This is a disappointing oversight because if we consider sex trafficking to be abhorrent, it is not possible to condone prostitution-buying from someone who is trafficked or otherwise coerced or forced. Such laws are in force in Finland and England and Wales.

The law in England and Wales was introduced in Section 14 of the Policing and Crime Act 2009. This made it an offence to buy sex from someone who's been forced, coerced, or deceived into it, regardless whether you are aware of this. Confusingly, Section 14 was implemented as Section 53A of the Sexual Offences Act 2003. The maximum sentence is a level 3 fine (£1,000).

The following table shows the number of prosecutions under this law in the years since it was enacted. These figures are taken from page 85 of the [CPS Violence Against Women and Girls report 2016](#).<sup>12</sup>

<b>Year</b>	<b>Prosecutions</b>
2010-2011	40
2011-2012	7
2012-2013	8
2013-2014	0
2014-2015	3
2015-2016	2

The law has fallen out of use – probably because it requires a considerable amount of police work to prove that the woman has been forced, coerced or deceived by an identified individual. But the maximum sentence is only a level 3 fine and the police do not invest many resources into investigating offences that carry such a low penalty.

That this law has been ineffective is, we believe, a strong argument for criminalising the purchase of sex *per se* – because it is easier to enforce and can therefore provide a realistic deterrent.

## The need for comparative research

The report notes that there is broad consensus about the need to decriminalise prostituted persons. If we accept this consensus, the practical legislative alternatives are between the following broad options:

1. Decriminalise (with or without regulation) all the actors (prostituted persons, punters and pimps and procurers), as in Germany and New Zealand.
2. Decriminalise prostituted persons and punters, as in Denmark.
3. Decriminalise prostituted persons only, as in the Nordic Model.

Given that Scotland has a binding obligation to reduce the demand for prostitution that drives sex trafficking, it seems to us that a comparative study is imperative. This could look at broad figures for the numbers of people in prostitution compared to the general population, the numbers of murders of prostituted persons, the size and quality of the services that help women exit prostitution, the welfare system and economic situation of women, gender equality, and so on, under the different regimes.

As noted in the report, without a comparative approach, it is not possible to determine whether some of the problems thrown up in the research (such as violence to prostituted women) is due to the inherent violence of prostitution itself or is related to the criminalisation of the buyers.

There is overwhelming evidence that nothing can make prostitution safe and that anything that tips the balance of power in favour of the punter – as full decriminalisation does – tends

to make the violence worse. For example, the [numbers of murders of prostituted women](#) <sup>13</sup> are invariably highest where pimping and prostitution-buying are tolerated.

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<sup>1</sup> <http://nordicmodelnow.org/>

<sup>2</sup> <http://www.gov.scot/Resource/0051/00514185.pdf>

<sup>3</sup> <http://thefeministahood.wordpress.com/2015/08/24/what-amnesty-did-wrong/>

<sup>4</sup> <http://kvinnefronten.no/sex-trade-survivors-symposium/>

<sup>5</sup> <http://kvinnefronten.no/sex-trade-survivors-symposium/>

<sup>6</sup>

[http://www.heraldscotland.com/news/13149175.Exposing\\_the\\_invisible\\_men\\_who\\_rate\\_sex\\_workers\\_online/](http://www.heraldscotland.com/news/13149175.Exposing_the_invisible_men_who_rate_sex_workers_online/)

<sup>7</sup> <http://www.mirror.co.uk/news/uk-news/keith-vaz-hid-real-identity-8763804>

<sup>8</sup> <http://www.bbc.co.uk/news/uk-northern-ireland-37026784>

<sup>9</sup> <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx>

<sup>10</sup> [http://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/study\\_on\\_the\\_gender\\_dimension\\_of\\_trafficking\\_in\\_human\\_beings\\_final\\_report.pdf](http://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/study_on_the_gender_dimension_of_trafficking_in_human_beings_final_report.pdf)

<sup>11</sup> [http://news.bbc.co.uk/nol/shared/bsp/hi/pdfs/16\\_07\\_04\\_paying.pdf](http://news.bbc.co.uk/nol/shared/bsp/hi/pdfs/16_07_04_paying.pdf)

<sup>12</sup> [http://www.cps.gov.uk/publications/docs/cps\\_vawg\\_report\\_2016.pdf](http://www.cps.gov.uk/publications/docs/cps_vawg_report_2016.pdf)

<sup>13</sup> <https://nordicmodelnow.org/facts-about-prostitution/fact-prostitution-is-inherently-violent/>