

NMN Submission to GRETA's third evaluation of the United Kingdom

About us

Nordic Model Now! (NMN) is a grassroots women's group campaigning for the Nordic Model, the equality and human rights-based approach to prostitution. The group includes survivors of prostitution and child sexual exploitation. All members are unpaid volunteers, we run on a shoestring budget and have no funding other than donations (mostly small) from supporters. See <http://nordicmodelnow.org/> for more information.

Summary

We understand that the theme of the current evaluation is centred on victims' access to justice and remedies. While there are many gaps and weaknesses in this area, we believe that there are other organisations who are better placed to respond than us.

However, we have serious concerns about how legislation and policy in England and Wales is not conformant with the Council of Europe Convention on Action against Trafficking in Human Beings (the Convention) and how as a result, there is systemic official failure to recognise and identify the vast majority of victims of human trafficking for the purposes of the exploitation of their prostitution and other forms of sexual exploitation (sex trafficking).

This is a catastrophe for women and girls in the UK and we argue that the UK is in breach of many aspects of the Convention, including Article 3, which requires provisions to be implemented without discrimination on the grounds of sex, and Article 5, which requires a gender mainstreaming and child-sensitive approach.

The definition of human trafficking in the MSA is incorrect

The legal definition of human trafficking for England and Wales is in Sections 2 and 3 of the Modern Slavery Act 2015 ([MSA](#)).¹ Paragraphs 260 to 264 of the GRETA panel's second evaluation [report](#)² on the UK noted that this definition does not conform to the definition set out in Article 4 of the Convention.

The UK government provided various justifications for the discrepancies. We believe that these justifications are disingenuous and in fact the way the MSA frames sex trafficking is of very serious concern.

¹ <http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>

² <http://rm.coe.int/16806abcdc>

It is relevant that the CEDAW Committee expressed concern in its [Concluding Observations](#)³ that the definition of trafficking in the MSA is centred on travel and recommended that it is brought into line with the international definition.

1. The definition is centred on the travel of the victim

Section 2 of the MSA centres the definition of human trafficking on the **travel** of the victim. Although the ‘action’ components set out in Article 4 (“the recruitment, transportation, transfer, harbouring or receipt of persons”) are mentioned, they are only relevant in respect to the travel of the victim.

This means that if travel cannot be proved, according to the law, human trafficking did not take place – even if all of the elements of the Convention definition are met.

2. The full list of ‘means’ are not specified

The MSA does not specify the full list of ‘means’ set out in Article 4 (“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”).

It is of particular concern that nowhere is the “abuse of power or of a position of vulnerability” mentioned. As a result there is no explicit recognition in the legislation that human traffickers take advantage of the social and structural inequalities based on sex, age, race, caste, migration status, and economic class.

The power dynamics intrinsic to these systems of structural inequality are not always obvious to bystanders, particularly those who occupy more privileged positions within those hierarchies.

That the ‘means’ are not spelled out is of particular concern in the current climate where prostitution is becoming normalised and because most of those who are tasked with implementing the legislation (from police officers to Supreme Court judges) occupy more privileged positions.

3. Relevance of consent

The Convention definition of human trafficking states that consent is irrelevant in respect of the intended **exploitation** when the other elements are met. This implies that it is the exploitation of the victim that is the core of the human rights abuse of human trafficking and, like all human rights abuses, whether the person consented is not relevant.

However, Section 2 of the MSA specifies that the consent of the victim is not relevant – but only in respect of their **travel**. This is a grave concern because it opens the way for defendants to claim that the victim consented to the prostitution that they are exploiting. It also implicitly suggests that it is only the exploitation of ‘forced prostitution’ that is

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http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fGBR%2fCO%2f8&Lang=en

prohibited – whereas in fact the Convention makes the **exploitation** (i.e. profiting from) another person’s prostitution the key factor, not whether the prostitution was ‘forced.’

It should be noted that the restriction on the relevance of consent does not apply to Section 1 of the MSA which defines the criminal offences of slavery, servitude and forced or compulsory labour.

4. Definition of sexual exploitation

Section 3 of the MSA defines the various forms of exploitation. While the other forms of exploitation (with the exception of organ trafficking) are fully defined in this section, the definition of sexual exploitation refers to a long list of offences in other acts. While this list includes controlling someone’s prostitution for gain, this is only one of many other possible offences – thus obscuring the fact that the trafficking for the purpose of exploiting (i.e. profiting from) a woman’s prostitution is almost certainly the most common form of human trafficking, and that to prevent it, we therefore need to reduce men’s demand for prostitution.

Consequences of the incorrect definition

The forms of human trafficking to which males are more likely to fall victim, such as forced labour on a farm or carrying drugs (‘county lines’), are framed as ‘modern slavery’ which is defined in Section 1 of the MSA without the need for travel to be proved. But sex trafficking is excluded from the definition of ‘modern slavery’ unless the sexual exploitation is positioned as a form of labour that is forced.

To achieve conviction under the MSA, cases of sex trafficking must therefore either be centred on the victim’s travel or the exploitation of her prostitution must be framed as forced labour or services. Both of these options are more complicated than bringing a case of forced labour on a farm, for example.

As a result of the way the MSA frames the offences:

- The vast majority of victims of sex trafficking as it is defined in the Convention are not recognised in England and Wales and do not get the support and compensation they are due under international law.
- The vast majority of the perpetrators have more or less impunity.
- The scale of the problem is significantly underestimated.

The Convention definition of human trafficking (and the [Palermo Protocol](#)⁴ definition on which it is based) deliberately separates the exploitation of a person’s prostitution from forced labour, because the harms are of a different nature and the [UN recognises](#)⁵ prostitution as incompatible with human dignity, meaning it must never be officially sanctioned as a form of ordinary work.

⁴ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx>

⁵ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/TrafficInPersons.aspx>

The MSA fails to maintain this clear distinction, and by implicitly framing prostitution as a form of work that can be ‘forced’, it normalises and trivialises prostitution. This understanding now dominates public policy.

For example, the Home Office’s [Typology of Modern Slavery](#)⁶ defines sexual exploitation as ‘forced sex work,’ even when the victim is a child and even though the Convention is clear that no force is necessary to meet the trafficking definition when the victim is a child. Even for an adult the force might be subtle and in the form of taking advantage of the victim’s vulnerability, or discrepancies in power, and is relevant only to the ‘act’ and not the exploitation itself – for which whether the victim consented is not relevant. This again shows that by centring the definition and whether she consented on her travel, the MSA has hollowed out the powerful definition in the Convention.

The latest [police guidance](#)⁷ accepts prostitution as inevitable and that it is a woman’s ‘choice’ and is not inherently harmful, and implies it would be wasting time to enforce legislation that penalises men who buy sex (punters) and brothel keepers.

Overall the MSA fails to send out a clear, easy-to-understand message to society. It obfuscates the true nature of sex trafficking and the fact that the majority of sex trafficking is driven by the easy profits that can be made from women’s and girls’ prostitution – because of men’s demand for prostitution. This in turn obscures the measures that are required to prevent sex trafficking, and the fact that without reducing men’s demand for prostitution, efforts to prevent sex trafficking are bound to fail.

The way the MSA frames and defines sex trafficking therefore serves to exonerate the Government from addressing this most heinous human rights abuse and of taking holistic measures to address the underlying causes. We are already seeing the catastrophic consequences for women and girls. Below we provide some examples.

As the vast majority of victims of sex trafficking are female, the MSA can only be seen as profoundly sexist, in violation of Article 3 of the Convention, which requires the provisions to be implemented without discrimination on the grounds of sex, and Article 5, which requires a gender mainstreaming approach.

Case study from the Crown Prosecution Service report

This case study appears on page 16 of the Crown Prosecution Service’s (CPS) 2017 annual report, [CPS VAWG Report 2016-17](#).⁸

*“Three defendants forced a group of Hungarian women to **work** as prostitutes. The women were trafficked to the UK with the promise of legitimate jobs. Their identity documents were taken and they were forced into **sex work**. Two of the women had up to ten customers every day, while a third was ordered to have sex with men at car washes.*

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http://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/652652/typology-modern-slavery-offences-horr93.pdf

⁷ <http://nordicmodelnow.org/2019/04/29/a-sexist-prism-national-police-guidance-on-policing-prostitution/>

⁸ http://www.cps.gov.uk/sites/default/files/documents/publications/cps-vawg-report-2017_1.pdf

The victims, who were aged between 19 and 24, came from poor backgrounds and spoke little or no English. One of the defendants convinced two of the women that he was in a romantic relationship with them in order to manipulate them. The defendants were convicted – one was sentenced to over 13 years’ imprisonment; the second to over eight years for human trafficking and forcing prostitution and the third was sentenced to over three years for controlling of prostitution for gain.” [Our emphasis.]

The women are young and vulnerable. They are in a foreign country and speak little or no English. The defendants receive and harbour them, possibly transport them, exploit their vulnerability and use deception (the promise of legitimate jobs, pretence of a romantic relationship), coercion (stealing of documents) and force – all for the purpose of exploiting their prostitution. Clearly this meets the Convention’s definition of human trafficking, but apparently only one (or two – the text is unclear) of the defendants were convicted as such.

By framing ‘travel’ as the central feature of human trafficking, the more serious and damaging crime – in human and social terms – of the ongoing exploitation of the prostitution of these young women, is reduced to secondary status. Moreover prostitution itself is reframed as ‘work’ or ‘sex work’ – as if being penetrated (i.e. raped) by multiple men every day is equivalent to working as a waitress.

The third defendant was “sentenced to over three years for controlling of prostitution for gain.” Looking at this through the three elements of the Convention’s definition – act, means and purpose – we can see the defendant exploited the victim’s prostitution, which meets the ‘purpose’ element. That he controlled her, implies that he used some form of force or coercion, or abuse of her vulnerability, meeting the ‘means’ element. That he was in a position to do this, implies that he’d recruited, harboured or received her, which meets the ‘act’ element. The third defendant’s crime therefore meets the Convention’s definition of sex trafficking. But he was only sentenced to around **three years** for “controlling prostitution for gain,” sending out the message it was a relatively trivial offence, comparable in seriousness to shoplifting.

This example illustrates that most pimping fits the international definition of sex trafficking. As feminist legal scholar, [Catharine MacKinnon](#),⁹ memorably put it, “sex trafficking is straight-up pimping.”

The maximum sentence for “controlling prostitution for gain” (Section 53 of the Sexual Offences Act 2003) is only seven years – even though, as we have shown, all or most cases fit the Convention’s definition of sex trafficking.

The ‘Managed approach’ in Holbeck, Leeds

Introduced by [Safer Leeds](#)¹⁰ in October 2014, the ‘managed approach’ in the Holbeck area of Leeds, consists of designated streets in which soliciting is theoretically decriminalised between the hours of 8pm and 6am.

⁹ [http://www.prostitutionresearch.com/pdfs/MacKinnon \(2011\) Trafficking Prostitution and Inequality.pdf](http://www.prostitutionresearch.com/pdfs/MacKinnon%20(2011)%20Trafficking%20Prostitution%20and%20Inequality.pdf)

¹⁰ <http://www.leeds.gov.uk/saferleeds>

About 140 women solicit there, most addicted to Class A drugs and under the control of pimps, some of whom double as drug dealers.

Anna, who was in street prostitution in Leeds in the 1990s, [explained](#)¹¹ how when crack cocaine came in during the late 1990s, local pimps turned to drug dealing as a way of controlling women in order to profit from their prostitution. Clearly that continues in Holbeck and meets the Convention's definition of sex trafficking – the pimps recruit the women, abuse their vulnerability (typically deliberately getting them addicted), and exploit (i.e. profit from) their prostitution.

However, because the MSA does not recognise these pimps as traffickers, the women are not recognised as trafficking victims, and the men who buy them for sexual use and abuse are regarded as citizens of good standing who are exercising their 'right' to buy 'consensual sex.' And the women's distress is considered a personal behavioural problem and, far from being decriminalised, they are served with criminal behaviour orders (colloquially referred to as ASBOs), cautions, fines and even prison sentences.

In the [three months](#)¹² to July 2019, police reports show there were no arrests of pimps in the zone – but police served 30 warnings, 10 cautions and one ASBO on prostituted women.

If the definition of human trafficking in the MSA conformed to the Convention definition, these women would be recognised as trafficking victims, and it would be inconceivable that anyone could consider the 'managed approach' appropriate. As it is, not only are they not recognised as victims of human trafficking, but they are criminalised for the behaviour that is a direct consequence of it.

While Holbeck is an extreme example, we hear not dissimilar stories from other towns and cities, e.g. Coventry and Southend.

Indoor prostitution

In 2016 the Police Foundation [identified](#)¹³ 65 brothels in Bristol, of which 14 operated from commercial properties under the guise of massage parlours. Most are still [openly running](#).¹⁴

Bristol is not atypical and a similar picture is repeated in most towns and cities across the country. Yet in [2018](#)¹⁵ there were only 73 prosecutions for brothel keeping nationally.

We know from women who have been prostituted in massage parlour brothels that they are invariably run by men who seldom enter the premises and leave the day-to-day management in the hands of women, often those who were previously prostituted themselves.

¹¹ <http://nordicmodelnow.org/testimonial/annas-story/>

¹² <http://nordicmodelnow.org/2019/08/17/the-holbeck-red-light-zone-condoms-sex-offenders-and-cars-full-of-jeering-men/>

¹³ http://www.police-foundation.org.uk/2017/wp-content/uploads/2017/06/organised_crime_and_the_adult_sex_market.pdf

¹⁴ <http://nordicmodelnow.org/2017/12/18/submission-to-the-appg-on-prostitution-the-global-sex-trades-inquiry-into-pop-up-brothels/>

¹⁵ <http://www.cps.gov.uk/sites/default/files/documents/publications/cps-vawg-report-2018.pdf>

These brothels typically use humiliating ‘line-ups,’ where the women appear together in scanty clothing for punters to choose from, and take upwards of 50% of the women’s earnings, plus fees for laundry, etc. and ‘fines’ if punters are not ‘satisfied.’ So in practice, women cannot refuse a punter or dangerous practices (e.g. anal and no condoms) if she is to make enough money to survive. This means that brothel practices are intrinsically coercive.

It seems to us that running such brothels falls under the Convention’s definition of sex trafficking. However, because the MSA does not use the correct definition, this is not recognised. As a result, such brothels operate in plain sight all over the country, sending out the message to men that buying sex is an acceptable recreational activity, and so is pimping.

When brothel keepers are convicted, they typically receive low sentences, sometimes suspended, even though they may have made hundreds of thousands of pounds profit from the exploitation of the prostitution of many vulnerable women. For example, [Phillip Stubbs](#)¹⁶ was found guilty of two counts of brothel keeping at Bristol Crown Court in March 2015. Although he’d made vast profits, he received only a two-year suspended sentence and 250 hours of community service.

Much indoor prostitution is now facilitated by websites, the biggest of which are AdultWork and Vivastreet. These also make vast profits and provide new ways of controlling and coercing the women. If the UK honoured the Convention’s definition of human trafficking, we believe that these websites would be recognised as assisting sex trafficking. For more on this, see our investigation: [Online Pimping: A New Dystopia](#).¹⁷

The impact on children

Until 2015 the equivalent offence to ‘controlling prostitution for gain’ when the victim was a child was ‘controlling a child prostitute or a child involved in pornography.’ However, in 2015 all references to child prostitution were removed from the English criminal law and [replaced](#)¹⁸ with the term ‘child sexual exploitation’ (CSE) and the offence is now ‘controlling a child in relation to sexual exploitation.’

Those who pushed for this change in terminology were reacting to the shameful history of blaming girls who were being pimped, and writing them off as child prostitutes – which was seen as a ‘lifestyle choice.’ To counter this, campaigners used the catch phrase ‘no such thing as a child prostitute’ and the law change was the result. While we appreciate the intentions of those who pushed for this, it has had unintended consequences.

Using different terminology for prostitution when it relates to children implies that adult prostitution is acceptable, even though we know that many adult women in prostitution

¹⁶ <http://www.bristolpost.co.uk/news/bristol-news/man-who-ran-bristol-brothels-22481>

¹⁷ <http://nordicmodelnow.org/2019/07/11/online-pimping-a-new-dystopia/>

¹⁸ <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/modern-slavery/written/88821.pdf>

started before their 18th birthday, through the involvement of one or more third parties, or under the coercion of [extreme poverty](#).¹⁹

The word ‘prostitution’ is well understood to mean that a person (almost always a man) pays for sexual access to another person (usually a woman or a child) and that all or much of the payment often goes into the pocket of a third party (the pimp/trafficker). All of this is conveyed in the word ‘prostitution.’ ‘Sexual exploitation’ on the other hand, is not clearly understood by the general public or even professionals.

Dr Jessica Taylor has [written](#)²⁰ about the confusion between CSE and ‘child sexual abuse’ (CSA) among practitioners in social work and children’s services. Now the term ‘prostitution’ has been removed, the difference in the legislation hinges on giving money or gifts as payment for the child’s ‘sexual services.’ But the grooming of children for sexual abuse invariably includes some form of emotional or material bribe or ‘reward,’ so the difference is confused and the practical effect is that child victims are often subtly blamed for accepting the ‘payment.’

The framing of the offences as CSE also obscures the financial motivation driving the pimps/traffickers and makes the men who pay to sexually abuse children invisible.

We have shown earlier that controlling a woman in prostitution for gain does, in the vast majority of cases, meet the Convention definition of sex trafficking. When the victim is a child, no form of control, coercion or abuse of power is required – a third party simply profiting from their prostitution is, by definition, sex trafficking. It is of very extreme concern therefore that the Home Office frame this as ‘forced sex work,’ as mentioned earlier.

The maximum penalty for ‘controlling a child in relation to sexual exploitation’ is lower than for both human trafficking and paying for a child’s ‘sexual services.’ In other words the sex trafficking of a child carries a lower sentence than a single act of raping the child. This sends out a confused and confusing message. While both of these crimes are heinous, the former crime will inevitably lead to more incidents of the latter and should not therefore carry a lower maximum penalty.

Another issue we have with the CSE legislation (Sections 47 – 50 of the Sexual Offences Act 2003) is that if the child is older than 12 years, the burden of proof is on the prosecution to prove the accused did not reasonably believe the child to be 18 or over. This more or less gives impunity for men to pimp/traffic 13 to 17-year olds and to buy sexual access to them. **This must change.** If a man is not clear that a girl is 18 or over, he should keep well away and the law should provide no excuses.

We believe that the MSA must be revised to frame the exploitation of the prostitution (and other forms of sexual exploitation) of children as sex trafficking in line with the Convention definition. This would clearly position responsibility and culpability on the exploiters and

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<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23881&LangID=E&fbclid=IwAR0swCYcnPHp3EOoznjK4oFzlyjzTLwwC-ekBC8-5aOTXkGxT1bvk-tcUQI>

²⁰ <http://victimfocus.wordpress.com/2018/03/16/cseday18-blog-how-the-field-of-cse-has-changed-in-the-last-12-months-and-where-its-going-next/>

buyers, while making it clear that **any** third-party involvement in the prostitution of a child falls under the Convention definition of human trafficking and is a very serious human rights abuse.

Prevention

Articles 5 and 6 of the Convention are concerned with the prevention of human trafficking and require measures to use a gender mainstreaming and child-sensitive approach and to discourage the demand that leads to trafficking, especially of women and children.

The provisions for transparency in supply chains in the MSA go some way towards prevention – but they do not apply to sex trafficking, which mostly affects women and girls.

Not only does the MSA not include any measures to discourage the demand for prostitution that drives sex trafficking, it does not challenge, and in fact implicitly accepts, the damaging narrative, introduced by sex industry lobbyists, that prostitution should be renamed ‘sex work’ and considered a form of labour. This normalises and legitimises prostitution, and hence sanctions the demand, in direct contravention of Article 6.

There are two pieces of legislation in England and Wales that can currently be used to discourage demand for buying adults in prostitution. One, Section 53A of the Sexual Offences Act 2003, is [barely used](#),²¹ and the [CPS guidance](#)²² discourages the use of the other (the kerb crawling legislation).

Conclusion

We have shown above that the UK is not meeting its most basic obligations under the Convention in regards to how it frames sex trafficking under its domestic legislation. Instead of following the clear definition in the Convention, the UK has concocted a definition that implicitly normalises and trivialises prostitution and frames it as a normal form of labour that is sometimes ‘forced.’ As a result, not only are most victims of sex trafficking unrecognised and unsupported and most perpetrators have impunity, but men’s demand for prostitution is given the green light.

This is extremely serious for many reasons – not least because the UK now runs [training](#)²³ for legislators in its former colonies in how to implement legislation similar to the MSA in their own countries. In other words, the UK is exporting its legislation that violates not only the Convention but other binding international treaties.

Since 2010, the UK Government has overseen a huge increase in gender inequality and women and children’s poverty. We set out many examples in our [response](#)²⁴ to the Women & Equalities Committee’s inquiry on the implementation of SDG5. The situation has worsened

²¹ <http://nordicmodelnow.org/facts-about-prostitution/fact-its-illegal-in-england-and-wales-to-buy-sex-from-someone-whos-been-coerced/>

²² <http://www.cps.gov.uk/legal-guidance/prostitution-and-exploitation-prostitution>

²³ <http://www.uk-cpa.org/what-we-do/modern-slavery/>

²⁴ <http://nordicmodelnow.org/2018/04/10/submission-to-the-women-equalities-committees-inquiry-on-the-implementation-of-sdg5/>

since then and it is now [recognised](#)²⁵ that many women in the UK are turning to prostitution under the coercion of extreme poverty.

We are concerned that prostitution is becoming accepted as a form of last-ditch welfare for vulnerable women. We do not believe that this would have been possible had the UK implemented the definition of human trafficking set out in Article 4 of the Convention – because prostitution would be understood as inherently harmful and inseparable from sex trafficking.

As BREXIT approaches with all its uncertainties, the UK is facing a precarious future, both economically and socially, and, as in any crisis, women and children are likely to be the first collateral.

We cannot help but question whether the MSA was part of an attempt to deflect attention away from the international understanding of sex trafficking and replace it with a view of the world in which women and girls can become the source of ever more ruthless capitalist accumulation of wealth as they are treated as sex toys for men and reproductive machines for the rich. The Convention is meant to stop this.

We sincerely call on you to do everything in your power to insist the UK Government meets its obligations under the Convention and revises the MSA and related legislation accordingly.

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²⁵ <http://nordicmodelnow.org/2019/05/26/statement-about-universal-credit-and-survival-sex/>