



Submission to the Joint Committee on Human Rights' Call for Evidence on the Victims and Prisoners' Bill

About the HOPE campaign:

The campaign was set up by UK sex trade survivors who endured violence and abuse from punters and pimps along with the stigmatisation of being labelled 'common prostitutes'. These women were made to sell sex on the streets by pimps as teenagers and would be regularly arrested by the police for soliciting and loitering. They have all exited prostitution, some of them over thirty years ago, but they are still regarded as criminals because their criminal records are retained by the state.

The campaign aims to speak out on behalf of thousands of women who have had to live with the ongoing stigmatisation of records being kept of their past abuse and exploitation, most of whom are too fearful or vulnerable to speak out. The HOPE campaign is supported by the Centre for Women's Justice.

About the Centre for Women's Justice

Centre for Women's Justice (CWJ) is a lawyer-led charity focused on challenging failings and discrimination against women in the criminal justice system. We carry out strategic litigation and work with frontline women's sector organisations to challenge police and prosecution failings around VAWG. Our evidence base is built on the experience of frontline women's sector support workers, the requests for legal advice they send to us, and our research. CWJ supported the women in the HOPE campaign with litigation brought in the High Court which has now concluded.

Does Part 1 of the Bill do enough to protect victims' rights? If not, how could it do more?

The Victims and Prisoners' Bill could offer a key opportunity to end the unjust criminalisation and stigmatisation that women with convictions for street prostitution offences continue to experience. These women are victims, not criminals and should be recognised as such. We invite the Committee to consider recommending the Bill addresses this by:

- (a) Using the Bill to decriminalise conduct falling within section 1(1) of the Street Offences Act 1959, in other words street prostitution offences; and
- (b) Establishing, through the Bill, a mechanism to expunge criminal records for street prostitution offences and other minor offences committed as a result of being exploited in prostitution.

The UK's domestic and international human rights obligations

The UK is currently failing to comply with its international human rights obligations to women exploited in prostitution, including under the Istanbul Convention, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and trafficking and anti-modern slavery provisions.

International human rights conventions have increasingly recognised prostitution as a form of sexual exploitation and identified this as a key issue in ending violence against women and girls. The Palermo Protocol¹ aims to prevent, suppress and punish trafficking, especially of women and children, internationally. It recognises that “exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation”. This has been recognised by the enactment of the Modern Slavery Act 2015 (MSA). Section 45 of that Act provides a statutory defence to anyone who commits a wide range of criminal offences because they were compelled to do so by reason of slavery or exploitation.

The Independent Inquiry into Child Sex Abuse identified a number of case studies where children had been criminalised as a result of their exploitation, with life-long consequences. One of the themes highlighted in the Inquiry's final reportⁱ was that “young people, particularly those experiencing sexual exploitation, were sometimes arrested by the police and criminalised for offences arising from their exploitation, while the exploiters remained at liberty to continue offending”.

In its Concluding Observations to the UK, CEDAW specifically recommended that the UK should “Revise legislation to decriminalize women in prostitution and clear the criminal records of women who have been convicted for offences related to prostitution to enable them to seek alternative forms of employment.”²

The problem which needs to be addressed

Many thousands of women who were convicted of soliciting and loitering continue to be stigmatised and disadvantaged by the mandatory retention of criminal records as a result of being historically subjected to violence and exploitation by pimps and traffickers. Some of these women were children at the time they were first exploited and convicted as it was only in 2015 that the Street Offences Act was amended so that only a person over the age of 18 could be convicted of loitering and soliciting. Prior to this, the offence could be committed by a child as young as 10. Even where women were not convicted as children, many were groomed as children, but only convicted as adults while still under the continuing control of their pimps and traffickers. Many of these women were trafficked throughout the UK for the purposes of being prostituted.

¹ [General Assembly Resolution 55/25, 15 November 2000: Protocol to prevent, suppress and punish trafficking in persons especially women and children, supplementing the United Nations Convention Against Transnational Organised Crime](#)

² [Jay, A. et al \(2022\) The Report of the Independent Inquiry into Child Sexual Abuse](#)

It is also worth noting that before 2003, the offence was discriminatory on the basis of sex, such that only women could be convicted. Even after the offence was made sex-neutral, women continued to be disproportionately affected³. The policy of retention of criminal records therefore continues to have a hugely disproportionate impact on women. The Istanbul Convention, as ratified by the UK, applies to all forms of violence against women, including women exploited through prostitution, and imposes an obligation to abolish laws which discriminate against women. The UK is failing to comply with its obligations under the Convention in respect of the criminalisation of women exploited in prostitution.

Times have changed: those in street prostitution are now widely understood to be victims and are usually no longer arrested. In 1989, there were over 15,739 women cautioned or convicted for soliciting. By 2002, this number had fallen to 4,102. By March 2021, police recorded only 302 offences of soliciting for prostitution⁴ i.e. approximately 2 per cent of the numbers of recorded offences than 32 years previously. The changing nature of prostitution from street-based to online, combined with police guidance on seeing those prostituted as victims, means that it is only those deemed 'persistent' and troublesome that are now arrested.⁵

Disclosure and Retention of criminal record data

A judicial review claim brought by members of the HOPE campaign and others sought to challenge the disclosure, retention and criminalisation of criminal records arising from convictions of s1 Street Offences Act 1959. The Court of Appeal confirmed in *R (QSA, Broadfoot & ARB) v Secretary of State for the Home Department & Secretary of State for Justice* [2020] EWCA Civ 130, that the multiple conviction rule requiring mandatory disclosure under the DBS was contrary to Article 8 ECHR and led to subsequent statutory reforms allowing these records to be filtered. However, following remittal to the High Court, a subsequent judgment confirmed that such records must be retained until the holder reaches the age of 100.⁶

The law in England and Wales continues to require the retention of all criminal record data, including biometric data and data of the utmost sensitivity. There are no exceptions or mechanisms to allow for removal even in cases where the pimps or traffickers have gone on to be investigated and/or convicted for their abuse and exploitation.

The impact of this is significant and despite recent changes to the disclosure regime, women are still at risk of these records being disclosed in certain circumstances and knowledge that

³ For the period 1 May 2004 to 2014, there were a total of 11,341 convictions or cautions handed down or given to women, under section 1, Street Offences Act 1959. For the same period, there were a total of 213 convictions or cautions handed down or given to men i.e. less than 2% of the number affecting women. (Response from Ministry of Justice to Freedom of Information Request by Birnberg Peirce dated 27 May 2016, reference 246-16 FOI 104795)

⁴ Home Office, Police recorded crime and outcomes open data tables (2022)

⁵ Phoenix, J. (forthcoming 2023) "Prostitution and Sex Work", in Leibling, A., Maruna, S. and L. McAra (eds). *The Oxford Handbook of Criminology* 7th edition, Oxford University Press: Oxford

⁶ *QSA & Ors v National Police Chiefs Council and Secretary of State for the Home Department* [2021] EWHC 272 (Admin)

they remain on the record continues the sense of stigmatisation and is a significant psychological barrier to applying for jobs, volunteering and otherwise participating freely in civil society.

Street offences carry a unique stigma which is not comparable to other non-violent offences. For most women, disclosing the offences can also mean having to disclose a deeply traumatic history of abuse or exploitation, including serious domestic and sexual violence. This creates an additional barrier to exiting prostitution and increases the life-long impacts of having been abused, leaving women unable to move on. The mandatory retention of their records serves no purposes aside from re-traumatising victims of exploitation, abuse and trafficking.

This strict approach is not replicated in the majority of Council of Europe states, whether they have adopted the sex buyer model. Prostitution has been fully decriminalised in Austria, Belgium, Denmark, Germany, Greece, and the Netherlands, while Sweden, Norway, Iceland, Northern Ireland, the Republic of Ireland and France have adopted the sex buyer model (which decriminalises only those exploited and not those who profit from prostitution ('pimps' and brothel owners) and those who benefit from it ('punters')). It does not appear that any other Council of Europe state has a similar approach to the retention of prostitution-related criminal conviction data.

Conclusion

Parliamentary debate remains unresolved about decriminalisation of prostitution and which model best addresses the harms of prostitution for women.⁷ However most proponents of either model agree that s.1 offences should be decriminalised. It is also widely agreed that the expunging of these criminal records is necessary to end the unjust stigmatisation that these women continue to experience. The Home Affairs Committee has recommended that “the Home Office should change existing legislation so that soliciting is no longer an offence” and “legislate for the deletion of previous convictions and cautions for prostitution from the record of sex workers by amending the Rehabilitation of Offenders Act”.⁸

Decriminalising s.1 offences and allowing for the expunging of historical convictions which were a result of abuse and exploitation would provide the necessary recognition that these women were victims, not criminals. Many just want to be finally free of the record of their abuse and the stigma they have endured for decades.

The Victims and Prisoners' Bill should seek to rectify this continuing breach of the UK's domestic and international human rights obligations by addressing the enduring criminalisation of women exploited in prostitution and its discriminatory impact.

⁷ On stigma, difficulties exiting prostitution and proposed reforms, see this government-commissioned research: [Hester, M. et al \(2019\) The nature and prevalence of prostitution and sex work in England and Wales today](#). See also: [Matthews, R. et al \(2014\) Exiting Prostitution: A Study on Female Desistance](#).

⁸ [Home Affairs Committee \(2016\) Prostitution: Third Report of Session 2016-17](#)